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FACTORS AFFECTING THE DISPOSITION OF SEXUAL ASSAULT CASES BEFORE AND AFTER A CHANGE IN SEXUAL ASSAULT LAWS

Rita Gunn
Prairie Research Associates
Winnipeg, Manitoba

Rick Linden
University of Manitoba
Winnipeg, Manitoba

Abstract — Bill C-127, An Act to amend the Criminal Code in relation to Sexual Offenses and other Offenses Against the Person, was proclaimed by Parliament on January 4, 1983. An evaluation was conducted in six Canadian cities to determine the impact of the new law. This article describes the findings from one site — Winnipeg, Manitoba — and centers on the processing of sexual assault cases as they proceed through the criminal justice system. Files from the police, Crown, courts, and Sexual Assault Centre were used to obtain study information. A pre-reform/post-reform comparison was conducted to analyze the extent to which changes could be attributed to the legislation. Although results of the evaluation indicate no difference in conviction rates that can be attributed to the legislation, there are changes in the types of cases prosecuted.

Résumé — Le 4 janvier 1983 le Parlement du Canada a promulgué le projet de loi C-127, Loi modifiant le Code criminel en matière d'infractions sexuelles et d'autres infractions contre la personne. Afin de déterminer l'impact de ce nouveau projet de loi, une évaluation a été menée dans six villes canadiennes. Cet article décrit les conclusions provenant d'un de ces lieux — Winnipeg, Manitoba — et se concentre sur la suite des procès d'agressions sexuelles à travers le système de justice criminelle. Des dossiers obtenus de la police, de la Couronne, des cours et du Centre d'aide aux victimes d'agression sexuelle ont fourni l'information nécessaire aux fins de cette étude. Une comparaison préalable à la réforme/à la suite de la réforme fut menée afin d'analyser jusqu'à quel point les changements pouvaient être attribués à la législation. Les résultats de cette évaluation démontrent que même s'il ne semble pas y avoir de différence dans les taux de condamnations qui peuvent être attribués à la législation, il y a des changements dans le genre de poursuites judiciaires.

OVER THE PAST TWO DECADES many groups have criticized the legal treatment of sexual offenses. These concerns have centered on the degradation of victims and the apparent institutionalized denial of women's rights under the law. Particular problems with the law included the definition of rape as a crime that could only be committed against women and yet could not apply to a spouse, the treatment of victims by a criminal justice system that sometimes seemed more concerned with the complainant's credibility than with offenders' guilt, and the application of unique procedural and evidentiary standards to sexual offenses.

Bill C-127, An Act to amend the Criminal Code in relation to Sexual Offenses and other Offenses Against the Person, proclaimed by Parliament on January 4, 1983, represents a comprehensive response to these and other concerns with the rape law. Included in this new legislation were significant changes, such as reclassification of the crime of rape into three levels of sexual assault (based on aggravating factors), disqualification of evidence concerning the complainant's background that is not pertinent to the case, removal of spousal immunity, creation of a law that is gender neutral, and introduction of new rules of evidence, including those pertaining to consent, corroboration, and recent complaint.

In this article, we compare the processing of sexual assault offenses through the criminal justice system before and after implementation of Bill C-127 and discuss the impact of this legislation in Winnipeg, Manitoba.

RECENT EVALUATIONS ON RAPE LAW REFORM

Several studies have assessed the impact of rape reform legislation, among them studies done in Michigan (Marsh, Geist, & Caplan, 1982), Washington (Loh, 1980), Nebraska (Gilchrist & Horney, 1980), California (LeBeau, 1987; Polk,1985), and a recent study looking at six American jurisdictions (Horney & Spohn, 1987. The legislative changes evaluated in these studies were similar to the changes made in Canada, though the Canadian reforms were broader than those in most states. The effects reported in the U.S. studies were modest at best, with the only changes of any magnitude found in California and Michigan.

In his study using 1971–1975 data from San Diego, LeBeau (1987) looked at the impact of rape law reform on reporting of rapes to the police. In 1974 California restricted testimony on the victim's previous sexual history, prohibited the use of the term *unchaste character* to describe a rape victim in court, and prohibited any inference that the victim's prior sexual conduct had bearing on her credibility. In measuring the effect of these changes, LeBeau looked at both the number of rapes reported to the police and the characteristics of reported cases. He hypothesized that if the law did have an impact on reporting, it would increase the number of cases reported and the proportion of reported cases that did not conform to the pattern of "classic rape." In support of these hypotheses, LeBeau found that there was a substantial increase in the total number of reported rapes in 1975 (though there had been a similar increase in 1974). He also found a higher proportion of "nonclassic" assaults: More nonstranger rapes were reported, more white victims reported interracial rapes, and more rapes were reported by victims who did not receive physical injuries. Polk's (1985) subsequent work in California found no change in clearance rates or conviction rates, and a slight increase in rates of incarceration.

By contrast, the number of reported rapes did not increase in Michigan (Marsh et al., 1982), even though the Michigan reform was more comprehensive than California's. However, the Michigan study did show an increase in both arrests and convictions for rape. Criminal justice officials in Michigan believed that the prosecutor's chances of winning a rape case were increased by the restrictions on testimony about the victim's prior sexual conduct. These officials also believed that the new law made the victim's experience less unpleasant.

The study carried out by Horney and Spohn (1987) is worthy of note because it avoids some of the limitations of the earlier work. First, their study looked at rape law reform in six different states, so comparative analysis among states with different degrees of reform was possible. Legislative change ranged from reforms enacted in Michigan and Illinois, which were similar in scope to those enacted in Canada, to reforms in Georgia and Washington, DC, which introduced some evidentiary changes relating to corroboration and prior sexual history but which both require genital penetration and some evidence of resistance. Second, their study used a time-series

analysis of 15 years in order to show long-term trend data. Third, the effects of "history" on the dependent variables can be controlled to some extent by the fact that different jurisdictions had different intervention points (different dates of legislative change), and environmental factors such as an increased concern for rape victims are probably roughly constant from one jurisdiction to another.

Horney and Spohn (1987) performed a time-series analysis using the date of legal change as the independent variable and offenses reported to the police, number of indictments, and number of convictions as dependent variables. Although the final results of the analysis were not available, preliminary analysis of four of the six jurisdictions showed that the only significant effect of the legal changes was an increased number of indictments in Chicago, which is in a state that had enacted one of the most comprehensive legal reforms. Horney and Spohn hypothesize that effects will be greatest in jurisdictions that have had the strongest reforms, which suggests that Bill C-127 may have some measurable impact. They also suggest that legal changes will affect indictments and convictions more than offenses reported to the police, as the changes are better known among the legal community than among members of the public.

DATA SOURCES

For this evaluation, information was extracted from police records, Crown files, court documents, and Sexual Assault Centre files. The study period consisted of two discrete 2-year spans: the 2 years prior to the enactment of Bill C-127 (1981–82) and the 2 years after (1984–85). The two study periods were compared in order to analyze the extent to which any changes occurred that might be attributed to the implementation of the sexual assault legislation; for example, whether the law reform encouraged complaints from spouses, men, prostitutes, or other persons affected by the changes, and if so, whether these persons were successful in having charges laid.

Because records are prepared for organizational purposes, they did not always include variables of interest to the evaluation. Further, the researchers had no control over the quality of the information recorded in the files. This problem is compounded over time because procedural changes may alter the way events are reported. Additionally, organizational personnel may have changed, which could have led to alterations in recording procedures over time. Because of these

factors, apparent changes in outcome may actually reflect factors in organizational reporting or recording procedures. Similarly, real change in outcome may be concealed by such bookkeeping changes.

Although records can reflect biases of the organization or of the persons preparing the records, such biased data can actually permit additional insight into personal attitudes and perceptions. For example, police perception of credibility of the complainant may be based on their judgement of the person's character and may affect their decision to found a complaint. One way to evaluate the impact of the legislation is to compare the processing of pre- and post-reform cases in which doubt was cast on the character of complainants, to determine whether this factor made a difference in founding, charging, prosecuting, and convicting.

POLICE FILES

Police reports signify the first *official* stage of a sexual assault complaint. It is at this level that a case is deemed to be founded or unfounded. A classification of unfounded suggests that the officer receiving the complaint does not believe the complainant. This may be due to lack of evidence or to other, often discretionary, factors (e.g., officer believed the complainant was too intoxicated to recall details; there were contradictions in the complaint; complainant had a history of unfounded complaints). A case for which there is no evidence may be classified as founded, in spite of the unlikelihood of prosecution. The officers handling the complaint decide whether they think the complaint is credible, and thus founded. Charging also occurs at this level, although the Crown may be asked to advise whether to proceed with a case.

Police file data were used to record information about the initial report and manner of police processing. Winnipeg City Police received approximately 740 sexual assault complaints in 1981–82 and 1,180 in 1984–85. (These totals reflect all sexual offenses, including incest and other offenses not relevant to the evaluation.) A 50% sample of sexual offenses was drawn manually (every second card) from the card files on these complaints held in the Bureau of Police Records.

Cases not relevant to the evaluation were selected out of the sample. The 1981–82 sample was composed of cases of rape, attempted rape, indecent assault, sexual intercourse with a female between 14 and 16, sexual intercourse with a female under 14, gross indecency,

and buggery. To permit a comparison with the post-reform sexual assault data, incest cases were excluded except when combined with any of the above offenses. The 1984–85 sample consisted of complaints classified as sexual assault (as defined in Section 246.1 of the Criminal Code [CC]) or complaints that resulted in later charges for that offense. Some cases involved other sexual and nonsexual offenses in addition to sexual assault. The post-reform sample also included cases of sexual assault with a weapon, threats, or causing bodily harm (CC 246.2) and aggravated sexual assault (CC 246.3). As in the pre-reform sample, some of these cases involved other offenses as well, and again, incest cases were included in the sample only when combined with one of the three levels of sexual assault. The 1981–82 sample consisted of 315 incidents involving 317 complainants and 306 accused. The 1984–85 sample consisted of 523 incidents involving 528 complainants and 469 accused.

Incidents that were one-time events and that involved more than one complainant or more than one accused were classified as a single incident of sexual assault. Ongoing offenses that involved multiple complainants and one accused, or alternatively, multiple accused and one complainant, were classified as separate incidents. Because multiple accused and/or multiple complainants were involved in several cases, the total number of complainants and accused differs from the total number of incidents.

Information obtained at the police level included sociodemographic details of the complainants and accused, description of the incidents (time, location, resistance, injuries sustained, medical treatment, accomplices, witnesses, etc.), victim-offender relationship, promptness of reporting, offender's prior record, methods of classifying complaints, subjective data (i.e., personal comments reported in files), and any information about the police processing of cases. Reports dropped at the police level were examined to determine whether the decision was made by the complainant or police, and the reason for termination. Cases that proceeded beyond the police investigation (i.e., charges were laid) were tracked through the courts.

CROWN FILES

The next level of criminal justice processing, the Crown, is under the jurisdiction of the Manitoba Attorney General's Department. Crown attorneys determine whether a complaint should be prosecuted

and how the case should be prepared, and assess the likelihood of conviction. The Crown has the discretion to alter or to reclassify charges as they decide which charges to proceed with in order to obtain a conviction. They can also negotiate with defence counsel to secure a guilty plea from the accused in exchange for a reduction in the number or seriousness of the charges, or a lenient recommendation for sentence.

Data pertaining to the Crown's involvement provided details on charging, evidence, witnesses, plea bargaining, preliminary hearings, and preparation of complainants for court.Information regarding the termination of charges at this level was collected, including details concerning whether this decision was initiated by the Crown, prior to a preliminary hearing, by a judge at a preliminary hearing, or by the complainant, and why this decision was made. Crown files were also used to obtain information concerning the trial process, including the nature of final charges, disposition, sentencing, and appeals.

A total of 78 cases in the pre-reform period and 230 cases in the post-reform period were tracked at the Crown level. Juveniles, who made up 17.6% of the 1981–82 accused and 17.9% of the 1984–85 accused, were not tracked beyond the police level. (These cases are handled by youth court.)

COURT FILES

In Manitoba, most sexual assault cases at the provincial court level are preliminary hearings. It is unusual for changes to be made to charges at the preliminary level. At this stage of the proceedings, the Crown typically sets out the case and lets the judge decide whether to commit the defendant on any or all of the charges. Usually, the only cases that proceed to completion in provincial court are summary conviction offenses, and the Crown can elect to proceed summarily only in cases of simple sexual assault (CC 246.1). Summary conviction offenses carry low maximum penalties (i.e., a maximum of six months' imprisonment and/or a maximum $2,000 fine). Hence, Crown attorneys are unwilling to designate most sexual offenses (which are perceived as serious crimes) as within this category, preferring to handle them as indictable offenses, which allows the defendant to elect trial by provincial court judge, Queen's Bench judge, or Queen's Bench judge and jury. The latter two choices are favored because the defendant is then entitled to a preliminary

hearing. Often the defendant agrees to plead guilty in exchange for a reduction in the number or seriousness of the charges, or some lenient recommendation for sentence by the Crown. If the defendant pleads guilty prior to a trial, the plea is heard at a sentencing hearing.

Cases were tracked at this level if a case proceeded to a sentencing appearance, preliminary hearing, and/or trial. Court documents were used to provide information concerning the nature of final charges, dispositions, sentencing, and appeals. In all, 53 pre-reform cases and 178 post-reform cases were tracked at the court level.

FINDINGS

Table 1 demonstrates the filtering of sexual assault reports in the criminal justice system. Of 315 reports to the police in the pre-reform period, a total of 207 (65.7%) were terminated prior to any formal charges being laid. Among these, 78 (24.8%) reports were deemed unfounded by the police. Of the founded cases, charges were not laid in 21 (6.7%) and the suspect was not apprehended in 88 (27.9%). The remaining 20 (6.3%) cases were terminated at the request of the complainant or the complainant's parent/guardian. A further 30 cases (9.5%) were sent to youth court.

Of the 78 adult cases forwarded to the Crown, 25 (7.9%) were stayed, leaving 53 (16.8%) that proceeded to court. Of these cases, 13 (4.1%) were stayed at trial or resulted in acquittals. Dispositions were reached in 40 cases, 24 (7.8%) as a result of guilty pleas and 16 (5.1%) as a result of a trial verdict.

In the post-reform period, Table 1 shows that of 523 reports to the police, a total of 234 (44.7%) were terminated prior to any formal charges being laid. The police deemed 114 (21.8%) reports unfounded. Of the founded cases, charges were not laid in 40 (7.6%) and the suspect was not apprehended in 56 (10.7%). The remaining 24 (4.6%) were terminated at the request of the complainant or the complainant's parent/guardian.

Of the 230 adult cases forwarded to the Crown, 52 (9.9%) were stayed, leaving 178 (34%) that proceeded to court. Of these, 26 (5.0%) were stayed at trial or resulted in acquittals, and 152 cases resulted in dispositions, 121 (23.1%) as a result of guilty pleas and 31 (5.9%) as a result of a trial verdict.

The filtering out of reports at the police/Crown/court levels accounted for the termination of 87.3% cases in the pre-reform period and 70.9% cases in the post-reform period. It appears that the attrition rate has decreased considerably in the post-reform sample; however, a study of the processing of sexual assault cases in Winnipeg over the 2-year period 1976–77 (Minch, Linden, & Johnson, 1987) showed a conviction rate of 28.9%, almost identical to that found in the post-reform period.

Table 1
Filtering Out of Charges at the Police/Crown/Court Levels
Winnipeg, Manitoba

	1981-82 Pre-reform attrition		1984-85 Post-reform attrition	
	Number	Percentage	Number	Percentage
Police level	315	100.0	523	100.0
Unfounded	78 (24.8)	75.2	114 (21.8)	78.2
No suspect apprehended	88 (27.9)	47.3	56 (10.7)	67.5
Complainant initiated	20 (6.3)	41.0	24 (4.6)	62.9
Charges not laid	21 (6.7)	34.3	40 (7.6)	55.3
Youth court	30 (9.5)	24.8	59 (11.3)	44.0
Cases remaining	**78**		**230**	
Crown level				
Stayed	25 (7.9)	16.8	52 (9.9)	34.0
Cases remaining	**53**		**178**	
Court level				
Stayed at trial/ acquitted	13 (4.1)	12.7	26 (5.0)	29.0
Cases remaining	**40**		**152**	
Guilty plea	24 (7.6)	5.1	121 (23.1)	5.9
Found guilty at trial	16 (5.1)	—	31 (5.9)	—
Total filtering out of cases at the police, Crown, and court levels	275	87.3	371	70.9

An evaluation of Bill C-127 conducted simultaneously in Lethbridge, Alberta, found conviction rates of 24% for both pre- and post-reform samples. These findings, along with those from the earlier 1976–77 study and the 1984–85 study, suggest that the 1981–82 sample is atypical. Table 1 shows that in Winnipeg, the only substantial difference between the 2 years is in the proportion of offenders not apprehended by the police: 27.9% of pre-reform cases and 10.7% of post-reform cases. In 1976–77 the proportion not apprehended was 10.9%, again suggesting that the 1981–82 sample was not a typical one.

DISCUSSION

Though this article has focused solely on file review data, the evaluation findings are also based on data from court monitoring, and interviews with police, prosecutors, defence lawyers, judges, Sexual Assault Centre workers, physicians, and victims. Despite probable lack of any increase in the conviction rate, other changes were evident in the file data, court monitoring, and interviews. According to the majority of interview respondents, the most important differences between the old law of rape and the new one of sexual assault pertain to the elimination of the requirements of corroboration, recent complaint, and penetration. Respondents felt that many of the "less serious" cases are now being prosecuted, as well as incidents that were reported long after they occurred.

These perceptions were supported by the file data. For example, there were substantially more child complainants in the post-reform period, and more of the post-reform assaults involved parents or others who were known to the complainant. There are often long delays before children are able to overcome their fear and to disclose sexual abuse by a parent or other person close to them. Before the rules relating to the matter of recent complaint were repealed, it was believed that a victim suffering a genuine sexual assault would complain to someone at the first opportunity. The presumption of an immediate complaint failed to consider the severe impact a sexual assault may have on some victims' willingness to reveal the offence.

Another indication of positive change was the fact that more prostitutes appeared in the post-reform period than in the pre-reform period. There were 8 (2.5%) prostitutes in the pre-reform sample and

20 (3.8%) in the post-reform sample. This difference was also found in Lethbridge, where no complaints were made by prostitutes before the amendments and three cases were reported after passage of Bill C-127. The slight increase in sexual assaults reported by prostitutes in 1984–85 could reflect the new law's intended emphasis on the assaultive rather than the sexual aspect of the offense. The law reform restricts the questioning of complainants about their reputation, character, and past sexual behavior. Although there is evidence from trials and interviews that some former attitudes and practices are being preserved, we found that during the trials monitored in Winnipeg, complainants were generally not questioned about their previous sexual behavior. When defence attempted to pursue this line of questioning, the Crown and judge intervened.

More complainants in the post-reform period reported assaults of a nonstereotypical nature (e.g., not involving violent assault by strangers), and more of these cases were processed through the courts. As well, the proportion of complainants who reported being assaulted by strangers decreased in the post-reform period. Although this difference partly reflects the increased number of child sexual assault cases being reported to the police since 1983, even the reports of adult complainants revealed a smaller percentage of assault by strangers. The former law required corroborative evidence, such as a witness to the actual offence, a display of extreme distress by the victim immediately following an offence, or cuts, bruises, torn clothing, and so forth, to substantiate a victim's complaint of being sexually assaulted. Injury to complainants was not only evidence of an illegal act, but also served to define an assault according to the social stereotype. Under the new law, the absence of such evidence no longer precludes a conviction.

Although there have been more cases processed following Bill C-127, and there has been improvement in the manner in which cases are dealt with, the conviction rate has probably not been affected by the legislation. Advocates of the law reform had hoped for an increase in the conviction rate. However, some critics said that because charges would be laid in weaker cases, the conviction rates would decrease. Neither view is supported by our data.

The passage of Bill C-127 was an acknowledgment of womens' rights, but consistent affirmation of these rights cannot be guaranteed solely by legislation. Bill C-127 provides the framework that both

allows and validates social change. To this extent, the first step toward meaningful change has been taken.

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