EXECUTIVE SUMMARY

Sexual Assault Legislation: An Implementation Study

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CHAPTER I. INTRODUCTION

The U.S. Department of Justice published the first study of rape law reform in 1976, less than two years after the first legislative enactments made sweeping changes in Michigan law. That report attempted to detect early patterns of success or failure and urged caution in enacting law reforms. A primary concern of this study was the speed with which rape law reform was beginning to take place. In addition, the report suggested that proceeding with the legislative rather than the "more thoughtful and deliberate" common law process would produce laws reflecting confusion and uncertainty. A backlash against rape victims was predicted, particularly if law reforms were found to be unconstitutional.

Ten years have now passed since Michigan's landmark legislation, and it is possible to examine the concerns of earlier studies in the light of the decade of experience. The present study looks at the experience of three states as rape law reform models reflecting a range of new criminal laws nationwide. From the experiences of these states, the validity of concerns about lawmaking process can be tested. From the substantive law differences in these models, some indications can be drawn as to the significance of substantive law in meeting generalized rape law reform goals.

The project's primary source of information on the efficacy of rape law reform was the perceptions of criminal justice practitioners and victim advocates. These respondents were asked to assess specific elements of law reform.

A. Purpose of the Project

The passage of extensively reformed sexual assault legislation in Michigan in 1974 has been followed by legislative reform of some sort in every state. This study assessed the perceptions of criminal justice practitioners and victim advocates about the impact the rape law reforms introduced during the 1970's. A survey of practitioners evaluated the major elements of rape law reform.

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

Studies of the implementation of rape law reform should be useful to advocates and policy makers considering future

reform as well as to practitioners who must work with the law. The research further provides insight and guidance for the victim advocates who work within the criminal justice system.

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

By assessing the acceptance of reforms in the criminal justice system, this study tests the assumption of rape law reformers that law reform is a necessary first step in achieving long-term change in the criminal justice response to sexual assault. Under that assumption, statutory change should enhance the prosecution of cases by providing the law enforcement community with more effective tools and fostering social and legal climates more favorable to victims which would result in adequate use of those tools.

The project evaluated:

- the degree to which the legal assumptions and social values embodied in the rape law reform concept have achieved long-term acceptance by the criminal justice community;
- whether victim perceptions of the criminal justice system have changed, and if so, what effect this has had on the criminal justice system;
- non-legal factors which most influence reporting rates and the criminal justice response to complaints;
- reforms perceived by advocates and practitioners as enhancing the prosecution of cases; and
- how principals in the criminal justice system feel their individual roles have been affected by rape law reform.

B. Methodology

This study examined the impact of changes in rape law and criminal justice system practices in Florida, Georgia and Michigan. This study was based on: (1) a review of reform objectives and the basis for them; (2) a review of case studies of rape law modifications; (3) a review of state codes and case law relating to the development of criminal justice treatment of rape; and (4) a survey of professional personnel in the criminal justice system. The study surveyed 151 practitioners in six jurisdictions: Miami and Jacksonville, Florida; Atlanta/Decatur and Savannah, Georgia; and Detroit and Flint, Michigan. It included five occupations: police, prosecutors, judges, defense attorneys, and victim advocates. The survey was conducted through in-person interviews at the six sites using a standard questionnaire which was adapted slightly for each state.

The three states chosen for this study represent three different rape law models: (1) a common law model, (2) a sexual battery model, and (3) a criminal circumstance model. These models do not specificially reflect the rape law reform features of every state. They do, however, reflect the continuum of

law reform process and reform features. At the most conservative end the Georgia model, based on a combination of legislative intervention and case law, retains common law elements of the offense with some relaxation in standards of proof. In the middle the Florida model, also based on a combination of legislative intervention and case law, retains most common law elements but broadens the definition of the offense. At the opposite end of the continuum the Michigan model, based almost exclusively on legislative intervention, represents a major departure from common law.

The survey of professional personnel in the criminal justice system was carried out through individual meetings at six sites in the three states studied. A structured questionnaire was used which consisted of approximately 25 sets of questions. Respondents were asked about specific effects of new provisions in rape law.

C. Highlights of Findings

Of the three states studied, the change in Michigan rape law was the most comprehensive, while Florida law was subject to "moderate" change, and Georgia has experienced only "limited" reform.

All of the judges interviewed stated their satisfaction with the reformed laws. Similarly, 96 percent of prosecutors, 90 percent of victim advocates, and 80 percent of police indicated satisfaction with changes that were made in the law. Not unexpectedly, defense attorneys as a group expressed less satisfaction; but a surprising 50 percent did indicate no "real" dissatisfaction with the reformed laws.

A comparison of respondent satisfaction on a site by site basis indicates that the more comprehensive approach to law reform taken by Michigan has produced greater satisfaction than the "limited" approach taken by Georgia.

Rape law reform was considered by most respondents as having had an impact on both public and criminal justice system attitudes about sexual assault in their states. Certain changes in rape law were also credited with increasing victim reporting rates and/or victim cooperation with the criminal justice system. The most frequently mentioned reforms were enactment of rape shield laws, repeal of corroboration requirements, and modification of resistance standards. Changes in standards of proof were seen as contributing to increased reporting and improved cooperation. With these changes, complainants could expect to be treated in a less judgmental fashion and lack of corroborating evidence would not present a bar to prosecution of the complaint.

Respondents found changes in victim reporting patterns and criminal justice system response to complaints to be influenced by a number of non-legal factors. The most frequently cited were the women's rights movement and media attention. Some respondents saw the women's movement as having encouraged greater sensitivity on the part of law enforcement and criminal justice personnel through its demands for improved victim treatment. The

major change attributed to the women's movement, however, appears to be that of changing victims' attitudes toward themselves and fostering a demand for better protection under the law. Some respondents cited the women's movement as reducing the stigma of victimization resulting in better victim support by family and friends.

D. Major Conclusions

These findings support the conclusion that the legal concepts and assumptions now embodied in law in these states have achieved long-term acceptance. The findings indicate that law reform need not engender the confusion, uncertainty, or antagonism predicted by some early analysts. To the contrary, reforms in these states have achieved widespread acceptance among criminal justice professionals and victim advocates. As many of these reforms represented radical departure from common law tradition, this finding has implications for those now engaged in efforts to bring about reform in related or comparable areas of criminal law.

CHAPTER II. OBJECTIVES OF RAPE LAW REFORM

A. The Rape Law Reform Movement

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

According to the President's Crime Commission report of 1967, rape was a seriously underreported crime. The reporting victim was likely to encounter more than indifference. Her complaint might produce suspicion or disbelief. The post-rape trauma which she experienced was likely to be misinterpreted or underestimated. Any inconsistency in the victim's story or the absence of corroborating evidence might result in dismissal of her complaint by authorities. Even in the most obvious assaults, where injury had occurred, the complainant most often found her own actions scrutinized for signs of misconduct. Frequently, she would also find her name and address appearing in the local press, jeopardizing her safety and leading to ostracism by neighbors and co-workers. The expectation of poor treatment within the criminal justice system and the community prevented many victims from reporting or caused them to withdraw their complaint after it had been made.

Before the changes in criminal justice procedure were made, there was little guarantee that going through this experience would result in a conviction. A study of verdict patterns before the sexual assault law reform of the past decade found an average acquittal rate of 33 percent in all criminal cases; but a 43 percent acquittal rate in rape trials.[1]

By the early 1970's there was substantial documentation of the frequency with which victims encountered these attitudes and practices. An increasing rate of rape incidence was accompanied by an increasing "unfounding" (i.e., complaint dismissed) rate (18 percent in 1970).[2] Criminal law continued to reflect the false reporting assumption.[3] It was this backdrop of systemic indifference and public misconception which provided the impetus

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[1]Kalven & Zeisel, The American Jury 70 (1966).

[2]F.B.I. Uniform Crime Reports (1970-1971).

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

for rape law reform.[4]

The need for changes in rape law had long existed. Carnal knowledge statutes which derived from English common law[5] were vague and presented a confusing overlap with other statutes. Certain assaultive acts were not named offenses and thus did not fall under sexual assault statutes. Judicial interpretation of the law was obviously complicated and had resulted in conflicting opinions. The carnal knowledge statutes reflected social values of a bygone era and were in direct conflict with the changing social mores of the day.

During the 1940-1960 codification of common law which occurred in many states, some attempt had been made to develop more specificity in defining the elements of the offense and to correct some of the problems existing in the standards of proof. However, in the view of some legal scholars, these efforts frequently exacerbated the problems.[6]

Beginning with passage of comprehensive sexual assault legislation in Michigan, by 1980 some measure of rape law reform had been enacted in every state of the union. The process of law reform has continued as the initially limited reforms of most states are amended.

B. Nature of Rape Law Reforms

The research attempts to identify the most important rape law reform provisions in the view of criminal justice practitioners.

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

At the outset of rape law reform efforts in the early 1970's, society at large seemed more concerned with rising crime rates than with the treatment of the victim. However, the general public interest in reducing the crime rate coincided with that of advocates of victims' rights in rape law reform. The goal of reform advocates was to increase the certainty of punishment, because the threat of punishment already existing in law was

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

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

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

considered inadequate as a deterrent to rape.[7] This belief was bolstered by research findings on juror decisionmaking[8] and by statistics indicating an exceedingly low arrest and conviction rate for the crime.[9] The traditional severity of punishment called for by laws governing the offense made it difficult to obtain convictions in rape cases.[10] It was believed that new statutory schemes which would more closely tailor charges and punishments to specific acts and their consequences would result in increased conviction rates. Of all of the reform goals, this one was the most speculative as there was no precedent for it in other areas of criminal law.

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

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

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

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

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

[9]Battelle Law and Justice Study Center, op. cit.

[10]Gager & Schurr, op. cit., pp. 160-166.

Opponents to reform from the defense bar charged that changing rules of evidence would tend to undermine basic legal concepts, particularly the principle that, "It is better to let some guilty persons go free than to send one innocent person to jail."[11]

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

Traditional legal theory and practice reflected many fears and conflicting attitudes toward the crime of rape. Perhaps most of all, they reflected a belief in the prevalence of false accusations by women. At the outset of the rape law reform effort in the early 1970's, statutes and case law held such an array of "safeguards" against false accusations as to impede the criminal adjudication of many rape complaints.

Prompt reporting of the alleged rape ("immediate outcry") has been considered a major factor in complainant credibility in most jurisdictions.[12] Under English common law, a delayed report could justifiably create the presumption of untruth. Based on this, in some states complaints made after a specified period of time were considered unprosecutable. In other states, jurors were instructed to consider delay in reporting as a factor in assessing complainant credibility. A reverse approach was employed by a few states wherein jurors were instructed to view a prompt complaint as a form of corroboration and/or a factor in credibility. Nonetheless, whether required by statute or simple practice, a credible rape complaint was seen as one immediately reported.

In many states, rules of evidence afforded still another safeguard: the corroboration requirement. This requirement evolved through case law more than statute and reflected the fear of a miscarriage of justice.[13] Requirements varied by state as did the elements of the offense requiring corroboration. Acceptable corroboration has generally included physical injury to the complainant, physical evidence of intercourse, torn clothing, emotional upset and/or witnesses to the act ("immediate outcry"). Some states required corroboration of every element of the offense, while others were satisfied with corroboration of only one or more. In a few states, corroboration was not required either

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

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

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

by statute or case law, but it generally was included in investigation of complaints.

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

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

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

Reformers also sought to ban the judicial practice of cautionary jury instructions on the basis that it constituted denial of equal protection on the basis of sex. It was also held to represent judicial intrusion into the traditional role of the jury as "tryer of facts" and judge of complainant credibility.

Reformers also argued for elimination of the resistance requirement. Rape was cited as the only violent crime requiring prosecution proof of victim resistance.[14] It was argued that this requirement imposed an obligation on victims which could further endanger their safety. Use of force, as a constituent element of the offense, was held by the reformers as sufficient to imply victim resistance.

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

The rape shield law was vigorously opposed on grounds of

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

abridgement of the defendant's Sixth Amendment right to confront his accuser (i.e., guaranteed right to cross examination). Proponents argued that there is no constitutional right to the introduction of irrelevant information. (In some instances, information relevant to prosecution has been ruled inadmissable evidence.) Advocates argued that public interest in protecting complainants and the integrity of the trial process supercedes defense interests. They argued that past defense abuses of cross examination and the trial process made policy change necessary.

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

4. Measures to Replace Common Law Statutes

a. Model statutory schemes. As of 1985, 38 states had repealed their common law statutes, replacing them with a new statutory scheme of graded offenses with commensurate penalties. Many of these statutory schemes have broadened the concept of rape to include acts or behaviors not included under previous statutes, to reject the presumption of exclusively male perpetrators and female victims, and to disallow spousal exemption from prosecution. In a number of states the term "rape" has been replaced with terms such as "sexual assault" or "sexual battery" which stress the assaultive nature of the offenses.

There is great diversity in the nature of these new schemes. Some represent no more than a unification of previous offenses under a new label. Others retain common law offenses while incorporating some portions of the Model Penal Code.[15] Still other states are patterning their approach after the criminal circumstance model first adopted by Michigan, the assault and battery model adopted by Florida, or the resistance model adopted by Washington state. A surprising number of states adopted a mix of concepts and standards embodied in all these models.

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

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

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[15]American Law Institute (1962).

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

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

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

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

b. <u>Prompt reporting requirements</u>. As of 1980, "prompt reporting" as a condition of prosecution had become a relatively moot issue in the law and practice of all states.[16] In most states, a statutory repeal was enacted while in a few states repeal of the corroboration rule voided the application of a prompt reporting requirement. Today, the closest approximation of a prompt reporting requirement exists in Hawaii's law prohibiting prosecution of offenses reported 90 days or more after the fact. "Prompt reporting" remains an issue only where courts have held

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[16]New Responses, Inc., op cit.

the timing of a complaint to be a factor in juror assessment of complainant credibility. In Texas, corroboration may be required in statutory rape cases resulting from delayed complaints (six months after the fact).

c. Cautionary instructions. The so-called "Lord Hale Instruction" has now been abolished in every state where it previously had statutory authorization. A few states continue to follow case law guidelines permitting the issuance of instructions admonishing jurors to evaluate the complainant's testimony with special care due to the difficulty of determining truth.[17] Most states, however, now rely on standard instruction.

d. The corroboration requirement. By 1980, states with statutory requirements of corroboration had repealed the rule.[18] States without previous corroboration rules left new statutory schemes silent, carrying forward the prior case law rule that corroboration is not required. Fewer than six states have retained some formulation of a corroboration rule by case law, with such rules applied only to certain circumstances arising from charges of criminal sexual contact or statutory rape. In an unusual move to halt the custom practiced in some states despite legislative repeal of the law, a few states explicitly stated a "no corroboration rule" in their new statutes.

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

e. The resistance standard. As of 1980, nine states had, by statutory expression or omission, eliminated resistance as an element of prosecution proof of force or nonconsent.[19] By the same time, 26 states had adopted a relative resistance standard, while 13 still required victim resistance as proof of nonconsent.[20]

Of those states adopting a "relative resistance standard," the majority find the standard satisfied when victim resistance is prevented by threats of bodily harm or threats that would "prevent resistance by a person of ordinary resolve." In some

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[17]Gager & Schurr, op. cit., pp. 160-166.

[18]Wigmore, op. cit., Sec. 2061.

[19]New Responses, Inc., op. cit.

[20]Ibid.

of these states, the threat can be "constructive," and threats to a third person suffice to induce submission. A few states find the standard satisfied by whatever level of resistance is reasonable under the circumstances of the offense, and others find the existence of threat sufficient to prevent resistance only when accompanied by the power to execute the threat. The statutes and case law of at least two states are silent on the issue of "resistance."

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

Those states that adopted a "relative" resistance standard also rejected the notion that consent begins at the moment resistance ends. Some states now find that consent induced by injury or threats of harm does not constitute legal consent to the act.[21] Others define resistance as such action that is reasonable under the circumstances. To the extent that the majority of states have now adopted a (relative or modified) standard of reasonableness which does not impose an explicit risk to victim safety, the reform goal of fairer treatment of victims has met with some success. But, the larger goal of removing sexual assault from its unique position as the only crime where victim consent relieves defendants from criminal charges has not yet been realized.

f. The rape shield law. On the face of it, this new rule was the most successful of all the reform efforts. It is the only reform to have been enacted by all 50 states.[22]

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

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[21]New Responses, Inc., op. cit.

[22]Ibid.

of force and nonconsent, the broader the exceptions to the shield.

Like the "corroboration repeal," the widespread enactment of rape shield laws was a major symbolic victory for victim advocates. Perhaps more than any other element of reform, it reflected the incorporation of less judgmental social values in public policy, and it ended the implied exclusion of the law's protection for certain classes of victims. The practical significance of the widespread adoption of rape shield laws lies in the potential for keeping trials focused on relevant issues and maintaining decorum in the courtroom.

CHAPTER III. OVERVIEW OF THE SURVEY

A. Site Selection

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

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

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

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

Michigan was the first state to complete comprehensive reform of its statutes -- early in 1974. As such it has the longest period of post-reform sexual assault processing to examine. Michigan was targeted for study in part because the state's

experience under the law was studied in the late 1970's, and the current research offers an opportunity to make an assessment of the longer range influence of the law and determine whether its initial promise has been borne out.

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

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

Georgia: Atlanta/Decatur; Savannah
Florida: Miami; Jacksonville
Michigan: Detroit; Flint

B. Demographics

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

Because the study dealt with the effect of legal change, it was deemed relevant to interview some respondents with lengthy work experience. A surprisingly large proportion, 59 percent of those surveyed, had worked six years or more on their current job. Thirty-four percent of the respondents had, in fact, handled sexual assault cases before the laws were reformed.

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

C. Rape Law Models

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

Florida law, the "sexual battery" model, developed through the legislative process producing a statutory law reflecting

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

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

These models do not reflect in specificity the rape law reform features of every state. They do, however, reflect the continuum of law reform process and reform features. At the most conservative end, the Georgia model, based on a combination of legislative intervention and case law, retains common law elements of the offense with some relaxation in standards of proof. In the middle, the Florida model, also based on a combination of legislative intervention and case law, retains most common law elements, but broadens the definition of the offense. There is some relaxation in proof standards, and penalties are graduated on the basis of "dangerousness." At the opposite end of the continuum is the Michigan model, based almost exclusively on legislative intervention. This model is a major departure from common law, redefining criminal acts in a literal, rather than symbolic, fashion. Its hallmark is broader standards and more objective criteria than allowed under common law. Penalties are graduated first on the basis of conduct; second on the basis of dangerousness.

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

no longer an element of the crime, resistance is not necessary to show nonconsent; mistake as to consent is not relevant; and prior sexual conduct becomes irrelevant and inadmissible on that issue.

CHAPTER IV. SURVEY RESULTS

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

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

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

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

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

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

are (1) creation of a rape shield law, (2) redefinition of criminal acts, and (3) change in the resistance standards. Repeal of the corroboration requirement was seen as equally significant in Florida, but less significant in Michigan.

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

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

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

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

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

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

A. The Rape Shield Provision

Respondents were asked a series of questions about the impact of the shield provision. For each factor queried, the majority (usually the vast majority) replied that the shield law has an impact on victims, the criminal justice system, and attitudes of officials and the general public. As shown in Table IV-3, over 90 percent of those surveyed stated that (1) the shield provision had improved the treatment of victims during cross examination by the defense at trial, (2) encouraged victims to cooperate with the prosecution, and (3) increased the likelihood of conviction. In addition, over 80 percent perceived that it increased the likelihood that cases will be accepted for prosecution, while slightly less believed it encouraged victims to report their experiences to the police or improved the attitudes of criminal justice officials and the public toward rape victims.

Table IV-3
PERCEPTIONS OF RAPE SHIELD LAW
ALL SITES

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

Each official surveyed was asked to assess the impact of his or her state's shield provision. Their evaluations were overwhelmingly positive. As depicted in Table IV-4, 90 percent of those surveyed believed that the shield provision was needed, 88 percent stated that it is working as intended, 85 percent perceived it as fair, while 42 percent would like it modified. It should be noted that among those who wanted to modify the provision some suggested strengthening the provision by eliminating what were described as "loopholes" -- exceptions to the shield rule. Others desired just the opposite, that is, eliminating the provision entirely or weakening the provision by allowing more latitude in the introduction of the victim's prior criminal history or broadening the exceptions. Thus there was no uniform agreement on the direction of future reform in this area. This diversity is further affected by the fact that each state's shield law is shaped by the prescribed elements of the offense in state law.

Table IV-4
PERCEPTIONS OF RAPE SHIELD LAW
ALL SITES

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

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

Table IV-5
SATISFACTION WITH RAPE SHIELD LAW
ALL SITES

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

In summary, the rape shield provision was selected by practitioners as a key element of reform in Florida and Michigan (and was included in Georgia as one of the two reform elements). The majority of those surveyed found that the provision had improved the treatment of victims during trial, increased victims' willingness to cooperate with the police and prosecution, increased

prosecutors' willingness to accept cases, and improved the likelihood of conviction. Slightly fewer respondents believed that it also had improved the attitudes of criminal justice officials and the public toward rape victims. Overall, the majority of those surveyed assessed the shield provision as needed, fair, and effective and were satisfied with this element of their law.

Differences Among States and Respondents. Differences and similarities in satisfaction with the shield provision were examined by state and according to the respondent's role in the criminal justice system. By state, small differences were found in the impact of the shield provision, as shown in Table IV-6. Similar proportions of those surveyed in Georgia, Florida, and Michigan replied that the shield provision had increased the likelihood of prosecution, improved victims' treatment during cross-examination at trial by defense counsel, and encouraged victims to cooperate with the prosecutor.

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

Table IV-6
IMPACT OF RAPE SHIELD LAW
BY STATE

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

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

Table IV-7
IMPACT OF RAPE SHIELD LAW
BY STATE

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

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

Table IV-8
SATISFACTION WITH RAPE SHIELD LAW
BY STATE

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

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

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

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

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

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

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

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

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

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

B. Elimination of the Corroboration Requirement

Respondents were asked the same set of questions regarding the elimination of the corroboration requirement. Just as in their responses to the questions about the shield law, the majority surveyed responded that eliminating the corroboration requirement (1) increased the likelihood that the prosecutor would accept the case, (2) increased the likelihood of conviction, and (3) encouraged victims to cooperate with the prosecution. However, only half of the respondents found that removal of the corroboration requirement encouraged victims to prosecute, and fewer than half found that it improved victims' treatment during cross examination at trial or improved the attitudes of criminal justice officials or the public toward rape victims (see Table IV-12).

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

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

It is not surprising that reactions to the repeal of the corroboration requirement would differ from reactions to the shield law in light of the different intent of the two provisions. The shield provision was designed largely to eliminate undue harassment of victims during trial, to exclude the introduction of irrelevant material, and to encourage victims to report to the police and cooperate with prosecution. Therefore, one might expect more respondents to report effects in these areas than when discussing the corroboration repeal. Nonetheless, it is important to note that many respondents also stated that the corroboration repeal had unintended impacts. Many stated that the repeal has also encouraged victims to cooperate with the prosecutor and increased the prosecutor's willingness to accept cases because it increases the likelihood of conviction. As a result, the view that pursuing prosecution in cases without corroboration is "a waste of time" has been reduced. This appears indirectly to encourage victims to cooperate with prosecutors and prosecutors to pursue more cases.

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

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

very satisfied or satisfied, while only 13 percent stated that they were either very dissatisfied or dissatisfied (Table IV-14).

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

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

Table IV-14
SATISFACTION WITH CORROBORATION REQUIREMENT REPEAL
ALL SITES

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

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

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

statutory statement of the no-corroboration rule in Georgia would require a relatively new policy decision by Georgia courts.

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

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

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

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

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

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

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

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

Some differences were found in the assessment of the impact of the corroboration repeal by occupation of respondent, as shown in Table IV-18. However, no explicit or readily explainable pattern emerged. For some items listed, one group of respondents gave affirmative answers more often while another group responded more favorably on other items. Perhaps a larger sample would yield a clearer pattern in future research on this topic.

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

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

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

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

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

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

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

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

C. Redefinition of Criminal Acts

Over nine-tenths of those surveyed in Florida and Michigan found that redefining criminal acts resulted in more cases being accepted by prosecutors. Table IV-21 shows that one-half or fewer of the respondents, depending on the issue, indicated other impacts, including: encouraging victims to report to the police (50 percent) and to cooperate with the prosecutor (48 percent) as well as the improvement of public and criminal justice officials' attitudes (43 percent and 46 percent respectively).

Table IV-21
IMPACT OF REDEFINITION OF CRIMINAL ACTS

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

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

Table IV-22
RESPONDENT EVALUATION OF REDEFINITION
OF CRIMINAL ACTS

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

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

Table IV-23
SATISFACTION WITH REDEFINITION OF CRIMINAL ACTS

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

In summary, as in the case of the corroboration requirement and shield provision, the majority of those interviewed believed the redefinition of criminal acts had positive effects for both victims and the criminal justice system and that the provision is fair, needed, and working as intended. Also, most were satisfied with the current definition of criminal sexual conduct (Michigan) or sexual battery (Florida).

D. Redefinition of Force and Change in Resistance Standards

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

rape victims. However, only 44 percent found that they improve victims' treatment during cross-examination.

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

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

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

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

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

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

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

RESPONSE	(N=55)
Very satisfied	33%
Satisfied	55%
Not satisfied	1%
Very dissatisfied	11%

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

CHAPTER V. PERCEPTIONS OF OTHER REFORM FEATURES

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

A. Degree Structures

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

When assessed as a single reform feature, degree structures were seen by the majority of respondents as facilitating police investigation and improving charging, plea bargaining, and sentencing options. Advantages were found to both the prosecution and the defense. Among these were: (1) more logical tailoring of punishment to the elements of each offense, (2) clearer presentation of the law, (3) easier administration of the law, (4) narrowing of proofs early on in the process, and (5) enhanced plea bargaining options. Respondents selecting this reform feature were basically satisfied with the way it has been implemented, but several expressed concern that the proscribed penalties were insufficient punishment for certain types of crimes.

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

B. Mandatory Sentencing

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

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

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

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

C. Gender Neutralization of Statutory Language

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

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

D. Repeal of Spousal Immunity

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

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

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

E. Elimination of Need for Proof of Nonconsent

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

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

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

CHAPTER VI. IMPLICATIONS OF RAPE LAW REFORM

A. Acceptance of Rape Law Reform

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

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

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

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

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

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

The law reforms considered here were seen by survey respondents as having had some impact on both public and criminal justice system attitudes toward the crime of rape.

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

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

C. Impact of Rape Law Reform on Victims

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

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

The majority of respondents at all sites surveyed noted significant increases in the number of reported cases involving assault by an acquaintance and cases involving child sexual abuse. While many complaints of assault by an acquaintance involved "date rape" or assault by a former intimate acquaintance, increasingly complaints were seen to involve casual acquaintances. The increasing incidence of casual acquaintance rape reports was especially emphasized by police, with some investigators reporting that these cases now constitute up to 50 percent of their caseloads. Similarly, the volume of child sexual abuse complaints was also cited by many respondents as outpacing the resources of many law enforcement and public defender units. While no consistent patterns in child sexual abuse emerged from these interviews, many police officers and prosecutors expressed the view that intrafamily incidents were more prevalent than other reported incidents.

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

D. Other Factors Influencing Reporting and Criminal Justice System Response

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

Media attention was seen as the second most significant factor in victim reporting and criminal justice response. However, respondents had mixed feelings about the consequences of this attention. Many felt that it had greatly changed public perceptions of the crime and pressured the criminal justice system

to be more responsive. However, concern was expressed that while the change in public perceptions had been positive, media portrayals of the criminal justice system have led to unrealistic expectations. This was particularly true in the southern states where increased reporting of acquaintance rape and other "marginal" cases was seen as posing special problems for the criminal justice system. Still other factors cited include the current availability of victim support services and, to a lesser degree, improvement in sensitivity of the criminal justice system.

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

E. Implications for the Criminal Justice System

Increased reporting rates were seen to have implications for all components of the criminal justice system at all of the survey sites. Although the wider scope of Florida and Michigan law was intended to broaden the types of cases coming into the system, Georgia respondents observed the same trends in reporting and case characteristics as did the respondents in the other states. Therefore, implications for the system were similar in a number of ways, among them increased caseloads.

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

Opinions on how this increased workload might affect the criminal justice system varied by site and respondent role. In one Florida jurisdiction, for example, prosecutors were reported to be more likely to file when the complaint involved an "innocent victim" (e.g., rape committed during an armed burglary) than when the complaint involved acquaintances. The improbability of conviction in acquaintance rape cases was seen as justification for not further overcrowding the court's docket. Police in one Georgia jurisdiction cited the effect of increased workload on an understaffed office as leading to inadequate investigation

and closure on many serious crimes. Ironically, this is also a charge leveled at police by some Michigan prosecutors. Still another example came from prosecutors in a number of sites where the increased caseload was seen as negatively affecting the time available to prepare victims for their roles as trial witnesses. Public defenders in most, but not all, jurisdictions expressed a similar concern over lack of time for adequate trial preparation.

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

F. Disposition of Complaints

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

Most respondents agreed that case disposition is often tied to such factors as problems with suspect identification or plea bargaining. However, case disposition was also seen as being influenced by the changes in substantive law in each state. As noted in Chapter IV, for example, all of the Michigan respondents stated that redefinition of criminal acts had increased the likelihood of prosecution and conviction. Ninety-one percent of Florida respondents concurred in this view. Furthermore, the majority of respondents in Georgia as well as Florida and Michigan stated their belief that the rape shield law has increased the likelihood, if not the actuality, of conviction in their states. Yet despite these and other reform features seen as enhancing prosecution and conviction, sexual assault cases were seen by the respondents as among the more difficult cases for the criminal justice system.

When asked to assess the effect of the law on the prosecution of cases with no eyewitnesses, incomplete penetration, absence of physical injury to the victim, or the crimes of attempted rape or other sexual contact, approximately one-half of the respondents rated such cases as still (after law reform) somewhat difficult to prosecute. Some variation occurred among the sites surveyed when assessing certain of these case characteristics. In Michigan, for example, only 10 percent of respondents reported cases without physical injury as being in the "very difficult"

category, compared with 22 percent of respondents in Georgia and 18 percent in Florida. The likely explanation for these differences lies in the different way the offenses are classified in these states. Under Michigan law force is treated as an aggravating factor rather than as an element of the offense requiring proof. In cases in which penetration was incomplete, 22 percent of Michigan respondents saw prosecution as very difficult as compared with 38 percent of Georgia and 40 percent of Florida respondents.

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

Cases with more than the usual evidentiary problems, such as lack of eye witnesses and those with unusual victim-offender characteristics, were rated as somewhat difficult to prosecute across sites. This indicates that changes in legal standards of proof do not magically erase the difficulty in prosecuting sex offenses. However, differences in the degree to which cases are seen as difficult appear somewhat related to the substantive law of each site.

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

be of limited value.

G. Recommendations for Futher Change

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

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

There was no consensus among Michigan respondents as to further change in that state's law. The majority of respondents expressed the belief that the criminal circumstance model serves to make the system more fair and more objective with more convictions resulting from a statute covering more situations than the previous law did. Where a major consensus occurred, it was in the need for mandatory minimum sentences for all degrees of sexual assault (defense attorneys did not, in general, join in this consensus). Some respondents wanted minor clarification of "intent" language, while others called for a change in the current mandatory sentencing provisions requiring the judge to consider intent at sentencing, rather than during the trial. Some respondents stated that the shield rule should be modified to prevent the offer and motion of proof from occurring in front of the jury while others suggested a change in the juvenile code to permit prosecution of persons over age 15 as adults. In an opinion less related to criminal law, a significant number of respondents expressed the idea that the state should pay for the forensic medical examination of victims.

In assessing recommended changes by the respondents' role in the criminal justice system, some major differences emerged. Victim advocates (100 percent) and defense attorneys (88 percent) were more likely than other repondents to want gender neutralization of statutory language. Victim advocates (79 percent) and prosecutors (79 percent) were more likely to agree on the need for more redefinition of criminal acts. Mandatory sentences were more favored by victim advocates (79 percent) and police (62 percent), while the same respondent groups were more likely to also want

a change in spousal immunity. Victim advocates (43 percent) were more likely to also see the need for further change in resistance standards. Slightly half of all respondents favored a change in jury instructions; more than half, omitting defense attorneys, called for change in the prevailing consent standards.

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

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

Due to the small numbers of persons offering opinions, no absolute conclusions can be drawn about either the need for additional reforms or the precise reforms needed. However, the data do provide some insight into attitudes toward further law reform in general. Specifically, the results show that interest in the redefinition of criminal acts remains relatively strong in states adopting the common law and sexual battery models. They also show that interest in further change in consent standards continues to exist. The data further indicate that, on the basis of criminal justice system roles, support for further rape law reform is divided along much the same lines as at the outset of law reform efforts in the early 1970's.

H. Conclusions

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

Specifically, the study found that:

1. A criminal law reform initiated by private citizens, and achieved through legislative rather than the common law process, does not necessarily generate the anticipated confusion, uncertainty, or antagonism among administrators

of the reformed law.

2. The concepts embodied in law reforms reflecting a major, or even radical, departure from common law theory and assumptions, have achieved long-term acceptance by law enforcement, criminal justice, and related communities.
3. The goals of rape law reform to improve the administration of criminal justice appear to have been partially realized in the three states studied. The degree to which law reform goals have been realized, however, appears to be a product of the substantive nature of each state's reform as well as application of the law in individual jurisdictions.
4. Rape law reform is generally seen as most advantageous to the prosecution but, in some respects, advantageous to all in the criminal justice system. Reform features, such as new statutory schemes, are seen as greatly facilitating investigation, charging, prosecution, and sentencing, as well as improving plea bargaining options. Modified standards of proof, and changes in evidentiary rules, are seen as accomplishing some of the above objectives as well as resulting in increased victim reporting and improved cooperation with the criminal justice system.
5. Most rape law reform features are seen as being of some great significance to the criminal justice system with some seen as more useful than others. However, a "total package" of reform appears to be of even greater significance in determining satisfaction with the law and in determining the effectiveness of the law. In this regard, satisfaction appears higher with comprehensive, rather than selective, approaches to law reform and somewhat higher with the criminal circumstance rather than the sexual battery model.
6. Interest in further rape law reform exists, remaining highest in states with common law or sexual battery models. Those areas of new or further reform most favored are the redefinition of criminal acts and changes in consent standards. Victim advocates continue to be the greatest proponents of further law reform, with judges indicating the least favor. Police and prosecutors show some support for further reform while defense attorneys primarily favor only those reforms which they feel will restore the law to more traditional common law features or which will enhance plea bargaining and sentencing options.
7. Demonstrated interest in further law reform is borne out both by this study and by the continuing efforts of legislators. However, no consensus exists on what constitutes the most effective law, and efforts in recent years have created a lack of uniformity in criminal law treatment of offenses. Given the indications that changing social mores are bringing more and more difficult cases into the criminal justice system, laws designed with common law offenses in mind may have significant consequence for the system in the future.

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