JUSTICE RESEARCH NOTES

Sexual Assault Legislation in Canada: An Evaluation

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Background

On August 4, 1982, Bill C-127, *An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person*, was passed by the House of Commons. On January 4, 1983, it became Canadian law. The sexual assault provisions of Bill C-127 made fundamental amendments to the *Criminal Code* with respect to the substantive, procedural and evidentiary aspects of Canada's rape and indecent assault laws.

The laws relating to the offences of rape, attempted rape and indecent assault were expunged from the *Criminal Code* and replaced with a trilogy of sexual assault offences: sexual assault (s. 271, Level I); sexual assault with a weapon, threats to a third party or bodily harm (s. 272, Level II); and aggravated sexual assault (s. 273, Level III). The definition of a sexual assault was left for the courts to resolve. The new maximum penalties are, respectively: 10 years, 14 years, and life imprisonment.

The Bill attempted to address concerns expressed by advocacy groups and criminal justice practitioners. The new law changed the rules governing the kinds of evidence that could be used in a trial, and emphasized fair treatment for the victim.

The Research Initiative

Recognizing the significance of the fundamental changes to the law, federal and provincial deputy ministers responsible for criminal justice decided at a meeting in June, 1983, that the Department of Justice Canada would evaluate the impact of the sexual assault provisions of Bill C-127.

The objectives of this evaluation were:

- To describe how the new legislation has been implemented and how it works in the various segments of the criminal justice system.
- To determine how the legislation has effected changes in justice system practices, attitudes and procedures.
- To determine how the legislation has affected victims' experiences with justice system practices.
- To determine unintended impacts of Bill C-127 on the experience of victims of sexual assault and criminal justice system practices.

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SPECIAL ISSUE

This issue of *Justice Research Notes* is devoted to the Department's evaluation of the 1983 sexual assault legislation. Ten of the reports resulting from the evaluation are now available to the public; the remaining two reports will be available in the summer of 1991.

Research Approach

The evaluation research program began in 1985 (just over two years from the date of proclamation) and was completed in 1991. It is clear now that, in comparison with other evaluations of sexual assault reform, the Canadian evaluation initiative was substantial and quite extensive. This is owing, in part, to its national scope.

The research program included six site studies, a survey of front-line agency personnel to ascertain how victims were treated before and after the legal changes, an analysis of national reporting, founding and charging data (1977-1988), an analysis of sentencing patterns, a review of selected court cases from May 1985 to April 1988, and a study of homicide in the course of sexual assault.

The first four components of this comprehensive evaluation of Bill C-127 are encapsulated in an overview report prepared by the Research Section, Department of Justice.

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Research Findings - the Site Studies and the Front-line Agency Report

The six site studies were conducted in Vancouver, British Columbia; Lethbridge, Alberta; Winnipeg, Manitoba; Hamilton-Wentworth, Ontario; Montreal, Quebec; and Fredericton and Saint John, New Brunswick. These sites were selected to reflect the country's regional character. The individual site researchers analyzed reported sexual offences both before and after the legislation came into force. The findings listed below include some comparison with national-level analyses contained in reports described elsewhere in this issue.

- There has been an increase in numbers of reports of sexual assault across the country. While the site studies indicate that there were contrasts between cities of comparable size, national data confirm that there has been a general trend to higher rates of reporting sexual crimes since the proclamation of Bill C-127.
- There was some consensus among key respondents that sexual assault remains underreported and that victims' reasons for not reporting include fear of the assailant, shame, dread of the criminal justice process, and a sense that the incident was not worthy of reporting. These interviews were, however, undertaken before 1988; perceptions regarding reporting rates and reasons for underreporting may have changed since then.
- All sites indicated little overall change in the characteristics of complainants and assailants. There were very few spouses and few males reporting incidents to police. There were virtually no female assailants identified by complainants. The spousal exemption and the gender-neutral language of the offence had

therefore made only a small contribution to the increasing numbers of reports made to police.

- Founding rates (i.e., reports that are deemed by police, after preliminary investigation, to be supported by sufficient evidence to lay a charge) have not changed dramatically in the last 10 years. Furthermore, the founding rates across the provinces continue to vary. These findings suggest that the changes in requirements of proof and the offence classifications have not affected this aspect of police work.
- National-level analysis of charging data indicates that the clearance rate for sexual assault is similar to that for other crimes involving violence. There has been little change in the aggregate charging rate since the 1983 legislation. Thus, it does not appear that the legislation has had an effect on the likelihood that a charge will be laid in a sexual assault case.
- Corroborating evidence did not play a consistent role across the sites in relation to charging; however, there was some sense among key respondents that corroboration is still an important consideration in the charging decision.
- The site studies addressed three aspects of the criminal justice system: plea bargaining, conviction and sentencing. Firstly, the investigation into plea bargaining dealt with how changes in offence classification might affect the day-to-day work of the crown attorney and defence counsel in court. Counsel were divided on this issue. Some felt the new legislation made negotiation easier; however, there was no indication that negotiation is more prevalent under the new law. It would appear that crown attorneys approach plea bargaining with extreme caution in sexual assault cases.

  Secondly, findings across the sites for convictions were quite contradictory. The conviction rate went up in three sites, down in two, and remained approximately the same in two. Crown attorneys and defence counsel gave mixed responses on the likelihood of obtaining a conviction if: (a) the complainant's past sexual history was introduced into evidence; (b) corroborating evidence was present; and (c) the complaint was recently reported. These factors cannot be consistently related to either the qualitative or quantitative data on conviction rates.

  Thirdly, the data on sentencing in the sites were limited; however, respondents from sexual assault centres indicated a continuing belief that sexual assault sentences do not reflect a clear recognition of the victim's trauma. Roberts's sentencing patterns study (see page 6) indicated that, while there is variation across the country, sentences have not become more lenient since 1983.
- According to information gathered in 1987, very few victims of sexual assault were aware that the law had been amended. They therefore may have taken the decision to report the assault to police on the basis of other factors. The court experience continues to be unpleasant, a feeling that undoubtedly prevails in all cases but especially in sexual assault cases. ◀

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Overview, Sexual Assault Legislation in Canada: An Evaluation, Report No. 5, by Research Section, Department of Justice Canada. 1990. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.