



Police and Prosecutorial Decision Making in Sexual Assault Cases: Lessons from Los Angeles

Presentation to the Response Systems to Adult Sexual Assault Crimes Panel

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August 6, 2013

Acknowledgments

- This project was supported by Award No. 2009-WG-BX-009 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect those of the Department of Justice.

Outline of Presentation

- The problematic nature of sexual assault
 - And the problematic response of the CJ system to sexual assault
- Policies and Practices in Los Angeles
- Overview of Study
- Case Attrition, 2005-2009
 - Case flow analysis
- Case Outcomes, 2008
 - Quantitative analysis
- Conclusions and Policy Recommendations

The Problematic Nature of Sexual Assault

- 2008 report to the LAPD
 - 13-year-old runaway and gang member
 - She was drinking and smoking marijuana
 - Claimed friend she was staying with sodomized her
 - He denied any sexual contact with her
 - Forensic medical exam revealed acute anal trauma and victim ID'd suspect in photo lineup

Problematic Response of the CJ System to Sexual Assault

- LAPD did not arrest suspect but presented case to DA for pre-arrest charge evaluation
- DA refused to file charges, citing insufficient evidence
- Charge evaluation worksheet:
 - “Victim is a runaway who gives inconsistent and unlikely versions of her adventures. No evidence of any assault taking place. Defendant has a witness who corroborates his version.”
- Detective then cleared the case by exceptional means

Overlapping Roles of Police and Prosecutors

- In the 2008 case, the police did not **arrest** the suspect because the district attorney determined that there was not enough evidence to **file charges**.
- Suggests that decisions made by police and prosecutor should not be analyzed in isolation from one another
 - Researchers who examine only cases cleared by arrest or only cases evaluated by the prosecutor following arrest may be ignoring important aspects of police and prosecutorial decision making

Policies and Practices in Los Angeles

Policies and Practices: Clearing Cases in Los Angeles

- Cleared by arrest
 - Suspect is arrested, charged with commission of offense, and turned over to court for prosecution
- Cleared by exceptional means—must be able to answer 4 questions in the affirmative
 - Has investigation established identity of suspect?
 - Is exact location of suspect known?
 - Is there enough information to arrest, charge, and turn over to court for prosecution?
 - Is there something beyond control of law enforcement that precludes them from arresting suspect?

Clearing Cases

- Both LAPD and LASD have complicated decision rules and misinterpret UCR guidelines
 - If suspect arrested but charges not filed, many detectives change the case clearance from cleared by arrest to cleared by exceptional means
 - Present “problematic cases” to DA prior to arrest with expectation that cases will be rejected and then clear by exceptional means

Policies and Practices of the DA's Office

- Specialized sex crimes unit, Victim Impact Program, and vertical prosecution
- Trial sufficiency standard (Jacoby, 1980)
 - File charges only if sufficient evidence to prove case beyond a reasonable doubt at a jury trial
- In sexual assault cases, charges will not be filed without corroboration of victim's allegations
- Pre-filing interview designed to assess victim's credibility and willingness to cooperate is required

Overview of NIJ-Funded Study

Objectives of Study

- Document the extent of case attrition and identify the stages of the criminal justice process where attrition is most likely to occur
 - Where does “gatekeeping” occur?
- Identify the case complexities and evidentiary factors that affect the likelihood of attrition in sexual assault cases
- Identify the predictors of case outcomes in sexual assault cases

Data for the Study of Case Attrition over Time

- Quantitative data on all sexual offenses reported to LAPD and LASD from 2005 through 2009
 - LAPD: N = 10, 706
 - 5,031 forcible rape
 - 5,675 sexual battery
 - LASD: N = 3,309
 - 2,772 forcible rape
 - 537 sexual battery
- Quantitative data on all cases that resulted in arrest from the LA District Attorney
 - LAPD: 1,351 cases (12.5% of all cases)
 - LASD: 1,129 cases (34.1% of all cases)

Data for the Study of Case Outcomes, 2008

- LAPD: Sample of cases (N = 400), stratified by division and by case closure type (unfounded, exceptionally cleared, arrested, investigation continuing)
- LASD: All cases from 2008 (N = 592)
- LADA: All cases from 2008 that resulted in arrest
- Redacted case files from LAPD and LASD that include rich data on each case:
 - Initial investigative report by the responding officer, including victim's statement, the types of evidence that were gathered at the scene, whether a SART exam was done
 - In cases in which a suspect identified, whether the suspect made a statement and, if so, the content of the statement
 - The detective's case progress log, which details follow-up interviews with victim, interviews with witnesses, other steps taken to solve the crime
 - The SART exam of the victim
 - The DA's Charge Evaluation Worksheet (typically before an arrest is made)
 - The arrest report (for cases that resulted in arrest)

Problematic Definition of Forcible Rape (changed 09/12)

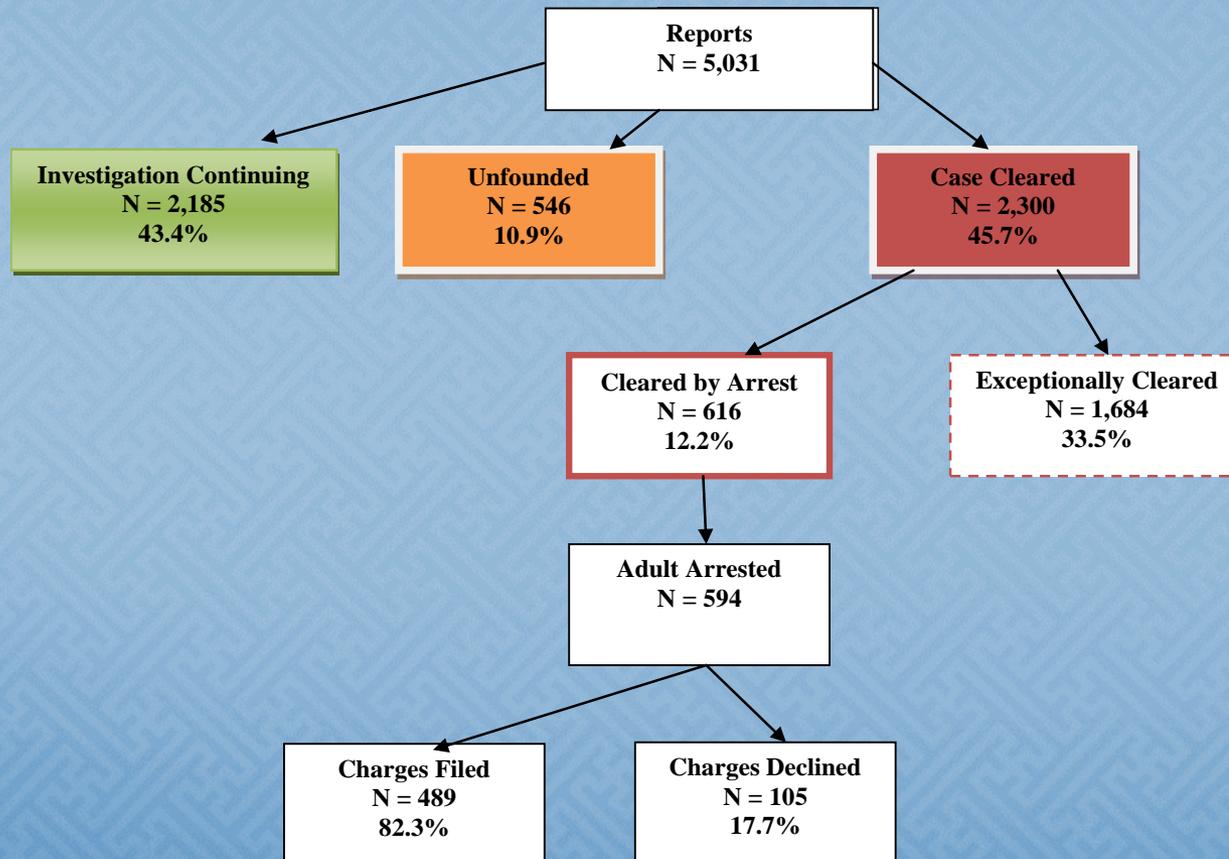
- “Forcible rape is the carnal knowledge of a female forcibly and against her will. Attempts or assaults to commit rape by force or threat of force are also included; however, statutory rape (without force) and *other sex offenses* are excluded.
 - Acts that do not involve penile-vaginal penetration are excluded
 - Sexual penetration with an object
 - Oral copulation
 - Sodomy
- New Definition: “The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

Forcible Rapes and “Other Sex Offenses” in Los Angeles, 2005-2009

	N	%
Reports Received by LAPD		
Rape or Attempt Rape	5031	82.6
Sexual Penetration with a Foreign Object	202	3.3
Oral Copulation	496	8.1
Sodomy	363	6.0
Reports Received by LASD		
Rape or Attempt Rape	2269	78.2
Sexual Penetration with a Foreign Object	214	7.4
Oral Copulation	303	10.4
Sodomy	113	3.9

CASE ATTRITION, 2005-2009

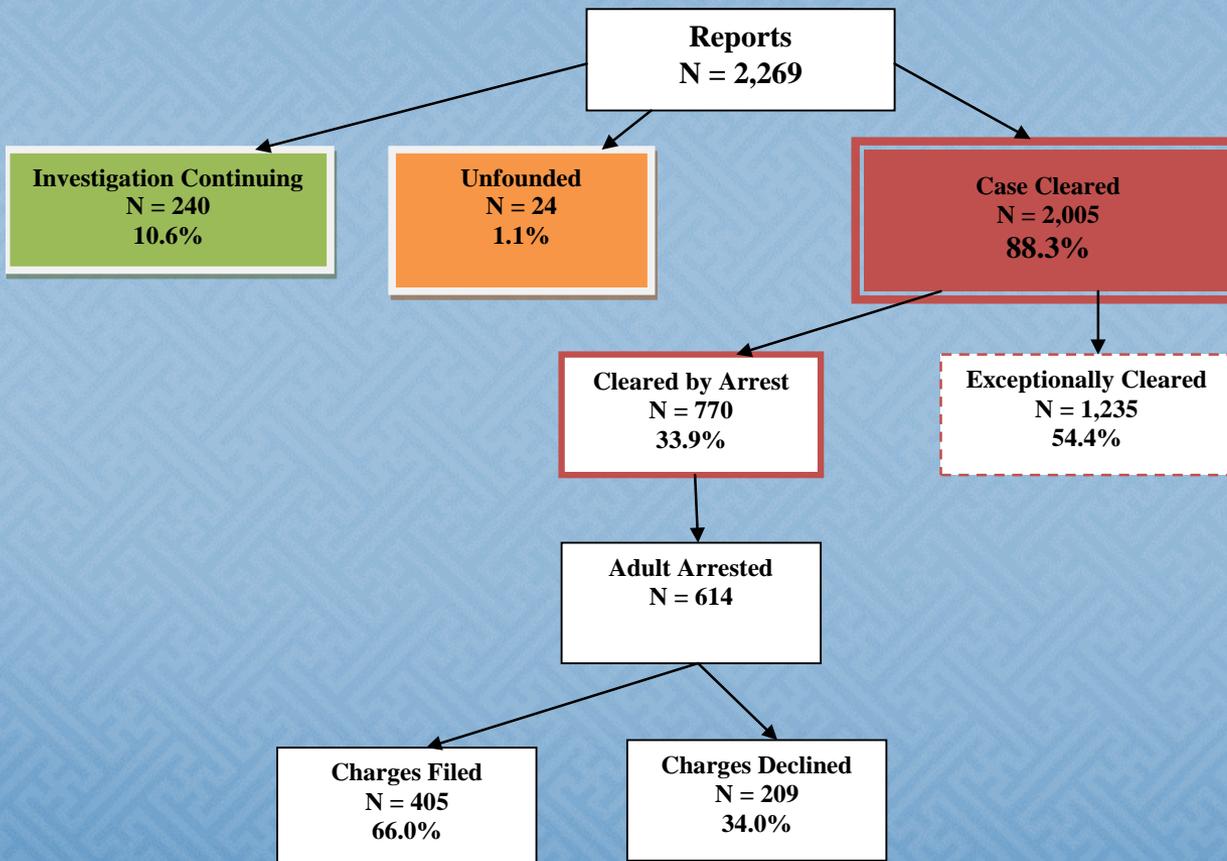
Case Outcomes: Rapes and Attempted Rapes Reported to LAPD, 2005-2009



Case Attrition: LAPD, 2005-2009

- 5,031 reports of rape and attempted rape
 - 12.2% (N=616) were cleared by the arrest of a suspect
 - 9.7% (N=486) resulted in filing of charges
 - 7.8% (N=390) resulted in a conviction
 - 4.6% (N= 232) resulted in a prison sentence

Case Outcomes: Rapes and Attempted Rapes Reported to LASD, 2005-2009





Case Attrition: LASD, 2005-2009

- 2,269 reports of rape and attempted rape
 - 33.9% (N=770) were cleared by the arrest of a suspect
 - 17.8% (N=405) resulted in filing of charges
 - 14.0% (N=317) resulted in a conviction
 - 8.4% (N= 179) resulted in a prison sentence

Case Outcomes, 2008: Descriptive Statistics

Case Clearances, 2008

	LAPD (N = 273)		LASD (N = 410)	
	N	%	N	%
All Cases				
Cleared by Arrest (Adult and Juvenile)	32	11.7	130	31.7
Cleared Exceptionally	92	33.6	235	57.3
<i>After making an arrest</i>	35	12.8	37	9.0
Investigation Continuing	119	43.4	38	9.3
Report Unfounded	30	10.9	7	1.7
Suspect Arrested (Cleared by arrest + exceptionally cleared after making an arrest)	67	24.5	176	40.7

Case Clearances in Stranger and Nonstranger Cases

Cases Involving Strangers	LAPD (N = 112) ^a		LASD (N = 87)	
Cleared by Arrest (Adult and Juvenile)	9	8.0	19	21.8
Cleared Exceptionally	17	15.2	48	55.2
<i>After making an arrest</i>	5	4.5	7	8.0
Investigation Continuing	71	63.4	19	21.8
Report Unfounded	15	13.4	1	1.1
Suspect Arrested (Cleared by arrest + exceptionally cleared after making an arrest)	14	12.5	26	29.9
Cases Involving Nonstrangers	LAPD (N = 161)		LASD (N = 318)	
Cleared by Arrest (Adult and Juvenile)	23	14.3	110	34.5
Cleared Exceptionally	75	46.6	184	57.7
<i>After making an arrest</i>	30	18.6	39	12.2
Investigation Continuing	48	29.8	18	5.6
Report Unfounded	15	9.3	6	1.9
Suspect Arrested (Cleared by arrest + exceptionally cleared after making an arrest)	53	32.9	149	46.7

Case Outcomes: Decision to Charge

	Case Evaluated After Suspect's Arrest (N= 210)		Case Evaluated Prior to Suspect's Arrest (N = 147)	
	N	%	N	%
LADA Filed Charges				
Yes	106	50.5	9	6.1
No	104	49.5	138	93.9
Case Clearance—Cases Rejected by LADA				
Cleared by arrest	45	43.3	0	0.0
Cleared by exceptional means	59	56.7	135	97.8
unfounded	0	0.0	3	2.2

Misuse of the Exceptional Clearance

- EC'd without arrest of suspect
 - Something beyond control of law enforcement that precluded suspect's arrest?
 - In 2/3 the victim was willing to cooperate
- EC'd following arrest of suspect
 - Should have been cleared by arrest

Case Outcomes, 2008: Quantitative Analysis

Methods

- Redacted case files for sample of sexual assaults reported to LAPD and LASD in 2008
- For this study, only rape and attempted rape cases with an identified suspect (n = 491)

Dependent Variables

- Decision to arrest
 - Case was cleared by arrest (yes = 1; no = 0)
 - Suspect was arrested (yes = 1; no = 0)
 - Case presented to DA for pre-arrest charge evaluation (yes = 1; no = 0)
- Decision to file charges
 - Suspect arrested & DA filed charges (yes = 1; no = 0)
 - Case presented to DA for charge evaluation and DA filed charges (yes = 1; no = 0)

Independent Variables

- Victim Characteristics
 - Age, race/ethnicity, relationship with suspect, risk-taking behavior, questions about character or reputation, mental illness/mental health issues, motive to lie
- Case Characteristics/Indicators of Seriousness
 - Most serious charge was rape, suspect used a weapon, suspect physically assaulted victim. Victim suffered collateral injury, victim physically or verbally resisted
- Indicators of Evidentiary Strength
 - Victim reported within one hour, number of witnesses, victim willing to cooperate, physical evidence

Predictors of Case Outcomes: Police Decisions

Cleared by Arrest	Suspect Arrested	Presented to DA Prior to Arrest of Suspect
V's character/reputation (-)	Charge is rape (-)	V engaged in risky behavior (+)
V has motive to lie (-)	S Physically assaulted V (+)	Charge is rape (+)
Charge is rape (-)	S used weapon (+)	S used a weapon (-)
S used weapon (+)	V injured (+)	V reported within one hour (-)
V injured (+)	V reported within one hour	Number of witnesses ()
V reported within one hour (+)	Number of witnesses	V willing to cooperate (-)
Number of witnesses (+)	V willing to cooperate	Physical evidence (-)
V willing to cooperate (+)	Physical evidence	
R2 = .41	R2 = .38	R2 = .40

Predictors of Case Outcomes: Charges Filed

Suspect Arrested and DA Filed	Case Presented to DA and DA Filed
V is less than 18 years old (+)	V is less than 18 years old (+)
V has a motive to lie (-)	V engaged in risk-taking behavior (-)
V is willing to cooperate (+)	V has a motive to lie (-)
	Charge is rape (-)
	S used a weapon (+)
	V resisted verbally and physically (+)
	V reported within one hour (+)
	V is willing to cooperate (+)
R2 = .40	R2 = .43

Invalid Assumptions about Arresting & Charging Decisions

- At least in this jurisdiction (LA County) and for this type of case (sexual assault), substantial proportion of cases in which the suspect was arrested were not cleared by arrest
 - Detective changed to cleared exceptionally when DA refused to file charges
- Also, substantial proportion evaluated—and rejected for prosecution—by the DA prior to arrest of suspect
 - Case then cleared exceptionally

Predictors of Arrest Varied Depending on Definition of Arrest

- Victim characteristics did not affect whether suspect arrested but did affect whether case cleared by arrest
 - Victim's character/reputation
 - Whether victim had a motive to lie

Predictors of Charging Varied Depending on Definition of Charging

- Only three factors affected charging decisions that followed arrest (age, willingness to cooperate, motive to lie)
- Charging decisions made before or after arrest affected by these three factors plus
 - Risky behavior by victim
 - Most serious charge was rape
 - Suspect used a weapon
 - Victim made a timely report

Decision to Present Case to DA Prior to Arrest of Suspect

- Predictors
 - Risky behavior by victim
 - Victim did not report within one hour
 - Victim unwilling to cooperate
 - Suspect did not use a weapon
 - No physical evidence
 - No or few witnesses
- Also, all but 9 of these 147 cases were rejected for prosecution

Conclusions and Policy Implications

Conclusion: Substantial Case Attrition

- LAPD—12.2% of 2005-2009 reports cleared by arrest, 9.7% resulted in filing of charges, 7.6% resulted in conviction
- LASD—33.9% of 2005-2009 reports cleared by arrest, 17.8% resulted in filing of charges, 14% resulted in conviction
- Locus of case attrition is the decision to arrest or not; but this is complicated by the pre-arrest screening process

Conclusion: Overuse (misuse) the Exceptional Clearance

- Overuse: 2005-2009 Data
 - LAPD: 33.5%
 - LASD: 54.4%
- Misuse: LASD cases w/o identified suspect cleared exceptionally
- Misuse: LAPD and LASD cases that resulted in arrest cleared exceptionally when DA rejected charges
- Potential Misuse: LAPD and LASD cases that were rejected by DA prior to arrest cleared exceptionally

Conclusion: Pre-Arrest Charge Evaluation Used to Screen Out Weak/Problematic Cases

- Not to ensure that “all the i’s are dotted and the t’s crossed”
- DA filed charges in only 9 of 147 cases screened prior to suspect’s arrest
- All but 3 of the 138 cases rejected during pre-arrest screening process were cleared by exceptional means
 - Not investigated further

Conclusion: Outcomes Not Affected by Victim/Suspect Relationship

- Inconsistent with prior research
- Inconsistent with Black's (1976) assertion that case outcomes affected by "relational distance" between suspect and victim
- Inconsistent with statements of detectives and deputy district attorneys
 - Most likely to be prosecuted—cases involving strangers
 - Least likely to be prosecuted—cases involving non-strangers

Conclusion: Importance of Victim Cooperation

- Only variable that affected all five outcomes
 - Police 6 times more likely to arrest suspect and 10 times more likely to clear by arrest if victim cooperative; significantly less likely to present to DA prior to arrest
 - Cases with cooperative victim 15 times more likely to result in filing of charges before/after suspect's arrest and 19 times more likely to result in filing of charges following arrest of suspect
- But cooperation may be affected by victim's treatment by police and prosecutor

Policy Implications of Pre-Arrest Screening

- Results in overuse (misuse) of the exceptional clearance
- Subjects decision to arrest to higher standard than is required by law and effectively gives prosecutor control over decision to arrest
- Failure to arrest in spite of probable cause means that individual not held accountable for behavior and that behavior does not become part of his criminal record
- Denies justice to victims who made decision to report and are willing to cooperate

Policy Recommendations for Law Enforcement

- There should be ongoing, specialized training that focuses on interviewing victims, interrogating suspects, and the penal code. Because nonstranger sexual assault is the most frequent type of case seen by law enforcement, training should specifically address investigation of this type of case
- Training on case clearances should emphasize that the exceptional clearance should be used only if the case meets all four UCR criteria for using this type of case clearance;
- Training on case clearances also should stress that if probable cause to arrest does not exist or if the prosecutor rejects the case for further investigation as a result of a prearrest charge evaluation, the case should be left open and investigated further.

Policy Recommendations for Prosecutors

- Prosecutors should file charges in more sexual assault cases that meet the legal elements of the crime and in which the victim is willing to cooperate.
- If there is a prearrest charge evaluation, the prosecutor's office should ensure that the case has been thoroughly investigated. If not, the case should be returned to law enforcement for further investigation
- If a prefiling interview with the victim is required, the prosecutor's office should establish a formal process in conjunction with law enforcement for the interview with the victim so that one interview occurs with representatives from both law enforcement and the prosecutor's office present
- Prosecutors should provide detailed reasons for charge rejection and should provide victims with a copy of the form that explains why charges have been rejected

Questions?