

Statistical Analysis of Waterfall Slides

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Challenges in Comparing Civilian and Military Outcomes

- Definitions Vary
 - UCR Program (1927-2012): forcible rape: “carnal knowledge of a female, forcibly and against her will.”
 - DOD: UCMJ—Sexual assault: overarching term that encompasses a range of sexual offenses prohibited by Article 120 (but does not include sexual assaults between spouses or intimate partners)
 - Rape
 - Sexual assault
 - Attempts to commit rape and sexual assault
 - Aggravated sexual contact
 - Abusive sexual contact

Challenges, continued

- Restricted versus unrestricted reports
 - Military data includes both reports that initiate a criminal investigation (unrestricted reports) and those in which the victim discloses in confidence and there is no criminal investigation (restricted reports)

Challenges, continued

- Jurisdictional issues limit cases that can be investigated by the Military Services
 - Limited to service members who are subject to the UCMJ
 - Excludes civilians, foreign nationals, and unidentified subjects who are reported to have sexually assaulted Service members
 - Also, civilian authority (state, county, municipality) may prosecute Service members if they commit an offense within its jurisdiction and military cannot take the case away

Challenges, continued

- Military Services data *much more comprehensive* than civilian data
 - Detailed data on outcomes of allegations for Military Services
- No national data on outcomes of civilian cases that resulted in arrest
 - Limited data for individual jurisdictions
- BUT military services use different definitions of outcomes (especially unfounding) and calculate prosecution and conviction rates differently

Challenges, continued

- Outcomes are not directly comparable
 - UCR Program does not distinguish between offenses cleared by arrest and offenses cleared by exceptional means
 - Clearance rates therefore are not same as arrest rates
 - Military Services report the results of subjects investigated for sexual assault who were Service members under the authority of the DOD
 - Ultimate disposition and action (if any) taken against each subject

Decision To Unfound: Inconsistent Definitions Between Military and Civilian Systems

- UCR—cases that are false or baseless
 - Either the victim made a false report or the report is baseless (but not fabricated)
- Military Services
 - “When an MCIO makes a determination that available evidence indicates the individual accused of sexual assault did not commit the offense, or the offense was improperly reported or recorded as a sexual assault, the allegations against the subject are considered to be unfounded.

Decision To Unfound: Inconsistent definitions among Military Services

- Army—“founding is a probable cause determination made by the prosecutor”
- Air Force—“determinations made by a commander that the cases were (1) false cases . . . (2) baseless cases”
- Coast Guard—categorizes cases as “investigation revealed that [entire] allegation was fabricated
- Navy—“unfounded by Command”
- Marine Corps—“allegations unfounded by command”

Statistics on Unfounding: Civilian System

- In the 1990s, the FBI estimated that about 8% of all rape complaints were unfounded
 - Spohn and Tellis study in Los Angeles—10.9% of cases reported to LAPD from 2005 to 2009 were unfounded
 - 13.4% of cases involving strangers; 9.3% of those involving non-strangers
- Little solid data on false allegations of rape; estimates range from 2% to 30-40% or higher
 - Methodologically rigorous research—2% to 8%
 - Spohn and Tellis study—4.5% of all sexual assaults reported to LAPD in 2008 were false allegations

Statistics on Unfounding: Military System

- 2012 DOD Report on Sexual Assault in the Military
 - There were 2,661 subjects of investigation with a disposition by end of FY2012
 - 594 were subjects outside DOD's legal authority
 - Of remaining 2,067 subjects, 363 (17.6%) involved allegations that were unfounded by MCIO (and therefore no action was taken against subject) and 81 (4.8%) involved allegations that were unfounded by commanders
 - Thus, overall unfounding rate of 22.4%

Statistics on Unfounding: Military Services

- Army
 - Of 476 completed rape investigations in FY2012, 25% (N = 118) were unfounded
 - Plus 30 cases in which there was insufficient evidence of any offense to prosecute
- Air Force
 - Of 177 cases presented to commanders for action in FY2012, 11 (6.2%) were unfounded
 - Plus 32 cases in which there was insufficient evidence of any offense

Statistics on Unfounding: Military Services

- Coast Guard: of 69 completed investigations in FY2012 in which command action was possible, there were no cases in which investigation revealed that allegations were fabricated
 - But 22 cases not pursued due to insufficient evidence, which the Coast Guard report indicates “also includes cases that *may* have been fabricated”

Statistics on Unfounding: Military Services

- Marine Corps: of 195 subjects in cases considered for possible action in FY2012, there were no cases in which the allegations were unfounded
 - But 41 subjects in which action not taken due to insufficient evidence of any offense and 21 subjects in which action was declined by commander (no reason given on chart)

Statistics on Unfounding: Military Services

- Navy: of 377 subjects in cases presented to commanders for action in FY2012, 49 (13%) were subjects in cases unfounded by command
 - Plus 84 subjects in which action not taken due to insufficient evidence of any offense

Unfounding Rates: Summary

- Civilian System (Forcible Rape)
 - FBI (1990s)—8%
 - LAPD (2005-2009)—10.9%
- Military System, Sexual Assault, FY2012
 - DOD—22.4%
 - Army—25%
 - Air Force—6.2%
 - Coast Guard—0%
 - Marine Corps—0%
 - Navy—18%
- QUESTION—should the cases in which no action was taken due to insufficient evidence of any crime be included in the unfounding rates?
 - Or are these different in some way?

Determining Military Prosecution Rates: What is the Denominator?

- All unrestricted reports? All reports involving cases presented to commanders for action? Only reports in which evidence supported command action for sexual assault?
 - Example: U.S. Air Force
 - Preferred cases/unrestricted reports
 - $42/399 = 10.5\%$
 - Preferred cases/reports presented to command
 - $42/177 = 23.7\%$
 - Preferred cases/reports with evidence supporting command action for sexual assault
 - $42/56 = 75\%$

Determining Civilian Prosecution Rates: What is the denominator:

- All cases reported? All cases closed? All cases that resulted in an arrest? All cases screened by prosecutor before or after an arrest? All cases screened by prosecutor after an arrest?
 - Example: Rapes and attempted rapes reported to LAPD from 2005 to 2009
 - Charges filed/all reports
 - $486/5,031 = 9.7\%$
 - Charges filed/all closed cases
 - $486/2,300 = 21.1\%$
 - Charges filed/all cases screened after arrest
 - $486/592 = 82.2\%$

Determining Military Prosecution Rates: What is the Numerator?

- Numerator = court-martial charge for sexual assault initiated
 - $594/1,714 = 34.7\%$
- Numerator = court-martial charge for any offense initiated
 - $631/1.714 = 36.8\%$
- Numerator = sexual assault charges substantiated (but court-marital charge not necessarily initiated)
 - $880/1,714 = 51.3\%$
- Numerator = evidence supported some type of commander action
 - $1,124/1.714 = 65.6\%$

Prosecution Rates—Civilian Courts

- Most prior research defines the prosecution rate as the proportion of cases presented to the prosecutor for a charging decision that result in the filing of charges
 - Detroit: charges filed against 66% of all criminal sexual conduct suspects (Spears & Spohn, 1997)
 - Kansas City and Miami: charges filed in 57.5% of cases in Kansas City and 56.8% of cases in Miami (Beichner & Spohn, 2005)
 - Six-city study of rape law reform (Spohn & Horney, 1992) found that prosecution rates were 36% (Washington, DC), 38% (Chicago), 45% (Philadelphia) , 48% (Detroit), 49% (Atlanta), and 62% (Houston)
 - Los Angeles: charges filed against 50.2% of all suspects arrested by the LAPD and the LASD (Spohn & Tellis, 2014)

Prosecution Rates: A Summary

- Problems determining both the denominator and the numerator make calculating rates difficult
 - And makes comparisons across systems somewhat problematic
- With these caveats, rates *appear to be* somewhat lower for military system
 - Overall military rate is 36.8% (court-martial charge/subjects in cases in which DOD action is possible)
 - Civilian rate is about 50%

Prosecution Rates: A Summary

- Calculated as number of *cases preferred for court martial* divided by cases *presented to commanders for action*
 - Air Force: $42/177 = 24\%$
 - Army (rape cases only): $104/186 = 56\%$
 - BUT cases unfounded due to lack of probable cause not included in denominator
 - Navy: $99/377 = 26\%$
 - Navy presentation—56% based on cases in which commander action taken
 - Marine Corps
 - $29/195 = 15\%$
 - Coast Guard
 - $13/38 = 34\%$

Conviction Rates: LAPD

- LAPD: 2005-2009—charges filed in 486 rapes & attempted rape cases
 - Convicted of charges 80.2% (N = 390)
 - Acquitted of charges 1.0% (N = 5)
 - Charges dismissed 9.7% (N = 47)
 - Case pending 9.1% (N = 44)
 - Conviction rate for cases with dispositions: $390/442 = 88.2\%$
 - Conviction rate for cases that proceeded to trial: $390/395 = 98.7\%$

Conviction Rate: 75 Large Urban Counties (SCPS Data) and 6-City Study

- 466 felony defendants charged with rape in 2006
 - Convicted 62%
 - Of felony (50%)
 - Of misdemeanor (12%)
 - Acquitted 2%
 - Dismissed 32%
- Conviction rates from six-city study (Spohn & Horney, 1992) were 56% (Philadelphia), 57% (Houston), 66% (Chicago), 67% (Detroit), 72% (Atlanta), 76% (Washington, DC)

Conviction Rates

- DOD: FY2012—594 subjects against whom sexual assault courts-martial charges were initiated
 - Convicted of charges 40.1% (N = 238)
 - Acquitted of charges 10.8% (N = 64)
 - Charges dismissed 14.8% (N= 88)
 - Discharge/resignation 11.8% (N = 70)
 - Case pending 22.6% (N = 134)
- Conviction rate for cases with dispositions:
 $238/460 = 51.7\%$
- Conviction rate for cases that proceeded to trial: $238/302 = 79\%$

Recommendations

- Use a consistent definition of unfounding and consistent procedures for determining whether a case should be unfounded or not
- Develop a consistent methodology for characterizing case flow/case attrition and for calculating prosecution and conviction rates

Conclusions: Comparing Military & Civilian Response to Sexual Assault

- Making valid & reliable comparisons is challenging
 - Definitions of crimes vary (forcible rape for UCR v. sexual assault for DOD)
 - Jurisdictional issues limit cases that fall under legal authority of DOD
 - DOD data much more comprehensive than civilian data (no national data on prosecution rates and limited data on conviction rates)
 - Difficult to compare outcomes
 - Inconsistent definitions of unfounding
 - Not clear what the denominator and numerator should be for determining rates of prosecution
 - Not clear what the numerator should be for determining rates of conviction

Conclusions: Comparing Military & Civilian Response to Sexual Assault

- Unfounding rate (22.4%) for military substantially higher than rate for civilian jurisdictions (8 to 10% on average)
- Although there are challenges inherent in determining rates of prosecution, the rates appear to be relatively similar for military and civilian jurisdictions
- Conviction rate is lower for military than for civilian jurisdictions
 - But this reflects at least in part the fact that there are options other than dismissal, acquittal and conviction

Research Agenda for the Future

- Determine why the unfounding rate is higher for DOD than for civilian jurisdictions
 - Case file review to determine if cases unfounded are in fact false or baseless or if unfounding is being used to dispose of “problematic cases”
- Identify the correlates of cases that are not prosecuted and that result in dismissal or acquittal
 - What role does victim cooperation(or lack thereof) play? (Research reveals that this is a key factor in cases handled in civilian court system)
- Based on the results of these studies, are there changes in policies and procedures that might produce lower rates of unfounding, higher rates of prosecution and conviction?