


MAINE STATE LEGISLATURE

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**The Arrest, Prosecution and Sentencing of
Sex Offenses in Maine**

Suggestions for Improving the System

Survey Results

November 2003



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The authors are on the staff of the Maine Criminal Justice Statistical Analysis Center. The Center serves as a clearinghouse for data collection and statistical analysis for the Maine criminal justice system.

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METHODOLOGY

In response to a request from the state's Department of Corrections, the staff of the Maine Statistical Analysis Center (SAC) undertook an investigation of why there is a low rate of conviction for sex offenders in Maine.

In 2000, Maine's crime rate per 100,000 residents was 2,620/100,000, with a rate of 25/100,000 reported forcible rapes. This is lower than the overall US crime rate of 4,124/100,000, with a corresponding rate of 32/100,000 rate of reported forcible rapes. In all likelihood, the number of forcible rapes is much higher. Garofalo¹ (1991) and Bryden and Lengnick² (1997) have both advanced theories for high attrition rates in sex offenses.

To better understand the attrition in adult sex offenses in Maine, the Maine SAC formed an internal research team³ to facilitate, design, and implement a study. The SAC research team then recruited and convened an advisory group of practitioners with experience and expertise in the field of sex offenses. Membership included representatives from the following groups:

- Law enforcement – state police (SP), local law enforcement (LLE), and Sheriffs
- Prosecutors (DA, ADA)
- Defense attorneys (DEF)
- Advocates - community-based (CBA) and victim witness (VWA)
- Maine Department of Corrections (DOC) staff, and
- Maine Department of Human Services (DHS) staff.

Early in the design stage, the advisory group suggested that a qualitative survey⁴ of the very groups they represented – practitioners with experience and expertise in the field – would yield valuable insight into the reasons for high attrition rates. The advisory group shared their expertise with the SAC as the SAC research team developed a set of survey questions tracing the progress of sex offense cases through the criminal justice system. The questions were both common and unique to all of the respondent professional groups. This enabled the SAC to collect data across prosecutorial districts and by professional groupings. Questions were pilot-tested and revised prior to administration of the survey.

¹ Garofalo, J. *Police, Prosecutors and Felony Case Attrition*, Journal of Criminal Justice, 1991, 19, 439-449.

² Bryden, DP and S. Lengnick. *Rape in the Criminal Justice System*, The Journal of Criminal Law and Criminology, 1997, 87, 1194-1388.

³ The SAC research team consisted of Larry Ullian, Project Director, Al Sheehy and Ruth Thomas, Project Analysts, and Melanie LaPierre, Project Assistant.

⁴ Since the rate of reported adult sex offense crimes are relatively low in the state of Maine, the research team and advisory group agreed that a strictly quantitative approach would only provide proportional information on attrition rates, or a numerical picture of criminal rape-case processing.

SAMPLE

The research team sent out letters of introduction to all potential respondents, using both geographic distribution and experience with sex offenses as key selection criteria. The sample included equal representation of criminal justice professionals from each of the eight prosecutorial districts in Maine. This resulted in the identification of 64 sample members who were interviewed over a span of five months.

The research team conducted one-to-one interviews, with two researchers present for each interview. One researcher asked the questions and the second documented the responses.

The interview data were entered into QSR N5 qualitative data analysis software. This software enabled the interview to be coded and later analyzed.

IMPROVEMENT OF THE SYSTEM

This briefing paper focuses on survey respondents' views about how to improve the system of processing sexual assault cases in which victims find themselves. The specific survey question, which was asked of all 64 respondents, is as follows:

How would you improve the arrest, prosecution, and conviction of sex offenses?

Responses were independently coded by two researchers. The two researchers each generated a list of themes, which were merged into one list.⁵

Eight key themes emerged from the transcripts:

- (1) Training
- (2) Legal Process, Policy & Procedure
- (3) Resources
- (4) Investigation
- (5) Outreach & Public Education
- (6) Victims & Victim Services
- (7) Sex Offenders, and
- (8) Interagency Information Sharing and Coordination

For the purpose of this paper, themes are generalized statewide. The data set is not large enough to gain meaningful information by district. This may result in the inability to portray discrepancies in practice and perceived needs in improvement at the local level. Each theme is depicted in the order of greatest to least responses. Within several themes, sub-themes or "currents" emerge; these are also depicted where possible in the order of greatest to least responses. Quotes are used primarily to provide emphasis and to reinforce key points. Specific suggestions for improvement were often proffered by individual respondents; this briefing paper includes all specific suggestions.

⁵ The researchers who themed the data were not part of the original research team, which may have some positive effect on the objectivity of the analysis.

1. TRAINING

Training, cited by 34 of 64 (53%) of the survey respondents, was the theme most often raised to improve the arrest, prosecution and conviction of sex offenses in Maine. While respondents most often mentioned that law enforcement personnel could benefit from training, other responses emphasized that judges would benefit from training. Some respondents noted that everyone involved in processing sexual assault cases could benefit, while others emphasized that training for people involved at the victim's entry into the system was most important.

Specific suggestions about training are listed below:

- Forensic interviewing skills
- Interrogation techniques
- Collection of medical evidence
- Obtaining victim statements
- Dynamics of sex crimes
- Differences between child and adult victims
- Basic child abuse training
- Understanding how children make disclosures

Respondents who suggested that judges receive training about sexual assault cases focused on their understanding and awareness of the impact of sexual assault on victims, the impact of sex abuse in relation to sentencing practice, the potential consequences of a lenient sentence⁶ on offender and victim, and the need for more consistent sentences across the state. Another respondent noted that “we need to educate judges so harsher sentences are placed on sex offenders...in the case of judges, they need to be educated about the impact.” (CBA)

One respondent perceived the need for newer judges to receive training – “...new judges are not as trained. There are issues unique to this area that they just don't know about.” (DA) Another respondent noted that judges had expressed frustration about the lack of programs and training for sex offenders themselves – “one of the frustrations I feel, and hear judges say, we don't do anything for sex offenders, don't counsel, castrate, rehabilitate. At some point, how do we fix (it). This has to be part of (the) plan.” (ADA)

Some respondents felt that everyone could benefit from training. One respondent noted that “training everyone could reinforce a team approach.” (Sheriff) Another said “I would like to see the same core group of classes and some type of certification.” (SP) One respondent noted that “people are unaware of the complexity and time involved” in moving sexual assault cases through the criminal justice system, and that “all participants” could benefit from training. (LLE)

A prosecutor talked about the benefit of training for prosecutors - “Understanding the dynamics (of sexual assault crime) helps in dealing with victims and in conveying the essence of the crime to the jury.” (DA)

⁶ “...a 30-day jail sentence for someone who has raped someone.” (CBA)

Suggestions about training audience and methods included the need for mid-level (intermediate), advanced and refresher training, development of and adherence to “protocols”, and the need for support, supervision and mentoring of investigators and prosecutors of sexual assault cases.

2. Legal Process, Policy & Procedure

Twenty-eight of 64 respondents (44%) made comments and concrete suggestions to improve process, policy and procedure in the handling of sexual assault criminal cases. Responses concentrated on changes in court process and sentencing. Two respondents talked specifically about issues involving child victims of sexual assault.

Court Process

Several respondents noted that the court process for sexual assault cases is too lengthy. Comments emphasized the need to achieve justice in the form of speedy dockets, trials and sentencing procedure. Sensitivity to the impact of a lengthy court process on the victim was an important consideration.

Some respondents made specific suggestions to make the court process more efficient in sexual assault cases. Some responses may apply to district rather than statewide practice – they are listed below:

- Eliminate the rotation of judges for sexual assault cases – it causes delays
- Change scheduling process – “the uncertainty of the trial list” is inefficient (DA)
- Convene the Grand Jury more often than once every other month for sexual assault cases

One suggestion that merits special consideration (because it is mentioned by three respondents) is the suggestion to alter or drop the requirement that the victim appear in the presence of the defendant. One respondent noted that “the main problem is the courtroom. The right to face the accuser doesn’t mean face-to-face. It could be in another room. In other states it is legal if the prosecution goes in a room, it may be a schoolroom. The jury can watch in real time via monitor and have the kid in another room. Maine needs to get with it on this.” (LLE)

Sentencing

Several respondents noted the need for increased consistency and efficiency in sentencing practice statewide in sexual assault cases, while acknowledging the tension between the need for case-by-case sentencing and the problem of a too-lenient sentence. One respondent mentioned observing a Texas model of speedy trials and sentences in which “the same jury that convicted him sentenced him the very next day.” (CBA) Most comments focused on inconsistency in sentencing and include:

- “It is all different with every judge.” (LLE)
- “(The) cases do lend for an argument of mandated sentencing, but conversely the side that is argued is that not every case is the same.” (MSP)
- “We also need some stiffer sentencing.” (Sheriff)

- “Both plea and conviction sentences...have gotten really, really small...they are not consistent.” (VWA)

Sentencing consistency in sexual assault cases was felt to be important because of the potential wrong message sent to both offender and victim when different sentences are handed down. “The law allows up to 40 years. A sentence of 30 days in jail is still sending a message to the offender ‘no big deal’. There are more penalties for OUI. It also sends the message to the victim ‘why did I bother?’ ” (CBA)

Specific suggestions to improve sentencing practice are listed below:

- Drop stays of execution prior to sentencing sexual assault cases
- Prescribe long probationary periods for sex offenders
- Set higher bail for sexual assault allegations

A few respondents noted unique considerations involving children in the court process and sentencing of sexual assault cases. These are listed below:

- Refrain from requiring children to testify on holidays
- Change the videotape testimony statute, because the current statute does not protect children from the offender
- Increase the judiciary’s understanding of how children make disclosures
- Prosecute cases when children have made credible disclosures

One respondent felt strongly that the recent “sexual predator” law complicated things by labeling a diverse group of offenders – “they are now labeling some of these people coming out of jail as sexual predators under the new law...it is not just violent rapes, but can be touching, looking, (or) re-offenders.” (LLE)

Another respondent suggested adapting the domestic violence model for policy reasons – “I would write a law very much like the domestic violence legislation. If there is a suspicion of sexual assault when they (police) go to a crime scene, there is a provision that at least for that night there will be a separation and mandatory arrest...(This) assures automatically (that there is) no contact (between alleged offender and victim).” (CBA)

3. Resources

Resource issues (human, funding, time, facilities) were mentioned by 28 of the 64 survey respondents (44%).

Human

A number of respondents felt specialization for people working on sexual offense cases was important. Some respondents felt the development of expertise would help case outcomes. Others felt it would make sense for investigators and prosecutors to be able to follow each case through from beginning to end. One respondent noted – “The very best thing to happen would be that we would have an adequate number of competent investigators...we get familiar with evidence gathering because we work with it all the time.” (DA)

Motivation and attitudes of personnel were also considered to be important. Some respondents echoed the view that “The people that are doing this work need to be people who want to do this work.” (VWA) Another noted – “Manpower is always an issue, but I really think the important issue is training and education of officers involved and whether people really care.” (SP)

One respondent shared the perspective that there are complex value and attitude differences about sexual assault cases that could affect the successful prosecution of cases - “In my experience, prosecutors as a whole are afraid to try (these cases) as seriously as we do. We get some criticism when we try a case. Particularly if you’re holding out for a major felony – rape. (You) have to be willing to say ‘this is serious’...” (ADA)

Time

Several comments stressed the need for additional personnel because sexual assault cases take a lot of time to pursue through the system. Examples were:

- “Increase the numbers of prosecutors in this district so the caseload could be reduced.” (DA)
- “Add more clerical people in the police department so there is not a holdup in getting (the report) in the computer.” (VWA)
- “I would give more time to the system at every level. Police, us, defense attorneys and courts are all full and somewhere they need more time...to give the attention to these (cases) that they deserve.” (ADA)

Funding

A few respondents also mentioned the lack of adequate funding in relation to sexual assault cases. Suggestions for uses of additional funding focused on the need for more training, especially in investigation, and the application of resources to be more thorough with each case.

One respondent provided the perspective that “To me the issue is resources and it continues to be putting your money where your mouth is.” (DA)

Facilities

Two respondents specifically mentioned the need for appropriate facilities for child victims of sexual assault. Comments are listed below:

- “Another room designed to meet child victim needs. A soft room for the child with a small chair so they can feel secure, especially with their feet on the floor.” (LLE)
- “...some kind of place where kids could be interviewed...a child advocacy center like they have in Alabama.” (VWA)

4. Investigation

Seventeen of 64 respondents (27%) mentioned the importance of quality investigations in the pursuit of successful prosecutions of sexual assault cases. A number of respondents

suggested that the best way to improve investigation of sex offense cases is to create law enforcement units with a focus and specialization in sexual assault cases. One noted that "...We need to come to a point that this is a specialty, and only those properly trained will be able to do these cases." (Sheriff)

Seven respondents suggested specific changes, including the increased use of DNA evidence and reinforcement of the importance of the SANE nurse in relation to the gathering of physical evidence. One respondent emphasized the relationship between SANE nurses and the effective collection of physical evidence - "...Get the word out that if you get this (SANE nurse takes sex crime kit) done at the time of the crime...it takes sex crime victims a long time to get to the point where they can come forward and say this happened to me. Anything we can do to collect...the physical evidence...even though we had to hold (it) for six months, even if refrigerated we have something to back (the victim) up if they decide to come back later. That alone would help us convict and prosecute more people." (Sheriff)

5. Outreach & Public Education

Fifteen of 64 (23%) respondents emphasized the need to increase community (and jury members') awareness and understanding of sexual assault crimes. Combined with respondents' emphasis on awareness and understanding within the system (training), the overall theme of awareness and understanding of sexual assaults stands out as the most-often referenced issue for improvement of the arrest, prosecution and conviction of sex offenses.

Community Awareness

Respondents focused on the need for community understanding about victim issues, the need to educate both children and parents of potential and actual sexual assault victims, and the need for "...community acceptance that sex crimes happen to people of every age, gender and background." (ADA)

Specific suggestions are listed below:

- Provide more prevention education for kids
- Explain why victims' testimony (statements) may change over time
- Educate the public about issues facing victims going through the criminal justice system
- Increase public education about sexual abuse/assault in general
- Go into schools and educate kids about the need to report sexual abuse
- Educate parents that it's OK for their kids to report (and what to do when their kids report)
- Educate parents and children about the signs that indicate that an adult may sexually abuse a child

One respondent stressed that "(We) need to try more of these (cases), because there is a perception out there that makes it hard to convict on consent crimes. Society needs to say (this is) unacceptable." (ADA) Another respondent said "I believe my agency...has to do

more education to the general public to let them know it is not the fault of the victim survivor. By doing education we will encourage more people to come forward. Part of the people who will be educated will be the prospective jurors.” (CBA)

Informed Juries

Several respondents suggested or implied that juries are sometimes not willing or able to believe that sexual assault could have happened in a case, and that public education should focus on educating potential jurors. Some of the individual respondents that addressed this issue said:

- “You may have a good case, but if the jury believes it was a set up situation they can decide either way.” (Sheriff)
- “Juries are frustrating...In Maine I see a greater acceptance of sexual assault. If you are married there is no such thing as a sexual assault. If you are a child then it is hard to bring before the court. There is a pervasive attitude and a lack of empathy...I think it actually happens more than is reported.” (VWA)
- “Juries are reluctant to believe kids. When you talk to the jurors after, they say they have a hard time believing that this could have happened.” (Sheriff)
- “I had an idea of a series of articles in the paper in an attempt to educate potential jurors. They don’t want to believe kids.” (VWA)
- “Jurors like evidence. They can’t stand it when a victim says this happened, and a defendant says no (it did not).” (DEF)

6. Victims & Victim Services

Thirteen of 64 respondents (20%) specifically talked about victims and victim services in response to the question. Some survey respondents noted that in order for the victim to be willing to go through the criminal justice process, the criminal justice system needs to provide encouragement and support to them. Respondents focused on the need for victims to feel safe in reporting sexual assaults quickly so that critical physical evidence can be gathered.

Respondents also emphasized that support of the victim with available services can help improve the system. Specific suggestions are listed below:

- Having a SANE nurse at a clinic rather than a hospital, where “...everyone wouldn’t see you.” (Sheriff)
- Having an advocate involved very early on “...to refer (victims) to counseling and inform them of what is going on.” (VWA)

One respondent noted that “I wish I could make the system easier on the victim. The intrusiveness of the process re-victimizes the victim over and over.” (Sheriff)

Three respondents remarked favorably about their local Sexual Assault Response Team (SART) or Sexual Assault Nurse Examiner (SANE) program. One respondent noted that “...having one SANE nurse in each hospital.” would be good practice. (CBA)

7. Sex Offenders

Twelve of the 64 respondents (19%) talked about sex offenders in their recommendations to improve the system. Several respondents emphasized that sex offenders need to be held accountable to the victim, the courts, and the community.

Specific suggestions to reinforce accountability are listed as follows:

- Preventing contact with the victim “type” – e.g. children, women – once the offender is released into the community
- Ensuring the sex offender registration program is statewide
- Tracking and notification is very important
- Making it a requirement that commercial processors report evidence of pornography to local law enforcement
- Improving supervision of sex offenders before trial – “if they are out on bail then someone should be supervising (them)...” (VWA)

Respondents also talked about the need for programs for persons who commit sex offenses. Suggestions and comments are listed below:

- Diversion pre-trial programs
- Intervention programs
- Programs in jails – “good programs in Canada are showing some results in terms of no re-offenses. I think at the very least we need to do some kind of therapy inside of our jail walls.” (CBA)
- Programs that start immediately after sentencing

8. Interagency Information Sharing and Coordination

Eleven of 64 survey respondents (17%) felt strongly that the system would benefit from increased communication and coordination across agencies dealing with the sexual assault of children and adults. One respondent said “We don’t caucus or network. We don’t share information well as a group. I’m hoping this will start a dialogue. We need better decisions...(this is) not win-lose. (ADA)

Suggestions for improvement are listed below:

- Creating child abuse task forces throughout the state
- Strengthening a team approach to investigation
- Keeping better rapport with both DHS and Victim Witness Advocates
- Reducing the constraints to information sharing from agency to agency

Appendix

Study Research Question

The primary study research question is:

What are the adult sex offender attrition rates (the rate at which cases are lost or dropped) at key decision points in the Maine criminal justice process and what affects the rates at each decision point?

Decision points are based on a criminal justice flow diagram adapted by the Maine Department of Corrections from the U.S. Department of Justice, Bureau of Justice Statistics.

Briefing Paper

This briefing paper focuses on survey respondents' views about how to improve the system of processing sexual assault cases in which victims find themselves. The specific survey question, which was asked of all 64 respondents, is as follows:

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