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Death as Deterrent or Prosecutorial Tool? Examining the Impact of
Louisiana's Child Rape Law

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Abstract

This project measures the impact of a 1995 amendment to Louisiana's aggravated rape statute that allows juries to consider imposing the death penalty for convicted child rapists. Pre-amendment populations of cases from two large parishes were compared to post-amendment populations of cases. In addition, 40 individual case files were randomly selected and reviewed. Variables measuring certainty, severity, and swiftness of punishment were compared. The only significant change was the reduction of trials, which may be linked to an increased propensity for plea agreements, dismissals and charge reductions. In general, offenders initially charged with aggravated rape of a child seemed to benefit from the passage of this amendment, as did district attorneys' offices. Unfortunately, the state of Louisiana does not seem to be benefiting from the increased "deterrence" and "retribution" that this amendment was touted to deliver.

Introduction

Although centuries of scholars have debated philosophies of justice, most would agree that laws and their associated punishments should have some deterrent effect (Parker, 1989). Regardless of the degree to which other correctional philosophies such as retribution, rehabilitation, and incapacitation are supported within our justice system, our belief in deterrence provides the foundation for American jurisprudence and corrections. We have laws to guide societal behavior, and provide consequences when those laws are violated. Following the arguments of Beccaria (1764/1819) and Bentham (1843), we believe that the threat of certain, swift, and severe personal pain (punishment) or the sight of others being punished prevents potential violators from law-breaking.

Empirical support for the idea that potential criminals are deterred by the threat of punishment is mixed. Instead, evidence suggests that perceptions of punishment are mediated by prior experience with the justice system. In fact, Apospori, Alpert, and Paternoster (1992) found an experiential effect based on differing levels of experience with criminal justice sanctions. Offenders with more experience had the lowest levels of perceived risk of legal sanctions. This is contrary to deterrence philosophies that imply after being caught and punished an offender's fear of legal sanctions should increase.

Furthermore, Loewenstein, Nagin, and Paternoster (1997) found that rational decision-making can be affected by other "visceral" feelings, such as anger or sexual arousal. The authors found that behaviors related to sexual arousal, such as one might experience in a date rape situation, are not mediated by cognitive processes. That is, when strong physical or emotional feelings are involved (such as sexual arousal), rational thought becomes less likely.

This may help to explain why attempts to curb behaviors with strong visceral components, such as rape, have not been very successful. Bachman and Paternoster (1993), for example, found that statutory rape law reform has not substantially affected either victim behavior (reporting) or actual practice in the criminal justice system.

A variety of penalties are available for law violation. Generally, the most severe crimes receive the most severe penalties. Arguably, the most severe penalty is death. As of year-end 2000, the death penalty was authorized by statute in 38 states and by Federal statute (Snell, 2000). All 38 states authorizing the death penalty include murder as one of the requirements to impose the death penalty, and most states *only* have murder as a crime that receives death. Montana authorizes death for sexual assault, but only after a second conviction (Section 45-5-503 MCA).

Louisiana, one of the top five executing states (Snell, 2000), also is among the nation's leaders in violent crime rates (5th), murder rates (2nd), and incarceration rates (2nd) (Beck & Mumola, 1999; Federal Bureau of Investigation, 1998). It also ranks 17th in the nation for rate of forcible rape (FBI, 1998).

The factor that really distinguishes Louisiana, however, is that it is the only state that makes the death penalty an option for the offense of aggravated rape of a child under the age of 12 years (Snell, 2000). In 1995, the Louisiana legislature amended the state's aggravated rape statute to provide that juries may authorize a death sentence for someone who rapes a child under 12 (La. Rev. Stat. Ann., Sec.14:42 (D)(1), (2), 1999). This amendment would seem to be a measure to reduce the incidence of child rape, although the proportion of rapes involving children is not readily accessible information. Given

the rather high rates of rape and overall violent crime in Louisiana (FBI, 1998), perhaps the legislature viewed enhancing punishment options to be a necessary step to deterrence.

Most everyone would agree that rape is a vicious and disturbing act. When the rape is of a child, however, the act becomes incomprehensibly heinous. Unfortunately, data pertaining to child victimization is difficult to obtain, and existing data is becoming dated. The most recent information indicates that more than half of violent crimes against children involved victims 12 years old or younger. Most disturbing is that 66% of all violent state inmates in 1991 who had victimized a child had raped or sexually assaulted them, with the majority of the victims under the age of 12 (Greenfeld, 1996).

It is possible, however, that the enhanced penalty does not serve a deterrent effect, but instead serves as a prosecutorial tool to increase guilty pleas. When an offender is arrested and charged with aggravated rape of a child under 12, it is possible that prosecutors might offer either to reduce the charge to a lesser (non-capital) offense, or to promise a life sentence in exchange for a guilty plea. Prosecutors may have increased leverage to elicit guilty pleas in these types of cases because child rape is an abhorrent act and child rapists are abhorred individuals unlikely to garner sympathy from any jury, which makes a death sentence more likely.

Since the passage of this amendment, no offender has been sentenced to death for this offense. Two defendants, Patrick Bethley and Anthony Wilson, were the first defendants to be indicted with the possibility of a death sentence. Before trial, the defendants moved to quash the indictments, challenging the constitutionality of the law on its face. Each trial court agreed, but the trial court in Bethley's case ruled the law constitutional. It struck down the law, however, because it did not sufficiently limit the

class of death-eligible defendants, and was therefore subject to arbitrary and capricious application.

The State appealed both cases, after which they were consolidated into State v. Wilson (1996) for review by the Louisiana Supreme Court. During appeal, the defendants argued that the death penalty for raping a child violates the 8th Amendment to the U.S. Constitution, which prohibits “cruel and unusual punishments” (U.S. Constitution, Amendment VIII). The state Supreme Court found the law to be constitutional. Bethley then petitioned the U.S. Supreme Court for certiorari, which was denied on June 2, 1997. Justices Stevens, Ginsburg, and Breyer noted, however, that certiorari was denied because the case had not reached a final disposition. Bethley had not been tried, convicted, or sentenced under the law (Bethley v. Louisiana, 1997). He entered into a plea agreement on December 2, 1998, and was sentenced to life imprisonment without possibility of parole.

Wilson was judged mentally incompetent to stand trial, and currently is in a mental health facility undergoing periodic psychiatric evaluations. It is likely that he will be tried if ever found competent, but it is unknown whether the prosecuting attorney would seek the death penalty.

In justifying its ruling that the amendment was constitutional, the Louisiana Supreme Court reasoned that its decision supported the goals of punishment, retribution, and deterrence, and held that these goals are met by imposing capital punishment for child rape (685 So. 2d, 1996). In fact, Justice Bleicher argued in the majority opinion that the possibility of death would be a deterrent for anyone who contemplated raping children, whether or not they were aware of the child’s age. Bleicher also predicted other

states following Louisiana's lead if there was a "drastic reduction in the incidence of child rape, an increase in cooperation by rape victims in the apprehension and prosecution of rapists, and a greater confidence in the role of law on the part of the people" (685 So.2d, 1996, p. 1073). Measuring the state's success in attaining these goals, however, seemed neither to be a priority of the state legislature nor of the State Supreme Court.

Research Questions

Given that the implicit goal of the amendment was to deter future potential child rapists, it is important to determine whether any deterrent effects have been observed as a result of the policy change. This study addressed the following questions related to the amendment's impact in Louisiana:

1. Have numbers of counts and indictments for aggravated rape of a child under 12 significantly decreased since the amendment (Has the enhanced penalty had a deterrent effect)?
2. What has been the effect of the amendment on the plea bargaining process in aggravated child rape cases? Are offenders who are arrested for child rape actually prosecuted for that offense? Are prosecutors now more likely to reduce or dismiss charges? Are offenders more likely to plead guilty to avoid being tried, convicted, and sentenced to death? (Is the law being used as a prosecutorial tool?)
3. Among cases that are tried, what factors (victim-related, offender-related, case-related) affect dispositional decisions (either to convict or acquit)?
4. For guilty offenders (pled or tried), what factors affect sentencing decisions and sentence lengths?

This project attempted to measure the success of this amendment in providing deterrence and/or retribution. This was accomplished by using the guidelines of deterrence theory that punishments must be certain, severe, and swift in order to deter. For example, the amount of time between arrest and final case disposition was used as a

measure of swiftness. Less time was assumed to be swifter. Several variables indicated the certainty and severity of punishment. Whether a defendant and the prosecutor entered into a plea agreement, for example, was one measure of certainty. Measures of severity pertained to the sentences imposed (type and length). The conceptualization and operationalization of these variables is more completely explained in the following section.

Methods

Research Design

This study used a pre-test/post-test quasi-experimental design. Cases of rape involving a child under the age of 12 in which the dates of offender arrest were between January 1, 1992 and August 15, 1995 were “pre-amendment” cases. Cases in which the dates of arrest were between August 16, 1995 and December 31, 1998 were “post-amendment” cases. Pre-amendment measures were compared to post-amendment measures to determine whether significant changes occurred after the amendment.

Population and sample analyses were conducted. First, analysis considered the entire populations of cases from two of the districts (Orleans and East Baton). Pre-amendment populations of cases from Orleans Parish (n = 46) and East Baton Parish (n = 39) were compared to their respective post-amendment populations (n = 32; n = 32). Thus, a total of 85 pre-amendment cases and 64 post-amendment cases were examined. Pre-amendment cases were compared to post-amendment cases overall (aggregate) and by parish. Selected variables (numbers of counts, indictments, trials, pleas, dismissals, plea outcomes, and adjudications) were measured and compared (see following section on variables).

Second, sample analyses were conducted on the entire population of cases from the 2nd District (parishes of Bienville, Claiborne, and Jackson), as well as on random selections of cases from the parishes of Orleans and East Baton. The 2nd District only had six cases throughout the entire period of interest (3 pre- and 3 post-amendment), so its entire population was used in these analyses.

Listings of cases from Orleans and East Baton were arranged into pre-amendment time periods and post-amendment time periods. Each case was assigned a number, and 34 cases were selected according to a table of random numbers. These 34 cases were added to the six cases from the 2nd District for a total of 40. This figure represents 26% of all pre-amendment cases (n = 22) and 28% of all post-amendment cases (n = 18) from these districts during the study period. A larger sample size would have been preferable, but time and funding limitations required restraint. Although 40 cases may not seem like many, this number represents more than one quarter (26%) of all the cases that came through these districts over a three-year time period, making generalizations from this sample to the population more realistic.

Generalizations are even more possible given that the sample analysis involved an intensive study of these 40 case files. Each file varied widely with respect to its completeness and order, and required approximately 90 – 120 minutes to review and code. Some files included grand jury indictments, while others did not. Some cases that were plea-bargained included Boykin documents (detailing plea arrangements), and others did not. Some files had complete victim and offender information, while many did not. While each file had basic demographic information about the victim and offender,

most were missing information about offender education, employment, and prior criminal history. In addition, medical reports on victims often were included, but not always.

Information on medical evidence was sparse. For example, several victimizations became apparent only after medical exams revealed the presence of sexually transmitted diseases. Apparently, however, this type of medical examination is not required upon suspicion of child sexual assault because all case files did not contain medical reports. In situations where such information is missing, examination of those variables is limited to basic descriptive analysis.

These 40 case files, representing 40 individual defendants, were examined for offender (sex, race, etc.), victim (sex, race, age), case (whether there were multiple victims, the victim-offender relationship, etc.), and prosecutorial variables (type of defense attorney, number of defense attorneys, whether there was a plea agreement, etc.). In addition, capital cases (those in which the case material indicated an intention by the prosecuting attorney to seek the death penalty) were compared to non-capital cases in terms of characteristics.

Variables

For the population analysis, dependent variables included numbers of counts, indictments, trials, pleas, dismissals, plea outcomes, and adjudication. Only pre- and post-amendment aggregate counts from two districts (Orleans and East Baton) were examined. These measures give a rough indication of the impact of the amendment. Each district was asked to prepare a report detailing cases in which the offender's date of arrest was between January 1, 1992 and December 31, 1998. These reports only gave arrest date, disposition date, number of counts, number of dismissals, and the disposition

(whether pled or tried). Totals were tallied by district and by pre- or post-amendment. The only independent variable in this analysis was the presence or absence of the amendment.

For the sample analysis, dependent variables were those that measured the deterrent effect of the amendment. Concepts to reflect deterrence included certainty, severity, and swiftness. Conceptually, research on deterrence has indicated that the certainty, severity and swiftness of punishments are closely associated with the prevention of future criminal behaviors. As the certainty, severity (in proportion to the offense), and swiftness of the punishment increases, the greater its deterrent effect.

Certainty of punishment. Certainty of punishment was measured by three variables: 1) whether the defendant and prosecutor entered into a plea bargain at any time; 2) the number of charges/counts dismissed; and 3) whether charges were reduced at any time during the prosecutorial process. According to Reaves (2001), about 30% of all defendants who are convicted at trial receive a sentence to probation. This percentage is likely to be much higher for defendants who plea bargain. Because probation is a significant possibility for plea bargaining defendants, especially those who receive charge dismissals and/or reductions, this project considered greater certainty of punishment to be associated with cases that did not plea bargain (i.e., they were tried).

Numbers of dismissals were measured as an indicator of certainty because as the number of counts for a particular offense increases, the likelihood of conviction and punishment should grow. Therefore, defendants who had more charges dismissed faced reduced certainty of more harsh punishment. Additionally, having charges dismissed may factor into a plea agreement. Although a defendant may have committed multiple

acts of an offense for which he or she could be severely punished, a plea bargain could make it appear that a defendant committed only a single act and ameliorate the punishment accordingly.

Additionally, certainty is measured by whether an offender was convicted of or pled to the initial charge of aggravated rape of a child, or for some lesser, related offense. Offenders initially charged with aggravated rape but who were convicted of (or pled to) some other offense were not convicted of the crime for which they were initially charged, so the certainty of punishment for the act they committed is reduced. Likewise, offenders charged with and convicted of (or pleading to) aggravated rape had greater certainty of punishment for the act they committed.

Severity. Severity of punishment was measured by several variables related to the harshness of the punishment imposed as the result of either a plea bargain or a trial. Disposition after trial, sentences (to prison, to jail, to probation, etc.), and lengths of imposed sentences (in numbers of months) provide measures of punishment severity. Life sentences were coded as 601 months, one month over the maximum sentence imposed of 600 months (50 years).

Swiftness. Finally, swiftness of punishment was measured by calculating the number of days between the date of arrest and the date of the final disposition. Fewer days between arrest and disposition indicated swifter punishment.

Capital and non-capital cases were compared to determine whether their characteristics significantly differed. Prosecutors only actively negotiated with defendants by dangling the possibility of the death penalty in five post-amendment cases. This does not mean that these cases would necessarily have been tried as capital cases.

Case materials detailing plea arrangements often referred to the prosecutorial “threat” of the death penalty, although prosecutors may never have actually declared an intent to try the case as a capital case. To date, only one capital case actually has been tried. It resulted in a hung jury, which meant an automatic life sentence for the defendant (Darby, 2000).

Analysis and Results

This project examined the impact of a 1995 Louisiana amendment that established the death penalty as a possible punishment for the aggravated rape of a child under 12 years old. Specifically, this study sought to determine whether any appreciable general deterrent effects have been realized as a result of this legislation. Population measures of deterrent effects are numbers of counts, indictments, trials, pleas, dismissals, plea outcomes, and adjudication. Pre- and post-amendment measures were made of these variables within the parishes of Orleans and East Baton. Pre- and post-amendment levels were compared using t-tests for independent samples. Confidence intervals were constructed around mean differences using the 95% level of confidence.

Correlations were calculated for each dependent variable and potential related independent variables. Additionally, to measure possible effects of the amendment, pre- and post-amendment levels of interval level dependent variables were compared using t-tests for independent samples. Confidence intervals (95% confidence level) were constructed around mean differences between pre- and post-amendment measures to determine the possibility that the true mean difference between the pre- and post-populations was actually zero. If a t-test indicated statistical significance, but the confidence interval contained zero, the test was considered not significant. For nominal

or ordinal level dependent variables, potential relationships were measured with cross-tabulations and the chi-square statistic. Phi was used as a measure of association.

The relatively small sample size precluded the use of more sophisticated statistical measures, such as regression. Although the sample size is only 40 cases, these cases were randomly selected from all the cases in the participating parishes during the period of interest. While this sample cannot be said to represent the entire state of Louisiana, it is a good representation of the participating parishes. Conclusions can be generalized to these parishes, but cannot be generalized to the entire state given the strong possibility that the participating parishes significantly differ from other parishes in terms of record keeping, crime trends, demographics, and environment. Since these 5 parishes contain about 21% of Louisiana's population (U.S. Census Bureau, 2000), this makes generalizations more possible.

Descriptive Analyses

Descriptions of defendant characteristics (prior criminal history, age, sex, race, education, occupation, etc.) and of victim characteristics (age, sex, race) are contained in Table 1. Descriptions of variables related to the case (whether STDs were involved, the relationship between the offender and the victim, whether multiple victims were involved, etc.), and those related to the prosecution (type of attorney, whether there was a plea bargain, etc.) are contained in Table 2. Most independent variables were dummy-coded for calculation of correlations.

Several of the potential independent variables had little variation, so they were excluded in statistical procedures. For example, offender sex was, with only one exception, male. Victim sex was, with limited exception, female. Type of attorney was,

with few exceptions, court appointed/public defender. Also, the volume of missing data regarding variables related to offender occupation, education, mental health history, and whether STDs were involved made analysis using these variables impractical and uninformative. Thus, information about variables with little variation is presented for descriptive purposes only.

Insert Tables 1-2 about here

Population Analyses

The pre-amendment population of cases from Orleans and East Baton involving aggravated rape of children was compared to the post-amendment population of cases to determine whether the amendment significantly impacted counts of aggravated rape, indictments, numbers of trials, numbers of pleas, and numbers of dismissals. Table 3 provides information about this analysis.

Insert Table 3 about here

Only one significant difference was observed between pre-amendment and post-amendment mean levels of these variables. The number of trials significantly decreased after the amendment was enacted. Before the amendment, these parishes tried an average of 4.13 cases over the pre-amendment period, but only an average of .75 cases after the amendment. This indicates that, although counts and indictments did not significantly change (i.e., decrease), the number of trials did.

Much of this decrease can be attributed to Orleans parish, which decreased from a 4-year average of 6.5 trials before the amendment to a 4-year average of 1.5 trials afterward. This change, however, was not significant at $p = .05$. Otherwise, mean

numbers of plea agreements increased and mean numbers of dismissals increased, although neither of these changes was statistically significant (see Table 4).

Insert Table 4 about here

The only significant finding within Orleans parish was that the average number of offenders who stood trial and were acquitted (i.e., found not guilty) decreased significantly after the amendment. Thus, tried offenders were less likely to be acquitted after the amendment was enacted. This does not necessarily mean, however, that these offenders were more likely to be found guilty, only less likely to be acquitted.

In East Baton parish no significant pre-/post-amendment differences were noted. Although the average number of trials decreased, the average number of dismissals increased, and average number of plea agreements decreased in East Baton, none of these changes was significant.

Sample Analyses

For this analysis, pre- and post-amendment measures were compared using t-tests for independent samples. Table 5 provides information about these analyses.

Insert Table 5 about here

Counts of aggravated rape decreased, dismissals of aggravated rape counts increased, and counts of other related charges increased. The likelihood that a person would be convicted of a lesser offense than the charge for which he or she was indicted also increased. Moreover, both plea and trial sentences were shorter after the amendment. This could reflect the tendency for prosecutors to be more willing to dismiss aggravated rape charges and charge offenders with other related offenses in order to

avoid the aggravated rape statute after the amendment because it involves the possibility of a death sentence. Although statistical significance was not reached due to the small sample size, this tendency is worth investigating on a larger scale with future research.

This tendency also may be associated with offender race, measured either as non-White (coded as 0), or White (coded as 1). As indicated in Table 6, non-White offenders who plea-bargained experienced significant decreases in sentence lengths after the amendment, and were significantly more likely to be convicted of or pled to a charge lesser than the original charge. These offenders went from an average plea sentence of 360 months (30 years), to an average of just over 138 months (11.5 years). These patterns are related. Offenders who plea bargain should receive sentences for shorter lengths of time, especially if they plead to, or are tried for a reduced charge. White offenders experienced no significant changes.

Insert Table 6 about here

Certainty

Plea-bargaining. Pre-post comparisons of certainty were conducted using chi-square to determine the likelihood of a relationship in the population between plea-bargaining and the presence of the amendment. As indicated in Table 7, the chi-square statistic was not significant indicating little likelihood within the population that the amendment affected plea-bargaining. Offenders had similar pre-amendment as post-amendment likelihood of entering into plea bargains.

Insert Table 7 about here

Bivariate correlations indicated that plea-bargaining was strongly related to race of the offender and race of the victim (see Table 8). These two variables, however, were

highly intercorrelated; victimization was intra-racial so only race of offender is used in subsequent tests.

Insert Table 8 about here

This correlation between race and plea bargaining persisted, but was somewhat mediated, by controlling for offender's prior history, whether the case involved multiple victims, and whether all of the victims were under the age of 12 (see Table 9). No other variables were significantly correlated with plea-bargaining.

Insert Table 9 about here

Investigating this racial effect more closely led to a chi-square test of relationship between race and plea-bargaining (see Table 7). The chi-square statistic was highly significant, meaning that race and plea-bargaining are probably related in the population of offenders from which this sample came. The measure of association indicated that approximately 46% of the variation in plea-bargaining is explained by the race of the offender. White offenders are significantly more likely than non-White offenders to enter into a plea bargain. Conversely, non-White offenders are more likely to go to trial. In fact, all of the offenders who did not enter into a plea bargain (i.e., went to trial) were non-White.

A pre-post examination of this relationship indicated that race, plea-bargaining, and being tried were significantly related before, but not after the amendment (see Table 10). In fact, before the amendment, race explained 54% of the variation in plea-bargaining and 59% of the variation in being tried. It appears that the passage of the

amendment significantly reduced the impact of race on the plea bargaining process, although the overall likelihood of plea-bargaining (or trial) was not affected.

Insert Table 10 about here

Dismissals. As a second measure of certainty, correlations between variables and numbers of dismissals were investigated. Race of the offender was again the only significant correlate (see Table 8). While dismissals of aggravated rape charges did not significantly differ by race, dismissals of other related offenses did (see Table 11). White offenders had significantly more charges of related offenses dismissed.

Insert Table 11 about here

Because the plea bargaining process often involves the dismissal of charges, dismissals were compared by whether a plea agreement was reached. Mean numbers of dismissals significantly differed by whether a plea agreement was made. Offenders who pled had significantly more dismissals than offenders who did not. This is to be expected given that dismissal of charges is often offered as an incentive for offenders to plead guilty.

Comparing pre- and post-amendment patterns by race again suggested that the passage of the amendment significantly reduced the effects of race on dismissals. Before the amendment, Whites had significantly more charges dismissed, but not afterward.

Reduction of charges. Offenders also may be offered a reduction in charges as an incentive to plea bargain. The variable that measured this examined whether an offender was sentenced for the original charge or a reduced charge (see Table 8). The variable significantly correlated with reduction of charges was whether there was a plea

agreement. This is to be expected in that offenders who had charges reduced were those more likely to plea bargain. Charge reductions were not significantly different before and after the amendment (see Table 5).

Table 12 illustrates a chi-square test of relationship between charge reduction and entering a plea agreement. This relationship is so strong that whether a plea agreement was made explained about 87% of the variation in whether charges were reduced.

Insert Table 12 about here

Given the prior observed correlations between race and several dependent variables, this relationship between race and charge reductions was examined, as well. Before the amendment, race and charge reductions were significantly related and race explained over half (52%) of the variation. White offenders were significantly more likely to have charges reduced than non-White offenders. After the amendment, there is no relationship between the two variables. Overall, this reflects the greater likelihood of White offenders to enter into plea bargains. In fact, as illustrated in Table 13, the significant correlations among race, dismissals, and charge reduction disappear when controlling for plea-bargaining, although the correlation between race and dismissals is nearly significant ($p = .056$). One must consider, however, that tried offenders (who all were non-White) had no dismissals; only plea bargaining defendants had dismissals. So, while it may appear that race and dismissals are correlated, it is primarily due to the relationship between plea-bargaining and dismissals. Once more, however, passage of the amendment seems to have somewhat mediated any racial effects (see Table 11).

Insert Table 13 about here

Severity

Length of plea sentence (only for offenders who plea bargained). The length of sentence a plea-bargaining offender received was not significantly correlated with any other variable. Moreover, there were no significant before and after differences (see Table 5).

Length of sentence on aggravated rape conviction (only for offenders who were tried). The length of sentence a convicted offender received was not correlated with any other variable. Race was not a consideration since all tried offenders were non-White. Pre- and post-amendment comparisons also were not significantly different (see Table 5).

Dispositions (only for offenders who were tried). No variable was significantly correlated with the disposition that was received after trial. Additionally, no significant pre-/post-amendment differences were observed (see Table 5). There was no racial variation in this variable in that all tried offenders were non-White.

Swiftness

Only one variable was used to measure this concept. The number of days between arrest and disposition was calculated to measure the swiftness of punishment. The average time between arrest and disposition was about one year (365.55 days), with a median time of 335 days. Time ranged from 0 days (when offenders plead guilty on the day they were arrested), to 1111 days (over 3 years).

Shorter time spans meant swifter punishments. Logically, it seems that offenders who plea-bargained would move from arrest to disposition more quickly than offenders who were tried. This was not the case. As indicated in Table 14, there was no significant

difference between defendants who were tried and those who plea-bargained in terms of swiftness.

Insert Table 14 about here

Passage of the amendment did not affect the swiftness of punishment (see Table 5). While offenders waited a longer average amount of time between arrest and disposition after the amendment (about 46 days longer), this mean difference was not statistically significant.

Capital Cases

Finally, cases were examined by whether the prosecuting attorney sought the death penalty. Only five of 18 post-amendment cases (28%) were capital cases. Three defendants were non-White males and two were White, a married male and female couple. Eighty percent of these cases (4/5) involved questions of the defendant's mental competency. As a result, two of the defendants were found incompetent to stand trial and currently undergo periodic evaluation in a state psychiatric hospital. One of the incompetent defendants was the White female. Her male partner pled guilty in exchange for a life sentence. The two Black males each entered into plea agreements with the state in exchange for 20-year sentences.

Capital cases did not significantly differ from non-capital cases in victim characteristics, offender characteristics, or case characteristics (e.g., number of victims, ages of victims, relationship to victim, prior criminal history, number of counts, number of dismissals). The only significant difference between capital and non-capital cases was the number of days between arrest and disposition. Capital cases took an average of 633

days to reach disposition, while non-capital cases took an average of only 283 days (see Table 15).

Insert Table 15 about here

Conclusions and Recommendations

Only one thing changed within the population of cases involving aggravated rape of a child after a 1995 statutory amendment authorizing death as a possible punishment. The number of trials significantly decreased, mostly due to a large decrease in Orleans parish. This reduction cannot be attributed to significant changes in numbers of charges, prosecutions, pleas, or dismissals. Plea agreements and dismissals both increased, but not significantly.

Similarly, within each parish population, only one change was noted. Orleans parish experienced a significant drop in the number of tried offenders who were acquitted. That is, tried offenders were less likely after the amendment to be acquitted of aggravated rape. Statistically, however, they were no more or less likely to be convicted. In East Baton, dismissals increased, and pleas and trials decreased, but not significantly.

The amendment had little impact on variables associated with deterrence. If this amendment had a general deterrent effect, counts of this offense in the population and within the sample should have significantly decreased. This did not happen. Although there were fewer counts of aggravated rape after the amendment, there also were more dismissals and more counts of other related offenses (all statistically non-significant changes). These changes, although statistically non-significant, may reflect a prosecutorial reluctance to charge offenders with aggravated rape, and an increased

tendency to dismiss charges of aggravated rape, or to instead charge offenders with other, related offenses.

Punishment severity and swiftness remained statistically unchanged after the amendment. Some aspects of certainty, however, were affected. While overall likelihood of entering into a plea agreement did not change, there was a significant relationship between pleading guilty and offender race that was only slightly mediated by the offender's prior criminal history, and by the numbers and ages of the victim(s). White offenders were significantly more likely than non-White offenders to plead guilty, and significantly less likely to go to trial. In fact, all offenders who were tried were non-White.

Dismissals and reductions of charges did not change. Dismissals varied significantly, however, by offender race. While Whites and non-Whites had similar numbers of aggravated rape dismissals, White offenders had significantly more charges of other offenses dismissed. Both dismissals and charge reductions were strongly correlated with plea-bargaining. Obviously, the plea process involves incentives to the offender in exchange for a guilty plea. These incentives most often involve dismissals or reductions of charges. Since White offenders were most likely to enter into plea agreements, it is only logical that they would have more charges dismissed and/or reduced.

Interestingly, the amendment seems to have ameliorated some of the racial discrepancies in plea-bargaining, trials, dismissals, and charge reductions. While race was significantly related to these variables before the amendment, it was not a significant factor afterward. That is, Whites were significantly more likely than non-Whites to plea

bargain, have charges reduced and/or dismissed before the amendment was passed, but not afterward. Racial patterns that were so obvious and influential before the amendment disappeared after its passage. This may be partially explained by the fact that the population data indicated a significant reduction in the numbers of trials after the amendment, and non-White offenders were significantly more likely than White offenders to be tried.

In general, the outlook for non-White offenders became better after the amendment. The racial effects did not disappear after the amendment because the situation became worse for Whites. Instead, non-White offenders were more likely to plea bargain and less likely to be tried, more likely to have charges dismissed or reduced, and to be sentenced to shorter periods of time. This tendency may be partly explained by an increased level of prosecutorial caution given the potential stakes of trying a defendant after the amendment. This is worth future investigation.

This data is perhaps most noteworthy for what it does not indicate. Offenders who are charged with the aggravated rape of a child under 12 seemingly are processed through the system with little regard for case characteristics that would seem to be important. Logically, it would seem that cases involving younger victims, multiple victims, a close relationship between the victim and the offender, or offenders with prior criminal histories would be prosecuted more harshly. It would seem that these offenders would not be allowed to plea bargain, be more likely to be convicted, and serve longer sentences. This was not the case, however. Victim, offender, and case characteristics had little significant impact on the certainty, severity, and swiftness of punishment. Offender race was the primary correlate of case outcomes, at least before the amendment.

Moreover, capital and non-capital cases differed only in the amount of time required to reach a conclusion. Capital cases took over twice the number of days as non-capital cases to proceed from arrest to disposition, even though all the defendants in capital cases either were adjudicated incompetent or entered into plea agreements. In addition, post-amendment cases took an average of 46 days longer (although this difference was not significant). In effect, passing the amendment has increased the burden of prosecuting a defendant for aggravated rape of a child for less of a return. After the amendment, dismissals, charge reductions, and pleas increased and average sentence lengths decreased. That is, prosecutors now work harder for defendants to be punished less harshly than before the amendment.

This leads one to wonder how decisions are made regarding prosecutions, plea bargains, charge dismissals and reductions, adjudications, dispositions, and sentences. Without the strong racial component one might argue apparent arbitrariness in the decision-making process, the luck of the draw, so to speak. Arbitrariness would be better than bias, but both potential offenders and law-abiding citizens deserve more structured criminal procedures. Offenders who plea-bargained were sentenced to no less time than offenders who were tried, even though they were charged with significantly fewer offenses. Why would a defendant plead guilty to a charge if he or she will serve (statistically) the same sentence as someone who is afforded the benefit of a jury trial? A plea of guilty is an automatic conviction for the prosecution while a trial involves the possibility (however slight) of acquittal.

Of course, prosecutors would rather enter into plea arrangements than face the time and expense of a trial, especially if it may be a capital case. But, what is the purpose

of legislation? Is it to make it easier on the people who run the system, or to prevent future crimes? If no difference exists between pled cases and tried cases in the amount of time from arrest to case disposition, how does the system benefit?

Can legislation deter criminal behavior when convictions of, and punishments for, violations are not distributed in any logical or predictable way? According to the classical school, from which deterrence evolved, humans rationally weigh the possible benefits and risks associated with any given act. One purpose of the law is to increase the possible risks by associating potential punishments with certain behaviors. Knowing the potential risks is crucial for deterrence. For example, a potential child rapist may consider the odds of being tried for aggravated rape of a child to be very low, especially given the likelihood of a plea bargain, dismissals, and charge reductions. So, although the potential punishment could be death, this offender knows that the likelihood of a death sentence is so remote that he or she will not be deterred. In fact, offenders face less likelihood of punishment now than they did before the amendment.

Rather than an argument for harsher punishment or greater certainty of death, this project emphasizes the need to develop rational models for case processing. Participating districts in this study screened cases to determine processing, but distinctions among cases are not apparent in terms of these screening criteria.

For example, representatives from district attorneys' offices said that victim age and relationship between the defendant and victim are important considerations in deciding whether to try a case. The age of the victim would seem to be crucial for prosecutors. The younger the victim, the more difficult it is to prosecute an offender. This is partly due to the fact that younger children are less able to verbalize what

happened to them, and also are less likely to be perceived as credible by a jury. The average age of the 53 victims in this study was about eight years old. In fact, 51% were under the age of nine, with 23% under the age of six.

In addition, prosecutors are hesitant to try a child's parent and risk the possibility that the child will be penalized or stigmatized when the parent is sent to prison or executed. However, this study found absolutely no relationships between case processing and these types of variables.

The apparent unrelated nature of case processing and case characteristics is not restricted to this study. Smith (1987), in an examination of 504 capital-eligible cases in Louisiana involving homicide, found seven factors (race of offender, race of victim, sex of victim, number of victims, type of weapon used, victim/offender relationship, and homicide location) to "be of little aid in predicting death penalty decisions" (p. 283). In fact, within the 53 cases actually assigned capital punishment, Smith found a "striking pattern of capriciousness" (p. 283). Specifically, he found that what mattered most in determining who received a capital sentence was "who was murdered" (p. 283).

Paternoster (1984) also noted this tendency in a review of 300 South Carolina homicide cases from 1977-1981. This author specifically analyzed factors that influence a prosecutor's decision to seek the death penalty. He found race of the victim to be significantly related to decisions to seek death, even when legally relevant factors were considered. That is, cases with White victims were more likely than cases with Black victims, especially when the killer also was Black, to be tried as capital cases. This finding reflects an interactive effect between offender and victim race.

Obviously, cases of homicide and cases of aggravated rape have substantially different characteristics. However, it seems that both types of situations share the commonality of unpredictable application of the death penalty. One disadvantage to Smith's conclusions is that he did not control for important legal considerations such as the offender's prior criminal record or quality of legal counsel. These factors may have played a significant role in assigning cases as capital cases.

At a more philosophical level, these results call into question rationales of the Louisiana legislature and of the Louisiana Supreme Court. This bit of legislation was passed during an election year in which the Louisiana governor was up for reelection. State rates of violent crime were at their highest and increased rates of vigilantism were feared (Cordle, 1998). The legislature decided to take a tough stance on the particular crime of child rape by passing the amendment authorizing juries to consider the death penalty for rapists of children under the age of 12. The incumbent governor knew that a "get-tough" on crime approach was popular with his constituency, and what approach could be tougher than backing the expansion of death-eligible crimes? Although this measure was lauded as providing retribution and deterrence, many at the local level, including one Executive Assistant District Attorney (who requested anonymity), believed it to serve mainly a political purpose (personal communication, April 10, 2001).

This research would seem to support that contention. The Louisiana Supreme Court, however, appeared to determine that both the goal of retribution and the goal of deterrence was being met by the Louisiana amendment (685 So.2d, 1996). This court's misinformed beliefs about the nature of deterrence probably are reflected among much of the country's populace. Scholars and researchers have yet to specify the formula for

deterrence. It is not simply a matter of adjusting the severity, certainty, or swiftness of sanctions in precise ratios so as to guarantee the eradication of undesirable behaviors. Even animals trained (i.e., punished) to stop behaviors such as digging, chewing, biting, and barking occasionally revert to their “natural” states and risk punishment even though it may be quite certain, swift, or severe. Humans have the capability for rational thought that makes this likelihood even more possible.

Even if Louisiana’s legislature and court believed that death was a deterrent and/or retribution, this research should make them reconsider. How can death function as a deterrent (especially a specific deterrent) or as retribution if the sanction is never applied? Louisiana is unique in its legislative insistence that individuals convicted of raping children under the age of 12 be faced with the possibility of death. Several discretionary phases, however, are involved which may mean that no child rapist ever gets executed. First, arresting officers must charge the offender with aggravated rape under the amended statute. This assumes that officers will not use their discretionary powers to charge these offenders with a less controversial offense such as molestation or sexual assault. Second, prosecuting attorneys must prosecute the offender under the aggravated rape statute and seek the death penalty. As this research shows, prosecutions are more likely to proceed under an alternative charge rather than that of aggravated rape. This is the result of plea agreements, dismissals of charges, and reductions in charges. Furthermore, prosecutors must actively seek the death penalty for offenders charged with aggravated rape.

The discretion of prosecuting attorneys is powerful and has been the subject of some research on deterrence and the criminal process (see Paternoster, 1984). Deterrence

fails to become an issue if offenders rarely are prosecuted for the most severe crime for which they are eligible to be charged. That is, will an individual be deterred from committing aggravated rape if he or she is prosecuted for molestation? Or will that individual be encouraged to continue committing aggravated rape precisely because he or she knows that prosecutors are likely to plea bargain, reduce charges, or dismiss charges? The basic premise of deterrence requires the deterred to be aware of his or her behaviors and to rationally consider costs and benefits. If an individual is rational enough to consider costs and benefits of a behavior, would that individual also not be rational enough to understand when costs are negotiable and perhaps nonexistent?

Louisiana should be forthcoming about the purposes behind its aggravated rape amendment. As this study indicates, it serves no deterrent purpose, and perhaps no retributive purpose. Retribution also would seem to require punishment for the offense that one committed. On average, individuals receive “less” punishment after the amendment than they did before the amendment. In fact, all indications are that the amendment serves neither retributive nor deterrent functions.

The incidence of aggravated rape in Louisiana has not been appreciably affected by the amendment. In fact, it seems that prosecutors are now more hesitant to prosecute an offender under this statute precisely because it involves the possibility of death. Knowing that capital cases are more time-consuming and expensive than non-capital cases may contribute to that reluctance. Moreover, since the constitutionality of the amendment is untested (i.e., no one has been sentenced to death), prosecutors may be even more hesitant to be the first to try a “successful” case that has a strong likelihood of resulting in the overturning of the statute by the U.S. Supreme Court.

In conclusion, the effects have not been what the legislature purported to desire. If, however, the primary purpose of the legislation was to secure political positions and elect officials on a “get-tough on crime” platform, then it has been an overwhelming success. The goals of deterrence and retribution, however, clearly have not been met. In fact, when the constitutionality of the statute is tested, Louisianans may find that child rapists have not been deterred and society has not obtained retribution. They may instead discover that the true impact of this amendment only has been to perpetuate the erroneous idea that death deters and to make things “easier” on prosecuting attorneys and child rapists by increasing the likelihood of plea bargains, charge reductions, and dismissals.

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