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Abstract

This study examines the predictors of sexual assault case clearance, with a focus on arrest and two types of exceptional clearance: victim refusal to cooperate and prosecutorial declination to prosecute. Using National Incident Based Reporting System (NIBRS) data on crime incidents that contain a sexual offense ($N = 21,977$), we estimated a multinomial regression model to examine the predictors of different clearance types for cases of sexual assault. Results indicated that the likelihood of victim refusal decreases in cases perpetrated by strangers, involving victim injury, occurring in public, and involving multiple offenses. A similar pattern of findings was observed for the decision to decline to prosecute a case. In addition, prosecutors are more likely to decline to prosecute cases with male victims and older victims. We discuss the implications of our findings and directions for future research.

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Sexual assault is significantly underreported to law enforcement, with research indicating that these offenses are the most underreported of all violent crimes (Rennison, 2002; Tjaden & Thoennes, 2006). According to data from the National Crime Victimization Survey (NCVS) between 2006 and 2010, 65% of sexual assaults were not reported to the police, compared with 44% of aggravated assaults and 41% of robberies (Langton, Berzofsky, Krebs, & Smiley-McDonald, 2012). Reasons for underreporting vary, but studies suggest that primary motivations for victim silence include fears regarding retaliation for reporting, feelings of shame and embarrassment about the assault, beliefs that the assault was not serious enough to report, fears that they will not be believed, and *fears that not enough will be done if they do report* (i.e., they will not receive justice) (Bachman, 1998; Cantor et al., 2015). Reasons for not prosecuting a sexual assault case also varies, including rape kit incompletion, victim credibility, issues of consent, lack of evidence, timing between the assault and report, and *victim cooperation*, among others (Campbell, Feeney, Fehler- Cabral, Shaw, & Horsford, 2015; Spohn & Holleran, 2001; Spohn & Tellis, 2010; Venema, 2016).

Given the low reporting rate for sexual assault, as well as victim fears sur- rounding reporting and the likelihood of justice, understanding what happens to cases of sexual assault once they are reported to law enforcement is para- mount. Prior research confirms that the majority of cases of sexual assault cleared by law enforcement are not cleared through the arrest of a suspect (Planty, Langton, Krebs, Berzofsky, & Smiley-McDonald, 2013) but through "*exceptional means*" (Walfield, 2016). In other words, a suspect is identified but an arrest is not made due to factors outside the agency's control (Addington, 2006). While most previous studies have treated exceptional clearance in cases of sexual assault as a

singular outcome (e.g., Durfee & Fetzer, 2016; Addington & Rennison, 2008; Walfield, 2016), the Federal Bureau of Investigation (FBI) provides several categories of exceptional clearance: cases in which the victim refuses to cooperate, cases the prosecutor declines to prosecute, and "other cases," in which the offender has died, for example, or extradition has been refused. These types of exceptional clearance outcomes are qualitatively different from each other, just as they are different from uncleared cases and those cleared through arrest. Understanding the factors associated with these various case outcomes is important for understanding the challenges associated with encouraging victim cooperation with the criminal justice system and encouraging the prosecution of these crimes.

Previous research on sexual assault has examined predictors of case clearance generally, and predictors of arrest versus exceptional clearance more specifically. The distinction *among* a large proportion of cleared sexual assault cases—that is, cases cleared by exceptional means—has received little empirical attention. The present research advances our understanding of exceptional clearance for sexual offense incidents by using data from the National Incident Based Reporting System (NIBRS) to examine predictors of case outcomes for these crimes, including (a) cleared by arrest, (b) victim refused to cooperate, (c) prosecution declined, (d) cleared exceptionally by other means, and (e) not cleared. In particular, we focus on the victim–offender relationship and its association with two particular forms of exceptional clearances: the victim's refusal to cooperate and the decision not to prosecute. The NIBRS is useful for exploring these relationships, as it contains data on victims, offenders, and offenses, and thus can account for important details of the incident that may influence case outcomes (Maxfield, 1999). The findings shed light on factors related to criminal justice case outcomes in sexual offense incidents, with a focus

on the victim–offender relationship and other incident characteristics and how they relate to various forms of case clearance.

Clearing a Sexual Assault Case

Arrest

The majority of previous research on sexual assault case clearance has focused on factors that predict arrest, with the victim–offender relationship receiving considerable attention (e.g., Felson & Lantz, 2016; Hirschel & Faggiani, 2012; O'Neal & Spohn, 2017). Black's (1976) theory of relational distance posits that the level of intimacy between victims and offenders directly affects the severity of the criminal justice system's response to crime, such that the criminal justice system responds more punitively as the relational distance between the victim and offender increases. Yet, research on the victim–offender relationship in cases of sexual assault generally demonstrates that cases involving strangers are *less* likely than cases involving non-strangers to result in an arrest (Bouffard, 2000; D'Alessio & Stolzenberg, 2003; LaFree, 1981; Roberts, 2008).

Early work by LaFree (1981), for example, examined all forcible sex offenses (*n* = 905) reported to police in a large mid-western city over the course of 6 years and found that cases involving strangers were less likely to result in arrest than cases involving acquaintances while controlling for other legal and extralegal factors. Similarly, Bouffard (2000) examined 323 (73%) felony sexual assault cases from a large urban/suburban jurisdiction and found that cases involving victim-offenders with a "prior-relationship" (ranging from work associate or neighbor to spouse or ex-spouse) were significantly more likely to result in an arrest than cases involving victim-offenders with no prior relationship (i.e., strangers) irrespective of a host of other control variables. More recently, Roberts (2008) used data from the 2000

NIBRS, the 2000 census, and the 2000 Law Enforcement Management and Administrative Statistics (LEMAS) to explore the influence of multiple incident and contextual factors on the likelihood of arrest for cases of forcible rape as well as robbery and assaults in 106 U.S. cities. Findings from a multivariate time-series model indicated that rape cases involving family members and cases involving friends/acquaintances had a higher likelihood of arrest than cases involving strangers.

While this pattern of findings may suggest the police are more responsive to victims assaulted by nonstrangers, an alternative explanation is that the solvability of a case is tied to the availability of information, including the identity of the suspect (Spohn & Horney, 1996; Eck, 1983). In other words, it is likely much more difficult to identify and locate a suspect in incidents perpetrated by strangers. In fact, Spohn and colleagues (O'Neal & Spohn, 2017; Spohn, Beichner, Davis-Frenzel, 2001; Spohn & Holleran, 2001; Spohn & Tellis, 2010) have found that issues of case convictability (such as victim cooperation in identifying and/or locating a suspect) are focal concerns of police and prosecutors working sexual assault cases. When suspect identification is controlled, arrests are *more* likely in cases involving strangers relative to non-strangers (Tasca, Rodriguez, Spohn, & Koss, 2013).

The victim–offender relationship is also important to consider in the con- text of arrest for sexual assault cases given state policies specific to intimate partner violence (Durfee & Fetzer, 2016). Many states have adopted either "mandatory" or "pro-arrest" policies for intimate partner violence, making arrest either the required or preferred response (Hirschel, Buzawa, Pattavina, & Faggiani, 2007). Comparatively, states with discretionary arrest policies for intimate partner violence leave more decision-making power with the responding officer(s).

Prior sexual assault research suggests that several

other incident characteristics, including those that may increase perceptions about the seriousness of the offense, are related to the likelihood of an arrest. Characteristics such as younger victim age (D'Alessio & Stolzenberg, 2003; Roberts, 2008; Walfield, 2016) and victim injury (D'Alessio & Stolzenberg, 2003; Roberts, 2008; Spohn & Tellis, 2012; Walfield, 2016) as well as older suspect age (Walfield, 2016) have been associated with an increased likelihood of arrest for sex offenses. In addition, several incident-level factors such as the use of a weapon (Walfield, 2016) and concomitant crimes (D'Alessio & Stolzenberg, 2003; Roberts, 2008; Walfield, 2016) have been linked to suspect arrest in cases of sexual assault.

A large proportion of cases of sexual assault, however, are not closed though arrest. For example, using data from the NCVS, Planty and col- leagues (2013) found that only 31% of sexual assaults reported to law enforcement from 2005 to 2010 resulted in an arrest. Prior research suggests that instead, the majority of sexual assault cases that are cleared are cleared by exceptional means (Walfield, 2016).[1] Cases may be cleared through exceptional means only when law enforcement officers have completed all aspects of an investigation including the identification of a suspect, but still cannot clear the case via an arrest. In these occasions, the case can be cleared by exceptional means if the agency has established the following four conditions. The agency must have (a) identified the offender; (b) gathered enough evidence to support an arrest, make a charge, and turn over the offender to the court for prosecution; (c) identified the offender's exact location so that the suspect could be taken into custody immediately; and (4) encountered a circumstance outside the control of law enforcement that prohibits the agency from arresting, charging, and prosecuting the offender (FBI, 2004).

Bouffard (2000) observed that although almost 50% of cases of rape in his sample were closed, nearly twice as many rapes were cleared exceptionally (31.6%) than by arrest (18.1%). In addition, Spohn and Tellis (2012) reported sexual assault clearance rates for the Los Angeles Police Department (LAPD) and the Los Angeles' Sheriff Department (LASD) of 88.9% and 45.7%, respectively; however, when clearance rates were constrained to cases cleared by arrest only, clearance rates fell to 12.2% in the LAPD and 33.9% in the LASD. Furthermore, Walfield (2016) examined case clearance of rapes reported to NIBRS from 2006 to 2011 and found that nearly half (47.3%) were cleared through exceptional means. What is largely missing from prior research on clearance of rape and sexual assault cases through exceptional means is an examination of predictors of different types of exceptional clearance relative to cases that result in an arrest and/or that remain uncleared. The FBI provides three categories of exceptional clearance: cases in which the victim refuses to cooperate, cases in which the prosecutor declines to prose- cute, and "other cases" (e.g., the offender has died, extradition has been refused).

Victim Cooperation With Law Enforcement

Prior research suggests that victim cooperation influences law enforcement officers' decisions to make an arrest in cases of rape and sexual assault (Spohn & Tellis, 2014). At the same time, studies indicate that victims of rape and sexual assault report negative experiences with law enforcement officers, including victim blaming attitudes, a focus on victim behavior precipitating an assault, and disbelief regarding the assault (Ahrens, Campbell, Ternier-Thames, Wasco, & Sefl, 2007; Chen & Ullman, 2010; Konradi & Burger, 2000; Patterson, Greeson, & Campbell, 2009; Rennison, 2002).

These negative experiences, or "secondary

victimizations" (Martin & Powell, 1994), are thought to stem from beliefs regarding what constitutes "real" rape (Estrich, 1987). Real rape, for example, might involve a weapon, include additional co-occurring crimes, result in physical injuries to a victim, and involve a stranger perpetrator. Indeed, victims who are assaulted by strangers are perceived as "genuine victims," more credible, and more worthy than those assaulted by someone they know (Feldman-Summers & Palmer, 1980; LaFree, 1989; LeDoux & Hazelwood, 1985). For victims assaulted by a known perpetrator, there may be questions regarding whether the victim enticed the alleged attacker or whether the sexual contact was consensual, albeit regrettable, on the part of the alleged victim (Bryden & Lengnick, 1997). This burden of "consent credibility" is theorized to be most severe when the attacker is an intimate partner.

   While decades of victimization surveys indicate that the majority of sexual assaults do not meet this real rape standard (Planty et al., 2013), prior studies suggest that cases that do not adhere to this standard are taken less seriously (e.g., are afforded less time and attention) (Spohn & Tellis, 2014) and these victims may be counseled by officers to drop their report all together (Campbell, 2006; Kerstetter & Van Winkle, 1990). Perceptions of real rape and related secondary victimization are likely associated with victim cooperation. For example, Kaiser, O'Neal, and Spohn (2016) found that the perceived credibility of sexual assault victims was strongly associated with victim cooperation with law enforcement at both the time of investigation and suspect arrest. In addition, Tellis and Spohn (2008) indicated that victim cooperation was higher in cases involving injured victims and victims of stranger assaults (rather than assaults by intimates or acquaintances). Furthermore, prior research by Pattavina, Morabito, and Williams (2016) examining predictors of sexual assault cases cleared by exceptional means due to victim refusal to

cooperate versus arrest found that exceptional clearance was more likely when the offender was an acquaintance versus a stranger, when there were no concomitant crimes, and/or the victim was not injured.

Taken together, studies suggest that "real rape" is perceived to occur between strangers, results in injuries (presumably due to victim resistance), and involves more serious actions (such as the use of a weapon or multiple concurrent crimes). Furthermore, victim cooperation is seen as an essential element for the success of clearing sexual assault cases and can be used as one justification for clearing these cases exceptionally rather than through arrests. Based on this, we examine whether those whose victimizations are consistent with perceptions of "real rape" are more likely to cooperate with the police and are thus more likely to see their cases result in arrest rather than be cleared by exceptional means or remained uncleared.

Prosecutorial Decision Making

The majority of prior research examining prosecutorial influence on sexual assault case attrition and case outcomes has focused on prosecutors' decisions to file charges and/or which charges to file *once law enforcement officers have made an arrest* (e.g., Beichner & Spohn, 2012; Spears & Spohn, 1997; Spohn & Holleran, 2001); however, prosecutors may have significant influence on whether or not law enforcement officers actually make an arrest in cases of sexual assault. As noted by Spohn and Tellis (2010), in some sex offense cases, "law enforcement officials may present the case to the prosecutor prior to making an arrest and, based on the prosecutor's assessment of the evidence in the case and evaluation of the credibility of the victim, either make an arrest or (inappropriately) clear the case exceptionally" (p. 1382). Thus, the means by which law enforcement clears a case of sexual assault

may be directly impacted by prosecutorial decision making.

Prior studies suggest that prosecutors' decisions are primarily driven by a case's perceived "convictability" (Alderden & Ullman, 2012), whereby prosecutors will file charges only in cases where they believe the odds of conviction are high (Spohn et al., 2001; Spohn & Holleran, 2001). While convictability is tied to a myriad of legally relevant case characteristics such as case seriousness (Albonetti, 1997), prior research has demonstrated that extralegal victim characteristics including victim credibility are "at least as important as 'objective' evidence about the crime" (Stanko, 1988, p. 170). Recent research continues to support the idea that victim credibility is associated with prosecutorial decisions (e.g., Spohn & Tellis, 2010).

Victim credibility and "genuine victimhood" may play an especially important role in the "convictability" calculus for cases of sexual assault because victims are responsible for convincing criminal justice system actors that a crime—and not just sex—took place (Spohn & Holleran, 2001). According to Frohmann (1991), in cases of sexual assault, "prosecutors are actively looking for 'holes' or problems that will make the victim's version of what happened not convincing beyond a reasonable doubt" (p. 214). The victim–offender relationship is likely a significant factor in determining whether an alleged victim is to be believed. According to Estrich (1987), prosecutors differentiate between "aggravated, jump-from- the-bushes stranger rapes" and the bulk of assaults experienced by victims: "the simple cases of unarmed rape by friends, neighbors, and acquaintances" (p. 28).

Research quantitatively testing assumptions about the role of victim– offender relationship in prosecutorial decision making suggests that cases involving known perpetrators are treated differently than cases involving strangers. Spohn and Holleran (2001) found that in cases

of rape involving intimate partners, but not strangers, victim risk taking behavior and injury were significantly related to prosecutors' charging decisions. The likelihood of charging increased by threefold when victims were not engaged in risky behavior (e.g., used alcohol or drugs, willingly accompanied the suspect to his residence, or invited the suspect to her residence) and were injured in the assault. Beichner and Spohn (2012) found that in cases of nonstranger assaults, prosecutors' decisions regarding whether to file charges were most influenced by whether the victim invited the offender to her residence: cases where the victim invited a stranger in were less likely to be charged, while in non-stranger sexual assaults, prosecutors were less likely to file charges when the victim had a prior criminal record or was using alcohol at the time of the assault. Furthermore, Pattavina et al. (2016) found that cases of sexual assault were more likely to be cleared due to prosecutors declining to prosecute versus arrest when the offender was an acquaintance versus a stranger and when the cases did not include younger offenders, minority victims, concomitant crimes, and/or victim injuries. Thus, we consider whether prosecutors are more likely to prosecute sexual assault cases that adhere to the "real rape" standard and are more likely to exceptionally clear those cases that do not.

The Present Study

As previously described, emerging evidence indicates that the majority of sexual assault cases are cleared not through arrests, but instead by exceptional means, meaning that something outside of the law enforcement agency's control prohibits the agency from arresting and prosecuting the offender. Victim refusal to cooperate and prosecutorial discretion are two primary ways by which clearance by exceptional means is justified. Some have suggested that these sexual assault cases are not considered "real rape" by justice system

actors (law enforcement officers or attorneys) or even by the victims themselves, which reduces the chances that the cases are cleared like other crimes (via arrest). In particular, sexual assault cases that involve non-strangers or romantic partners, do not result in injury, do not involve weapons or other exacerbating factors, and occur in private are less likely to be viewed as a "real rape" and are more likely to be cleared by exceptional means. We use NIBRS data to examine the predictors of the various types of exceptional clearance with a particular focus on the impact of characteristics that conform to "real rape" on these outcomes. The following hypotheses guided our analysis.

Hypothesis 1: Victims are more likely to refuse to cooperate in cases involving intimates and acquaintances compared with cases involving strangers.

Hypothesis 2: Victims are less likely to refuse to cooperate in cases involving victim injury.

Hypothesis 3: Victims are less likely to refuse to cooperate in cases involving concomitant crimes.

Hypothesis 4: Victims are less likely to refuse to cooperate in cases involving weapons.

Hypothesis 5: Prosecutors are more likely to decline to prosecute cases involving intimates and acquaintances compared with cases involving strangers.

Hypothesis 6: Prosecutors are less likely to decline to prosecute cases involving victim injury.

Hypothesis 7: Prosecutors are less likely to decline to prosecute cases involving weapons.

Hypothesis 8: Prosecutors are less likely to decline to prosecute cases perpetrated in a public setting.

Data

We used data from the 2011 NIBRS to examine the relationships between crime incident variables and case

outcomes in incidents involving a sexual offense, with a focus on distinct forms of case clearance through exceptional means. Sexual offenses include forcible rape, forcible sodomy, sexual assault, and forcible fondling. NIBRS represents crimes reported by law enforcement agencies annually across the United States to the FBI. The NIBRS collects information on all reported crime incidents from law enforcement agencies, including data on multiple offenses, victims, and offenders within a single crime incident (Thompson, Saltzman & Bibel, 1999). NIBRS data are archived by the National Archive of Criminal Justice Data and available through the Inter-University Consortium on Political and Social Science. Available variables include offense type, victim and offender demographics, the victim–offender relationship, time of day, location, weapon use, and victim injury, as well as whether and how a case was cleared by the agency. This makes the data useful for understanding how crime event variables are related to case outcomes. Despite these strengths, not all agencies report to NIBRS. Approximately 6,000 agencies representing 87 million citizens from 36 states reported crime incidents to NIBRS in 2011 (FBI, 2011). Although NIBRS participation has increased since its inception, large cities remain underrepresented. For example, only four of the 20 largest U.S. cities reported to NIBRS in 2011.[2]

The present study focuses on crime incidents reported to NIBRS by law enforcement agencies in 2011 that reported 12 months of data that year and contain a sexual offense that was perpetrated by a single perpetrator against a single victim, both of whom were 15 or older at the time of the incident. There were 27,697 incidents that met these criteria. Of these, 21,977 had valid values on all variables of interest and were included in the present study.

Variables

Case Outcome

The dependent variable in the current study is a nominal variable measuring *case clearance* with the following five categories: cleared by arrest, cleared exceptionally—victim refused to cooperate, cleared exceptionally—prosecution declined, cleared exceptionally through other means, and not cleared.

The Victim–Offender Relationship

The victim–offender relationship is measured using five dichotomous variables (0 = no, 1 = yes). *Stranger* relationships are those in which there was no prior relationship between the victim and offender. *Acquaintance* indicates that the victim and offender knew each other prior to the incident, but are not family, nor are they current or former romantic partners. *Family* indicates the victim and offender are related, but are not current or former roman- tic partners. *Romantic partner* indicates that the perpetrator is a current or former romantic partner of the victim. This includes spouses, former spouses, boyfriends, girlfriends, and ex-boyfriends and ex-girlfriends. Finally, *unknown* indicates that the victim–offender relationship was not known at the time of data collection.

Situational Characteristics

NIBRS includes several variables that capture situational differences across crime incidents that may influence case outcomes. Similar to Messner, McHugh, and Felson (2004), we distinguish between *minor victim injury* (0 = no, 1 = yes) and *major victim injury* (0 = no, 1 = yes). Major injuries include broken bones, severe lacerations, loss of teeth, unconsciousness, or potential internal injury. *Weapon* measures whether any weapon was present during the incident (0 = no, 1 = yes). Three dichotomous variables were created to capture the location of the incident. *Private locations* (0 = no, 1 = yes) are private residences. *Semi- public locations* (0 =

no, 1 = yes) are places that have some sort of management, such as stores, restaurants, and bars. Finally, *public locations* (0 = no, 1 = yes) are places open to the public that typically lack specific management, such as roads, alleys, parking lots, garages, fields, and so on. *Daytime* (0 = no, 1 = yes) measures whether the incident occurred between the hours of 7:00 a.m. and 7:00 p.m. *Total number of offenses* is a count of the number of offenses reported in the incident. Finally, *offender under the influence* (0 = no, 1 = yes) measures whether the victim, offender, or law enforcement officer reported that the offender was under the influence of alcohol or drugs during the incident.

Victim and Offender Demographics

We included a series of dummy variables in the analyses to capture victim and offender demographics. Variables include *victim male* (0 = no, 1 = yes), *Black (non-Hispanic) victim* (0 = no, 1 = yes), *Hispanic victim* (0 = no, 1 = yes), *victim age* (in years), *offender male* (0 = no, 1 = yes), *Black offender* (0 = no, 1 = yes), and *offender age* (in years).

State Arrest Policies

Finally, given that victim–offender relationship was of particular interest in this study and that sexual assault most often occurs between victim-offenders who have a prior relationship (Planty et al., 2013), we controlled for states' domestic violence arrest policies. Durfee and Fetzer's (2016) coding scheme for states' arrest policies was applied to states' statutes. Consistent with Durfee and Fetzer, we classified state policies as *discretionary, preferred, mandatory*, and *mandatory with the exception of dating couples* (0 = no, 1 = yes) (American Bar Review, 2011).

Analytic Plan

We began by examining descriptive statistics for all study variables (see Table 1). Descriptives were also computed by case outcome to observe how incident characteristics vary by case outcome. Multinomial regression analysis was used to examine the correlates of case outcomes, while controlling for the victim–offender relationship, situational characteristics, victim and offender demographics, and state arrest policies (see Table 2).[3] Multinomial regression allows for categorical dependent variables, such as our categorical measure of case outcome that includes arrest, victim refusal to cooperate, prosecution declined, and case not cleared. The analysis produces one set of coefficients for each category of the dependent variable, minus one for the reference category that is omitted (Pampel, 2000). In the present study, "arrest" is the omitted reference category of the dependent variable. This allows us to directly examine how incident characteristics are associated with victim refusal to cooperate relative to arrest, and prosecutors' decisions to decline prosecution relative to arrest. Recall that each of these outcomes— victim refusal and prosecution decline—are assigned as exceptional clearance in cases in which an offender has been identified and located, and there is enough evidence to make an arrest.

Each set of coefficients can be interpreted as the effect of a one unit change in the predictor variable on the logged odds of each category of the dependent variable (i.e., victim refusal to cooperate, prosecution declined, not cleared), relative to "arrest" (Pampel, 2000). Note that while we include the "cleared exceptionally by other means" category in the descriptive statistics reported in Table 1, we did not estimate a set of coefficients for this outcome in the multinomial logistic regression analysis because the small number of cases ($N = 254$) led to

unstable estimates. Therefore, the multivariate analysis is based on the 21,723 incidents with the following outcomes: arrest, cleared exceptionally because the victim refused to cooperate, cleared exceptionally because prosecution was declined, and not cleared.

Findings

Table 1 presents the descriptive statistics for the full sample, and by case outcome. A majority of crime incidents with sexual offenses reported to law enforcement were perpetrated by acquaintances (56%; n = 12,307), followed by current or former romantic partners (16%; n = 3,516) family members (n = 2,198; 10%), and strangers (9%; n = 1,977). Overall, over 80% of sexual assault cases (n = 17,581) are between non-strangers. Within the various case outcomes, these percentages vary. For example, sexual offenses perpetrated by acquaintances make up a greater proportion of cases in which prosecution is declined (60%; n = 1,405) relative to cases that result in an arrest (52%; n = 2,716).

Minor victim injury occurred in 18% of incidents (n = 3,956). Major victim injury was less common, occurring in just 5% of incidents overall (n = 1,099). However, victims sustained minor injuries in 22% of cases that result in an arrest (n = 1,149), and major injuries in 7% of those cases (n = 366). Weapons were used in approximately 7% of incidents (n = 1,538) and in 9% of incidents that resulted in an arrest (n = 470). An overwhelming majority of incidents occurred in private residences (72%; n = 15,823), relative to semi-public (17%; n = 3,736) and public (11%; n = 2,417) locations. Nearly half of all incidents occurred during the day (47%; n = 10,329). On average, incidents contained 1.08 total offenses. The offender was suspected of being under the influence of alcohol or drugs in just 16% of incidents (n = 3,516). Males were victims in just 7% of the reported incidents (n = 1,538). With respect to victim demographics, 18% of

victims were Black (n = 3,956) and 6% were Hispanic (n = 1,318), with a mean victim age of 26.27 years. Approximately 29% of reported incidents were perpetrated by a Black sus- years.

The state domestic violence arrest policies where the incidents occurred varied, with 48% of incidents (n = 10,549) occurring in states with a mandatory arrest policy for domestic violence except for dating relationships, while 30% of incidents (n = 6,593) occurred in states with a discretionary domestic violence arrest policy, 17% (n = 3,736) occurred in states with a policy preferential to arrest in cases of domestic violence, and only 5% (n = 1,099) occurred in states that mandate the use of arrest in cases of domestic violence for all domestic relationships.

Table 2 presents the results of the multinomial regression analysis. The first set of coefficients compares cases that were cleared exceptionally due to victim refusal to cooperate with those cases that were cleared through an arrest. The findings indicate that the victim–offender relationship is significantly associated with a victim's refusal to cooperate. Specifically, victims were most likely to refuse to cooperate when the perpetrator was a current or former romantic partner, followed by acquaintances, strangers, and non- romantic family members. This is consistent with Hypothesis 1, which predicted that cases involving intimates and acquaintances would be more likely to be cleared due to victim refusal to cooperate relative to arrest. Victim injury in incidents was also significantly associated with victim refusal to cooperate. Consistent with Hypothesis 2, victim refusal was significantly less likely (relative to arrest) when victims sustained minor or major injuries. Also, in line with Hypothesis 3, victim refusal was negatively associated with the presence of co-occurring crimes.

Table I. Descriptive Statistics for Crime Incidents Containing a Sexual Offense, by Case Outcome.

	All incidents	Arrest	Victim refused to cooperate	Prosecution declined	Cleared exceptionally (other)	Not cleared
	(n = 21,977; 100%)	(n = 5,223; 23.8%)	(n = 1,797; 8.2%)	(n = 2,341; 10.7%)	(n = 254; 1.2%)	(n = 12,362; 6.2%)
Victim–offender relationship						
Stranger	0.09	0.10	0.07	0.06	0.05	0.10
Acquaintance	0.56	0.52	0.57	0.60	0.68	0.58
Family (not romantic)	0.10	0.12	0.07	0.10	0.12	0.10
Romantic partner	0.16	0.19	0.21	0.17	0.12	0.14
Relationship unknown	0.08	0.07	0.08	0.07	0.03	0.09
Situational characteristics						
Minor victim injury	0.18	0.22	0.17	0.15	0.15	0.17
Major victim injury	0.05	0.07	0.05	0.05	0.03	0.05
Weapon	0.07	0.09	0.07	0.07	0.07	0.07
Private location (residence)	0.72	0.71	0.75	0.74	0.75	0.72
Semi-public location	0.17	0.18	0.15	0.18	0.16	0.16
Public location	0.11	0.11	0.10	0.08	0.09	0.12
Daytime (between 7:00 a.m. and 7:00 p.m.)	0.47	0.46	0.41	0.49	0.56	0.48
Total number of offenses	1.08	1.15	1.05	1.04	1.10	1.06
Offender under the influence	0.16	0.17	0.17	0.15	0.20	0.15
Victim and offender demographics						
Victim male	0.07	0.06	0.05	0.09	0.09	0.07
Black, non-Hispanic victim	0.18	0.18	0.20	0.17	0.09	0.18
Hispanic victim	0.06	0.08	0.07	0.06	0.01	0.06
Victim age	26.27	25.99	26.66	25.86	25.08	26.44
Offender male	0.98	0.98	0.98	0.97	0.97	0.98
Black offender	0.29	0.29	0.31	0.27	0.17	0.29
Offender age	34.04	34.66	33.73	33.41	35.06	33.92
State arrest policy						
Discretionary	0.30	0.26	0.21	0.29	0.80	0.32
Preferred	0.17	0.18	0.19	0.14	0.04	0.17
Mandatory, except dating relationship	0.48	0.51	0.56	0.51	0.17	0.45
Mandatory, all relationships	0.05	0.06	0.04	0.06	0.00	0.06

Note. The reference category for the dependent variable is "arrest." For the independent variables, the omitted reference categories are "Romantic partner," "No victim injury," "Private location (residence)" "White, non-Hispanic victim," "Discretionary."

Table 2. Multinomial Regression Predicting Case Outcomes in Sexual Offenses.

	Victim refused to cooperate			Prosecution declined			Not cleared		
	B	SE	OR	B	SE	OR	B	SE	OR
Intercept	−0.09	0.27		0.61***	0.23		1.61***	0.15	
Victim–offender relationship									
Stranger	−0.49***	0.13	0.61	−0.36***	0.12	0.70	0.37***	0.07	1.45
Acquaintance	−0.04	0.07	—	0.18**	0.07	1.20	0.38***	0.05	1.47
Family (not romantic)	−0.63***	0.12	0.53	−0.12	0.10	—	0.01	0.07	—
Relationship unknown	0.07	0.12	—	0.19	0.11	—	0.57***	0.08	1.77
Situational characteristics									
Minor victim injury	−0.39**	0.07	0.67	−0.45***	0.07	0.64	−0.29***	0.04	0.75
Major victim injury	−0.48**	0.13	0.62	−0.22*	0.11	0.80	−0.42***	0.07	0.66
Weapon	0.04	0.11	—	0.10	0.10	—	−0.05	0.06	—
Semi-public location	−0.26***	0.08	0.77	−0.09	0.07	—	−0.25*	0.05	0.78
Public location	−0.09	0.10	—	−0.18*	0.09	0.83	0.06	0.06	—
Daytime (between 7:00 a.m. and 7:00 p.m.)	−0.20***	0.06	0.82	0.05	0.05	—	0.05	0.03	—
Total number of offenses	−1.00***	0.11	0.37	−1.16***	0.11	0.31	−0.77***	0.05	0.46
Offender under the influence	−0.06	0.08	—	−0.13	0.07	—-	−0.19***	0.05	0.83
Victim and offender demographics									
Victim male	−0.21	0.13	—	0.26**	0.10	1.30	0.02	0.07	—
Black, non-Hispanic victim	0.09	0.09	—	−0.10	0.08	—	−0.01	0.05	—
Hispanic victim	−0.07	0.11	—	−0.17	0.10	—	−0.26***	0.07	0.77
Victim age	0.01***	0.00	1.01	0.01***	0.00	1.01	0.01***	0.00	1.01
Offender male	0.25	0.22	—	0.08	0.17	—	0.11	0.12	—
Black offender	0.05	0.08	—	0.05	0.07	—	0.04	0.05	—
Offender age	−0.01**	0.00	0.99	−0.01***	0.00	0.99	−0.01***	0.00	0.99
State arrest policy									
Preferred	0.28***	0.09	1.32	−0.29***	0.08	0.75	−0.24***	0.05	0.79
Mandatory, except dating relationship	0.30***	0.07	1.36	−0.05	0.06	—	−0.31***	0.04	0.73
Mandatory, all relationships	−0.24	0.15	—	−0.07	0.12	—	−0.13	0.08	—

Note. The reference category for the dependent variable is "arrest." For the independent variables, the omitted reference categories are "Romantic partner," "No victim injury," "Private location (residence)" "White, non-Hispanic victim," "Discretionary." OR = odds ratio.
*p < .05. **p < .01. ***p < .001.

Finally, we found no support for Hypothesis 4, which predicted that victim refusal would be negatively associated with offender weapon use during the incident; the presence of a weapon was not significantly related to victim refusal to cooperate.

Beyond the hypothesized relationships, several other variables were significantly associated with clearance due to victim refusal to cooperate. Clearance due to victim refusal was significantly less likely in incidents that occurred during the day and incidents perpetrated by older offenders. The likelihood of victim refusal to cooperate increased with victim age. Finally, victim refusal was significantly related to the arrest policy of the state. Victims were more likely to refuse to cooperate when their cases were located in states with mandatory arrest policies for domestic violence (except in dating relationships) and in states with preferred arrest policies, relative to cases in states with discretionary policies.

The second set of coefficients in Table 2 compares cases cleared because prosecution was declined relative to those cleared through arrest. As expected, the victim–offender relationship was significantly related to a prosecutor's decision to decline a case. Specifically, prosecutors were most likely to decline cases perpetrated by acquaintances, followed by current or former romantic partners, family members, and finally strangers. This is consistent with Hypothesis 5, which predicted that prosecutors would be more likely to decline cases involving intimates and acquaintances. As predicted by Hypothesis 6, prosecutors were less likely to decline cases involving minor or major victim injury. Hypothesis 7 was not supported, as the presence of a weapon was not significantly related to the prosecutorial decision to decline a case. We did, however, find support for Hypothesis 8: prosecutors were significantly less likely to decline cases that occurred in a public setting.

In addition to the hypothesized relationships, the

findings indicate several other significant effects. Prosecutors were less likely to decline cases involving multiple offenses and those perpetrated by older offenders. Prosecutors were more likely to decline cases perpetrated against a male victim and older victims and in cases from states with preferred arrest policies, relative to cases in states with discretionary policies.

Finally, while not the focus of the present study, the third column in Table 2 compares cases not cleared to those cleared by arrest. Cases are more likely to remain uncleared when perpetrated by a stranger, an acquaintance, or an unknown offender and when the victim is older. They are more likely to result in an arrest rather than remain uncleared when minor or major victim injury occurs, when more offenses are reported within the incident, when the offender is under the influence of drugs or alcohol, when the victim is Hispanic, and when the offender is older. Arrest, relative to uncleared, is also more likely when an incident occurs in a state with a mandatory arrest policy for domestic violence (except when the victim and offender are a dating relationship) and states with policies preferring arrest, relative to states with discretionary arrest policies.

Discussion

The present study advanced research on victim and prosecutor decision making in cases involving sexual offenses by examining the predictors of two *types* of exceptional clearance—victim refusal to cooperate and prosecution declined to prosecute—relative to case clearance through arrest. Given prior research on the "real" rape standard and case convictability, as well as Black's theory of relational distance, the potential impact of victim– offender relationship on case closure was of particular interest, as were indicators of "real rape" (e.g., injury, location). The extant research on victim, law enforcement, and prosecutorial decision making in sexual

assault cases further informed the examination of case characteristics including whether the victim was injured during the assault, the use of a weapon, co-occurring crimes, and whether the location of the incident afforded potential witnesses on type of case closure. Specifically, we sought to better understand whether sexual assault cases that adhered to the conditions of "real rape" were more likely to be cleared by arrest, and whether the characteristics of "real rape" predicted types of exceptional clearance in the predicted directions. Our study offers insight into why certain sexual assault cases are treated differently (by use of exceptional clearance instead of arrest) as well as why exceptional clearance is used. The results indicate that exceptional clearance is used primarily when sexual assaults do not adhere to "real rape" conditions, which, notably, are also the conditions under which *most* sexual assaults occur (e.g., between non-strangers, without weapons, in private). Furthermore, what constitutes "real rape" appears to permeate to victims' and prosecutors' behaviors as well, as cases were less likely to be cleared exceptionally (due to victim refusal to cooperate or because the prosecution declined the case) when perpetrated by strangers, involved injury, occurred in public, or involved multiple offenses (i.e., when they appeared more like "real rapes"). We discuss these findings below.

Findings first showed that, consistent with prior work examining case closure of sexual offenses (Bouffard, 2000; Planty et al., 2013; Walfield, 2016), the majority of cases of sexual offenses reported through NIBRS in 2011 were not cleared by law enforcement (56.2%). Less than one quarter of cases were cleared through arrest (23.8%) and almost 11% of cases were cleared when prosecution was declined. These findings do little to quell fears by victims that reporting sexual offenses is not worth the risk of "secondary victimization" by criminal justice system actors. Likewise, an additional 8% of cases were closed due to victim non-cooperation. Given

that the cases examined here were all *reported to the police*, factors associated with cases that were later closed due to victims' decisions not to cooperate may provide insight into associated victim–law enforcement interactions.

Regarding predictors of case clearance type, results from the multivariate model demonstrated that as hypothesized, both victims and prosecutors were more likely to move forward with cases perpetrated by strangers. These findings are consistent with Black's (1976) theory of relational distance, which argues that victim–offender dyads with the greatest relational distance will be treated most harshly by the criminal justice system. In addition, expectations of the "real" rape standard suggest that sexual offenses perpetrated by strangers will not be subject to questions of consent credibility like known-perpetrated sexual offenses, and that victims of stranger assaults will be viewed as genuine and worthy victims by system actors as well as society at large (Bryden & Lengnick, 1997; Feldman-Summers & Palmer, 1980; LaFree, 1989; LeDoux & Hazelwood, 1985; Spohn & Holleran, 2001).

At first blush, these results may seem to deviate from prior research finding that sexual offenses involving strangers have lower likelihoods of arrest relative to known perpetrators (e.g., Bouffard, 2000; D'Alessio & Stolzenberg, 2003; LaFree, 1981; Roberts, 2008). However, an examination of the uncleared cases in this sample sheds light on these apparent discrepancies. Findings demonstrate that stranger cases were more likely to be "uncleared" relative to closed through arrest—a finding supportive of Spohn and Horney's (1996) contention that suspect identification is an important factor to con- sider in case closure of sexual offenses perpetrated by strangers. Indeed, research from Tasca et al. (2013) that found that once "identified suspect" was controlled for, cases involving strangers were more likely than cases involving known perpetrators to result in an

arrest. In the present study, cases cleared exceptionally either due to victim refusal to cooperate or prosecutors declining the case have an identified suspect.

Other case characteristics consistent with previous conceptualizations of the "real" rape standard and the associated "authority" given to genuine victimhood, including victim injury and concomitant crimes, were associated with lower rates of clearance due to victim non-cooperation relative to arrest. In addition, incidents that occurred during the day, incidents perpetrated by older offenders, and incidents perpetrated against older victims were all associated with lower rates of victim non-cooperation. It is unclear, however, whether victims in these cases were less likely to refuse to cooperate given their own perceptions of the seriousness of their case, perceptions of case seriousness by law enforcement (and any associated impact on "secondary victimization"), or both. Furthermore, counter to study expectations, victim refusal was not (negatively) associated with offender weapon use during the incident.

Finally, cases were more likely to be cleared due to victim refusal to cooperate rather than cleared by arrest in states with mandatory arrest policies for domestic violence (except in dating relationships) and states with preferred arrest policies, relative to states with discretionary policies. These findings are inconsistent with the letter and the spirit, respectively, of these states' domestic violence arrest policies. While additional, qualitative information unavailable in the NIBRS data would be necessary to fully unpack these results, these findings are reminders that state polices may not be enforced consistently across all law enforcement departments or all law enforcement officers. Furthermore, policies that reduce or remove law enforcement officer discretion in some instances (e.g., in sex offenses involving intimates) may create a backlash among officers in other instances (e.g., cases of sex offenses involving other victim–offender dyads) if law enforcement officers

experience or perceive negative consequences as a result of such policies.

Factors associated with prosecutors' decisions to decline a case relative to arrest were also examined. Regarding the victim–offender relationship, prosecutors were most likely to decline cases perpetrated by acquaintances, followed by current or former romantic partners, family members, and finally strangers. Prior research suggests that sexual offenses perpetrated by strangers are more conducive to prosecutorial narratives describing worthy victims and dangerous perpetrators, and less likely to trigger questions about believability or risky behavior on the part of the victim, than cases involving acquaintances or intimate partners (Spohn & Holleran, 2001). Similarly, cases with additional characteristics that could be associated with higher convictability—cases involving victim injuries, cases involving co-occurring offenses, and cases that occurred in a public setting where ostensibly there would be greater access to witnesses—were also less likely to be declined by prosecutors (e.g., O'Neal & Spohn, 2017).

At the same time, prosecutors were more likely to decline to prosecute cases involving male victims and older victims. These victim characteristics are contradictory to stereotypical notions about real, genuine rape victims, who are young and female, and thus may diminish prosecutors' confidence in the convictability of the case. Contrary to expectations, the presence of a weapon was not significantly (negatively) associated with a prosecutor's likelihood to decline to prosecute. Finally, prosecutors were less likely to decline to prosecute cases in states with a preferred domestic violence arrest policy relative to a discretionary policy. This finding may be indicative of greater systemic change (i.e., prosecutorial action) in favor of a more serious response to domestic violence in these states.

While the present research provides new insight into the prevalence and predictors of different types of

exceptional clearance for cases of sexual offenses reported to law enforcement, some limitations should be noted. This study used data from NIBRS because it includes important information about victim, offender, and incident characteristics, as well as reasons for case clearance. However, as discussed above, not all agencies report to NIBRS, and large cities remain underrepresented (McCormack, Pattavina, & Tracey, 2017). Furthermore, additional case characteristics that have been considered in single site studies of sexual assault case closure such as the availability of witnesses and victim behavior (e.g., Spohn & Holleran, 2001; Spohn & Tellis, 2012) are not available in these data. Future research would benefit from expanding Spohn and Tellis's (2012) two-site qualitative study of policing and prosecuting cases of sexual assault in California. In particular, it is important to collect data from *victims* as well as police and prosecutors about cases that are cleared exceptionally to triangulate data on decision making by various actors in cases involving sexual offenses.

Conclusion

The current study finds that, consistent with a small but growing body of prior research, the "exceptional" clearance of sex offense cases is in fact the standard means by which these cases are cleared. Current findings suggest that exceptional clearance is used primarily to clear cases of sexual assault that are inconsistent with the "real" rape standard—cases involving known perpetrators and victims, that occur in private, and do not result in victim injuries. Likewise, cases with these characteristics are significantly more likely to be cleared exceptionally due to victim refusal to cooperate and pros- ecutorial discretion to decline the case, signaling that stereotypes regarding genuine and worthy victims continue to impact both system actors' and

victims' behavior.

As Spohn and Tellis (2010) aptly note, "the misuse of the exceptional clearance raises the possibility that individuals who may in fact be guilty of rape are not arrested, prosecuted, and punished" (p. 1381). The is particularly problematic given that these types of sexual assault incidents represent the majority of sexual assault, whereas "real rape" scenarios do not. Our findings are consistent with the idea that expectations about "real rape" may shape the treatment of these cases, as convictability seems to be the driving factor for these types of cases. Future qualitative research conducted with both victims and prosecutors is needed to further understand how sexual offense incident characteristics shape decision making, including law enforcement behavior after the crime is reported.

Declaration of Conflicting Interests

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Notes

1. In the data analyzed in the present study, cases cleared by exceptional means account for approximately 40% of all cleared sexual offenses.
2. See McCormack, Pattavina, and Tracey (2017) for a detailed discussion of the coverage and representativeness of National Incident Based Reporting System (NIBRS) as of 2013.
3. Diagnostics indicate that multicollinearity among the independent variables is not a concern (variance inflation factors ≤ 2.11).

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