

SEXUAL ASSAULT CASES AND THE FUNNEL OF JUSTICE: AN EXAMINATION OF  
POLICE AND PROSECUTORIAL DECISION-MAKING

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**Title**

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## **ABSTRACT**

In order to improve responses to sexual assaults so that fewer cases drop out of the criminal justice funnel, it is important to understand the decision-making processes of the police and prosecutors in these cases. The focal concerns perspective posits that legal and extralegal variables factor into the police and prosecutors' decisions about how to proceed with sexual assault cases. Although decisions made at the prosecutorial stage are largely reliant on the actions of the police, the prosecutors' charging decisions often differ from how the police classify the incidents. This study examined 11 years of adult sexual assault incidents reported to the police in a Midwestern city to determine the level of congruence in the charging decisions made by the police and prosecutors. Unique from past research, this study used a mixed methods approach to analyze the data from police reports and court documents. Quantitative data examined the extent to which charging decisions were congruent between the police and prosecutors and assessed which factors in sexual assault cases predict the agreement in police and prosecutors' charging decisions. Qualitative data was used to determine which factors were cited most frequently within sexual assault case documents in congruent and incongruent cases. The quantitative analysis revealed that the police and prosecutors' decisions were in agreement in 34% of the cases, and distinct from prior research, the only statistically significant predictors of congruent charges were legally-relevant variables. Findings from the qualitative analysis mirrored those from the quantitative analysis, as legally-relevant characteristics such as the amount of evidence collected and the use of physical force were cited more frequently in congruent cases than incongruent cases. Overall, the results suggest that the focal concerns of the police and prosecutors in this study revolve primarily around the level of evidence available in sexual assault cases. Implications resulting from these findings are discussed.

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## CHAPTER 1: INTRODUCTION

According to the Bureau of Justice Statistics, approximately 270,000 women were victims of rape or sexual assault in 2010 (Bureau of Justice Statistics, 2013). It is also estimated that between 2% and 10% of sexual assault victims are males (RAINN, 2013; Tjaden & Thoennes, 2006). The National Violence Against Women Survey (NVAWS) indicates that roughly one out of six females will become victims of sexual assault during their adult years (Tjaden & Thoennes, 2006). Victimization surveys display a much higher prevalence of sexual assaults than official statistics show, revealing that relatively few cases come to the attention of the criminal justice system.

Feminist scholars assert that violence against women, including sexual assault, is deeply embedded in the culture of society (Brownmiller, 1975; Herman, 1984). By linking violence and sexuality, the United States has been characterized as a “rape culture” in which sexual aggression against women becomes normative, and societal reactions toward victims are often negative (Herman, 1984). Underlying society’s negative reception toward victims of sexual assault are rape myths. First defined by Burt (1980), rape myths are “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists” (pg. 217). Rape myths serve to justify, trivialize, and deny sexual assault by perpetuating the idea that women are somehow responsible for their sexual assault victimizations (Burt, 1980; Lonsway & Fitzgerald, 1994). Examples of common rape myths include the beliefs that: women are asking to be raped when they wear provocative clothing, women who accompany a man home on the first date are implying that they are willing to have sex, when women say “no” to sex, they really mean “yes,” all women secretly want to be raped, and women routinely lie about being raped (Burt, 1980, Lonsway & Fitzgerald, 1994). The predominance of rape myths in American culture may explain why reporting rates are low and attrition rates are high when compared to other crimes (Tjaden & Thoennes, 2006).

Case attrition of sexual assault cases occurs at all of the decision points in the criminal justice system, beginning with the non-reporting of the crime to police. Research has found that most sexual assault victims are reluctant to report their victimization to the police. The National Violence Against Women Survey noted that only one out of five adult women, or 20%, reported their sexual assault victimization to the police, a number far less than the reporting of other types of crimes (Kilpatrick, Saunders, Veronen, Best, & Von, 1987; Tjaden & Thoennes, 2006). Other research approximates the number of victims who report being sexually assaulted to the police as much lower, with some researchers claiming as few as 7.1% of rapes come to the attention of the police (Kilpatrick et al., 1987). Reasons for not reporting can include: embarrassment, guilt, uncertainty of whether their assault constituted a criminal act, lack of physical evidence that they were assaulted, threats made from the offender, substance use prior to the commission of the assault, and the fear of being perceived as blameworthy or not credible by the police and prosecutors (Estrich, 1987; Jordan, 2004; Kerstetter, 1990; Schuller & Stewart, 2000). In addition, some victims fear that they will be revictimized during the criminal justice process by having to recount the traumatic experience over and over at numerous stages within the criminal justice process (Fisher, Daigle, Cullen, & Turner, 2003; Jordan, 2004; Kerstetter, 1990).

Some scholars assert that the criminal justice system acts as a funnel, where cases are dismissed at various stages and decisions made at each stage affect each of the other stages that follow (Stuntz, 2006). The rationale for the criminal justice system to act as a funnel and filter out cases at each stage is to ensure that the criminal justice system overall does not become overloaded. This filtering process includes discretionary decisions that are made by the police and prosecutors. In some cases, they make decisions based on the likelihood that the cases will result in convictions. Therefore, priority is given to delegating limited resources toward handling

the most serious cases that contain the most evidence (Albonetti, 1986; Frohmann, 1991). As a result, very few cases actually make it all the way through the funnel.

The criminal justice funneling process for sexual assault cases begins when a sexual assault is reported to the police. At this point, the victim will come into contact with a police officer who will take the initial report. An initial report typically consists of the police officer interviewing the victim to determine what happened, securing the scene by protecting any potential physical evidence, and debriefing his or her supervisor on the status of the report (Martin & Powell, 1994). Then, if the victim consents to a rape kit, the police officer will drive her to the hospital and will wait while the exam is being conducted. Once the rape kit is completed, the victim will be driven to the police station, where she will be interviewed in further detail by an investigator. The first-responding officer will then use the information he or she gathered from the initial contact to compile an incident report, in which the officer will record information about the incident, victim, and suspect (e.g., when and where the assault happened, the relationship between the victim and suspect, victim and suspect demographics, identities of any witnesses that were present, what evidence was collected, etc.). Crimes are filtered out of the criminal justice system after the initial report if the police do not have sufficient information and evidence to process the case (Kelley & Campbell, 2013). Crimes that are perceived by the police to be less serious are also filtered out if the police do not have adequate resources to pursue the cases, such as limited time and lack of staff. After the initial report is made, sexual assault cases may also result in further investigation (i.e., follow-up reports) and begin their way through the system. Cases in which an investigation was conducted and a suspect(s) is arrested are referred to prosecutors, who use the information gathered by the police to determine whether to press charges and further process the case through the system to

the courts, or not pursue charges and instead drop the case. Cases that are brought to court are either reduced to lesser charges (e.g., disorderly conduct, menacing gestures, etc.), dropped, or go to trial. If found guilty, the defendant is sentenced to a correctional facility or some other form of punitive action (Kyckelhahn & Cohen, 2010). It is difficult to accurately predict the fate of cases that enter the criminal justice system as discretion is used at various points in the criminal justice process.

Many sexual assault cases drop out of the criminal justice system after they are initially reported to the police, due to either the victim's preference or at the discretion of the police. According to Kelley and Campbell (2013), reasons for victim withdrawal at this point are similar to the reasons that people do not report the incident to the police in the first place (e.g., guilt, fear of retaliation from the suspect, fear of being blamed by the criminal justice professionals). As police officers are granted a great deal of discretion in deciding how much effort to contribute to each case, they may choose not to investigate the case further or refer the case to prosecutors. They may also determine that an incident does not fit the elements of a sexual assault crime, and drop the case (Kelley & Campbell, 2013). In addition, police officers who interview victims may not be properly trained in how to interview victims of sexual assault in a sensitive manner. As a result, the victim may withdraw his/her participation, or the case may lack important evidence that the officer failed to collect from the victim (Tasca, Rodriguez, Spohn, & Koss, 2013).

In the pursuit of solving cases, police officers guide their decisions by legally-relevant factors such as the seriousness of the offense and the amount of evidence available for each case. Sexual assault cases in which the victims sustain physical injuries, where a weapon was used, and where there is forensic evidence that the crime occurred are more likely to be forwarded for

prosecution than assaults lacking these characteristics (Kerstetter, 1990; Spohn & Spears, 1996). Research has shown that extralegal factors are also considered by police officers when deciding how to handle sexual assault claims. Specifically, officers are less likely to pursue cases and forward them to prosecutors if the victim is viewed as lacking credibility (e.g. victim used alcohol prior to the incident, engaged in risky behavior, or previously dated the offender) (Bouffard, 2000; Jordan, 2004). Officers are also more likely to put forth effort in cases where the victim immediately reported the incident as opposed to waiting days or weeks to report the incident (Bouffard, 2000; Frohmann, 1991; Monroe et al., 2005; Schuller & Stewart, 2000). Cases are more vigorously investigated when the victim actively resisted the attacker, while incidents where victims were passed out at the time of the attack receive less attention (Jordan, 2004; Kerstetter, 1990; Schuller & Stewart, 2000). Some research also suggests that the relationship between the victim and suspect influences how the police handle sexual assault cases. In some studies, cases where victims did not know or did not previously date the suspect were more likely to be pursued by the police (Frazier & Haney, 1996; Holmstrom & Burgess, 1978; Jordan, 2004), whereas other research has found that a prior relationship between the victim and suspect increased the likelihood that the suspect would be arrested (Bouffard, 2000; LaFree, 1981).

Previous research has consistently found that the police are more likely to pursue cases that have the highest likelihood of being solved with little effort, such as cases where a suspect is identified (Bouffard, 2000; Frazier & Haney, 1996). They are also more likely to devote their resources to cases they feel will be successfully prosecuted, as the police are under constant pressure to clear cases (Du Mont, Miller, & Myhr, 2003; Du Mont & Myhr, 2000; Tellis & Spohn, 2008). Therefore, sexual assault cases that fit the mold of what Estrich (1987) terms, a

“real rape” are often pursued more vigorously by police because they are perceived to be more likely to lead to a prosecution in court. A “real rape” includes various rape myths modeled after society’s stereotypical idea of what a typical rape looks like. That is, in a “real rape:” a weapon was used, the victim sustained physical injuries, the suspect was a stranger, the victim reported the incident immediately, and the victim was engaged in morally-respectable behavior prior to the attack. According to Estrich’s definition, a sexual assault between acquaintances that leaves no physical evidence behind would not be considered a “real rape” as there may be questions about whether the victim consented to sex. Since “real rapes” leave little room for doubt that the sexual assault occurred and are often perceived by police to be “slam dunk” cases, they receive more police attention (Frazier & Haney, 1996; Tellis & Spohn, 2008).

Once sexual assault cases are reported to the police, the cases either move on to the prosecutor for review or they are no longer pursued by the police. Prosecutors have the option of pressing charges or dropping cases that are forwarded to them. Just as the police depend on information from victims (and sometimes witnesses) to build their cases, prosecutors depend on the information and evidence provided to them by the police (Frohmann, 1991, 1997; Galton, 1975; Kerstetter, 1990). Research on the factors that predict the way that prosecutors handle sexual assault cases mirror those that focus on police decision-making. Prosecutors are most concerned with the “convictability” of the case when they decide what, if any, charges to file (Frohmann, 1991; 1997; Spohn, Beichner, & Davis-Frenzel, 2001). Cases that prosecutors perceive will result in convictions are actively pursued, while the remaining cases are filtered out of the criminal justice system at this point (Spohn et al., 2001).

Similar to the police, prosecutors consider both legal and extralegal factors in determining whether to proceed with the case and which charges to file. The most prominent

legal factors that are considered in this decision include the seriousness of the offense and the amount of evidence present in each case. Research shows that prosecutors are more likely to file charges in more serious sexual assault cases where physical evidence of the crime is available (Frazier & Haney, 1996; Kerstetter, 1990). Sexual assaults in which weapons were used and the victims sustained physical injuries are also more likely to result in charges (Burt, 1980; Frazier & Haney, 1996; McGregor, Du Mont, & Myhr, 2002).

Prosecutors also use extra-legal factors such as the perceived credibility of the victim, whether the victim resisted the attacker, and the relationship between the victim and suspect to guide their charging decisions in sexual assault cases. Charges are less likely to be filed in cases where the victim engaged in risky behavior, such as alcohol use prior to the incident (Beichner & Spohn, 2012; Spears & Spohn, 1996), the attacker was an acquaintance or someone known to the victim (Spohn & Holleran, 2001), and the victim did not actively resist the attacker (Spohn, Beichner, & Davis-Frenzel, 2001; Spohn & Horney, 1993; Spohn & Spears, 1996). In sum, prosecutorial decision making in sexual assault cases involves many of the same factors as police officer decision making. Both of these criminal justice professionals take into consideration legal and extralegal factors when deciding whether and how to move sexual assault cases through the criminal justice system funnel.

The concept of the criminal justice system acting as a funnel is especially evident in rape and sexual assault cases. According to the Rape, Abuse, and Incest National Network, 46 out of every 100 rapes are brought to the attention of the police (RAINN, 2013). Only 12 of those reported to the police will lead to an arrest, and nine will progress to the prosecutorial stage. Ultimately, only three assailants will serve any time in prison for their crime. Similar estimates were noted in Lonsway and Archambault's (2012) study in which they found that between 5 and

20 out of every 100 sexual assaults are reported to the police, 0.4 to 5.4 are prosecuted, 0.2 to 5.2 result in a felony conviction, and 0.2 to 2.8 of the offenders are incarcerated as a result.

The low rate of reporting sexual assaults is alarming, and suggests that there is a need for research in this area. Once in the criminal justice system, rape and sexual assault cases have an especially high attrition rate. The high attrition rate might be due to genuine biases held by the police and prosecutors, or it may be the result of the focal concerns that guide each branch of the criminal justice system (Steffensmeier, 1998). According to the focal concerns perspective, the police and prosecutors' decisions in criminal cases are based on a set of three primary focal concerns: establishing that the suspect is culpable, protecting the community by removing dangerous offenders from free society, and maintaining a steady case flow by pursuing cases that will result in convictions (Holleran, Beichner, & Spohn, 2010). The police and prosecutors must often make quick decisions and have limited time and information available about all legally-relevant case variables, which fosters a level of uncertainty about cases. As a result, they develop and use a "perceptual shorthand" that includes extralegal variables, or stereotypes about the victim and suspect in their decision-making (e.g. race, relationship between the victim and suspect, backgrounds and behaviors of the victim and suspect, etc.) to help avoid uncertainty in cases that lack strong evidence (Albonetti, 1986; Crow & Adrian, 2011; Holleran et al., 2010; Steffensmeier, 1998).

Although there have been a number of studies that have focused on how the police or the prosecutors handle sexual assault cases, very few have examined the consistency between the decisions of the police and prosecutors (Alderden & Ullman, 2012; Frazier & Haney, 1996; Holleran et al., 2010). To date, it appears that only one study has used the focal concerns perspective to examine this topic, and that study relied solely on a quantitative methodology



(Holleran et al., 2010). Based on the focal concerns perspective, the current study will use a mixed-methods approach to determine the factors that predict the agreement between the police classification and prosecutor's charging decisions in adult sexual assault cases. Using police reports and court records, the quantitative analysis will examine the case attributes that predict the congruence between the police and prosecutor's decisions. Qualitative analysis of these documents will shed light on the decision-making process by examining the features of sexual assault cases where charging decisions were in agreement and divergent between the police and prosecutors. The combination of quantitative and qualitative analyses will yield a more fully-developed picture about the focal concerns of these two stages of the criminal justice system.

Drawing from the focal concerns perspective and previous research, the current study used quantitative and qualitative analyses to examine adult sexual assault cases in a Midwestern city.

Quantitative data were used to examine the following research questions:

1. To what extent are charging decisions in adult sexual assault cases congruent between police and prosecutors?
2. Which factors predict the agreement between the police and prosecutors' charging decisions in sexual assault cases?

The following research question was examined using qualitative data:

1. Which factors are cited most frequently within sexual assault case documents among congruent and incongruent adult sexual assault cases?

## CHAPTER 2: LITERATURE REVIEW

Prior research has shown that police and prosecutors both use discretion when deciding how to pursue sexual assault cases (Frazier & Haney, 1996; Frohmann, 1991; Holleran et al., 2010; Kelley & Campbell, 2013; Kerstetter, 1990). The police use their discretion in determining whether to initiate charges against sexual assault suspects. The decisions made by police officers dictate the workload for prosecutors as the prosecutors are charged with reviewing all of the cases that are forwarded to them by the police. In turn, prosecutors use their discretion in determining which cases to accept or reject. Ultimately, the police and prosecutors work toward the same goal: to move cases that are winnable through the criminal justice system. Although the police and prosecutors are interconnected in their pursuit of winnable cases, there has been very little research examining the decision-making dynamics between the two (Alderden and Ullman, 2012; Holleran et al., 2010; Kerstetter, 1990).

There are a number of studies that examine how the police and prosecutors handle sexual assault cases independent of each other (Frohmann, 1991; Jordan, 2004; Lonsway, K. A., Welch, S., & Fitzgerald, L. F., 2001; Lord & Rassel, 2000; Page, 2008; Schuller & Stewart, 2000; Spohn & Holleran, 2001; Spohn & Spears, 1996; Spohn et al., 2001). Included in the literature review are studies that examine the way that police perceive sexual assault and sexual assault victims. It is important to look at police perceptions of sexual assault victims as their perceptions may guide the way they handle sexual assault complaints. Next, research regarding the way police process sexual assault complaints will be reviewed, including factors that have been found to influence their decisions. Then, studies that focus on prosecutorial discretion and decision-making are examined, followed by a review of the focal concerns perspective and its extension into police

and prosecutorial decision-making. Finally, a description of the proposed study is offered, along with the reasons why it is important to look at this topic using a mixed methods approach.

### **Police Officer Perceptions of Rape Victims**

Sexual assault is a difficult and complex crime to process as many sexual assaults do not contain clear evidence that the crime occurred. Estrich (1987) terms a “real rape” as one in which a stranger appears from a dark alley with a weapon and forces sex onto a victim who suffers bruises from the attack. In a “real rape,” there is little doubt that the incident took place as the unsuspecting victim is a morally-respectable female who was left with physical injuries from a violent attack. Unfortunately, “real rapes” are the least likely to occur (RAINN, 2013). Instead, many rapes are committed among acquaintances and in the home of the victim or suspect (Jordan, 2004; RAINN, 2013). Also, unique from other crimes, many rapes lack physical evidence (Jordan, 2004). For example, there is often significant and noticeable bodily injury in aggravated assault cases, yet many sexual assaults are void of any physical manifestations to indicate the incident took place. As a result, the police and other criminal justice professionals rely heavily on victim accounts of the incident (Galvin & Polk, 1983) and their own perceptions of rape and who constitutes a rape victim (Wentz & Archbold, 2012) when deciding how to process sexual assault cases.

Research on police officers’ perceptions of rape has revealed that many police officers subscribe to Estrich’s (1987) “real rape” idea and many of the rape myths that the general public believes (Feild, 1978; Page, 2008). Rape myths involve shifting the blame from the suspect to the victim and can include: the victim is somehow responsible for the assault (e.g., she dressed provocatively); a real rape victim does not know her offender; a real rape victim physically fights off the offender and sustains physical injuries; women who are sex workers cannot be rape

victims (e.g., a prostitute cannot be a victim); and most claims of sexual assault are made up by the victim (Burt, 1980; Galton, 1975; Krahe, 1991; La Free, 1980; Page, 2007). Some police officers are less likely to perceive victims of sexual assaults that do not fit within the “real rape” category as credible and may devote less time to investigating their complaints (La Free, 1989; Lonsway, Welch, & Fitzgerald, 1995; 2001).

Lord and Rassel (2000) utilized on-site and telephone interviews to examine the processing of sexual assault cases by police officers from 34 departments in nine North Carolina counties. Using logistic regression, they found that police officers were skeptical of sexual assault complainants. Officers in this study believed that complainants lacked credibility and granted consent for the sex that they claimed was rape. To prove that complainants were truthful about the allegations, officers in some of the departments subjected complainants to polygraph tests. The authors found that written procedures for handling sexual assaults were rare in the departments examined; however, officers in departments with positive working relationships with victim advocates (e.g., rape crisis centers) were less suspicious of sexual assault victims. This study also reported that police officers were less vigorous in pursuing cases in which the victim used alcohol as they believed the prosecutors would not follow through with charging the suspects. Although this study did not test the impacts on the victims of using polygraph tests, other studies have found that the use of vigorous interviewing techniques may make it more likely that the victims will drop their cases rather than subject themselves to being scrutinized by the criminal justice system.

Jordan (2001) examined police skepticism from the victim’s perspective and found that 18 of the 48 sexual assault victims in her study felt that they were viewed suspiciously by the police during the investigation process. They felt that the police were constantly trying to catch

them in a lie and that they had to prove to the police that they had been assaulted. The results from these studies demonstrate that some police officers guide their investigative behavior according to whether or not they perceive the rape to be a “real rape.”

Prior research has found that the way police officers behave during sexual assault investigations influence the victims’ decisions about whether to press charges in the case (Allison & Wrightsman, 1993; Holmstrom & Burgess, 1978; Martin & Powell, 1994). Without an arrest, further processing of sexual assault cases is not possible. Consequently, it is important to understand the processes by which police make their decisions in sexual assault cases.

### **Police Officer Processing of Sexual Assault Cases**

As the gatekeepers to the criminal justice system, police officers are granted a great deal of discretion in how to investigate and process sexual assault complaints (Kerstetter, 1990). Police officers can choose whether or not to document a report, how much time and effort to devote to a case, whether or not to make an arrest, and if an arrest is made, how to classify a case when sending it to prosecutors. The police are the initial point of contact in the criminal justice system for most rape victims, and are the widest part of the criminal justice funnel. Ideally, police officers’ decisions are based solely on legally-relevant factors, such as the seriousness of the offense (i.e., weapon use and victim injuries) and the amount of evidence supporting that a sexual assault occurred (i.e., forensic evidence, witness corroboration, physical injuries). For example, research consistently finds that sexual assault cases were more likely to be founded if a weapon was present and if the victim was physically injured (Bouffard, 2000; Kerstetter, 1990; Spohn & Spears, 1996; Tasca et al., 2013). It is logical, however, to consider that the police officers’ personal beliefs about rape victims, suspects, and the characteristics of the crime affect

their decisions in sexual assault cases. Table 1 provides an overview of the findings for the most notable legal and extralegal factors associated with the police processing of sexual assault cases.

Table 1  
*Variables that Influence Police Processing of Sexual Assault Cases*

<b>LEGAL VARIABLE</b>	<b>AUTHORS</b>	<b>PROCESSING INFLUENCE</b>
Weapon used	LaFree (1989) Kerstetter (1990) Kerstetter & Van Winkle (1990) Bouffard (2000) Tasca et al. (2013)	Arrest more likely
Physical or forensic evidence	Kerstetter & Van Winkle (1990) Tasca et al. (2013)	Arrest more likely
Victim injury	Rose & Randall (1982) Kerstetter (1990) Frazier & Haney (1996)	Arrest more likely
<b>EXTRALEGAL VARIABLE</b>	<b>AUTHORS</b>	<b>PROCESSING INFLUENCE</b>
Race	Bouffard (2000)	No influence
Victim/suspect were strangers	*LaFree (1981; 1989) Bryden & Lengnick (1997) *Bouffard (2000) **Alderden & Ullman (2012) **Kelley & Campbell (2013)	Arrest more likely *Arrest less likely than acquaintances **no influence
Victim substance use	Holmstrom & Burgess (1978) Kerstetter (1990) Lord & Rassel (2000) *Schuller & Stewart (2000) Fisher et al. (2003) Kelley & Campbell (2013) Tasca et al. (2013)	Arrest less likely Victim credibility questioned *no charging differences, but victim credibility diminished
Victim completed rape kit	Rose & Randall (1982) LaFree (1989) Bouffard (2000) Alderden & Ullman (2012)	Arrest more likely
Prompt reporting	LaFree (1981)Rose & Randall (1982) Tasca et al. (2013)	Arrest more likely
Victim risk-taking behavior	LaFree (1989) Kerstetter (1990) Kerstetter & Van Winkle (1990)	Arrest less likely; cases pursued with less vigor; victims encouraged to drop case
Victim physically resisted	LaFree (1989) Alderden & Ullman (2012)	Arrest more likely
Victim reported incident promptly	LaFree (1989)	Arrest more likely
Police desire for promotion	Kerstetter (1990)	“real rapes” pursued with vigor
High detective effort	Kelley & Campbell (2013)	Case referral

Along with evidentiary factors such as the amount of evidence in a case and the seriousness of the offense, a multitude of extralegal variables can impact the way sexual assault cases are handled by the police. Extralegal factors are characteristics of the victim, suspect, and incident that have no legal bearing on the way a case is processed. In other words, extralegal factors should not matter when determining if a suspect committed the crime. In sexual assault cases, most of the extralegal factors revolve around the victim's credibility (Alderden & Ullman, 2012; Beichner & Spohn, 2005; Frazier & Haney, 1996; Jordan, 2001; 2004; Page, 2008; Schuller & Stewart, 2000). Examples of extralegal factors found in the sexual assault literature include: prior relationship between the victim and suspect, the victim's activity/behavior prior to the incident, the time it takes the victim to report the incident, and whether the victim physically resisted the incident (Bouffard, 2000; Frazier & Haney, 1996; Horney & Spohn, 1996; Kerstetter, 1990; LaFree, 1981).

Another extralegal factor is a personal motivation for police officers to pursue the case. Personal motivations include the desire to build and pursue cases that have the highest likelihood of being accepted by prosecutors and successfully prosecuted (Du Mont, 2003; Frazier & Haney, 1996; Holmstrom & Burgess, 1978; Martin & Powell, 1994; Tellis & Spohn, 2008). Through the analysis of police reports and interviews with police officers, Kerstetter and Van Winkle (1990) noted that the police officers' decisions to pursue sexual assault cases were guided mainly by the amount of evidence and whether they believed that the case would be accepted by prosecutors and won in court. Kerstetter (1990) added to the research on police decision making when he found that police were also motivated by the prospect of promotion as winnable cases, or those believed to lead to convictions, increased the chances for officers to become promoted within the department. He also found that many cases that were perceived to lead to convictions

were those that mirrored the image of a “real rape:” the victim was physically injured, the victim reported the incident right away, and the perpetrator was a stranger.

The effects of pursuing winnable cases on sexual assault victims has also been examined, and may be a contributing factor to the high level of attrition in these cases. Research shows that some victims of rape experience a “second victimization” by having to recount the crime numerous times when they encounter criminal justice agents (Campbell & Raja, 1999; Galvin & Polk, 1983; Martin & Powell, 1994). Unlike victims of other crimes, the past and current behaviors of rape victims are scrutinized by the police in an attempt to build a strong case for prosecutors and judges (Martin & Powell, 1994). As a result, some victims decide not to move forward with their cases as the pain of having to tell their stories repeatedly is too difficult (Brown, Hamilton, & O’Neill, 2007; Brownmiller, 1975; Jordan, 2004).

Although police training for sexual assault has improved, there is some evidence that case processing is still influenced by police officers’ personal biases and stereotypes (Beichner & Spohn, 2005; Campbell & Johnson, 1997). Some officers endorse rape myths and are reluctant to pursue cases of sexual assault that do not match an “ideal rape” scenario, and some even encourage victims not to press charges (Galton, 1975; Kelley & Campbell, 2013; Martin & Powell, 1994). Kerstetter and Van Winkle (1990) found that the police were more likely to discourage victims who engaged in questionable behavior (she had previously had sex with the suspect, was sitting in a bar alone, went to the suspect’s home willingly, or was an unwed mother) from pursuing their cases. The findings from their research corroborate LaFree’s (1989) study in which he analyzed police and court records, observed trials, and interviewed jurors to study sexual assault case processing in Indiana. He found the police to be suspicious of victims who did not conform to traditional gender roles. Consequently, they were less likely to devote



time and effort toward making arrests in cases where the victim violated traditional gender roles and engaged in risky behaviors.

Research shows that the relationship between the victim and suspect is often considered in cases of sexual assault and rape. Sexual assault cases present a notable challenge to police officers as the victim and suspect's account of the incident are contradictory and there is little evidence to corroborate either side. Moreover, most rapes are committed by someone known to the victim and rarely produce physical injuries as evidence that the rape occurred (RAINN, 2013). As a result, attention is often drawn to the credibility of the victims and their behavior prior to the incident, including whether the victim and suspect are strangers or were acquainted (Bryden & Lengnick, 1997).

A sexual assault involving strangers fits the concept of an "ideal rape," while the credibility of the victim comes into question if the victim is an acquaintance or had dated the offender (Estrich, 1987). The victim's truthfulness in nonstranger cases may be scrutinized as these types of assaults tend to be less violent and produce fewer signs of physical injury than assaults involving strangers (Spohn & Holleran, 2001). Many scholars assert that police believe nonstranger assaults are those in which victims are willing participants who later regret their decisions to have consensual sex; therefore, the police are more likely to devote their attention to stranger cases that involve a "real victim" (Bryden & Lengnick, 1997; Frazier & Haney, 1996; Kerstetter, 1990; Spohn & Spears, 1996). Not all studies have come to the same conclusion regarding stranger/nonstranger sexual assaults. Some have found nonstrangers are more likely to be arrested than strangers in sexual assault cases (Bouffard, 2000; LaFree; 1989).

In LaFree's (1989) study of over 905 sexual assault cases in Indianapolis, he found that offenders who were acquaintances of the victim were more likely to be arrested than strangers.

The author attributed this finding to the fact that victims who knew the offender could identify them to the police, making apprehension easier. More recently, Alderden and Ullman's (2012) study of the processing decisions of 465 criminal sexual assaults that were reported to a Midwestern police department found results that contrasted with LaFree's earlier study. The results from their multivariate logistic regression showed that the victim/suspect relationship did not play a significant role in whether police officers made an arrest. Similarly, the relationship between the victim and suspect did not impact charging decisions at the prosecutorial stage.

Victims are also viewed as more credible if they report the assault immediately after it occurs (Jordan, 2001; Rose & Randall, 1982). Victims who wait as little as one day to report the assault are viewed as less credible. After examining 610 police incident reports for sexual assault cases, Rose and Randall (1982) concluded that the police interpret the victim's hesitation to report in one of two ways: uncertainty about whether he or she was even assaulted, or that the victim needed time to create a "cover story" to hide his/her behavior (as in the case of infidelity). Victims in that study were persuaded not to continue the case as the police told them that they would be subjected to numerous interviews with police, prosecutors, and even a grand jury. Jordan (2001) interviewed 48 adult female sexual assault victims in New Zealand and found that approximately 62% of the victims reported the incident within one day. Women who delayed reporting in her study stated that they felt "numb" for some time after the assault, and many of them did not know if the assault constituted a crime since violence wasn't involved. Although Jordan didn't directly examine how the police handled the cases, it is important to consider that most of the women were satisfied with the police response and felt that the police believed them. Additionally, Hazelwood and Burgess (2008) point out that physical evidence diminishes with

time; therefore, victims are faced with the potential loss of evidence if they don't report their assaults promptly.

A similar factor in sexual assault cases that could reflect on the victims' credibility is whether the victim sought a medical exam or rape kit to collect forensic evidence after the incident. Police in Rose and Randall's (1982) study claim that if victims are true victims, they will do everything possible to prove it, including providing evidence from a rape kit. This study also noted that victims needed to appear visibly shaken during the initial contact and medical examination in order to be believed. More recent studies have found that victims who did not undergo a sexual assault exam are more likely to withdraw their participation in the investigation (Kelley & Campbell, 2013). In addition, suspects in sexual assault cases are more likely to be arrested when the victim agrees to undergo a sexual assault exam (Bouffard, 2000; Tasca et al., 2013).

Another crucial factor in police officers' decisions in how to handle sexual assault complaints is whether the victim was engaged in risky behavior prior to the incident. Victims who used alcohol prior to the commission of the assault are perceived by the police as being partially responsible for the assault since drinking alcohol reflects poor judgment (Fischer et al., 2003; Holmstrom & Burgess, 1978; Jordan, 2004; Schuller & Stewart, 2000; Tasca et al., 2013). Subsequently, cases are viewed as "weak" (Holmstrom & Burgess, 1978). A unique aspect of alcohol use within sexual assault cases was found when Schuller and Stewart (2000) presented vignettes to 212 police officers. The vignettes depicted an acquaintance rape in which either, neither, or both the suspect and victim had been drinking alcohol. They noted that a victim who had been drinking in the vignette was viewed by police as more responsible for the assault than a non-drinking victim. Police in this study viewed victims who consumed alcohol as willingly

placing themselves in positions that made them vulnerable to being victimized. Conversely, suspects who had been drinking were perceived as less responsible for the assault because they were under the influence of alcohol and may not have fully understood the consequences of their actions. The officers' charging decisions remained the same regardless of whether alcohol was used; however, the study was limited by the use of vignettes rather than actual sexual assault cases. It is important to note that the officers' views in this study were quite similar to other populations in society. For example, some students in a recent study that used focus groups to inquire about college students' perception of rape believed that intoxicated rapists were less culpable for their actions (Burnett, Mattern, Herakova, Kahl, Tobola, & Bornsen, 2013). This research corroborates the notion that police officers adhere to the same rape myths as broader society.

Studies have used various methods of testing how the police process sexual assault cases. Even when using multiple methods, research confirms that the police typically use a combination of legal and extralegal factors when determining how to proceed with sexual assault claims; however, the variables that are the most significant are not always in agreement. Beginning with the earliest studies, the results suggest that the police use both types of variables to arrive at their decisions in sexual assault cases.

LaFree (1981) employed a quantitative approach to study factors that the police use when making arrest decisions in rape cases. His early study on this topic included more than 900 sexual assault cases over a six-year span and revealed that the police relied on a combination of legal and extralegal factors when deciding whether to arrest a suspect. Suspects who could be identified by the victim and who used a weapon were more likely to be arrested. Additionally, suspects were less likely to be arrested if they were strangers to the victim, if the victim didn't

report the assault immediately, and when the victim was engaged in risky behavior (such as being at a bar or hitchhiking). This contrasts with more recent findings from Alderden and Ullman's (2012) mixed-methods study and Kelley and Campbell's (2013) qualitative study in which they found that although extralegal variables were considered by the police, the victim/suspect relationship played no role in police processing decisions. Although it is clear that the police use both legal and extralegal factors in their decision-making processes, the lack of consistent results between early and recent studies illustrates the need for further research in this area.

Qualitative analyses reveal findings similar to the quantitative analyses. Rose and Randall (1982) qualitatively analyzed more than 600 police reports over six months and conducted observation and interviews of police investigators to assess the perceptions of sexual assault case legitimacy. They revealed that rape claims were deemed legitimate by investigators when there was evidence supporting the victim's claim (injuries, weapon use) and when victims appeared credible (reported the incident promptly and cooperated with investigators). Victims were perceived to be more credible if they physically resisted the assault, especially when they could prove it by exposing visible injuries.

Kerstetter (1990) also found that extralegal factors were involved in police officers' decision making in his mixed-methods research on police and prosecutor responses to sexual assault. Although the amount of evidence and the seriousness of the crime were the most crucial variables impacting whether officers would substantiate the cases, extralegal variables were also important considerations within the decision making framework. In particular, a history of alcohol use by the victim made it less likely that the incident would be classified as a rape.

Overall, the research shows that police officers consider legal and extralegal factors when deciding how to handle sexual assault cases. They are also more likely to pursue cases that they believe will be accepted by prosecutors because they are “winnable” (Martin & Powell, 1994). As a result, there is a considerable amount of discretion in this level of the criminal justice system. The way sexual assault cases are handled by the police can influence the decisions made at the prosecutorial level, and ultimately, the outcomes of the cases.

### **Prosecutors’ Discretion and Decision-Making**

Just as the police are considered the “gatekeepers of the criminal justice system,” prosecutors “control the doors to the courthouses” (Neubauer, 1988). Prosecutors use the information about cases that they receive from the police in order to determine whether or not to prosecute and which charges to file (Albonetti, 1986). Their reasons for not prosecuting are rarely ever reviewed, and those cases end their path within the criminal justice system at that point (Holleran & Spohn, 2001).

Research has shown that prosecutors assess the level of convictability of each case in determining which cases to prosecute, with priority placed on cases that are perceived to have high odds of conviction (Albonetti, 1986). According to Albonetti (1986), this is done to reduce uncertainty when solid evidence that a crime was committed is lacking. The research on this perspective is limited; however, studies have confirmed its assumption that prosecutors are more likely to accept cases containing overwhelming evidence. Frohmann (1991) observed over 300 sexual assault case screenings in the West Coast over the course of seventeen months and determined that prosecutors used two main reasons to justify why they did not accept some sexual assault cases, both of which revolve around the lack of victim credibility. The first reason is that there were discrepancies in the details of the case. This means that the victim had given

an account of the assault to the prosecutor that was inconsistent with the police report, the victim did not report the incident promptly (which would be inconsistent with a “real rape”), or the victim seemed uncomfortable when interviewed (which was perceived as her being untruthful). The second reason for rejecting sexual assault cases focuses on the notion that the victim had an ulterior motive for reporting the assault. This pertains to cases in which the prosecutor believes that the victim granted consent for sex, only to regret it later and falsely report it as a sexual assault. Frohmann’s (1991) qualitative analysis added to this by revealing that prosecutors’ motivations for case rejection stem from the desire to focus on cases that are winnable as losing cases tarnishes prosecutors’ records.

Cases that prosecutors accept are guided by a host of legal and extralegal factors, all similar to the variables that have been noted in police research, and all serving as ways for prosecutors to assess the level of convictability for each case. Although prosecutors’ case decisions are guided primarily by legally-relevant factors such as the amount of evidence and the seriousness of the offense (Holleran et al., 2010), attention is also given to extralegal factors that pertain to the victim’s character and credibility, such as the victim’s relationship with the defendant and engagement in risky behaviors (Beichner & Spohn, 2005; Bryden & Lengnick, 1997; Kingsnorth et al., 1999; LaFree, 1981).

The impact of the relationship between sexual assault victims and offenders in prosecutors’ charging decisions remains uncertain. Some studies have found that sexual assaults occurring between strangers are investigated more thoroughly and are more likely to be charged as they tend to fit the description of what Estrich terms “real rapes” (Albonetti, 1986; Kerstetter, 1990; Weninger, 1978). Conversely, other research has concluded that the relationship does not

influence the prosecutors' charging decisions (Horney & Spohn, 1996; Kingsnorth, MacIntosh, & Wentworth, 1999; Spohn & Spears, 1996).

Kingsnorth et al. (1999) studied 467 sexual assault cases from prosecutorial intake through the sentencing disposition stages. Using quantitative analysis, they found that the relationship between the victim and defendant did not affect the prosecutors' decisions to accept the case. In other words, both stranger and nonstranger cases were equally likely to be charged by prosecutors. They did note, however, that cases involving strangers were significantly more likely to result in longer prison sentences than nonstranger cases (203.6 months versus 93.1 months) (Kingsnorth et al., 1999; pg. 284).

Albonetti (1986) found that when solid evidence is lacking in felony cases, prosecutors look toward extralegal variables, including the relationship between the victim and suspect to determine how to proceed. Specifically, she examined 4,238 felony cases in Washington, D.C. to determine what degree prosecutors relied on extralegal variables to avoid uncertainty in the case dispositions. In her quantitative analysis, she found that as the prosecutor's uncertainty about case outcomes increased (due to the absence of evidence), they became more dependent on extralegal variables (such as the victim/defendant relationship) when deciding how to proceed with the cases. In this study, prosecutors were less likely to pursue felony cases in which the victim and offender were acquaintances. The probability that the case would move forward was nine percent higher when the defendant was a stranger to the victim (Albonetti, 1986). A similar finding was noted when Kerstetter (1990) found that prosecutors were nearly twice as likely to deny police requests to file charges in cases that involved acquaintances than cases involving strangers.



Similar to the police, prosecutors judge sexual assault victims' credibility when making decisions. Schuller and Wall (1998) examined whether complainant and defendant intoxication influenced guilty pleas in a mock trial and found results similar to their study focusing on police perceptions of guilt. Jurors ascribed blame to the intoxicated victim and felt that the intoxicated defendant was less guilty. Although this study did not test whether prosecutors would accept or reject cases, there is some evidence that prosecutors are more likely to accept cases that are winnable and avoid jury trials as much as possible (Albonetti, 1986; Frohmann, 1991). The results of this study suggest that void of physical evidence; prosecutors would be more likely to dismiss sexual assault cases where the victim and offender are intoxicated as the victim would be seen as more responsible for the act and the offender less culpable. A female victim who is intoxicated is perceived to be in violation of appropriate female behaviors, and thus engaging in risk-taking behaviors (Kerstetter, 1990).

Estrich (1987) points out that blame and believability of the victim is more of a factor in simple sexual assault cases as they are not considered "real rapes." A real rape, or aggravated rape is often more violent in nature, occurs among strangers, and often results in physical injuries (Spohn & Holleran, 2001). A simple rape usually occurs between acquaintances, rarely involves a weapon, and the victim rarely sustains injuries. Victims in aggravated rapes are far less likely to have their behavior and morals questioned than simple assault victims as there is little question that the assault occurred in aggravated assaults. Spohn and Holleran (2001) illustrate this in the following example: "if a woman was raped by a complete stranger who held a gun to her head or a knife to her throat, criminal justice decision makers normally would not care whether she had been using drugs or was employed as a topless dancer" (pg. 656). Since the majority of sexual assaults occur between acquaintances, it is likely that prosecutors use legal

factors along with factors that question the victim’s character in determining whether to accept or reject sexual assault cases. Table 2 depicts the variables that influence the way sexual assault cases are handled by prosecutors.

Table 2  
*Variables that Influence Prosecutor Processing of Sexual Assault Cases*

<b>LEGAL VARIABLE</b>	<b>AUTHORS</b>	<b>PROCESSING INFLUENCE</b>
Weapon used	LaFree (1981) Kerstetter (1990) Spohn & Spears (1996)	Charging more likely
Physical or forensic evidence	Kerstetter (1990) Frohman (1991) Holleran et al (2010)	Charging more likely
Victim injury	Frazier & Haney (1996) Holleran et al. (2010)	Suspect more likely to be charged
<b>EXTRALEGAL VARIABLE</b>	<b>AUTHORS</b>	<b>PROCESSING INFLUENCE</b>
Victim/suspect were strangers	Albonetti (1986) Kerstetter (1990) *Horney & Spohn (1996) *Kingsnorth et al. (1999) Beichner & Spohn (2005) Holleran et al. (2010)	Charging more likely *no influence
Substance use	Frazier & Haney (1996) *Schuller & Wall (1998)	No influence in charging decisions *not directly tested; but mock jurors blamed victim and denied suspect responsibility
Race	*LaFree (1989) Frazier & Haney (1996) Bouffard (2000)	No influence *Non-White suspect more likely to be charged
Timely report to police	Frohmann (1991)	Charging more likely
Victim completed rape kit	Bouffard (2000)	Charging more likely
Discrepancies in victim’s account	Frohmann (1991)	Charging less likely

### **The Focal Concerns Perspective**

Introduced by Steffensmeier in 1980, the focal concerns perspective was initially used to describe the disparities in judicial sentencing decisions between male and female defendants (Steffensmeier, 1980; Steffensmeier, Kramer, & Steifel, 1993; Steffensmeier, Ulmer, & Kramer, 1998). The focal concerns perspective posits that the sentencing decisions of judges are based on

three focal concerns that incorporate both legal and extralegal factors: (1) the blameworthiness of the offender; (2) their desire to protect the community; and (3) their concerns about the social costs, or practical constraints and consequences, of their sentencing decisions (Steffensmeier et al., 1998). According to Steffensmeier et al. (1998), judges rarely have enough information about the defendants and court cases to accurately determine how dangerous or blameworthy the offenders are. To resolve uncertainty, judges develop a “perceptual shorthand” that incorporates a number of extralegal variables that focus on the characteristics of the offender (e.g., age, race, sex) into their decision-making processes (Albonetti, 1991; Hawkins, 1981; Steffensmeier et al., 1998). This means that because of limited time and lack of information about legally-relevant qualities of a case, judges’ decisions can be based on stereotypes and past decisions (Albonetti, 1991). As a result, sentencing disparities based on age, sex, race, and ethnicity exist among criminal offenders.

Steffensmeier et al. (1998) argue that the most significant factor in sentencing decisions is the first focal concern, blameworthiness of the offender. Legally-relevant factors used to assess blameworthiness include the seriousness of the offense and the criminal history of the offender. Extralegal variables revolve around the characteristics of the offender, and include the offender’s role in committing the offense (e.g., whether the offender acted alone or was an accomplice to the crime) (Steffensmeier et al., 1998), the offender’s mental health history, and whether the offender admits his or her guilt by pleading guilty (Hartley, Madden, & Spohn, 2007). For example, according to this perspective an offender with a lengthy criminal history, a history of mental delusions, who instigated and carried out an armed robbery, would receive a more severe sentence than a first-time offender of sound mind who drove the getaway car in the same robbery.

The second focal concern, the desire to protect the community, refers to the need to incapacitate dangerous offenders or deter potential offenders in order to keep the community safe. Although it is similar to the blameworthiness of the offender because it takes into account the criminal history of the offender, this concept also requires that judges make predictions about how dangerous the offender would be if he or she remained in the community. Along with the criminal history of the offender, variables that judges consider when measuring community protection include the type of offense (e.g., violent, property, or drug offense) and extralegal variables such as the offender's education level, employment status, and their family status (Hartley et al., 2007). From this perspective, it would be expected that judges would consider sentencing uneducated, unemployed, single offenders more harshly than educated, family-oriented offenders who hold jobs, as the former have fewer stakes in the community and would be considered more likely to recidivate than the latter.

The final focal concern, practical constraints and consequences, refers to both the organizational and individual consequences of judges' sentencing decisions. Organizational constraints and consequences include maintaining a steady flow of cases through the court system, preserving positive working relationships among courtroom actors (e.g., attorneys, judges, clerks, etc.), and being cognizant of issues such as overcrowding in correctional facilities and the availability of community resources (Steffensmeier et al., 1993; 1998). The individual constraints and consequences that judges consider revolve around the ability of the defendant to serve time in jail or prison. This means that judges would consider: the health of the defendant, any special needs that the defendant might have that would require additional costs to the correctional system, and whether the defendant has a spouse and children. From this perspective, removing of the defendant from his or her family may place a financial burden on

the family that would need to be absorbed by state and federal resources (Steffensmeier, 1980). In addition, institutional correctional facilities may be overcrowded and ill-equipped to handle offenders who require extensive medical assistance.

The focal concerns perspective has been supported in studies that have applied it to the influence of sex, race, ethnicity, and age in the judicial decision-making process (Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000; Spohn & Holleran, 2000). Using sentencing outcomes for nearly 140,000 felony and misdemeanor court cases in Pennsylvania, Steffensmeier et al. (1998) examined the effects of race, gender, and age on sentencing decisions and found that judges' decisions were based primarily on the legal factors of offense seriousness and the offenders' prior criminal involvement (i.e., blameworthiness of the offender). They also found that the race, gender, and age of the offenders to be significantly related to sentencing decisions, both independently and cumulatively. Males were more likely to be sentenced to incarceration than females, and when sentenced, males were given longer sentences. The effect of age on sentence length was dependent on the gender of the offender. Younger males were sentenced more harshly than older males overall, whereas age did not impact sentence severity for female offenders. With regard to race, young African American males were given longer sentences than young White males; however, this effect diminished with age, as older African American and White males received similar sentences. The youngest African American male received a prison sentence approximately 11.3 months longer than the oldest White male. Unlike males in this study, female offenders did not see the effect of age diminish, as African American females received harsher sentences than White females at all ages (with sentences approximately two months longer for African American females than White females). Overall, they found that young, African American males were the most likely to be incarcerated and received the longest

sentences out of any group, illustrating the perceptual shorthand used by judges. That is, the harsh sentences given to young, African American males may be a result of the judges' stereotypes, or perceptual shorthand, that this group is the most dangerous, criminally-involved, and most likely to recidivate.

Other studies have offered support for the focal concerns perspective in the judicial decision-making process (Freiburger, 2009; Kramer & Ulmer, 2002; Spohn & Holleran, 2000). Spohn and Holleran (2000) included ethnicity (African American and Hispanic) and employment status in their replication of Steffensmeier et al.'s (1998) study and hypothesized that unemployed Hispanic and African American males would be sentenced more harshly than any other group. Using sentencing data from Chicago, Miami, and Kansas City, their hypothesis was partially confirmed. Young, African American and Hispanic males in all three jurisdictions were more likely to be sentenced to prison than White males or females. They also found that offenders who were unemployed were more likely to receive prison sentences in two of the three jurisdictions (Miami and Kansas City) than offenders who were employed. Distinct from Steffensmeier et al. (1998), they found that gender, race, and age did not impact the length of the offenders' prison sentences.

Freiburger (2009) used pre-sentence investigation reports and court documents to test the focal concerns perspective on sentencing for drug offenses in Pennsylvania. She found strong support for the focal concerns perspective as the most significant factors affecting the decision to incarcerate were offense severity and the offenders' criminal history, both of which indicate the dangerousness and blameworthiness of the offender. In addition, the offenders' educational level was inversely related to the likelihood of incarceration. That is, as the level of education increased, the probability of receiving a prison sentence decreased. This suggests that offenders

with higher levels of education are perceived to be less dangerous than offenders who have received less education. Finally, this study found support for the focal concern, practical constraints and consequences, as offenders who paid child support were less likely to be sentenced to prison. Incarcerating an offender who is paying child support could have negative consequences on a family that is dependent on child support. The focal concerns perspective and the notion that judges use a perceptual shorthand was supported in this study and others that have tested it on the judicial decision-making process, and has been extended to account for the decision-making process at other stages in the criminal justice system.

Similar to judges, police officers often have limited time and information available to guide their decisions (Skolnick, 1966). The nature of their jobs requires them to react quickly to many situations, including those in which the use of force is an option. Crow and Adrian (2011) used the focal concerns perspective to explain the decision-making process that police use when deciding whether force against a suspect should be applied. Using police use-of-force reports from a medium Midwestern police agency, their study examined the factors associated with the type of force used by police, categorized as either Taser use or some other type of force (including physical force, pepper foam, K-9, firearms, etc.). Blameworthiness was assessed by looking at the type of call that the officers responded to, ranging from disturbance calls to pursuits. The level of dangerousness, or desire to protect the community in the focal concerns perspective, was examined by assessing the level of resistance that the suspect displayed prior to the police use of force, ranging from verbal resistance to weapon use. Practical constraints were accounted for by including a recent change in department's use-of force policy that had occurred which required officers to receive extensive training on the use of Tasers. Therefore, this study included incidents where force was used that took place prior to and after a change in the

organization's policy. There was overall support for the focal concerns perspective as non-White suspects were over twice as likely to have the Taser deployed on them in cases where they didn't attempt to flee, and were 372% more likely in instances where they did try to flee. Suspects who flee may be viewed by the police as more dangerous, necessitating the use of Tasers in the apprehension process. Male suspects were over 450% more likely than female suspects to have the Taser used on them. In addition, the variable measuring practical constraints, the change in the department's policy, was found to be strongly linked to Taser deployment as the likelihood of Tasers being used was 146% greater prior to the policy change. Overall, their research suggests that police departments should institute use-of-force policies and require that police officers receive ample training on use-of-force tactics. As a result, the authors contend that the use of a perceptual shorthand would diminish and use-of-force incidents will be based on legally-relevant factors.

Holleran et al. (2010) extended the focal concerns perspective to incorporate the decision-making processes of both the police and prosecutors in sexual assault cases. They argued that the focal concerns of the prosecutors are similar to those of judges; both are concerned with the offense seriousness, the level of harm caused to the victim, and the blameworthiness of the offender. They note one primary distinction between the practical constraints and consequences of judges and those of the police and prosecutors. While judges are concerned with the social costs of incarceration, Holleran et al. (2010) argued that the police and prosecutors are concerned with the likelihood that the case will result in a conviction. Therefore, the perceptual shorthand that police and prosecutors develop involves stereotypical factors about what constitutes a real crime and real victims. This includes factors such as the



behavior and background of the victims and the relationship between the victim and suspect (Holleran et al., 2010).

Numerous studies have examined police and prosecutors' processing decisions for sexual assault cases separately; however, few have tested the level of charging agreement between the two (Holleran et al., 2010). To date, it appears that Holleran et al. (2010) were the only scholars to examine this topic using a focal concerns framework. They conducted a quantitative analysis of two jurisdictions that had different case screening criteria. In Kansas City, arrests made for sexual assault are sent to a Sex Crimes Division, where attorneys determine whether or not to accept the case based on the likelihood that the case will succeed in court. Attorneys in Kansas City can interview the victim for added case strength if there are any concerns about the convictability of the case. In Philadelphia, cases forwarded to Sex Crimes Unit attorneys focus on the statutory elements of the crime rather than the likelihood that the case will win in court. It was noted that police officers in Philadelphia work very closely with attorneys and rarely is a case that is forwarded to them rejected. The results from their study showed that, consistent with the focal concerns perspective, the more serious the crime (aggravated assaults), the more likely that charging decisions would be consistent between the police and prosecutors. Extralegal factors were rarely considered in the two jurisdictions. Extralegal factors did not affect the charging decisions in Philadelphia, where cases focused on the statutory elements of the crime, and only weakly affected charging decisions in Kansas City, where convictability was of prime concern. Specifically, the charging decisions were impacted by the relationship between the victim and suspect and the victim's risk-taking behaviors in Kansas City. Charges were more likely to be congruent between police and prosecutors in Kansas City when the victim and suspect were strangers. Charges between the police and the prosecutors were not congruent in

Kansas City when it was believed that the victim engaged in risky behavior prior to the incident (such as hitchhiking, being at a bar alone, using alcohol, or going to the suspect's home); however, this extralegal factor did not influence charging agreement between the police and prosecutors in Philadelphia. Sexual assault cases in Philadelphia were guided by statutory elements of the crime, where decisions are more likely to be guided by legally-relevant factors such as the seriousness of the offense and the amount of evidence. In Kansas City, where the focal concerns revolved around the likelihood of convictions, the police and prosecutors took into consideration variables that reflected the victims' behavior when cases lacked a significant amount of evidence. These findings suggest that to avoid uncertainty and secure convictions, the police and prosecutors rely on extralegal factors, or a perceptual shorthand, when choosing how to process sexual assault cases. As Holleran et al.'s (2010) quantitative study is the only one to date that has examined the intersection of the police and prosecutorial decision-making stage in sexual assault cases using a focal concerns perspective, further research in this area that incorporates qualitative analyses is warranted.

### **Current Study**

Research from studies that focus on police and prosecutorial decision making in sexual assault cases has consistently found that both of these criminal justice professionals utilize legal and extralegal factors in determining how to handle each case. Both of these criminal justice professionals also base many of their decisions about how to proceed with sexual assault cases on the likelihood that the case will result in a conviction (Frazier & Haney, 1996; Martin & Powell, 1994). Quantitative and qualitative analyses confirm that legally-relevant factors form the primary basis of police and prosecutors' decisions (Bouffard, 2000; Frohmann, 1991; Holleran et al., 2010; Kelley & Campbell, 2013; Kerstetter, 1990; Spohn & Spears, 1996). Both

types of analyses also show that a number of factors that *should* be considered legally irrelevant to sexual assault cases are also reflected in many of the charging decisions made by police and prosecutors. However, there are discrepancies as to which variables bear the most weight in deciding how to proceed in sexual assault cases. For example, the relationship between the victim and offender influenced case processing in LaFree's (1989) study, but had no impact in a more recent study (Alderden & Ullman, 2012). With few exceptions (Jordan, 2004; Kelley & Campbell, 2013; Kerstetter, 1990), most of the decision-making research has relied on either quantitative or qualitative analyses rather than using both methods at the same time.

The current study contributes to the existing body of research by examining the charging decisions between the police and prosecutors from a focal concerns perspective using both qualitative and quantitative analyses. Specifically, this study determines the extent to which the police and prosecutors agree on charges in sexual assault cases and which factors within sexual assault cases make congruent charging decisions more likely. Using a mixed methodological approach adds credence to the results as each method has strengths that help offset the weaknesses of the other (Tashakkori & Teddlie, 2003). Findings from studies using both quantitative and qualitative analyses may offer unique insight that otherwise would have gone unnoticed if using only one method. The main disadvantages of using mixed methods research are that the findings may be divergent between the two methods or one method is emphasized more than the other when reporting findings (Jick, 1979). As rape and the way it is officially handled are very sensitive issues, it is especially advantageous to use qualitative and quantitative methods to develop a richer, fuller picture of police and prosecutors' decisions. Any diverging results shall warrant future research.

Again, quantitative data were used to examine the following research questions:

1. To what extent are charging decisions in adult sexual assault cases congruent between police and prosecutors?
2. Which factors predict the agreement between the police and prosecutors' charging decisions in sexual assault cases?

The following research question was answered using qualitative data:

1. Which factors are cited most frequently within sexual assault case documents among congruent and incongruent adult sexual assault cases?

The methods that were used to examine the above research questions are detailed in Chapter Three. Chapter Three also outlines how the data were collected and the analyses that were used to examine the congruency between police and prosecutors in sexual assault charging decisions.

### **CHAPTER 3: METHODOLOGY**

Previous studies that examine police and prosecutor decision-making in sexual assault cases rely on either quantitative (Bouffard, 2000; Holleran et al., 2010; LaFree, 1981) or qualitative analyses (Frohmann, 1991; Rose & Randall, 1982; Schuller & Wall, 1998). These studies have found that the police and prosecutors use legal and extralegal variables when considering charging decisions in sexual assault cases. The strength of the findings varies between studies and might be the result of the methods used in each study. To date, very few studies have used a mixed methods approach to specifically examine the decision-making of both the police and prosecutors (Alderden & Ullman, 2012; Kerstetter, 1990). In general, the findings from these studies corroborate studies that employ one method; however, distinctions exist between mixed-methods studies and studies using one method. For example, the relationship between the victim and suspect influenced arrest decisions in a quantitative study (LaFree, 1981), but was not significant in a more recent study using a mixed-methods design (Alderden & Ullman, 2012). Differing outcomes could be a result of the differing time frames of the research, as some recent studies yield different outcomes than studies that were conducted decades prior. Since discrepancies in the research findings might also be a result of the method used to study sexual assault case processing, it is of value to employ a mixed-methods approach to examine this topic.

It is possible that the qualitative analysis will yield findings similar to those found within the quantitative analysis. It is also possible that the findings from one method will reveal additional factors that would have gone unnoticed by using only one method. The current study will utilize a mixed-methods approach to examine factors that influence congruent charging

decisions between the police and prosecutors from a focal concerns perspective. Therefore, this study will extend the work of Holleran et al. (2010) by incorporating a qualitative component.

### **Research Site**

The research site for this study is a Midwestern city in the United States. This city has a population of nearly 110,000 people (U.S. Census, 2010). According to 2010 Census figures, the racial composition of the city includes 92.4% White, 2.5% African American, 2.1% Hispanic or Latino, and 3% other races (including American Indian, Asian, and two or more races). The city has a mixed economy (including retail, manufacturing jobs etc.), and can be described as a university town as it has several universities and community/technical colleges in the surrounding area.

The analyses for this study were derived from official police reports of sexual assault incidents from a Midwestern police department employing 145 sworn patrol officers. At the time of data collection, the department was comprised of approximately 21% female officers and 79% male officers. The average length of employment for police officers in this study is nine years. Over three quarters of the police officers are married and have attained at least a Bachelor's degree. Any sworn police officer at any rank in this department is qualified to respond to reports of sexual assault as this department does not have a specialized sexual assault task force or unit in place. Corresponding court documents that were contained within the police reports were included in the study.

### **Data Collection**

Data for this study were collected beginning in the summer of 2010 and ending in the spring of 2011. Upon approval from the University's Institutional Review Board, the researcher was granted access to police reports and court records of all adult sexual assault incidents that

were reported between January 1<sup>st</sup>, 2000 and December 31<sup>st</sup>, 2010. These reports contained information about the victim, suspect, and incident, primarily through initial and follow-up event summaries written by investigating officers. The reports also included information from the prosecutorial stage for cases that police forwarded to prosecutors. A total of 570 sexual assault incident reports were collected, encompassing 11 years of adult sexual assaults reported to the police department.

### **Quantitative Data**

To assess the level of congruence between police officer incident classifications and prosecutorial charging decisions, the initial and follow-up police reports and corresponding court documents were first analyzed quantitatively to determine which case attributes are the most influential in the decision-making processes at both stages. Since this study specifically investigates the decisions made by *both* the police and prosecutors, the quantitative analysis focuses solely on the adult sexual assault cases that were forwarded to the State's Attorney for prosecution. The 307 cases that were dismissed by the police are beyond the scope of this study as they were removed from criminal justice processing after having contact with the police. Nevertheless, those cases will be reserved for future research to determine the reasons for their dismissal at that stage. Of the 263 cases that were used in this study, 32 cases were pending charging decisions by prosecutors, 152 were reduced to a lesser charge or dismissed by prosecutors, leaving 79 cases in which the police classification and prosecutor's charging decisions were the same (See Figure 1). Since prosecutors' decisions have not been made in 32 cases, those cases were excluded from this study. Therefore, a total of 231 cases of adult sexual assault were analyzed. Based on previous research, the current study examines a number of

variables to determine which ones best predict the agreement between police officer classification and prosecutorial charging decisions of sexual assault cases.

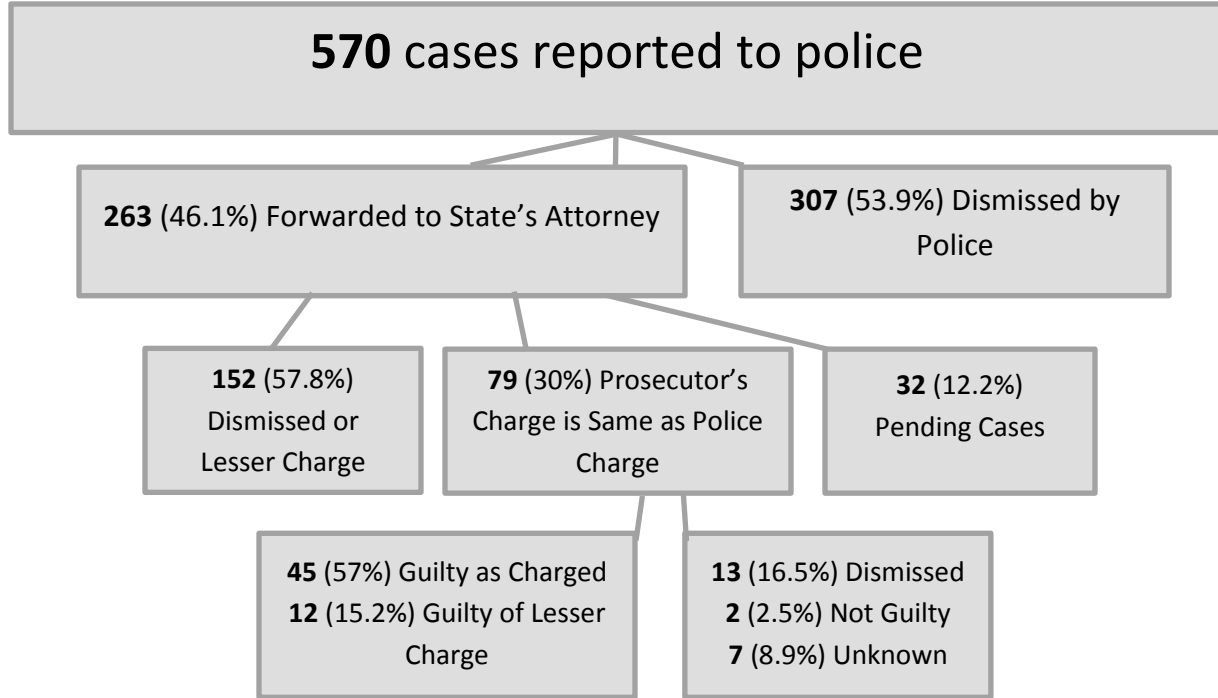


Figure 1. Disposition of sexual assault cases.

Dependent variables

Similar to Holleran et al. (2010), the dependent variable in the current study is the agreement between the way the police charge suspects in sexual assault cases and the charging decisions of the prosecutors. As the dependent variable is dichotomous, it was coded so that 1 = police and prosecutors agree on the charge and 0 = the police and prosecutors do not agree on the charge. Cases in which the prosecutor drops the charges against the suspect and cases that the prosecutor files a lesser charge were included in the “do not agree” category as the charges are divergent from the police charges.



### Independent variables

Based on the findings from prior research, the independent variables in the current study investigated the influence of two legally-relevant factors on the processing of sexual assault cases: the seriousness of the offense and whether evidence was obtained. According to the focal concerns perspective, the seriousness of the offense indicates the blameworthiness of the offender. In the current study, the seriousness of the offense was measured by two items: whether the victim sustained physical injuries such as bruises, cuts, or abrasions (0 = no and 1 = yes) and whether the suspect obtained physical injuries (0 = no and 1 = yes). The assault is perceived to be more serious by the police and prosecutors if it involved a physical struggle between the victim and assailant, and that struggle resulted in bodily injury (Estrich, 1987; Holleran, 2010). Whether forensic or physical evidence was obtained from the scene was dichotomized as 0 = no and 1 = yes. Evidence included forensic evidence such as bedding, clothing, hair, or other objects believed to contain DNA that were obtained by investigators at the scene or were presented to the police by the victim or a third party. Evidence also included physical evidence such as photographs of the scene, video tapes with recorded footage of the incident, empty condom wrappers, and other evidence that were collected by, or provided to, investigators.

A host of extralegal variables have been shown to guide the discretionary decisions of the police and prosecutors when determining how to proceed with sexual assault cases. It is important to incorporate these variables as other studies have demonstrated their significance. The extralegal variables that were included in the current study include: whether the victim went to the hospital for a medical exam after the incident (0 = no and 1 = yes), whether the victim physically resisted the assault (0 = no and 1 = yes), the timeliness of the report, and several

measures of victim blame and believability. The timeliness of the report is important to include as the police and prosecutors are more apt to pursue sexual assault cases in which the victim immediately reported the incident (Jordan, 2001). Similar to Holleran et al.'s (2010) study, the timeliness of the report was measured by assessing whether the victim reported the assault to the police within 24 hours (0 = no and 1 = yes). Past research has shown that the credibility of sexual assault victims is often questioned by the police and prosecutors and victims are assigned a certain amount of blame for their assault (Frazier & Haney, 1996, Holleran et al., 2010; Kerstetter, 1990; Rose & Randall, 1982; Spohn & Spears, 1996). In the current study, the victim's blame and believability was evaluated by considering whether or not the victim engaged in risky behavior leading up to the assault. Indicators of risky behavior include: whether the victim went to a bar, lounge, or club prior to the incident (0 = no and 1 = yes), whether the victim was consuming alcohol or drugs prior to the incident (both 0 = no and 1 = yes), whether the suspect was a stranger to the victim (0 = no and 1 = yes), and whether the incident occurred at the victim's and/or suspect's residence (0 = no and 1 = yes) as these items have been examined in prior research that has focused on sexual assault victims' credibility (Alderden and Ullman, 2012; Kelley & Campbell, 2013; LaFree, 1980; 1981; Schuller & Stewart, 2000; Kelly & Campbell, 2013).

### **Quantitative Analytic Procedures**

The quantitative data analyses consisted of univariate, bivariate, and multivariate analyses using SPSS version 21. First, the sample characteristics were described by conducting frequency distributions and percentages for each variable. Next, bivariate correlations were utilized to determine which, if any of the independent and dependent variables are significantly related. Since the dependent and independent variables are categorical, the bivariate analysis was

conducted using the chi-square ( $\chi^2$ ) test of independence to identify the relationship between the independent and dependent variables. The bivariate analysis also included correlations to identify any potential issues of multicollinearity among the independent variables. Since the bivariate correlations may not definitively expose variables that are highly correlated, multicollinearity diagnostics were computed to ensure that there were no issues with multicollinearity (Midi, Sarkar, & Rana, 2010). Tolerance scores range from zero to one, where values closer to zero indicate issues with multicollinearity (Myers, 1990). Experts suggest that a multicollinearity may be a threat if the tolerance values are less than 0.2 (Menard, 1995) or less than 0.1 (Midi et al., 2010; Myers, 1990). To be certain that multicollinearity did not pose a threat, the current study followed the more conservative threshold of 0.2. Therefore, tolerance scores below 0.2 would signify that multicollinearity may be biasing the regression model, and indicate that the model will need to be adjusted to resolve multicollinearity issues (Myers, 1990). Upon completion of the univariate and bivariate analyses, the final stage of the quantitative analysis of the current study involved multivariate analysis.

Finally, similar to Holleran et al. (2010), the current study employed binary logistic regression. This statistical analysis is the most appropriate as the dependent variable is dichotomous (Field, 2009). Since the dependent variable was dummy coded (0 = do not agree, 1 = agreement), using this statistical technique ensured that the predicted probabilities are constrained between 0 and 1. To ensure that the model is correctly specified, the Hosmer and Lemeshow (2000) goodness of fit test was examined. If the value of the Hosmer and Lemeshow (2000) goodness of fit test is not significant (i.e., above 0.05), the model is a good fit for the data. If the test is significant (i.e., 0.05 or below), a review of the model will take place to determine

where it can be improved. After achieving a satisfactory Hosmer and Lemeshow statistic, a review of the binary logistic regression output ensued.

### **Qualitative Data**

The current study also utilized content analysis to provide a more thorough understanding of the processing of sexual assault cases by police and prosecutors. Specifically, the analysis examined the initial and follow-up police reports and court documents from the 231 cases that police forwarded to prosecutors and were not pending prosecutorial charging decisions. The qualitative analysis consisted of a directed manifest content analysis of these documents to determine whether the focal concerns perspective could be applied to police and prosecutors' decisions in sexual assault cases. Additional information on the content analysis used for this study is presented on page 47.

The units of analyses for the content analysis included the narrative content of the police reports and court documents. A limitation of this type of analysis involves the inability to determine the underlying meanings of the content within the police reports and court documents. Instead, a directed manifest content analysis presents a numerical depiction of the factors within these documents, which in turn, may illustrate the focal concerns of the police and prosecutors.

Spohn and Holleran (2001) assert that the three focal concerns of the police and prosecutors in sexual assault cases include the seriousness of the offense, the degree of harm to the victim, and the culpability of the suspect. Based on their influence in prior research examining sexual assault case processing, and guided by the focal concerns perspective, four thematic areas were categorized in the content analysis: victim and suspect characteristics, evidence of the incident, victim blame and believability, and investigative effort (Bouffard,

2000; Frazier & Haney, 1996; Frohmann, 1997; Holleran et al., 2008; Kelley & Campbell, 2013; Kerstetter, 1990; Tasca et al., 2013).

Categories that examine victim and suspect characteristics included the age and race of the victim and suspect, and the relationship between the victim and suspect (e.g., dated previously, acquaintances, friends, coworker, or stranger). Prior research has noted that as the age of the victim and offender increases, so does the likelihood that the case will be pursued by the police and prosecutors (LaFree, 1980; 1981). Some research has found that cases involving non-White victims and those involving White suspects are less likely to be pursued by the criminal justice system (Spohn et al., 2001), while other research has found no such effect (Bouffard, 2000; Kelley & Campbell, 2013). Research has also found mixed results in regard to the influence of the relationship between the victim and suspect. Some studies have shown that a prior relationship between the victim and suspect decreased victim credibility (Bryden & Lengnick, 1997), increased the likelihood that the suspect would be arrested (Alderden & Ullman, 2012; Bouffard, 2000; LaFree, 1981), or decreased the likelihood that the prosecutor would file charges (Kerstetter, 1990), while other research has shown that there is no difference in arrest or prosecutorial charging outcomes based on the victim and offender relationship (Alderden & Ullman, 2012; Spohn, 1996).

In this study, evidence of the incident included the type of force used by the suspect (verbal, physical, both verbal and physical, or no force due to the victim being asleep or unconscious) and the amount of forensic and physical evidence collected at the scene (e.g., DNA, clothes, pictures, etc.). Numerous studies have shown that the presence of physical injuries and corroborating evidence such as DNA-laced bedding, clothing, or pictures from the crime scene increases the likelihood that the case will move forward in the criminal justice

system as they reduce the level of uncertainty that the incident took place (Albonetti, 1991; Alderden & Ullman, 2012; Holleran et al., 2010; Kerstetter, 1990; Tasca et al. 2013).

Blame and believability factors included: substance use by the victim and/or suspect (i.e., alcohol and/or drugs), whether the victim and/or suspect has mental health issues or was perceived to be developmentally delayed, the number of witnesses who were present to corroborate the victims' account of the incident, how often it was noted that there were inconsistencies in the victims' accounts of the incident, and prosecutorial justifications for their decisions to charge or dismiss the case (i.e., sufficient evidence to proceed, inconsistencies in the reports to indicate a crime may not have been committed, not enough evidence, victim withdrawal). Substance use by the victim and suspect has been shown to reduce the victim's credibility, reduce the suspect's blameworthiness, and reduce the likelihood that the case will move forward in the criminal justice system (Kerstetter, 1990; Schuller & Stewart, 2000.) Based on the limited research, it is possible that similar to substance use, sexual assault victims with either mental issues or developmental disabilities would be perceived as being partially responsible for the incident as they do not fit the description of a "real rape" victim and may have limited capacities to deny consent. It is also possible that sexual assault offenders with mental issues or developmental disabilities would be perceived as less culpable for the assault. The small body of research that has examined mental health issues in sexual assault cases has noted that appearance of mental health problems in the victim may make the victim appear less believable and more responsible for the sexual assault (Kaufmann, Drevland, Overskeid, & Magnussen, 2003). Conversely, Frazier and Haney (1996) found that cases in which victims exhibited post-traumatic stress disorder (PTSD) as a result of the incident were no more likely to move forward than cases in which the victim did not show signs of PTSD. Since very little is

known about the impact of mental health issues and developmental delays on sexual assault case processing, the inclusion of these variables is important. Research has shown that as the number of witnesses that are present to corroborate the victim's account of the incident increases, the more likely it is that the case will proceed in the criminal justice system (Horney & Spohn, 1996; Kingsnorth et al., 1999; La Free, 1980). In addition, cases containing discrepancies in the victim's account of the incident were less likely to be pursued by police (Jordan, 2004) or prosecutors (Frohman, 1991) as victims in those cases were viewed as lacking credibility. Finally, it is important to examine the justification for the prosecutors' decisions. Since much of their decisions are based on the documents presented to them by the police, it is important to identify their justifications for why some cases should proceed to court while others should be excused from further processing.

The level of investigative effort in each case (defined as the extent to which officers investigated and followed up on each report, or by the number of follow-up police reports after the initial report) was examined, as Kelley and Campbell (2013) found that the police were the most likely to forward sexual assault cases to prosecutors that they had followed up on. Kelley and Campbell's (2013) study was the first to examine how investigative effort can impact case referral, therefore the coding for this variable was a replication of the previous research to allow for comparisons to be made.

Based on previous research, the categories in the qualitative analysis adequately assess the focal concerns of the police and prosecutors in sexual assault cases; however, it is possible that additional categories will surface while conducting the content analysis. Although it is important to remain consistent with past research in order to make comparisons, any newly-emerging categories were considered in the qualitative analysis.

## **Qualitative Analytic Procedures**

The qualitative analysis was examined through content analysis. Content analysis involves examining manifest content and/or latent content (Maxfield & Babbie, 2008). Manifest content (or surface content) includes coding for elements that are physically or visibly present and quantifiable. Manifest content analysis is a deductive approach in which the researcher uses predetermined key words, variables, or categories, based on relevant research, to examine a theory or phenomenon (Kondracki & Wellman, 2002; Maxfield & Babbie, 2008). With this type of approach, the researcher does not assume underlying meanings behind the text. Instead, the researcher counts the frequency of words and phrases for each defined category. As a result, manifest content analysis has a high level of reliability when compared to latent content coding (Kondracki & Wellman, 2002; Maxfield & Babbie, 2008).

Latent content analysis expands on manifest content and involves interpreting the underlying meaning contained in the data (Maxfield & Babbie, 2008). This type of analysis is often used when there is very little information about a theory or phenomenon; therefore, researchers who use latent content analysis avoid using preconceived categories and instead allow the themes and categories to flow from the data (Kondracki & Wellman, 2002). An advantage of this inductive approach is that it may broaden what is known about a phenomenon by generating rich data (Maxfield & Babbie, 2008). This type of analysis presents a notable challenge, however. Since latent content analysis requires researchers to infer deeper meaning from the text, it has been criticized for not being as objective as manifest content coding (Maxfield & Babbie, 2008).

The current study is grounded in the focal concerns theory, a perspective that has been used to examine the decision-making processes of the police, prosecutors, and judges



independently (Crow & Adrian, 2011; Freiburger, 2009; Hartley et al., 2007; Steffensmeier et al., 1998; Spohn & Holleran, 2000). Only one study, conducted quantitatively, has used the focal concerns perspective to explain the charging agreements between the police and prosecutors in sexual assault cases (Holleran et al., 2010). Since this study was the first to use a multi-methods approach to examine sexual assault case processing at this junction in the criminal justice system, the content analysis focused on manifest content coding. Using a directed manifest content analysis in the current study ensured an objective and systematic examination of the factors that influence the level of agreement between police and prosecutors' charging decisions.

The procedure for the manifest content analysis included counting the frequency of words and phrases within the initial and follow-up police reports and court documents in order to add depth and breadth to what is known about the focal concerns of the police and prosecutors. The coding categories were derived from variables that have been tested in previous police and prosecutorial decision-making studies. For example, the age (in years) and race (White or non-White) of the victim and suspect were recorded, along with the number of times the police reports and court documents drew attention to the relative age and race of the victim and suspect (e.g., "victim is young African American female," or "suspect is White"). Although Table 3 does not account for all possible key words and phrases, it provides further details about the coding strategies.

The content analysis of these variables provided a description of the substance within the police reports and court documents in these cases. It will also act as a measure of the focal concerns of the police and prosecutors in sexual assault cases. Once all of the cases were coded, the frequencies for each variable were compared between the 79 cases in which the police and

prosecutors were in agreement and the 152 cases that were not in agreement to ascertain which, if any, of the variables were noted more frequently between the two groups in the police and court documents.

Table 3  
*Independent Variable Coding*

Category	Examples of Key Words and Phrases	How Category was Coded in Analysis
Victim Age Suspect Age Victim Race Suspect Race	“young African American victim/suspect” “older White victim/suspect” “Native American victim/suspect” “Asian victim/suspect” “Hispanic victim/suspect”	Age in years; frequency of key words/phrases; race collapsed to White and non-White in analysis
Victim/Suspect Relationship	“victim and suspect previously dated” “victim and suspect are friends” “victim does not know suspect” “victim and suspect met at bar” “victim and suspect are married”	Frequency of key words/phrases; collapsed to “stranger vs. nonstranger” categories
Type of Force Used	“suspect verbally threatened victim” “suspect pushed victim onto ground” “suspect threatened victim with knife” “victim was passed out during incident”	Frequency of key words and phrases; collapsed to: Verbal threats and physical force, physical force only, verbal threats only, and no force/victim asleep.
Forensic and Physical Evidence	“victim/suspect’s clothing collected” “stained bedding collected” “videotape of the incident collected” “DNA on towel collected” “carpet sample containing semen collected” “used condom collected”	Number of items collected
Victim Mental Health Issues Suspect Mental Health Issues	“victim/suspect seemed delusional” “victim/suspect stated they were seeking treatment for mental health issues” “victim/suspect stated they were taking medication for mental health”	Frequency of key words and phrases
Victim Developmental Delay Suspect Developmental Delay	“victim/suspect exhibited signs of a developmental disability” “victim/suspect’s friend/relative stated he/she had low IQ” “victim/suspect stated he/she was developmentally delayed”	Frequency of key words and phrases

Table 3. *Independent Variable Coding (continued)*

Category	Examples of Key Words and Phrases	How Category was Coded in Analysis
Victim alcohol/drug use Suspect alcohol/drug use	“victim stated she was under the influence of alcohol” “victim stated suspect had been drinking” “victim/suspect smelled of alcohol” “victim and suspect were drinking at bar/residence” “victim/suspect stated that they had used drugs” “victim/suspect stated they had taken prescription drugs”	Frequency of key words and phrases
Number of witnesses	“_____stated he/she saw the suspect threaten the victim”	Actual number of witnesses that were interviewed
Investigative effort	“Officer X phoned victim/suspect the next day...” “Officer X contacted the bar where the victim and suspect had been the night of the incident” “Officer X retrieved the rape kit from the hospital the next day”	Number of times the police followed up after the initial contact.
Inconsistencies in victim’s story	“the victim gave a different account of the incident than she gave Officer X” “the victim answered differently each time the same question was asked of her” “victim’s story is not consistent with her original story”	Frequency of key words and phrases
Prosecutorial justifications	“enough evidence to proceed” “not enough evidence to proceed” “inconsistencies in reports to indicate a crime may not have been committed” “victim refused to participate/victim withdrawal”	Frequency of key words and phrases

Since manifest content analysis measures the number of times words or phrases are used rather than examine the implicit meaning of those words or phrases, one of its strengths is that it is highly reliable (Maxfield & Babbie, 2008). As the content analysis in the current study was conducted by humans rather than through the use of a computer program, added care was taken to ensure that the data was reliable. An IRB approved graduate student coded a random sample of both types of cases; cases in which the police and prosecutor are congruent, and those where

they are divergent. According to prior research, a second coder should examine a subset of 20% of the original sample and maintain agreement with the first coder in at least 90% of the subset (Carey, Morgan, & Oxtoby, 1996; Hruschka, Schwartz, St. John, Picone-Decaro, Jenkins, & Carey, 2004). In this study, at least 25% of the cases were coded by the second coder, or 20 of the 79 congruent cases and 38 of the 152 divergent cases. The main researcher and the additional coder met to discuss the coding results and resolve any discrepancies between coders. Only one discrepancy was noted between the coders in one of the cases. Once the discrepancy was resolved, the coders were in agreement in 100% of the cases.

The findings from the quantitative and qualitative analyses were compared to determine whether the factors that predict congruence in police and prosecutors' charging decisions appeared similar between the two methods. For example, the quantitative analysis may reveal that the primary factor associated with case congruency is whether evidence was collected. The qualitative analysis may support the quantitative findings if it was discovered that words and phrases associated with evidence (e.g., "evidence," "clothes were retrieved," "pictures were collected," "evidence collected included...") appeared most frequently in the police and court documents. Alternatively, evidence may not be the most frequently cited variable within the qualitative analysis. The results from the current study were also compared to findings from previous research. As this was the first multiple methods study that used the focal concerns perspective as the basis to examine the congruency between the police and prosecutors in sexual assault cases, the results from the analysis may guide the direction of future research in this area.

## CHAPTER 4: RESULTS

This study incorporated both quantitative and qualitative analyses to assess the focal concerns perspective among police and prosecutors in adult sexual assault cases. The quantitative analysis consisted of bivariate and multivariate analyses of police reports and court documents. A directed manifest content analysis of the police reports and court documents was used to examine the qualitative portion of this study. This section details the quantitative findings first, followed by the results of the qualitative analysis.

### Quantitative Findings

The quantitative data from the police reports and court documents was used to examine two research questions: (1) To what extent are charging decisions in adult sexual assault cases congruent between police and prosecutors? (2) Which factors predict the agreement between the police and prosecutors' charging decisions in sexual assault cases?

To address the first research question, descriptive statistics explored the dispositions of the 231 adult sexual assault cases in which charging decisions were made by both the police and prosecutors. Frequency distributions illustrated that there were relatively few cases in which the prosecutor's charging decisions were the same as the charging decisions made by the police. Similarly, the majority of cases that the police forwarded to prosecutors were either dismissed or reduced to a lesser charge. This study found that the police and prosecutors agreed on filing the same charges in approximately one third of the sexual assault cases in which they were presented. Specifically, 79 out of 231 cases (34%) resulted in congruent charges (See Figure 1). The remaining 152 sexual assault cases (66% of 231 cases) that were forwarded to the prosecutors were either dismissed or were reduced to a lesser charge. Of the cases that were congruent between police and prosecutors, over half (57%, or 45/79) resulted in guilty-as-

charged verdicts, while the remaining cases were found guilty of a lesser charge (15.2%, or 12/79), were dismissed (16.5%, or 13/79), were found not guilty (2.5%, or 2/79), or the case outcomes were unknown at the time of this study (8.9%, or 7/79). When congruent cases with unknown outcomes were excluded from this analysis, the percentage of cases that resulted in guilty-as-charged verdicts increased to almost 63% (62.5%, or 45/72). The percentage of cases that were found guilty of a lesser charge increased to 16.7% (12/72), dismissals accounted for 18% of case outcomes (13/72), and 2.8% (2/72) were found not guilty. In sum, approximately one third of adult sexual assault cases resulted in charging agreement between the police and prosecutors, while the remaining two thirds were removed from the criminal justice funnel through dismissals or charge reductions.

In order to examine the second research question, involving which factors predict congruent charging decisions between the police and prosecutor, bivariate and multivariate analyses were conducted. The independent and dependent variables were analyzed using chi-square ( $\chi^2$ ) test of independence to provide more information about the characteristics of the cases that were forwarded to the prosecutors. In addition to providing the frequency and percentage for each independent variable among all 231 cases, this analysis provided a breakdown of case characteristics for cases that were congruent and those that were not congruent between the police and prosecutors. A few notable findings were initially observed from this analysis. First, charging decisions were congruent in a higher percentage of cases in which victims incurred physical injuries. Injuries to the victim occurred in 31.1% of congruent cases whereas 18.8% of incongruent cases involved a victim with physical injuries. In addition, a victim physically resisted the attack in almost one third of congruent cases (30.3%), while 14.8% of incongruent cases involved physical resistance. The majority of the sexual assault

cases (74.5%) were reported to the police within 24 hours; however, further observation revealed that timely reporting occurred in 84.8% of congruent cases and 69.1% of incongruent cases. Finally, 74.3% of incongruent cases and 62% of congruent cases involved a victim who attended a bar or club. See Table 4 for case descriptions.

The chi-square test for independence revealed significant relationships between the dependent variable (charging agreement) and four independent variables. Two legally relevant independent variables, victim injury and the presence of physical or forensic evidence, were significantly related to congruent charging outcomes at the  $p < .05$  level. Charges in sexual assault cases in which the victim sustained physical injuries were more likely to be congruent between the police and prosecutors than in cases void of physical injuries,  $\chi^2(1, N = 218) = .04, p < .05$ . Charging agreement was also more likely in cases that contained physical or forensic evidence,  $\chi^2(1, N = 229) = .015, p < .05$ . Two extralegal variables were also associated with a higher likelihood of charging agreement between the police and prosecutors at the  $p < .01$  level in the bivariate analysis. Cases in which the victim physically resisted the attack were more likely to be congruent than cases in which the victim did not physically struggle,  $\chi^2(1, N = 211) = .007, p < .01$ . Also, charging outcomes were more likely to be in agreement in cases that were reported within 24 hours of the incident than in cases reported after 24 hours,  $\chi^2(1, N = 231) = .009, p < .01$ . In summary, the bivariate analysis showed that the charging decisions made by the police were more likely to be upheld by prosecutors in cases where the victim physically fought the suspect, the victim sustained physical injuries from the assault, the crime was reported within 24 hours, and physical or forensic evidence was collected from the scene.

Table 4

*Descriptive Statistics for Independent and Dependent Variables (n = 231)*

Variable	All cases n (%)	Charges Congruent n (%)	Charges Incongruent n (%)
Victim Injury	n=218	n=74	n=144
No injuries	168 (77.1)	51 (68.9)	117 (81.3)
Injuries	50 (22.9)	23 (31.1)	27 (18.8)
Suspect Injury	n=210	n=70	n=140
No injuries	201 (95.7)	68 (97.1)	133 (95)
Injuries	9 (4.3)	2 (2.9)	7 (5)
Evidence Collected	n=231	n=79	n=152
No	134 (58)	44 (55.7)	90 (59.2)
Yes	97 (42)	35 (44.3)	62 (40.8)
Medical Exam	n=226	n=77	n=149
No	113 (50)	41 (53.2)	72 (48.3)
Yes	113 (50)	36 (46.8)	77 (51.7)
Physical Resistance	n=211	n=76	n=135
No	168 (79.6)	53 (69.7)	115 (85.2)
Yes	43 (20.4)	23 (30.3)	20 (14.8)
Report within 24 Hours	n=231	n=79	n=152
No	59 (25.5)	12 (15.2)	47 (30.9)
Yes	172 (74.5)	67 (84.8)	105 (69.1)
Bar or Club before Incident	n=231	n=79	n=152
No	69 (29.9)	30 (38)	39 (25.7)
Yes	162 (70.1)	49 (62)	113 (74.3)
Substance Use	n=194	n=68	n=126
No	85 (43.8)	34 (50)	51 (40.5)
Yes	109 (56.2)	34 (50)	75 (59.5)
Relationship	n=230	n=79	n=151
Non-stranger	134 (58.3)	44 (55.7)	90 (59.6)
Stranger	96 (41.7)	35 (44.3)	61 (40.4)
Victim/Suspect Residence	n=230	n=79	n=151
No	77 (33.5)	31 (39.2)	46 (30.5)
Yes	153 (66.5)	48 (60.8)	105 (69.5)



Bivariate correlations also provided information about the relationships between each of the independent variables (victim injury, suspect injury, physical and forensic evidence, medical examination of the victim, physical resistance of the victim, timely report of the incident, whether the victim was at a bar or club, whether alcohol or drugs were ingested by the victim, the relationship between the victim and suspect, and whether the incident took place at the victim and/or suspect's home). As shown in Table 5, all of the independent variables were significantly related to at least two other independent variables. Before the multivariate analysis was carried out, multicollinearity diagnostics were performed to check for tolerance scores below 0.2. Collinearity statistics did not detect any issues as all tolerance scores were constrained within the range of .711 to .912.

Table 5  
*Correlation Matrix of Variables in Analysis*

	1	2	3	4	5	6	7	8	9	10	11
1. Charging Agreement	1										
2. Victim Injury	.139*	1									
3. Suspect Injury	-.070	.373**	1								
4. Evidence	.160*	.175**	.044	1							
5. Medical Exam	-.047	.228**	.036	.417**	1						
6. Physical Resistance	.184**	.232**	.180*	-.064	-.118	1					
7. Timely Report	.171**	.086	.001	.259**	.232**	.076	1				
8. Bar/Club Prior	-.128	.040	.018	.133*	.116	-.087	.030	1			
9. Substance Use	-.092	.165*	.057	.306**	.369**	-.083	.156*	.218**	1		
10. Relationship	-.038	-.268**	-.147**	-.062	-.139*	-.033	.134*	.051	.042	1	
11. Victim/Suspect Residence	.036	.036	-.048	-.100	.073	.059	.099	-.269**	-.148*	-.061	1

\*(Pearson) Correlation is significant at the 0.05 level (2-tailed)

\*\* (Pearson) Correlation is significant at the 0.01 level (2-tailed)

Binary logistic regression analysis was conducted to determine which factors predict charging agreement in adult sexual assault cases. Before interpretation began, all of the independent variables were entered into the model and logistic regression model diagnostics were examined to ensure that the model was a good fit for the data. The Hosmer and Lemeshow goodness of fit test yielded a statistic that was not significant, indicating that the model was appropriate for the data,  $\chi^2(8, 231) = 4.392, p = .820$ . In addition, the overall model chi-square statistic was statistically significant, demonstrating that the overall model was predictive of charging agreement,  $\chi^2(10, 231) = 20.554, p = .024$ .

The results of the binary logistic regression analysis revealed that two independent variables were statistically significant at the  $p < .05$  level (see Table 6). The presence of forensic or physical evidence and physical injuries to the victim were found to be significantly related to charging agreement between police and prosecutors. The significance of these two variables was in the same direction as noted in the bivariate analysis. The odds of charges being in agreement between the police and prosecutors were slightly more than three and one half times greater for cases in which physical or forensic evidence was collected. In addition, the odds of congruent charges were over three times greater in cases that involved physical injury to the victim.

One independent variable that was not significant in the bivariate analysis, the victim went to the hospital for a medical exam after the incident, approached significance in the multivariate analysis with a  $p$ -value of .069. Additionally, physical resistance by the victim and reporting the incident within 24 hours were both significantly related to charging agreement in the bivariate analysis; however, neither variable proved to be statistically significant at the multivariate level. Table 6 presents the findings from the binary logistic regression analysis.

Table 6  
*Binary Logistic Regression for Congruent Charging Decisions (N = 231)*

Variable	B	SE	p	OR
Victim Injury ( <i>no</i> = 0)	1.187	.536	.027*	3.277
Suspect Injury ( <i>no</i> = 0)	-1.272	.821	.121	.280
Evidence Obtained ( <i>no</i> = 0)	1.305	.538	.015*	3.687
Medical Exam ( <i>no</i> = 0)	-.805	.442	.069	.447
Physically Resisted ( <i>no</i> = 0)	.671	.471	.154	1.957
Report w/in 24 hours ( <i>no</i> = 0)	.457	.447	.307	1.579
Bar or Club Prior to Incident ( <i>no</i> = 0)	-.566	.402	.160	.568
Substance Use ( <i>no</i> = 0)	-.089	.407	.826	.915
Suspect was Stranger ( <i>no</i> = 0)	.260	.384	.497	1.298
Offense Occurred at Victim and/or Suspect's Residence ( <i>no</i> = 0)	-.001	.014	.941	.999
Constant	-.781	.548	.154	
Model $\chi^2$	$\chi^2 (10, 231) = 20.554, p = .024$			
Hosmer and Lemeshow Goodness of Fit	$\chi^2 (8, 231) = 4.392, p = .820$			
Nagelkerke's Pseudo-R <sup>2</sup>	.162			

\*p < .05

Consistent with the focal concerns perspective and previous studies, this study found that police and prosecutors' charging decisions were primarily influenced by legally relevant factors. Only two variables, the presence of physical or forensic evidence and victim injury, were statistically significant in the binary logistic regression model. Extralegal variables in this study were related to charging agreement at the bivariate level; however, none of the extralegal variables influenced charging agreement at a statistically significant level in the multivariate

analysis. The results from the quantitative analysis offer modest support for the focal concerns perspective.

### **Qualitative Findings**

The qualitative analysis consisted of a directed manifest content analysis of police and court documents to ascertain which factors appeared most frequently in sexual assault cases documents. Frequencies of factors contained within cases in which charging decisions were congruent and charging decisions were not congruent between the police and prosecutors were examined and compared. The content analysis in this study served as a preliminary qualitative examination of the focal concerns perspective. Factors that are documented most frequently in case documents may indicate the focal concerns that guide the police and prosecutors in sexual assault cases. Results from the content analysis are presented in Table 7.

Results from the analysis showed that victims in the sexual assault cases were most likely to be between the age of 18 and 25 (56.7%, or 131 cases). The percentage of cases that included victims within this age group was evenly distributed between cases that were congruent (56.9%) and cases that were not congruent (56.6%). Conversely, sexual assault suspects were most often older than the victims as the majority of them were 31 or older (57.6%, or 129 cases). Similar to victim age, the percentage of cases with suspects that were at least 31 years old was similar between congruent (59.4%, or 47/79) and incongruent cases (56.5%, or 82/152). The relative age of the victim and suspect was rarely mentioned in any of the documents. The relative age was only mentioned in a handful of cases when the victim (1.3%, or 3/231 cases) or suspect (2.2%, or 5/231 cases) was perceived as “old” or “elderly” in any of the reports.

The race of the suspect was mentioned more frequently than the race of the victim in the police reports and court documents. Victim race was generally only mentioned in reports

containing White victims (22.1%, or 51/231 cases). White victims were mentioned one or two times in 11.4% (9/79) of congruent cases and in 27.6% (42/152 cases) of incongruent cases. Nonwhite victims were mentioned in 1.7% of all reports (4/231 cases). White suspects were cited in 30.7% (or 71/231) of cases. The percentage of times White suspects were referenced in the documents was higher in cases in which the police and prosecutors' charging decisions were not in agreement (40.1%, or 61/152) than in congruent cases (12.7%, or 10/79 cases). Nonwhite suspects were mentioned in 25.5% (or 59/231) of the total cases. This percentage was relatively stable between congruent (25.3%, or 20/79) and incongruent (25.7%, or 39/152) cases; however, Nonwhite suspects were mentioned twice as many times as White suspects in congruent cases and about 13% less often than White suspects in incongruent cases.

Sexual assault cases in this study were more likely to be perpetrated by someone who was known to the victim as non-stranger assaults were noted in 56.7% (131/231) of the total cases. Strangers were mentioned at least once within 33.3% (77/231) of cases. Sexual assaults among nonstrangers were identified in a higher percentage of congruent cases (77.2%, or 61/79) than incongruent cases (46.1%, or 70/152). Conversely, sexual assaults involving strangers were cited more frequently in cases that were dismissed or reduced to a lesser charge (45.4%, or 69/152 of cases) than in cases in which the charging decisions were in agreement (10.1%, or 8/79 of cases). In addition, all of the congruent cases involving strangers made mention of the fact that the suspect was a stranger to the victim only once, whereas strangers were noted as many as four times in cases that were not congruent.

Physical force was a prominent feature of sexual assaults that resulted in congruent charging decisions. Slightly more than 60% of all sexual assault incidents involved physical force. An example of a statement from a congruent case (#29, 2001) that was coded as involving

physical force is, “She said he was very, very forceful and hurt her when she was struggling with him. She stated that when she was screaming, he did hit her in the face.” The percentage of sexual assaults that involved physical force was higher in congruent cases (78.5%, or 62/79 cases) than in cases where the prosecutors’ charges diverged from the police charges (50.6%, or 77/152 cases). In addition, physical force was mentioned in the police reports and court documents as many as six times in congruent cases, whereas the most often it was cited in incongruent cases was three times. Approximately one third of sexual assaults did not involve physical force as the victim was passed out or asleep (34.6%, or 80/231 cases). The percentage of cases involving no force was twice as high for cases that were reduced or dismissed (41.4%, or 63/152 cases) than cases with charging decisions that were in agreement (21.5%, or 17/79). A statement contained within an incongruent case (#199, 2004) that depicted a scenario coded as not involving force is, “She told me that she woke up twice during the night and that someone was on top of her trying to have anal sex with her. (Victim) said that she felt like she had been taken advantage of last night, but didn’t remember exactly what happened.”

The amount of evidence that was gathered from the scene of each incident was recorded in the qualitative analysis. Overall, physical or forensic evidence (e.g. items of clothing, bedding, pictures, videos, buccal swabs to test for DNA, etc.) was collected in in 44.6% (103/231) of the cases. Congruent cases were approximately 15% more likely to contain evidence as 54.4% (43/79) cases included evidence versus 39.5% (60/152) of incongruent cases. More evidence was collected in congruent cases than incongruent cases. Most of the congruent cases in which evidence was collected contained at least five items of evidence, whereas one item of evidence was most commonly noted in cases that were not congruent. Likewise, the range for the number of items collected was 0 – 22 for congruent cases, while the range for

incongruent cases was 0 – 5. The presence of witnesses to corroborate the victims’ accounts of the incidents was noted in slightly over one fourth of all sexual assault cases (28.6%, or 66/231). The percentage of cases that included at least one witness was slightly higher for congruent cases than for incongruent cases (32.9% versus 26.3%, respectively).

The police reports and court records also noted if the victim or suspect was perceived to have mental health problems or a developmental impairment. Cases in which it was explicitly stated that the victim or suspect was perceived to have one or both of those conditions were included in the qualitative analysis. An example of a quote from a congruent case (#421, 2008) in which the victim was coded to reflect both a mental illness and a developmental disability is:

“It appears that (victim) may have a developmental disability. (Victim) told me that she is bipolar, suffers from depression, and is under the care of Southeast Human Service Center.”

Overall, victims were reported to have some form of mental illness (10%, or 23/231 cases) or developmental disability (9.5%, or 22/231 cases) more frequently than suspects (1.3%, or 3/231 and 5.2%, or 12/231 cases, respectively). A lower percentage of congruent cases noted victims with mental illness than incongruent cases (7.6%, or 6/79 cases versus 11.2%, or 17/152 cases, respectively). On the contrary, a higher percentage of congruent cases recorded that the victim had a developmental disability than did cases where the charges were dismissed or reduced (12.7%, or 10/79 cases versus 7.9%, or 12/152 cases, respectively). Inconsistencies in the victim’s statements were noted in a small amount of case documents (6.1%, or 14/231 of cases).

The percentage of cases that cited discrepancies in the victim’s statements was about twice as high in cases that were reduced or dismissed (7.3%, or 11/152 cases) than cases in which the charging decisions were in agreement (3.8%, or 3/79 cases). An example of a statement within a police report (#410, 2008) that was coded as having inconsistencies in the victim’s account of the

crime is, “I again asked (victim) if there was any other inaccuracies in what she is telling me and if she was actually raped or if she had sex with somebody and was afraid to tell her husband.”

The use of alcohol or drugs by the victim and suspect was observed at least once in approximately half of the police reports and court documents. Victims were noted to have used alcohol or drugs in 46.3% (or 107/231) of the cases, while suspects were recorded to have used drugs or alcohol in 50.2% (or 116/231) of the cases. An example of a quote from an incongruent case (# 62, 2001) in which the victim was coded as using alcohol or drugs is, “(Victim) appeared quite intoxicated, she had a strong odor of alcohol beverage on her breath and her speech was very slurred.” Another example from an incongruent case (#253, 2005) in which the victim and suspect were both coded as using substances is, “(Suspect) stated that while he was smoking marijuana with (victim), at one point she put informed him that she was ‘high’.” The use of alcohol or drugs was mentioned in the police reports and court documents once or twice in most of the cases, however; in congruent cases substance use by the victim was brought up as many as four times (5 cases) and substance use by the suspect as many as five times (1 case). In contrast, the highest frequency of substance use recorded by either the victim or suspect in cases where charges were not in agreement was three times (5 cases discussing victim substance use and 7 cases discussing suspect substance use).

The level of investigative effort was measured by the number of times the police followed-up on a claim of sexual assault after their initial contact. Upon examination of the police reports, it was found that the majority of all sexual assault cases (84%, or 194/231 of cases) received further attention at least once. The percentage of cases that contained at least one follow-up were similar between cases that were congruent (83.5%, or 66/79 cases) and cases that were not congruent (84.2%, or 128/152 cases). As displayed in Table 7, the number of follow up



reports was dispersed evenly between congruent and incongruent cases; however, a higher percentage of congruent cases received at least six follow-ups than did incongruent cases (22.8%, or 18/79 cases versus 10.5%, or 16/152 cases, respectively).

Finally, the qualitative analysis examined the reasons given by prosecutors for why they chose to pursue the cases as charged, and why they chose to reduce the charges or dismiss the case entirely. The reasons given by the prosecutors, according to the court documents, fell within one of three categories: (1) sufficient evidence to proceed, (2) insufficient evidence, or (3) victim withdrew participation or could not be located. Prosecutorial justification for all of the congruent cases (100%, or 79/79) fell within the category, “sufficient evidence to proceed.” Conversely, most of the cases in which the charging agreement was not congruent fell within the category, “insufficient evidence” (84.9%, or 129/152 cases). An example of a statement from a case (#126, 2002) in which prosecutors declined charges is, “Upon review of the entire thus far submitted report, attachments, and pictures mentioned in the police reports, and after having multiple conversations with Detective (name) regarding the evidence presently available in this matter, the State declines to criminally prosecute the suspect (name) for this incident at this time as there presently exists insufficient evidence to prove the case beyond a reasonable doubt to a unanimous jury.” In 15.1% (or 23/152) of the incongruent cases, the victim withdrew participation or could not be located. An example of a statement given by prosecutors in a case (#62, 2001) where the victim could not be located is, “Comes now the State’s Attorney of (County), (State), and moves this Honorable Court to dismiss, without prejudice, in the above-entitled action. The basis for this Motion is as follows. The Court continued this matter over one term, at the State’s request, to give the State an opportunity to locate the victim, (name). The (County) Sheriff’s Department still has been unable to locate and serve a subpoena to appear

upon the victim. The State has no reason to believe that it will be able to locate (victim) prior to the scheduled trial date of December 18, 2001. The State does not believe this matter should be tried without the victim's testimony."

Overall, the qualitative analysis yielded a modest amount of support for the focal concerns perspective, as the amount of evidence collected in congruent sexual assault cases was higher than the amount of evidence collected in incongruent cases. The focal concerns perspective posits that the greater the level of evidence, the less uncertainty there is that the incident occurred. In addition, physical force was reported in a higher percentage of cases that resulted in congruent charging decisions than in incongruent cases. According to the focal concerns perspective, the use of physical force in sexual assault incidents is an indicator of the seriousness of the offense. That is, the assault would be considered more seriousness and the offender more blameworthy, if it includes physical force or causes physical harm to the victim. Subsequently, incongruent cases were more frequently observed to lack force as a result of the victim being asleep or passed out during the incident than congruent cases. There was little indication, however, of a perceptual shorthand being used to guide decisions based on the age, race, or substance use by the victims and suspects as the percentages of such factors were evenly distributed between both groups. The importance of the findings from the quantitative and qualitative analyses will be discussed further in Chapter 5.

Table 7  
*Qualitative Frequencies for Each Category*

Category	All Cases (n=231)	Congruent Cases (n=79)		Incongruent Cases (n=152)	
	Number of Cases (%)	Number of Cases (%)	Number of times within cases	Number of Cases (%)	Number of times within cases
<b>Victim Young</b>	0 (0%)	0 (0%)	0	0 (0%)	0
<b>Suspect Young</b>	0 (0%)	0 (0%)	0	0 (0%)	0
<b>Victim Old</b>	3 (1.3%)	3 (3.8%)	1 time = 2 cases 2 times = 1 case	0 (0%)	0
<b>Suspect Old</b>	5 (2.2%)	2 (2.5%)	1 time = 1 case 2 times = 1 case	3 (2%)	1 time = 1 case 3 times = 1 case 4 times = 1 case
<b>Victim White</b>	51 (22.1%)	9 (11.4%)	1 time = 7 cases 2 times = 2 cases	42 (27.6%)	1 time = 39 cases 2 times = 3 cases
<b>Victim Non-White</b>	4 (1.7%)	1 (1.3%)	1 time = 1 case	3 (2%)	1 time = 2 cases 2 times = 1 case
<b>Suspect White</b>	71 (30.7%)	10 (12.7%)	1 time = 6 cases 2 times = 4 cases	61 (40.1%)	1 time = 51 cases 2 times = 9 cases 3 times = 1 case
<b>Suspect Non-White</b>	59 (25.5%)	20 (25.3%)	1 time = 13 cases 2 times = 2 cases 3 times = 3 cases 4 times = 2 cases	39 (25.7%)	1 time = 26 cases 2 times = 9 cases 3 times = 4 cases
<b>Non-Stranger</b>	131 (56.7%)	61 (77.2%)	1 time = 43 cases 2 times = 15 cases 3 times = 2 cases 4 times = 1 case	70 (46.1%)	1 time = 51 cases 2 times = 17 cases 3 times = 2 cases
<b>Stranger</b>	77 (33.3%)	8 (10.1%)	1 time = 8 cases	69 (45.4%)	1 time = 43 cases 2 times = 21cases 3 times = 4 cases 4 times = 1 case
<b>Verbal Threats &amp; Physical Force</b>	31 (13.4%)	15 (19%)	1 time = 6 cases 2 times = 5 cases 3 times = 3 cases 4 times = 1 case	16 (10.5%)	1 time = 11 cases 2 times = 4 cases 3 times = 1 case
<b>Physical Force Only</b>	108 (46.8%)	47 (59.5%)	1 time = 24 cases 2 times = 17 cases 3 times = 4 cases 4 times = 1 case 6 times = 1 case	61 (40.1%)	1 time = 40 cases 2 times = 20 cases 3 times = 1 case
<b>Verbal Threats Only</b>	13 (5.6%)	3 (3.8%)	1 time = 3 cases	10 (6.6%)	1 time = 8 cases 2 times = 1 case 3 times = 1 case
<b>No Force/Victim Asleep</b>	80 (34.6%)	17 (21.5%)	1 time = 12 cases 2 times = 3 cases 3 times = 2 cases	63 (41.4%)	1 time = 50 cases 2 times = 13 cases

Table 7. *Qualitative Frequencies for Each Category (continued)*

<b>Category</b>	<b>All Cases (n=231)</b>	<b>Congruent Cases (n=79)</b>		<b>Incongruent Cases (n=152)</b>	
	Number of Cases (%)	Number of Cases (%)	Number of times within cases	Number of Cases (%)	Number of times within cases
<b>Victim Mental Health Issues</b>	23 (10%)	6 (7.6%)	1 time = 3 cases 2 times = 3 cases	17 (11.2%)	1 time = 9 cases 2 times = 6 cases 3 times = 2 cases
<b>Suspect Mental Health Issues</b>	3 (1.3%)	2 (2.5%)	1 time = 2 cases	1 (0.7%)	2 times = 1 case
<b>Victim Developmental Delay</b>	22 (9.5%)	10 (12.7%)	1 time = 6 cases 2 times = 3 cases 6 times = 1 case	12 (7.9%)	1 time = 9 cases 2 times = 2 cases 4 times = 1 case
<b>Suspect Developmental Delay</b>	12 (5.2%)	3 (3.8%)	1 time = 1 case 2 times = 2 cases	9 (5.9%)	1 time = 6 cases 2 times = 3 cases
<b>Victim Substance Use</b>	107 (46.3%)	33 (41.8%)	1 time = 13 cases 2 times = 9 cases 3 times = 6 cases 4 times = 5 cases	74 (48.7%)	1 time = 40 cases 2 times = 29 cases 3 times = 5 cases
<b>Suspect Substance Use</b>	116 (50.2%)	38 (48.1%)	1 time = 13 cases 2 times = 17 cases 3 times = 5 cases 4 times = 2 cases 5 times = 1 case	78 (51.3%)	1 time = 45 cases 2 times = 26 cases 3 times = 7 cases
<b>Inconsistencies</b>	14 (6.1%)	3 (3.8%)	1 time = 2 cases 3 times = 1 case	11 (7.3%)	1 time = 3 cases 2 times = 4 cases 3 times = 2 cases 4 times = 2 cases
<b>Sufficient Evidence to Prosecute</b>	79 (34.2%)	79 (100%)	1 time = 79 cases	0 (0%)	0
<b>Victim Withdrawal</b>	23 (10%)	0 (0%)	0	23 (15.1%)	1 time = 23 cases
<b>Insufficient Evidence</b>	126 (54.5%)	0 (0%)	0	129 (84.9%)	1 time = 129 cases

Table 7. *Qualitative Frequencies for Each Category (continued)*

<b>Continuous variables</b>					
	<b>All Cases (n=231)</b>	<b>Congruent Cases (n=79)</b>		<b>Incongruent Cases (n=152)</b>	
<b>Victim Age</b>					
<b>18-20</b>	55 (23.8%)	17 (21.5%)	n = 79 Range = 18-80	38 (25%)	n = 152 Range = 18-62
<b>21-25</b>	76 (32.9%)	28 (35.4%)		48 (31.6%)	
<b>26-30</b>	34 (14.7%)	11 (13.9%)		23 (15.1%)	
<b>31-40</b>	34 (14.7%)	11 (13.9%)		23 (15.1%)	
<b>41+</b>	32 (13.9%)	12 (15.2%)		20 (13.2%)	
<b>Suspect Age</b>					
<b>18-20</b>	10 (4.5%)	5 (6.3%)	n = 79 Range = 18 - 73	5 (3.4%)	n = 145 Range = 18 - 77
<b>21-25</b>	46 (20.5%)	18 (22.8%)		28 (19.3%)	
<b>26-30</b>	39 (17%)	9 (11.4%)		30 (20.7%)	
<b>31-40</b>	56 (25%)	22 (27.8%)		34 (23.4%)	
<b>41+</b>	73 (32.6%)	25 (31.6%)		48 (33.1%)	
<b>Evidence</b>					
<b>None</b>	128 (55.4%)	36 (45.6%)	n = 79 Range = 0 - 22	92 (60.5%)	n = 152 Range = 0 - 5
<b>1 piece</b>	40 (17.3%)	6 (7.6%)		34 (22.4%)	
<b>2 pieces</b>	26 (11.3%)	11 (13.9%)		15 (9.9%)	
<b>3 pieces</b>	10 (4.3%)	4 (5.1%)		6 (3.9%)	
<b>4 pieces</b>	12 (5.2%)	8 (10.1%)		4 (2.5%)	
<b>5 +</b>	15 (6.5%)	14 (17.7%)		1 (0.7%)	
<b>Witnesses</b>					
<b>None</b>	165 (71.4%)	53 (67.1%)	n = 79 Range = 0 – 4	112 (73.7%)	n = 152 Range = 0 - 8
<b>1</b>	38 (16.5%)	16 (20.3%)		22 (14.5%)	
<b>2</b>	16 (7%)	6 (7.6%)		10 (6.6%)	
<b>3</b>	9 (3.9%)	3 (3.8%)		6 (3.9%)	
<b>4+</b>	3 (1.2%)	1 (1.3%)		2 (1.3%)	
<b>Follow-ups</b>					
<b>None</b>	37 (16%)	13 (16.5%)	n = 79 Range = 0 - 13	24 (15.8%)	n = 152 Range = 0 - 11
<b>1</b>	52 (22.5%)	18 (22.8%)		34 (22.4%)	
<b>2</b>	40 (17.3%)	10 (12.7%)		30 (19.7%)	
<b>3</b>	23 (10%)	4 (5.1%)		19 (12.5%)	
<b>4</b>	31 (13.4%)	10 (12.7%)		21 (13.8%)	
<b>5</b>	14 (6.1%)	6 (7.6%)		8 (5.3%)	
<b>6+</b>	34 (14.7%)	18 (22.8%)		16 (10.5%)	

## CHAPTER 5: DISCUSSION

The purpose of this study was to determine the degree to which charging decisions in sexual assault cases are in agreement between the police and prosecutors and to examine the factors that contribute to the congruency of charging decisions. Of particular interest was the degree to which the focal concerns perspective could be applied to charging decisions made by the police and prosecutors. The focal concerns perspective posits that the seriousness of the offense, the blameworthiness of the offender, and the likelihood that the case will result in a conviction underlie the decisions made by the police and prosecutors in sexual assault cases. According to this perspective, police and prosecutors incorporate both legal and extralegal factors into their decision-making processes.

The quantitative analysis revealed modest support for the focal concerns perspective; charges were more likely to be congruent when physical or forensic evidence was obtained from the scene of the sexual assault and when the assault resulted in physical injury to the victim. Both of those factors indicate the seriousness of the offense and the blameworthiness of the offender as suspects are viewed as more culpable when there is evidence that their actions result in physical harm to the victims. Only one variable that centered on the credibility of the victim, the victim went to the hospital for a medical exam, approached significance in the logistic regression. Likewise, two extralegal variables that focused on victim credibility were significant at the bivariate level, the victim physically resisted the attack and the incident was reported within 24 hours, but failed to reach significance in the binary logistic regression model. Overall, the results of the quantitative analysis are consistent with Holleran et al.'s (2010) finding that the primary factors that impact charging agreement between the police and prosecutors are legally-relevant evidentiary factors to indicate that the assault occurred. The findings are distinct from

Holleran et al.'s (2010) analysis as their study found that charges were more likely to be filed in sexual assault cases that involved strangers. The quantitative analysis in the current study found that the relationship between the victim and suspect bore no influence on charging agreement. Whether the victim was engaged in risky behavior did not impact charging decisions in the current study whereas charges were less likely when the victim was involved in risky behavior in the previous study examining charging agreement using the focal concerns perspective (Holleran et al., 2010).

The qualitative analysis revealed results that mirrored those in the quantitative analysis and offered further insight into the third focal concern, convictability. The amount of evidence contained within congruent cases was found to be greater than in cases that were not congruent. As physical injuries to the victim was shown to increase the likelihood of congruent charges in the quantitative analysis, it is not surprising that cases involving physical force were cited more frequently in congruent cases than incongruent cases in the content analysis. According to Albonetti (1986), characteristics such as victim injury and an abundance of evidence reduce the level of uncertainty that prosecutors face when determining whether a case will result in a conviction. Therefore, it is reasonable to predict that sexual assault cases with an abundance of physical and forensic evidence and those in which physical force was used against the victim will be prosecuted to the fullest extent. The results of this study confirm that prediction.

Prosecutorial justifications for their actions in the qualitative analysis elaborated further on the prosecutors' desire to process cases that are perceived to lead to convictions. When insufficient evidence was named as the reason for why cases were dismissed or reduced, prosecutors commonly cited that there was "insufficient evidence to prove the case beyond a reasonable doubt to a unanimous jury." This phrase implies that prosecutors attempt to predict

the manner in which a jury would respond to the case if it was processed through to the court stage of the criminal justice system. In formulating their predictions, the prosecutors in this study relied almost exclusively on evidence that corroborates the statutory elements of the crime, including evidence that suggests an unwanted sexual act was committed by force, threat of force, or coercion. For example, physical force was used in the commission of the sexual assault in 78.5% of cases that were congruent, compared to 50.6% of incongruent cases. Cases in which physical force was used against the victim are consistent with what Estrich (1987) termed, “real rapes.” Therefore, prosecutors may consider that a preponderance of citizens within society subscribe to the stereotypical view that real rapes involve physical attacks against the victim. When making their predictions of how a jury would perceive the incident, it is plausible that prosecutors are inclined to pursue charges in cases that involve physical force. Likewise, prosecutors may believe that sexual assault cases in which the victim was asleep at the time of the incident will not result in convictions. As a result, they may decide to dismiss such cases or reduce the charges as they are uncertain that a jury would convict suspects in such cases. In this study, only 21.5% of congruent cases involved sleeping victims, whereas 41.4% of incongruent cases noted that no force was used. Although a sleeping victim can still be a victim of sexual assault, this type of crime is not consistent with Estrich’s (1987) definition of a “real rape” or “real victim” and may bring about questions of whether consensual sex occurred. Prosecutors might believe that jurors in such cases may be reluctant to find the defendant guilty by the judicial standard of “beyond a reasonable doubt.” Consequently, prosecutors in this study might have been inclined to reduce or dismiss the charges in cases not fitting the description of a “real rape” in order to avoid an uncertain jury trial.



Past research has shown that just as prosecutors attempt to make predictions about how a jury will perceive a case, the police make predictions about how the case will be handled by the prosecutors. Police officers in this study are aware that sexual assault cases with overwhelming physical and forensic evidence and physical injuries to the victims are more readily accepted by prosecutors and are furthered through the criminal justice funnel; therefore, their focal concerns in sexual assault cases reflect an attempt to frame the cases for the prosecutors. Rather than incorporating many of the extralegal characteristics shown to be influential in previous studies, this study found that if a perceptual shorthand is used by police and prosecutors, it is primarily centered on the amount of evidence in the case and how that evidence will be received by prosecutors, and ultimately a jury. Cases that contain sufficient evidence in the eyes of the police are forwarded to the prosecutors for their review. This may account for why cases in which charging agreements differed were investigated to a similar extent as congruent cases, as the number of follow-up investigations conducted by the police was similar between the two groups of cases. Recent research has suggested that victims are less likely to withdraw their participation in the criminal justice process when they perceive that the police are investing a moderate amount of effort in their cases (Kelley & Campbell, 2013). Although victim satisfaction was not the focus of the current study, it is interesting to note that only 10% (23/231) of the victims in cases that were forwarded to prosecutors in this study withdrew participation once the case reached the prosecutors.

The relationship between the victim and suspect might have been a consideration in police and prosecutors' decisions as the percentage of congruent sexual assault cases that involved nonstrangers was much higher than the percentage of incongruent cases involving nonstrangers (77.2% versus 46.1%, respectively). Although the content analysis in the current

study could not ascertain whether this difference was statistically significant, results from previous studies that have examined the influence of the relationship between the victim and suspect in sexual assault cases have been mixed. Some studies have found that charges were more likely to be filed in cases involving strangers than nonstrangers (Holleran et al, 2010; Kerstetter, 1990), while other research has found the relationship does not influence charging decisions (Horney & Spohn, 1996; Kingsnorth et al., 1999).

As with all studies, the current research has a number of limitations. First, this study was constrained by the quality of the archival records from which the data were collected. It is possible that key factors that guided the decisions made by police and prosecutors were not reflected in the documents used for this study. In addition, the narratives in the police reports may not accurately reflect how the sexual assault cases were handled by the police officer or any biases held by the police and prosecutors. Second, the results from this study may not be generalizable as the sexual assault police reports and court documents were gleaned from one Midwestern police agency. However, the results from this study are generalizable to other places with similar characteristics to the agencies in this study. Third, of the 570 total cases, this study focused on the 231 cases that were forwarded to the prosecutors by the police. As such, this study could not ascertain why the remaining cases were not processed further. Fourth, the content analysis could not explain why some sexual assault cases resulted in congruent charges while others were reduced or dismissed. As this study is the first to incorporate both quantitative and qualitative methods to assess the focal concerns perspective among the charging agreement of police and prosecutors, the content analysis provided information about the numerical representation of previously-studied factors within cases. A logical extension would be to examine the latent content to determine whether there are underlying themes that went

unrecognized in the current study. Finally, the current study did not assess the potential influence of individual officer and prosecutor characteristics to determine whether these factors impacted the way reports of sexual assault were handled. Although the current study sought to examine the processing of sexual assaults from a systems perspective, individual officer and prosecutor characteristics may provide valuable insight to the way sexual assaults are handled. Despite the above limitations, this study provided insight into the focal concerns of the police and prosecutors for adult sexual assault cases in a Midwestern city.

In conclusion, this study emphasizes that the collection of evidence and the involvement of physical force and physical injuries within sexual assault incidents are the primary focal concerns, or the most significant factors, that ensure charging decisions made by the police are carried out by the prosecutors. Sexual assault cases that are predicted to lead to convictions are pursued further by police and prosecutors, while cases lacking these features are funneled out by way of dismissals or reduced charges. While the collection of evidence and physical injuries to the victim were found to be the only significant factors in predicting charging agreement in the quantitative analysis, the qualitative analysis offered unique insight into the prosecutors' decision-making in sexual assault cases that were forwarded to them. Their decisions to accept or reject cases were a direct reflection of whether they perceived that the case would lead to a conviction. The combination of quantitative and qualitative analyses yielded some support for the focal concerns perspective as the practical constraints and consequences of this perspective revolve around whether the cases are perceived to be "winnable" in court. In seeking winnable cases, the police and prosecutors in this study focus almost exclusively on the collection of evidence to avoid any uncertainty about the case.

An implication from the findings in this study includes police training efforts that are aimed at increasing the amount of evidence and the quality of evidence in sexual assault cases. Additionally, informing jurors and the general public about what a typical “real rape” looks like may help to reduce the amount of rape myths that are widely adopted by society. In turn, prosecutors may be less likely to reduce or dismiss charges in sexual assault cases. Further examination and replication is needed to assess whether the findings of this study are unique to the jurisdiction used.

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