

1969

## Effect in Philadelphia of Pennsylvania's Increased Penalties for Rape and Attempted Rape

Barry Schwartz

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Barry Schwartz, Effect in Philadelphia of Pennsylvania's Increased Penalties for Rape and Attempted Rape, 59 J. Crim. L. Criminology & Police Sci. 509 (1968)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

## THE EFFECT IN PHILADELPHIA OF PENNSYLVANIA'S INCREASED PENALTIES FOR RAPE AND ATTEMPTED RAPE\*

BARRY SCHWARTZ

Mr. Schwartz is a graduate student at the University of Pennsylvania, working for a Ph.D. in sociology. While concentrating in criminology he has also published in the area of social psychology. He received his Bachelor's degree from Temple University and his Master's from the University of Maryland.

In an attempt to evaluate the deterrent effect of Pennsylvania's increased penalties for rape the author subjects annual rape frequencies to regression-discontinuity analysis and also compares monthly variation in the seriousness and volume of rape. The analysis shows that neither the excitement leading up to the imposition of stronger penalties nor the actual imposition of such penalties affected the frequency or seriousness of rape in Philadelphia.

This paper is a revised version of a paper prepared in a seminar conducted by Professor Thorsten Sellin.

### BACKGROUND

*The Palm Sunday rape.* On April 3rd, 1966, at approximately 3:00 a.m., three Negro men broke into a West Philadelphia home occupied by an eighty-year-old widow, her forty-four-year old daughter and fourteen-year-old granddaughter. During a period of forty minutes, the intruders viciously beat up and raped both women and the child, ransacked and looted the home. The grandmother was found unconscious by the police and lying in a pool of blood. The mother and daughter were hysterical. Each of the three victims was ferociously dragged and thrown about (the fourteen-year old had been pulled across the floor by her hair); the upstairs and downstairs were spattered with blood. The grandmother later died from her wounds.<sup>1</sup>

On April 14, after considerable public outrage (expressed most forcefully in *The Philadelphia Inquirer*), an end was put to all continuances on trials for those accused of crimes leading to bodily injury. This administrative shift was justified in terms of its deterrent value by one of Philadelphia's leading jurists:

"Let the word go out loud and clear to the lawless element in the city of Philadelphia that the arrest for any crime of violence will result in speedy arraignment and trial. Such action should

\* The author wishes to express his appreciation to former Commissioner of Police Edward J. Bell for placing needed police data at his disposal. He is also indebted to the staff of the Research and Planning Division of the Philadelphia Police Department for their assistance.

<sup>1</sup> *The Philadelphia Inquirer*, April 4, 1966, pp. 1; 31. The grandmother died on April 22, 1966.

serve not only to remove those convicted of such crimes in our community but—perhaps of equal importance—to deter others who might be so inclined."<sup>2</sup>

The District Attorney in Philadelphia applauded the new policy. "Once the pattern seeps down through the criminal element," he said, "they will think twice...and this will bring about the desired deterrent effect"<sup>3</sup> The District Attorney did admit that "the people we're dealing with in rape cases aren't quite as sensitive to what's being printed in the papers as the average public. . . . But it takes time to seep down . . . eventually these rapists are going to realize that such an attack is going to put them in prison for a good part of their lives."<sup>4</sup>

*New penalties for rape.* By the middle of April the Palm Sunday Rape in West Philadelphia had become a *cause célèbre* throughout the state. Legislators began to speak of doubling the existing penalties. On Monday, April 18th the Senate, in special legislative session, voted 48-0 for a bill which doubled the 15 year maximum sentence and provided for a \$10,000 fine. This action was soon scuttled by the House, which set forth a more detailed and harsher measure providing for a maximum of life imprisonment and a \$10,000 fine for those convicted of rape involving serious bodily injury. This latter proposal passed 202-0 after 64 minutes of debate.<sup>5</sup>

<sup>2</sup> *Ibid.*, April 14, 1966, p. 1.

<sup>3</sup> *Ibid.*, April 15, 1966, p. 10.

<sup>4</sup> *The Evening Bulletin*, April 14, 1966, p. 1.

<sup>5</sup> *The Philadelphia Inquirer*, April 19, 1966, pp. 1; 37. The other House proposals that were defeated

One legislator expressed the hope that a compromise between Senate and House could be "speedily agreed upon...so the women of our Commonwealth can walk our streets safely and live in their homes more securely".<sup>6</sup> Thus, public safety was seen to depend upon the passage of a new rape law, and tempers were running short. *The Philadelphia Inquirer* suggested that "...the maneuverings indicated a desire by both groups to seize political advantage in the battle over enactment of legislation in an effort to curb the growing number of rape cases".<sup>7</sup> Both the Governor and Senate Majority Leader accused the Democrats of exploiting the rape crisis for political gain. After further accusations and counter-accusations a compromise, modelled basically after the House proposal, was agreed upon.<sup>8</sup>

On May 12, 1966, Governor Scranton signed into law the compromise bill which amended the Pennsylvania Penal Code of 1939. The chief provisions of this new law call for differential maximum penalties for rape and attempted rape with and without bodily injury,<sup>9</sup> and for harsher penalties for those convicted of second and subsequent offenses in attempted rape. Perhaps the most important feature of this act is the setting of a *minimum* sentence of 15 years for rape involving injury. (In Pennsylvania the law in most cases only provides maximum penalties.)

The maximum sentence for rape with bodily injury was increased from 15 years to life imprisonment. For rape without injury the top penalty was raised from 15 to 20 years. The maximum punishment for attempted rape with bodily injury was increased from 5 to 15 years of imprisonment, and from 5 to 7 years for attempted rape without injury to the victim. However, for

involved a proposal to introduce the "cat-o-nine tails", and another to extend the death penalty to rapists. (*Ibid.*, May 11, 1966, p. 32.)

<sup>6</sup> *Ibid.*, April 22, 1966, p. 7.

<sup>7</sup> *Ibid.*, April 26, 1966, p. 11.

<sup>8</sup> *Ibid.*, April 27, 1966, p. 6; May 10, 1966, p. 7. Interestingly, legislators had no special preference for either bill, despite the fact that the House and Senate versions differed broadly with respect to both the degree and structure of the rape penalties. Unanimity, then, was no measure of commitment in either House or Senate. The new rape penalties had definitely become a political issue which both parties were eager to exploit in the upcoming primaries.

<sup>9</sup> Bodily injury refers to that which "creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any member or organ of the body." (*Purdon's Pennsylvania Legislative Service*, 1966 Regular and Special Sessions, 1966, p. 27.)

those at least twice convicted of attempted rape, the maximum sentence was increased from 5 years to life imprisonment. The new law also provides for increased maximum fines.<sup>10</sup>

Upon passage of the bill one of its three sponsors (a state senator from West Philadelphia) declared:

"The passage of this bill is a major breakthrough in the fight on crime throughout the State, and especially in Philadelphia, and will bring about a definite deterrent on future rapists.

"When the word is circulated among these vicious criminals that they will be swiftly and severely punished; when they get the message that our organized society will not tolerate the violation of our women, these men will think twice before committing these uncivilized acts."<sup>11</sup>

It is the purpose of the remainder of this paper to evaluate the effectiveness of the increased penalties for rape in Pennsylvania.

#### THE PRESENT STUDY

The rationale underlying this investigation is that the deterrent effect of the new penalties should affect the rate of rape and attempted rape most forcefully in the very community in which the celebrated Palm Sunday offense occurred. If the new law had a desirable effect, a perceptible drop in the monthly rape rates could be expected after May 12, 1966—or even in April, the period of greatest public outrage in which much well-publicized planning for the new penalties took place. Before analyzing the data we must point out that only negligible changes in the adult male population have occurred in Philadelphia during the period of time studied.<sup>12</sup> We may therefore work directly with frequencies.

*Rapes and attempted rapes in 1965 and 1966.* Police records of combined rape and attempted

<sup>10</sup> For details of the 1939 Code and its amendment, see *Purdon's Pennsylvania Statutes Annotated*, Title 18 (Philadelphia: Biesel, 1963), pp. 210, 227; *Purdon's Pennsylvania Legislative Service*, 1966 Regular and Special Sessions, 1966, pp. 27-28.

<sup>11</sup> *The Philadelphia Inquirer*, May 12, 1966, p. 42.

<sup>12</sup> The number of males in Philadelphia between the ages of 15 and 54 has remained very stable. For the sake of completeness these estimates, which are available from 1960, are: 1960: 501,922; 1961: 528,100; 1962: 513,500; 1963: 514,700; 1964: 505,600; 1965: 524,900; 1966: 514,100. Sources: U.S. Bureau of the Census, *Characteristics of the Population*, Vol. I, Part 40, 1960, p. 243; Philadelphia, Department of Public Health, Division of Statistics and Research, *Population Estimates, 1962-1965, 1967*; Philadelphia, Department of Public Health, Division of Statistics and Research, *Annual Statistical Report*, 1965, p. 1.

rape in the months of 1965 and 1966 immediately cast doubt upon the deterrent value of the new penal measures. This information is presented in Table I.

It can be seen that decreases of 16, 5 and 20 were found in April, May and June of 1966; however, the increases of 21, 5 and 3 in July, August and September disillusioned anyone who took the former decreases as indications of the deterrent effect of public attention and the rape legislation. Indeed, the number of rapes taking place after June 1st was 205 in both 1965 and 1966. On the basis of these figures, then, no long-run deterrent effect could be claimed.

*Rapes and attempted rapes: 1958-1966.* It may properly be argued that the monthly distribution of rape and attempted rape in 1965 was for some reason or other an unusual one, and therefore an unfair basis of comparison with the 1966 data. A more proper method would involve the enumeration of rape and attempted rape over a number of years and the expression of their monthly frequencies as a proportion of the trend (regression line) that best represents them.<sup>13</sup> This method would provide a distribution of values for each month of the year which are standardized with respect to seasonal variation. Such a procedure allows us to compare the monthly ratios of actual to trend for rape and attempted rape in 1966 with those of any other year. If the rape legislation produced a deterrent effect we would expect the ratios for the months following April or May of 1966 to be part of the lower tail of their respective distributions. In Figure 1 the 1966 values are circled.

The ratios of actual to trend in rape and attempted rape for 1966 are fairly consistent. Throughout the year values are found generally to be in

<sup>13</sup> The values of  $a$  and  $b$  in this equation ( $Y = a + bX$ ) are  $Y = 44.065 + (-.075 X)$ . Therefore, the trend in frequency of rape and attempted rape over the past nine years is decreasing slightly. The annual volumes of rape and attempted rape over the nine year period are:

1958: 556	1961: 500	1964: 461
1959: 642	1962: 523	1965: 535
1960: 529	1963: 460	1966: 535

In computing the line of best fit January, 1958 was omitted in order to make the number of months an odd number. This reduced computational labor.

This technique involves an examination of the regression line with a view to confirming or disconfirming a discontinuity at the cutting points implied in the hypothesis. As such, we are dealing with one mode of "Regression-Discontinuity Analysis." See CAMPBELL & STANLEY, *EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH* 61-64 (1966).

TABLE I  
RAPES AND ATTEMPTED RAPES IN PHILADELPHIA:  
1/65-12/66\*

Month	1965	1966	Difference 1965-1966
January.....	47	42	-5
February.....	28	43	+15
March.....	29	40	+11
April.....	50	34	-16
May.....	51	46	-5
June.....	54	34	-20
July.....	42	63	+21
August.....	50	55	+5
September.....	45	48	+3
October.....	52	46	-6
November.....	41	43	+2
December.....	46	41	-5
Total.....	535	535	0

\* Source: Philadelphia Police Department, *Major Crime* (Monthly Reports), January, 1966-December, 1966. (The 1965 data are included in the 1966 reports.)

the upper part of the distribution. The 1966 values are only found below the monthly means of the nine year period in April and June—and in neither of these months are the values extreme. In all other months, including May, 1966 (the month in which the legislation was passed) values are somewhat above average. If we compare the 1966 ratios of actual to trend before and after May or June we find nothing unusual in either set. There is certainly no indication of a decline in these values after the spring months.

Incidentally, the data at the bottom of Figure I enable us to evaluate the extent to which the year 1965 serves as an adequate base against which to judge the 1966 monthly breakdowns of rape and attempted rape. The 1965 ratios were below the mean of the nine year period in February, March, July, and August. It can also be seen that these ratios are highest not in July and August as is the case in 1966 and for the mean of the nine year period, but in May, June and October. In this particular year, then, seasonal variations were atypical. Therefore, 1965 was not the best possible period to use as a base of comparison for the 1966 data.

*Rape and attempted rape: 1966.* Despite the fact that no reduction in the total number of rapes and attempted rapes appears to have been provoked by the imposition of harsher penalties,

Ratio	Month											
	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
1.50-1.59				'			⊙	'				
1.40-1.49							'		'	'		
1.30-1.39				'	'	"		⊙		'	'	
1.20-1.29	'			"	"		'	"		'		
1.10-1.19	"				⊙		'	///	⊙	⊙	'	'
1.00-1.09	⊙	⊙	"	'	'	"	"		///		⊙	⊙
.90-.99			⊙		"	///	"	'	"	"	"	"
.80-.89			'	⊙	"	⊙	'		'	'	"	///
.70-.79	"	///	'	"						'		'
.60-.69		///	'	'		'			'		'	'
.50-.59			'									
.40-.49			'									
.30-.39	'											
Mean	.94	.79	.81	1.05	1.06	1.03	1.13	1.23	1.02	1.08	.98	.88
1965	1.12	.67	.70	1.20	1.23	1.30	1.02	1.21	1.09	1.26	1.00	1.12
1966	1.03	1.05	.98	.84	1.13	.84	1.56	1.31	1.19	1.14	1.07	1.02

FIGURE 1

RATIOS OF ACTUAL TO TREND FOR RAPES AND ATTEMPTED RAPES DURING A PERIOD OF 107 MONTHS:  
2/58-12/66

Source: Philadelphia Police Department, *Statistical Report*, 1961-1965; *Major Crime* (Monthly Reports), January 1966-December 1966. (Data for 1958-1960 are included in the 1961 *Statistical Report*.)

it is entirely possible that the *proportion* of forcible rapes has declined while the proportion of attempted rapes has increased. Since these modes of assault are confounded in the data published by the Philadelphia Police it was necessary to consult the Department's unpublished information in order to break down these totals.

All forcible and attempted rapes reported to the police between March 1, 1966 and July 31, 1966 were recorded. The justification for the use of this particular time interval is as follows: First, we have reason to suspect that sexual assaults may have decreased between April 3rd (the date of the Palm Sunday episode) and May 12th (date of the imposition of the more severe penalties). Public outrage had been very well articulated through the news media and may have served as a deterrent. Secondly, such administrative measures as the speeding-up of trials for those accused of crimes leading to bodily injury were explicitly imposed with a view to preventing violent offenses. Our choice of data enables us to

compare the period of March 1st to April 3rd with that of April 3rd to May 12th with respect to the volumes of rape and attempted rape. But the major claim is for the new penalties themselves, which must be given sufficient time to prove themselves. As Philadelphia's District Attorney noted, it may take time for the news of the stiffer penalties to "seep down" to the criminal element. But if the May 12th legislation was effective one might expect that a reduction in the number of forcible rapes would be apparent by July 31st. In table II we find the volumes of rape and attempted rape by age groups within the time intervals referred to.

Table 2 shows that the proportion of forcible rapes by adult offenders has not declined. In fact this proportion has risen slightly from .489 in Period 1 to .571 and .500 in Periods 2 and 3. But if we combine Periods 1 and 2 we find .529 of the total to consist of forcible rape by adults compared to .500 after May 12th (Period 3)—a hardly noticeable difference.

It may be yet argued that the new rape penalties could have brought about a deterrent effect by reducing the *seriousness* of forcible rapes. In other words, the imposition of harsher punishments may have no effect upon the volume of the offenses to which they are directed, but may succeed in reducing their intensity. This possibility was tested by drawing out the Police Investigation Reports on each of the 221<sup>14</sup> cases of rape and attempted rape reported to the Philadelphia Police between March 1st and July 31st of 1966. The description of the offense in all forcible rape cases was then examined and scored by the Sellin-Wolfgang Index.<sup>15</sup> The manner in which the events distributed themselves is shown in Table III.

It can be seen that the scores in Table III are markedly skewed,<sup>16</sup> suggesting the median as the appropriate measure of central tendency. Clearly, the median seriousness scores are almost identical in each of the three time periods, which forces us to reject the idea that the new penalties could have brought about a deterrent effect by reducing the *seriousness* of forcible rapes.

On the other hand, the seriousness of a rape may be increased by theft or damage as well as by bodily injury. It is therefore possible for the *median* seriousness of this offense to remain constant over time while the bodily injury component decreases. A rapist, in other words, may not injure his victim by force of the more severe penalties for such an offense but compensate (as

<sup>14</sup> As can be seen in Table 1, the Philadelphia Police reported only 217 cases of rape and attempted rape in their monthly *Major Crimes* reports. The small difference of 4 created by the 221 cases drawn by the investigator has chiefly to do with administrative lags. An investigation report, for example, may be returned to the arresting officer for more information and not be re-submitted in time for inclusion into the published monthly report in which it belongs.

<sup>15</sup> SELLIN & WOLFGANG, *THE MEASUREMENT OF DELINQUENCY* 401-412 (1964).

<sup>16</sup> Professor Sellin has suggested that in evaluating the impact of crime control measures which have been established as a result of or in response to a particularly brutal or unusual offense, the offense itself be taken out of the data and not counted. The brunt of this rationale is seen in Table 3, whose first column contains the Palm Sunday offense. *The seriousness of this crime is so unusually high that it guarantees a reduction in seriousness in the periods following the one in which it itself occurred.* Notice, for example, that the mean seriousness score of 15.18 in Period 1 drops to 13.70 and 13.24 in Periods 2 and 3. If the Palm Sunday offense is removed, the mean of Period 1 drops to 13.95. (All means have been computed with ungrouped data.) However, we may retain this offense in our data as long as we employ the median as our measure of central tendency, for this is insensitive to the extreme or unusual values in a distribution.

TABLE II  
FORCIBLE AND ATTEMPTED RAPES BY AGE GROUP  
OF OFFENDER: PHILADELPHIA, 3/1/66-7/31/66

Offenses and Age Group of Offender	Period 1	Period 2	Period 3	Total
	March 1-April 3	April 4-May 12	May 13-July 31	
Forcible Rape				
Adult.....	22	24	67	113
Juvenile*.....	4	4	12	20
Unknown.....		2	7	9
Attempted Rape				
Adult.....	17	8	39	64
Juvenile.....	1	3	5	9
Unknown.....	1	1	4	6
Total.....	45	42	134	221
Forcible Rape by Adults; total.....	.489	.571	.500	.511

\* Seventeen years of age and under; adult: Eighteen years of age and over.

TABLE III  
SERIOUSNESS SCORES OF 113 FORCIBLE RAPES  
COMMITTED BY ADULT OFFENDERS IN  
PHILADELPHIA: 3/1/66-7/31/66

Score	Period 1	Period 2	Period 3	Total
	March 1-April 3	April 4-May 12	May 13-July 31	
11	7	7	25	39) 45
12	3	2	1	
13		2	7	9) 35
14	6	4	16	
15		3	7	10) 16
16	1	2	3	
17		1	7	8) 11
18	2	1		
19				) 4
20+	3	1		
Unknown		1	1	2
Total	22	24	67	113
Mean	15.18	13.70	13.32	13.77
Median	14.16	14.12	14.00	14.10

TABLE IV  
INJURY SCORES OF 113 FORCIBLE RAPES  
COMMITTED BY ADULT OFFENDERS IN  
PHILADELPHIA: 3/1/66-7/31/66

Score	Period 1	Period 2	Period 3	Total
	March 1- April 3	April 4- May 12	May 13- July 31	
11	10	13	28	51
12				
13	4	6	13	23
14	3	1	18	
15	1	1	1	3
16	1		3	
17	1	1	3	5
18				
19	1	1		2
20+	1			
Unknown		1	1	2
Total	22	24	67	113
Mean	14.05	12.43	12.77	12.95
Median	13.25	11.88	13.38	13.24

TABLE V  
INJURY CLASSIFICATIONS OF 64 ATTEMPTED RAPES  
BY ADULT OFFENDERS IN PHILADELPHIA:  
3/1/65-7/31/66

Injury Group	Period 1	Period 2	Period 3	Total
	March 1- April 3	April 4- May 12	May 13- July 31	
No Injury.....	9	3	15	27
Minor Injury.....	6	2	11	19
Treated.....		3	10	13
Hospitalized.....	2		3	5
Total.....	17	8	39	64
Treated and Hospitalized as a Proportion of Total.....	.118	.375	.333	.281

it were) for this renunciation by stealing from the victim, or by damaging her property in some way. Thus, it is necessary to isolate the injury component of the distribution of total scores set down in Table III. This is done in Table IV.

We find ourselves again compelled to reject the suggestion that more injury was inflicted upon the victim prior to the imposition of harsher penalties than after. As can be seen in Table IV the median injury score in Period 1 is 13.25 compared to 11.88 and 13.24 in the second and third periods.

The degrees of injury for attempted rape were obtained by classifying the data into the categories shown in Table V. Plainly enough, there is no indication that the proportion of treated and hospitalized victims decreased after April 3rd or May 12th.

Before concluding let us remind ourselves that the law now provides higher penalties for rapes and attempted rapes which create "a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any member or organ of the body." But it has not been possible to evaluate all of our cases according to this criterion—chiefly because we could not follow up the victims who had been treated or hospitalized.<sup>17</sup> For this reason, the distributions in Tables III to V are probably very slight underestimates of the true degree of seriousness. (This is of course true for each time period; the error does not, therefore, affect the propriety of our comparisons.)

#### CONCLUSION

We bring this investigation to a close by noting that Philadelphia found no relief from forcible and attempted rape either during the excitement leading up to the imposition of stronger penalties for these offenses or after the imposition itself. This holds true with respect to both the frequency and intensity of these crimes. We are therefore bound to conclude that Pennsylvania's new deterrent strategy against rape was a failure as far as Philadelphia is concerned.

The inefficacy of the new legislation should create much disappointment among those in Philadelphia who had taken for granted the deterrent impact of increased penalties. Of course, the question of deterrence was quite beside the point for those who supported the new legislation for the sake of a more perfect retribution, or with

<sup>17</sup> The recorded seriousness score of the Palm Sunday event, for example, is 41. However, the eventual death of the grandmother (not recorded on the police Investigation Report) would increase this score. Other cases must surely exist whose more serious consequences are not felt until some time after their description and recording by the police.

a view to the May primary elections. Whatever their motives, however, legislators and other officials are not to be held alone responsible for the misguidance to which the Philadelphia public was subjected. The criminological community could confront the legislator with few compelling arguments against his plans for greater and more costly penalties. Very little is actually known about the relationship between rape and penal sanction. Indeed, the deterrent effect of criminal law is a question which cuts across almost all modes of offense. Writes Adenaes:

"While general prevention has occupied and still occupies a central position in the philosophy of criminal law, in penal legislation and in the sentencing policies of the courts, it is almost totally neglected in criminology and sociology.

It is a deplorable fact that practically no empirical research is being carried out on the subject. As long as no research results are available legislators and judges necessarily must base their decisions on common sense alone."<sup>18</sup>

This study is meant to contribute to the body of knowledge which Andenaes calls for.

<sup>18</sup> Johannes Andenaes, *Punishment and the Problem of General Prevention*, a paper read before the International Society of Criminology, Montreal, 1965, p. 8. This same exhortation was made by Andenaes more than ten years earlier in his *General Prevention—Illusion or Reality?*, 43 J. CRIM. L., C. & P. S 176 (1952). See also Thorsten Sellin, *L'Effet Intimidant de la Peine*, 4 *Revue de Science Criminelle et de Droit Penal Comparé* 593 (1960). The lack of empirical data in respect to the deterrent effect of criminal law has also been discussed by John C. Ball, who presents a paradigm for future research in *The Deterrence Concept in Criminology and Law*, 46 J. CRIM. L., C. & P. S. 347 (1955).