

The Philadelphia Model: Advocate Review of Police Sex Crime Files

2019 National Sexual Assault Conference
Beyond the Breakthrough

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- High Impact Litigation & Legal Advocacy
- Public Policy
- Community Education

Reproductive Rights and Justice, Sexual and Domestic Violence, Family Law Reform, Discrimination in Athletics, Employment, Education, and Insurance

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Today's Goals

We will discuss:

- History of Rape Law
- The Philadelphia Crisis and the Response
- Development of the Philadelphia Model
- Academic Research
- Recommendations for Systemic Reform

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History of Rape Law

U.S. Law Developed from English Common Law:

- Rape – A crime against property, not person
- Female reproductive capacity, in the form of her chastity, was the property
 - essential to establish patriarchal inheritance rights
 - “owned” by father and transferred to the man who became her husband

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Historic Elements of Rape Law

Carnal knowledge

- Male (penile)-female (vagina) penetration
- Lack of Consent (against her will)
- To establish lack of consent
 - force was needed
- To establish force, resistance necessary
 - Resist to the utmost was the standard

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History of Rape Law

- Rape laws protected the economic interests of men
- Rape was theft of property
- Bodily integrity of the female was irrelevant.

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History of Rape Law

Under the law

- Only unmarried female virgins
- Married women cannot be raped by spouse
“implied, irrevocable consent”
- Non-virginal females cannot be raped
- Men could not be raped
- Rape of orifices other than the vagina was not rape

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Legal Consequences

Numerous Procedural Anomalies in Legal Proceedings Unique to Rape

- Corroborating victim's testimony by independent testimony
- Serious physical injury
- Prompt complaint to law enforcement
- Cautionary instructions impugning victim's credibility to juries
- Introduction of past sexual history
- Excessive penalties, e.g., death penalty
 - Rarely used except in lynching of guiltless Black men.

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Legal Consequences

Impact of Procedural Issues

- Rules and requirements imposed only in rape and sexual assault cases
- Disadvantaged and stigmatized rape complaints
- Rendered successful prosecution extraordinarily difficult.

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1970s Sweeping Law Reform by Grassroots Feminists

- Assaultive nature of rape recognized
- Court decisions and statutory changes rescinded requirements of
 - Resistance
 - Corroboration
 - Prompt reporting to law enforcement
 - Introduction of woman's past sexual history (rape shield laws).
 - Elimination of marital exemption

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Philadelphia: Early Reforms

1972 - Women Organized Against Rape: one of the first rape crisis centers in the nation

1978 - Creation of Rape Prosecution Unit
District Attorney's Office

1981 - Creation of Special Victims Unit (SVU) in
Philadelphia Police Department

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Philadelphia: The Crisis

Fall 1999 *Philadelphia Inquirer* reported:

- PPD dismissed one-third of reports of rape and other sex crimes as "Investigation of Person" – a non-UCR (non-criminal) code.
- Over at least two decades thousands of cases were not investigated.
- No crime code – no investigation.

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Unknown Philadelphia History

- Early 1970's: high unfounded rate and use of non-offense "throw-away" codes in 11% of sex crimes ("The Aftermath of Rape" 1979)
- 1983: 43% rate of unfounded (false or baseless) rape (FBI audit)
- 1977-97: 30 % of rapes and other sex crimes coded as **non-crimes** under code 2701 "investigation of person"

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Putting Faces on the Numbers

Philadelphia Inquirer reported:

- Three women in same neighborhood not believed, strangle marks ignored, cases classified as "Investigation of Person," Shannon Schieber murdered by serial rapist.
- Child kidnapped, raped, identified rapist. SVU officer left card at rapist house. No further follow-up.
- Teenage girls raped by babysitter's boyfriend, strong evidence, good forensics, no action.

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WLP's Initial Response

- Collaborated with WOAR
- Met with PPD Leadership
- Demanded reinvestigation of cases misclassified
- Requested & Testified at City Council hearings
- Responded to and encouraged ongoing news coverage
- Responded to calls from victims

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Biased Treatment Revealed

Are you sure you didn't initiate it?

Are you sure you didn't have too much to drink?

One of you is lying. I'm giving you a polygraph. One of you is going to jail.

If I find out you're lying, you're going to jail. Long road ahead of you.

Do you ever fantasize? Exaggerate?

Sometimes women just make up stuff to get back at men.

To boyfriend: Is she known to be a liar?

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Systemic Consequences of Bias

- Victim interrogation instead of interview
- Presume victim not credible
- Focus on victim behavior, not accused
- Threats of & polygraphing victim
- Threats of & charging victims with crimes
- More concern for the reputation of the accused than the victim
- Discourage reporting

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Why?

- Gender Bias: Myths & Stereotypes
- Lack of leadership and poor supervision
- Pressure to keep crime data low
- Narrow definition of Rape in UCR Crime Reporting System (male-female penile-vaginal by force)
- Vicarious Trauma

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Police Reform: Reinvestigation of Cases Classified as "Investigation of Person"

Results:

3,119 complaints reviewed (1995-1997)*

- 681 first degree felony rapes
- 1,141 other sex crimes

**(1998-1999 already audited by new police commissioner)*

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Police Reform:

- Reorganization of SVU
- Increased Supervision & Accountability
- Revision of Classification Manual
- Invitation to advocates to review sex crime files
- Relocation of SVU
- Crime alerts potential repeat offender

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Police Reform: Advocate Case Review

Annual case review:

**Sustained and embraced by
four Police Commissioners and
three SVU Captains since 2000.**

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Advocate Case Review

Advocates

- Women's Law Project
- WOAR
- Support Center for Child Advocates
- Philadelphia Children's Alliance

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Case Review Process

- Review files
 - Approximately 400 cases each year
 - Unfounded rape (including attempted)
 - Random sample of all open sex crimes
 - Non-UCR: e.g., third party child abuse & medical reports
- Communicate Findings & Questions
- Confidentiality
- Leadership Follow-Up

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Case Review Goal:

Systems Improvement

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Case Review Objectives

- Was investigation thorough?
 - Were all witnesses interviewed?
 - Was all evidence collected and tested?
 - Were rape kit & other test results returned to investigator?

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Case Review Objectives

- Was there bias?
 - Were questions blaming, elevating interests of accused over victim?
 - Was victim accused of lying?
 - Were interviews proper, i.e., not interrogation?
 - If victim recanted, was it coerced?

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Case Review Objectives

- Was case classified correctly?
- Was case properly cleared?
 - Arrest
 - Exceptional Clearance
 - (no arrest due to causes outside of law enforcement: e.g., noncooperation or prosecutorial declination)
- Was case properly unfounded?
- Did supervisor review and approve?

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What Advocates Had to Learn

State Sex Crime Laws

Classification Systems

- F.B.I. Uniform Crime Summary Reporting System and National Incident Reporting System (NIBRS)
 - Founding/Unfounding
 - Clearance: Arrest, Exceptional Means

Local Classification System

- Investigation of Person (non-crime codes)

Police Policies, Procedures, Training

Academic Research

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Lessons Learned in Philadelphia

Leadership, Management, & Accountability

- Clear message top down: victim centered, no downgrading
- Supervision
- External audit and feedback
- Community Engagement
- Transparency
- Vicarious trauma
- Importance of data

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Research Findings

Extra-legal (irrelevant) factors contribute to police decision not to arrest:

- risk-taking behavior (drinking, walking alone, accepting a ride from a stranger)
- mental health issues
- inability to recall assault details
- uncooperative or deemed to be uncooperative
- delayed reporting
- lack of witnesses or physical evidence.

Morabito, M. S., Williams, L. M., & Pattavina, A. (2019). *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S.* Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/252689.pdf>

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Research Findings

For every 100 rapes or attempted rapes reported police, 30 cases are cleared by exceptional means most commonly due to:

- Prosecutor declination for other than probable cause, or
- Complainant lack of cooperation.

Morabito, M. S., Williams, L. M., & Pattavina, A. (2019). *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S.* Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/252689.pdf>

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Research Findings

High attrition in judicial system: for every 100 rapes reported to law enforcement:

- 19 lead to arrest
- 5 end in guilty verdicts
- 1 case ends in guilty verdict through trial

Conclusion: only 6% of complaints end in conviction or guilty plea.

Morabito, M. S., Williams, L. M., & Pattavina, A. (2019). *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S.* (assessing 3,269 victim reports from 6 jurisdictions) <https://www.ncjrs.gov/pdffiles1/nij/grants/252689.pdf>

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Research Findings

- Police officers scrutinize of rape victims who don't fit the "ideal" victim profile.
- Police interrogate victims whose reports they believe are false, with no indication of similar officer behavior with other crime victims.
- Police work influences whether prosecutors take the case.

Rachel Venema, *Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports*, 31 J. of Interpersonal Violence 872-899 (2016) <https://doi.org/10.1177/0886260514556765>

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Research Findings

Only a fraction of sexual assault complaints are false (between 2% and 10%).

Lisak et al. (2010). False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases. *Violence Against Women*, 16(12), 1318–1334. <https://doi.org/10.1177/1077801210387747>

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Philly Not Alone

Journalists have reported crises in Cleveland, Baltimore St. Louis, New Orleans, New York City, Milwaukee, and Nashville, Minneapolis, Austin and cities across the U.S. and Canada:

- refusing to accept cases for investigation
- misclassifying cases in non-criminal categories resulting in no investigation
- high unfounding rates
- high exceptional clearance rates
- downgrading charges
- not testing or destroying rape kits

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Local to National: UCR Rape

- Sept. 2001: Letter to FBI requesting change in FBI UCR definition of rape signed by 93 state-based and national organizations
- 1929 Legacy Definition: "The carnal knowledge of a female forcibly and against her will."
- 2012 New Definition: "Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."

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Uniform Crime Report (UCR)

- Purpose: to provide nationwide view of crime
- Method: voluntary collection of crime data from states
- Two Systems:
 - UCR Summary Reporting System
 - NIBRS: National Incident-Based Reporting System
- Publication limited
- Importance: assessment of performance

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Changes to Uniform Crime Report

- January 2021 End of Summary Reporting System
- Switchover to NIBRS
- NIBRS
 - Does not collect data on "unfounded"
 - Does not use new definition of rape
 - "Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."
 - Retains archaic/inappropriate definitions re penetration crimes
 - Archaic terms: carnal knowledge, sodomy, fondling
 - Recognizes rape of men but only by opposite sex

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WLP Response to Changes

Requests to FBI Advisory Policy Board

- Collection of unfounded data
- Replacement of rape definition with 2012 SRS definition
- Transparency of rape data: ##police reports, unfoundeds, arrests, exceptional clearances (including “refusal to cooperate” and “prosecutorial declination”)

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Recommendations for Advocates

- Review and analyze UCR data for your jurisdiction.
- Request more detailed data and local policies, procedures, and classification systems.
- Understand state crime laws, police protocols, and UCR data collection.
- Ally with local government and media regarding any concerns.
- Collaborate with legal advocates.
- Explore development of an external review process.
- Review academic research.

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Local to National: DOJ

- Aug. 2011: Train DOJ on Philadelphia audit model
- DOJ Investigations of New Orleans, Puerto Rico, Missoula, Baltimore Police (2011-2016) result in first DOJ finding of gender-biased policing
- Summer 2012: Advocates deliver proposed guidance to and meet with DOJ Civil Rights Division about request to publish guidance to address gender bias in police response to sexual assault and domestic violence

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Local to National: DOJ Guidance

- Aug. 2015: Roundtable on Gender Bias in Policing sponsored by DOJ COPS and Police Executive Research Forum
- Dec. 2015: Attorney General Lynch announces publication of *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*

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Local to National: Crimes Codes

June 5, 2012: *RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM* by Carol E. Tracy, Terry L. Fromson, Women's Law Project and Jennifer Gentile Long, Charlene Whitman, AEquitas

Presented to the National Research Council of the National Academies Committee on National Statistics Panel on Measuring Rape and Sexual Assault in the Bureau of Justice Statistics Household Surveys

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Local to National: Crime Codes

March 2012 and ongoing: Adviser to American Law Institute Project on Sexual Assault and Related Offenses

This project is re-examining Article 213 of the Model Penal Code, which was ahead of its time when approved by ALI in 1962, but is now outdated and no longer a reliable guide for legislatures and courts.

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Resources

U.S. Senate, Subcommittee on Crime and Drugs, *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases* (September 14, 2010) Testimonies available at: <http://www.judiciary.senate.gov/meetings/rape-in-the-united-states-the-chronic-failure-to-report-and-investigate-rape-cases>

UCR SRS User Manual (2013) <https://ucr.fbi.gov/nibrs/summary-reporting-system-srs-user-manual>

NIBRS User Manual (2013) <https://ucr.fbi.gov/nibrs/nibrs-user-manual>

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Resources

PERF, *Improving Police Response to Sex Crimes* (March, 2012) http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf

WLP and Aequitas, *Rape and Sexual Assault in the Legal System* (June 2012) (reprinted with permission from the National Academy of Sciences, Courtesy of the National Academies Press, Washington, D.C.. See the National Research Council's final report: Candace Kruttschnitt, William D. Kalesbeek & Carol C. House, eds., Nat'l Academy of Sciences, *Estimating the Incidence of Rape and Sexual Assault* (2013) http://www.nap.edu/catalog.php?record_id=18605.

WLP, *Advocacy to Improve Police Response to Sex Crimes* (2013) http://www.womenslawproject.org/resources/Policy_Brief_Improving_Police_Response_to_Sexual_Assault_Feb2013_FINAL.pdf

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Resources

DOJ, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2015)

<https://www.justice.gov/opa/file/799366/download>

PERF, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence: A Roundtable Discussion* (2016)

<http://ric-zai-inc.com/Publications/cops-w0796-pub.pdf>

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