

Introduction to Rape and Sexual Assault

Without a doubt there are few categories of crime that affect the community and their victims as much as rape, sexual assaults, and the other so-called sex-related or sex crimes.¹ The impact of rapes and sexual assault crimes can be seen in the very way we live our lives and raise our children because they affect our overall sense of safety. We see this in a constant barrage of sex and violence in the media; one need only to read newspapers or watch TV to see examples of it. Media coverage of sex crimes becomes particularly saturated when there is a high-profile crime involving a well known victim or offender, or when there are especially gruesome aspects of the crime. Perhaps even worse is the community response and fear when there are reports of a serial offender operating within a particular jurisdiction, with multiple victims. Whenever these crimes are reported, the public becomes riveted to every salacious detail of what happened; much like our reality TV programs, these events can be both captivating and repulsive at the same time. However, the problem with rape and sexual offenses is far more complex than just the terrible nature of the crimes themselves and the fear they bring to so many. It is the combination of the crime and the community's reaction, coupled with the many myths and victim stereotypes that make this type of crime so difficult to investigate and even more difficult to prosecute.

Lanning and Hazelwood² address several important concepts in the problem of investigating and prosecuting these types of crimes. First, they address the general societal attitude of *denial* concerning aspects of child sexual abuse, child prostitutes, rape, and other sexual crimes. Denial in this context means

¹ The terms *sex-related crimes* and *sex crimes* are used interchangeably to describe the many offenses involving sex acts. What constitutes these offenses may differ by culture, jurisdiction, and legal definition. However, they generally include but are not limited to any forced sexual acts or other offenses including sodomy, incest, and child pornography, and may include status crimes such as carnal knowledge.

² Lanning, K. V., & Hazelwood, R. R. (1988, September). The maligned investigators of criminal sexuality. *FBI Law Enforcement Bulletin*, 57(9), 1–10.

that people simply do not want to believe or accept that these things happen in our society or that reputable, well known, and respected people are sometimes involved. The second problem is the general stereotypical understanding of the term *sex crimes*. Because when we hear the word “sex” we think of terms like pleasure, ecstasy, warmth, sharing, love, and emotion, which of course are generally pleasant and comforting to us. But the word “crime” is associated with violence, anger, devastation, and fear, which are often linked to physical harm and punishment. The two words really do not go together and for laymen what is generally heard or understood is the *sex* part of the term. Lanning and Hazelwood offer a much better description of these crimes as *interpersonal violence* or *criminal sexuality* because these terms better reflect what these crimes are actually about.

Another example of one of the many difficulties revolving around rape and other so-called sex crimes is to compare them with other criminal acts. All we have to do is think of our own individual response or imagine the public’s response to any of the more common crimes such as the theft of a motor vehicle, the burglary of a home, or even physical child abuse. In each of these crimes the public can almost always accept and empathize with the victim, because no one wants to lose their possessions, no one wants to see another person, particularly a child, injured, and certainly there is a great deal of general animus by the public toward the offenders and their criminal acts. But what is missing from these types of crimes is the general suspicion on the part of the public and police that the person making the complaint is making a false report. Generally speaking, these events are almost always accepted at face value as presented by the victim. Unfortunately, this is not necessarily the case with rape and other sex-related crimes. As we will cover in more detail throughout this text, sex-related crimes are the only ones where we, culturally or as a society, tend to more readily *disbelieve* victims when they make a report of their sexual victimization; and before their complaint is taken seriously, we almost insist that victims be able to prove *they* are not lying. It is also one of the few crimes where police and other researchers are concerned with statistics of false reporting, or what is often referred to as *unfounding*.³ The statistics on the number of cases that are determined to be unfounded by the police have been batted back and forth for years by different groups with varying agendas. The police may use them to reflect the difficulties in working these types of cases and to reflect a

³ The term *unfounded* has no standard definition in the law enforcement community and the term has come to mean different things to different agencies. For instance, it could mean an investigation that was closed without prosecution, was closed based on lack of cooperation by the victim, or the victim requested not to proceed any further with the investigation. To most agencies and detectives, this term is used to describe allegations that were determined to be based on a false report. Therefore, based on their investigation the offense never happened and was thus “unfounded.” The difficulty when conducting research into this aspect of rape investigations is determining which definition was used by a particular agency.

much lower incidence of occurrence. For instance, if 100 incidents of rape were reported in a community in 1 year, but 30 of these cases were determined to be unfounded or never to have happened, then the police can report only the 70 rape offenses actually occurred during that particular reporting period. One purpose of collecting these statistics is to show the community was safer with only 70 victims than it might seem if the number of victims reported was 100. Various male groups have also use these same unfounded statistics in order to reflect the number of false reports confronting men, while feminist groups use these statistics to reflect the callous treatment of victims by the male-dominated police, criticize a particular study and how it was conducted, and respond with one of their own studies to show a much lower rate. From personal experience of the author, there are far more instances of people falsifying theft or accident reports in order to make fraudulent claims against their insurance company than false rape complaints; however, there are neither statistics created or collected nor any real discussion on this particular topic. The concept of false rape reports, however, is a such problem for detectives that it is generally covered in nearly every text written on this subject and thus is addressed in greater detail in a separate chapter of this text.

Unfortunately, when dealing with any discussion of rape and sexual assault, the victim, the offender, the criminal act, and the effect on the local community can be lost in the mix with the various competing groups arguing between each other. These divergent groups may seem well intentioned with their particular philosophical beliefs, but they often lose sight of what our responsibilities as a society and particularly the police should be—that is, protect the victims; identify, prosecute, and punish the offenders; and prevent future assaults.

► Historical Perspective

There are numerous texts already written covering the concept of rape and sexual assault and postulating various theories on why rape occurs. Which theory is correct is beyond this particular text because we are concerned with the actual investigation of the offenders. However, it is important to give a brief historical context to rape and forced sexual assault in order to understand how the concept of rape and its victims affects our culture and community. Rape and forced sex has actually played a part of human history probably since the beginning of time and although we have no actual evidence, it would be conceivable that our very early human ancestors such as Cro-Magnons, Neanderthals, and early *Homo sapiens* also overpowered females from their clans or other groups and forced sex upon them.

Historically there are essentially *two versions* or concepts of rape: one is through war, and the other seen as a criminal offense within individual societies. Although they are essentially the same violations of the victims, they have been seen in different light throughout human history.

War Rape

In what we generally think of as ancient history, the rape of women of a conquered city by the victorious army was considered a part of the “spoils of war.” The plunder and theft of any valuables or personal effects, along with the rape of women or taking of the surviving population of the defeated city as slaves or the taking of women as concubines, was considered a normal and expected result of victory and the penalty of defeat. It was also a way for generals and governments to “pay” or reward their soldiers for their service. The rape of women of a defeated city or army was not just about the carnal lust of the victorious army or individual soldiers; it was also considered as another way to completely humiliate and subjugate the defeated country and society. It was also not unheard of for the male survivors of the defeated army to be sodomized as an additional humiliation to their manhood.

Such conduct would also serve as a reminder to the defeated civilization of the potential retribution for any future act of rebellion against the victorious army and, just as important, would serve as a stark warning to any other cities or civilizations of the price of resistance. Such early forms of terror succeeded in either fortifying the resolve to fight or caused the capitulation of many cities to their enemies to avoid the results of defeat in battle. Examples can be found within the Bible: Numbers 31:1–18 described how Moses ordered the slaughter of all Midianite males after a battle but the 32,000 female virgins were spared to become slaves or given to soldiers as captives of war. Deuteronomy 21:11–14 even outlined instructions to shave a captive’s head and allow her to mourn the loss of her family for 30 days; afterward the captives were required to submit sexually to their captors. We can assume that most victims submitted against their will, but that was their lot for being taken captive.

Mythology and ancient legends are also full of other examples of women being ravished by the gods or other civilizations. The Greek God Zeus, for instance, was notorious for using different tricks, guile, and deceit to have sex with mortal women. Whether or not actual force was used, the essential result was overcoming the woman’s hesitancy or will to have sex. One other very important historical legend is known as the *Rape of the Sabine Women* as noted in **Case Study 1-1**.

Case Study 1-1

Most of what we know of the early history of Rome comes from Plutarch and Livy,⁴ including the well known story of the *Rape of the Sabine Women*. This incident is supposed to have occurred shortly after Rome’s establishment by

⁴ Titus Livius (traditionally reported to have lived from 59 BC to AD 17), perhaps better known as Livy, was a Roman historian who wrote a monumental history of Rome, *Ab Urbe Condita*, from its traditional founding (roughly 753 BC) through the reign of Augustus in Livy’s own time.

Romulus. According to legend, after the Romans had build their impressive city, they realized their shortage of women destined them to decline within a generation because there would be no children to take their place. Therefore, they needed to seek wives to create families, raise children, and keep their city growing.

The Romans attempted to peacefully negotiate with the surrounding tribes including the Sabines in order to merge their communities together through marriage. The Romans were unsuccessful however, because the Sabines feared the emergence of Rome as a rival society. Unable to negotiate peacefully for women, the Romans simply turned to force and planned to abduct Sabine women and take them as their wives. In furtherance of this plan, Romulus devised a ruse to lure in the Sabines with the festival of Neptune Equester, inviting all of Rome's neighbors to attend and show off his city. Many people of Rome's neighboring tribes, including the Sabines, attended and marveled at the city. According to Livy, at a particular point in the festival Romulus gave a signal by raising his cloak, at which time the Romans literally began abducting the Sabine women and spirited them away. The Sabine males, furious at the act, departed back to their own cities to raise an army. However, the indignant female abductees were addressed by Romulus to accept the Roman men as their husbands and according to legend no real sexual assault took place. On the contrary, Romulus is supposed to have offered them free choice to remain or return and further promised both civic and property rights to the women if they stayed. According to Livy, Romulus promised that if they remained, "they would live in honorable wedlock, and share all their property and civil rights, and dearest of all to human nature would be the mothers of free men."⁴ The legend continues that eventually the Sabine men returned to Rome, intent on war to rescue their daughters, but instead the captured women ran in between the two forces aligned for battle and begged their fathers not to fight their new husbands.



FIGURE 1-1 The Rape of the Sabine Woman by Nicolas Poussin, Rome, 1637–1638.

Source: SuperStock. © Peter Willi/SuperStock

The problem with this particular legend is that the concept of a forced abduction of women that turned out all right does not fit with the reality of an abduction of women. In this legend the victims eventually grew to love their abductors and did not wish to return to their former lives, which is a fantasy of some kidnappers. This concept in which a certain type of offender will fantasize that their forced sex on a victim will somehow work out to become a lasting relationship with the victim is explored later in the text.

When we first consider this concept of women and rape being the accepted *spoils of war*, we most often think about ancient warfare and civilizations such as the Assyrians, the Babylonians, the Greeks, and the Romans. However, this concept was fairly well accepted and used throughout human history. In what we think of as modern times—the 20th and 21st centuries—mass rape has not necessarily been state or governmental policy (with some exceptions), but it has still occurred. We only have to go back as far as World War II history to find examples of atrocities committed by various armies as they fought in nearly every theater of war. Examples include German soldiers who reportedly routinely raped Russian women, as they rolled through Russia and other defeated countries. A few short years later, Russian soldiers returned the humiliation by committing their own whole-scale rape of German women as they entered Germany. The Russians however were not concerned with the age of the women, and both the very young and the very old were routinely assaulted as they plundered through Germany.

Perhaps the most blatant example during World War II was the *Rape of Nanking*, perpetrated by victorious Japanese soldiers against the population of Nanking, China. The Rape of Nanking (also called the Nanking Massacre) included not only the horrific rape of thousands of Chinese women and girls, but also the slaughter of thousands of Chinese men, women, and children as the Imperial Japanese Army exhibited an undisciplined rampage through the city without any real reason or mercy. The Japanese Army's treatment of prisoners of war and of the many conquered peoples was an additional element of the various atrocities they committed.

One atrocity was more of a state or officially sanctioned policy than other individual murders or other acts of rape. This involved the so-called “comfort women” who were literally taken from their homes in Korea and other Southeast Asian countries and pressed into prostitution to service the Japanese soldiers in the field. These comfort women were brought to the front-line troops as prostitutes. They were expected—that is, they were forced—to “service” or have sex with any number of Japanese soldiers every day. These actions resulted in literally thousands and thousands of rapes, all officially sanctioned by the Imperial Japanese Army and Japanese government. The Japanese commanders did not consider this repeated victimization of the so-called “comfort women” as being wrong or anything other than a way to

improve the morale of the front-line troops⁵ and keep them from assaulting local women in the occupied area.

Such instances of mass rape as noted in World War II still occur in the world today, but they are now the exception rather than the rule. There are still some very clear examples of rape being used as a method of terror against other ethnic groups by governments or armies. Perhaps the most recent examples were the Serbian efforts of *ethnic cleansing* in Kosovo, where the intent was basically to commit genocide or otherwise drive out the Muslim residents of Kosovo to absorb their property and country into the Serbian nation. To achieve this purpose, the Serbian army or special police units used organized rape, wherein the Muslim or other ethnic women were brought to special camps or other locations for the sole purpose of being raped or sexually tortured. Again, this was not based on a general unsatisfied carnal lust of the soldiers, but used as an instrument of terror against the population, forcing them to flee the country to escape victimization.

Many similar events that have taken place in various locations in Africa as one tribe attempts to subjugate or drive out another tribe, or corrupt, despotic leaders attempt to terrorize their own populations. Sadly, it is still very likely for these and other similar events to be repeated in the future, because they unfortunately do achieve their purpose of terrorizing the population. For the most part, rape in war is unlikely to ever be totally stopped, but it is now more generally limited to individual acts perpetrated by individual soldiers with individual victims rather than as part of a widespread, official state policy.

The Criminal Offense of Rape

The offense of rape has historically been considered a criminal offense and the prohibitions and penalties have been documented as far back as the Code of Hammurabi, long considered to be the first written law. However, when reading these ancient historical texts, it appears the offense was not always perceived as a crime against the female victim as much as it was seen as an offense against the husband or father of the victim. For instance, under ancient Hebrew law as documented in the Bible in the book of Deuteronomy, the crime of rape or even consensual intercourse with a virgin without permission of a father had specific punishments. Either incident was viewed as a crime against the dominant male within the family. As punishment for rape, the offender paid a sum of money to the husband or the father, because they were the ones considered to be wronged by the act. It is important to remember that in many ancient cultures women were considered to be the property of their fathers or husbands. Rape was considered not so much as a crime against a person but almost like the offense of trespassing.

⁵ Hicks, G. (1994). *The comfort women: Japan's brutal regime of enforced prostitute*. W.W.Norton and Company Inc, NY: New York.

Although harsh and confusing by today's standards, the concepts of marriage, sex, and the family were viewed far differently. A father's property and possessions were passed down to his children, and it was vitally important to society that such customs were observed. Further, both sons and daughters were used to bond different families together within the tribe or community, much in the same manner as royal families intermarried to bind countries together. In some societies it was common to pay the father for the bride, while in others it was the father who was expected to put forth a dowry or provide something for his daughter to bring to her new family and serve as a form of protection for the new wife against the possibility of ill treatment by her husband as an incentive to the husband not to harm her.

The concept of proof and punishment as noted in the Bible may seem to be in striking contrast with our concept in modern times. Many who read the modern translation of the Christian Bible conclude that the Hebrews and God may have excused or condoned rape, even to the point of punishing the female victim equally as the offender. This comes from Deuteronomy, chapter 22, where if a man raped a virgin within the walls of a city and she was already betrothed to another man, both she and the rapist should share the same fate of stoning to death. The rationale was if the victim had actually offered resistance and screamed for help, she would have been heard and therefore rescued. Failing to do so therefore justified her own punishment for having sex outside of marriage. Concerning the offender, the ancients believed he had "humbled his neighbor's wife"⁶ and therefore was subject to communal punishment for his transgression. However, if a woman was assaulted outside the city or while she was laboring in the fields where no one could hear her screaming, only the rapist was put to death. In this case, it was accepted that being alone and outside of any protection no one could have heard her cry out and therefore was held essentially blameless. Other punishments are outlined, including payment of 50 shekels of silver or forcing the male to marry the victim without being able to divorce her for the rest of his life.

What is missing in much of the critique of the Biblical passages is an understanding of the living conditions and societal demands of the time. During those times it was almost unheard of for an unmarried female to go out into the community or walk around the area at night without another male member of her family to accompany her; the typical "city" or town was so small and the houses were so close together that it was assumed that any attempt to call attention to an event would have been heard by someone else. What is also often missing in discussions about these and other passages in the Bible is consideration of the severe penalties prescribed for these offenses. There were no prisons or involuntary confinement back then and 50 shekels of silver was an enormous amount of money; never being able to divorce the victim might not sound like much of a punishment for the offender and

⁶ Deuteronomy 22:23–29.

certainly not a positive result for the victim either, but in effect the offender had to be responsible for the victim for the remainder of her life and the whole community would hold him to his responsibility toward the victim. Although not so important in our modern times, community acceptance was very important at the time and, because the villages were so small, everyone in the village would know about the act. It is probable that this particular law was written, like many laws today, to influence people not to commit a particular crime because of the possible punishment. Lastly, in some instances even the death penalty was prescribed for rape, but before this punishment was inflicted there was a requirement for other witnesses to testify as to what happened. The requirement of additional witnesses besides the victim as defined in other scripture passages is not about not believing the victim and her rape complaint; it was a requirement under the legal code for all serious criminal offenses that other witnesses must be produced in order to inflict the maximum punishments.

Before the Norman conquest, the punishment for rape was extremely severe and included both death and possible dismemberment of the offender. In fact, under ancient Saxon Laws⁷ as provided by Henrici de Bracton,

If a man were to throw a woman upon the ground against her will, he forfeits the King's grace; if he shamelessly disrobes her and places himself upon her, he incurs the loss of all possessions; and if he lies with her, incurs the loss of life and his members.

Specifically, punishment could include:

Even his horse shall to his ignominy be put to shame upon its scrotum and its tail, which shall be cut off as close as possible to the buttocks. If he has a dog with him, a greyhound or some other, it shall be put to shame in the same way; if a hawk let it lose its beak, its claws and its tail.

Although the law allowed extreme punishments for an offender, in reality they were seldom applied and although rape was still considered a serious offense during this time it was seldom charged.

During the next 700-plus years, legal concepts about the offense of rape continued to develop but many rape myths still influenced our society, and more importantly, the police and the courts. MacFarlane,⁸ in his treatise entitled "Historical Development of the Offence of Rape," covers how the

⁷ From Henrici de Bracton in *De Legibus et Consuetudinibus Angliae, Libri Quinque*, written between 1250 and 1260.

⁸ MacFarlane, B. A., *Historical Development of the Offence of Rape*, [Originally published by the Canadian Bar Association in a book commemorating the 100th anniversary of Canada's criminal code, titled: "100 years of the criminal code in Canada: essays commemorating the centenary of the Canadian criminal code," edited by Wood and Peck (1993)]. MacFarlane was the Deputy Minister of Justice, Deputy Attorney General for the Province of Manitoba, Canada.

offense of rape was viewed under ancient and English common law. What is interesting is not just how the offense was viewed throughout history—because it is clear that forced rape was always viewed as a horrible crime and thus severe punishments were prescribed for the offense—but that there has *always* been a lingering suspicion or fear of potential false reports that has influenced the investigation and prosecution of this offense. We see this suspicion and fear in some of the laws and procedures enacted to ensure this was not the case. For example:

In the 12th century a new law entitled “An Appeal Concerning the Rape of Virgins” insisted that the report of rape must be made shortly after an assault took place and the victim required to present her torn or bloodstained clothing to the crown law officials. The thinking was that if this was a true case of rape, the victim would immediately report the incident and thus seek justice and punishment for the assailant. This actually resulted in the shifting of responsibility away from the offender and onto the victim who was also required to have her body examined by law-abiding women who would attest if she were in fact a virgin and defiled or not. If proved to be defiled then the trial would continue, but if not, then the charges were likely dropped and the victim herself taken into custody. Whereas this particular law was designed to protect virgins, the rape of all women was still prohibited, but the possible penalty assessed actually revolved around the victim herself, meaning, if a nun, a widow, a chaste woman, or youth was raped then punishment could be severe. If the woman was of low character or a prostitute then the punishment may not be so severe.⁹

Interestingly, in cases of multiple rape, the first offender was likely to receive more punishment than other offenders who also raped the victim, under the theory virginity could only be lost once. Again, the loss of virginity was considered a more serious offense than the rape itself. It was not until 1285 that the virginity of the victim was no longer a consideration in the act or punishment of rape and was no longer considered a misfortune to a family and their potential land and property rights but seen as a criminal act requiring action by the state. The death penalty for rape, which had been suspended for a number of years, was returned and could be applied equally regardless of the status of the victim.

By the 17th century the concept and definition of rape were firmly established as being sexual intercourse by *force and against a woman’s will*, and further that *consent* could not be forced or obtained through threats or fear of harm. While the definition of rape broadened, the concept of a vengeful, lying victim still permeated the courts, which resulted in trials almost always turning to the conduct and background of the victim and her own credibility and moral

⁹ MacFarlane, B. A. (1993). Historical development of the offence of rape. In *100 years of criminal code in Canada: Essays commemorating the centenary of the criminal code of Canada* (Eds. Woods & Peck). Canadian Bar Association. Ottawa, Canada.

standing rather than focusing on the conduct of the defendant. In the 17th century, other very important concepts were introduced, such as a husband could not legally *rape* his wife. He could be charged and convicted of other assaultive behavior toward her but not rape. The belief during this time was that a woman by her matrimonial consent essentially waived any future nonconsent, as it was assumed to be the husband's right to sex with his wife.

The concept that rape must include use of force and be against a woman's will lead to the idea that the man must have used overpowering force to overcome the victim's resistance and further, that the woman must resist using all means at her disposal or must be in dread or fear of death. Thus, the following rape myth developed: *An otherwise healthy woman can prevent being raped if she truly wants to*. Similarly, the concept came into being that if a pregnancy resulted from a rape, then it was not rape. This was the result of the belief at the time that no woman could conceive if she did not consent to the act.

Perhaps the most striking and long-lasting statements on this subject came from Sir Mathew Hale, a noted English jurist who in 1670 wrote his famous "History of the Pleas of the Crown"¹⁰:

It is true rape is the most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused though never so innocent.

We see this same caution and fear in numerous previous laws that were enacted by several states in the United States, such as an insistence that some form or type of corroborating evidence must be presented in order to validate the victim's complaint. This once legal requirement has now been eliminated by every state but attests to the same fear and mistrust of the victim that is still present in our own court system today.

During the Victorian era the background of the victim and her chaste character were again important in court proceedings; women who were chaste were considered to be reputable and those who were promiscuous were not. These background and moral concerns were not brought out on issues of consent or even force, but rather they were used to validate or impugn the credibility of the victim. This was also seen in courts in the United States until the 1990s, when the rape shield laws and other rules began to generally prohibit these types of questions from being asked of the victim. Most of our legal concepts for criminal acts are based on English common law and when looking briefly through the history of rape offenses, we can see where some of our own processes, prejudices, and rape myths originated.

The major change in the way we started to view these offenses really started back in the 1970s during the rise of the feminist movement, when we finally started to study the offenders and started looking at the victims and

¹⁰ Hale, M. (1670). *History of the pleas of the crown*.

how these offenses impact their lives. Until the late 1980s to 1990s there were no police departments with specialized investigative sections to deal with rape and similar offenses and there was not much specialized training. In fact, before this time period, a detective's assignment to investigate sex crimes was considered the last stop for the burnouts, disciplinary problems, incompetents, or malcontents within a department. It was where bad performers were assigned before they quit, retired, or were fired. This section dealt with weirdos and perverts and crimes that most other detectives were uncomfortable hearing about.

It was also prior to this time that rape victims were almost considered as untouchables, meaning no one wanted to have anything to do with them—not the police, not prosecutors, nor even medical personnel. They were somewhat like damaged goods that no one truly understood. With all the rape myths so well established within the police ranks, if victims presented with no real injuries, no one really believed them or had any interest in working on their cases. There was a time when even emergency room doctors would go out of their way to avoid doing any work or treating rape victims—not just out of a lack of compassion, but because they did not want to be called to court or grilled on their findings by defense attorneys. So, victims were often made to spend endless hours in the emergency department waiting room with other patients, and it was not unusual for them to give their initial police statement in the waiting room because the hospital did not have an examination room available for them to get them away from the public. They were frequently examined by male doctors and most emergency room doctors only had a rudimentary amount of training in the collection of evidence. It was often a hit-or-miss experience, depending on who was on call at the hospital, if the evidence was ever located, and if it was collected correctly.

The last hurdle to jump for victims was the prosecutors and, like the police and medical personnel, they also did not like prosecuting the majority of rape and sex crimes unless they were “good rapes”—that is, they had evidence that included injuries to the victim, other witnesses, forensic evidence, and especially a confession from the defendant. Prosecutors often declined to even consider taking cases to court in which:

- There were no injuries to the victim.
- The victim was involved in drinking alcohol or using drugs.
- The moral and sexual background of the victim could be called into question.
- The victim was a known prostitute, hitchhiker, or sexually indiscriminate.

Until the 1980s and 1990s it was very rare for a victim who was not severely beaten and without the physical or forensic evidence available to ever have her day in court. Again, it was not any single component but rather the entire criminal justice system that was hesitant to become involved in these cases. Our thought process and approach to these crimes and toward the victim have

changed dramatically since the 1970s, and it is encouraging to note that this is not how the police, medical personnel, prosecutors, the courts, and even the various state legislatures look at these crimes during the 21st century.

This brief historical look at rape and sexual assault explains the background or origin of some of the rape myths that we will discuss in greater detail throughout the text and the rationale behind some of the investigative steps we suggest. One final perspective we need to address in the introduction of this subject is the extent of the problem; we must ask: “How prevalent are these crimes in the United States today?”

► Extent of the Problem

One of the other problems associated with rape and other sex crimes is determining the extent of the crimes, or how many are actually committed each year and who the victims are. Like *unfounded* statistics discussed earlier, the extent of the problem, or how many rapes actually take place in the United States every year, may devolve into another hotly contested subject between the same groups mentioned earlier in an effort to show that rape or sexual assaults are a lesser or a greater problem in our country and society. This should not be that difficult because the Federal Bureau of Investigation (FBI) collects annual crime statistics from law enforcement agencies across the United States and then publishes them annually as part of their Uniform Crime Report (UCR). So, theoretically we should be able to go to the UCR and look up the crime of rape to determine how many acts were reported during a specific year and also be able to determine through comparisons with other years how the crime trends and if the crime rate is rising, staying the same, or is going down. The UCR for 2009 is shown in **Table 1-1**; it is based on the statistics for previous years. The offense of rape and other crimes of violence continue to show a general downward trend, with minor fluctuations, from the number of reported rapes and other violent crimes from the mid-1990s.

According to the preliminary results that were assembled for 2010’s UCR, all four of the violent crime categories, which include murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, again show a decline nationwide when compared with 2009 data. The 2010 UCR reflects an additional decline of 4.4% of murder and nonnegligent manslaughter, a forcible rape decline of around 4.2%, a decline in robbery of 9.5%, and also a decline in aggravated assault of around 3.6%. The UCR provides a good idea of how many crimes are being reported across the United States and we therefore could get an idea of the problem. Unfortunately, the FBI’s UCR only collects statistics from those incidents that were actually reported by participating law enforcement agencies. However, rape and sexual assault offenses are widely recognized by almost all experts as one of the most underreported crimes in the United States; therefore, these official statistics do not necessarily reflect *all* of the rapes that were committed during any year, only those which were officially reported to the police.

TABLE 1-1 Crime in the United States: By Volume and Rate per 100,000 Inhabitants, 1990–2009

Year	Population ¹	Violent crime	Violent crime rate	Murder and nonnegligent manslaughter	Murder and nonnegligent manslaughter rate	Forcible rape	Forcible rape rate	Robbery	Robbery rate
1990 ²	249,464,396	1,820,127	729.6	23,438	9.4	102,555	41.1	639,271	256.3
1991	252,153,092	1,911,767	758.2	24,703	9.8	106,593	42.3	687,732	272.7
1992	255,029,699	1,932,274	757.7	23,760	9.3	109,062	42.8	672,478	263.7
1993	257,782,608	1,926,017	747.1	24,526	9.5	106,014	41.1	659,870	256.0
1994	260,327,021	1,857,670	713.6	23,326	9.0	102,216	39.3	618,949	237.8
1995	262,803,276	1,798,792	684.5	21,606	8.2	97,470	37.1	580,509	220.9
1996	265,228,572	1,688,540	636.6	19,645	7.4	96,252	36.3	535,594	201.9
1997	267,783,607	1,636,096	611.0	18,208	6.8	96,153	35.9	498,534	186.2
1998	270,248,003	1,533,887	567.6	16,974	6.3	93,144	34.5	447,186	165.5
1999	272,690,813	1,426,044	523.0	15,522	5.7	89,411	32.8	409,371	150.1
2000	281,421,906	1,425,486	506.5	15,586	5.5	90,178	32.0	408,016	145.0
2001 ²	285,317,559	1,439,480	504.5	16,037	5.6	90,863	31.8	423,557	148.5
2002	287,973,924	1,423,677	494.4	16,229	5.6	95,235	33.1	420,806	146.1
2003	290,788,976	1,383,676	475.8	16,528	5.7	93,883	32.3	414,235	142.5
2004	293,656,842	1,360,088	463.2	16,148	5.5	95,089	32.4	401,470	136.7
2005	296,507,061	1,390,745	469.0	16,740	5.6	94,347	31.8	417,438	140.8
2006 ³	298,754,819	1,435,951	480.6	17,318	5.8	94,782	31.7	449,803	150.6
2007 ³	301,290,332	1,421,990	472.0	17,157	5.7	91,874	30.5	447,155	148.4
2008 ³	304,374,846	1,392,629	457.5	16,442	5.4	90,479	29.7	443,574	145.7
2009	307,006,550	1,318,398	429.4	15,241	5.0	88,097	28.7	408,217	133.0

¹ Populations are U.S. Census Bureau provisional estimates as of July 1 for each year except 1990 and 2000, which are decennial census counts.

² The murder and nonnegligent homicides that occurred as a result of the events of September 11, 2001 are not included in this table.

³ The crime figures have been adjusted.

Source: From the FBI Uniform Crime Report, 2009. (http://www2.fbi.gov/ucr/cius2009/data/table_01.html)

► The Unreported Crime

As will be discussed in much greater detail later in the text, not all victims actually report being assaulted to the police, and rape has often been labeled as the most underreported crime. There are many reasons why victims may choose not to report their victimization, but it is important to acknowledge the number of unreported incidents in order to get a better understanding of the actual number of incidents that take place. One method used to make that determination is through the use of victimization surveys, wherein questions about crime and their victimization are sent to a large number of citizens or to a certain population. The thought process is that the selected respondents would have a chance to report their victimization via a criminal offense which for some reason was never reported to the police nor put through the legal process. One of the more common governmental surveys is the National Crime Victimization Survey (NCVS), compiled by the Bureau of Justice Statistics (BJS). The NCVS was initiated in 1972 to complement the official statistical information on those incidents already reported to police. This allows for the collection of additional information and aids in the determination of the actual prevalence of crime by including those crimes which were never reported. The NCVS is an annual effort completed by about 80,000 persons age 12 and older in approximately 43,000 households twice each year regarding their victimizations from crime. The NCVS collects information on rape and sexual assaults as well as other offenses such as robbery, aggravated assaults, simple assaults, and some property crimes such as burglary and theft.

Other private or nongovernmental surveys have been completed with the intent to uncover unreported incidents, sometimes targeting a specific population group, and again to determine the exact number of incidents and victims or at least identify those which were never reported to the police. One often cited survey was completed by Mary Koss et al.,¹¹ which was particularly focused on college both male and female students, in an effort to determine the victimization rate and how many of these incidents were unreported to the police. The survey was administered at 32 different universities and colleges across the United States, to a national sample of 6,159 male and female college students who actually participated. The survey questions were designed to determine the actual instances of rape, attempted rape, sexual coercion, or other unwanted sexual contact ranging from age 14. Some of the more important findings that Koss reported included:

- One-quarter of women in college were victims of rape or attempted rape, and the vast majority knew their assailants.
- Fifty-two percent of all the women surveyed have experienced some form of sexual victimization.

¹¹ Koss, M. P., Gidycz, C. A., & Wisniewski, N. (1987, April). The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology*, 55(2), 162–170.

- One in every 12 male respondents admitted to having fulfilled the prevailing definition of rape or attempted rape.
- Of the women who were raped, almost three-quarters did not identify their experience as rape.
- Three-quarters of the women raped were between ages 15 and 21; the average age at the time of the rape was 18.
- Forty-seven percent of the rapes were by first or casual dates, or by romantic acquaintances.
- The majority of instances took place off campus with nearly 50% taking place at the males' home or car, or other location.
- One-third of the women had never discussed what happened to them to anyone.
- More than 90% never reported incidents to the police.

These findings sent shockwaves through the country, because this was a potential offense rate far beyond what anyone had ever suspected. Since this study was released many other experts have come forward with criticism of the study, particularly the makeup of its questions, which seem vague and easy to misinterpret. Using terms such as "unwanted sexual contact" were argued as being too ambiguous and unclear to count as an actual forced or coercive sex act of "rape." What is interesting about the study is that it has resulted in more conversation about the design and execution of the study rather than examination of its results, and, like other aspects of rape, the acceptance or criticism of the results depends on which group is considering it. The main important point of this study is to validate that there are many incidents of sexual assault and rape that are not being reported to the police and that many incidents involve much younger victims and offenders than we may have believed. The exact number is not known and the problem of these types of anonymous surveys is that they are based almost exclusively on the self-reporting of an event, without an ability to later verify their accuracy. The survey administrator is absolutely dependent on the information supplied by the respondents. This means the survey is also subject to deliberate falsification of information if the respondent so desired. What percentage is or could be false is really unknown. It is unlikely we will ever know for certain how many more offenses have taken place that are never reported, but it is important to know that there are more incidents that occur than are officially reported.

Further validation that many rapes go unreported comes from studies of incarcerated sex offenders who report being convicted of one or two rapes, but may have admitted to committing many more that were never reported to police. Again, such information is dependent on self-reporting which is subjected to deliberate falsification from the respondent, but such information supplied by an offender is a statement against self-interest and thus may be a little more accurate or believable.

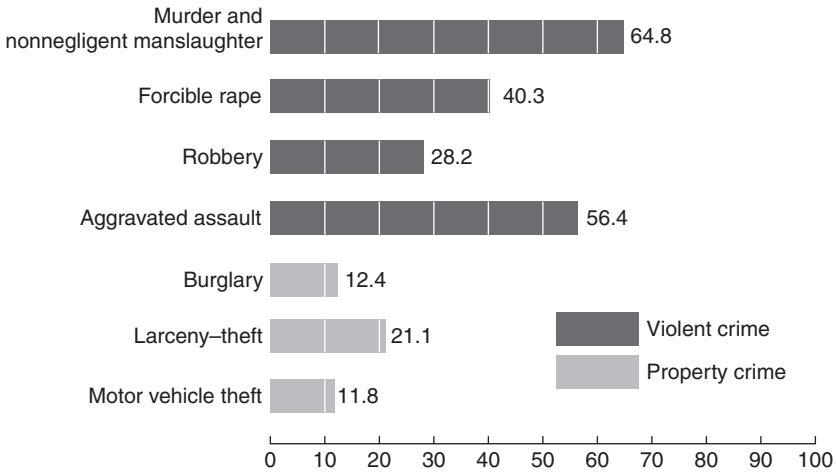


FIGURE 1-2 Percent of crimes cleared by arrest or exceptional means, 2010.

Source: From the FBI Uniform Crime Report, 2010. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2010/crime-in-the-u.s.-2010/clearances-figure>

► Clearance Rates and Prosecution

The annual FBI UCR also provides statistics for clearance rates for these same crimes and reflects what is also known as the solved rate. For a case to be cleared requires at least one person to have been arrested, charged with the commission of the offense, and turned over to the court for prosecution.¹²

Figures 1-2 and 1-3 were obtained from the 2010 and 2009 UCRs and reflect the overall clearance rates for these same violent crimes. Note there is a slight, insignificant downturn in the clearance rates between 2010 and 2009. Basically, this means that for every 10 rapes reported, the police were able to make an arrest or close the case as resolved in 4 of them. An average clearance rate of 41% for rape is significantly below that of murder, negligent homicide, and aggravated assault, but is significantly higher than robbery, burglary, and other property crimes. The problem is not just clearing the case, but being able to take the case to court and then to get a conviction. Getting the case to court

¹² For the purposes of the Uniform Crime Report, a crime index offense is cleared when a law enforcement agency has identified the offender, there is enough evidence to charge him, and he is actually taken into custody. The arrest of one person can clear several crimes, or several persons may be arrested in the process of clearing one crime.

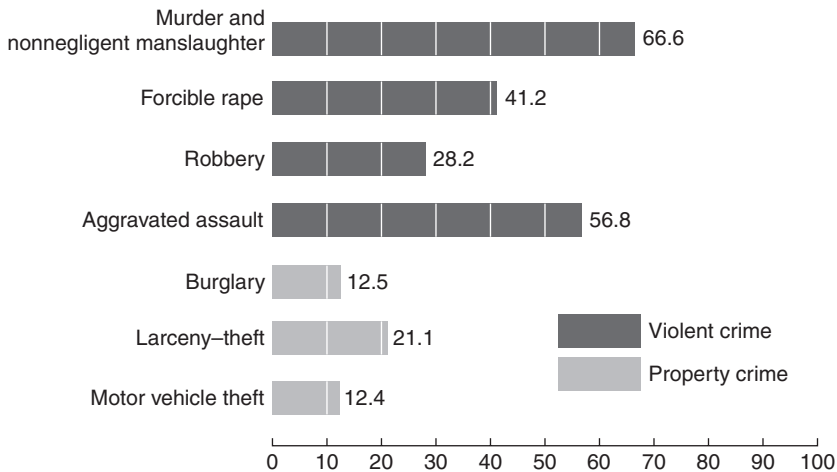


FIGURE 1-3 Percent of crimes cleared by arrest or exceptional means, 2009.

Source: From the FBI Uniform Crime Report, 2009. <http://www2.fbi.gov/ucr/cius2009/offenses/clearances/index.html>

and getting a conviction is, of course, one of our main goals as detectives. Unfortunately, there are a going to be a great many cases that prosecutors will determine lack any prosecutorial merit and may decide to drop charges against a suspect. This could be based on the lack of evidence, no other witnesses, or even the prosecutor's impression of the victim and his or her complaint.

It is also possible that victims at some time during or following the investigation may elect not to go forward with the investigation or decide to drop charges against the offender. It is also very likely the prosecutor will decide to accept a plea bargain from the offender, which is an offer to plead guilty, but for a lesser offense. Many times this offer allows the offender to plead guilty for a minor crime such as simple assault or some type of property crime such as burglary or unlawful entry in order to avoid pleading guilty to rape or another sex-related crime and thus escaping other control measures such as registering as a sex offender. Even still, when those cases do end up with an arrest and a prosecution, there is always a chance that the jury is not convinced beyond a reasonable doubt of the offender's guilt and the offender is acquitted.

What we have to remember whenever we try to determine how effective we are as police officers in working these cases is that it can be very frustrating. Although we may have cleared or resolved a case, it does not mean it will lead to a prosecution or a conviction; perhaps worse, even when there is a conviction, it may not necessarily mean the offender will end up in prison or, just as likely, he will only receive a suspended sentence or probation.

► Conclusion

This chapter identifies several important issues and problems associated with the investigation and prosecution of rape and sex-related crimes. First, these offenses have been long looked at as criminal acts and often deserving the most severe of penalties. However, they have not always been seen as a crime against women themselves, and even more importantly, historical laws and procedures were sometimes designed to inhibit, prohibit, and even discourage a woman from making a false report against a man. As we will see throughout the remaining text, this fear of a false report, whether real or imagined, has an impact on the way that rape is investigated, the way the victim is seen, and the way the case is prosecuted in court. It is also clear that throughout history it was the victim and her background, her morals, and her behavior that were scrutinized more closely than the suspect.

It is also hard to judge whether we as police are having any effect in our efforts to catch offenders and punish them. It becomes difficult to accurately judge police failure or success when it is clear not all offenses are being reported. Although we accept that many victims do not report their assaults, the problem is that we do not know *exactly* how many go unreported because we generally have to depend on self-reporting surveys that may or may not be accurate, depending on the survey questions and motives of the respondents. We also know there are false rape reports or reports we later determined did not occur as alleged. But since there is no standardized method to collect such statistics we also have to depend on studies that examine a few separate police departments and then perhaps extrapolate the results.

These are just a few of the issues that surround the investigation of rape and sex-related crimes; detectives need to be aware of these issues and their impact on individual victims, their communities, and society as a whole.

► Further Reading

- MacFarlane, B. A. *Historical Development of the Offence of Rape* [Originally published by the Canadian Bar Association in a book commemorating the 100th anniversary of Canada's criminal code, titled: "100 years of the criminal code in Canada; essays commemorating the centenary of the Canadian criminal code", edited by Wood and Peck (1993)]. Retrieved May 14, 2012, from http://www.canadiancriminallaw.com/articles/articles%20pdf/Historical_Development_of_the_Offence_of_Rape.pdf
- LeDoux, J. C., & Hazelwood, R. R. (1985). Police attitudes and beliefs towards rape. *Journal of Police Science and Administration*, 13(3).
- Raphael, J., & Logan, T. K. *The use (and misuse) of data on rape: Restoring sexual assault to the national agenda*. A white paper prepared for the DePaul University College of Law and the University of Kentucky. Retrieved May 14, 2012, from <http://www.counterquo.org/assets/files/reference/The-Use-and-Misuse-of-Data-on-Rape.pdf>

