

Letter to FBI Regarding Definition of Rape in the Uniform Crime Report

September 17, 2001

Robert S. Mueller, III
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, DC 20535

Re: UCR Definition of Rape

Dear Mr. Mueller:

We are writing to request your assistance in a matter of grave importance for survivors of sexual assault. As described more fully below, the current Uniform Crime Report (UCR) definition of rape is narrow, outmoded and steeped in gender-based stereotypes. It seriously understates the true incidence of sexual assault in the United States today, confuses and hampers law enforcement, and discourages victims from reporting serious crimes. We urge you to act speedily to amend this definition to conform to a more contemporary understanding of sex crimes.

The Uniform Crime Report system, developed in 1927 as a framework for gathering and publishing crime data and maintained by the FBI, has become the country's major source of crime data. The UCR defines rape as, "the carnal knowledge of a female, forcibly and against her will."¹ This definition was created over seventy years ago. In the intervening years, America has significantly expanded its understanding of rape, and states have revised their laws accordingly. Many state criminal laws now recognize that all forms of non-consensual sexual penetration regardless of gender, relationship, or mode of penetration are as serious as the criminal conduct included in the UCR definition of rape.

¹ FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK 10 (1984) [hereinafter GREENBOOK].

The UCR definition of rape should be revised to include rape of males, rape committed against the victim's will without force, and rape by blood relatives, and it should not be limited to vaginal/penile penetration. The public is entitled to know the full extent of serious sex crimes committed in the United States. In addition, the police entrusted with enforcing state law would benefit greatly from consistency in their reporting and enforcement obligations. To accomplish this goal, we recommend that the UCR define rape as follows:

Rape: vaginal, oral or anal intercourse or vaginal or anal penetration by a perpetrator using an object or body part without freely and affirmatively given consent.

Background:

The Women's Law Project and the undersigned individuals and organizations are all experienced in advocacy on behalf of victims of sex crimes and domestic violence. Consequently, we have a strong interest in the appropriate treatment of victims of sexual assault and in the effective investigation and prosecution of sex crimes. We strongly believe that the UCR must be updated to improve the reporting and handling of crimes of sexual assault.

The Women's Law Project recognized the need to change the UCR definition of rape after learning about the impact of the UCR on the Philadelphia Police Department's handling and reporting of sex crimes. The Law Project began working with the Philadelphia Police Department following the publication in *The Philadelphia Inquirer* of a series of articles recounting the Philadelphia Police Department's misclassification of substantial numbers of sex crime complaints as non-crimes. The Department requested that we assist it in revising its classification system and reviewing its handling of complaints.

While helping the Philadelphia Police Department improve its crime classification system and response to sex crimes, the Women's Law Project learned that the inconsistencies between the UCR's narrow definition of rape and the broader definitions of sex crimes promulgated by the Pennsylvania legislature present major problems. These inconsistencies create an unnecessary barrier to the accurate and comprehensive reporting of serious crime in Pennsylvania. The narrow UCR definition of rape reduces significantly the amount of information shared with the public about sex crimes in a way that disregards how Pennsylvania has chosen to define sex crimes. The narrowness of the UCR's definition of rape also improperly influences police perception of what constitutes a serious sex crime, focusing the police on the UCR definition of rape rather than on what Pennsylvania has defined as serious sex crimes. These problems are not unique to Pennsylvania; they affect every jurisdiction that has chosen to modernize its rape laws.

Problems with the Current UCR Definition of Rape:

1. *Part I rape does not accurately inform the public of the true incidence of serious sex crimes.* The UCR divides crimes into Part I and Part II crimes and treats Part I crimes as the serious crimes. It also reports more information to the public about the incidence of and effectiveness of police response to Part I crimes. We do not object to the UCR's focus on more serious crime. However, because the only sex crime included in the UCR's Part I crime index is the narrowly defined category of rape and Part I excludes many serious sex crimes, the report fails to give an accurate picture of the incidence of serious sex crimes in America.

Many serious sex crimes classified under the crime codes of most states as felonies and misdemeanors are not included in the Part I category of rape. Rather, all sexual assaults which do not fit within the narrow UCR definition of rape are reported as a single, undifferentiated category, Other Sex Crimes,² which includes both serious crimes such as involuntary deviate sexual intercourse and incest as well as more minor offenses such as indecent exposure. These Part II crimes are only reported when an arrest has been made. For those sexual assaults that fall outside the current definition of rape, the public will only find out how many arrests the police have made, rather than the numbers of serious sex crimes reported to police in their communities. America needs to know the extent of serious sex crimes, not just the incidence of one specific type of sexual assault (UCR rape).

2. *The UCR negatively impacts law enforcement's response to sex crimes.* The UCR's narrow definition of rape also has complicated and damaging ramifications for law enforcement. When the UCR minimizes what crimes count as rape, it sends a powerful message to those who gather the statistics - the local agencies - that the only serious sex crime is UCR rape. The UCR's definition of rape becomes the standard of "real" rape, negatively influencing the attitudes of law enforcement towards the many rape victims whose stories do not fit within this narrow, stereotypical view of rape. When a sex crime is considered less serious, it may not receive the full range of police resources and attention that it deserves. Police response is already hampered by pervasive biases against rape victims. By minimizing the seriousness of sex crimes, the UCR's limited definition of rape exacerbates this problem.
3. *The narrow definition of Part I rape contributes to underreporting by victims.* Inadequate police response in turn leads to diminished public confidence in the handling of sex crimes by police within a particular community. Rape is

² See GREENBOOK, *supra* note 1 at 80.

already the most underreported of crimes.³ Because rape victims find it so difficult to come forward under the best of circumstances, diminished trust in the police strongly undermines the likelihood of victims to report a rape. When a victim does not report a rape to the police, the police can not bring the perpetrator to justice, making it possible for this rapist to strike again.

4. *Diminution of rape statistics hampers law enforcement and victim assistance efforts.* The underreporting of rape seriously handicaps the efforts of all those who would help the victims, from the decision-makers who control funds for investigation and prosecution of sex crimes to rape crisis centers who provide essential victim services to community organizations concerned with crime in their communities. Data that diminish the scope of the problem reduce the ability to develop programs and policies that appropriately respond to the problem. Accurate information is essential to the work of all these parties, and the data on rape currently reported by the UCR are not adequate.

Changing the Part I definition of rape to more closely match the crime actually experienced by so many victims is an important step towards addressing these complicated problems. Because the FBI's definition of crimes for UCR reporting purposes carries so much weight for police departments across the country, the broadening of Part I rape would correspondingly improve police response to rape complaints and their investigation of complaints. Police recognition that rapes that fall outside of the narrow confines of the Part I definition are serious crimes is essential to the proper investigation of these crimes and the proper treatment of these victims.

Attempt to Expand Reporting by NIBRS:

The FBI's attempt to improve the accuracy and usefulness of UCR sex crimes data by creating a whole new system to replace the UCR is not an adequate solution. Created in the mid-1980s in response to seven decades of criticism about the data collected on rape and other sex crimes, the National Incident-Based Reporting System (NIBRS), is, on paper, a great improvement over the traditional summary system of gathering UCR data. In particular, in the Group A offenses for which it collects both incidence and arrest data, NIBRS includes two groups of sex offenses: Sex Offenses, Forcible and Sex Offenses, Nonforcible.⁴ Together, these two groups more closely reflect serious sex crimes as defined by state laws. "Sex Offenses, Forcible" is defined as "Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent."⁵ This group includes: forcible rape, forcible sodomy, sexual assault with an

³ See Mary P. Koss, *The Underdetection of Rape*, 48 J. SOC. ISSUES 61, 63 (1992) (citing the 1982 UNIFORM CRIME REPORT).

⁴ FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK: NIBRS EDITION 21-22 (1992) [hereinafter NIBRS HANDBOOK].

⁵ See *id.*

object, and forcible fondling.⁶ The category “Sex Offenses, Nonforcible” is defined as “Unlawful, nonforcible, sexual intercourse” and includes incest and statutory rape.⁷ NIBRS has expanded upon the definition of rape itself, eliminating both the gender limitations and force requirements of the UCR definition.⁸

Unfortunately, the NIBRS system has not been adopted by many local law enforcement authorities. Today, more than fifteen years since the inception of this system, NIBRS statistics represent only 11% of the population.⁹ Austin, Texas is the only city with a population over 500,000 to use NIBRS, and only three other cities with populations over 250,000 use NIBRS.¹⁰ The scale and complexity of NIBRS, along with the degree to which it departs from summary reporting make NIBRS very cumbersome and very expensive to implement – disproportionately more so for the large law-enforcement agencies in the major metropolitan areas where most of the American population lives. The current summary reporting system took over thirty years to implement,¹¹ and NIBRS is a vastly more complex and ambitious system. Widespread adoption of NIBRS will not take place for decades, if at all.

Proposed Changes to the Summary Reporting Definition:

Since NIBRS is not likely to be implemented to the extent necessary to gather nationally representative statistics for decades, we call for a change in the current definition of rape in Part I of the UCR’s Index Crimes. Unlike the implementation of NIBRS, instituting a revised definition of rape is not costly, and will not require extensive retooling of local agencies data-collection systems. The Part I definition of rape should be changed to include all forms of non-consensual sexual penetration, rather than just the limited group covered by the current definition. Specifically, the following conduct needs to be included in the definition of rape:

1. *Non-forcible rape*: Currently, summary UCR reporting only includes those rapes perpetrated by use of force. The definition reads, “forcibly *and* against her will.”¹² By contrast, the definition of rape used for NIBRS includes rape against the victim’s will even if force is not used. It reads, “forcibly *and/or*

⁶ See *id.* at 21.

⁷ See *id.* at 22.

⁸ See *id.* at 21.

⁹ See BUREAU OF JUSTICE STATISTICS & FEDERAL BUREAU OF INVESTIGATION, LEVEL OF UCR PARTICIPATION BY STATE AS OF MAY 5, 2000 available at <http://www.ojp.usdoj.gov/bjs/nibrstatus.txt>.

¹⁰ *Wichita, Charlotte-Mecklenburg, and Chicago Test NIBRS*, A NEWSLETTER FOR THE CRIMINAL JUSTICE COMMUNITY: NIBRS EDITION (Criminal Justice Information Services Division, FBI, Washington, D.C.), vol. 4 at 8, tbl. at 10

¹¹ Michael G. Maxfield, *The National Incident-Based Reporting System: Research and Policy Applications*, 15 J. QUANTITATIVE CRIMINOLOGY 119, 139 (1999).

¹² See GREENBOOK, *supra* note 1 at 10 (emphasis added).

against the person's will,"¹³ and the definition used in summary reporting should as well.

Many rapists do not use force. They use other types of coercion or other means to control their victim. In many acquaintance rapes, the offender uses a high level of verbal coercion but little physical force.¹⁴ Many rapes of children are perpetrated without force or even threat of force.¹⁵ Rape of other particularly vulnerable victims such as mentally disabled, physically disabled or unconscious persons also may occur without actual force, but without the victim's consent. Some stranger rapes are perpetrated without force or with very minimal force.¹⁶ At least eighteen states currently criminalize penetration without the victim's consent without requiring proof of force or coercion.¹⁷ Approximately twenty states have a statute that substitutes non-physical forms of coercion for the traditional force requirement.¹⁸ The UCR's definition of rape excludes the above-described situations and is in conflict with state statutes. It should be changed to require only that rape be against the victim's will.

2. *Non-vaginal/penile rape*: The UCR definition counts only vaginal/penile penetration as rape. However, oral, and anal rape and penetration of the vagina or anus with a body part or foreign object¹⁹ are just as serious and must be included. Most states have expanded the definition of rape beyond vaginal/penile penetration.²⁰ Because the states have by and large already made reforms to their rape laws in this respect, the UCR is reporting only a segment of what state laws classify as rape, thus presenting an inaccurate picture of the incidence of this crime. The current UCR definition conflicts with the overwhelming majority of states in this respect, and needs to be brought into line.

¹³ See NIBRS HANDBOOK, *supra* note 4 at 21 (emphasis added).

¹⁴ See Ian T. Brownes, et al., *Rape – A Comparison of Stranger and Acquaintance Assaults*, 31 MED. SCI. & L., 102, 108 (1991).

¹⁵ See *id.* at 326-35.

¹⁶ See Robert R. Hazelwood & Ann Wolbert Burgess, *The Behavioral-Oriented Interview of Rape Victims: The Key to Profiling*, in PRACTICAL ASPECTS OF RAPE INVESTIGATION: A MULTIDISCIPLINARY APPROACH 144, 158 (Robert R. Hazelwood & Ann Wolbert Burgess eds., 1999).

¹⁷ Patricia J. Falk, *Rape by Fraud and Rape by Coercion*, 64 BROOK. L.A.W REV. 39, 125-26 (1998).

¹⁸ See *id.* at 119

¹⁹ The report that resulted in the formulation of NIBRS recommended that the UCR include rape by instrumentation. See EUGENE C. POGGIO ET AL., FEDERAL BUREAU OF INVESTIGATION, BLUEPRINT FOR THE FUTURE OF THE UNIFORM CRIME REPORTING PROGRAM 5 (1985) [hereinafter BLUEPRINT].

²⁰ See Patricia Searles and Ronald J. Berger, *The Current Status of Rape Reform Legislation: An Examination of State Statutes*, 10 WOMEN'S RIGHTS REPORTER 25, 31 tbl.1 (1987). When Searles and Berger did this survey, only 33.3% of states still limited rape to vaginal penetration. Even fewer states limit their definitions today. See, e.g., D.C. CODE ANN. § 22-4102 (2000); IDAHO CODE § 18-6101 (2000); KY. REV. STAT. ANN. §§ 510.010, 510.040 (2000); Me. Rev. Stat. Ann. tit. 17-A § 251, 253 (2000), MISS. CODE ANN. § 97-3-95, 97 (2000).

3. *Rape without gender limitations*: Summary UCR reporting only includes rapes of women (“carnal knowledge of a female”²¹). In reality, many rape victims are boys and men, and the definition of rape must include these crimes as well. The National Violence Against Women Survey done in 1995-96 by the Centers for Disease Control and Prevention and the National Institute of Justice found that 15% of all victims of attempted or completed rape are male.²² The same survey found that in the United States, 1 in 33 men has experienced an attempted or completed rape in his lifetime and approximately 92,700 men and boys are forcibly raped each year.²³ The percentage of child victims who are male is even higher. Using NIBRS data, a recent report on sexual assault of young children from the National Center for Juvenile Justice and the Bureau of Justice Statistics found that 31% of victims of sexual assault under age six were male.²⁴ Although women are more likely overall to be the victim of rape, the number of men and boys raped is significant and most states have made their sexual assault laws gender neutral. The UCR should make the Part I definition of rape gender neutral as well.
4. *Rape by a blood relative*: Currently, the UCR counts rapes committed by blood relatives as incest. These rapes are reported as an undifferentiated piece of the Part II offense category “Other Sex Crimes.” Minors are more likely to be raped than adults,²⁵ and minors are particularly likely to be raped by members of their families. According to the National Center for Juvenile Justice/Bureau of Justice Statistics Report, family members perpetrated 49% of sexual assaults where the victims were under age 6, 42% where the victims were ages 6-11, and 24% where the victims were ages 12-17.²⁶ In comparison, 12% of offenders who sexually assaulted adults were family members.²⁷ As a significant portion of victims, particularly juvenile victims, are assaulted by family members, these crimes need to be counted with other rapes, rather than mixed in with less serious sex crimes such as indecent exposure.

Each of these types of sexual assault is equal in seriousness to male/female-vaginal/penile rape and are encompassed by the definition we have proposed. Only when

²¹ See GREENBOOK, *supra* note 1 at 10.

²² PATRICIA TJADEN & NANCY THOENNES, NATIONAL INSTITUTE OF JUSTICE & CENTERS FOR DISEASE CONTROL AND PREVENTION, PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 3-4 (1998)

²³ See *id.*

²⁴ HOWARD N. SNYDER, NATIONAL CENTER FOR JUVENILE JUSTICE, BUREAU OF JUSTICE STATISTICS, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 4 (2000).

²⁵ See also TJADEN & THOENNES, *supra* note 10 at 6 (discussing how more than half (54%) of the women in their survey experienced their first rape before age 18).

²⁶ See SNYDER, *supra* note 24 at 10.

²⁷ See *id.*

Robert S. Mueller, III
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the UCR includes these rapes in its definition can it begin to provide the useful accurate information essential to fighting these horrible crimes.

Conclusion:

The dated and inaccurate definition of rape currently used in Part I of the UCR is inadequate and must be changed as outlined above. It omits many rapes equally as serious as the narrow group it includes. By omitting these rapes from the data it collects and publishes, it contributes substantially to the serious problem of the underreporting of rape. Through this diminution in crime statistics, the UCR provides communities and decision-makers with inaccurate information about the incidence of serious sex crimes and contributes to the invidious problem of reduced public confidence in law enforcement's handling of sex crimes, which negatively impacts the ability of local agencies to fight rape effectively. NIBRS has not solved these problems and therefore is not an adequate solution. In the interim, the definition of rape used in Part I must be changed, and changed quickly, to include all types of rape.

Respectfully Submitted,

Carol E. Tracy
Executive Director

Terry L. Fromson
Managing Attorney

Women's Law Project

On Behalf of 89 Organizations In Support
Of Change in UCR Definition of Rape
(Listed in Attachment "A")

cc: Advisory Policy Board, UCR Subcommittee
Office for Victims of Crime
Violence Against Women Office, Dept. of Justice
International Association Chiefs of Police
National Sheriff's Association
National District Attorneys Association