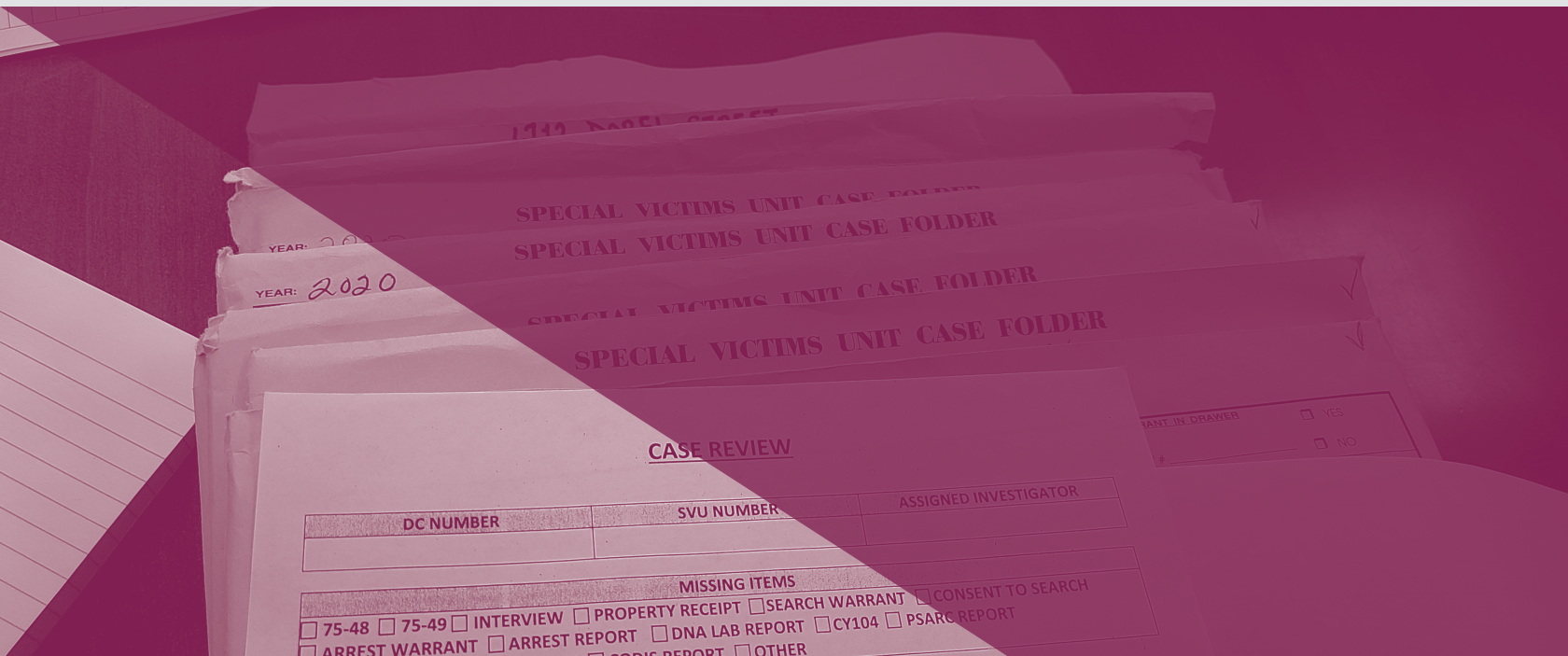




Annual Advocate Sex Crime Case Review Guidebook

THE PHILADELPHIA MODEL

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The Women's Law Project (WLP) is a Pennsylvania-based nonprofit public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. WLP leverages impact litigation, policy advocacy, public education and direct assistance and representation to dismantle discriminatory laws, policies, and practices and eradicate institutional biases and unfair treatment based on sex or gender. See womenslawproject.org

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This report is available on our website at womenslawproject.org and in print. To order a print copy, contact the Women’s Law Project at our Philadelphia address or phone number. This guidebook may be reproduced in whole or in part without fees or permission, provided that acknowledgment is made to the Women’s Law Project.

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Authors' Note

This guidebook describes everything we have learned over the past 20 years about police response to sex crimes and the innovative tool we developed in collaboration with the Philadelphia Police Department (PPD) to help improve it—the annual advocate case review.

Our education began in 1999, when the Philadelphia Inquirer published an investigative report alleging that the PPD was failing to adequately investigate sex crimes and concealing that failure in their reports. The allegations were shocking and suggested a police department infected by bias against rape victims.

As we considered how to respond, we initially considered the feasibility of bringing a civil rights lawsuit or seeking legislative changes. After examining the crimes code and case law, however, we concluded that neither litigation nor legislative reform in Pennsylvania would effectively eliminate the problem of bias compromising or even preventing appropriate investigation.

Instead, we orchestrated an advocacy campaign to try to rectify past failures and improve investigations moving forward. We researched the historic treatment of rape. As described in this guidebook, we learned about long entrenched historic biases against women with respect to rape which persists today as both explicit and implicit and its extension to LGBTQ people. We delved into social science articles and crime data. We discovered that the PPD's practice of moving sex crimes to a non-criminal category in order to avoid a complete investigation, while keeping clearance numbers high, was an open secret; studies detailing this process were published decades before our project began. Unfortunately, there was a disconnect between the academic and advocacy communities, and this information was not acted upon. We saw how systemic bias corrupts data, which in turn informs access to resources. In researching how Philadelphia police buried rape complaints in a non-criminal code, we discovered national statistics also grossly undercounted rape.

We met with the Philadelphia Police Commissioner, called for City Council meetings, suggested improvements to coding crimes, and requested an internal audit. The Commissioner was responsive to our requests. After he completed an internal review of the sex-crime investigations that had been placed in the non-crime category for the past five years, the statute of limitations at the time, he understood that the newspaper allegations were accurate, and that investigators had failed to properly identify and investigate sex crimes and had in some cases treated victims in a “god-awful manner.” He made numerous structural and management improvements and then invited us to organize an advocate review of recently unfounded sex crime files to provide feedback that could guide changes to help regain the public trust.

We conducted our first advocate case review of recent PPD sex crime files in 2000. It may have begun as a confrontation, but it has evolved into an unprecedented collaboration between police and advocates. It has been a learning experience for both police and advocates.

We later learned from the Special Victims Unit supervisors at the time that they were confident that we would not find problems with their investigations during the case review and were shocked when we did. They told us that, as a result of our questions, they began asking themselves why they focused on the behavior of complainants—asking what they were wearing or why they were out alone and if they were drinking—when there were no legitimate reasons to do so.

Our eyes have also been opened by this process. In short, we learned how hard it is to investigate sex crimes. They can be complex and time-consuming. They can also be emotionally draining. In our review,

we only read paper files; we do not personally interview a person who has been horribly violated or a person suspected of committing such a heinous act. The police do, however, while needing to maintain professional neutrality during interviews of both parties.

By starting with local reform and working up the systemic chain, we have become national leaders and experts on the topic of improving police response to sex crimes. We have testified before the U.S. Senate Subcommittee on Crime, led the campaign to change the definition of rape in the Uniform Crime Report (UCR), assisted the Department of Justice (DOJ) in an investigation of police misconduct regarding sexual assault, participated in advocacy efforts to create a DOJ Guidance, and have consulted with the Police Executive Research Forum on improving police practices in nine other jurisdictions.

During these twenty years, we have reviewed thousands of sex crime police files. We have seen significant improvements but continue to see the remnants of the historic bias against rape victims in these files. We also have seen recognition by police leadership of the serious public safety threats to individuals and communities caused by rapists. We have seen efforts of police to improve their practices, but we have also seen that adequate police resources have not been dedicated to properly investigate this crime, and that investigators often lack appropriate training, particularly on how to conduct trauma-informed investigations.

We have learned that the now largely discredited “broken windows/zero-tolerance/quality of life” theories developed in the 1990s that emphasized proactive enforcement of low-level and non-criminal offenses, as opposed to serious crimes, have not only led to the over surveillance and mass incarceration of Black and brown people, but also drained resources from responding to serious crimes. We have yet to see a police department that has adequate staffing, technology, training, and resources to investigate sex crimes in the thorough, timely, and effective manner that crimes of this magnitude require.

Most troubling of all, as described in this guidebook, national evidence-based research shows few arrests and even fewer successful prosecutions on rape charges, leaving the public vulnerable to this serious crime and repeat offenders.

We understand that not every victim of rape will want to report to the police. But every person who does choose to report deserves a timely, fair, thorough, and unbiased investigation of their allegations. The investigation should be informed by both an awareness of the cultural history of bias against rape victims and current knowledge about the neurobiology of trauma and its effect on behavior and memory.

We know that the case review is not a “one and done” process, which is why it has continued for more than 20 years. Philadelphia PPD Special Victims Unit Captain, Joseph Mooney, once summed up our impact on the SVU, saying, “their eyes see things that ours do not.” We also know that the advocate review is an effective tool as long as there is appropriate police leadership, accountability, and management. We strongly advise that police leadership follow the path of Philadelphia and conduct an internal review to assess that appropriate management, supervisory, and accountability structures are in place before asking advocates to review case files for systemic bias.



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I. INTRODUCTION

The #MeToo movement has created a watershed moment in society's recognition of the prevalence of sexual misconduct and violence and the need for massive social and cultural change. #MeToo stands on the shoulders of advocacy efforts begun by grassroots feminists who identified deep-seated bias against rape victims* in our justice system over five decades ago. Their advocacy led to significant reform in civil and criminal laws. However, the #MeToo movement, galvanized by Black and brown advocates, has demonstrated that, in spite of improved legal protections as set forth in our laws, sexual victimization and the failure of our justice system to address it continue virtually unabated.**

Considerable effort is currently underway to expand civil law protections and legal resources to eliminate sexual harassment and sexual assault in the workplace. Social media disclosures connected with #MeToo have revealed violations not only of laws applicable to non-discrimination in the workplace but also violations of sex crime laws. Dedicated efforts are similarly needed to eliminate systemic bias—based on sex, gender, race, and ethnicity—in the criminal justice system's response to sex crimes.

Over the past two decades, investigative journalists have repeatedly exposed evidence of police refusing to accept sex crimes for investigation, failing to adequately investigate sex crime complaints, determining rape complaints to be “unfounded” (false or baseless) at high rates, and arresting at low rates.¹ Academic research has corroborated that the existence of biased attitudes at all levels of the criminal justice system results in disbelief and blaming of sex crime complainants, including inaccurate perceptions of “real rape” (forcefully, by a stranger in a vacant lot at night, resulting in physical injuries), “real victims” (individuals of substance who do not engage in risk-taking conduct), and “real rapists” (low stature in society).²

Rape is rarely pursued as a crime. Evidence-based research consistently shows high attrition rates for rape complaints in the criminal justice system.³ The most recent study of six jurisdictions shows that, out of 100 cases reported to police, only 19 result in arrest, and of those, only six end in conviction or guilty plea, implicating the lack of responsiveness not only by police but also by prosecutors, judges, and juries.⁴

The treatment of rape is distinct from the treatment of other assault crimes. For other assault crimes, the legal system focuses only on the actions of the accused to establish criminal activity. For example, the crime of battery (e.g., a punch) is established based solely on evidence of the perpetrator's actions and/or intent, and the victim's conduct is irrelevant. The victim need not resist nor express unwillingness to being punched to establish a crime; nor is a victim's history of being punched relevant. Lack of consent is assumed. Rape, on the other hand, under the historical view, is perceived as occurring not because of the action of the assailant, but because the victim incited it and failed to stop it. As a consequence, law enforcement may focus on the victim's character, behavior, and words in order to ascertain whether the victim was being truthful, particularly with regard to whether they consented to sexual activity, instead of the actions of the accused.

* We use the term “victim” rather than “survivor” because the criminal justice system uses “victim.”

** We recognize people of all genders and across the spectrum of sexual orientation experience and perpetuate sexual violence, and that deeply entrenched myths about and biases against LGBTQIA+ people have disproportionately enabled sexual violence and hindered justice in the wake of assault. Though we use gender-inclusive language where possible, data and much of the law are assessed and interpreted in a binary way, and we therefore refer to “women” and “men” to accurately reflect research, data, and the law.

It is evident that major reform is needed in the criminal justice system's treatment of sex crimes. The vast majority of victims of rape and other sexual assault do not report to police, many because of their fear of being disbelieved, blamed, or mistreated by police.⁵ Some victims are pursuing alternative procedures to seek justice. Others continue to seek assistance through the criminal justice system. Those who do report to police deserve to have a thorough, bias-free, trauma-informed investigation. Police are the first responders in the criminal justice system. How a police officer interacts with the victim is critical to the future progress of the investigation and its outcome as well as the emotional health and safety of the victim.⁶

One way to approach the need to achieve systemic improvement of police response is the inclusion of advocates in a process to review police sex crime investigations. For almost 20 years, the Women's Law Project, along with other advocates, has performed an annual review of the Philadelphia Police Department's (PPD) Special Victim Unit's (SVU) sex crime files. The review was created because of a publicly reported scandal and a courageous police commissioner's response to it. The scandal was the Philadelphia Police Department's failure to investigate thousands of sex crimes by concealing them under a non-crime code. After a sequence of public city council hearings orchestrated by advocates, a comprehensive internal review of five years of sex crime files, and a restructuring of the SVU, the Police Commissioner invited advocates to help the police regain the community's trust by improving its response to sex crimes. The resulting annual advocate case review has been ongoing through to the present. The Philadelphia advocate case review has become known as the Philadelphia Model and has been adopted by the New York City Police Department⁷ and a number of Canadian cities.⁸

This guidebook provides information essential to creating and effectively performing an advocate case review. It describes the history, nature, and influence of bias on the treatment of rape by police, and the components necessary to conduct an effective advocate case review. First and foremost, police leadership needs to recognize the value of advocate experience and input. Second are the nuts and bolts details of formalizing the process with the police addressing confidentiality, establishing an advocate team to perform the review, selecting cases to be reviewed, and preparing the team for the case review. Additional components include becoming informed about relevant applicable criminal law provisions, local police protocols, and local police sex crime data; learning about national and local crime data that inform the advocate case review process, and promising practices in law enforcement response to sex crimes. The objective of the case review is to monitor the thoroughness of the investigation and to root out bias.

We recognize that bias continues throughout the criminal justice process. However, our case review was created due to a problem at the police level of the criminal justice system. Moreover, as said above, first responders play a very critical role in responding to rape. Research demonstrates that the attitude of law enforcement personnel and their treatment of victims have a singular impact on victim recovery and participation in the criminal justice process. The manner in which investigators interview complainants has an effect on the extent to which the complainant is comfortable cooperating and disclosing information and potentially on the successful prosecution of the case. Almost half of victims report secondary victimization by police who convey they do not believe the victim, the complaint is not serious, or the victim is to blame. To the extent that a negative experience with a detective results in an inadequate victim statement, victim experiences with police may impact whether a case is prosecuted and whether prosecution ultimately results in a conviction. Participants whose cases were prosecuted reported that detective support helped them endure the criminal justice process.⁹

While reform throughout the system is essential, this guidebook is limited to a review of police sex crimes case files through a collaboration by advocates and law enforcement.

II. THE EVOLUTION OF RAPE LAW AND BIAS

To effectively perform a case review, it is important to understand the historical context in which rape and other sexual assault laws have evolved and led to bias in the application of the law by some assigned the task of its enforcement.

This historical context has influenced the way sex crime laws are written by lawmakers and enforced by law enforcement and the courts, including specifically how police investigate a sex crime, question a complainant, interrogate a suspect, and decide whether to arrest; how prosecutors decide whether to take the cases to court, and how judges and juries make ultimate decisions as to whether to convict. The justice system's response in turn impacts whether victims perceive themselves as crime victims, and whether they view the criminal justice system as one that recognizes them as crime victims.

The complexity of sex crime laws derives from English Common Law's historical bias against women; racial bias dating to the origins of slavery in America against Black men as perpetrators of rape of white women and Black women as incapable of being raped; and LGBTQ bias directed against individuals because of their gender identity and sexual orientation.

The manner in which the laws are enforced and sexual assault cases are processed are influenced by these biases. Researchers who have examined the decision-making process at all levels of the criminal justice system have found that these decisions rely on both legal and non-legal factors that allow the exercise of wide discretion. This discretion permits decisions relating to arrest, prosecution and conviction to be influenced by consideration of victim and suspect characteristics as measures of credibility and culpability, including victim moral character, reputation, risk-taking behavior (i.e., drug or alcohol use), mental health or criminal history, time to report, cooperation, resistance to the assault, memory deficit resulting from trauma, lack of corroborating injuries, and prior relationship with the suspect.¹⁰ Some of these factors, as discussed below, were—but are no longer—elements of the crime of rape but persist in the form of stereotypes and rape myths.¹¹

The processing of sex crimes in the criminal justice system through the lens of rape myths and race, ethnicity and gender bias likely contributes to the high attrition rate.¹² Eliminating the inappropriate use of these factors as a basis for discrediting or blaming the complainant will result in greater trust in the police and thus increased reporting and cooperation.¹³

A. Sex Bias

Under English common law—from which American laws developed—rape was a crime against property, not person. A woman's reproductive capacity, in the form of her chastity, was considered the property of her father and was essential to the perpetuation of patriarchal inheritance rights. Rape laws protected the economic interests of men, first the fathers, who considered the rape of their daughters the theft of their property. Upon marriage, the law protected the husband's patriarchal property rights in his wife and her property and future children. The bodily integrity of the woman was irrelevant.¹⁴

The consequences of the early rape laws were that (1) unmarried women could be raped only if they were virgins; and (2) married women were presumed to have consented to all sexual activity with their husbands.¹⁵ Under these theories, men could not be raped, rape of orifices other than the vagina was not legally recognized, and rape of non-virginal women was not a crime.

As incorporated into American jurisprudence, the basic elements of state rape laws included: carnal knowledge (male [penile]-female [vaginal] penetration), use of force beyond the rape itself, and “against her will” (lack of consent).¹⁶ In order to establish that the act was against the will of the woman, it was necessary to establish that force was used, and to establish force, it was necessary to show how much a woman resisted.

As the law evolved and rape became recognized as a crime against the female victim, women were cast as liars to protect men’s interests.¹⁷ Chastity was an element of the crime.¹⁸ Rape complainants who were “unchaste” were viewed as immoral, to have likely consented, and therefore likely to lie and the woman’s lack of chastity was used to establish her lack of credibility.¹⁹ Women who charge rape have historically been under constant suspicion about their veracity and accused of falsely claiming rape to protect their reputation, explain a pregnancy, seek revenge against or blackmail a man, gain notoriety, or force marriage.²⁰

As a result of this false view that women lie, lawmakers imposed numerous procedural and evidentiary requirements as tests of victim veracity with the objective of proving the innocence of the accused.²¹ The legal system’s hostile treatment of rape cases and rape victims is unique and in marked contrast to its response to other assault crimes. In sex crimes, the focus is on the victim’s character, behavior, and words in order to ascertain whether the victim is being truthful, particularly with regard to whether she consented to sexual activity. Laws were written that required rape victims to prove their truthfulness by producing evidence that they resisted their attacker, suffered serious physical injuries beyond penetration, were chaste, and promptly complained to authorities. They also had to provide corroborating witnesses or other evidence. The complainant’s word was insufficient.²²

These rules and requirements, imposed only in rape and sexual assault cases, severely disadvantaged and stigmatized rape complainants and made it extraordinarily difficult to successfully prosecute rape. For other assault crimes, the legal system focuses only on the actions of the accused to establish criminal activity. In cases of rape, the legal system focuses on the actions of the victims.

Out of this history grew myths about and bias against female victims. Rape myths are “attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women.”²³ These myths include:

- Most rape claims are false, and women lie about rape out of guilt or vengeance.
- Most rapes are committed by strangers, rather than friends, acquaintances, or family members.
- Real rapes are violent and use a weapon or cause serious injuries.
- Real rape victims fight back.
- A woman cannot be raped against her will—a woman can prevent a rape.
- Rape happens only to women who are considered “bad” by society, including those considered “promiscuous” or dressed provocatively and those who drink alcohol or engage in other activities that render them deserving of societal blame.
- A complainant will promptly report a rape to police.
- Women secretly want to be raped. No means yes.
- If a complainant was really raped, she would be visibly upset and yet would be capable of providing a comprehensive and chronological narrative of the assault.
- A real rape victim would not continue contact with the person who assaulted them.
- Women are incapable of committing rape.
- There is no such thing as rape in the LGBTQ community.

Most rape allegations are not false; rape does not discriminate among classes of women (although law enforcement response may); and most rapes are committed by someone the victim knows.²⁴ In contrast to the mistaken belief that women make false allegations, research demonstrates that only 2 to 8 percent of complaints are false, no more than for any other crime, and that false allegations are unlikely to result in wrongful convictions.²⁵ Moreover, most women do not even report their victimizations to law enforcement. In reality, only 15 to 20 percent of victims of sexual assault report to police for a variety of reasons, including embarrassment, fear of retaliation, fear of being blamed, and concerns about the criminal justice system.²⁶ In addition rape often results in few, if any, physical injuries apart from the rape itself.²⁷ Many victims do not physically resist their attackers because, among other reasons, they fear serious injury or death or are immobilized by trauma.²⁸ Furthermore, research shows that there are a wide range of reactions and behaviors that victims exhibit during and in the aftermath of sexual assault, and it is erroneous to assume that a victim should behave in any particular way.²⁹

In response to the biased manner in which the criminal justice system treated women, sweeping sex crime law reform began in the 1970s.³⁰ Feminists rejected the notion that women are the property of men without independent legal status or rights, and demanded changes in the laws. As a result of this activism, most states have expanded the definitions of sex crimes to eliminate disparities based on gender and marital status. Most have also rescinded or reduced the requirements of resistance, corroboration, and prompt reporting to law enforcement,³¹ and prohibited introduction of a woman's past sexual history (with exceptions) because it was improperly used by defendants to discredit victim testimony.³² It is now well-established that penetration of orifices other than the vagina is a felony. Issues of force and consent continue to change but clear trends in the evolution of the law are identifiable. The definition of force is broadening beyond overt physical force alone to include other modes of coercion. There is an increasing recognition that penetration without consent without any physical force is a serious sex offense.³³ These trends demonstrate the growing understanding that unwanted and unconsented to bodily invasion is the core wrong that sex crimes laws must address.³⁴

Regardless of the letter of the law, and prior changes in the law reflecting the lack of evidentiary support of rape myths, they persist within society. In persisting, these myths perpetuate the criminal justice system's practices of wrongly blaming the victim, assuming the victim's untruthfulness, trivializing the seriousness of sexual assault, and excusing the assailant's behavior.³⁵

Consequentially, the reform efforts have not alleviated either the systemic sex bias against women or the bias that pervades the criminal justice system against Black men and women and LGBTQ victims of sexual assault.³⁶

B. Racial and Ethnic Bias

With the introduction of slavery in America, Black women had no rights and were the property of owners who viewed them as breeders of slaves and could rape them at will with no repercussions. Before the Civil War, laws in the United States overtly criminalized only rape of white women by Black men. Specific laws existed that prescribed castration and death for the rape by Black men of white women. Rape of Black women was not a crime.³⁷

In the immediate post-Civil War era, the rape laws were rewritten to be racially neutral. By 1917, no rape statutes mentioned race. However, racially motivated practices continued. Black women were per se considered promiscuous and unchaste and therefore could not be raped.³⁸ Black men were accused of

raping white women on no evidence and subjected to harsher penalties than white men. Justice by mob rule and lynching of Black men was condoned.³⁹

The racial legacy of rape denied even basic due process to Black men accused of raping white women in service of the dominance of white men over Black men.⁴⁰ Black women—enslaved or not—essentially had no legal recourse, and white women raped by white men were also without legal recourse.⁴¹

The mistreatment of Black women persists. Although the public concern with over-criminalization disproportionately affecting Black men is legitimate, it has overshadowed the ongoing mistreatment of Black women in the criminal justice system. Black women are particularly vulnerable to inadequate criminal justice response. Black victims continue to be viewed as uncooperative, disruptive, and blameworthy, leading to incomplete investigations, fewer referrals to prosecution, and lower likelihood of charges being filed.⁴² They continue to be viewed as available for sexual assault without legal repercussion because they are viewed as being more sexually active and less harmed by assault.⁴³

Research on the current impact of race on decision-making in the investigation, prosecution and trial of rape complaints is not extensive. The research that exists is focused on the impact of racial bias in prosecutorial and judicial decision-making.⁴⁴ That research shows that Black or Hispanic men who are accused of raping white women are punished more harshly than white men accused of rape, particularly in stranger rape cases; white suspects accused of assaulting Black or Hispanic victims are treated the most lenient.⁴⁵

The research on the impact of race and ethnicity on decision-making by law enforcement, the aspect of the process on which this guidebook is focused, is mostly inconclusive or contradictory to earlier research or outdated.⁴⁶ While mixed, early research has suggested that police are influenced to pursue an investigation not only based on the evidence, victim-suspect relationship, and the victim's character and behavior at the time of the incident, but also on race and ethnicity.⁴⁷

In recognition of the gatekeeping function of law enforcement and high level of attrition at the arrest stage of the criminal justice system,⁴⁸ researchers recently published an analysis of racial and ethnic bias at the arrest stage. In doing so, they understood that arrest decisions may involve the prosecutor.⁴⁹ A police officer may arrest early in the case but the arrest may not be the final determination on the case. Police may also refer a case for arrest to the prosecutor who must sign off (or not) on the arrest warrant. Some investigators present the case to the prosecutor pre-arrest for evaluation and the decision to arrest is made by the prosecutor. This pre-arrest charge evaluation has been described as unique or more frequently used in sexual assault cases. While justified by prosecutors to ensure solid evidence before arrest, some acknowledge that this pre-arrest evaluation is intended to weed out cases at an early stage.⁵⁰

Acknowledging some overlap of police and prosecutorial involvement in the arrest decision, researchers undertook an analysis of 622 rape complaints filed with two Los Angeles law enforcement bodies in 2008 and found that police were less likely to make an arrest in cases involving Black suspects and Black or Hispanic victims than they were in cases involving white suspects and white victims.⁵¹ Further recognizing that police decision-making was also influenced by the quality of the evidence, the authors concluded that their results partially supported police bias based on race/ethnicity in their decision-making.⁵²

C. LGBTQ Bias

Bias on the basis of sexual orientation and gender identity and expression has a long history as well. Gender fluidity and same sex relationships have existed for millennia, at times with acceptance (e.g. ancient Greece), and at times with animosity by religious, legal, and medical authorities.⁵³ In the legal realm, sodomy laws first appeared in 16th century England and criminalized sex acts that would not lead to procreation, regardless of the sex of the individuals. When states repealed or courts enjoined these laws in the 1960s and thereafter, they typically only decriminalized conduct between partners of a different sex. They remained applicable to same-sex acts until the Supreme Court in 2003 decriminalized sex between same sex individuals.⁵⁴ Despite the Supreme Court ruling and recognition of same sex marriage, as well as greater acceptance of gender differences in the 21st century, bias against and mistreatment of LGBTQ individuals persists.

Although LGBTQ persons, especially transgender persons, are vulnerable to mistreatment in this arena, evidence-based research on the response of the criminal justice system to their complaints of sexual assault is scarce. In the early 1990s, one study found between 3% and 16% of LGBTQ respondents had been raped because of their sexual orientation.⁵⁵ Surveys conducted over the last two decades suggest that LGBTQ persons experience a disproportionate number of sexual assaults, including in the context of hate crimes.⁵⁶ A 2014 Lambda Legal national survey of LGBT experiences with law enforcement in the previous five years found that 39% of the respondents who reported sexual assault to the police described the police as neglecting their complaints.⁵⁷

D. Reform to Eliminate Bias is Needed

Additional reform in law and practice is needed to improve the response of the criminal justice system to all victims of rape. It is important to understand that vestiges of archaic requirements remain in some laws and that culturally ingrained bias influences the enforcement of the laws, and results in mistreatment of victims in all levels of the criminal justice system. These biases result in reluctance to report by individuals who fear not only mistreatment to themselves but also to the accused, particularly due to race and LGBTQ identities. Training and education are needed to eliminate bias throughout the system.

In addition, sex crime laws must be amended and supplemented to eliminate historical bias and recognize public understanding of rape. All jurisdictions retain a crime of penetration with force, but some still do not recognize rape without force and without consent. Some jurisdictions allow consideration of the promptness of complaint, resistance, and physical injury for some purposes, such as determining the credibility of the victim. While marital rape is now a crime in all jurisdictions, differences in treatment persist with regard to both rape of spouses and intimate partners. In addition, consideration of prior sexual history with the accused is allowed in some jurisdictions.

III. ORIGINS OF THE ADVOCATE CASE REVIEW

A. The Philadelphia Crisis

The Philadelphia annual advocate case review is an unprecedented and innovative collaboration between police and advocates that has proven highly effective in monitoring the systemic influence of bias on sex crime investigations. It was created due to a loss of public confidence after the Philadelphia Inquirer exposed a crisis in the Philadelphia Police Department (PPD) in 1999.⁵⁸

The PPD had been burying thousands of rapes and other sex crimes for at least two decades in the non-crime code 2701 “Investigation of Person.” Driven by the pressure to improve crime statistics and influenced by long-standing societal bias against sex crime victims and myths about sexual assault, the PPD labeled thousands of cases not “real rape” and did not investigate them. This downgrading eliminated a full and complete investigation of thousands of sexual assault cases. The victims were never advised that their complaints had been shelved.

As described in the Inquirer articles, the complainants in these cases included marginalized vulnerable women and children, who were poor, of color, had histories of drug and alcohol abuse, spent time in prison or had criminal records, lived in dangerous neighborhoods, worked as prostitutes or were deemed “uncooperative or hard to reach.” They also included white women, who lived in affluent neighborhoods in Center City Philadelphia. All were deemed not credible, including cases with good forensics and strong evidence. They were subjected to questions focused on the victim’s behavior, not the assailant’s. They were accused of initiating the sexual encounter, having too much to drink, lying, fantasizing, exaggerating and making stuff up to get back at men. Ultimately, they were abandoned by the police.⁵⁹

The Inquirer’s series shocked the advocacy community who had believed that the PPD was appropriately handling sex crime investigations. WOAR: Philadelphia Center Against Sexual Violence, one of the first rape crisis centers in the country, had aggressively advocated for reform in police and prosecutorial practice in the late 70s and early 80s. In response to this advocacy, in 1981 the PPD established a special police unit to investigate rape and other sex crimes that would be tailored to the unique and sensitive nature of the crimes. Child abuse was later added to the unit, which is now called the Special Victims Unit (SVU). At the same time, a special prosecution unit for sexual assault was established in the Philadelphia District Attorney’s office; family violence was later added to this unit.

In 1999, the advocacy community also learned that as far back as the early 80s and despite the creation of special units to improve the criminal justice system’s response to sex crimes, the PPD was failing in other ways.

In its early years, the SVU reported high numbers of unfounded complaints. In the first half of 1983, the PPD SVU’s unfounded rape rate rose to 52%, when the national average was 10%. The FBI contacted the Pennsylvania State Police, the oversight agency for crime statistics in Pennsylvania, asking for an explanation for data that disproportionately exceeded the national average.

Unfounded and Clearance by Exception Explained

The FBI knew about Philadelphia's unfounded rate because it oversees the Uniform Crime Reporting (UCR) system which collects data from law enforcement. This data collection is part of a voluntary national system intended both to generate data to inform the administration of criminal justice and to provide an understanding of the scope of crime in the United States.

From the 1980's until recently, the UCR had two reporting systems – the Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS) – and only the SRS system collected data on unfounded crimes. The SRS system has been retired and NIBRS will be collecting data on unfounded crimes by 2024.

The UCR SRS system specifies that a complaint may be unfounded only in the “occasional” (defined as “infrequent”) instance in which it is determined to be false or baseless after a thorough investigation.⁶⁰ Unfounding is not always equivalent to a false report. A report can be classified as baseless if the investigation reveals that the incident does not meet the elements of a criminal offense. A case cannot be unfounded if no investigation was conducted.

Despite strict guidelines for classifying a complaint as unfounded, law enforcement frequently classify cases as unfounded that do not meet these requirements. By increasing the unfounded rate, a police department keeps the crime rate down, in this case, the rape rate.

In addition to unfounding a case, a case may be cleared in FBI terminology by arrest or by exception. When a case is cleared by exception, it meets all the requirements of arrest but there is no arrest due to factors outside law enforcement control. As a consequence, a police report about the number of cases cleared may suggest to the public that the number represents the number of cases that are solved and led to arrests, when in fact arrests did not occur in some or many of those cases.

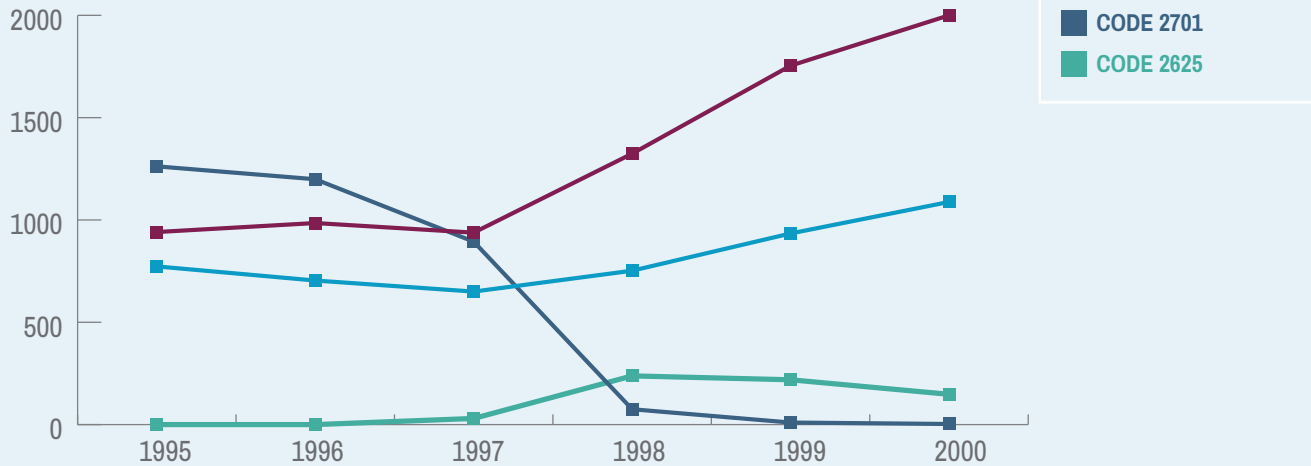
The exception factors include: the offender has died, is in the custody of another jurisdiction or is a juvenile, which are straightforward. However, the factors also include two categories that are vulnerable to misuse with respect to sex crimes: “victim refusal to cooperate” and “prosecutor declination.”

As discussed previously, threats and police behavior may render victims unable to continue cooperating with police. Under these circumstances, police may perceive a victim to be non-cooperative when in fact the victim is acting out of fear. Under other circumstances, it is the police treatment that is responsible for the victim's non-cooperation. In either case, it would be inappropriate to classify such victims as having refused to cooperate. Instead, police can take steps either to address the victim's fears or to improve their treatment of the victims with whom they interact. Similarly, as described in the research, prosecutors decline to charge and prosecute at a high rate. The high usage of clearance by exception raises concerns that this category is being misused or abused.⁶¹

In response to the FBI’s communication about its high unfounded rate, the PPD reduced it by, apparently, placing high numbers of complaints in the non-crime code 2701, “investigation of person.” This code is not an FBI code. Complaints placed in 2701 were not reported to the FBI. Non-crime coded incidents do not count in crime statistics. Nor are complaints placed in non-crime codes likely to be thoroughly investigated.

According to the Inquirer, the PPD placed approximately 30% of its complaints in code 2701 over two decades. The SVU also started placing complaints in another non-crime code: “2625—Investigation, Protection and Medical Examination.” In 1998 and 1999, the SVU placed about 5% of its caseload in this code. This manipulation of case classification gave the PPD an artificially high rape clearance rate; the rate by which crime complaints are cleared—or solved. The PPD’s rape clearance rate for 1993 was 74 percent, compared to the national average of 53 percent, which dramatically misrepresented their effectiveness.

Coding of Reported Crimes 1995–2000



	1995	1996	1997	1998	1999	2000
RAPE	773	704	650	752	934	1,088
OTHER SEX CRIMES*	941	985	938	1,324	1,754	2,000
CODE 2701	1,262	1,199	894	75	10	3
CODE 2625	0	0	30	238	219	148

* “Other sex crimes” include sexual penetration of orifices other than the vagina, vaginal penetration without force and without consent, sexual penetration of men, statutory sexual assault, incest, indecent exposure and attempts to commit any of these acts.

Source: Philadelphia Police Department

B. The Advocate Response to the Crisis

The WLP led the advocacy by the women’s and children’s organizations that work on sexual assault to address this scandal. The Inquirer reported on every step taken to respond to the crisis.

Recognizing the need for public oversight, the WLP requested that the Public Safety Committee of City Council hold hearings to investigate the Inquirer’s allegations. In addition, WLP organized meetings between advocates and then–Police Commissioner Timoney and his senior staff to discuss the need for departmental reform.

The Commissioner agreed to conduct an internal audit to evaluate the coding of sex crime complaints placed in non-crime codes for the previous five years—which was at that time the statute of limitations or time period following the assault during which charges could still be filed against an assailant. He assigned his Quality Assurance Bureau as well as 45 newly-graduated detectives to conduct this reinvestigation and recoding of approximately 3,700 complaints handled from 1995 through 1999. He agreed that the Department would recode and pursue any cases that had incorrectly been placed in a non-crime code.

The outcome of the reinvestigation was alarmingly revealing. It found that 681 cases that had been coded 2701 should have been classified and investigated as rape—a first degree felony. In total, 58% of the 3,119 cases originally coded 2701 were recoded as crimes and founded. In addition to the 681 recoded as founded rape crimes, 1,141 were recoded as crimes other than rape, including other sex crimes.

Commissioner Timoney testified before City Council that he did not expect to find uninvestigated rapes. When his internal review found rapes, he acknowledged to City Council and national press that he had been wrong and that the PPD had treated victims in a “god-awful” manner.

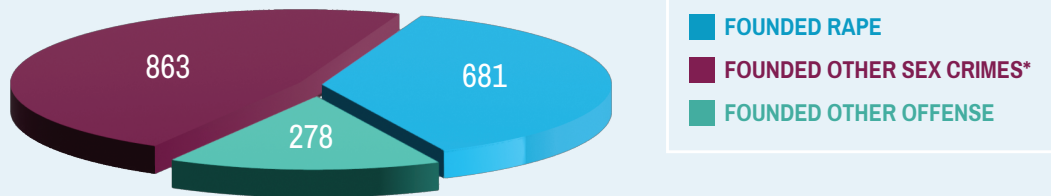
THE IMPORTANCE OF ACADEMIC RESEARCH

While responding to the crisis in 1999, WLP discovered that research conducted by academics decades earlier had revealed the use of non-crime codes by the PPD. A University of Pennsylvania law review article published in 1968 described the PPD’s use of the non-crime code 2701 in the 1960s, at which time it also engaged in other practices that essentially unfounded crimes, including turning away complainants without preparing and filing incident reports and unfounding incident reports without any follow-up investigation at all.⁶² In 1978, a research study analyzing the interaction of the Philadelphia criminal justice system with sexual assault victims found that the PPD placed almost 11% of the 1141 cases studied into non-crime codes, including code 2701—Investigation of Person.⁶³

Had advocates known about the PPD’s mislabeling of sexual assaults as non-crimes and both the rationales and consequences, the community could have acted sooner to call for change in police practice. Our experience is a reminder to stay on top of evidence-based research on sexual assault. The WLP has since 1999 continued to stay abreast of the academic research.

Review & Reinvestigation of Cases 1995–1997 Originally Coded "2701–Investigation of Person"

Breakdown of 1,822 Cases Recoded as Founded Crimes



* "Other sex crimes" include sexual penetration of orifices other than the vagina, vaginal penetration without force and without consent, sexual penetration of men, statutory sexual assault, incest, indecent exposure and attempts to commit any of these acts.

Source: Philadelphia Police Department

Commissioner Timoney took additional corrective actions to fix the problem. He not only reinforced the correct coding of crimes regardless of impact on statistics, but also reorganized the Special Victims Unit (SVU). He appointed a new captain of the SVU, improving supervision and accountability, and assigned detectives to the unit for the first time. New policies were put in place, requiring captain review of all unfounded files and supervisory review of all files before they are closed, and the PPD Coding Manual was revised. The PPD started putting out public alerts to warn residents of potential serial rapists. In addition, when WLP recognized how entirely inadequate the SVU facility was for victims and staff, WLP testified before City Council that a new facility was needed. The SVU was moved to a new location that would provide a better setting for victims of sexual assault and a better workplace for police with the difficult job of investigating sex crimes.

Most importantly, in an unprecedented move to regain public confidence in the PPD Special Victims Unit, Commissioner Timoney invited the WLP to review adult and child sexual assault cases and provide feedback. This invitation to allow a citizen's group to review police files is, WLP believes, the first voluntary collaboration of its kind in the country, and as such, has received considerable attention.

Thus, in 2000, the WLP commenced what would become an annual review of sex crimes files with our colleagues from the Support Center for Child Advocates, which provides representation to child victims of abuse, Philadelphia Children's Alliance, Philadelphia's primary intervention organization for child sexual abuse victims which coordinates multi-agency forensic interviews, and WOAR: Philadelphia Center Against Sexual Violence. In the first year of the case review, advocates reviewed all of the cases unfounded by the SVU for the years 1999 and 2000 and 100 randomly selected cases from the year 2000. These cases were selected by the PPD and the reviews were conducted on site in the Special Victims Unit. The review was also conducted pursuant to a confidentiality agreement with each reviewer, committing to keep all information about the files confidential. Reviewers took no documents or paperwork out of the police quarters.

WLP and the team of reviewers have continued to review sex crime files and provide advice on an annual basis. Commissioner Timoney and his successor commissioners, along with the captains of the SVU, have supported the ongoing collaboration as an important factor in improving police response to sex crimes in Philadelphia.

WLP's commitment to continuing the case review grew out of an appreciation of the impact observed. WLP learned that multiple factors had contributed to the crisis—most prominently sex bias, both explicit and implicit, but also poor supervision, pressure to keep crime data low, inadequate resources and training, and vicarious trauma. After the annual case review was started, the quality and thoroughness of investigations improved and the coding was more accurate. Investigators engaged in less interrogation of victims, asked fewer victim-blaming questions, and were less likely to express disbelief of the complainant. However, the case review continues, and the team continues to raise meaningful questions about the conduct of investigations that require ongoing advocate input which the Department takes seriously.

IV. A NATIONAL CRISIS AND A NATIONAL RESPONSE

Philadelphia's crisis and the response to it resulted in national advocacy to change the FBI definition of rape, revelations by journalists of similar police mishandling of sex crimes in other cities, and investigations and guidance on addressing and preventing biased responses to sex crimes. WLP participated in these initiatives.

A. Changing the FBI Definitions of Rape

1. DEFINITION OF RAPE IN THE UCR SUMMARY REPORTING SYSTEM

The WLP led the national effort to change the definition of rape used by the FBI in its Uniform Crime Reporting (UCR) System to reflect more accurately societal and legal definitions of serious sexual assault. At the time, the UCR had two data collection systems: the Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS). The WLP focused on reforming the SRS system because most law enforcement was reporting crime data through this system at the time the request was put forward.

The WLP recognized the need to change the UCR SRS definition of rape after learning about its impact on the PPD's handling and reporting of sex crimes. The UCR was developed in 1929 as a framework for gathering and publishing crime data from local police departments. Unchanged until 2012, the UCR SRS defined rape as "the carnal knowledge of a female, forcibly and against her will." This definition included only forcible male penile penetration of a female. Omitted from the former UCR definition of rape were oral and anal penetration, penetration of the vagina and anus with an object or body part other than the penis, rape of males, rape of females by females, incest, statutory rape, and non-forcible rape.

As WLP worked with the PPD, it became apparent that it was the UCR SRS definition of rape and not Pennsylvania's criminal sexual assault statutes that drove police perception and response to sex crimes. As a consequence, police did not perceive sex crime complaints that did not meet the UCR SRS definition of rape as serious or credible crimes and did not code them as crimes and/or investigate them appropriately.

Moreover, as we studied the UCR, we learned that the FBI publicly released significantly more data on Part I crimes which includes rape than on other offenses including other sex offenses. This means that the public only learned about the number of sex offenses reported to law enforcement that fit within the narrow subset of penetration crimes included in the FBI's forcible rape definition. As a consequence, the FBI was leaving the public in the dark about the true incidence of equally serious penetrative sex crimes.

In addition, data is instrumental in driving policy responses to societal problems. Sex crime data influences the scope of resources afforded victims. The diminution of sex crime statistics has therefore also hampered government response and victim assistance efforts. In the years since the UCR created its definition of rape, America 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 original UCR definition of rape, but which, until now, remained excluded.

In a letter sent to then-FBI Director Robert Mueller, III in September 2001, the WLP outlined the deleterious impact of the UCR's definition of rape on public knowledge about serious sex crimes and on the reporting and handling of sexual assault complaints. Over 80 organizations throughout the nation involved in advocacy on behalf of victims of sexual assault signed on to this letter in support of its persuasive argument that the UCR's definition of rape should be updated immediately. The letter received no response.

The drive to change the UCR definition of rape gained momentum in 2010, after hearings before the U.S. Senate Judiciary Subcommittee on Crime and Drugs on the mishandling of rape cases by police departments. Carol Tracy, WLP's Executive Director, testified that sexual stereotypes are a root cause of police mishandling of sex crimes and made clear that the manner in which the FBI's UCR system defines, analyzes and publicizes the incidence of sex crimes is also a major factor. The U.S. Department of Justice Office of Violence Against Women joined and supported the effort that led to the creation of a new definition.

THE NEW DEFINITION DEFINES RAPE AS:

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.

It went into effect in 2013 for the UCR SRS summary system.

2. NIBRS RAPE DEFINITION

In 2016 the FBI announced the decision to eliminate the SRS system and use only the NIBRS for crime reporting after 2001. The NIBRS definition of rape differs significantly from the SRS definition.

NIBRS currently defines rape as:

The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

This definition includes modifications made by the UCR system after the SRS definition of rape was changed. At that time, the FBI removed "forcible" from the NIBRS definitions for the category of "Sex Offenses" and the crimes "forcible rape," "forcible sodomy" and "forcible fondling," and replaced it with the absence of consent. However, it chose to retain the archaic terms of "carnal knowledge" in the definition of rape and the terms of 'sodomy' and 'fondling.' While acknowledging that "carnal knowledge" has been defined as "the act of a man having sexual bodily connections with a woman; sexual intercourse," instead of removing the term, it has redefined it so that it covers rape of both males and females, but only so long as "at least one of the offenders is the opposite sex of the victim."⁶⁴ This redefinition renders the NIBRS definition of rape narrower than the 2012 SRS definition of rape.

On July 2, 2019, the WLP commenced the process of seeking a change in the NIBRS definition of rape to make it identical to the 2012 revised SRS rape definition. The request to change the rape definition was considered and approved by the FBI in 2020. The new definition of rape will be identical to the SRS definition of rape and will be implemented in NIBRS in 2023.

WLP also requested the FBI to collect and publish the NIBRS data it collects on the numbers of cases law enforcement unfounds and to publish the numbers of exceptionally cleared cases, including the reason for exceptional clearance. The FBI has started to publish the requested exceptional clearance information.

B. Philadelphia Was Not Alone

The egregious handling of sex crimes revealed in Philadelphia in 1999 is not limited to Philadelphia. In the years immediately following the publication of Philadelphia's sex crime crisis and ongoing through to today, journalists have published article after article describing similar police practices uncovered in cities across the United States—including New Orleans, New York, St. Louis, Baltimore, Cleveland, Milwaukee, Nashville, and Austin, among others, as well as in Canada.⁶⁵ They described police refusing to accept sex crime complaints for investigation, misclassifying sex crimes to non-criminal categories that deprived victims of investigations, unounding sex crime complaints at exceptionally high rates by concluding that women were lying, exceptionally clearing cases at a high rate, and treating victims with extreme insensitivity. There were also reports in Philadelphia and Cleveland of police refusal to take complaints seriously, allowing serial rapists to continue to rape. At the same time, revelations about rape kits being untested or destroyed came to light.⁶⁶ Many of these journalists contacted WLP to discuss what they had found.

It became clear early on that there was a national crisis of chronic and systemic patterns of police failure to respond to sex crimes appropriately. We now know, as a result of testing backlogs of untested rape kits, that police failure resulted in missed opportunities to stop a significant number of serial rapists.⁶⁷

National attention was focused on this problem after WLP requested congressional hearings and testified about this national crisis rooted in gender bias at the U.S. Senate Judiciary Committee's 2010 hearing on *The Chronic Failure to Report and Investigate Rape Cases*.⁶⁸

The hearings led to the Police Executive Research Forum (PERF), a national think tank on police practice, holding a Critical Issues Forum on identifying national trends and challenges in law enforcement response to sexual assault in 2011.⁶⁹ Expansion of the definition of rape was a key item of discussion at this meeting and revived WLP's 2001 request to change the FBI definition of rape.

C. Police Executive Research Forum (PERF) Initiatives

After the 2010 Congressional hearings and 2012 change in the FBI rape definition, PERF continued to prominently focus on police response to sex crimes in collaboration with the WLP. In 2012–2015 PERF and WLP were awarded funding from the Department of Justice (DOJ) Office of Violence Against Women (OVW) to help police agencies improve their response to sexual assault. After reviewing and providing assistance to four agencies, PERF convened a meeting to share the results with other law enforcement bodies and published an Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault in 2018. PERF obtained additional DOJ OVW funding to assist four more agencies with

respect to both domestic and sexual violence that is currently in progress. PERF, WLP, and Wellesley Centers for Women obtained a multi-year contract with the City of Austin, TX to review their response to sex crimes.

D. U.S. Department of Justice Investigations and Guidance

The U.S. Department of Justice started investigating gender-biased policing with regard to their response to sex crimes in its investigations of police misconduct by the New Orleans Police Department in 2011.⁷⁰ The Civil Rights Division investigated sexual violence response again in Puerto Rico, Missoula, and Baltimore.

The Philadelphia advocate case review became a model for these investigations. The DOJ included it as a remedy in the resolutions with police in Missoula, Montana, and contracted with the WLP to review cases in its investigation of the Baltimore, Maryland Police Department.

In 2015, the U.S. Department of Justice issued *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* to assist law enforcement in eliminating bias in sex crime investigations (2015).⁷¹ This guidance was published as a result of advocate efforts, including by the WLP. In 2022, the U.S. Department of Justice issued an update *Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias*. The guidance provides a set of principles to increase public confidence in law enforcement, protect victim safety, and hold offenders accountable without bias.

- Recognize and address biases, assumptions and stereotypes about victims.
- Treat all victims with respect and employ interviewing tactics that encourage a victim to participate and provide facts about the incident.
- Ensure that policies, training, supervision, and resource allocation support thorough and effective investigations.
- Appropriately classify reports of sexual assault or domestic violence.
- Refer victims to appropriate services.
- Properly identify the predominant aggressor in domestic violence incidents.
- Implement policies to prevent officer-perpetrated sexual assault and domestic violence and hold officers who commit these offenses accountable.
- Maintain, review and act upon data regarding sexual assault and domestic violence.

V. HOW TO CONDUCT AN EFFECTIVE ADVOCATE CASE REVIEW

The purpose of the advocate case review is to assess and improve police response to sexual assault by reviewing the efficacy of the investigatory process and identifying perceived case deficiencies or other errors or anomalies that could undermine the integrity of either individual investigations or systemic investigative processes. This includes assessing thoroughness of investigation, assignment of proper coding, achieving appropriate outcomes for investigations, and elimination of bias.

This section of the guidebook will provide detailed information about how to form and conduct an advocate case review. It will cover who participates, confidentiality, case selection, training of participants, and specific kinds of information to look for in file reviews in the form of a checklist, including assessment of how the crime is labeled and coded, and examination of interview statements for indicia that reflect bias or stereotypical myths.

The advocate case review described herein is different from a Sexual Assault Response Team (SART) or multidisciplinary team (MDT). Many jurisdictions have SART teams or other MDTs that play a role in assessing policies or currently active cases and often include advocate participation. While these teams provide meaningful input into specific cases or policies, they differ from an advocate case review which involves review of a large number of cases from a particular year looking for trends and areas which would benefit from systemic improvement.

A. Leadership

The support of law enforcement leadership is essential for a case review to be effective and to achieve a true collaboration and the opportunity to develop mutual trust and respect.

B. Confidentiality

The terms of the Philadelphia Case Review from the very beginning included complete confidentiality. These terms include reviewers not retaining any documentation and not discussing any information from the reviewed files with anyone not involved in the review.

The purpose of the confidentiality and non-disclosure agreement is two-fold. First, to protect the confidentiality of complainants, accuseds, and witnesses involved in an investigation. Second, the agreement encourages law enforcement's receptiveness to feedback by assuring them that the reviewer's intent is to achieve systems improvement and not to publicly disclose information about the investigators or the unit that might put them in a bad light.

C. Selection and Training of the Review Team

The Philadelphia case review has proceeded with the same organizational members that were part of the team from the beginning. WLP organizes the annual review and training. Because the PPD SVU handles both adult sex crimes and child sex crimes/abuse, it was important to include organizations knowledgeable about child sex crimes as well as adult sex crimes. Two of our team members are the Support Center for Child Advocates, which provides representation to child sex abuse victims, and the Philadelphia Children's Alliance, which coordinates forensic child interviews for the police and human services personnel. WOAR: Philadelphia Center Against Sexual Violence is the primary public service provider for victims of sexual assault in Philadelphia. The Women's Law Project provides the legal expertise essential to the success of any such collaboration.

Although the organizations and their leadership have mostly stayed the same, the individual reviewers often change. This change in staffing is beneficial as it provides greater diversity and fresh insight and perspective to the case reviews. WLP conducts a training within a week of the scheduled case review to both educate new staff and refresh continuing staff about the contents of files, what to look for, how the process proceeds, and our obligation to maintain the confidentiality of the information in the files. Once on site at the SVU, newcomers are paired with experienced reviewers to get started. During the review itself, reviewers frequently consult with other members of the review team for additional input on the case.

The WLP has been asked about participation of prosecutors in sex crime case reviews and have concluded it would be inappropriate as they often are involved in making decisions not just about prosecution but also about arrests.

D. Number and Type of Cases Reviewed

Approximately 5,000 sex crime complaints are made to the Philadelphia SVU every year. Every year the team reviews the approximately 400–500 files from the previous year brought to them by the PPD upon arrival at the SVU. The files selected by the PPD for review include:

- All cases that the SVU has unfounded.
- A random sample of at least 100 open sex crimes files.
- A sizeable sample of cases coded either "third party report" which is for mandated reporters of child abuse or elder abuse, and "medical investigation," a non-crime report code for cases in which a complaint is made on behalf of someone who does not know but is concerned they may have been sexually assaulted. This latter category mostly involves someone who was so incapacitated as to have no memory of an assault but comes to under circumstances suggesting something happened. They could wake up in an unfamiliar place and/or partially clothed.

WLP may ask the SVU to adjust the type and number of cases from year to year depending on trends. For example, if prior years were to show an increase in exceptionally cleared cases, WLP may request a larger portion of those cases.

The PPD collects files in advance of scheduled review.

You will want to assess the caseload of your jurisdiction and select the number and type of cases you want to review.

E. The Case Review

The Philadelphia case review typically takes 3–4 full days, preferably sequentially.

The Philadelphia review team schedules approximately 10–12 reviewers for each day.

The review is performed on the premises of the SVU, which provides a conference room for the duration of the review.

WLP provides the reviewers with a number of items for the review:

- The PPD coding manual,
- Copies of the state crime statutes, and
- The FBI manuals that define specific terms regarding case closure codes, which are discussed later in What You Need to Know.
- Post-it notes for notekeeping during the review (which will be destroyed by the end of the review).

Case files may be on paper or in electronic format. It is helpful to review the various forms expected to be found in case files before the case review in order to be better prepared. If files are only in electronic format, the department will have to make preparations for reviewers to access the files. A notetaking process will also have to be developed so that reviewers are able to effectively describe aspects of the file that may be of concern. It is important to review any state laws that may limit disclosure of police documents to non police entities. It may be necessary to redact identifying information before police files are shared with civilians.

Philadelphia case files are primarily paper files. Reviewers carefully read the paper files, a process that often requires organizing a disorganized set of papers in a large envelope. To the extent documents are missing from the paper file, the SVU provides them to us upon request.

WLP has reviewed files that are only maintained electronically in other jurisdictions. In these instances, the police department prints the documents for the review. An alternative would be to download the electronic files to a thumb drive for reviewers to review on site on their laptops.

Each file is reviewed by only one review team member, unless consultation is requested of other members.

If reviewers have questions or comments, notes are recorded on documents that will ultimately be left with the department and then destroyed. A system has been developed to request missing documents during the review so any found documents can be returned to the reviewer before it is time to discuss feedback. Files with questions and comments to be discussed with the SVU leadership and squad supervisors are set aside until the files are reviewed and reviewers are ready to meet for the feedback session.

In the first years of the case review, the team reviewed all files and then met with the SVU leadership to provide feedback. In recent years, at the request of the SVU Captain, the team has reviewed files by squad and then meets with SVU leadership and squad supervisors as soon as the review of that squad's files has been completed. This format has made the review and feedback more efficient. It also lends itself to identifying systemic issues that may concern a particular investigator or practice.

During the feedback meeting, team members raise questions and concerns and discuss them with SVU leadership and squad supervisors and make suggestions to address those concerns. The SVU response varies: (1) the questions are answered and there is no further action to be taken with the file; (2) the supervisor takes the file back to the investigator to address identified concerns or actions, including further investigation, or coding changes; (3) files that have been unfounded are on occasion reopened and reinvestigated; and (4) some files reveal larger issues that SVU leadership must address.

F. What To Look For When Reviewing Sex Crime Files

IMPORTANT INFORMATION TO NOTE FOR EACH CASE FILE

- ✓ Date and time of offense
- ✓ Nature of offense
- ✓ Race, ethnicity, and gender/identity of the parties
- ✓ Age of the parties
- ✓ Date and time of complaint to police
- ✓ Crime and coding of offense on forms
- ✓ Timeline for commencing and completing investigation
- ✓ If investigation has been completed, status of case (e.g., unfounded, arrest, exceptional clearance, active, open but inactive)
- ✓ Date of last action

FILE CONTENTS

- *Does the file include the following:*
 - ✓ Initial complaint
 - ✓ Forensic exam results
 - ✓ Drug and alcohol toxicology reports
 - ✓ Documentation that evidence was submitted to the lab for testing
 - ✓ Identification of other evidence
 - ✓ Interview records (paper, audio or video)
 - ✓ If the victim is a child and the jurisdiction has a partnership with a Child Advocacy Center (CAC), a report of the child's forensic interview (and CD, if any)
 - ✓ Photographs
 - ✓ Surveillance camera footage, text messages, Facebook posts, or other social media
 - ✓ Warrants
 - ✓ Investigation reports summarizing all interviews and actions status and outcomes and supervisory review
 - ✓ If documents are missing from the file, such as results of requested testing, ask for them; they may be stored elsewhere.

FIRST RESPONDER

- *Does the file reflect the first responder's treatment of the complainant?*
 - ✓ Did the first responding officer treat the victim with respect, patience (if you can tell)?
 - ✓ If the first responder is not the investigator, did the officer only ask the victim basic information?
 - ✓ Did the first responder complete the complaint form and include all information obtained?
 - ✓ If the first responder is not the investigator, did the first responder contact the investigator?
If the first responder did contact the investigator, when was that done?
 - ✓ Did the victim need and get immediate medical attention?
 - ✓ Did the victim receive a forensic examination?
 - ✓ Was evidence collected from the crime scene, photos taken, etc.?
 - ✓ Did the crime get coded correctly on the complaint form consistent with the jurisdiction's classification requirements, if any?
 - ✓ If the victim is a child, were forensic interviewers brought in?

COMPLAINANT INTERVIEW

- *Did the investigator exhibit bias (sex, race, ethnicity, LGBTQ) by:*
 - ✓ Blaming or disbelieving, e.g., by asking questions such as: *Are you sure you didn't have too much to drink? Why were you there by yourself? What were you wearing? (potentially relevant if looking for evidence, but may be blaming depending on how question was asked or in what context); why didn't you report sooner?*
 - ✓ Focusing on victim behavior, not the behavior of the accused.
 - ✓ Threatening to or polygraphing victim.
 - ✓ Threatening to or charging victims with crimes.
 - ✓ Exhibiting more concern for the reputation of the accused than the victim.
 - ✓ Discouraging pursuing/continuing investigation.
 - ✓ Questioning lack of physical injury.
 - ✓ Focusing on victim prior relationship with accused?
- *Did the investigator exhibit bias (sex, race, ethnicity, LGBTQ) by:*
 - ✓ Discounting credibility of victim because she/he is a prostitute, mentally impaired, drug and alcohol user, has a criminal record, or other vulnerabilities;
 - ✓ Discounting victim credibility due to victim affect/demeanor;
 - ✓ Coercing a recantation or failing to recognize coercion by the accused;
 - ✓ Interrogating instead of interviewing the complainant;
 - ✓ Expressing disbelief in the complainant based on inconsistencies between common victim behavior due to trauma, self-blame and shame and their own preconceived notions of how a victim "should" behave;
 - ✓ Accusing the victim of lying;
 - ✓ Did the file reveal any bias against the suspect based on race, ethnicity, LGBTQ.
- *Did the investigator demonstrate sensitivity to the complainant by:*
 - ✓ Introducing themselves, expressing empathy (I'm sorry about what happened to you; it's not your fault); explaining the process, referring to counseling and other resources, not prejudging the complainant, asking what the complainant needs, making sure the complainant was comfortable, and reassuring the complainant throughout the process;
 - ✓ Postponing the interview if the victim appeared intoxicated or traumatized (unable to recall details, give a sequential narrative);
 - ✓ Performing a trauma-informed interview, which would include allowing the victim to present an uninterrupted narrative in their own way and not demand chronological retelling of the experience, instead of interrogating the victim.
 - ✓ Explaining the need to ask clarifying information because it is helpful to the case to know?
 - ✓ Using open-ended questions, such as: *what can you tell me about....? It would help me to understand.?*
 - ✓ Letting the victim know it's ok if they can't remember;
 - ✓ Letting the victim know they can get back to you later if they remember something;
 - ✓ Asking non-blaming questions *most likely to elicit information, such as:*
 - ✓ What are able to tell me about your experience?
 - ✓ What were you thinking during the experience; *what did you think was going to happen?*
 - ✓ What were your reactions: physically, emotionally; *what did fear feel like?*
 - ✓ What are you able to remember about what you saw, smelled, felt, heard, said (senses)
 - ✓ What was the most significant part of the experience for you?

CHILD VICTIM

Research and experience has demonstrated that the best practice in responding to child sexual abuse is a multidisciplinary one that involves cooperation and coordination among social workers, physicians, therapists, victim/witness service providers, prosecutors, judges, and law enforcement officers to effectively address the child's needs. Philadelphia, like many other jurisdictions has a Child Advocacy Center (CAC) because child abuse is investigated by the SVU.

As a member of such a team, law enforcement's role is to determine whether the criminal law has been violated, and if so, to initiate proceedings in the criminal justice system. Because of their age and relationship with an offender, children can be challenging witnesses. Law enforcement must be trained to investigate them properly, including "how to investigate child maltreatment objectively, recognize and document suspicious injuries, interview children, and interrogate suspected offenders."⁷²

Overarching questions in your jurisdiction:

- ✓ Does your jurisdiction have a multidisciplinary approach that includes medical, counseling, social service and law enforcement, and legal services professionals to provide a coordinated victim-centered, and trauma-informed response to child sexual assault?
- ✓ If not, does the jurisdiction have specially trained investigators who can interview a child in an age-appropriate, victim-centered, and trauma-informed manner and provide in which all understand their own roles and roles of others.
- ✓ Does your jurisdiction have written guidelines for response to child sexual assault, including mandatory reporting requirements?

Did the first responder/investigator:

- ✓ Assess the child's immediate safety needs if the suspected abuse is by a person with whom the child comes into contact or lives with, including whether a referral to protective services and/or removal of the child is necessary consistent with state law and in consultation with their supervisor and assigned investigators.
- ✓ Assess the child's need for emergency medical services.
- ✓ Explain mandatory reporting requirements that may apply.
- ✓ Obtain basic initial information from the child or caregiver regarding the time frame and abuse in order to apprehend a suspect and assist police in evidence collection.
- ✓ Interact with the child from their perspective, using language consistent with the child's developmental stage and age, and with empathy and lack of stigmatizing language.
- ✓ Preserve the crime scene.
- ✓ Collect clothing and other relevant evidence.
- ✓ Inform caregiver or child of need to preserve forensic evidence by not washing, changing clothes, urinating, defecating, drinking, eating, brushing hair or teeth or rinsing mouth before forensic exam if possible. If not possible, did law enforcement collect and preserve any such fluids prior to arrival at exam.
- ✓ Arrange for and provide transportation to emergency medical assistance and forensic exam but not be present during any medical or forensic exam
- ✓ Arrange for an interview of the child by a specially trained forensic interviewer in conjunction with child protective services as applicable to the case.
- ✓ Connect family with support services and an advocate to support the family and child.
- ✓ Provide contact information for follow up questions.
- ✓ When contacted by the exam site to pick up forensic evidence, retrieve evidence and deliver to designated labs/law enforcement storage facility.⁷³

SUSPECT

- ✓ Was suspect interviewed? If not, was there a reason?
- ✓ If so, was suspect given a Miranda warning?
- ✓ Was suspect arrested?
- ✓ Is the victim known to the suspect?
- ✓ If suspect is stranger, was suspect investigated and identified?
- ✓ Did the assigned investigator review the suspect's criminal record, driving history, etc.?
- ✓ If DNA was retrieved, was CODIS (Combined DNA Index System) checked for prior history?
- ✓ Was there a photo array/lineup?
- ✓ Was forensic evidence collected from suspect and tested, with results returned?
- ✓ Were there admissions by the suspect?
- ✓ Was alibi verified?
- ✓ Was follow-up evidence or identity of witnesses revealed by suspect?
- ✓ Was information about the suspect obtained, including behavior, relationship, prior abuse, harassment, and threats?
- ✓ Did the file reveal any bias against the suspect based on race, ethnicity, LGBTQ?

FORENSIC EVIDENCE

- ✓ Was a forensic examination performed and done so timely?
 - ✓ A forensic examination and collection of evidence from a victim's body can be timely processed within 120 hours of an assault.
 - ✓ Does the file reveal whether a victim reported the sexual assault within the window of timeliness?
 - ✓ If so, does it reveal whether an examination was offered to a victim in a timely manner?
 - ✓ If there is no indication of forensic exam(s) in the file, note the date of the incident and the date of the victim's first contact with SVU. If the elapsed time is longer than 120 hours, it could explain why evidence was not submitted to the lab. If the elapsed time is within the window, does the file explain why an exam was not performed?
 - ✓ If the victim called 911, did the telephone operator give appropriate advice not to wash themselves or any clothing or materials that could be evidence? Although the case record may not reveal this information, it would be appropriate for a review team to ask the police department for the 911 protocol for reported sex crimes.
- ✓ Was the evidence timely processed?
 - ✓ Does the file document submission of the kit and other materials to a lab?
 - ✓ Does the file document return of the lab analyses to the investigator
 - ✓ Examine the file to determine what was collected, whether the collected materials were sent to the lab and whether test results were received. Labs may have limits on the number of items that can be sent at a given time and a priority protocol for sequence of testing.
- ✓ Did the examination report reveal evidence of criminal conduct?
 - ✓ Even if the lab did not find evidence from which it could identify sperm or DNA, a report of the sexual assault examination may include victim statements and examination findings that corroborate the assault. These may include injuries, vaginal tears and other evidence that support forceful assault and penetration. Such evidence could contradict a suspect defense of voluntary sex.
- ✓ Does exam report identify any physical trauma or other factors relevant to crime determination?

- ✓ If there is evidence of either involuntary or voluntary administration of alcohol and/or drugs which could render a victim vulnerable or incapable of consent, was testing done to determine level of substance?
 - ✓ Time is of the essence in testing for these substances as well.
 - ✓ Consideration of the evidence should include examination of factors such as size of victim, prior intake of food, amount ingested, time period of ingestion, victim's report of quantity and reports of the victim's behavior to assess impairment.
 - ✓ Your jurisdiction may have policies as to the time period when testing can be effectively done.
- ✓ Was a forensic examination performed on the suspect?
 - ✓ If so, was the evidence collected submitted to lab to test?
- ✓ Were results of all testing considered in the outcome of the investigation?

OVERALL INVESTIGATION

- ✓ If interviews are recorded on paper, are they recorded verbatim?
- ✓ If interviews are video or audio taped, were electronic versions provided to you?
- ✓ Were potential witnesses or other sources of evidence identified
- ✓ Was investigation initiated and completed in a timely manner?
- ✓ Were all leads investigated or were there any actions that were not performed? If so, were there attempts or barriers to their performance?
 - ✓ Were all witnesses interviewed?
 - ✓ Were interviews thorough?
 - ✓ Was all evidence collected and tested?
 - ✓ Were rape kit & other forensic test results returned to investigator?
- ✓ Was victim kept informed of status of investigation?
 - ✓ When new information was discovered;
 - ✓ When the rape kit test results were received;
 - ✓ When the investigation was completed;
 - ✓ When the case was closed and nature of closure.
- ✓ Was case properly supervised?
- ✓ Was case forwarded to prosecutor after complete investigation?
- ✓ If victim does not respond to outreach by investigator, what, if any, other efforts were made to reach the complainant? (phone, mail, visit, victim advocate support)

ARREST

- ✓ Were the elements of a crime established? If so:
 - ✓ Was an arrest warrant requested?
 - ✓ Was there an arrest?

WAS CASE APPROPRIATELY EXCEPTIONALLY CLEARED?

- Exceptional Clearance is only appropriate if the following questions can be answered in the affirmative:
 - ✓ Has the investigation clearly and definitely established the identity of the offender?
 - ✓ Is there enough information to support an arrest, charge, and turning over to the court for prosecution (probable cause)?
 - ✓ Is the exact location of the offender known so that the subject could be taken into custody now?
 - ✓ Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender?

- Examples of reasons outside law enforcement control include:
 - Death of offender
 - Victim refuses to cooperate in the prosecution
 - Prosecution declined (by the prosecutor for other than the lack of probable cause)
 - In custody of another jurisdiction
 - Juvenile/No Custody

Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program, Summary Reporting System (SRS) User Manual, 115-116 (June 20, 2013); Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting Program 2021 National Incident-Based Reporting System (NIBRS) User Manual, 74-75 (4/15/21).

WAS CASE APPROPRIATELY FOUNDED/UNFOUNDED/ADMINISTRATIVELY CLOSED/LEFT ACTIVE OR INACTIVE?

- A case may be unfounded only after a thorough investigation demonstrates that the complaint is false or baseless (no crime occurred). Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program, Summary Reporting System (SRS) User Manual, 111 (June 20, 2013) (NIBRS will start collecting data on unbounding in 2024 and will use the SRS definition of unbounding).
- A victim recantation does not necessarily indicate a crime did not occur or support unbounding as a complainant may choose to remove herself from the criminal process for a number of reasons, including fear of retaliation from the accused or because of negative treatment by law enforcement.
- Complaints can only be unfounded after determining allegations established elements of a crime.
- The law enforcement agency may leave a case open if it has completed the investigation to the extent it can but there may be additional information in the future. A stranger rape with an unknown defendant could be left open. Such a case could be labeled “inactive.”
- Are there other case closing codes that the agency uses? What is their purpose and is it appropriate?

CODING

- ✓ Is crime coded consistent with the local jurisdiction’s coding manual, if any?
- ✓ Is final coding correct?
- ✓ If your jurisdiction has non-crime codes, such as for third party reports, did further investigation support recoding as a crime, and, if so, was it recoded.

SUPERVISORY REVIEW

- ✓ Was case submitted to and approved by SVU supervisor before it was submitted to Prosecutor?

PROSECUTORIAL REVIEW

- ✓ Did prosecutor review file?
- ✓ If so, was it after PPD supervisory review?
- ✓ Did the prosecutor request further investigation?
- ✓ Does the file show whether the investigator recommended arrest, exceptional clearance when it was turned over to the prosecutor?
- ✓ Did prosecutor approve arrest?
- ✓ Did prosecutor decline to prosecute?

NOTE: Although this guide is about police response to sex crimes, you may be interested in data about how sex crime complaints are handled by the prosecutors and courts. Prosecutors are not subject

to any governmental voluntary or involuntary data collection and reporting systems. However, some prosecutors' offices are starting to post data on their websites. You should check your local prosecutors' website to find out if yours provides such data.

ANNUAL DATA REQUEST

We recommend you request from your local law enforcement agency the annual data for sex crimes data for the time period (e.g. year) of the case files you are reviewing. Your state equivalent of the federal Freedom of Information Act (FOIA) may require the disclosure of the data you want or the agency may provide it in the context of your case review process. You can then request the data which you think would be valuable to see and which may not otherwise be publicly available to you.

In Philadelphia the case review is for cases opened in the previous year. The Special Victims Unit provides the case review team with data for the cases from that year at the time of the case review. The data provided include:

- The total number of rapes and other offenses handled by the Special Victims Unit the previous year, broken down by:
 - Type of offense (by code), including rape, other assaults, other sex offenses, offenses against family and children;
 - Offenses reported
 - Offenses cleared by arrest
 - Offenses exceptionally cleared
 - Offenses unfounded
- The total number of other sex crime investigations handled:
 - Medical investigations
 - 3rd party child abuse sexual
 - 3rd party elder abuse, sexual

VI. WHAT CASE REVIEWERS NEED TO KNOW

A. Medical Forensic Sexual Assault Examinations

Medical Forensic Sexual Assault Examinations are both medical examinations focused on the immediate medical needs of a victim and the collection of samples to be tested as potential evidence of a crime. A number of issues have arisen about these examinations, how the evidence has been handled and tested by law enforcement, how timely the evidence is processed, and how the evidence contributes to an investigation. This section of the manual is not meant to comprehensively describe and/or identify the myriad of problems that have arisen around rape kits, from lost kits, destroyed kits, untested kits, to failure to provide access to the medical forensic sexual assault examination, test the evidence, or consider its findings. There are many resources available that will assist you in addressing any of these concerns that you find during or in association with advocacy to improve law enforcement response to sex crimes. Lynn Hecht Schafran has authored an excellent article at http://www.ncdsv.org/JJ_Medical-Forensic-SA-Examinations_2015.pdf.

With respect to the subject of this guide, improving law enforcement response to sexual assault, we want to hone in on a number of issues that can be identified during the case review and the follow-up advocacy that can be pursued.

The advent of better DNA testing and DNA databases counsels in favor of testing all kits and monitoring results for a suspect.

It is helpful to visit a forensic lab, if possible, to find out how they process kits and other evidence.

It is also important to learn how to read the test results.

B. State Sex Crime Law

There is often significant disparity between the legal definition of crimes and the common understandings of researchers or lay people about what conduct is encompassed in a particular sex crime. For this reason, it is essential to go to the statute books and learn exactly what behavior is classified as a sex crime under your state's criminal laws.

When an individual reports an incident to police, an investigation is conducted to determine if a crime occurred. The law enforcement system can only charge a crime if the state crime laws make the conduct a crime. It is therefore essential that advocates know their jurisdiction's sex crime statutes in order to effectively review sex crime files. This guidebook does not provide detailed information on each state's specific crime laws. Instead, it provides an overview of the types of crimes that may exist in your jurisdiction and the basic elements of such crimes and describes how state crime laws may differ from state to state, both as to content and as to terminology.

Sex crimes may include crimes in which there is sexual penetration, sexual contact without penetration, sex trafficking, and non-physical sexual conduct such as sexual exposure, luring, or transmission of sexual images. Sex crimes against children include child sexual abuse, incest, and statutory rape. The law will

describe the conduct which constitutes the crime. The law is also likely to include many of the following elements of the crimes:

- Force, coercion, exploitation, and threats thereto, to describe physical and non-physical compulsion of a victim or another person.
- Consent and capacity to consent.
- The level of intent required to establish a crime was committed. Levels of intent generally include: intentionally, knowingly, recklessly, or negligently.
- Victim ages as elements of the crime and whether mistake as to age is a defense.
- Relationships and circumstances as elements of crime, i.e., family member, occurring in a prison.
- References to body parts as elements of particular crimes.
- Physical harm.
- Whether there are exemptions or specific defenses if the complainant is a spouse or intimate partner of the accused.
- Whether a victim must resist, promptly complain, or meet any specific evidentiary requirements.
- The extent to which a victim's sexual history is protected from being introduced in court.
- Grading of offense, which may encompass felony and misdemeanor crimes or numerical values of grading by degree.

You may encounter confusing terminology and complex crime definitions. Different jurisdictions use different terms, such as rape, sexual abuse, sexual assault, sexual battery, and deviate sexual intercourse to label the same conduct. Some jurisdictions may use the term sexual assault to describe all of the sex crimes but assign different degrees to distinguish the seriousness.

In some states, special terminology has been applied to refer to the sexual penetration of men and anal penetration of women, including sodomy and deviate sexual intercourse.

Significantly, even the term "consent" is defined differently in each state. It may be defined in a statute or it might be defined in case law. There are times when you may need the assistance of an attorney to help you understand how your jurisdiction defines consent.

Some terms are not defined in the statute but are defined in case law.

C. Local Police Policies and Procedures

Police departments often have internal documents that describe local procedures required of its officers. These may be called directives, protocols, or standard operating procedures (SOPs). They may outline the duties of various staff at different time periods in the course of handling a case. They could describe the duties of the call center, responding police officer, investigators and detectives, and supervisors. They may describe record-keeping requirements as well as any special requirements that the jurisdiction requires, either as set forth by a commanding officer or by resolution of a lawsuit. Obtaining copies of these documents will be immensely helpful in assessing departmental response while reviewing case files in any advocate case review (if supervisory review is required by a protocol, did it happen?). These documents are often publicly posted on the police department's website or otherwise available by request.

Some departments, like Philadelphia's, have coding manuals, which govern the nature of the crime assigned at time of report and as modified thereafter. In Philadelphia, this coding manual is in sync with the FBI UCR codes but has local subcategories.

Local procedures and policies are also worth advocate review and input. Major police associations have model procedures/protocols that might be helpful. See [http://www.theiacp.org/Portals/0/documents/pdfs/Communications/IACP Sexual Assault Response Policy and Training Content Guidelines.2017.3.23.pdf](http://www.theiacp.org/Portals/0/documents/pdfs/Communications/IACP%20Sexual%20Assault%20Response%20Policy%20and%20Training%20Content%20Guidelines.2017.3.23.pdf)

It may also be valuable to review and provide input on training of sex crime first responders and investigators.

D. How To Find, Analyze, And Learn From National And Local Crime Data

Data can inform your review of cases by highlighting trends and coding concerns and improving your understanding of the caseloads carried by investigators and resources allocated to sex crimes by your local police department. Data is available from several sources.

1. FBI DATA

The FBI Uniform Crime Reporting System program collects data from law enforcement as part of a voluntary national system intended to both generate data to inform the administration of criminal justice and to provide an understanding of the scope of crime in the United States.

The FBI collects crime data through the National Incident-Based Reporting System (NIBRS). On January 1, 2021, the FBI phased out the previously primary Summary Reporting System (SRS). Historical SRS data will be available on the UCR website.

The NIBRS system collects significantly more information than the SRS system, including elements about the offense, victims, and offenders, which it describes as "circumstances and context for crimes."

The primary electronic data tool for searching UCR crime data is **Crime Data Explorer** which can be found at this link <https://crime-data-explorer.fr.cloud.gov/pages/home>. Because it is a newer platform, the FBI continues to add more information to it on an ongoing basis.

The FBI crime reporting systems differ from crime *surveys* in important ways. The FBI system only collects information from law enforcement while crime surveys, including the National Crime Victimization Survey, collect crime information from individuals who are interviewed and answer questions about their experiences. Surveys therefore include information about crimes collected from individuals who may not have reported the incident to police.

2. UCR NIBRS DATA

NIBRS currently uses different definitions for sex crimes than the UCR SRS used. NIBRS will implement the new definition for rape in 2023.

The new definition for rape will mirror the SRS definition for rape that was adopted in 2012.

It will define rape as "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."

See Section IV. A. (1) (pages 14–16) for an explanation of how and why the definitions of rape in the UCR have changed.

Until the new definition is implemented, NIBRS will continue to use these definitions:

Sex Offenses:

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape:

The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

NIBRS annual reports are available here: <https://www.fbi.gov/services/cjis/ucr/publications>

The current NIBRS manual is located here: 2021.1 National Incident–Based Reporting System User Manual (04/15/2021) <https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manua-093020.pdf/view>

3. UCR SRS DATA

Historical SRS will be available on the UCR website. It includes annual reports Crime in the United State from 1995 through 2019, available at <https://www.fbi.gov/services/cjis/ucr/publications> The UCR SRS reports include the following data:

- Population and number of incidents of rape reported to law enforcement on a national, regional, state, county, city, university, and tribal agency level;
- Total number of clearances by “arrest or exceptional means” of rapes, on a national level and regional level. Prior to 2016, clearance data was also provided by region and population groupings (all states, all cities, cities by population groupings, geographic regions, city groupings);
- Arrests for rape, nationally by population grouping, and by age, race and ethnicity, as well as by region and by state. Prior to 2016, arrest information was also reported by city groupings.

The SRS reported sex crimes in two categories: “rape” and “sex offenses (except forcible rape and prostitution).” Rape is a “Part One” crime. Part I crimes categorized as such because the FBI has determined they are serious crimes, occur with regularity in all areas of the country, and are likely to be reported to police. They include criminal homicide, rape (legacy & revised), robbery, aggravated assault, burglary, motor vehicle theft, larceny–theft, and arson. The FBI publicly reports extensive information and data about Part I crimes on a regular basis, including the number reported to law enforcement, the number in which arrests occurred.

All other sex crimes (non-penetration crimes such as indecent contact and exposure) are included in the UCR SRS’s Part II category and are collected in one undifferentiated group under the title of “other sex crimes.” The only information reported to the public about this Part II category is arrest data.

Annual *Crime in the United States* reports can be found at <https://www.fbi.gov/services/cjis/ucr/publications>.

The 2013 Summary Reporting System (SRS) User Manual (06/2/13) can be found at <https://www.fbi.gov/file-repository/ucr/ucr-srs-user-manual-v1.pdf/view>

4. OTHER AVAILABLE DATA

STATE-LAW ENFORCEMENT DATA

Some states, like Pennsylvania, may have laws requiring law enforcement to collect and report crime data to the state through a state police or other state level criminal justice agency or statistical bureau. These state resources may report more detailed data than can be found in the FBI crime data and are worth checking. See e.g. Pennsylvania State Police annual crime data reports at <https://www.ucr.pa.gov/PAUCRSPUBLIC/CrimePublication/CrimePublicationReports> and a dashboard at <https://www.ucr.pa.gov/PAUCRSPUBLIC/Home/Index>

LOCAL LAW ENFORCEMENT DATA

Local law enforcement departments may also collect their own data which may include more detail than the FBI crime data.

OPEN POLICE DATA

Another data source is reported under an Open Data initiative that was started by the federal government in order to increase transparency in local government and includes police data. The cities who have signed on to this initiative are reporting police data in a very detailed granular incident-based format that may be difficult to aggregate to identify trends. There have also been concerns that this data may in some instances be capable of allowing someone to locate a sex crime victim or domestic violence victim who does not want their location to be public and may in fact place them in danger.

<https://www.techsafety.org/blog/2017/1/11/protecting-victim-privacy-while-increasing-law-enforcement-transparency-finding-the-balance-with-police-data-initiatives>

5. WHAT THE DATA REVEALS

This data may reveal patterns and concerns about poor police response or inaccurate coding of cases. For example, if a high number of complaints are unfounded, there may be concerns about incomplete investigations or improper assessment of the cases. If the number of sex crimes is less than the number of murders, this might suggest either questionable data or a problematic reluctance to report rape to police that could signal problems in police response. High numbers of exceptional clearances may suggest inadequate investigations or poor interactions with complainants that led them to abandon their complaints.

VII. APPENDIX A: CHRONOLOGY AND RESOURCES

Sept. 2001: Letter to FBI requesting change in FBI UCR definition of rape signed by 93 state-based and national organizations, available at https://www.womenslawproject.org/wp-content/uploads/2014/11/WLP_Sept20-2001_Letter_FBI-UCR-Rape-Definition.pdf

Sept. 2010: U.S. Senate Judiciary Subcommittee on Crime, *Chronic and Systemic Failure of Police to Investigate Sex Crimes*, Testimonies available at: <https://www.judiciary.senate.gov/meetings/rape-in-the-united-states-the-chronic-failure-to-report-and-investigate-rape-cases>

Aug., Oct., Dec. 2011: Criminal Justice Information Systems meetings to discuss updating UCR Summary System rape definition.

Aug. 2011: Women’s Law Project presents to Department of Justice Civil Rights Division on Philadelphia case review model.

Sept. 2011: Police Executive Research Forum *Critical Issues Improving Police Response to Sex Crimes*. Report published at http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf

2011-2016: DOJ Investigations of New Orleans, Puerto Rico, Missoula, Baltimore Police result in DOJ findings of gender-biased policing. See <https://www.justice.gov/crt/special-litigation-section-case-summaries/download#police-summ> under “Law Enforcement Agencies”

Jan. 2012: Attorney General Holder announces changes in FBI UCR definition of rape. Changes are reflected in FBI UCR SRS User Manual (2013) <https://www.fbi.gov/file-repository/ucr/ucr-srs-user-manual-v1.pdf/view>

March 2012 and ongoing: WLP Adviser to American Law Institute (ALI) Project on Sexual Assault and Related Offenses updating obsolete Model Penal Code sex crime provisions approved by ALI in 1962.

June 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.

2013: National Academies, *Final Report Estimating the Incidence of Rape and Sexual Assault* by Candace Kruttschnitt, William D. Kalesbeek & Carol C. House, eds. available at http://www.nap.edu/catalog.php?record_id=18605

2013: Women’s Law Project, *Policy Brief, Advocacy to Improve Police Response to Sex Crimes* http://www.womenslawproject.org/wp-content/uploads/2017/06/Policy_Brief_Improving_Police_Response_to_Sexual_Assault_Feb2013_FINAL-revd-2016.pdf

Dec. 2015: U.S. Department of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* <https://www.justice.gov/opa/file/799366/download>

Aug. 2016: *Ending Gender Bias in the Law Enforcement Response to Sexual Assault and Domestic Violence: Report on the OVW Roundtable* <https://www.bwjp.org/assets/documents/pdfs/ovw-gender-bias-roundtable-report.pdf>

PERF, Executive Guidebook: *Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault* (2018) <https://www.policeforum.org/assets/SexualAssaultResponseExecutiveGuidebook.pdf>

U.S. Department of Justice, *Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias* (Updated May 23 2022) <https://www.justice.gov/ovw/page/file/1509451/download>

U. S. Department of Justice Federal Bureau of Investigation Criminal Justice Information Services Division, NIBRS User Manual 2020.1 (04/15/21) available at <https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manua-093020.pdf/view>

U. S. Department of Justice Federal Bureau of Investigation, Crime Data Explorer, available at <https://crime-data-explorer.fr.cloud.gov/pages/home>

International Association of Chiefs of Police (IACP), Police Response to Violence Against Women—VAW, available at <https://www.theiacp.org/projects/police-response-to-violence-against-women-vaw>, describing all violence against women projects, and providing resources on police response to sexual violence. The 2015 publication found on the IACP website, *Sexual Assault Response Policy and Training Content Development Guidelines* (2015) is a comprehensive and thorough guide to sexual assault response. <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Sexual%20Assault%20Response%20Policy%20and%20Training%20Content%20Guidelines.2017.3.23.pdf>

Ending Violence Against Women International (EVAWI) see <http://www.evawintl.org/> (providing a broad portfolio of resources to improve criminal justice and community responses to gender-based violence, including an On Line Training Institute (OLTI), conferences, webinars, Training Bulletins, a Resource Library, FAQs and Online Resources, and Individual Technical Assistance).

Aequitas, The Prosecutors' Resource on Violence Against Women <http://www.aequitasresource.org/> generally, and <https://aequitasresource.org/resources> for Model Response to Sexual Violence for Prosecutors, Vols. 1 & 2 and Appendices and other relevant resources.

The Women's Law Project has filed *Amicus* ("friend of the court") briefs challenging institutional gender bias in sexual assault cases. The briefs in the following cases can be found on our website at <http://www.womenslawproject.org/domestic-sexual-violence/>

- Commonwealth v. Rogers, (Pa. 2020)
- Commonwealth v. Tighe, (Pa. Commw. Ct. 2019)
- Schanne v. Addis, (Pa. 2015)
- Hill v. Madison County School Board, et al., (11th Cir. 2014)
- Commonwealth v. Claybrook et al. (Pa. 2012)
- Reedy v. Evanson, (3rd Cir. 2010)
- C.C.H. v. Phila. Phillies, Inc. (Pa. 2008)
- Schieber v. City of Philadelphia (3rd Cir. 2003)

VIII. ENDNOTES

- 1 See *infra* pp. 13–19.
- 2 Rachel M. Venema, *Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports*, 31 J. INTERPERSONAL VIOLENCE 872, 891 (2014); Megan A. Alderden & Sarah E. Ullman, *Creating a More Complete and Current Picture: Examining Police and Prosecutor Decision-Making When Processing Sexual Assault Cases*, 18 VIOLENCE AGAINST WOMEN 525, 541–42 (2012); Louise Ellison & Vanessa E. Munroe, *Turning Mirrors into Windows? Assessing the Impact of (Mock) Juror Education in Rape Trials*, 49 BRIT. J. CRIMINOLOGY 363, 373–74 (2009); Louise Ellison & Vanessa E. Munroe, *Reacting to Rape: Exploring Mock Jurors' Assessments of Complainant Credibility*, 49 BRIT. J. CRIMINOLOGY 202, 203 (2009).
- 3 Kimberly A. Lonsway & Joanne Archambault, *The "Justice Gap" for Sexual Assault Cases: Future Directions for Research and Reform*, 18 VIOLENCE AGAINST WOMEN 145, 157 (2012).
- 4 Melissa S. Morabito, Linda M. Williams, & April Pattavina, *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S.* 16–21 (2019) <https://nij.ojp.gov/library/publications/decision-making-sexual-assault-cases-replication-research-sexual-violence-case>.
- 5 Jennifer C. Nash, *Black Women and Rape: A Review of the Literature*, Brandeis University Feminist Sexual Ethics Project 1 (2009), <https://www.brandeis.edu/projects/fse/slavery/united-states/slav-us-articles/nash2009.pdf> (finding black women are less likely to report rape to police than white women); Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NATIONAL INSTITUTE OF JUSTICE 33 (2006), <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (finding that only 19.1 percent of women who were raped since their 18th birthday reported the crime); Patricia A. Washington, *Disclosure Patterns of Black Female Sexual Assault Survivors*, 7 VIOLENCE AGAINST WOMEN 1254, 1272 (2001).
- 6 Joanne Archambault & Kimberly A. Lonsway, *Preliminary Investigation: Guidelines for First Responders*, END VIOLENCE AGAINST WOMEN INTERNATIONAL (2006, updated 20209), https://evawintl.org/wp-content/uploads/Module-4_Prelim-Invest-11.10.2020.pdf.
- 7 Tina Rosenberg, *Rape Victim Advocates Get a Role Alongside the Police*, N.Y. TIMES (June 27, 2018), <https://www.nytimes.com/2018/06/27/opinion/rape-victim-advocates.html>
- 8 Joanne Laucius, *Ottawa Police to Convene Civilian Panel to Review Handling of Sex-Assault Cases*, OTTAWA CITIZEN (updated July 28, 2017), <https://ottawasun.com/2017/07/27/ottawa-police-to-convene-civilian-panel-to-review-handling-of-sex-assault-cases>
- 9 See Venema, *supra* note 2, at 876 (finding that police work influences whether prosecutors take the case; good police work in which the detective conducts a thorough investigation is probably more likely to result in enough evidence for a prosecution); Bradley A. Campbell et al., *The determination of victim credibility by adult and juvenile sexual assault investigators*, 43 J. OF CRIM. JUST. 29, 33–4 (2015) (finding police officer's perception of the victim's credibility is a key factor in the prosecutor's charging decision); Melinda Tasca et al., *Police Decision Making in Sexual Assault Cases: Predictors of Suspect Identification and Arrest*, 28 J. INTERPERSONAL VIOLENCE 1157, 1169 (2012) (finding arrest of a suspect to be less likely when police reports indicated lack of victim credibility); Debra Patterson, *The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes*, 26 J. INTERPERSONAL VIOLENCE 328, 343 (2010) (finding a positive relationship between detective support of victims and successful future prosecution).
- 10 Ericka Wentz & Kelsey Keimig, *Arrest and Referral Decisions in Sexual Assault Cases: The Influence of Police Discretion on Case Attrition*, 8 SOC. SCI. 180, 187 (2019); Eryn O'Neal et al., *The Sexual Stratification Hypothesis: Is the Decision to Arrest Influenced by the Victim/Suspect Racial/Ethnic Dyad?*, 34 J. INTERPERSONAL VIOLENCE 1287, 1290–1291, 1298 (2019); Katharine M. Tellis & Cassia C. Spohn, *The Sexual Stratification Hypothesis Revised: Testing Assumptions About Simple Versus Aggravated Rape*, 36 J. CRIM. JUST. 252, 253 (2008); Rebecca Campbell, *The Neurobiology of Sexual Assault: Implications for Law Enforcement, Prosecution, and Victim Advocacy*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2012) <https://nij.ojp.gov/media/video/24056>; Christopher Wilson et al., *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims*, END VIOLENCE AGAINST WOMEN INTERNATIONAL (2016); Morabito, *supra* note 4, at IV–V.
- 11 Suzanne St. George & Cassia Spohn, *Liberating Discretion: The Effect of Rape Myth Factors on Prosecutors' Decision to Charge Suspects in Penetrative and Non-Penetrative Sex Offenses*, 35 JUST. Q. 1280, 1303 (2018).
- 12 O'Neal, *supra* note 10, at 1291–92, 1302; I; St. George & Spohn, *supra* note 11, at 1302–08.
- 13 Wentz & Keimig, *supra* note 10, at 190–91.
- 14 ESTELLE B. FREEDMAN, *REDEFINING RAPE* 3–4 (2013); Michelle J. Anderson, *Diminishing the Legal Impact of Negative Social Attitudes Toward Acquaintance Rape Victims*, 13 NEW CRIM. L. REV. 644, 656 (2010); Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465, 1478 (2003); Michelle J. Anderson, *From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law*, 70 GEO. WASH. L. REV. 51, 61 n.41, 62 n.49 (2002); SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 16–30, 376–77 (1975).
- 15 Anderson, *Diminishing the Legal Impact of Negative Social Attitudes Toward Acquaintance Rape Victims*, *supra* note 14, at 658–59.
- 16 *State of New Jersey in Interest of M.T.S.*, 609 A.2d 1266, 1270 (N.J. 1992).
- 17 *Id.* at 1271 (“According to the oft-quoted Lord Hale, to be deemed a credible witness, a woman had to be of good fame, disclose the injury immediately, suffer signs of injury, and cry out for help.”) (quoting MATTHEW HALE, HISTORY OF THE PLEAS OF THE CROWN 633 (1st ed. 1847)); BROWNMILLER, *supra* note 14, at , 23–30, 228.
- 18 Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L. J. 103, 126 (1983).
- 19 Anderson, *From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law*, *supra* note 14, at 75.

- 20 STEPHEN J. SCHULHOFER, UNWANTED SEX: THE CULTURE OF INTIMIDATION AND THE FAILURE OF LAW (1998); Wriggins, *supra* note 18, at 129.
- 21 Wriggins, *supra* note 18, at 126.
- 22 BROWNMILLER, *supra* note 14, at 30, 368–74.
- 23 Lori Haskell & Melanie Randall, *The Trauma on Adult Sexual Assault Victims*, (Report Submitted to Justice Canada 2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf; Kristine M. Chapleau et al., *How Ambivalent Sexism Toward Women and Men Support Rape Myth Acceptance*, 57 SEX ROLES 131–36 (2007); Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review*, 18 PSYCH. OF WOMEN Q. 133, 13334 (1994); Martha R. Burt, *Rape Myths and Acquaintance Rape*, in ACQUAINTANCE RAPE: THE HIDDEN CRIME 27 (Andrea Parrot & Laurie Bechhofer eds., 1991).
- 24 Matthew J. Breiding et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States 2011*, 63 MORBIDITY AND MORTALITY WEEKLY REPORT: SURVEILLANCE SUMMARIES 1, 6 (2014).
- 25 David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*. 16 VIOLENCE AGAINST WOMEN, 1318–34 (2010); Katie Hail-Jares et al., *False Rape Allegations: Do they Lead to a Wrongful Conviction Following the Indictment of an Innocent Defendant?*, JUST.Q. 16 (2018).
- 26 Dean G. Kilpatrick et al., *Drug-facilitated, Incapacitated, and Forcible Rape: A National Study*, U.S. DEPARTMENT OF JUSTICE 26 (2007); Wentz & Keimig, *supra* note 10, at 182.
- 27 Christopher P. Krebs et al., *The Campus Sexual Assault (CSA) Study*, Nat’l Inst. of Justice 5–20 (unpublished report to U.S. Department of Justice, 2007), <https://www.ojp.gov/pdffiles1/nij/grants/221153.pdf>
- 28 Sarah E. Ullman, *A 10-Year Update of Review and Critique of Empirical Studies of Rape Avoidance*, 34 CRIM. JUST. & BEHAV. 411, 417 (2007); Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey*, U.S. Dept. of Just. Office of Just. Programs, Nat’l Inst. of Just. Special Report 27 (2006), <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf>; Galliano et al., *Victim Reactions During Rape/Sexual Assault: A Preliminary Study of the Immobility Response and Its Correlates*, 8 J. OF INTERPERSONAL VIOLENCE 109, 110 (1993); Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K., *Rape in America: A Report to the Nation*, Nat’l Victim Ctr. & Medical Univ. of S. Carolina 4 (1992), https://evawintl.org/wp-content/uploads/rape_in_america.pdf
- 29 Jennifer Gentile Long, *Explaining Counterintuitive Victim Behavior in Domestic Violence and Sexual Assault Cases*, *The Nat’l Ctr. for the Prosecution of Violence Against Women*, Am. Prosecutors Research Inst. 1 (2006), <http://www.ncdsv.org/images/Explaining%20Counterintuitive%20victim%20behavior.pdf>; Kimberly A. Lonsway, *The Use of Expert Witnesses in Cases Involving Sexual Assault* 3 (Report for U.S. Dept. of Just., Office on Violence Against Women 2005).
- 30 Anderson, *Diminishing the Legal Impact of Negative Social Attitudes Toward Acquaintance Rape Victims*, *supra* note 15.
- 31 *Id.* at 652–54.
- 32 These laws are known as “rape shield” laws and prohibit the introduction of the victim’s past sexual history except under certain circumstances and then require a balancing test between the probative value and prejudicial impact. See Anderson, *From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law*, *supra* note 14; Wriggins, *supra* note 18, at 127–8.
- 33 For state laws that explicitly prohibit penetration without consent, see e.g., 18 PA. CONS. STAT. § 3124.1; LA. STAT. ANN. § 14.42; WASH. REV. CODE § 9A.44.060; WIS. STAT. § 940.225.
- 34 See, e.g., *State of New Jersey in Interest of M.T.S.*, 609 A.2d at 1271–72.
- 35 Tellis & Spohn, *supra* note 10, at 259.
- 36 At the time this text was being written the American Law Institute was updating its 1962 Model Penal Code provisions related to sex crimes amidst significant debate amongst its advisers and members as to whether to make changes in the direction of making it harder to prove and penalize rape or to make changes that would remove barriers to pursuing rape complaints.
- 37 Wriggins, *supra* note 18 at 105; BROWNMILLER, *supra* note 14 at 153–70.
- 38 Wriggins, *supra* note 18, at 106–16.
- 39 *Id.*
- 40 *Id.* O’Neal et al., *supra* note 10, at 1288.
- 41 Wriggins, *supra* note 18, at 106–16.
- 42 Jessica Shaw & HaeNim Lee, *Race and the Criminal Justice System Response to Sexual Assault: A Systematic Review*, 64 AM. J. OF COMMUNITY PSYCHOL. 256, 271, 272 (2019); Wriggins, *supra* note 18, at 122.
- 43 Toni Irving, *Decoding Black Women: Policing Practices and Rape Prosecution on the Streets of Philadelphia*, 20 NWSA J. 100, 108, 111 (2008).
- 44 O’Neal et al., *supra* note 10, at 1301.
- 45 O’Neal et al., *supra* note 10, at 1290; Tellis & Spohn, *supra* note 10, at 259; Wriggins, *supra* note 18, at 121; Shaw & Lee, *supra* note 42, at 274.
- 46 O’Neal et al., *supra* note 10, at 1290.
- 47 *Id.* at 1291.
- 48 Morabito, M. S., et al., *supra* note 4.
- 49 O’Neal et al., *supra* note 10, at 1291–92.

- 50 Cassia Spohn & Katharine Tellis, *Sexual Assault Case Outcomes Disentangling the Overlapping Decisions of Police and Prosecutors* 383,406–08 (2019).
- 51 O’Neal et al., *supra* note 10, at 1298–1302.
- 52 O’Neal et al., *supra* note 10, at 1301.
- 53 Bonnie J. Morris, *History of Lesbian, Gay, Bisexual and Transgender Social Movements*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <https://www.apa.org/pi/lgbt/resources/history> (last visited Feb. 20, 2020)
- 54 *Id.*; Donald E. Wilkes, Jr., *Lawrence v. Texas: An Historic Human Rights Victory*, FLAGPOLE MAGAZINE (Oct. 15, 2003), http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1051&context=fac_pm
- 55 GARY DAVID COMSTOCK, *VIOLENCE AGAINST LESBIANS AND GAY MEN* 40 (1991).
- 56 *Sexual Violence & Individuals Who Identify as LGBTQ*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER (NSVRC) (2012), https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Research-Brief_Sexual-Violence-LGBTQ.pdf
- 57 *Protected and Served? Police*, LAMBDA LEGAL (2014), <https://www.lambdalegal.org/protected-and-served/police>.
- 58 Mark Fazlollah, Michael Matza, Craig R. McCoy, Clea Benson, *Women Victimized Twice in Police Game of Numbers*, PHILA. INQUIRER, Oct. 17, 1999; Mark Fazlollah, Michael Matza, Craig R. McCoy, Clea Benson, *How Police Use A New Code When Sex Cases Are Unclear*, PHILA. INQUIRER, Oct. 18, 1999; Michael Matza, Craig R. McCoy, *Police Used ‘Throwaway Categories Since 1960’s*, PHILA. INQUIRER, Oct. 18, 1999; Mark Fazlollah, Michael Matza, Craig R. McCoy, *After FBI Questioned One Tactic, Another Was Found*, PHILA. INQUIRER, Oct. 18, 1999.
- 59 Mark Fazlollah, Michael Matza, Craig R. McCoy, Clea Benson, *Women Victimized Twice in Police Game of Numbers*, PHILA. INQUIRER, Oct. 17, 1999.
- 60 *Summary Reporting System (SRS) User Manual*, U.S. DEPT. OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION, UNIFORM CRIME REPORTING (UCR) PROGRAM III (June 20, 2013), <https://www.fbi.gov/file-repository/ucr/srs-user-manual-v1.pdf/view>
- 61 See Morabito, *supra* note 4; Cassia Spohn & Katharine Tellis, *Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff’s Department, and the Los Angeles County District Attorney’s Office*, (unpublished report to U.S. Department of Justice) (Feb. 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf>; Bernice Yeung et al., *When It Come to Rape, Just Because A Case Is Cleared Doesn’t Mean It’s Solved*, PROPUBLICA (Nov. 15, 2018), <https://www.propublica.org/article/when-it-comes-to-rape-just-because-a-case-is-cleared-does-not-mean-solved>.
- 62 Note, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. OF PA. L. REV. 277, 279 n.8 (1968).
- 63 THOMAS W. MCCAHILL, LINDA C. MEYER, ARTHUR M. FISCHMAN, *THE AFTERMATH OF RAPE* 81, 99, 109–12 (1979).
- 64 U. S. Department of Justice Federal Bureau of Investigation Criminal Justice Information Services Division, *NIBRS User Manual 39* (2021) available at <https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manua-093020.pdf/view>.
- 65 Yeung et al., *supra* note 61; Brendan Stahl, *Denied Justice: When Rape is Reported and Nothing Happens*, STAR TRIBUNE (Jan. 25, 2018) <http://www.startribune.com/denied-justice-series-when-rape-is-reported-and-nothing-happens-minnesota-police-sexual-assault-investigations/487400761/>; Robyn Doolittle, *Unfounded: Why Police Dismiss 1 In 5 Sexual Assault Claims As Baseless*, THE GLOBE AND MAIL (Feb. 3, 2017), <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>; Irin Carmon, *The Depressing Realities of Rape Statistics*, JEZEBEL (Jan. 11, 2011, 3:30 PM), <https://jezebel.com/the-depressing-realities-of-rape-statistics-5730719/>; Gina Barton & Becky Vevea, *Police Launch Investigation Into Inaction Complaints*, JOURNAL SENTINEL (July 7, 2010), <http://www.jsonline.com/news/crime/97995519.html>; Gina Barton & Becky Vevea, *Rape Victims Say Police Failed Them*, JOURNAL SENTINEL, (July 6, 2010), <http://www.jsonline.com/news/milwaukee/97848834.html>; Rachel Dissell, *History Shows Sexual-Assault Cases Have Not Been a Priority for Cleveland’s City Leaders, Law Enforcement*, PLAIN DEALER (Mar. 28, 2010) (updated Jan. 12, 2019) https://www.cleveland.com/metro/2010/03/history_shows_sexual_assault_c.html; Justin Fenton, *City Rape Statistics, Investigations Draw Concern*, BALT. SUN (June 27, 2010), <https://www.baltimoresun.com/news/bs-md-ci-rapes-20100519-story.html>; John Eligon, *Panel Seeks More Police Training on Sex Crimes*, N.Y.TIMES (June 3, 2010), A26, <http://www.nytimes.com/2010/06/03/nyregion/03rape.html>; Graham, Rayman, *More Questions Raised About NYPD Handling of Sexual Assaults*, VILLAGE VOICE (May 11, 2010), <https://www.villagevoice.com/2010/05/11/more-questions-raised-about-nypd-handling-of-sexual-assaults/>; Graham Rayman, *NYPD Forced to Apologize Publicly to Rape Victim for Downgrading Her Attack*, VILLAGE VOICE (May 10, 2010) <https://www.villagevoice.com/2010/05/10/nypd-forced-to-apologize-publicly-to-rape-victim-for-downgrading-her-attack/>; Laura Maggi, *NYPD Downgrading of Rape Reports Raises Questions*, TIMES-PICAYUNE (July 12, 2009, 1:02 AM), https://www.nola.com/news/article_55d4f60e-b968-57c0-b45f-58f6acbb3888.html; Rachel Dissell, *Sowell’s Arrest, Release in 2008 Leaves Lingering Questions About Handling of Case*, PLAIN DEALER (Nov. 13, 2009) (updated Jan. 12, 2019), http://blog.cleveland.com/metro/2009/11/sowells_arrest_release_in_2008.html; Jeremy Kohler, *What Rape: Abused by the System*, ST. LOUIS DISPATCH (Aug 28, 2005), <https://dartcenter.org/content/what-rape>; Sharon Lerner, *Rape Crisis*, VILLAGE VOICE (Aug. 7, 2001), <https://www.villagevoice.com/2001/08/07/rape-crisis/>.
- 66 Ashley Fantz, *Good Evidence Gone*, CNN (Nov. 29, 2019), <https://www.cnn.com/interactive/2018/11/investigates/police-destroyed-rapekits/good-evidence-gone.html>; Steve Reilly, *Tens of thousands of rape kits go untested across USA*, USA TODAY (July 16, 2015, 9:04 AM) (updated July 30, 2015, 3:32 PM), <https://www.usatoday.com/story/news/2015/07/16/untested-rape-kits-evidence-across-usa/29902199/>
- 67 See, Rebecca Campbell et al., *Connecting the Dots: Identifying Suspected Serial Sexual Offenders Through Forensic DNA Evidence*, 10(3) PSYCHOL. OF VIOLENCE 255–67 (2020) (finding that 35.7% reoffending rate after finding DNA for perpetrators in 7,287 previously untested sexual assault kits from Detroit, MI.); Rachel Lovell et al., *Describing The Process And Quantifying The Outcomes Of The Cuyahoga County Sexual Assault Kit Initiative*, 57 J. OF CRIM. JUST. 106–15 (2018). (testing of 4996 previously unsubmitted sexual assault kits identified 1429 sex offenders, 27% of whom were linked by DNA to more than one victim).

- 68 Carol Tracy, *Testimony on Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases*, Before the Senate Committee on the Judiciary Subcommittee on Crime and Drugs (Sept. 14, 2010), <https://www.judiciary.senate.gov/imo/media/doc/09-14-10%20Tracy%20Testimony.pdf>
- 69 *Improving Police Response to Sex Crimes*, POLICE EXECUTIVE RESEARCH FORUM (PERF) (March 2012), http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf.
- 70 *Investigation of the New Orleans Police Department*, U.S. Department of Justice, Civil Rights Division (Mar. 16, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf
- 71 U.S. Department of Justice, *Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias* (Updated May 23 2022) <https://www.justice.gov/ovw/page/file/1509451/download>; *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, U.S. Department of Justice (2015), <https://www.justice.gov/opa/file/799366/download>.
- 72 Eric H. Holder, Jr., Karol V. Mason, Robert L. Listenbee, U.S. Department of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Law Enforcement Response to Child Abuse, Portable Guide to Investigating Child Abuse* (July 2014), https://ssw.umich.edu/sites/default/files/documents/fauri-lecture/2014/ojjdp.gov_law-enforcement-response-to-child-absuse.pdf.
- 73 U.S. Dept. of Justice Office on Violence Against Women, *A National Protocol for Sexual Abuse Medical Forensic Examinations—Pediatric* (April 2016), <https://www.ncjrs.gov/pdffiles1/ovw/249871.pdf>

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