

Sexual Violence Review



Office of the State Courts Administrator
Office of Court Improvement

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News from the Office of Court Improvement

Sexual Violence Surveys

In accordance with our 2015-16 STOP Grant deliverables, the OCI is in the process of disseminating a set of surveys throughout Florida. These surveys are designed to elicit information from every type of SV court stakeholder, and will be used to map the future of the OCI STOP Grant SV initiative. Please contact your local coordinators and court staff for a link to the surveys, or email OCI at wentzella@flcourts.org, with the subject line "Survey Request." Thank you for your participation in this very important process.

Projects and Events

- **THE OCI WEBINAR SERIES** The Office of Court Improvement is proud to be championing the latest in education services. During the 2015-16 fiscal year, the OCI is offering two (2) webinars devoted to current sexual violence issues; these webinars will be available to any interested stakeholders in Florida. The first sexual violence webinar "**Sexual Assault Response Teams: the Florida Model**" was hosted on January 19, 2016. Look for more information regarding the second webinar to be released soon.



Let's Get Real About Rape

By: Jennifer L. Dritt, LCSW

Societal misconceptions about rape can impact victims' experiences within the judicial system. Rape has profound lifelong effects on victims; studies have shown, however, that offenders frequently perpetrate rape with impunity. It's important for responders to understand the reality of rape in order to hold offenders accountable for their crimes.

It's time to get real about rape.

FICTION: The "problem" of rape is exaggerated.

FACT: More than 1.2 million adult women in Florida have already been victimized by rape.

Scope of the Problem

The lifetime prevalence of forcible rape using the Federal Criminal Code definition¹ was 12.65% in the 1990 National Women's Study ("NWS")² and 16.1% in the 2005 National Women's Study-Replication

¹ In January of 2012, the Federal definition of rape was expanded to: "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 *Attorney General Eric Holder Announces Revisions to the Uniform Crime Report's*

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("NWS-R").³ This means that, for the estimated lifetime prevalence of forcible rape, there was an increase of 27.3% in the percentage of adult women in the U.S. who had ever been forcibly raped and that in 2005 the estimated number of women who had ever been forcibly raped was approximately 18 million.⁴ The estimated annual prevalence of forcible rape among adult women was 0.71% in the NWS and 0.74% in the NWS-R, suggesting that there was little change over 15 years in the percentage of adult women forcibly raped each year.⁵ Based on the NWS-R findings, we estimated that over 800,000 adult women in the U.S. were forcibly raped in the year prior to the NWS-R interviews.

The NWS did not measure drug or alcohol-facilitated rape (DAFR), which is clearly defined as rape in the Federal Criminal Code. However, the NWS-R found that the lifetime prevalence of this type of rape was 5.0%, and the annual prevalence was 0.42%⁶, suggesting that approximately 5.6 million adult women in the U.S. have ever experienced this type of rape and 471,000 women experience it each year.

Reporting

Both the NWS and NWS-R found that only 15-20% of rape cases are reported to police.⁷ Although there was a very small increase in willingness to report forcible rape cases, 82% were still never reported.⁸ Reporting of DAFR cases in the NWS-R was even lower (10%) than for forcible rape cases.⁹

Why Don't Victims Report?

Rape victims in the NWS-R expressed many of the same concerns that were expressed by rape victims in the NWS. For example, over half of the rape victims in both studies said they were concerned about their families or other people finding out about the rape, and over 60% said they were concerned about being blamed by others.¹⁰ More rape victims had concerns about these issues than expressed concerns about HIV/AIDS, other STDs, and pregnancy.

Definition of Rape. Department of Justice, Office of Public Affairs. (Jan. 6, 2012) available at <http://www.justice.gov/opa/pr/attorney-general-eric-holder-announces-revisions-uniform-crime-report-s-definition-rape> (last viewed on 1/19/16).

² Nat'l Victim Ctr. & Crime Victims Research & Treatment Ctr., *Rape in America: A Report to the Nation* (1992).

³ Dean Kilpatrick, et al., *Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study*, Medical University of South Carolina, Nat'l Crime Victims Research and Treatment Ctr. (2007).

⁴ *Id.* at 2.

⁵ *Id.* at 25.

⁶ *Id.* at 3.

⁷ *Id.* at 43.

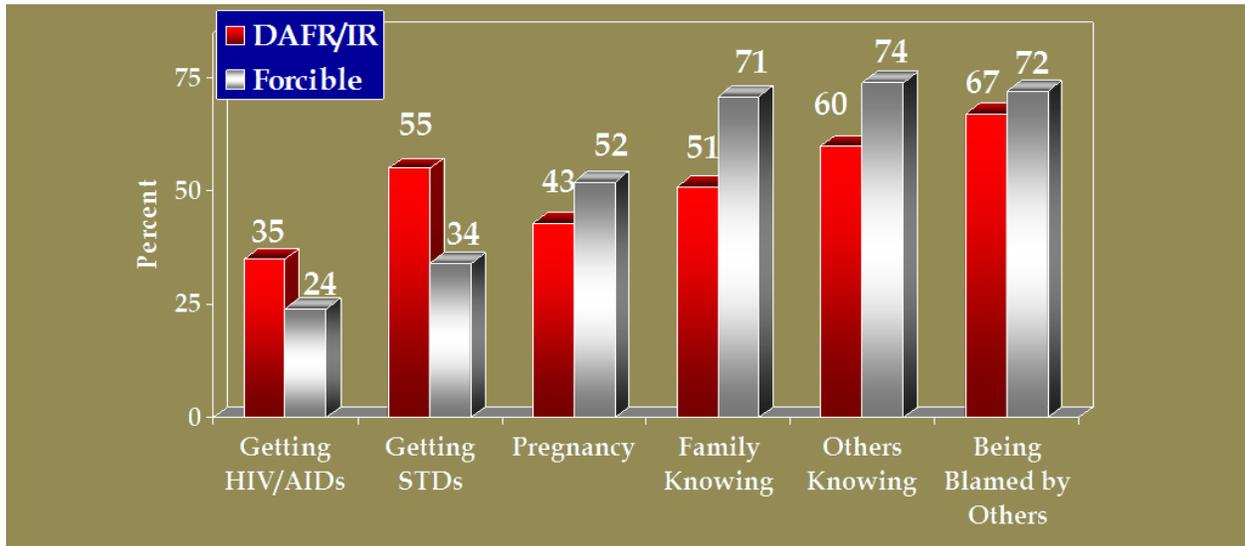
⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 39.

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FICTION: Most rape reports are false

FACT: Less than 8% of rape reports are false

The “Making a Difference”¹¹ project conducted evaluations by multidisciplinary teams for all sexual assault reports in specific jurisdictions across an 18-24 month period¹². Only 7% of reports were classified as false in the study of eight communities across the United States, including Jacksonville, Florida.¹³ Methodologically rigorous research finds the false reporting rate to be approximately 5.9%.¹⁴

Classification of Cases (N = 136)

Category	N	Percent
False Report	8	5.9
Case did not proceed	61	44.9
Case proceeded	48	35.3
Insufficient information	19	13.9

¹¹ “Making a Difference” is a long-term End Violence Against Women project. The goal of the project was for multidisciplinary teams from eight U.S. and eight Canadian communities to become partners in a joint effort to work together collaboratively to establish new standards for effectively investigating and prosecuting sexual assault. For more information, please see: <http://www.evawintl.org/mad.aspx>.

¹² David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 *Violence Against Women* 1318, 1326 (2010) [hereinafter *False Allegations*].

¹³ *Id.* at 1327.

¹⁴ *Id.* at 1329.

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FICTION: Most rape is simply a matter of miscommunication between the offender and the victim.

FACT: Rape is premeditated.

Undetected rapists

Rape is not a matter a miscommunication between the accused and the accuser. Most sexual assault is premeditated and predatory in nature. David Lisak and Paul Miller conducted research on non-incarcerated offenders revealing that:

Most interpersonal violence is perpetrated by individuals who in some way are known to the victim;
Most of this violence is never reported to authorities; and
Most perpetrators of this violence are never prosecuted.¹⁵

Researchers discovered that it was possible to gather accurate data from these men because they did not view themselves as rapists.¹⁶ They shared the very widespread belief that rapists were knife-wielding men in ski masks who attacked strangers; since they did not fit that description, they were not rapists and their behavior was not rape. This has allowed researchers to study the motivations, behaviors and background characteristics of these so-called “undetected rapists.”

Pooling data from samples in which 1,882 men were assessed for acts of interpersonal violence, 120 men self-reported acts meeting the legal definitions of rape or attempted rape, but were never prosecuted by criminal justice authorities.¹⁷ A majority of these undetected rapists were repeat rapists, and a majority committed other acts of interpersonal violence.¹⁸ The repeat rapists averaged 5.8 rapes each. The 120 rapists were responsible for 1,225 separate acts of interpersonal violence, including rape, battery, and child physical and sexual abuse.¹⁹ These 120 undetected rapists were responsible for 483 rapes.²⁰ Of the 120 rapists, 44 had committed a single rape, while 76 (63%) of them were serial rapists who accounted for 439 of the 483 rapes.²¹

Motivations and Characteristics

Many of the motivational factors that were identified in incarcerated rapists have been shown to apply equally to undetected rapists.²² When compared to men who do not rape, these undetected rapists are measurably more angry at women, more motivated by the need to dominate and control women, more

¹⁵ David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence and Victims* 73, 81 (2002) [hereinafter *Undetected Rapists*].

¹⁶ Sarah Edwards, *Denying Rape but Endorsing Forceful Intercourse: Exploring Differences Among Responders*, 1 *Violence and Gender* 188 (2014).

¹⁷ David Lisak, *Undetected Rapists*, *supra* at 78.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 81.

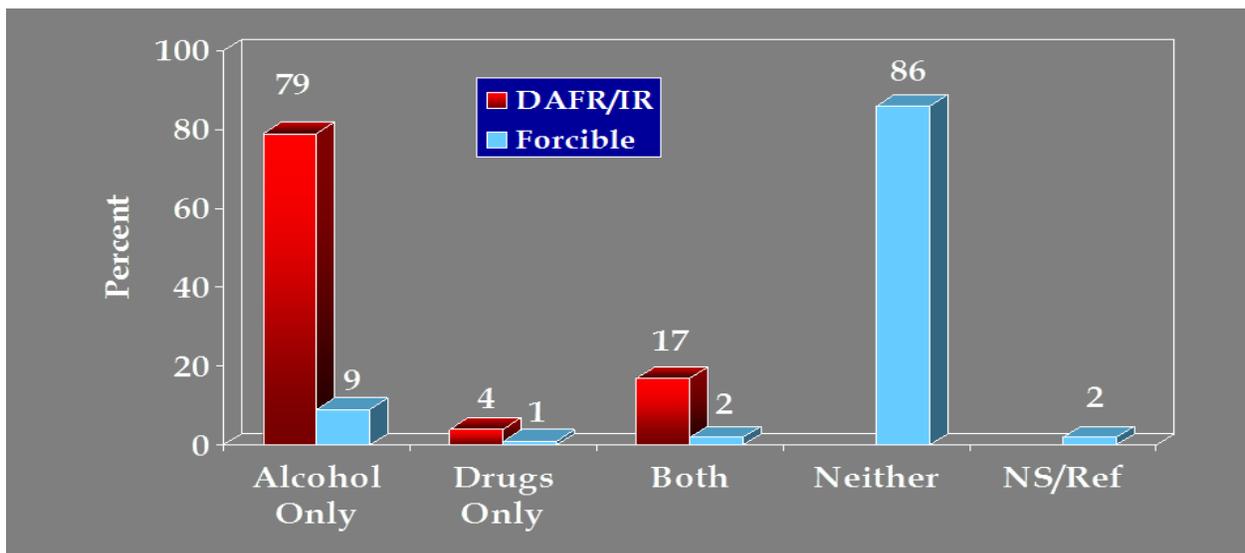
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impulsive and disinhibited in their behavior, more hyper-masculine in their beliefs and attitudes, less empathic and more antisocial.²³

Common operational characteristics of perpetrators

1. Extremely adept at identifying “likely” victims, and testing prospective victims’ boundaries;
2. Planning and premeditation of their attacks, using sophisticated strategies to groom their victims for attack, and to isolate them physically;
3. Use of “instrumental” not gratuitous violence; they exhibit strong impulse control and use only as much violence as is needed to terrify and coerce their victims into submission;
4. Use of psychological weapons – power, control, manipulation, and threats – backed up by physical force, and almost never resort to weapons such as knives or guns;
5. Deliberate use of alcohol or drugs to render victims more vulnerable to attack, or completely unconscious.²⁴



Undetected rapists share the same motivational matrix as incarcerated offenders in that they are serial offenders and most commit a variety of different interpersonal offenses. This picture conflicts sharply with the widely-held view that rapes committed on university campuses are typically the result of a basically “decent” young man who, were it not for too much alcohol and too little communication, would never do such a thing. The evidence points to a far less benign reality, in which the vast majority of rapes are committed by serial, violent predators.

²³ *Id.* at 73.

²⁴ *Id.* at 81.

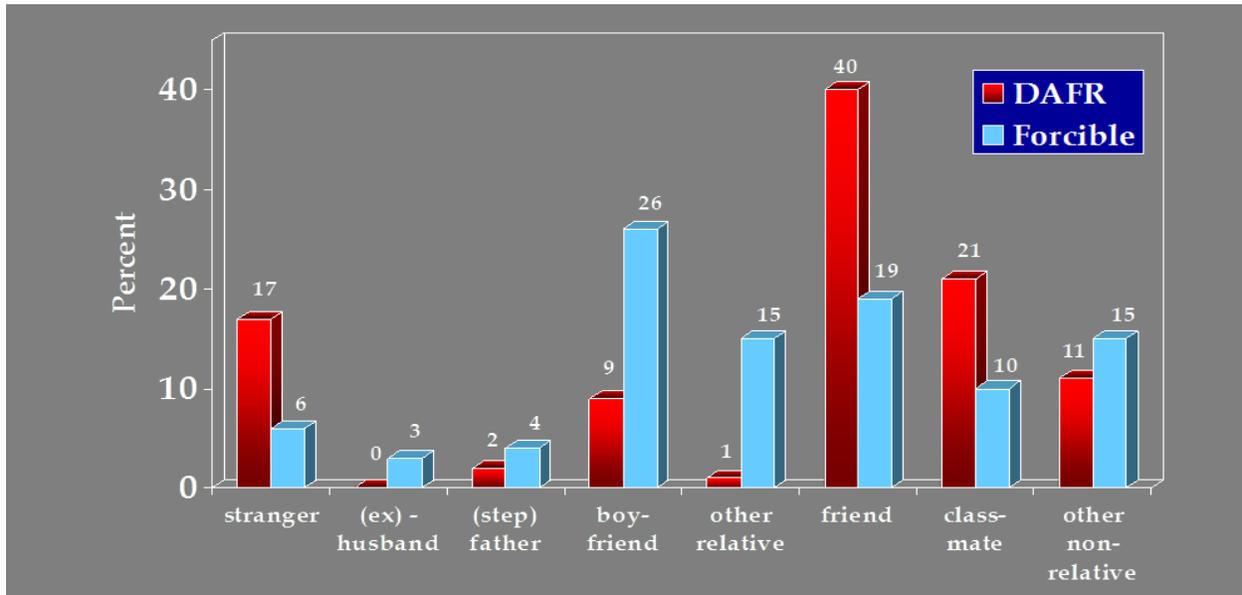
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FICTION: Nice guys don't commit rape.

FACT: Most rapes are committed by someone the victim knows and/or trusts.

PERPETRATORS' RELATIONSHIPS TO VICTIMS



Consequences for Victims

Rape has long term consequences for victims. The NWS-R data indicated that forcible rape and DAFR substantially increased risk of posttraumatic stress disorder, major depression, and substance use disorders.²⁵ All types of rape have lasting negative impacts on victims' mental health, and these mental health problems appear to be chronically unaddressed. Rape is a devastating crime that has profound negative effects on mental and physical health, academic performance, and quality of life. Rape is a cause and a consequence of other campus problems such as binge drinking. Nationally, many women have been raped before they enroll in college, and many will be raped while students. This is also true in Florida. Addressing the causes and consequences of rape is consistent with our ethical obligations as public officials.

Reality

There is no evidence that either the lifetime or annual prevalence of forcible rape is going down. In fact, the burden of rape among U.S. women is higher now than it was in the early 1990's because a larger percentage of women have been raped at some point during their lives, and there has been no decrease in the percentage of women who are raped each year. Most rape cases (over 80%) are still not reported to police, indicating that this remains a chronic problem that we must address.

²⁵ Kilpatrick, *supra* at 49.

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Rape victims' concerns about being blamed by others and about others finding out about the rape are major barriers to increased reporting, and these concerns are likely exacerbated by the way victims are routinely treated in high profile cases or when the criminal justice system does not pursue reported cases vigorously.

What can judges do?

Attend your local Sexual Assault Response Team (SART) meeting. For more information on SART meeting details, please contact your local rape crisis center. A list of rape crisis centers and contact information can be found at: <https://www.fcasv.org/information/find-your-local-center>.

Educate yourself about sexual assault and its effect on victims.



Caselaw Corner



Bilal v. State, ___ So. 3d ____, 2015 WL (Fla. 1st DCA 2015). **HOLDING AFFIRMED; NOTWITHSTANDING DSM-V, EVIDENCE SUPPORTS THE CONCLUSION THAT APPELLANT UNDERLYING CONDITION IS UNCHANGED AND THUS HE IS INELIGIBLE FOR RELEASE UNDER JIMMY RYCE ACT.** Appellant had been diagnosed with paraphilia not otherwise specified (NOS) (nonconsenting females), exhibitionism, psychotic disorder NOS, and personality disorder NOS with antisocial features. Subsequent to entering the Civil Commitment Center (CCC), the American Psychiatric Association issued DSM-5, removing paraphilia NOS (non-consenting females) as a mental disorder. Appellant then petitioned for release claiming that he no longer possessed a commitment-qualifying mental disorder under the Act. The appellate court held that in a petition and trial for release under the Jimmy Ryce Act, the State must show by clear and convincing evidence that “the person’s mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.” S. 394.918(4), F.S. Appellant argued that he was statutorily entitled to release because his paraphilia NOS diagnosis had disappeared from the current version of the DSM, leaving him without a qualifying mental condition. The appellate court agreed with the trial court’s conclusion that the DSM-5 revision was inconsequential in this case, and stated that the Jimmy Ryce Act (see ss. 394.910-.932, F.S.) did not establish the latest version of the DSM as the basis of making either the “mental abnormality or personality disorder”

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diagnosis required for an initial commitment under the Act (see s. 394.912(10) F.S.), or the mental condition diagnosis that must “remain” for purposes of considering a petition for release in s. 394.918(4), F.S. The court continued to say that the State had “considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment.” State v. White, 891 So. 2d 502, 506 (Fla. 2004) (quoting Kansas v. Crane, 534 U.S. 407, 413 (2002)) (internal quotations omitted). Though the science of psychiatry informs diagnoses made in this area, it “does not control ultimate legal determinations . . . whose distinctions do not seek precisely to mirror those of the law.” *Id.* (quoting *Crane* at 413). The appellate court noted that “the debate over the validity of the paraphilia NOS diagnosis may inform the weight given to the competing psychologist’s expert opinions; but ultimately this case hinges on whether the appellant’s real-life condition remained or had changed, irrespective of the DSM-5’s current clinical nomenclature. S. 394.918(4), F.S.” The trial court’s ruling was affirmed. February 27, 2015.

https://edca.1dca.org/DCADocs/2013/5500/135500_DC05_02272015_095022_i.pdf



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People wishing to contribute to future editions of the “Sexual Violence Review” should contact Andrew Wentzell at Wentzella@flcourts.org.