

## – SEXUAL HEALTH ISSUE BRIEF –

### Sexual Assault in Canada: Legal Definitions, Statistics, and Frontline Responses

Recent media reports in Canada and elsewhere have raised awareness that the crime of sexual assault is common and that victims are often reluctant to report incidents of sexual assault to police. It is important for public health professionals to have basic information regarding sexual assault. This Sexual Health Issue Brief provides: 1) information on the legal classifications of sexual assault in Canada; 2) a summary and discussion of Statistics Canada methods for collecting sexual assault data, including key findings and their implications; 3) a summary of an Ontario study on drug facilitated sexual assault in Ontario; 4) points for frontline staff to consider when a victim discloses a sexual assault; and 5) a list of Toronto/Ontario sexual assault services and resources.

#### The Definition of Sexual Assault

In 1983, the terms rape and indecent assault were replaced with a three-tier structure of sexual assault within the *Criminal Code* of Canada. One of the reasons for the re-classification was to reposition acts of sexual violence as “assaults”, drawing attention to their physical and violent nature (Sinha, 2013). Furthermore, the term sexual assault was chosen in order to better incorporate sexual offenses beyond forced penile-vaginal intercourse (e.g., unwanted sexual touching) and to be gender inclusive (i.e., not all victims are female). Other important changes to the criminal code included restrictions placed on the admissibility of a victim’s prior sexual history (i.e., Rape Shield laws) and the elimination of immunity for sexual assault by a spouse. An additional purpose of broadening the criminal definition was to encourage victims to come forward to police – regardless of the severity of the sexual assault.

#### Levels of Sexual Assault

(Summary of Criminal Code of Canada classifications)

**Level 1:** Any form of sexual activity forced on another person (i.e., sexual activity without consent), or non-consensual bodily contact for a sexual purpose (e.g., kissing, touching, oral sex, vaginal or anal intercourse). Level 1 sexual assault involves minor physical injury or no injury to the victim. Conviction for a level 1 sexual assault is punishable by up to 10 years in prison.

**Level 2:** A sexual assault in which the perpetrator uses or threatens to use a weapon, threatens the victim’s friends or family members, causes bodily harm to the victim, or commits the assault with another person (multiple assailants). Conviction for a level 2 sexual assault is punishable by up to 14 years in prison.

**Level 3:** (Aggravated sexual assault) A sexual assault that wounds, maims, or disfigures the victim, or endangers the victim’s life. Conviction for a level 3 sexual assault is punishable by up to life in prison.

#### Canadian Sexual Assault Statistics

*Police-reported versus victim-reported statistics*

Assessing the true prevalence of sexual assault in Canada is difficult due to the different ways that sexual assault data is collected. Statistics Canada relies on two data sources to track the incidence of sexual assault—the Uniform Crime Reporting (UCR) Survey and the General Social Survey (GSS), which includes data on victimization. The UCR survey tracks the number of sexual assaults reported to police, and the GSS asks Canadians whether they've been victims of sexual assault, including assaults they may not have reported to police.

According to data from the UCR, in Canada, in 2013, there were approximately 21,300 sexual assaults reported to the police, 98% of which were classified as Level 1. In the same year, there were 7,677 police reported sexual assaults in the province of Ontario. In both Ontario and Canada generally, the rate of police reported sexual assaults declined by 4% from 2012 to 2013 (Boyce, Cotter, & Perreault, 2014).

The GSS, on the other hand, which is conducted at 5-year intervals (a new GSS report will likely be published in 2015) uses a different method of data collection. It calculates self-reported crime rates by asking a nationally representative sample of 15-and-older Canadians whether they've been victims of various types of crime during the previous 12 months. Overall, the GSS results for sexual assault were similar in 1999, 2004, and 2009.

For 2009, the most recent year for which GSS data is available, there were approximately 677, 000 incidents of sexual assault in Canada, or 24 incidents per 1000 people who were 15 and older (Perreault & Brennan, 2010). For 472, 000 (70% of the total) of these sexual assaults, the victim was female and 87% of perpetrators were male. Most (81%) involved unwanted sexual touching, grabbing, kissing, or fondling (i.e., generally corresponding to Level 1 sexual assault) while about one in five involved more serious sexual attacks. In more than half (58%) of 2009 sexual assaults, the perpetrators were friends, acquaintances, or neighbours of the victims.

Aside from the statistics related to the gender of victims, there is limited information within the GSS on the demographic characteristics of sexual assault victims. Sexual assault rates were almost twice as high for 15- to 24-year-olds as for 25- to 34-year-olds, and many times higher than for people who were 35 and older. People who identified as single or as students had higher rates of sexual assault. Sexual assault victimization rates did not differ significantly based on household income. Aboriginal people experienced higher rates of sexual assault compared to non-aboriginal people (Perreault & Brennan, 2010). The GSS information reported by Statistics Canada does not include sexual assault rates of people with non-heterosexual orientations and does not include a transgender identity category.

As the URC survey and GSS statistics show, there's a large difference between the number of sexual assaults reported to police and the number that actually take place. Although the two surveys define sexual assault in slightly different ways, making direct comparisons difficult, researchers estimate that only about one in 10 sexual assaults in Canada is reported to the police (Brennan & Taylor-Butts, 2008).

## **Why Are So Many Sexual Assaults Not Reported To Police?**

### *Common reasons for not reporting a sexual assault to police*

According to the GSS victimization data (Brennan & Taylor-Butts, 2008), the most common reason victims of sexual assault gave for not reporting an incident to police was because they felt it was not important enough (58%), followed by the incident was dealt with in another way (54%). Other common reasons given were that it was a personal matter (47%) and that the victim did not want to get involved with the police (41%). Situational variables may result in women not wanting to report the activity to

the police. For example, in 2009, 51% of cases involved a current or previous intimate partner or acquaintance/friend (Perrault & Brennan, 2010). Research has found that having a prior relationship with the assailant is associated with a reduced likelihood that the victim will report the assault to the police (Jones, Alexander, Wynn, Rossman, & Dunnuck, 2009).

In a national study of female rape victims in the United States, among those who did not report the assault to police, the main reasons given by women for not reporting were the fear of reprisal (68.1%), not wanting family to know (59.1%), not wanting others to know (57.4%), believing that there was not enough evidence to file charges (51.1%), and fear of the justice system (42.6%) (Wolitzky-Taylor, Resnick, McCauley, Amstadter, Kilpatrick, & Ruggiero, 2011).

It has been suggested that one reason women do not report sexual assault to the police stems from a belief among victims that the police will not take their report seriously. Long-held rape myths in Western culture mean some women may believe they will face skepticism regarding whether or not they resisted strenuously enough or that authorities will be less inclined to investigate if the perpetrator is a dating partner or husband (Johnson, 2012).

*Only a small percentage of sexual assaults reported to police result in a conviction*

A fundamental reason why many women may choose not to report a sexual assault to police is that the probability that the complaint will eventually result in a criminal conviction is low. Using data from the 2004 GSS, Johnson (2012) has shown that only a small proportion of sexual assaults reported to police by women result in a conviction (See Figure 1).

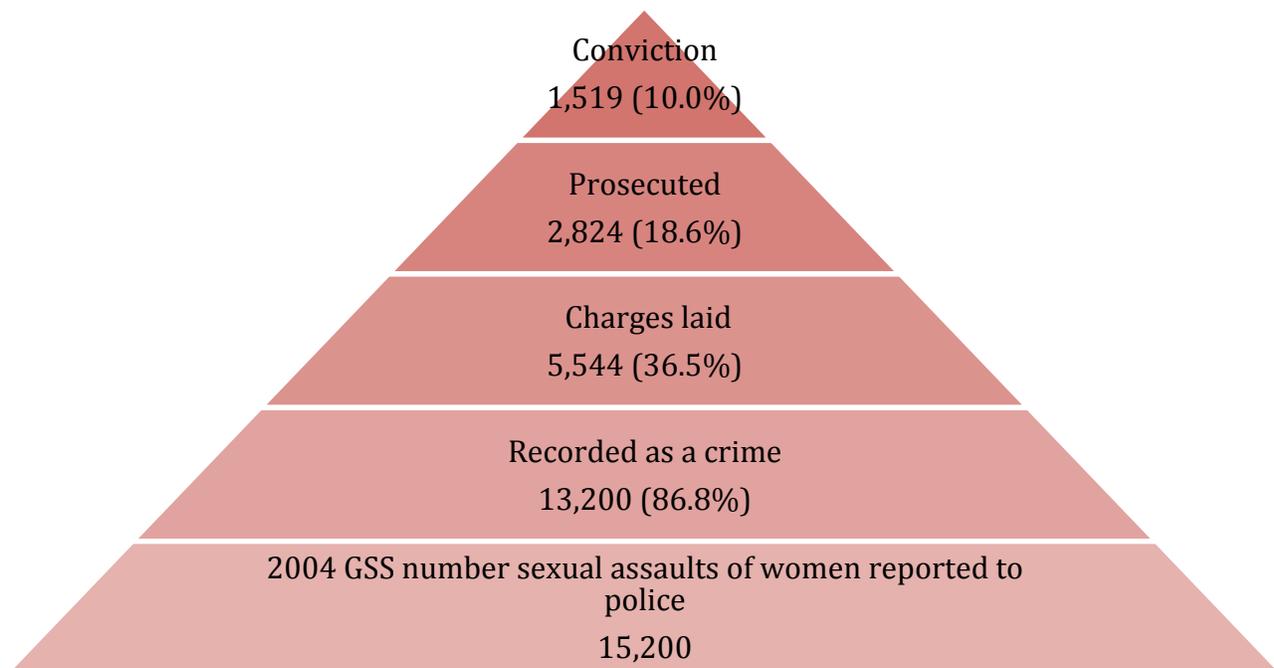


Figure 1: Percentage of sexual assaults of women reported to police resulting in criminal conviction  
Source: Adapted from Johnson, H. (2012). Limits of a criminal justice response: Trends in police and court processing of sexual assault. In E. Sheehy (Ed.) *Sexual Assault in Canada: Law, Legal Practice, and Women's Activism* (pp. 613-634). Ottawa, ON: University of Ottawa Press.

If a sexual assault is reported to police they have a duty to investigate. Upon investigation, the police may decide that the report is “unfounded” – meaning that there is not enough evidence to pursue any further investigation (Johnson, 2012). Research has found that reports of sexual assault are more likely to be deemed as unfounded compared to investigation of other types of crime (Roberts, Johnson, & Grossman, 2003). If charges are laid, they may be dropped for a number of reasons

including that the victim chooses not to proceed or the police conclude that they do not have “reasonable grounds” to pursue a charge or it is concluded that the evidence is insufficient to obtain a conviction (Johnson). As Figure 1 indicates, only about half of sexual assault charges result in a criminal prosecution. In addition, as the Figure also illustrates, in 2004, just over half of sexual assault prosecutions resulted in a conviction. More recent Statistics Canada (2014) data indicate that in 2011-2012, 41% of sexual assault cases brought to court resulted in a guilty decision and the corresponding figure for Ontario was 35%.

### **Police Records Likely Under-Report the Severity of Many Sexual Assaults**

As noted above, of sexual assaults substantiated and reported by Canadian police services in the UCR, 98% were recorded as level 1 in 2013 (Boyce, Cotter, & Perreault, 2014). As Johnson (2012) points out, since the three-tiered sexual assault classification replaced rape in the criminal code in 1983 the proportion of all reported sexual assaults that were recorded as the least severe level 1 has increased (88%/1983 vs. 98%/2013). This could indicate that the proportion of all sexual assaults that involve weapons and physical violence causing physical injury to the victim is decreasing.

Other data, however, suggest that this may not be the case and point to another explanation for the relative decline in the proportion of sexual assaults recorded by police that are more severe compared to level 1 sexual assaults. Participants in the self-report GSS indicate that they are more likely to report a sexual assault to police if it involves a more severe physically violent sexual attack. It is noteworthy that while the proportion of sexual assaults recorded by police as level 2 or 3 has been declining, the percentage of victims in the GSS who reported that their sexual assaults involved the use of threats or physical violence remained unchanged at 19% in 2004 and 2009 ((Brennan & Taylor-Butts, 2008; Perrault & Brennan, 2010). In an analysis of 2007 *Revised Uniform Crime Reporting Survey*, Johnson (2012) found that, of sexual assaults classified as level 1, 2% involved the use of a weapon, such as a firearm, knife, or blunt object and 17% resulted in physical injury. In other words, these findings suggest that about a fifth of sexual assaults that were classified as level 1 may have been more appropriately been classified as level 2 sexual assaults.

### **Drug Facilitated Sexual Assault**

Drug facilitated sexual assault can be defined as an offense in which victims are subjected to non-consensual sexual activity while they are incapacitated or unconscious due to the effects of alcohol and/or drugs and are therefore unable to resist or give consent (Hall, 2008). Although reports and public awareness of drug facilitated sexual assault have increased in recent years, only a few studies have sought to precisely determine the percentage of sexual assaults that involve drug facilitation and the types of drugs used.

Du Mont and colleagues (2009, 2010) investigated possible drug facilitated sexual assault among 882 people (97% female) presenting to hospital-based sexual assault centres in Ontario. Participants were designated as having been victims of drug facilitated sexual assault if they reported a suspicion of having been drugged in combination with 1 or more of 16 associated symptoms (e.g., total or complete amnesia, loss of consciousness, paralysis, confusion, drowsiness). Using these criteria, 20.9% of the sexual assaults were designated as drug facilitated (Du Mont et al., 2009). The most common substances detected in toxicology screening of participants were alcohol (30.9%) (Alcohol but no other drugs were present in 12.9% of cases), cannabis (33.7%), cocaine (21.4%), amphetamines (7.3%), and MDMA (7.3%). Anti-anxiety medication (lorazepam) was found in 6.2% of cases and the antidepressant citalopram in 6.7%. Ketamine and GBH were each found in 1.1% of cases. Flunitrazepam (Rohypnol®) which is often thought to be a drug commonly used in drug facilitated sexual assault was not found in any of the cases (Du Mont et al., 2010).

The findings of the Du Mont et al (2009, 2010) research suggests that approximately a fifth of sexual assaults are drug facilitated and that there are a variety of drugs, including alcohol, used by perpetrators to incapacitate their victims.

## **Frontline Responses to Sexual Assault**

Due to the high prevalence of sexual assault, frontline public health professionals may encounter clients who have been victimized. Frontline staff can play an important role as an initial confidante and/or individual support system, especially for victims who choose to not report an assault to law enforcement.

The Ontario Coalition of Rape Crisis Centres (<http://www.sexualassaultsupport.ca>) provides a range of suggestions for supporting individuals who disclose that they have been sexually assaulted. These include:

- Protect the client's confidentiality and inform them that you will do so.
- Do not conduct an "investigation". Accept and believe what the client discloses.
- Listen emphatically and non-judgmentally.
- Tell the client that that a sexual assault is never the victim's fault.
- Do not give personal advice (e.g., "If I were you, I would....").
- Do not call the police against the victim's wishes (unless you are specifically mandated to do so).
- Suggest options for action (e.g., legal, counselling, and other support; see below) but let the client decide what action to take.
- Encourage the client to seek medical help including testing for unplanned pregnancy, HIV and other STI.

Being aware of the sexual assault services in the community that victims can access is especially helpful (See below). The Toronto Police/Victim Services Guide for Sexual Assault survivors (see link below) provides information about the criminal justice system for victims who are making a decision about reporting the assault to police.

### ***Ontario/ Toronto Area Sexual Assault Services and Resources***

- Toronto Police/Victim Services. A Guide for Sexual Assault Survivors. [http://www.torontopolice.on.ca/publications/files/a\\_guide\\_for\\_sexual\\_assault\\_survivors.pdf](http://www.torontopolice.on.ca/publications/files/a_guide_for_sexual_assault_survivors.pdf)
- Toronto Rape Crisis Centre/Multicultural Women Against Rape. 24-hour crisis line: 416-597-8808 [www.trccmwar.ca](http://www.trccmwar.ca)
- Ontario-wide: Assaulted Women's Helpline 1-866-873-0511 (If assaulted in last 72 hours = 416-323-6040)
- Women's College Hospital Sexual Assault and Domestic Violence Care Centre. 416-323-6040
- Scarborough Hospital Sexual Assault/Domestic Violence Care Centre. 416-495-2555
- Peel Region Sexual Assault/Domestic Violence Program. 905-848-7580. X2142
- Richmond Hill Domestic Abuse and Sexual Assault Care Centre. 1-800-521-6004
- Durham Region Domestic Violence/Sexual Assault Centre. 905-571-3344 x116

## References

- Brennan, S., & Taylor-Butts, A. (2008). Sexual assault in Canada 2004 and 2007. *Canadian Centre for Justice Statistics Profile Series*, 19, 1-20. <http://www.statcan.gc.ca/pub/85f0033m/85f0033m2008019-eng.pdf>
- Boyce, J., Cotter, A., & Perreault, S. (2014). Police reported crime statistics in Canada, 2013. *Juristat*. Statistics Canada catalogue no. 85-002-x <http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14040-eng.pdf>
- Du Mont, J., Macdonald, S., Rotbard, N., Asllani, E., Bainbridge, D., & Cohen, M. (2009). Factors associated with suspected drug-facilitated sexual assault. *Canadian Medical Association Journal*, 180, (5), 513-519.
- Du Mont, J., Macdonald, S., Rotbard, N., Bainbridge, D., Asllani, E., Smith, N., & Cohen, M. (2010). Drug-facilitated sexual assault in Ontario, Canada: Toxicological and DNA findings. *Journal of Forensic and Legal Medicine*, 17, 333-338.
- Hall, J.A. (2008). Drug facilitated sexual assault – A review. *Journal of Forensic and Legal Medicine*, 15, (5), 291-297.
- Jones, J.S., Alexander, C., Wynn, B.N., Rossman, L. & Dunnuck, C. (2009). Why women don't report sexual assault to the police: the influence of psychosocial variables and traumatic injury. *Journal of Emergency Medicine*, 36 (4), 417-424.
- Johnson, H. (2012). Limits of a criminal justice response: Trends in police and court processing of sexual assault. In E. Sheehy (Ed.) *Sexual Assault in Canada: Law, Legal Practice, and Women's Activism* (pp. 613-634). Ottawa, ON: University of Ottawa Press.
- Perreault, S., & Brennan, S. (2010). Criminal victimization in Canada, 2009. *Juristat*, 30, 1-29. <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.pdf>
- Roberts, J., Johnson, H., & Grossman, M. (2003). Trends in crimes of sexual aggression in Canada: An analysis of police-reported and victimization statistics. *International Journal of Comparative Criminology*, 18, 187-200.
- Sinha, M. (2013). Measuring violence against women: Statistical Trends. *Canadian Centre for Justice Statistics Profile Series*, no. 85-002-X. <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>
- Statistics Canada. (2014). Adult criminal courts, number of cases and charges by type of decision. CANSIM Table 252-0053. <http://www5.statcan.gc.ca/cansim/a05?lang=eng&id=2520053&pattern=2520053&searchTypeByValue=1&p2=35>
- Wolitzky-Taylor, K.B., Resnick, H.S., McCauley, J.L., Amstader, A.B., Kilpatrick, D.G., & Ruggiero, K.J. (2011). Is reporting of rape on the rise? A comparison of women with reported versus unreported rape experiences in the National Women's Health Study replication. *Journal of Interpersonal Violence*, 26 (4), 807-832.



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