Anonymous Reporting of Sexual Assault Using Internet Technology

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Abstract: This paper will discuss the current status of rape and sexual assault in the United States, problems associated with using scientific evidence to prosecute offenders, and suggest a method of anonymous reporting to boost prosecution and conviction of serial offenders.

I: Introduction

Rape is a crime that nobody wants to talk about.¹ It is the least reported crime with possibly the lowest conviction rate.² It is a crime most often perpetrated by someone the victim knows.³ Moreover, it has the highest rate of recidivism for convicted offenders.⁴

Scientific evidence in the form of DNA and toxicology has been used to both convict and exonerate those accused of rape.⁵ Unfortunately, such evidence is often not available.⁶ When it is available, it may still be inadmissible due to issues involving sample collection, chain of custody, and testing methodology.⁷

² SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM (Frances P. Reddington & Betsy Wright Kreisel eds., Carolina Academic Press 2nd. ed. 2009); See Larsen, supra note 1, at 193 (rapists have approximately 4% chance of being arrested, prosecuted, and found guilty); CAL. COALITION AGAINST SEXUAL ASSAULT, RESEARCH ON RAPE AND VIOLENCE 19 (2008) (only 2% of rapists are convicted and imprisoned).
³ Tom Lininger, Bearing the Cross, 74 Fordham L. Rev. 1353, 136 (2005) (80% of rape victims know their assailants).
⁵ Julie A. Singer, Monica K. Miller, and Meera Adya, The Impact of DNA and Other Technology on the Criminal Justice System: Improvements and Complications, 17 Alb. L.J. Sci. & Tech. 87 (2007) (juries expect DNA evidence); http://www.Innocenceproject.org (more than 260 convictions have been overturned based on DNA evidence).
⁶ Kahn, supra note 4, at 647.
⁷ Laura K. Bechtel & Christopher P. Holstege, Criminal Poisoning: Drug Facilitated Sexual Assault, 25 EMERGENCY MED. CLINIC N. AM. 499, 501 (2007); Diana M. Riveira & Angela L. Hart, Drug-Facilitated Rape Series Part Three: Trying the Drug-Facilitated Rape Case, 34 PROSECUTOR 32 (2000) (in majority of drug facilitated sexual assault (DFSA) cases, prosecutors do not have test results because no test were done, the drug was metabolized before it could be tested or the lab was not capable of detecting the drug);
The biggest problem facing law enforcement in dealing with rape and sexual assault is the reluctance of victims to ever report the incidents. This paper proposes a method of anonymously reporting sexual assault incidents to authorities in cases where the perpetrator is known to the victim. It is hoped that this reporting method will encourage victims to report incidents and identify perpetrators. When the same perpetrator is identified in multiple reports, authorities will anonymously advise reporters and seek to convince them to come forward in order to prosecute and convict the accused.

II: Defining Rape and Sexual Assault

The word “rape” comes from the Latin word rapere, which means “to take by force.” At Common Law, rape occurred when a man had sexual “intercourse with a woman, not his wife; by force or threat of force; against her will and without her consent.” States and the federal government have individualized definitions of rape and sexual assault. The one element in common in all definitions is the victim’s lack of consent. The World Health Organization defines rape as follows:

“physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object.”

The National Crime Victimization Survey in an attempt to make rape gender neutral defines it as:

“forced sexual intercourse in which the victim may be either male or female and the offender may be of a different or the same sex as the victim.”

Bernard Marc, Current Clinical Aspects of Drug-Facilitated Sexual Assaults in Sexually Abused Victims Examined in a Forensic Emergency Unit, 30 Ther Drug Monit 218 (2008) (in a large number of DFSA cases blood and urine are not sampled, conserved or properly tested).

DEAN G. KILPATRICK, MED. UNIV. S.C., DRUG-FACILITATED, INCAPACITATED, AND FORCIBLE RAPE: A NATIONAL STUDY 2-3 (2007) (only 16% of rapes ever reported to law enforcement; only 12% of college women report rape although perpetrator known in most cases); Kahn, supra note 4, at 648 (sexual assault victims often do not report the crime immediately; child victims do not report sexual assault because they do not understand the significance of the act or fear adults won’t believe them).

Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 4.


This narrow definition fails to take into account many other acts including sodomy and oral sex, as well as other factors including coercion, and incapacitation.

In an effort to expand the definition, many jurisdictions describe prohibited sexual behavior as sexual assault. The United States Department of Justice defines sexual assault as:

“any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.”

Due to differences in the definitions, it is difficult to reconcile survey data relating to the prevalence of rape and sexual assault. Nevertheless, it is estimated that 18% of women in the United States are raped during their lifetime. Rape has not declined over the past fifteen years, and only 16% percent of all rapes are reported to law enforcement. For purposes of this paper, rape and sexual assault will be used interchangeably.

There are many kinds of rape. “Real rape,” is described as stranger rape against a “virtuous” woman. Prosecutors are more likely to prosecute a “real rape” case than other types of rape cases. Rape involving force is known as “forcible rape.” “Drug-facilitated sexual assault” (DFSA) occurs when a victim is given drugs or alcohol surreptitiously or when a victim voluntarily consumes intoxicants which incapacitate the victim. DFSA is also known as

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15 KILPATRICK, supra note 8, at 2.
16 Id. at 2-5.
18 Id.; KILPATRICK, supra note 8, at 3 (only 12% of college women report sexual assault).
19 Kilpatrick, supra note 8, at 2.
20 *Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System*, supra note 2, at 56-57 (there are three types of DFSA: where the victim is surreptitiously drugged; where the victim voluntarily becomes intoxicated; where the victim voluntarily consumes drugs or alcohol and is surreptitiously drugged).
“incapacitated rape.”\textsuperscript{21} “Date rape” or “acquaintance rape” is rape perpetrated by someone who is known to the victim. Date rape is usually associated with DFSA.\textsuperscript{22} “Gang rape” occurs when the victim is raped by more than one perpetrator during the incident.\textsuperscript{23} When a woman is raped by her husband it is called “spousal rape.”\textsuperscript{24}

\textbf{III: A Brief History of Rape}

Rape of women has been documented since the beginning of recorded history.\textsuperscript{25} Acts of rape are described in ancient Greek mythology and in the Bible.\textsuperscript{26} In early history, rape of a virgin was considered a severe crime because it diminished her worth; she was considered “damaged goods,” and the head of her household was entitled to monetary damages.\textsuperscript{27} This is because women were considered chattel.\textsuperscript{28}

Rape has been encouraged by a patriarchal society.\textsuperscript{29} Early forms of mating involved a male raping a female to “stake his claim” to his intended “bride.”\textsuperscript{30} Under the doctrine of \textit{lex talionis}, (an eye for an eye) a man was permitted to rape an assailant’s wife if his daughter had been raped.\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{21} \textsc{Kilpatrick, supra} note 8, at 10.
\item \textsuperscript{22} \textsc{Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra} note 2, at 56 (surreptitious DFSA is usually accomplished by drink spiking).
\item \textsuperscript{23} \textit{Id.} at 43.
\item \textsuperscript{24} \textit{Id.} at 41.
\item \textsuperscript{25} \textsc{http://femmaffix.wordpress.com/2011/03/10/the-history-of-rape/}.
\item \textsuperscript{26} \textit{Id.}
\item \textsuperscript{27} \textit{Id.}
\item \textsuperscript{28} Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice, \textit{supra} note 2, at 10.
\item \textsuperscript{29} \textit{Id.}
\item \textsuperscript{30} \textit{Id.}
\item \textsuperscript{31} \textit{Id.}
\end{itemize}
Throughout history, rape was considered one of the “spoils of war.” Rape has also been used during war as a form of genocide by impregnating victims in order to breed out a conquered culture. This crime is so dehumanizing and psychologically demoralizing that the United Nations and The Hague have declared it a war crime. War rape continues today in the Congo and the Middle East.

In the United States, rape was common during the 16th and 17th centuries. African-American women slaves were often subject to rape by white masters who owned them. Rape of married white women by their husbands was considered a marital right.

In addition to a history of forced rape, there is a history of drug facilitated sexual assault (DFSA) that dates back to at least the 1800s when people were drugged with chloral hydrate (a.k.a. Mickey Finn) to facilitate robbery and sexual assault. Today there are approximately

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32 Id. at 11.
36 Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 11.
37 Id.
39 Adam Negrusz, et al., Coll. of Pharmacy, Univ. of Ill. at Chicago, Estimate of the Incidence of Drug-Facilitated Sexual Assault in the U.S., 15 (2005); see also Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 61.
fifty different drugs that are associated with DFSA. Nevertheless, alcohol is by far the most prevalent substance implicated in sexual assault.

IV: Rape Reform Laws in the United States

Until the mid-1970s rape laws in the United States made it difficult to convict even those who were guilty of the crime of rape. A 1960s study of jurors found that they were more likely to acquit a defendant of a rape charge than of any other type of charge. Jurors were judgmental about the victim's character and provocative conduct. Moreover, rape myths (which will be discussed) contributed to jury acquittals.

Reform of rape laws began in the mid-1970s and continues today. The purpose of reforming rape laws has always been to overcome some of the difficulties in prosecution. Before these reforms, rape victims were required to present corroborative evidence that the rape occurred. Corroboration was not necessary to prosecute virtually any other crime. Today no state requires corroboration except for Texas which still requires corroboration when the crime is not reported for more than a year after the incident occurs.

40 European Monitoring Ctr. for Drugs and Drug Addiction, Sexual Assaults Facilitated by Drugs or Alcohol 1, 3 (2008); Negrusz, et al., supra note 39, at 7.
41 Kilpatrick, supra note 8, at 5.
42 Klein, supra note 4, at 983.
43 Id.
44 Id.
45 Id.
46 Id. at 984.
47 Eastwick-Field, supra note 34, at 31.
48 Klein, supra note 4, at 985-86.
49 Susan Caringella, Addressing Rape Reform in Law and Practice, 14 (Columbia University Press 2009).
50 Klein, supra note 4, at 987.
Victims of rape were also required to prove “utmost” or at least “reasonable resistance.” This is because it was believed that “virtuous women,” who did not want intercourse, would have fought it off. Today many states do not require proof of physical resistance.

One of the most significant changes in the law was the enactment of so called “rape shield laws.” These laws were enacted to protect the victim from being asked about her sexual history prior to the rape. Before rape shield laws were enacted, the victim, rather than the accused rapist, was essentially put on trial concerning her prior sexual history. Nevertheless, there are exceptions to these laws.

Another significant reform was elimination of the ”marital exemption.” Under this exemption it was impossible to charge a husband with raping his wife. Justification for the marital exemption included the notion that the wife was the husband’s “property” and that the marriage contract included sexual relations. By 2008, most states eliminated the spousal exemption.

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51 Id.
52 Id.
53 Id. at 987-89.
54 Id. at 990; see Kahn, supra note 4, at 651 (rape shield laws limit admission of victim prior sexual history, but do not completely protect victim).
55 Klein, supra note 4, at 990 (rape shield laws enacted to encourage victims to come forward and to prevent juries from being unduly prejudiced by information relating to prior sexual behavior).
56 Id. at 992; Laura E. Boeschen, et al., Rape Trauma Experts in the Courtroom, 4 PSYCHOL. PUB. POL’Y & L. 414 (1998).
57 Klein, supra note 4, at 993 (at the trial judge’s discretion, victim may be asked questions about prior sexual history with the defendant or whether she was convicted of prostitution); Lininger, supra note 3, at 1374 (rape shield laws have diminished over the years).
58 Klein, supra note 4, at 1000.
59 Id. (it was also believed that the state should not interfere with the marital relationship).
60 Id. at 1001-02 (a few states recognize and exemption when the victim is mentally incompetent).
More recent rape law reforms include the following: requiring the defendant to prove that the victim affirmatively consented to intercourse; eliminating the requirement of a prompt complaint; prohibiting introduction of the victim’s clothing worn at the time of the rape; protecting the identity of the victim; and increasing or eliminating the statute of limitations for prosecuting the crime. 61 Additionally, Congress enacted a national registry of sexual offenders which requires all states and municipalities to submit data on convicted sexual offenders.62 It also notifies neighbors when an offender moves into the neighborhood and restricts convicted child molesters from living near schools, playgrounds, etc.63 Federal and state governments have also passed legislation dealing specifically with DFSA, and the controlled substances implicated in DFSA.64 Moreover, the federal and many states rules of evidence were amended to allow in evidence of prior sexual offenses.65

More radical changes in rape reform include post-conviction civil commitment of convicted rapists thought to be a future threat to society.66 By 2007, the federal government

61 Id. at 1002-1021, 1025, 1028-30, 1032-36.
65 Fed. R. Evid. 413, 414.
66 Faigman, et al., supra note 63, at § 11:2 et seq.
and at least twenty states had enacted civil commitment legislation. Some states have also tried enacting legislation requiring the death sentence in juvenile rape cases. In *Kennedy v. Louisiana*, however, the United States Supreme Court held a Louisiana death penalty statute unconstitutional.

Unfortunately, rape reform laws have had little impact on the number of rapes committed, the number of cases prosecuted, or the number of convictions obtained. A recent study found that forcible rape victims are no more likely to report the incident today than they were fifteen years ago. Another study found that DFSA cases, which were estimated to be less than 10% of all sexual assault cases in 1993, increased to over 25% of all sexual assault cases by 2002.

**V: The Scope of the Problem**

**i) Generally**

Sex crimes are different from other types of crimes. Often there are no witnesses, there is a lack of physical evidence, and the crime is not reported immediately. In DFSA cases,

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67 Klein, *supra* note 4, at 1044.
68 *Id.* at 1045-49.
70 Klein, *supra* note 4, at 1031-32; Kilpatrick, *supra* note 8, at 2, 5 (the incidence of rape has not declined over the past fifteen years); Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Forum*, 38 Suffolk U. L. Rev. 467, 467-68 (2005) (virtually no data suggest that rape reform laws have deterred rape, increased prosecution or increased conviction rates); Boeschen, et al., *supra* note 56.
73 Kahn, *supra* note 4, at 647.
74 *Id.* at 647-48.
the victim may have little or no memory of the assault. Victims also face the unique challenge of convincing a jury that they did not consent to the sexual act. Consent is a substantial problem because in 80% of the cases the victim knew the assailant.

Rape is fundamentally a crime perpetrated by men against women and children. Statistically, 99% of rapists are men. It is estimated that between 91% and 93% of victims are female. Approximately 18% of U.S. women are raped during their lifetime. Eighty-three percent of female victims are under twenty-five years of age at the time of their first rape. In this past year alone, over one million women in the United States were raped. Women facing the highest risk of sexual assault are young, unmarried, lower income, unemployed, and living in a large city.

**ii) Effect on Women Victims**

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75 Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System supra note 2, at 58.
76 Kahn, supra note 4, at 650; Christine Chambers Goodman, Protecting the Party Girl: A New Approach for Evaluating Intoxicated Consent, 2009 BYU L. REV. 57; Seidman, et al., supra note 70, at 486 (jurors, prosecutors and police must decide what the boundary line is between sex and rape); Note, Acquaintance Rape and Degrees of Consent: “No” Means “No” but What Does “Yes” Mean?, 117 HARV. L. REV. 2341 (2004).
78 Kahn, supra note 4 at 649.
80 Id. at 6; Larsen, supra note 1, at 199; CAL. COALITION AGAINST SEXUAL ASSAULT, supra note 2, at 35 (In 97% of DFSA cases the victim is a woman).
81 Kilpatrick, supra note 8 at 2; Patricia Tjaden & Nancy Thoennes, Nat’l. Inst. of Justice Ctrs. for Disease Control and Prevention, Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey, 22 (2000) (18.2% of women are raped during their lifetime); Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 6 (World Health Organization estimates that 12-25% of women worldwide have been victims of sexual assault).
82 CAL. COALITION AGAINST SEXUAL ASSAULT, supra note 2, at 2.
83 KILPATRICK, supra note 8, at 2.
84 Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 3.
Rape is an act of violence used to humiliate, degrade, dominate, terrorize, and control women.\textsuperscript{85} Victims experience a wide variety of physical injuries, both genital, non-genital, and in some cases death.\textsuperscript{86} Women also suffer physical consequences which include unwanted pregnancy, sexually transmitted diseases, abortion, sexual dysfunction, infertility, and more.\textsuperscript{87}

In addition to physical injuries, victims experience psychological injuries that can last a lifetime.\textsuperscript{88} Rape victims are at risk for post-traumatic stress disorder (PTSD), rape trauma syndrome (RTS), depression and substance abuse.\textsuperscript{89} They may experience social phobias, suicidal behavior, and many other psycho-social issues.\textsuperscript{90} Studies have found that psychological injuries suffered by victims of DFSA are just as harmful as those suffered following forcible rape.\textsuperscript{91}

\textit{iii) Drug-Facilitated Sexual Assault}

Drug-facilitated sexual assault adds a whole new dimension to rape. It is estimated that 35-45\% of all sexual assault occurs under the influence of drugs or alcohol.\textsuperscript{92} Using drugs to

\begin{itemize}
\item \textsuperscript{85} World Health Organization, Guidelines for Medico-Legal Care for Victims of Sexual Violence, 9 (2003); Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 18 (rape is experience of violation, degradation and humiliation which seriously affects survivor).
\item \textsuperscript{86} World Health Organization, supra note 85, at 12-13.
\item \textsuperscript{87} Id. at 12.
\item \textsuperscript{88} Kilpatrick, supra note 8, at 4-5; Cal. Coalition Against Sexual Assault, supra note 2, at 11 (82\% of college women said that rape permanently changed them).
\item \textsuperscript{89} Kilpatrick, supra note 8, at 4-5; World Health Organization, supra note 85, at 14 (discussing symptoms of RTS).
\item \textsuperscript{90} World Health Organization, supra note 85, at 13-16.
\item \textsuperscript{91} Kilpatrick, supra note 8, at 61; Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 8, at 60, 83 (DFSA victim’s lack of memory of event robs them of cognitive ability to heal and prolongs feelings of helplessness; victims feel like they have been the victim of a double crime).
\item \textsuperscript{92} Marc, supra note 7, at 218 (U.S. DOJ estimates 44\% SA occurs under influence of drugs or alcohol); Bechtel, et al., supra note 7, at 502-03; Valerie M. Ryan, Comment, Intoxicating Encounters: Allocating Responsibility in the Law of Rape, 40 Cal. W. L. Rev. 407, 411 (2004) (alcohol plays a role in 50\% of all sexual assaults).
\end{itemize}
incapacitate a victim for purposes of committing sexual assault is becoming more common.\textsuperscript{93} Alcohol is the agent most implicated in DFSA cases.\textsuperscript{94} There are, however, approximately fifty drugs that have been or could be used in DFSA.\textsuperscript{95} Covert administration of drugs is commonly accomplished through “drink spiking.”\textsuperscript{96}

Victims of DFSA may not report the crime immediately because the type of drugs typically used cause amnesia and confusion.\textsuperscript{97} These drugs are rapidly absorbed, metabolized, and excreted by the body.\textsuperscript{98} Therefore, routine blood and urine tests may not detect them.\textsuperscript{99} More often, however, testing for drugs and semen is never accomplished because the victim is misdiagnosed.\textsuperscript{100} Lack of trauma in these cases may explain why forensic evidence is never

\textsuperscript{93}See CAL. COALITION AGAINST SEXUAL ASSAULT, supra note 2, at 35; EUROPEAN MONITORING CTR. FOR DRUGS AND DRUG ADDICTION, supra note 40, at 1, 3; April L. Girard & Charlene Y. Senn, The Role of the New “Date Rape Drugs” in Attributions About Date Rape, 23 J. Interpersonal Violence 3, 4 (2008); Caryl M. Beynon, et al., The Involvement of Drugs and Alcohol in Drug-Facilitated Sexual Assault: A Systematic Review of the Evidence, 9 TRAUMA VIOLENCE & ABUSE 178 (2008) (DFSA is increasing); Marc, supra note 7, at 218 (DFSA is complex problem with increasing frequency); McGregor, et al., supra note 72, at 442.

\textsuperscript{94}SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM supra note 2, at 45 (use of alcohol common practice used to overcome reluctant female victims); Bechtel, et al., supra note 7, at 505; Bernadette Butler & Jan Welch, Drug-Facilitated Sexual Assault, 180 CAN. MED. ASSOC. J. (2009) (alcohol plays a major role in DFSA).

\textsuperscript{95} NEGRUSZ, ET AL., supra note 39, at 25.

\textsuperscript{96}SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM, supra note 2, at 56.

\textsuperscript{97} Id. at 5; Bechtel, et al., supra note 7, at 500 (delay in reporting DFSA); Hurley, et al., The Epidemiology of Drug Facilitated Sexual Assault, 13 J. Clinical Forensic Med. 181 (2006) (median delay of 20 hours from incident to examination in DFSA cases).

\textsuperscript{98} Marc, supra note 7, at 221; Larsen, supra note 1, at 197 (residue from date rape drugs is undetectable after a few hours); see Pascal Kintz, et al., Testing for the Undetectable in Drug-Facilitated Sexual Assault Using Hair Analyzed by Tandem Mass Spectrometry as Evidence, 26 THER DRUG MONIT 211 (2004) (using hair to detect drugs).

\textsuperscript{99} Marc, supra note 7, at 221; Bechtel, et al., supra note 7, at 500, 502-03 (8% DFSA drugs are not typically detected using standard testing methods); Kintz, et al., supra note 98, at 214 (hair samples can be tested for single dose drug exposure 3-4 week after incident).

\textsuperscript{100} Marc, supra note 7, at 218.
obtained.\textsuperscript{101} Often in cases where samples are obtained, they are not properly conserved or analyzed.\textsuperscript{102}

\textbf{The Perpetrators}

An analysis of five hundred convicted rapists concluded that men rape for three reasons: power, anger and sadism.\textsuperscript{103} Incarcerated rapists have usually raped 2-3 times before being apprehended.\textsuperscript{104} Data collected by the Department of Justice shows that convicted rapists are 7.5 times more likely than those convicted of other crimes to be arrested for a new sexual assault.\textsuperscript{105} Only 2\% of rapists are convicted and imprisoned.\textsuperscript{106}

Sexual assault on college campuses is associated with fraternities and team sports. In a fraternity sub-culture, incapacitating women with alcohol in order to have sex with them is not viewed as rape by the perpetrators.\textsuperscript{107} Women are viewed merely as a commodity.\textsuperscript{108} Sports teams comprise another group of men that are notoriously implicated in cases of rape.\textsuperscript{109} This may be because men’s athletic group values are often centered on hyper-masculinity; they devalue and degrade women.\textsuperscript{110}

\begin{footnotesize}
\begin{enumerate}
\item Id. at 219.
\item Id. at 221.
\item SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM, supra note 2, at 7.
\item Kahn, supra note 4, at 653.
\item Id.
\item CAL. COALITION AGAINST SEXUAL ASSAULT, RESEARCH ON RAPE AND VIOLENCE, supra note 2, at 19; see also Larsen, supra note 1, at 193 (rapists have approximately 4\% chance of being arrested, prosecuted, and found guilty).
\item Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 45.
\item Id.
\item Id. at 46-47.
\item Id.
\end{enumerate}
\end{footnotesize}
Men who use drugs or alcohol to coerce women into having sex, have done so more than once.\textsuperscript{111} In one study, 3\% of male college students admitted to using alcohol or drugs to induce women to have sex against their will on more than one occasion.\textsuperscript{112} In another study, 58\% of male college students who admitted to rape or attempted rape, admitted to multiple victims.\textsuperscript{113} A 2002 study of nearly 1900 college men found that the vast majority of rapes are perpetrated by serial offenders who average six victims each.\textsuperscript{114} These serial rapists committed 91\% of the rapes reported.\textsuperscript{115}

Perpetrators of DFSA typically have “well-honed sets of social skills,” which they use to perpetrate the crime and to persuade the victim not to report it.\textsuperscript{116} Rapists, in general, seek out victims who they think will appear incredible.\textsuperscript{117} DFSA offenders do not have to worry about their victims yelling for help or physically resisting which makes this crime much easier to commit.\textsuperscript{118} The perpetrators of surreptitious DFSA know that what they are doing is a crime.\textsuperscript{119}

There has been significant research conducted over the years to try to determine what motivates sexual offenders and how to treat them in order to prevent recidivism.\textsuperscript{120} The results are mixed. Nevertheless, numerous social scientists have concluded that sexual crimes are an acquired behavior and men who rape do so only under conditions where they are likely to get

\textsuperscript{111} Girard, et al., supra note 93, at 10.
\textsuperscript{112} Id., at 17.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 60.
\textsuperscript{118} Kahn, supra note 4, at 650.
\textsuperscript{119} Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 58.
\textsuperscript{120} Id., at 59.
away with it.\textsuperscript{121} It is considered an act of normal deviance.\textsuperscript{122} Presently, rapists are likely to escape conviction 96% of the time. Therefore, there is little to deter them from their intended goals.

\textbf{VI: Prosecution}

\textit{i) Generally}

It is well documented that victim characteristics influence whether a prosecutor elects to prosecute a rape case.\textsuperscript{123} Prosecutors usually look for a minimum of three criteria in deciding whether to file a complaint for forcible rape: lack of victim consent; evidence of penetration; and threat of force.\textsuperscript{124} Prosecutors are more likely to prosecute cases of “real rape.”\textsuperscript{125} They are also more likely to file charges where there are witnesses to the assault; where the assault is reported immediately, and where there is evidence of physical injury.\textsuperscript{126} Prosecutors are less likely to file charges where the victim’s moral character is in issue or where the victim was engaged in risk-taking behavior.\textsuperscript{127} This is because societal stereotypes about rape victims make rape trials hard to win.\textsuperscript{128}

\textsuperscript{121} Id. at 261; RANDY THORNHILL AND CRAIG T. PALMER, A NATURAL HISTORY OF RAPE: BIOLOGICAL BASES OF SEXUAL COERCION, 66, 122 (MIT Press 2000).
\textsuperscript{122} Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 261.
\textsuperscript{123} Wood, et al., supra note17, at 336 (prosecutor less likely to prosecute where victim drinking alcohol or taking drugs before rape occurred).
\textsuperscript{124} SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM, supra note 2, at 29.
\textsuperscript{125} Wood, et al., supra note 17, at 337.
\textsuperscript{126} Id. at 336; see Boeschen, et al., et al., supra note 56, at 414 (stereotype woman who is raped must have done something to encourage it; virtuous woman would have resisted to the point of dying and would not hesitate to report it).
\textsuperscript{127} Wood, et al., supra note 17, at 337.
\textsuperscript{128} Kahn, supra note 4, at 644.
Statistically, over half of all rape prosecutions result in either a dismissal or an acquittal.\textsuperscript{129} This is partly because jurors, upon entering the courtroom, do not leave behind their prejudices or their stereotypical preconceptions about what a rapist and rape victim should look and act like.\textsuperscript{130} Also, people generally do not want to believe that rape and child molestation occur.\textsuperscript{131} Some jurors are also reluctant to believe that a rape occurred where there is no physical evidence that the victim resisted.\textsuperscript{132} This is particularly true where the victim and rapist had a prior sexual relationship or where the victim was under the influence of drugs or alcohol.\textsuperscript{133} In these circumstances, the victim is usually blamed for the rape.\textsuperscript{134}

\textbf{ii) Lack of Corroborating Evidence}

Cases that are reported to authorities are often reported so long after the incident that it is impossible to obtain DNA evidence or toxicology in cases of DFSA.\textsuperscript{135} Lack of such corroborating evidence, although not required, has a negative impact on the jury who expect such evidence to be presented.\textsuperscript{136} Delay in reporting also raises doubts about the victim’s

\textsuperscript{129} Id. (number dismissed or acquitted rape cases double the number of dismissed or acquitted murder cases).
\textsuperscript{130} Louise Ellison & Vanessa Munro, \textit{Reacting to Rape: Exploring Mock Jurors’ Assessments of Complainant Credibility}, 49 BRIT. J. CRIMINOLOGY 202 (2009); Kahn, \textit{supra} note 4, at 650.
\textsuperscript{131} Kahn, \textit{supra} note 4, at 649.
\textsuperscript{132} Id. at 648-49.
\textsuperscript{133} Id. at 650.
\textsuperscript{134} Ryan, \textit{supra} note 92, at 411.
\textsuperscript{135} Larsen, \textit{supra} note 1, at 197 (residue from some date rape drugs undetectable after only a few hours); Kahn, \textit{supra} note 4, at 648 (delay in reporting sexual assault results in disappearance of physical evidence).
\textsuperscript{136} Kahn, \textit{supra} note 4, at 652 (lack of DNA evidence calls victim’s credibility into question); Singer, \textit{et al.}, \textit{supra} note 5, at 113 (juries expect DNA evidence, reluctant to convict without it – it’s the “CSI effect”-television crime show); Gwen Jenkins & Regina A. Schuller, \textit{The Impact of Forensic Evidence on Mock Jurors’ Perceptions of a Trial of Drug-Facilitated Sexual Assault}, 31 LAW & HUM. BEHAV. 369 (2007) (negative toxicology report in DFSA cases has negative impact on jury); \textit{but see} Ole Ingemann-Hansen, Ole Brink, Svend Sabroe, Villy Sorensen, and Annie Vesterbye Charles, \textit{Legal Aspects of Sexual Violence –}
credibility: it has a negative impact on the prosecutor’s decision to prosecute and the jury’s
decision to convict.\textsuperscript{137} Lack of physical evidence and witnesses make the victim’s credibility the
focus of the case.\textsuperscript{138}

iii) Corroborating Evidence and Credibility

Sex crimes are particularly difficult to prosecute.\textsuperscript{139} Prosecutors have many obstacles to
overcome even where corroborating evidence exists. Often there are issues involving chain of
custody of DNA and toxicology evidence.\textsuperscript{140} Expert testimony regarding scientific evidence may
be confusing and misunderstood by the jury. Other expert testimony regarding Rape Trauma
Syndrome, which has no true scientific basis, may further complicate the trial.\textsuperscript{141} There are also
issues of victim credibility.

Traditionally, women and children are viewed as less credible than men.\textsuperscript{142} Juries have
preconceived notions of what a rapist and rape victim should look like.\textsuperscript{143} If a woman does not
fit the jury’s image of what a rape victim should look like or how she should act, they are likely
to acquit.\textsuperscript{144} Additionally, women are portrayed as having ulterior motives for accusing a man
of rape.\textsuperscript{145} Juries and society in general believe in rape myths.

iv) Rape Myths

\textit{Does Forensic Evidence Make a Difference?}, 180 Forensic Science International 98 (2008) (one study
found no correlation between use of forensic evidence and conviction rate).
\textsuperscript{137}Kahn, supra note 4, at 649; Wood, \textit{et al.}, supra note 4, at 336-37.
\textsuperscript{138}Kahn, supra note 4, at 648.
\textsuperscript{139}Id. at 644.
\textsuperscript{140}Bechtel, \textit{et al.}, supra note 7, at 501.
\textsuperscript{141}Boeschen, \textit{et al.}, supra note 56, at 414 (rape trauma syndrome unscientific and should not be allowed
in trial).
\textsuperscript{142}Kahn, supra note 4, at 649; Larsen, supra note 1, at 199.
\textsuperscript{143}Kahn, supra note 4, at 650.
\textsuperscript{144}Larsen, supra note 1, at 201.
\textsuperscript{145}Id. at 199, (ulterior motives include wanting money or seeking personal revenge).
The term, “Rape myths” was initially defined as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists.”\textsuperscript{146} The definition was later expanded to include “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.”\textsuperscript{147} There are also rape myths about male victims and animals. Rape myths include the following:

- women lie about rape and the majority of rape claims are false;
- rape only happens to “bad” women;
- the majority of rapes are committed by strangers;
- rape is a black on white crime (black rapist, white victim);
- women secretly wish to be raped;
- when women say “no” to sex they really mean “yes”;
- rapists are mentally ill;
- rape leaves obvious signs of injury;
- sex is the primary motivation for rape;
- sex workers cannot be raped;
- rape involves a great deal of physical violence and the use of a weapon;
- males cannot be victims of rape;
- rape is limited to humans.\textsuperscript{148}

\begin{itemize}
\item \textsuperscript{146} Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 2, at 12.
\item \textsuperscript{147} Id.
\item \textsuperscript{148} Id. at 14-20; WORLD HEALTH ORGANIZATION, supra note 85, at 11.
\end{itemize}
Rape myths allow rapists to act without fear of retribution and teach women to blame themselves for being victimized. Rape myths are some of the reasons why women do not report the assault.

v) Reporting

The major problem associated with prosecuting rapists is the failure of victims to ever come forward. It is estimated that only 16% of rapes are ever reported to law enforcement. There are many reasons why women don’t report rape. They include the following:

- not wanting others to know;
- fear of retaliation;
- fear of not being believed;
- uncertainty about how to report;
- uncertainty about whether a crime was committed;
- perception of insufficient evidence;
- not wanting to be revictimized by the judicial system;
- low prosecution success rate.

In addition to these reasons, because of the stigma associated with rape, victims feel so personally violated that they have difficulty talking about the details, fearing that they will not be believed and that the system will compound their humiliation. Victims often blame

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149 Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System, supra note 1, at 40.
150 Kilpatrick, supra note 8, at 2-3.
152 Larsen, supra note 1, at 196.
themselves for “allowing” it to happen.\textsuperscript{153} This is particularly true when victims were drinking alcohol or taking drugs before the rape occurred.\textsuperscript{154} Women are also reluctant to report rapes involving men with whom they have had a prior sexual relationship or friendship, fearing that they will not be believed.\textsuperscript{155}

\textbf{vi) Consent}

In order to obtain a rape conviction, the prosecutor must prove lack of victim consent to the sexual act.\textsuperscript{156} Lack of consent is especially difficult to prove where there is no evidence beyond the victim’s testimony.\textsuperscript{157} This is particularly troublesome in DFSA cases where the victim’s memory of the event is impaired. The victim is more likely to be believed if there is substantiation of other sexual assaults perpetrated by the same offender.\textsuperscript{158}

\textbf{vii) Prosecution Problems Summarized}

Sexual assault cases are difficult to prosecute for the many reasons previously discussed. The bottom line is that the vast majority of victims will never report the assault; the ones that do, often do so too late to obtain any corroborative evidence; prosecutors are reluctant to prosecute because lack of tangible evidence; and rapists continue to rape destroying their victims’ lives.

\textbf{VII: Evidence of Other Sex Crimes}

\textsuperscript{153} Id. at 194.
\textsuperscript{154} Id. at 194-95.
\textsuperscript{155} Id.
\textsuperscript{156} \textsc{Sexual Assault: The Victims, The Perpetrators, And The Criminal Justice System}, supra note 2, at 27; Goodman, \textit{supra} note 76, at 57; Mary P. Koss, & Narry R. Burkhart, \textit{A Conceptual Analysis of Rape Victimization}, 13 \textsc{Psychol. Women Q.} 27 (1989).
\textsuperscript{157} Larsen, \textit{supra} note 1, at 197, 210.
\textsuperscript{158} Id. at 208.
In 1994, Congress amended the Federal Rules of Evidence, adding three new rules which permit admission of evidence of allegations of past sexual offenses to prove conduct in conformity with the defendant’s character.\textsuperscript{159} Federal Rule of Evidence 413, allows in evidence of prior sexual assault offenses in a criminal prosecution of a sexual assault.\textsuperscript{160} Federal Rule of Evidence 414, allows in evidence of the commission of other offenses of child molestation in a criminal prosecution for child molestation.\textsuperscript{161} Federal Rule of Evidence 415, allows in evidence

\textsuperscript{159} Faigman, et al., \textit{supra} note 63, at § 11:2 at 159.

\textsuperscript{160} Rule 413 provides as follows:

“(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant’s commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, “offense of sexual assault” means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved-

1. any conduct proscribed by chapter 109A of title 18, United States Code;
2. contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
3. contact, without consent, between the genitals or anus of the defendant and any part of another person’s body;
4. deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
5. an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).”

\textsuperscript{161} Rule 414 provides:

“(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, “child” means a person below the age of fourteen, and “offense of child molestation” means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved-
of prior sexual assault offenses and prior child molestation offenses in civil cases for damages
and other relief predicated on an allegation of sexual assault or child molestation.162 Before the
rules were amended, evidence of prior bad acts could only be admitted under Federal Rule of
Evidence 404 (b), in certain circumstances and could not be admitted as character evidence or
to prove that the defendant acted in conformity therewith.163 Approximately twenty states
have followed the federal courts by enacting similar rules of evidence. Both federal and state
courts have obtained convictions of sexual predators through admission of evidence of prior
sexually based offenses.164

(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in
relation to a child;
(2) any conduct proscribed by chapter 110 of title 18, United States Code;
(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;
(4) contact between the genitals or anus of the defendant and any part of the body of a child;
(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on
a child; or
(6) an attempt or conspiracy to engage in conduct described in paragraphs (l)-(5).”

Rule 415 provides:
“(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged
commission of conduct constituting an offense of sexual assault or child molestation, evidence of that
party's commission of another offense or offenses of sexual assault or child molestation is admissible
and may be considered as provided in Rule 413 and Rule 414 of these rules.
(b) A party who intends to offer evidence under this Rule shall disclose the evidence to the party against
whom it will be offered, including statements of witnesses or a summary of the substance of any
testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at
such later time as the court may allow for good cause.
(c) This rule shall not be construed to limit the admission or consideration of evidence under any other
rule.”

Rule 404 provides in part as follows:
(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove
the character of a person in order to show action in conformity therewith. It may, however, be
admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,
knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the
prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the
court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends
to introduce at trial.

164 See, e.g., United States v. Rodriguez, Jr., 581 F.3d 775 (8th Cir. 2009); United States v. Dillon, 532 F.3d
379 (5th Cir. 2008); State v. Nunes, 260 Conn, 649, 800 A.2d 800 (2002); Sera v. State, 341 Ark 415, 17
VIII: A Proposed Method of Anonymous Reporting Using Internet Technology to Identify Offenders

The biggest problems associated with prosecuting rapists are twofold: the victim’s failure to report the crime to authorities; and lack of corroborating evidence. Without a report there is no case. Lack of corroborating evidence makes it difficult to prove that a sex act occurred and that there was lack of consent. Experts studying the problem have suggested that more rapes would be reported if victims could do so anonymously. I believe that the internet is the perfect vehicle for doing so.

It would be relatively simple for the Department of Justice (DOJ) to set up a secure website that individuals could access in order to anonymously report a sexual assault. Since 80% of all sexual assaults are committed by someone known to the victim, the perpetrators would be identified to authorities immediately. Victims would be asked to complete an online report which would ask for identifying information about the assailant such as the person’s name, address, date of birth, schools attended, names of employers, etc. The site would also ask for information about the assault to determine certain characteristics such as: when and where it took place; whether drugs or alcohol were involved; how the victim knew the rapist; and whether there were any documented injuries. The report would also ask whether the victim is male or female and the victim’s age. The report would make it clear, however, that the victim can refuse to answer any question. There would also be a place for the victim to add


other details, remarks, or contact information. Each report would be assigned a number and the victim would have to create a password in order to access the report in the future. Victims would be encouraged to check their reports at a later date to see whether law enforcement has added any information to the report. The website would also provide information on where the victim could go to obtain anonymous medical and psychological treatment.

The information contained in the reports would only be available to law enforcement authorities who would review it in order to identify perpetrators with multiple reports. Once a particular offender is identified more than once, law enforcement would be able to add a note to each individual report advising that this offender has had multiple reports filed against him. Additionally, law enforcement would encourage victims to speak confidentially to a named law enforcement officer assigned to a particular identified offender in order to facilitate prosecution and conviction. Direct contact information to contact that particular officer would be added to the report. I suggest that a female officer be assigned to cases involving female victims.

I believe that rape survivors will be more willing to come forward to testify against an assailant if they know that there will be other witnesses that will testify about other sexual assaults involving the same offender. Juries will be more likely to believe the assault victim because there will be substantiation of other assaults.\footnote{Larsen, supra note 1, at 208.} Evidence of multiple offenses will negate any negative effects stemming from lack of physical evidence or delay in reporting the assault.\footnote{See Peebles, et al., supra note 113.}
I believe that anonymous reporting will have a therapeutic effect as well. One of the problems caused by sexual assault is that victims often feel isolated and alone. Carrying around this terrible secret has adverse psychological effects. A big part of the psychological impact of rape is that victims feel that their power has been taken away from them.\(^{168}\) Anonymous reporting is a method by which they can begin to regain their power by taking back control.\(^{169}\)

Human beings are curious by nature. I believe that if a victim could be convinced to file an anonymous report in the first place, she would be likely to return to her report at a later date to find out whether other reports have been filed concerning the same perpetrator. Knowing that she is no longer alone, a victim may be more willing to come forward to press charges or to testify in another case involving the same assailant. Successful prosecutions obtained through this method must be widely publicized in order to encourage a snowball effect of more anonymous reporting.

How will victims know about the website? That’s easy. The DOJ can launch a public awareness campaign using modern social media to advertise (i.e. Facebook, My Space, etc.). Advertising can also be accomplished by more traditional methods like television, radio and newspapers. Presently, the DOJ is launching a new national campaign to reduce sexual violence in the United States.\(^{170}\) Anonymous reporting could be a major part of that campaign.


\(^{169}\) *SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM*, supra note 2, at 99 (Allowing victim to decide whether to report the crime helps to restore her sense of control).

Another benefit of anonymous reporting is that it will ultimately have a deterrent effect on perpetrators. Rapists rely on their victims not to disclose their identities. If anonymous reporting catches on, offenders may be less likely to rape in the first place, knowing that their identity is likely to be revealed to authorities. There will also be more certainty that serial rapists will be tried and convicted for their offenses. Since studies indicate that certainty of punishment is a deterrent to criminal offenses, increasing conviction rates should deter offenders.\(^{171}\)

What about the rights of the accused? Quite simply, the rights of the accused would be protected as they always have been. They would still be subject to a trial and afforded all the protections of law that they are presently afforded. The information contained in reports would only be available to law enforcement and to the individuals who file a report.

What about women who file false reports? Anyone can falsely report a rape at any time. This is why we have an adversarial legal system complete with jury trials in order to find the truth, protect the innocent, and convict the guilty.

**IX: Conclusion**

Rape remains a huge problem in the United States and throughout the world. The many legislative reforms enacted throughout the years have failed to make a significant difference in the number of rapes committed, the number prosecuted, or the number convicted. The primary problem remains the unwillingness of victims to report the assaults to law enforcement. Secondarily, a lack of corroborative evidence in cases where the assault is

\(^{171}\) UNDERSTANDING VIOLENCE AGAINST WOMEN, 97 (Nancy A. Crowell and Ann W. Burgess eds., National Academy Press 1996) (increasing certainty of sanctions increases deterrent effects).
reported, reduces the number of prosecutions and convictions. Lack of evidence renders
science ineffectual in addressing the problem. Where corroborative evidence is lacking, cases
turn on the credibility of the complainant. Cases are reduced to a “he said, she said.”

It is time for a fresh approach to combat these horrific offenses. The United States
spends ten times more defending those accused of sexual assault than it spends on sexual
assault victims.172 It is time to give sexual assault victims a method to report assaults
anonymously, which will enable law enforcement to obtain useful information about
perpetrators, and to recruit victims to testify against their assailants. We need to turn “he said,
she said” into “he said, they said.” We can convict serial rapists, reduce future rape, and help
survivors to heal by obtaining justice. It is time to change our strategy for the benefit of our
women and children.

172 Larsen, supra note 1, at 209.