

2018 Government Lawyer CLE
Dispelling Rape Myths
Tyler J. Buller, Assistant Attorney General
Katie Strub, Forensic Interviewer & Supervisor, Allen Child
Protection Center

Disclaimers

- These materials are solely intended for educational use.
- The views expressed in this presentation do not necessarily reflect the views of the State of Iowa, the Attorney General of Iowa, the Iowa Department of Justice, or the Allen Child Protection Center.

Rape Myths

- **“Rape myths are stereotypical and erroneous beliefs about sexual assault, women who are victims of sexual assault, and men who perpetrate sexual assault.”** Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 J. PERSONALITY & SOC. PSYCHOLOGY 217, 229–30 (1980).
- **More than a quarter of Americans agree with “most” rape myths.** Katie M. Edwards et al., *Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change*, 65 SEX ROLES 761 (2011).

Myth #1: Rape is rare.

- **About 1 in 5 adult women and 1 in 30 adult men report being raped at some point in their life.** See Michelle C. Black et al., CTR. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE STUDY 1 (2010) (18.3% of women and 1.4% of men reported being rape at some point in lifetime); PATRICIA TJADEN & NANCY THOENNES, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE VIOLENCE AGAINST WOMEN SURVEY 7 (2000) (7.6% of women and 3.0% of men reported an attempted or completed rape).
 - **More than 2/3 of all sex assaults are committed against children under 18, and 1/3 of those are committed against children under 11.** HOWARD N. SNYDER, BUREAU OF JUSTICE STATISTICS, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 2 (2000).

Myth #2: Most rapes end up in court.

- **For every 1,000 forcible rapes...**
 - 310 are reported to police
 - 57 lead to arrest
 - 11 reach the desk of a prosecutor
 - 7 lead to a felony conviction
 - 6 lead to incarceration.

See *The Criminal Justice System: Statistics, RAPE, ABUSE & INCEST NATIONAL NETWORK*, <http://www.rainn.org/statistics/criminal-justice-system>; accord 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).

- “[R]ape is the least reported, least indicted, and least convicted non-property felony in America.” See Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 SUFFOLK L. REV. 467, 467 (2005).
- **These numbers likely overstate the percentage of cases prosecuted because male victims remain increasingly unlikely to report sexual assault in the first place.** See Nathan W. Pino & Robert F. Meier, *Gender Differences in Rape Reporting*, 40 SEX ROLES 979, 985 (1999).

Myth #3: There are usually witnesses to rape and other sex assaults.

- **Most sex crimes are committed in private, often in the residence of the victim or offender.** See, e.g., Lonsway & Archambault, *supra*, at 157.
- **There are usually no witnesses other than the victim and offender.** See, e.g., Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1175 (1986).
 - **Less than 1/5 or 1/10 of rape cases involve third-party eyewitnesses.** See JOSEPH PETERSON ET AL., *THE ROLE AND IMPACT OF FORENSIC EVIDENCE IN THE CRIMINAL JUSTICE PROCESS* 62, 92, 109 (2010); SEDELLA KATZ & MARYANN MAZUR, *UNDERSTANDING THE RAPE VICTIM: A SYNTHESIS OF RESEARCH FINDINGS* 198–99 (1979).

Myth #4: Most sexual assaults are committed by strangers.

- **Four out of five sex crimes are actually committed by acquaintances or intimate partners.** Michelle J. Anderson, *Women Do Not Report the Violence They Suffer: Violence Against Women and the State Action Doctrine*, 46 VILL. L. REV. 907, 921–22 (2001).
- **College-age victims almost always know their attackers.** HEATHER KARJANE ET AL., U.S. DEP’T OF JUSTICE, *CAMPUS SEXUAL ASSAULT: HOW AMERICA’S INSTITUTIONS OF HIGHER EDUCATION RESPOND 2* (2002) (84% to 97.8% of college sex assaults were perpetrated by non-strangers).

Myth #5: Victims tell right away.

- **Most victims do not report to law enforcement at all, let alone soon after an attack.** See, e.g., Lonsway & Archambault, *supra*, at 157 (less than 20% of rapes are reported to police); Laura M. Monroe et al., *The Experience of Sexual Assault: Findings from a Statewide Victim Needs Assessment*, 20 J. INTERPERSONAL VIOLENCE 767, 770 (2006) (of minority of victims who report sex assault, 55.6% of victims waited “years” to disclose, 17.7% disclosed within “days,” and another 17.7% disclosed within “hours”).

- **Children, like adults, tend to delay disclosure. Their reasons are often multi-faceted.**
- **Despite this, members of the public (including jurors) expect that a victim of sexual assault will report immediately to law enforcement.**

Myth #6: False allegations are common.

- **Among reputable studies, only between 2% and 8% of rape allegations are false.** See David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1318, 1329–30 (2010); Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013, 1014 (1991).
- **“[T]here is no empirical data to prove that there are more false charges of rape than of any other violent crime.”** Torrey, *supra*, at 1028.
- **Children are no more likely to make false allegations of sexual assault than adults are.** David A. Finkelhor, *Child Sexual Abuse: Challenges Facing Child Protection and Mental Health Professionals*, in CHILDHOOD AND TRAUMA—SEPARATION, ABUSE, WAR 108 (Elisabeth Ullmann & Werner Hilweg, eds., Mary Heaney Margreiter & Kira Henschel, trans., Ashgate Publ’g Co. 1999).
- **The public, on the other hand, believes that between 19% and 50% of rape allegations are false.** Katie M. Edwards et al., *Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change*, 65 SEX ROLES 761, 767 (2011).

What Can Government Lawyers Do About Rape Myths?

- **Educate yourselves.**
- **Educate investigators regarding child sexual abuse.**
 - Child Protection Centers exist for a reason—consider utilizing forensic interviewers to gather facts from children who have been abused or witnessed abuse.
 - Sexually abused children should ordinarily not be interviewed by ordinary police officers or agency investigators.
- **Educate your fact-finders.**
 - Call forensic interviews and forensic psychologists as expert witnesses.
 - **But beware of evidentiary problems.** For example, witnesses may not directly or indirectly comment on the veracity of a victim. **No direct or indirect comments on veracity.** See, e.g., *State v. Brown*, 856 N.W.2d 685, 687 (Iowa 2014); *State v. Dudley*, 856 N.W.2d 668, 677 (Iowa 2014); *State v. Jaquez*, 856 N.W.2d 663, 664 (Iowa 2014).

- **If in doubt about proper expert testimony, call the Criminal Appeals Division:** (515) 281-5976 or **Area Prosecutions:** (515) 281-3648.
- **Challenge case law and conventional wisdom based on rape myths.**
 - *State v. Smith*, 508 N.W.2d 101 (Iowa Ct. App. 1993) is little more than rape myths packaged as legal analysis:
 - *Smith* suggests corroboration should be required, but Iowa abolished the corroboration requirement in 1979.
 - *Smith* expresses shock that there are no physical injuries, but most sexually abused children do not show obvious injuries.
 - *Smith* suggests a report of sexual abuse with other persons in the house should not be believed, but this is common.
 - *Smith* suggests the young female victims were lying because they still kissed the defendant goodbye, but many child-sex-abuse victims have mixed feelings toward offenders.
 - *Smith* faults the victims for not knowing the dates when they were abused, but research shows reciting chronology is not related to whether the core events provided by a child are true.
- *Smith* has been cited more than 50 times by Iowa appellate courts—never favorably.

Questions? Contact us.

- **Tyler Buller:** tyler.buller@ag.iowa.gov
- **Katie Strub:** katherine.strub@unitypoint.org