

POLICY BRIEF

February 2013

ADVOCACY TO IMPROVE POLICE RESPONSE TO SEX CRIMES

INTRODUCTION

The Women's Law Project (WLP) is a leader in pursuing innovative strategies to improve police response to sex crimes on both a local and national level. WLP's advocacy on this issue started with its leadership in reforming police practice in Philadelphia in 1999, which included the unprecedented advocate review of sex crime files. The WLP initiated the call for the change in the Federal Bureau of Investigation's (FBI) antiquated definition of rape in its Uniform Crime Reporting (UCR) system and successfully requested hearings before the Senate Judiciary Committee's Sub-Committee on Crime & Drugs to address the national crisis that was revealed when media coverage demonstrated that the failures in Philadelphia existed in many cities. By invitation from The National Academies, the WLP has contributed its expertise on sex crime definitions to the examination of conceptual and methodological issues surrounding survey statistics on rape and sexual assault and the development of recommendations for best methods for obtaining accurate statistics in the future. WLP is currently participating as an advisor to the American Law Institute's project to modernize its model sex crime laws.

This policy brief provides the highlights of WLP's advocacy initiatives, including a detailed description of its unique Philadelphia Police Department (PPD)/advocate sex crime file review.

The goals of these advocacy initiatives are to achieve justice for the individual victims, prevent serial offenders from re-perpetrating, increase public confidence in the criminal justice system, and improve societal understanding of the prevalence of serious sexual assault in society.

IT STARTED WITH THE CRISIS

In the fall of 1999, *The Philadelphia Inquirer* published a series of articles revealing that the PPD had downgraded thousands of rapes and other sex crimes to a non-criminal category for almost two decades. This downgrading eliminated a full and complete investigation of thousands of sexual assault cases. Almost one third of all sex crime reports were buried in the non-crime code "2701-Investigation of Person." The victims were never advised that their complaints had been shelved.

This disclosure came on the heels of the murder of Shannon Schieber by serial sexual predator Tony Graves. The police eventually linked the attack on Schieber to five other sexual assaults of women in the same Philadelphia neighborhood. Although four of these assaults occurred prior to the strangulation death of Schieber, they were put in the 2701 non-crime category, preventing police from connecting the perpetrator to the related assaults. After raping one more woman in Philadelphia in 1999, Graves went to Colorado, where he raped eight more women. Graves was ultimately convicted of all of the crimes, but the downgrading of crimes to non-crime categories unquestionably interfered with the earlier identification of a rapist and the prevention of a murder and many rapes.

The Inquirer's series hit the advocacy community like a bombshell, because advocates had believed that the PPD was appropriately handling sex crime investigations. Women Organized Against Rape (WOAR), Philadelphia's nonprofit rape crisis center, one

of the first in the country, had aggressively advocated for reform in police and prosecutorial practice in the late 70s and early 80s. In response to this advocacy, in 1981 the PPD established a special rape squad so that investigations of rape and other sex crimes would be tailored to the unique and sensitive nature of the crimes. Child abuse was later added to the unit, which is now called the Special Victims' Unit (SVU). At the same time, a special prosecution unit for sexual assault was established in the Philadelphia D.A.'s office.

Looking back, it is clear that the police response to sex crimes was not as it should have been. In its first years, the SVU reported high numbers of unfounded complaints. According to the FBI, which monitors crime statistics through its UCR system, a complaint is to be unfounded only after it is determined through investigation that the complaint is false or baseless, meaning the evidence demonstrates that no conduct that meets the legal definition of a crime occurred or was attempted. Despite strict guidelines for classifying a complaint as unfounded, law enforcement frequently classify cases as unfounded that do not meet these requirements. This misclassification results in inordinately high unfounding rates. In 1983, the PPD SVU's unfounded rape rate was 43%, when the national average was 10%. By increasing the unfounded rate, a police department keeps the crime rate down, a result that police seek to achieve for public relations purposes.

In 1984, the FBI noticed an increase in Philadelphia's unfounded rate for rape to 52%

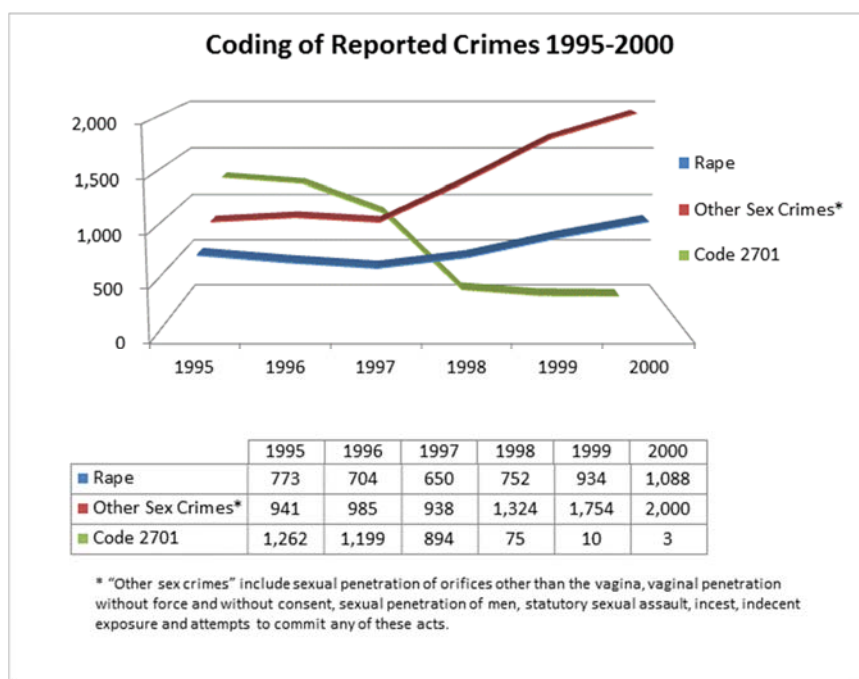
for the first half of 1983 and sent a letter to the PPD asking for an explanation. After the FBI told Philadelphia to reduce the unfounded rape rate, Philadelphia reduced it to 16% in 1984.

The FBI examined and addressed only the PPD's unfounded rate at that time. However, the PPD was apparently placing significant numbers of complaints in non-crime codes as well. Research conducted following the *Inquirer's* 1999 disclosures revealed studies had uncovered these PPD practices years before. A 1978 academic study analyzed the interaction of the Philadelphia criminal justice system with sexual assault victims and identified the use of non-crimes codes by the PPD in the early 1970s.¹ According to that study, the PPD placed almost 11% of the 1141 cases studied into non-crime codes, including code 2701—Investigation of Person.² A University of Pennsylvania law review published in 1968 also revealed that the PPD used the non-crime code 2701 in the 1960's, at which time it also engaged in other practices that essentially unfounded crimes, including turning away complainants without preparing and filing incident reports and unfounding inci-

dent reports without any follow-up investigation at all.³

In the 1980's, in response to the FBI's directive to reduce its unfounded rape rate, the PPD increased the number of cases it placed in non-crime codes. According to the *Inquirer*, the PPD placed approximately 30% of its complaints in code 2701 over two decades. This manipulation of case classification gave the PPD an artificially high rate of clearing—or solving—rape cases. The PPD's rape clearance rate for 1993 was 74 percent, compared to the national average of 53 percent.

In 1997, the FBI and PPD auditors questioned PPD's use of the 2701 code and the PPD discontinued its use for sex crimes.



¹Thomas W. McCahill, Linda C. Meyer, Arthur M. Fischman, *The Aftermath of Rape* 81, 99, 109-112 (1979).

²*Id.* at 99, 110.

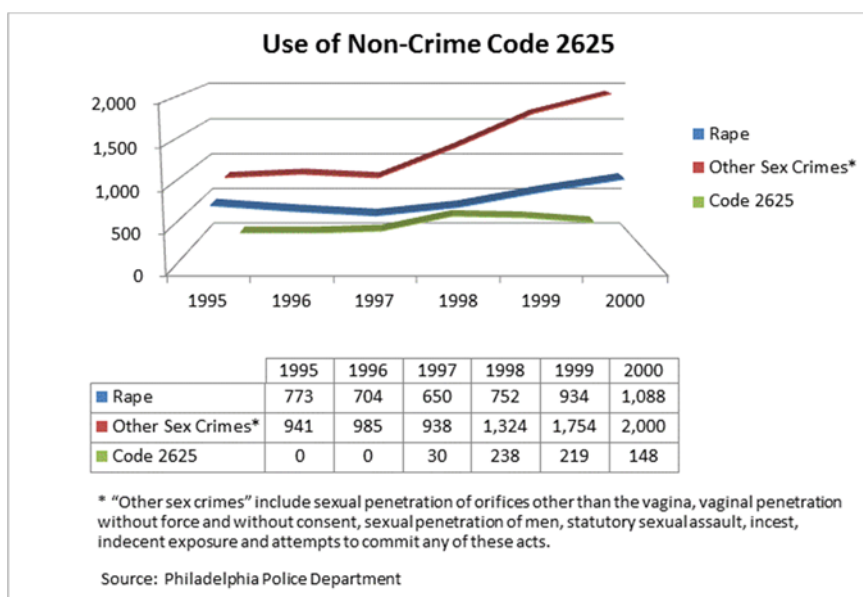
³Note, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. of Pa. L. Rev. 277, 279 n. 8 (1968).

The elimination of the 2701 code caused an increase in the unfounded rate – which doubled to 18% in 1998.

At same time, the SVU started placing complaints in another non-crime code: “2625–Investigation, Protection and Medical Examination.” In 1998 and 1999, the SVU placed about 5% of its caseload in this code.

ings with then-Police Commissioner Timoney and his senior staff to discuss the need for Departmental reform.

The Commissioner agreed to conduct an internal audit to evaluate the coding of sex crime complaints placed in non-crime codes for the previous five years—which was at that time the statute of limitations or



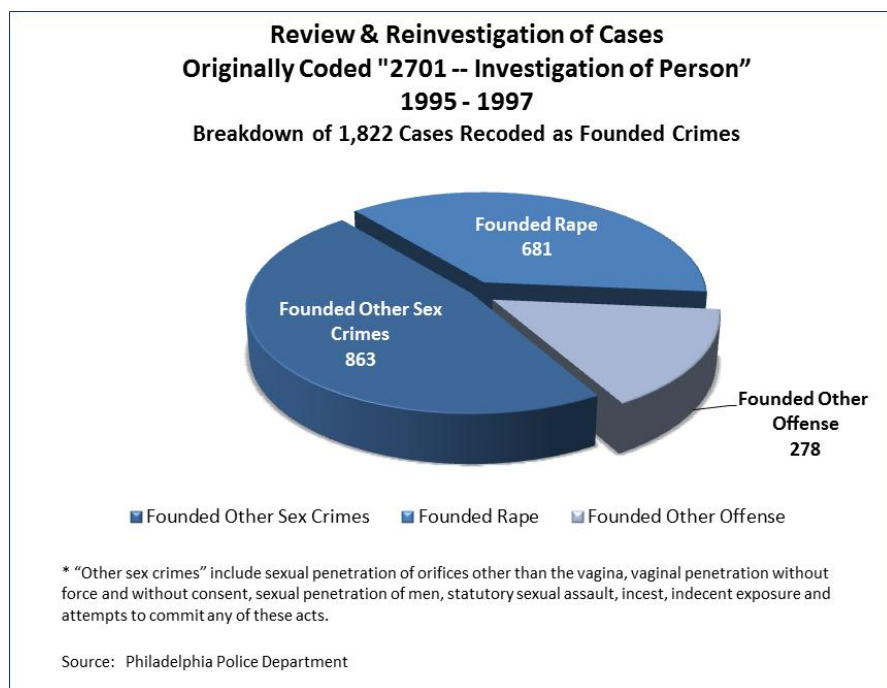
time period following the assault during which charges could still be filed against an assailant. He assigned his Quality Assurance Bureau as well as 45 newly-graduated detectives to conduct this reinvestigation and re-coding of approximately 3,700 complaints handled from 1995 through 1999 and agreed that the Department would re-code and pursue any cases that had incorrectly

been placed in a non-crime code.

THE ADVOCATE RESPONSE

The WLP led the advocacy by the women's and children's organizations that work on sexual assault to address this scandal. Although WOAR had been meeting with the police for years, they were unaware of the PPD practice of decriminalizing rape complaints and saw it as a betrayal of the good faith in which they had interacted with the police. Recognizing the need for public oversight, the WLP requested that the Public Safety Committee of City Council hold hearings to investigate the *Inquirer's* allegations. In addition, WLP organized meet-

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



REASONS FOR POLICE

MISHANDLING OF SEX CRIMES

There are multiple reasons for the PPD's mishandling of sex crimes. The two primary reasons revealed from the interviews reported in the press as well as in the academic literature are: (1) the influence of societal bias against sex crime victims and myths about sexual assault and (2) pressure to improve crime statistics.

Societal myths influence police response to sex crimes. Rape myths are "attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women."⁴ These myths include:

- Most rape claims are false, and women cry rape out of guilt or vengeance.
- Most rapes are committed by strangers.

- Real rape victims fight back and are seriously injured.
- Rape happens only to women who are considered "bad" by society, including those considered to be "promiscuous" or to dress provocatively and those who drink alcohol or engage in other activities that render them deserving of rape or blame.
- When a woman says "no" she means "yes."
- Women secretly want to be raped.

These myths wrongly blame the victim, assume the victim's untruthfulness, trivialize the seriousness of sexual assault, and excuse the assailant's behavior.

In fact, most rape allegations are not false, rape does not discriminate among classes of women, and most rapes are committed by someone the victim knows. In contrast to the mistaken belief that women make false allegations, most women do not even report their victimizations to law enforcement. In reality, only 5% to 20% of victims report to police. In addition, intoxicated victims are incapable of consenting to sex and rape often results in few, if any, physical injuries apart from the rape itself. Many victims do not physically resist their attackers for a variety of reasons. They fear serious injury or death and are immobilized by trauma. Furthermore, research shows that there is a wide range of reactions and behaviors that victims exhibit during and in the aftermath of sexual assault, and it is erroneous to assume that a victim should behave in any particular way.

The factors associated with the unbounding and decriminalizing of rape in Philadelphia echo these myths and biases. The study of the PPD's response to sex crimes in the 1970s found the following variables associated with the PPD's unbounding of sexual assault at that time:

- The victims were poor, minorities, prostitutes, and alcohol and drug abusers.
- The police believed the woman asked for it.

- The police believed the case would not succeed in court.

The following variables were identified as associated with coding a sexual assault as a non-crime:

- The assault took place in the victim's home.
- The victim was a heavy drinker.
- There was more than one offender.
- The victim had a history of truancy.
- Coercion was lacking.
- No sex act was completed.
- The victim was poor.
- The victim had prior trouble with the police.

The comments to *Inquirer* reporters in 1999 by then-current and former police as well as victims reflect the same biases. Police reported:

- Using non-crime codes to sideline victims who did not "fit a certain profile" or were not "people of substance," had a history of drug and alcohol abuse, spent time in prison or had criminal records, were strippers, prostitutes, or had been offered (but not accepted) money for sex, lived in dangerous parts of the city, had mental problems; or were low income;

⁴Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review*, 18 *Psych. of Women Quarterly* 133, 133-34 (1994).

- Questioning whether someone was really raped based on her “odd” behavior, such as writing notes while waiting to be interviewed and delaying reporting the crime.
- Asserting that non-crime codes were not for “real rapes” but for false complaints.

The police also identified a culture obsessed with statistics and downgrading crime to make the city look good.

Victims reported police treating them as liars:

- Police asked one woman whether she was hallucinating.
- Investigators showed little interest in their case, seemed skeptical, and did not contact them.
- Police told one victim it would be hard to prove rape because she let the perpetrator into her house.

Following the *Inquirer's* revelations and WLP's public comment in the newspapers, victims whose cases had not been investigated contacted WLP lawyers. They told us more about how officer bias affected the handling of their complaints. Victims reported that they were interrogated rather than interviewed, disbelieved, and threatened with false complaint charges or required to undergo polygraphs. They described officers showing more concern for the alleged perpetrator's reputation than the victim's safety.

In addition to bias and motivation to improve statistics, the difficulty of the work may have adversely affected police behavior. The rape unit had traditionally been overburdened and understaffed; training, guidance and supervision were inadequate. Burnout, or what has become known as secondary trauma, affecting persons who routinely work with traumatized clients, appears to have been a factor. This is consistent with research showing that police suffer more work-related trauma than combat veterans.

INNOVATIVE STRATEGIES

Leadership and Partnership

PPD Commissioner Timoney, who had been appointed only a year or so prior to the scandal, responded by not only reinforcing the correct coding of crimes regardless of impact on statistics, but also reorganizing the Special Victims Unit (SVU). Timoney appointed a new captain of the SVU, improved supervision and accountability, and assigned detectives to the unit for the first time. New policies were put in place, requiring captain review of all unfounded files and supervisory review of all files before they are closed.

Revision of Coding Manual

At the invitation of the PPD, the WLP also reviewed and provided extensive written and in-person comment on drafts of a new coding manual prepared by the Department. The coding manual now accurately and specifically describes the nature of the crimes under each code.

The Case File Review

Understanding the crisis in public confidence caused by this scandal, Commissioner Timoney, in an unprecedented move, asked the WLP to convene relevant advocacy groups to review adult and child sexual assault cases. This invitation to allow a citizen's group to review police files is, WLP believes, the first voluntary collaboration of its kind in the country, and as such, has received considerable attention. Thus, in 2000, we commenced what would become an annual review of sex crimes files with our colleagues from the Support Center for Child Advocates, which provides representation to child victims of abuse, Philadelphia Children's Alliance, Philadelphia's primary intervention organization for child sexual abuse victims which coordinates multi-agency forensic interviews, and Women Organized Against Rape, Philadelphia's rape crisis agency. Each organization participating in the review entered into a confidentiality agreement with the PPD, agreeing not to reveal any information learned from the file review.

In the first year of the case review, advocates reviewed all of the cases unfounded by the SVU for the years 1999 and 2000 as well as 100 randomly selected cases from the year 2000.

After the first year, we returned annually through the administration of Commissioner Timoney. When new Commissioners came on board, we met with each new Commissioner to explain the review process and why it was important, and each

Commissioner has supported our file review and agreed to its continuation. The review has been going on now for 12 years. It has resulted in significant improvement in the thoroughness and documentation of investigations and coding of crimes. The review has led to the reopening of some cases that had been unfounded.

During the review, which takes place over several days, advocates read hundreds of files. If needed to identify files for discussion with staff, reviewers write their question and concerns on sticky notes and place them on the files. The captain and lieutenants periodically meet with the advocates to discuss these issues identified. Following discussion and resolution of advocate concerns, the sticky notes are disposed of.

We examine the thoroughness of particular elements of the investigation:

- Were all witnesses interviewed that had been identified?
- Were the interviews conducted in a proper manner, i.e., not calling the victim a liar and not interrogating, blaming or threatening the victim?
- If there was a recantation, was it coerced? Were there circumstances that suggested the recantation resulted from fear of reprisal from the perpetrator and not because the assault did not occur?
- Were photos taken and the scene processed?

- Was evidence collection thorough?
- Was physical evidence timely tested and results returned to the investigator?

In addition, we examine the outcome of the investigation:

- Was the case properly coded as a crime and as the correct crime?
- If the investigation supported an arrest, was it made?
- If a case was unfounded, was it proper to do so? Did the investigation demonstrate that no crime had occurred?
- Did a supervisor review and approve each decision to unfound a case?
- If a case was exceptionally cleared was the exceptional clearance proper? In other words, was an arrest warranted by the evidence and the perpetrator identified and at a known location but some reason outside of law enforcement prevented the arrest from being made ?

It is important to understand that this review has been conducted in a collegial non-adversarial manner. It took some time for the advocates and police to become comfortable with each other. The SVU staff was not used to having outsiders review their files and were cautious in their interactions with the advocates. New to the process, the advocates were equally guarded. However, everyone at the table has been respectful to

one another. Although the Commissioners have invited us to come to them if there were problems, none have arisen. Ultimately, advocates and police staff developed a good rapport that fosters a positive exchange and receptivity to comments and concerns.

Data Review

We regularly obtain data from the Department to monitor ongoing coding and resolution of complaints.

Improved 911 Response

At the request of the Department, we have provided input into the Department's upgrading of its 911 system to better respond to sexual assault calls by assigning the correct priority of response and obtaining from and communicating to the victim essential information.

New Location

When this work began, the SVU was located in an industrial park that was formerly an arsenal. Surrounded by barbed wire, the SVU building was small and overcrowded, with victims and perpetrators passing each other in the halls. This facility was inappropriate for working with victims of sex crimes and child abuse, which requires a high degree of sensitivity.

Our advocacy led to the relocation of the SVU in September 2003 to a more appropriate facility located on the Episcopal Hospital campus, which doubled its previous space. Most importantly, victims and perpetrators are separated, there are comfort-

able waiting rooms for adults and child victims, and private interview space is available. Appropriate work stations and interrogation rooms as well as phone lines and internet access permit officers to conduct adequate investigations. A library and training room were also added to the facility.

In the Spring of 2013, the SVU will move again, this time to a new location where it will be co-located with the sexual assault unit of Philadelphia's child welfare agency, the Department of Human Services (DHS), and the Philadelphia Children's Alliance. Appropriate forensic interviews will take place. Medical examination facilities for children and adults will also be located at this site. This new state-of-the-art facility will accommodate victim needs and provide more efficient investigations of child sexual and physical abuse cases.

CHANGING THE FBI DEFINITION OF RAPE

The WLP led the national effort to change the definition of rape used by the FBI in its UCR system to reflect more accurately societal and legal definitions of serious sexual assault. The WLP recognized the need to change the UCR definition of rape after learning about the impact of the UCR on the PPD's handling and reporting of sex crimes. The UCR was developed in 1929 as a framework for gathering and publishing crime data from local police departments. Unchanged until 2012, the UCR defined rape as "the carnal knowledge of a female, forcibly and against her will." This definition included only forcible male penile penetra-

tion of a female. Omitted from this UCR definition of rape were oral and anal intercourse, penetration of the vagina and anus with an object or body part other than the penis, rape of males, rape of females by females, incest, statutory rape, and non-forcible rape.

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

Moreover, as we studied the UCR, we learned that the FBI only issued public announcements relating to the number of complaints that fit within the narrow subset of sex crimes included in the FBI's forcible rape definition. As a consequence, the FBI was leaving the public in the dark about the true incidence of equally serious sex crimes.

In addition, data is instrumental in driving policy responses to societal problems. Sex crime data influences the scope of resources afforded victims. The diminution of sex crime statistics has therefore also hampered government response and victim assistance efforts.

In the years since the UCR created its definition of rape, America significantly expanded its understanding of rape, and states have revised their laws accordingly.

Many state criminal laws now recognize that all forms of non-consensual sexual penetration regardless of gender, relationship, or mode of penetration are as serious as the criminal conduct included in the original UCR definition of rape, but which, until now, remained excluded.

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

The drive to change the UCR definition of rape gained momentum in 2010, after hear-

ings before the U.S. Senate Judiciary Subcommittee on Crime and Drugs on the mishandling of rape cases by police departments. Carol Tracy, WLP's Executive Director, testified that sexual stereotypes are a root cause of police mishandling of sex crimes and made clear that the manner in which the FBI's UCR system defines, analyzes and publicizes the incidence of sex crimes is also a major factor. Further advocacy led to the creation of a new definition.

The new definition, which goes into effect in 2013, defines rape as "Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." This effort was supported by the U.S. Department of Justice Office of Violence Against Women.

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