

NON-REPORTING AND HIDDEN RECORDING OF SEXUAL ASSAULT IN AUSTRALIA*

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Abstract

Visible sex crimes, such as rapes that come to the attention of police or survey interviewers, have been described as the ‘tip of the iceberg’, as they comprise a small proportion of sexual violence against women. The ‘submerged’ levels of the iceberg represent the silenced women and invisible crimes that occur within privatised contexts and are never reported to authorities. This paper provides an overview of the non-reporting and ‘hidden’ recording of sexual assault. It examines victims’ reasons for not reporting sexual incidents to the criminal justice system and considers the way that police recording practices may obscure the extent of sexual violence.

Sexual violence against women is a pervasive social problem that is linked with gender inequality, violates the right to live in freedom and without fear, and exacts costs from individuals, communities and governments. However, it is known that the nature and extent of sexual violence are not adequately charted. The police can count only those incidents that are reported to them, but a substantial number of sex crimes are never reported and, as this paper will argue, police counts may be incomplete for a number of reasons. Victimization surveys provide higher counts than police statistics and tell us much about why women do not report sexual victimisation to police, yet many offences may still be concealed from survey interviewers.

To inform policy and community awareness about sexual assault, the Commonwealth Government of Australia has launched a range of strategies under the aegis of the *National Initiative to Combat Sexual Assault*. This paper provides an overview of work in progress on an international literature review of sexual assault and the criminal justice system, which was commissioned by the Commonwealth Office of the Status of Women. The work concerns the way in which knowledge about sexual assault and criminal justice outcomes in sexual assault cases are impacted by the non-reporting and hidden recording of sex crimes. This paper aims to improve understanding of non-reporting by victims, to introduce the concept of hidden recording, and to initiate discussion about the extent to which it augments the lower levels of the 'iceberg' of sexual assault. The paper examines ways in which victim characteristics and institutional practices influence the reporting and recording of sexual assault. Based on survey findings from a number of industrialised countries, it suggests that although victims' perceptions of the criminal justice system may impede reporting of sexual assaults, the major barriers arise from the private context in which most attacks occur and because victims may regard incidents involving offenders who are known to them as inappropriate for police intervention. In respect of the legal system, it is suggested that procedural and extra-legal factors that result in attrition of sexual assault cases may contribute to the hidden recording of sex crimes and inflate the apparent rate of non-reporting by an unknown degree.

Sexual assault in Australia

A major problem faced by researchers, law enforcement agencies and policy makers concerns the lack of a standardised definition of sexual assault. This paper focuses on the experiences of women aged 16 and over and largely adopts the definition used in the Australian Women's Safety Survey (ABS 1996). The central features of sexual assault include its non-consensual nature and the use of physical and/or psychological tactics to force compliance. Acts included may be broadly categorised as rape, attempted rape, aggravated sexual assault and sexual violence. The definition does not include non-assaultive threats such as obscene phone calls, stalking, or sexual harassment, although it is recognised that these also contribute to women's feelings of vulnerability. In this paper, the broader term 'sexual violence' is used interchangeably with 'sexual assault'.

Sexual assault is less likely to be reported to law enforcement agencies than any other type of violence against the person. Knowledge about victims and their reporting behaviour is primarily derived from nationally representative crime victim surveys. The Australian results from the 2000 International Crime Victims Survey (ICVS) are in accord with those from other countries taking part (van Kesteren, Mayhew, & Nieuwbeerta 2000). Results from Australian surveys are also congruent with those from surveys conducted in England and Wales, Canada, New Zealand and the United States, at least in relation to the relatively uniform profile of risks for different groups of women and the characteristics of most sexual assaults. Incidence and prevalence estimates usually vary because of methodological differences (see Fisher, Cullen & Turner 2000; Gartner & Macmillan 1995; Johnson & Bunge 2001; Johnson & Sacco 1995; Morris 1997; Myhill & Allen 2002; Rennison 2000; Tjaden & Thoennes 2000).

This profile of risks is illustrated in Table 1, which presents selected data from three of the major publications of the Australian Bureau of Statistics (ABS). *Recorded Crime Australia* presents annual statistics on a range of offences recorded by police in all states and territories (ABS 2002). *Crime and Safety Australia* reports on the Crime and Safety Survey, a national crime victimisation survey conducted in 1998 among persons aged 15 years and over (ABS 1999). *Women's Safety Australia* presents the results of the Women's Safety Survey, a national survey of women aged 18 years and over, conducted in 1996, which focused on the nature and extent of violence against women (ABS 1996). The data are not directly comparable, as they are drawn from sources that use different populations, collection and counting methodologies, but they point to the general risks for and characteristics of sexual assault. Unless indicated, the figures for *Women's Safety* and *Crime and Safety* refer to sexual violence against women in the previous year.

Table 1. Selected data illustrating risk factors for and characteristics of sexual assault in Australia

	Women's Safety 1996	Crime & Safety 1998	Recorded Crime 2001
<u>Prevalence^a</u>			
Since age 15	17.9	NA	NA
Previous year	1.9	0.4	0.86
Victim characteristics			
<i>Gender</i>			
Female	NA	(Only women asked)	.139
Male	NA	NA	.029
<u>Victimisation rate^b</u>			
<i>Age group</i>			
24 and under	4.6 (18-24)	3.3 (18-24)	.498 (15-19) .203 (20-24)
35-44	2.3	0.5	.065
<i>Marital status</i>			
Married/de facto	0.9	0.1	NA
Unmarried	3.7	1.1	NA
	(includes divorced, separated, widowed)	(never married; does not include divorced, separated, widowed)	
<i>Labour force status</i>			
Employed	2.2	0.5	NA
Unemployed	6.6	2.0	NA
Selected characteristics of the most recent incident in the last 12 months (%)			
Weapon used	NA	7.2	1.9
Physically injured	22.0	23.2	NA
Residential location	55.0	58.0	64.4
Perpetrator a stranger	NA	17.0	17.0
One perpetrator	87.1	NA	NA
Male perpetrator	98.0	NA	NA

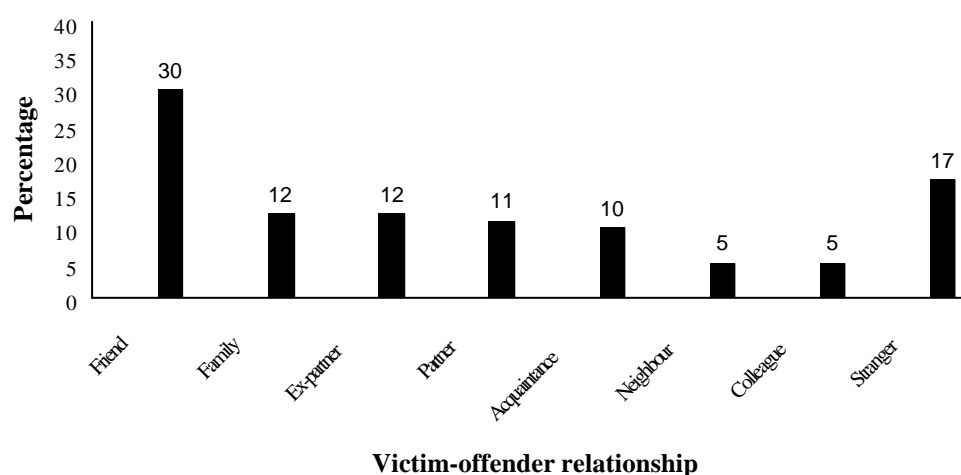
- a. Prevalence for *Women's Safety* and *Crime and Safety* is the number of victims expressed as a percentage of the total number of females aged 18 years and over. For *Recorded Crime* prevalence and victimisation rates are calculated per 100 females in the Australian population.
- b. Rate per 100 women in the relevant population.

As Table 1 demonstrates, the 'classic' rape scenario is misleading, as attacks by strangers who use inordinate physical force or weapons to subdue victims are in the minority. To summarise, women are at far greater risk of sexual assault than men, while the overwhelming majority of offenders are males. Sexual assaults are more likely to be perpetrated in a residential setting by a man known to the victim, than by a stranger in an open location. While force is a component of sexual assault, it may be in the form of psychological coercion, and often does not result in physical injury. Unemployment increases the risk of sexual victimisation and young unmarried women are at higher risk than older women. Younger women are more likely to be victimised by strangers, while married or cohabiting women are more likely to be assaulted by their partners and are at greater risk of repeat victimisation (ABS 1996, 1999, 2002).¹

Non-reporting, the 'iceberg model' and the 'dark figure' of sex crime

The profile of sexual assault presented in Table 1 gives some indications as to why most sexual crimes are hidden. Jewkes and Abrahams (unpublished) describe the unknown dimensions of sexual assault in terms of the "iceberg of rape and sexual coercion". This model suggests that visible sex crimes, such as fatal sexual assaults and rapes that are reported to police or survey interviewers, constitute only a small proportion of all sexual violence perpetrated against women – the tip of the iceberg. The lower or submerged levels of the iceberg represent the invisible crimes that occur within relationships and families and are never brought to the attention of law enforcement or other agencies. These incidents constitute what is known as the 'dark figure' of sex crime; that is, sexual assaults that are not captured in police statistics because they are not reported. While a variety of situational and personal factors influence a victim's decision to report an incident to police, the relationship between victim and offender may constitute one of the biggest impediments to reporting (see Figure 1).

Figure 1. Distribution of Victim-Offender Relationships in Sexual Assault



Source: Australian Bureau of Statistics 1999, *Crime and Safety Australia*, Australian Bureau of Statistics, Canberra.

The majority of women are sexually assaulted by men they know and often trust. The closeness of victim-offender relationships, together with the private context of attacks, may therefore set up

¹ For discussions of younger women's over-representation in various categories predicting sexual assault see Coumarelos & Allen 1998; Myhill & Allen 2002; van Kesteren, Mayhew & Nieuwbeerta 2000.

personal barriers to reporting. Victims' perceptions of the justice system may comprise an additional barrier. As surveys differ in relation to the nature of what is counted as a sexual offence, the proportion of incidents that respondents say they have reported to police can vary, as can the relative weight given to different reasons for not reporting. Thus, the Australian results from the 2000 ICVS showed a reporting rate of 15% for sexual assaults and offensive sexual behaviour, while the Crime and Safety Survey showed that a higher proportion of victims (33%) had told police about the most recent incident of sexual assault. The Women's Safety Survey found that only 15% of victims reported to police the most recent incident of sexual violence within the last 12 months, although most disclosed the incident to a family member (32%), friend or neighbour (59%).

Nevertheless, there are many commonalities across surveys in relation to reasons for not going to the police, although as noted, the relative weights can vary. In the Women's Safety Survey over half of the respondents who had been sexually victimised (55%) said the main reason for not informing police was that they had dealt with it themselves, while a further 16% did not regard the assault as a serious offence (ABS 1996). In the ICVS, 38% of victims of sexual incidents regarded the offence as not serious enough to report (van Kesteren, Mayhew & Nieuwbeerta 2000). The most common reasons for non-reporting, compiled from national and international surveys, are listed in Table 2. Additional barriers to reporting are likely to be encountered by minority population groups such as Indigenous or rural women.

Table 2. Barriers to reporting sexual assault

<u>Personal Barriers</u>	<u>Justice System</u>
<ul style="list-style-type: none"> ▪ Too trivial or inappropriate to report to police ▪ Dealt with it themselves ▪ Regard it as a private matter ▪ Not a 'real' crime ▪ Not clear that harm was intended ▪ Shame, embarrassment ▪ Did not want family or others to know ▪ Fear of reprisal by assailant ▪ Self-blame or blamed by others for the attack ▪ Desire to protect offender, relationship, or children 	<ul style="list-style-type: none"> ▪ Police would not or could not do anything ▪ Police would not think it was serious enough, or would not want to be bothered with the incident ▪ Fear of not being believed by police ▪ Fear of being treated hostilely by police or other parts of justice system ▪ Fear/dislike of police ▪ Fear of the legal process ▪ Lack of proof that the incident happened ▪ Did not know how to report

Although Table 2 suggests that reporting behaviour may be influenced by victims' perceptions of the justice system and doubts that it will provide redress, one of the most influential determinants of whether a sexual assault will be reported may be the victim's assessment of the seriousness of an incident. Even though women tell survey interviewers about incidents that meet the legal definition of sexual assault, they may perceive these acts as relatively unimportant and not as criminal victimisations. The following section deals briefly with selected factors that may influence perceptions of the seriousness of an offence.

When is sex perceived as a crime?

One way of distinguishing between sexual acts that may be regarded as 'real' crimes and those that may be viewed as less serious is to examine their physical and psychological correlates and consequences. Acts that may be viewed as serious are those that deprive victims of liberty, threaten their lives or physical integrity, or produce psychological harm. Thus, penetrative offences such as rape are more often reported to police than indecent assault or other forms of unwanted sexual touching, as are attacks involving the use of a weapon, or resulting in physical injury or emotional trauma. Public reaction to recent gang rape trials in Sydney suggests that the perceived severity of sexual assault escalates when there are multiple assailants, especially if the attacks are orchestrated. Drug facilitated sexual assault may also be regarded as serious, as the extreme physical and cognitive incapacitation prevents victims from either refusing consent or resisting the attack. The ongoing effects of the drugs, which among other things may cause uncertainty as to whether a sexual assault has occurred, may also prevent victims from contacting police (Abarbanel 2001).

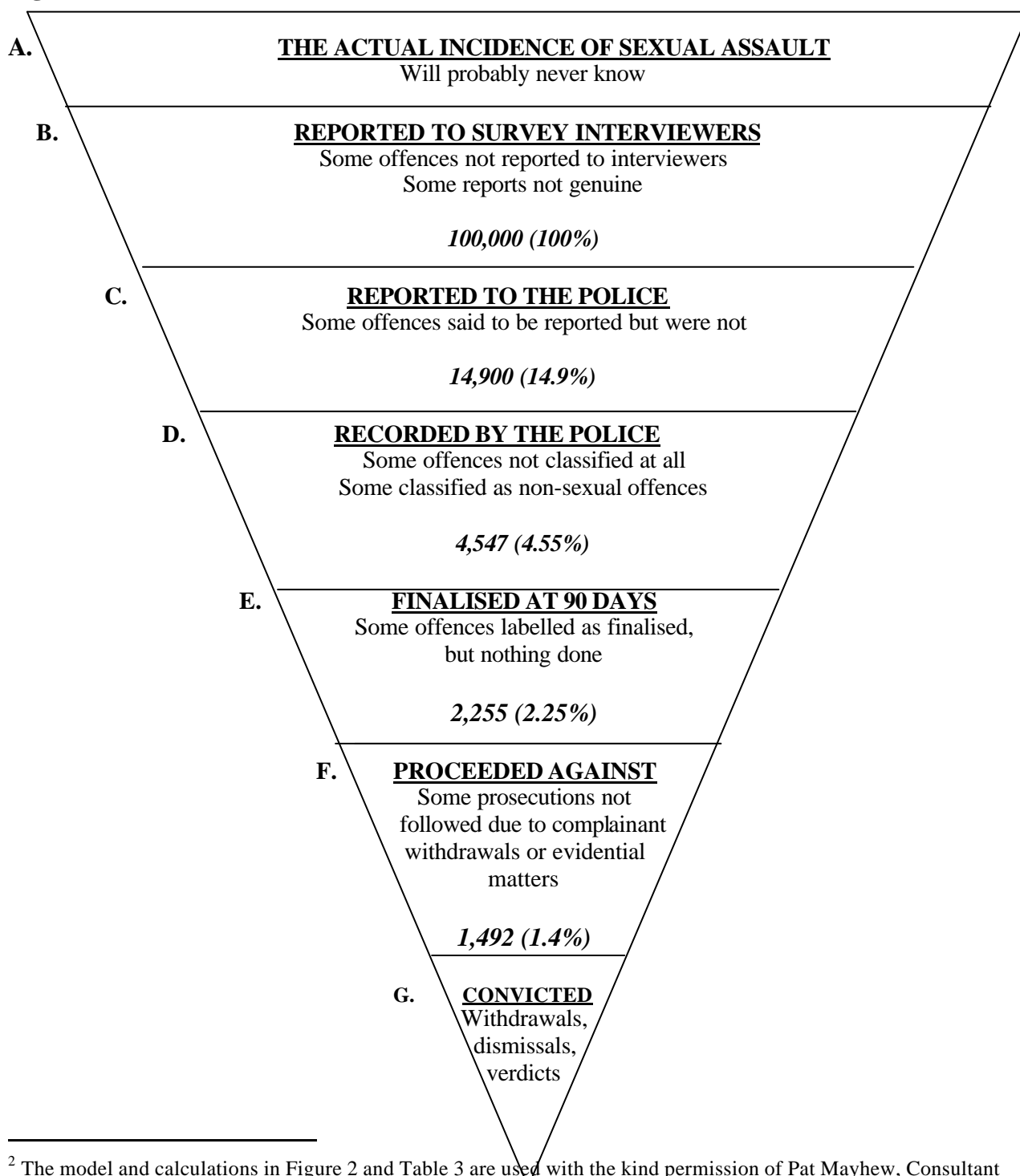
One of the most robust findings in sexual assault research is that the odds of a victim reporting to police decrease as the relational distance between the victim and offender decreases. Police are most likely to be notified of sexual assaults perpetrated by strangers, followed by estranged partners or known non-intimate offenders. Assaults by intimate partners are least likely to be reported. Clearly, women can have difficulty in reconciling intimate partner sex with criminality. Survey results show that substantial numbers of women whose experiences can be categorised as rape according to legal parameters do not classify themselves as rape victims, and even those who describe an incident as sexual assault hesitate to define it as a crime (Fisher, Cullen & Turner 2000; Myhill & Allen 2002). This finding is difficult to interpret. On the one hand it may signify that some women have difficulty in admitting to the stigma of sexual victimisation, for themselves or their partners. On the other hand, it may indicate that some women who are subject to experiences that are technically criminal simply take it in their stride.

While these explanations are not mutually exclusive, the latter is consistent with the view that violence between people known to each other is less serious than stranger violence, as evidenced by the traditional reluctance of legal and state officials to become involved in private matters. Police have often adopted a conciliatory or mediatory approach to intra-familial violence and, while there has been a shift in societal perceptions of sexual abuse and in political and legal responses to it, victims do not necessarily regard police intervention as an appropriate option. The New Zealand Women's Safety Survey, which interviewed women with current partners or who had cohabited with male partners in the past two years, found that neither police action nor court action featured in respondent's 'top five' list of influences that might change their partners' behaviour (Morris 1997). This indicates that some women may simply want the offending behaviour to cease, but notifying police may result in undesired outcomes, such as the offender being arrested or labelled as a criminal. Thus, victims who have a prior relationship with the offender may wish to avoid the potential repercussions of reporting, which include incurring the ire of family and friends, or reprisal by the assailant. They may also fear that police and others will blame them for the assault, not believe their allegations, or not take them seriously. In addition, women who are sexually assaulted by men known to them may believe that the chances of a successful prosecution are negligible. Choosing not to report sexual victimisation may therefore be perceived as an adaptive and rational response in some circumstances.

Attrition of Sexual Assault Complaints

The successive shrinkage between the number of sexual assaults that occur and those that are reported to police, recorded by them, and proceed to trial and conviction, can be depicted in terms of the 'attrition triangle' shown in Figure 2.² The figure shows that most charges reported to authorities are filtered out, either by police, or after referral for prosecution. While a range of procedural, evidential and non-legal considerations influence this process, the result is a substantial attrition between cases reported to police and successful prosecutions (Cook, David & Grant 2001; Heenan 1997; Kingsnorth, MacIntosh & Wentworth 1999).

Figure 2. Attrition of sexual assault cases



² The model and calculations in Figure 2 and Table 3 are used with the kind permission of Pat Mayhew, Consultant Criminologist at the Australian Institute of Criminology, on secondment from the British Home Office. Box 1 details the adjustments that produced the attrition rates. Calculations based on differing data sets are likely to yield different rates of attrition.

Box 1. Calculations for the Attrition Triangle for Sexual Assault

B.	Based on respondents to the 1996 Women's Safety Survey who reported experiencing sexual violence (sexual assault and sexual threat) in the previous year.
C.	This applies the percentage of incidents said to have been reported to the police to the number of offences in B.
D.	Based on <i>Recorded Crime</i> figures for the number of sexual assaults recorded by the police in 1995, adjusted to cover only women aged 18 or more.
E/F.	The finalisation and prosecution rates are from sexual assaults recorded by the police in 1997 (no data were available for 1995). The percentage finalised at 90 days and the percentage proceeded against are applied to the adjusted number of sexual assaults recorded by the police in 1995.

- Section A of the triangle notes that the actual incidence of sexual assault will probably always remain unknown, since some incidents are not disclosed to survey interviewers.
- The figure of 100,000 sexual assaults in Section B is based on the 1996 Women's Safety Survey; specifically, this is the number of respondents who reported experiencing sexual violence in the previous 12 months. It is likely that not all respondents who were sexually abused disclosed the experience to interviewers. It also conceivable, however, that some reports did not constitute genuine offences.
- Section C highlights that less than one in five sexual offences disclosed to interviewers in the Women's Safety Survey were reported to the police. There is a considerable degree of attrition between the number of crimes that survey respondents say they have reported to police (Section C) and the total number of offences recorded by police (Section D). Researchers have routinely found similar shortfalls between reported and recorded figures; the discrepancy may be partially inflated by survey respondents saying that they reported incidents when they did not.
- Section D indicates that police recording practices may also result in cases disappearing from or being hidden within a police department's statistics. The exercise of police discretion in deciding which incidents are recorded and which are screened out contributes to attrition through under-recording. Some allegations of sexual assault are not recorded at all; they may be shelved because of doubts about their truthfulness, while delayed reporting may compromise the collection of evidence in other cases. Some may be assessed as 'definite' crimes because there is clear evidence of a crime having been committed. Others may be assessed as 'possible' crimes, either because little evidence exists to support the claim or because the complainant may withdraw the charge or refuse to co-operate with police. Therefore, officers may not record a 'possible' complaint of sexual assault, or they may record it, but later 'no-crime' it. There is no Australian evidence that bears directly on this. However, a British study found that as many as 56% of allegations of sexual assault that were initially assessed by police as 'definite' crimes were 'no-crimed' following further investigation, whereas all 'possible' crimes were 'no-crimed' (Burrows, Tarling, Mackie, Lewis & Taylor 2000). This does not mean that all 'possible' crimes are unable to be substantiated and it is likely that an undefined proportion of sexual assault complaints are not fully investigated before being 'no-crimed'. Complaints may be filed without formal reports, or recorded in such a way that they are not treated as active criminal cases, thereby reducing the workload by closing cases, avoiding investigation of difficult cases and making the incidence of sex crimes appear low and the rate of police clearance high (Lonsway 2002).

Classificatory practices may compound the problem, as uncertainty sometimes exists as to how allegations should be classified, and some complaints may be hidden if they are classified as non-sexual crimes or under non-criminal codes. Police may also downgrade classifications in anticipation of a lesser charge being pursued in the courts, or out of concern that they might be unable to clear a more serious offence. However, it may be difficult to assess the impact of such practices on sexual assault rates, as there is no simple way of tracking cases from their entry into the police system through to the final outcome (see discussions in Burrows et al. 2000; Harris & Grace 1999; Kingsnorth et al. 1999; Lonsway 2002).

- Section E shows that approximately half the number of sexual assaults recorded by police in 1995 (just over 2% of those reported to survey interviewers) were finalised within 90 days of being brought to police attention. However, as demonstrated by the 30-day finalisation figures for 2001 in Table 3, sexual assault has one of the highest proportions of finalisations in which no offender is proceeded against.

Table 3. 30-day finalisations for sexual assault, non-sexual violence and property offences in 2001

Offence	Finalised (%)	Finalised but not proceeded against (%)
Sexual assault	36.0	48.0
Non-sexual violence	52.0	22.0
Property offences	9.0	17.0

Source: *Recorded Crime 2001* supplementary statistics

Low rates of finalisation and prosecution (Sections E and F) may be partially attributed to cases that are unsolved, unsubstantiated, or withdrawn. While Table 3 shows more finalisations for sexual assaults than for property offences, attrition at the proceedings stage (Section F) is typically much higher for sexual assault cases than for other crimes against the person. Complainant withdrawals in a small number of 'crimed' cases preclude further action and, even when police treat allegations of sexual assault as crimes, they may decide not to pursue the case if the chances of a successful prosecution are slight (Criminal Justice Commission 1999).

- Conviction rates for sexual assault cases across Australia in 1995 are not available (Section G). However, acquittal rates for sexual assault, and for rape trials in particular, tend to be high. Between 1994 and 1998 in Queensland, charges for sexual offences increased steadily, while conviction rates were relatively stable. The court data in Table 4 show that rape charges resulted in convictions for a minority of appearances, while charges for other sexual offences, offences against the person and other types of offences resulted in higher conviction rates. The figures are slightly higher when translated into the number of appearances that result in convictions. However, further examination of court data is required to determine whether there is any systematic variation in the numbers of cases in which 'no conviction' findings are the result of a 'not guilty' verdict by jury, a dismissal of the charge by the court, or a withdrawal by the prosecution and, in the latter case, the reasons for decisions to terminate legal action.

Table 4. Conviction rates for rape and other charges in Queensland 1994-1998(%)

Offence	Charges resulting in convictions	Appearances resulting in convictions
Rape	35.0	45.0
Other Sexual assaults	57.0	67.0
Offences against person	59.0	73.0
Other offences	73.0	75.0

Source: Criminal Justice Commission 1999, *Reported Sexual Offences in Queensland*, Criminal Justice Commission, Brisbane.

The attrition triangle strongly suggests that official police statistics systematically undercount the number of sexual assaults. This undercount is likely to be explained by issues to do with classification, discretion and satisfactory evidence. However, it is suggested that under-counting may also result in the hidden recording of some sex crimes, as it affords invisibility to incidents of sexual assault that have been reported by victims. This may then feed into the perception that redress from the criminal justice system is unlikely.

Conclusion

Sexual assaults that are reported to police constitute only the tip of iceberg of all sexual violence against women. Incidents that are reported to survey interviewers may be closer to the true number, although it is difficult to know by how much. Nor is it clear whether and to what degree surveys simply count incidents that are easy for respondents to disclose. If this is the case, then the true picture of the *nature* of sexual assault may be distorted. Nevertheless, the survey count of sexual incidents is both broader-based and weighted towards less serious incidents than police statistics.

A number of factors deter victims from reporting to police, including their perceptions of the seriousness of an incident, although this does not account for all non-reported incidents. A major barrier to reporting stems from the private context in which most sex crimes occur and the fact that most victims are sexually assaulted by men they know. Police data, then, undercount the magnitude of the problem because they reflect only incidents that victims are either willing to report or consider serious enough to report. They also cover only those reported incidents that officers consider serious enough to record or choose to record. The number of sexual assault cases that eventually proceed to trial and sentencing constitutes a small proportion of those brought to police attention. However, the extent to which hidden recording is implicated in the attrition of sex crimes and inflates apparent rates of 'non-reporting' is unclear and requires further examination.

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