

STOP

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Newsletter

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So How Many Rapes Are False?

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By Joanne Archambault, Training Director, SATI, Inc.



In her 25 years as a police officer, sergeant, and independent consultant, Joanne Archambault reports that she has seen dramatic improvements in how law enforcement agencies investigate crimes of sexual assault. However, she believes there is still work to be done.

Ms. Archambault relates that she is surprised by the number of officers who come up to her at lunch, after class or during a break to tell her how rarely they respond to a valid complaint of sexual assault. Recently, a 22-year female veteran of a state police agency told Ms. Archambault that she (the officer) had never investigated a valid complaint in her entire career! In another example, Ms. Archambault was approached by two detectives who said they had not received a single valid sexual assault complaint in the five months they had been assigned to a Sexual Assault Unit. When asked about details of the cases, the detectives cited a number of reasons for believing the allegation to be false including alcohol and/or drugs being involved or the fact that the victim was uncooperative.

Some of the perceptions held by law enforcement officers can be explained by looking at the training often provided to them on sexual assault. For example, law enforcement training may identify any of the following as indicators of a false report:

- ❖ Delayed report.
- ❖ Report made to a person other than law enforcement.
- ❖ The victim is indifferent to injuries or seems to experience a lack of pain.
- ❖ The victim is extremely vague about details of the assault, or is extremely detailed.
- ❖ The victim attempts to steer away from unsafe details in the description of the assault, i.e., suspect description or location of offense.

The dilemma is that what we know about sexual assault reporting often parallels what officers are taught as signs of false reporting.

For example:

- ❖ Sexual assault victims will most likely be acquainted with the suspect(s).
- ❖ Suspects rarely use weapons.
- ❖ Victims normally delay hours, days, weeks and months in reporting their assault. According to the National Crime Victims Survey, only 36 percent of rapes and 26 percent of sexual assault victims ever report to police.²

"Shall Arrest" Provisions under the Protection From Abuse Act

By Lois D. Fasnacht, PCADV Criminal Justice Trainer

Pennsylvania law does not require police to make an arrest in domestic violence situations except as provided for in the Protection From Abuse Act (See 23 Pa.C.S.A § 6113 for the exact language). An arrest must be made if the defendant abuses the plaintiff; if the defendant, who is evicted and excluded from the plaintiff's residence returns to the residence; if the defendant violates the custody provisions of the order; if the defendant has contact with the plaintiff; if the defendant fails to relinquish weapons ordered relinquished; or if the defendant harasses or stalks the plaintiff or her household members.

Once an order is issued by a court the police have an obligation to arrest for the aforementioned violations of the order. Since not every order will have these provisions included, it is important that police review the specific language of the order before arresting the defendant.

§ 6113. Arrest for violation of order

(a) General rule. -- An arrest for violation of an order issued pursuant to this chapter or a foreign

protection order may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer in circumstances where the defendant has violated a provision of an order consistent with section 6108(a)(1) abusing the plaintiff or minor children; (2) exclusion from the residence; (3) exclusion from residence when residence is in defendant's name; (4) temporary custody; (6) no contact with plaintiff, minor children and plaintiff's relatives, stay away from plaintiff's work or children's school; (7) relinquish weapons that were used or threatened to be used; or (8) no harassing or stalking the plaintiff or household members. The police officer may verify the existence of a protection order by telephone, radio or other electronic communication with the appropriate police department, Pennsylvania State Police registry, protection order file or issuing authority. A police officer shall arrest a defendant for violating an order issued under this chapter by a court within the judicial district, issued by a court in another judicial district within this Commonwealth or a foreign protection order issued by a comparable court.



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So How Many Rapes Are False?

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- ❖ Few victims sustain physical injury.
- ❖ Alcohol and drugs are involved in a high percentage of sexual assaults. At least 50 percent of college student sexual assaults are associated with alcohol use.³
- ❖ Victims might lie about the circumstances of the sexual assault because they feel their actions contributed to the assault.
- ❖ Victims, traumatized by the assault, may not be able to remember details important to the investigation.

The reality is that the best data available still only provides a partial look at sexual assault reports and false allegations. The FBI tracks crime through reports submitted by law enforcement agencies throughout the country. The reports are compiled and published in the Uniform Crimes Report. In 2003, the FBI Uniform Crimes Report stated that over 93,000 forcible rapes were reported to law enforcement. Arrests were made in just over 26,000 of these cases. Forty-five percent of those cases were cleared (arrested, charged and turned over to the courts for prosecution). Of the remaining fifty-five percent, 8 percent of forcible rape complaints were unfounded as compared to 2 percent for other crimes.⁴

The FBI Guidelines define unfounded as "the investigation shows no offense occurred nor was attempted for UCR purposes." When unfounding a case, a law enforcement professional might use a phrase like, "The elements of the crime could not be met or established." This includes cases where:

- ◆ There is insufficient evidence to determine whether the incident was consensual.
- ◆ Police are unable to locate the victim.
- ◆ The victim decides not to follow through with the prosecution.
- ◆ The victim repeatedly changes the account of rape.
- ◆ The victim recants.
- ◆ The allegation is found to be false.

Additionally, the Uniform Crime Reporting Program defines rape only as forced carnal knowledge with a woman against her will. It does not include rape of men, statutory rape (without force) or other sex offenses such as sodomy, oral copulation and penetration with a foreign object.

It is important for law enforcement not to confuse "unfounded" and "false." The UCR states that "false" reports are only a portion of the total number of unfounded cases.

So, what guidance can be offered to police officers investigating a case of sexual assault?

- ◆ False reports do occur, but are still the exception not the norm.
- ◆ Victims may lie about their own illegal activity because it may be unlawful or they're ashamed of having engaged in risky behavior. Offering immunity to the victim for that activity may result in a more truthful statement.
- ◆ The victim was not raped because they wore provocative clothing or drank too much alcohol. They were raped because the perpetrator perceived them as vulnerable.
- ◆ Inconsistent statements by the victim don't automatically mean a sexual assault didn't occur. Ms. Archambault reminds investigators that they "should always be commended for conducting a comprehensive, evidence based investigation. A thorough investigation may exonerate an innocent person rather than leaving doubt in the minds of others. I think this reflects the Criminal Justice System at its best."

It is important for law enforcement not to confuse "unfounded" and "false." The UCR states that "false" reports are only a portion of the total number of unfounded cases.

¹ http://www.mysati.com/news_3_29_04.htm#practices.

² Rennison, Callie. (2002) Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000. Washington D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

³ "High Risk Drinking in College: What We Know and What We Need to Learn," NIAAA Reports, April 2002. http://www.collegedrinkprevention.gov/Reports/Panel101/HighRisk_04.aspx.

⁴ Crime in the United States, 2003 Uniform Crime Report, US Department of Justice, Federal Bureau of Investigation: <http://www.fbi.gov/publications.htm>.

Police Liability & Domestic Violence

By Sharon R. López, PCADV PA Senior Attorney

A common lawsuit brought against law enforcement is an 18 U.S.C. § 1983 action, more commonly known as a civil rights or equal protection violation. Since the 1989 DeShaney case, where the U.S. Supreme Court found that generally there is no affirmative right or entitlement to protection by the state, there have been fewer successful § 1983 lawsuits against police. Recent developments in the law may increase police liability for failing to properly enforce protection from abuse orders. A police officer does not have a general responsibility to protect an individual from private violence. However, in November 2004, the U.S. Supreme Court agreed to hear a case that could dramatically increase the number of failure to protect lawsuits filed in domestic violence situations. The case is *Town of Castle Rock v. Gonzalez*.

The Gonzalez case originated in Castle Rock, Colorado, where Ms. Jessica Gonzalez secured a restraining order for herself and her three daughters. She made several phone calls seeking enforcement of her order, one of which occurred after her estranged husband, Mr. Gonzalez, took her three daughters from their front yard. Later that day, the girls were found dead in Mr. Gonzalez's pickup truck. Ms. Gonzalez filed a \$30 million suit against the City of Castle Rock for failing to enforce her restraining order, claiming that the police violated her civil rights. The District Federal Court dismissed the suit based upon the DeShaney ruling, but the 10th Circuit sided with Gonzalez on a 6-5 vote. The court was persuaded that Ms. Gonzalez possessed protected property interest in the enforcement of her restraining order and that the officers' arbitrary denial of that entitlement violated her procedural due process rights. See *Gonzales v. City of Castle Rock*, 366 F.3d 1093; 2004 U.S. App. Lexis 19049 (April 29, 2004).

The 10th Circuit opinion reviewed the relevant facts as follows: The order issued by the Colorado court directed the defendant to "not molest or disturb the peace of [Ms. Gonzalez] or ...any child." The defendant was excluded from the home. The terms of the order prohibited both parties from unilaterally changing the terms of the order. The order directed the police to enforce the order by arresting the defendant. The order further provided for the Defendant to have parenting time with the children, but only after giving Ms. Gonzalez reasonable advance notice. After agreeing to the aforementioned order, the

defendant took the children without giving Ms. Gonzalez advance notice.

Ms. Gonzalez called the police. The police reviewed her order and informed Ms. Gonzalez that there was nothing they could do to enforce the order. She was told to call again if the children were not returned in several hours. Shortly thereafter, Ms. Gonzalez spoke to the defendant who revealed his location. Ms. Gonzalez called the police again and gave the defendant's location. The officer told her to wait and see if the girls were returned. Several hours later, she called and was again told to wait. Later, she went to the defendant's apartment. Again, she called the police and they told her to wait for the police to arrive. After waiting 50 minutes, she went to the Castle Rock Police Department. She was directed to complete an incident report, but the police took no further action to find the children or the defendant.

Later that same night, the defendant arrived at the police department and opened fire on the station. Mr. Gonzalez was shot dead at the scene. The children were found dead in the cab of his truck.

The facts of this case parallel those in many protection from abuse orders in Pennsylvania. A similar case was recently reported in the Eastern District Court of Pennsylvania. See *Burella v. City of Philadelphia*, 2003 U.S. Dist. LEXIS 25170 (E.D. Pa. Dec. 17 2003). These cases indicate a greater likelihood of police liability where a clear order is entered directing the police to take specific action, such as arrest.

