

False Allegations of Rape and Sexual Assault by Adolescents and Adults: What Does the Research Say?

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Allegations of sexual harassment, sexual assault, and rape have been in the news, with the #MeToo movement and allegations against prominent men. This culminated in the controversy surrounding the United States Supreme Court confirmation of Judge Brett Kavanaugh. While many people take the position that we should “believe the victim,” others maintain we must always give the accused the benefit of the presumption of innocence. Studies attempting to estimate the prevalence of false allegations show a very wide range; one review puts it between 1.5% and 90%. This presentation will summarize the literature on the prevalence of false allegations of sexual assault and rape. It will also examine the research on the factors and motivations underlying false allegations.

How Many Sexual Assault Allegations are False?

Adolescents and adults do make false allegations of rape or sexual abuse for a variety of motivations including attention seeking, to gain status with their friends, or to achieve some goal. But, although this has been a topic of research for many years, no one knows how often it happens. Rumney (2006) reported that the range of the prevalence of false allegations of rape in various studies was between 1.5% and 90%. O’Donohue and Cirlugea (2016) note that a major problem in all the false allegation research is that different studies vary tremendously on the criteria used to determine historical accuracy.

There are difficulties in classifying an allegation of sexual assault as false. Because there are often no witnesses and no physical evidence (especially if the victim delays in filing a report), the case may come down to the credibility of the accused versus the credibility of the accuser. There is a fine line between supporting victims and protecting the rights of the accused. Lonsway (2010) terms false rape reports “the elephant in the middle of the living room.”

A 1994 study by Kanin is often cited. Kanin had strict criteria for classifying the allegation as false. There was a careful investigation including an offer made to polygraph both the suspect and the complainant, and the complainant had to acknowledge that the complaint was false. Kanin reported 41% of the allegations

were false. He later reported on two other samples from two large Midwestern state universities; no polygraph was used in these samples. The police reported 50% were false.

Kanin's study has been criticized by those who believe false allegations of rape and sexual assault are rare. For example, Lisak et. al (2010) disagree with Kanin's use of the polygraph and maintain the prevalence of false allegations in various studies is between 2% and 10%.

In past FBI surveys, the best estimate of false rape charges was 8% (Gross, 2009). This can be compared to unfounded reports of other serious felonies, which were about 2%. More recent FBI surveys indicate the unfounded rate has dropped somewhat in recent years, along with other serious felonies. Alan Dershowitz (1992) noted years ago that rape was the crime with the highest unfounded rate.

Ferguson and Malouff (2016) performed a meta-analysis to determine the rate of confirmed false reports of sexual assault to police. They identified seven studies where researchers evaluated sexual assault cases to determine the rate of confirmed false reports. The meta-analysis calculated an overall rate and tested for possible moderators of effect size. The meta-analytic rate of false reports of sexual assault was .052 (95 % CI .030, .089). The rates for the individual studies were heterogeneous so they examined possible moderators. But none of the moderator variables—year of publication, whether the data set used had information in addition to police reports, whether the study was completed in the U.S. or elsewhere, and whether inter-rater reliabilities were reported—were significant.

Rumney and McCartan (2017) observe that “the subject of false rape allegations is shrouded in anxiety, confusion, and misunderstanding.” They found an enormous variation in the literature in falsity rates, which were as low as 0.6% and as high as 90%. They examined 701 cases of purported false allegations of rape and other forms of wrongdoing. They stress the importance of terminology, noting the difference between “malicious,” “false,” “unsubstantiated,” “unproven,” and “unconfirmed.” The latter three terms may mean the allegation is entirely untrue, partially true, or wholly true. They found the rate at which false allegations are said to occur depends on how they are counted and noted that all the studies they reviewed had inherent limitations. They concluded that false allegations are hard to identify in the absence of evidence establishing the allegation is untrue. In addition, some retractions may not be genuine.

O'Donohue, Cummings, & Willis (2018) observe there is a large variety of sampling methods in the literature on false allegations. This includes unrepresentative samples and unclear and sometimes invalid criteria to determine whether an allegation is true or false. The result is that there is a large variation in estimated rates of false allegations. They report that the studies are usually in the 2% to 5% range and note that in analogue studies of false claims of touching, nearly one-third of children make false claims. They conclude most allegations are true but that false allegations occur at some non-negligible rate.

Lonsway (2010) observes that the estimates of false reports range from 2% to 10%, depending upon which specific studies are included. She found that reports characterized as false were more likely resemble the stereotype of a "real rape," with a stranger, weapon, and high levels of physical violence. She noted that the person making the false report was likely to suffer from mental illness or severe emotional problems and observed that false cases may therefore resemble Munchausen's Syndrome.

McGrath et al. (2018) conclude the 2% false report rate that is frequently cited is not only inaccurate, but has no basis in reality because there is no published research to support it. They assert that the claim that false reports are rare is misleading and state, "The reality is that citation of this number is baseless and ultimately fraudulent" (p. 200). They stress the importance of due process and careful investigation in all cases of alleged sexual assault.

Pathways to False Allegations

There are two major pathways to a false allegation of sexual assault. The first is that the person has a false memory and the second is that the person is making it up. Although young children are more vulnerable to false memories than older children and adults, older children and adults can also confuse something they talked about or something they just imagined with something that happened. Ceci et al. (2007) state that the assumption that suggestibility and suggestive interviews are primarily a problem for younger children is unwarranted.

There is a large body of literature demonstrating how suggestive techniques can produce false memories in adults for a variety of events that never happened. People have become convinced that as a child they had knocked over a punch bowl at a wedding, been lost in a shopping mall, nearly drowned and had to be rescued by a lifeguard, or were a victim of a vicious animal attack. A person who initially made a false allegation knowing it was false can come to believe it is true.

O'Donohue, et al. (2016) note that when the two pathways are not distinguished, studies on the rates of false allegations range from 1% to 9%. They don't believe most false allegations of young children are due to the child deliberately lying; they see them arising from suggestive interviews. They also discuss child pathology including conduct disorder, oppositional defiant disorder, and personality disorders.

Rumney (2006) discusses the importance of defining terms. For example, the following situations are different:

- Allegations of an event that the complainant knows never occurred;
- Non-malicious allegations from people with medical conditions who truly believe they have been raped.
- Intoxicated complainants who thought they had been raped but the medical examination shows no sexual contact took place.

Engle and O'Donohue (2012) propose 11 pathways to false allegations in adolescents and adults. These include lying, implied consent, false memories, intoxication, antisocial personality disorder, borderline personality disorder, histrionic personality disorder, delirium, psychotic disorder, dissociation, and intellectual disability. They note that these pathways originate in psychological problems in the individual and suggest forensic psychological examinations of both the accused and the accuser.

Reasons for Deliberately Falsifying Sexual Assault Claims

Kanin (2004) discusses motives behind deliberate false allegations. With the cooperation of the police agency of a small metropolitan community, 45 false rape allegations covering a nine-year period were studied. These false rape allegations constituted 41% of the total forcible rape cases ($n = 109$) reported during this period. He reports that false allegations appear to serve three major functions for the complainants: providing an alibi, seeking revenge, and obtaining sympathy and attention. He concludes the false rape allegations were not the consequence of a gender-linked aberration but reflected impulsive and desperate efforts to cope with personal and social stress situations.

O'Neal, et al. (2014) observe that the issue of false allegations is highly controversial. Portrayals of women who make false allegations are negative and leave little room for understanding the complex motivations behind false

complaints of sexual assault. They performed a study using detailed qualitative data on 55 sexual assault cases that were reported to the Los Angeles Police Department in 2008 and that were subsequently unfounded. They then identified the factors that motivated complainants to file false allegations. They found that motivations for false allegations fall into five overlapping categories: avoiding trouble/providing an alibi, anger or revenge, attention seeking, mental illness, and guilt/remorse. They conclude that motivations for filing false reports are varied and complex, often resulting from a need to alleviate social and personal distress.

De Zutter, et al. (2018) examined motives to file a false allegation of rape and concluded gain is the predominant factor. They examined a sample of 57 proven false allegations provided by the National Unit of the Dutch National Police (NU). The complete files were studied to ensure correct classification by the NU and to identify the motives of the complainants. They propose a list of motives in which gain is the predominant factor. In the proposed list, complainants file a false allegation out of material gain, emotional gain, or a disturbed mental state. The list can be subdivided into eight different categories: material gain, alibi, revenge, sympathy, attention, a disturbed mental state, relabeling, or regret.

McGrath et al. (2018) provide several examples in actual cases of motivations for making false allegations and discuss “red flags” that are helpful in identifying potential false reports. They note that these are not conclusive evidence the allegation is false, but indicate the need for a careful investigation that includes a detailed and in-depth interview with the complainant. Their chapter also includes an analysis of the infamous Duke University Lacrosse team case in 2006.

Campus Sexual Assault and Affirmative Consent

Sexual assault on college campus has drawn tremendous public attention and colleges are under pressure to respond. Gerstmann (2019) observes that in many cases, the result is a system of sexual assault tribunals that define sexual offenses in an unconstitutionally broad manner that punishes the accused and labels them as sex offenders without a fair hearing. He argues that colleges tribunals are depriving accused students of due process, while at the same time are failing to protect actual victims of assault. He concludes the way college campuses respond to sexual assault allegations serves everyone poorly. Falsely accused students are punished by the lack of due process, but actual victims are not protected.

Sexual assault is defined by the absence of “affirmative consent.” Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Each person must ensure he has affirmative consent from the other. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship or the fact of past sexual relations between a couple should not by itself be assumed to be an indicator of affirmative consent.

Gerstmann reports that the nation’s first mandatory affirmative consent legislation was signed by California Governor Jerry Brown in the fall of 2014. The legislation applies to all schools, public or private, receiving state funds. Since then other states have adopted similar legislation and more than 1,400 colleges and universities have adopted affirmative consent policies defining sexual assault. He states that although affirmative consent laws do not inherently shift the burden of proof, in practice they can lead to confusion. The accused may have to prove his partner affirmatively consented to every contact or he is presumed guilty of sexual misconduct.

An example: A couple are sleeping in bed together. The man wakes up and kisses the woman while she is still asleep. Because a sleeping person cannot give consent, this would be considered sexual misconduct. The problem is that the affirmative consent rules don’t distinguish between this and pinning someone to the wall and forcing a kiss on them. Sexual assault and unwanted sexual contact can be confused.

Willis et al. (2019) surveyed 707 college students from three universities to determine when sexual consent is likely to be communicated explicitly and verbally as opposed to silence or a lack of resistance. They found that explicit verbal consent cues are less likely when the person is a woman, when the sexual behavior is not vaginal-penile intercourse, and when the sexual relationship is casual. Both female and male students see affirmative consent as something men need to get from women. According to the traditional sexual script, women are supposed to be the gatekeepers in a sexual encounter (also see Curtis & Burnett, 2017).

I have seen this mindset in practice. I have had cases where a couple hook up in a bar, get drunk, and go to one of their apartments and have sex. The next day, the woman regrets it and presses charges against the man because she was too drunk to give consent. However, I haven’t encountered a case where the man

wakes up and realizes the woman performed oral sex on him while he was passing out and the woman is charged with sexual assault.

Willis et al. conclude that the standard practice of obtaining consent varies by context. This contextual nature of affirmative consent means that communicating consent should never be taken for granted.

Sexual Behavior and Knowledge in Adolescents

Children and adolescents are more sexual than many people realize, especially with the easy access to social media and internet. This is important in evaluating allegations of sexual assault in older children and adolescents because it may be believed they wouldn't have this type of knowledge unless they had been abused by an older person.

A 2011 national survey from the U.S. Department of Health and Human Services found 63% of females and 64% of males age 18 to 19 have had sexual intercourse at least once. For those only 15 to 17 the percentages were 27% and 28%. Child Trends (2005) reported that in a national survey 55% of males and 54% of females reported engaging in oral sex.

The lyrics to rap songs can be sexually explicit. For example, Snoop Dogg has a song called "Sensual Seduction" and the Eastside Boys have a song called "Skeet Skeet." The lyrics to the latter include phrases such as, "bend over shorty, to da mother fuckin back."

Books targeted to adolescents can be sexually explicit, e.g.,

- Paul Ruditis (2005). *Rainbow Party*. The adolescent girls plan to throw a party where each one will put on a different color lipstick and perform oral sex on all the boys.
- Melvin Burgess (2014). *Doing It*. The book is about three teenaged boys and their sexual experiences. It is recommended for 7th to 12th grade boys.
- Kate Brian (2005). *The Virginity Club*. About virginity and the secrets the girls keep from each other.
- E.L. James (2012). The explicitly sexual novels, *Fifty Shades of Grey*, and its sequels, *Fifty Shades Darker* and *Fifty Shades Freed* not explicitly targeted to adolescents but they readily available and popular among teenage girls.

Conclusions

There is no definitive data on the frequency of false sexual assault allegations. O'Donohue, et al. (2018) observe that methodological problems mean the actual rate of false allegations is unknown. Burnett (2016) states, "Until a methodologically rigorous, appropriately funded, exhaustive survey can be launched, the reality is that the extent of false allegations is likely to remain a 'dark figure'." Gerstmann (2019) observes, "Because the studies vary so widely in their conclusions . . . the only fair conclusion is that we really don't have good estimates of the percentage of false allegations." McGrath et al. (2018) conclude, "False reports of sexual assault are a possibility that must be considered in every case, along with the possibility that the reporter is telling the truth. The truth is only established by an investigation of the evidence. It is not established by the desires or beliefs of investigators."

The recent standard of affirmative consent adds to the confusion. My conclusion is that no one knows how often false sexual assault allegations occur, but they happen often enough that the possibility should always be considered.

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