

# Rising rape cases, a broken criminal justice system and the 'digital strip search'

December 18 2019, by Michelle McManus and Louise Almond

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[New rape statistics](#) have highlighted what many people already know: the

UK's criminal justice system is broken. Rape allegations are at a record high, but the number of cases progressing through from [charging to prosecution](#) have significantly dropped.

A Cabinet Office report [leaked to \*The Guardian\*](#) suggested a lack of police resources were a key contributing factor. While this is clearly having an impact, it would be wrong to blame the whole crisis on police resources. The issue goes to the heart of the criminal justice system and how it treats sexual assault victims.

The statistics on [rape](#) in the UK are shocking. According to the Crown Prosecution Service's [Violence Against Women and Girls report](#), rape figures from 2017 to 2019 showed that the number of suspects referred for a charge of rape by the police has fallen by 22.8%. Charges for rape have fallen by 38%, prosecutions have fallen by 32.8% and the number of convictions have fallen by 26.9%.

Yet recorded offenses of rape are increasing at [an alarming rate](#). The [crime data](#) shows there is a 350% increase in the number of rapes recorded by the police when comparing figures from 2008 to 2019. Recorded crimes, include offenses reported to the police, but do not necessarily result in charge or conviction.

And, according to the Crime Survey for England and Wales, just 17% of people report their rape, so many offenses [do not even enter the criminal justice system](#).

So why when we are finally at a point in society where the reporting of sexual violence is [increasing](#) are there huge reductions in the amount making it through each stage of the criminal justice system?

## **The digital strip search**

The majority of rapes take place in a room where there are no witnesses. And there is unlikely to be [video evidence](#) that shows consent was not given.

When a victim initially discloses to the police that they have been a victim of rape, the process often starts with them having to offer themselves up to a ["digital strip search"](#). This involves police and lawyers scrutinizing personal photographs and messages from the victim's phone. A [recent report by the Crown Prosecution Service \(CPS\)](#) states:

This is not something that should be requested as a matter of course in every case. Only reasonable lines of inquiry should be pursued, to avoid unnecessary intrusion into a complainant's personal life.

But the [decision to charge a suspect](#) requires the CPS to find "sufficient evidence to provide a realistic prospect of conviction." So the "type" of girl/victim becomes a key part in each stage of decision making as the narrative and evidence must be understood and interpreted by a jury.

Defence teams in rape trials often attempt to tarnish the credibility of the victim, questioning whether they showed "normal sexual behavior." But this is a dangerous game. Issues like [what the victim was wearing](#), intoxication levels, how the victim interacted with the attacker, have all been shown to influence [negative perceptions and outcomes](#) in rape cases.

## **Victims are not "perfect"**

It is important for defense teams to challenge a victim's versions of events, but now [the CPS](#), as well as [victim groups](#), are rightly raising questions about the requirements for victims to fully disclose all aspects of their lives, which make them feel like [they are the ones under investigation](#).

This problem was highlighted in the recent high-profile [Grace Millane murder trial](#) in New Zealand. In attempting to create [reasonable doubt](#) about the case, the accused lawyers brought into evidence the amount of alcohol Grace drank and her previous sexual history. Victims can face [similar questioning](#) in the UK.

The fact is there is no such thing as the "[perfect](#)" [rape victim](#). We need to urgently review how far the courts can delve into a victim's life and there should be clear guidelines about what should be off limits.

## **Changes in offending behavior**

Our work in [serious sexual offenses and homicide](#) has shown how [modern technology](#) is leading to [key changes](#), not just in the behavior of sex offenders, but also in the behavior shown by the general public when it comes to sex.

People are meeting their attackers [after brief online interactions](#), in riskier, isolated places—sometimes even in the [victim or offender's home](#). This change from outdoors (where more precautions are taken) to indoors has led to more bold, confident and overt [sexual offending](#). And defense teams can interpret these decisions to create reasonable doubt in a jury's mind over the question of consent.

Sexual offenses where the victim [met their attacker online](#) are going to continue to increase, as will the technology and data which is available to examine. Huge [backlogs across police forces](#) with additional [delays in rape charge decision making](#) are already being reported.

[Urgent reviews and funding](#) are needed to ensure that victims are supported from the initial crime report through to court. It is in our power to ensure that victims aren't prevented from reporting crimes because the system is not effectively set up to deal with the demand this

creates.

But there are also huge ethical questions about the balance of justice regarding how far victims can reasonably be pushed in court. And given the clear increase of rape cases failing [due to victims retracting their accusations](#), this has never been so critical.

Simply stating this is [a policing resource issue](#) is not a sufficient response. The system is unintentionally giving confidence to perpetrators by effectively putting a victim's personal life on trial before a case even gets to court. There is now a real risk society is going back to a time when victims were too afraid to report rape as they had no confidence the system would protect them.

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