



**Position Statement:
Sexual Battery Victims' Right to
Review the Final Law Enforcement Report and Provide a Statement**

During the 2011 legislative session, the Florida legislature passed a new provision related to sexual battery victim rights:

Fla. Stat. 794.052 (1) – A law enforcement officer who investigates an alleged sexual battery shall:

(c) – Prior to submitting a final report, permit the victim to review the final report and provide a statement as to the accuracy of the final report.

FCASV strongly encourages Florida law enforcement agencies to fully implement this new requirement. FCASV also strongly encourages law enforcement to fully involve victim advocates at Florida's certified rape crisis centers in the process.

Background and Importance of the Provision:

FCASV anticipates that this new protocol will strengthen the criminal justice response to sexual battery in our state. The statute clearly provides the opportunity to victims to comment on any errors they may identify in the law enforcement report. Sexual battery is a traumatic experience, because traumatic memories are developed, stored and retrieved differently than other memories, it is not unusual that a victim recounts some details of the assault differently from one retelling to the next (Lisak, 2000). If the victim was drugged, this will also affect the memory and re-telling of the event (Lisak, 2000). These factors point to the importance of a subsequent discussion and review of the report with the victim to develop a full investigative record.

While 9,885 forcible sex offenses were reported in Florida in 2010, only 2,622 arrests were made and many more sex offenses went unreported (FDLE). According to national researchers, approximately one out of every nine adult women in Florida has been the victim of forcible rape, which amounts to over 700,000 women (Ruggiero and Kilpatrick, 2003). In order to ensure public safety and prevent future sexual violence, the reporting, investigation and prosecution rates of sexual battery must be improved. This is a national problem that needs local, state and national responses.

On September 14, 2010, the United State Senate Judiciary Hearing held a hearing entitled *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases*. Police Commissioner Charles H. Ramsey of the Philadelphia Police Department testified at the hearing.

He has 42 years in law enforcement, first in Chicago for 30 years, then as Chief of the Metropolitan Police Department in Washington, D.C. for nine years, and now as Police Commissioner in Philadelphia. He also serves as the President of the Police Executive Research Forum (PERF), the First Vice President of Major Cities Chiefs, and as a member of the executive committee of the International Association of Chiefs of Police. At the hearing he stated:

“Fostering collaboration amongst governmental organizations, police departments, courts, and advocacy and prevention groups is critical in ensuring that we work with victims of rape and sexual assault in a manner that is compassionate, and under a process that is transparent. We must all be advocates for anyone who has been impacted by this kind of violence. If there are lessons to be learned from our Department, I would urge others to focus on this aspect of how we report and investigate rape and sexual assault. Don’t do it alone - Invite your stakeholders to be a part of this process, and work together in treating rape and sexual assault from a holistic perspective. Our partnerships have strengthened every part of the process, from reporting each case of sexual assault, irrespective of the circumstances, to a thorough investigation by well-trained specialized detectives, and finally to working with our medical and mental health providers in minimizing the trauma experienced by victims of the heinous crime.”

Implementing the Statute:

Many law enforcement agencies have already instituted policies regarding contacting victims about the provision and accepting statements as to the accuracy of the final report. FCASV is aware, however, of a few concerns about the impact inconsistencies between the final report and the victim’s statement might have on the prosecution of the case. FCASV believes it is likely that any inconsistencies in the case will come to light regardless of whether or not the victim makes a statement as to the accuracy of the report, and that it is important to uncover those inconsistencies as early as possible in the process. Reviewing and discussing the report with the victim before it is finalized would give the investigating officer an important opportunity to build a relationship of trust and mutual respect that will assist the prosecution of the sexual battery case.

Although the language of this statute appears simple and straightforward, its brevity raises several questions when put into practice. Therefore, FCASV would like to offer the following interpretive recommendations to clarify several issues and ensure that the application of the statute is consistent with legislative intent:

Notification

FCASV recommends that investigating officers give victims timely notice of their right to view the final police report. We advise that the officer call the victim upon completion of the report. At this time, the victim should be advised of:

- His or her right to review the final report and provide a statement as to its accuracy;
- The availability of a victim advocate to assist the victim in this review process; and
- Any preferred or necessary timeframes for scheduling the victim's review and for completing any statements.

If after two phone calls the victim cannot be reached, the officer may send a certified letter to the victim advising him or her of the date that the case will be submitted to the State Attorney's Office for review.

Victim Advocate Involvement

Victim advocates can and should apprise victims of their rights and support them in asserting these rights. We encourage law enforcement to involve a victim advocate from the local certified rape crisis center in this process. Advocates can also help victims understand the role of law enforcement, the criminal justice process in general, and factors affecting successful prosecution of the case. Advocates can and should help victims think about the pros and cons of making a statement in response to the report and how to frame the statement if the victim desires to make one. Advocates from certified rape crisis centers are ethically bound to discuss options with victims, helping them understand the potential ramifications of each, without inserting personal bias or offering direct advice.

Sexual Battery

794.052(c) applies to cases of sexual battery as defined by Chapter 794, Fla. Stat. Other types of sex crimes, such as criminal sexual misconduct and lewd and lascivious offenses, are not covered by this legislation.

Minor Victims

As defined in Chapter 794, 'victim' is a person who has been the object of a sexual offense. Victims of sexual battery include minors as well as adults; there is no age distinction. It is important to remember that while minors are victims, only sexual battery as legally defined will be subject to the provisions of 794.052 (c). All other sex crimes typically involving minors are not to be included.

Audio and/or Video Statements

FCASV is not currently taking a position on whether or not it is a best practice to make an audio or video recording of a victim statement. For law enforcement agencies that elect to record statements by audio or video, the time allotted for transcription of this information may not allow for prompt review by the victim. Therefore, we recommend that 'viewing the report' should be interpreted to include listening to an audio recording or watching a videotaped statement as well as the reading of the report.

Final Report

FCASV recommends that 'submission of final report' be interpreted as the submission of the investigating officer's report to the State Attorney's Office including all information that will be submitted. The language does not allow for limiting the review to only the victim's statement. However, this statute does not remove any current legally binding obligations to confidentiality of other witnesses, so all confidential and/or identifying information will have to be redacted prior to allowing the victim to review the report.

For More Information

For more information on sexual battery victims' legal rights and remedies, please visit the Publications section of FCASV's website and view this brochure in English, Spanish and/or Creole: <http://fcasv.org/sites/default/files/SBVictim%20Rights%206-11Final251adds.pdf>

For more information on this position statement, please contact FCASV at (850) 297-2000 or etucker@fcasv.org.

Citations

Lisak, David (2000). *The Neurobiology of Trauma*, reprinted in National Judicial Education program, *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases*.

Ruggiero & Kilpatrick (2003). *Rape in Florida: A Report to the state*. National Violence Against Women Prevention Research Center, Medical University of South Carolina.