

Closing the loophole on police sexual violence



Allison Danish, MPH (c), University of Minnesota School of Public Health

Opinion Editorial

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In October 2017, two New York City police officers were charged with the rape and kidnapping of an 18-year-old Brooklyn woman named Anna Chambers [1]. After pulling her over for possession of marijuana in her vehicle, the officers detained her in their police van and took turns assaulting her. In the case that followed, a horrifying loophole in the criminal code was uncovered: there is no law that specifically states a person is unable to give consent to an officer while under arrest, detained, or in custody. While prosecutors asserted that Anna pleaded with the officers to stop, the defense team argued it was consensual.

Current Sexual Conduct Laws

In a report from BuzzFeed News, Albert Samaha analyzed the criminal codes of all 50 states, and came to the conclusion that 35 states have either unclear or non-existent sexual conduct laws with regard to consent while a person is under arrest, in detention, or in custody [2]. These unclear or otherwise nonexistent laws allow officers and their defense teams to argue any sexual acts between the officers and those in their custody are consensual. In response to the Anna Chambers case and subsequent public outrage, New York has since been in the process of passing a bill to amend their current criminal code to explicitly state that individuals under arrest, in detention, or in custody are incapable of giving consent [3]. Joining New York, Minnesota has also introduced a bill to close the loophole by amending the Minnesota state criminal code [4]. However, other states have yet to follow suit.

Current sexual conduct laws nationwide recognize the importance of power dynamics in giving consent. Clinical therapists cannot gain sexual consent from their patients, members of the clergy may not gain consent from those seeking their spiritual comfort, and employees of correctional and treatment facilities may not gain consent of those under the supervision of the facility. These examples clearly illustrate that existing laws reflect an

understanding that consent cannot be given when one party holds power over the other. Omitting the relationship between police officers and detainees is a grievous oversight that must be corrected.

Consequences of the Loophole

This absence in state statute is not inconsequential. While the NYC officers who assaulted Anna were brought to justice, this loophole has allowed for numerous officers to be acquitted or given lighter sentences.

A 2015 Buffalo News investigation collected over 700 accusations over ten years [5, 6]. According to BuzzFeed's Mr. Samaha, of the 158 officers charged with sexual misconduct, close to a fifth were acquitted or had charges dropped because of the consent loophole.

While some officers do face consequences in court, their sentences can be absurdly light. A former Birmingham, Ala. police officer faced a minimum 10-year prison sentence for sodomizing a woman while she was in his custody [7]. His lawyer argued consent, and he received a reduced 18-month sentence.

Not only does the loophole allow officers to commit sexual assault with little, if any, repercussions, it fosters a culture tolerant of police sexual violence. Right after use of excessive force, sexual misconduct is the most frequently reported form of police misconduct, and this is not simply a matter of America's general tolerance for sexual violence [8]. Philip Stinson, a former police officer, performed a three-year national analysis in which he found that about half of the police officer arrests for sexual misconduct were on-duty, while the other half were off-duty but often facilitated by the power of the badge [9]. As one officer mentioned in his taped confession, "the badge gets you the p—sy and the p—sy gets your badge, you know?" [10].

Even more disturbing, the criminal justice system allows for repeat offending by police officers. A 2012 study showed that more than 41 percent of police sexual

violence cases in the Midwest were committed by officers who had previously been accused of similar crimes—averaging 4 victims over 3 years—and remained on the force [11]. This is in part fostered by the “officer shuffle.” Officers resign amidst allegations and are allowed to move across jurisdictions to maintain employment, similar to the Roman Catholic Church’s shuffling of sexually abusive priests [12].

Looking Forward: Solutions

Police sexual misconduct is a complex issue with no simple solution, however the problem is clear: current statutes and practices enable harm. Predominantly perpetrated against young women [13], women of color [14], and otherwise vulnerable women (such as survivors of domestic violence [15]), to ignore police sexual violence is to ignore some of our population’s most vulnerable. Inaction is not a solution, and it is not an option.

Addressing police sexual misconduct is a part of the long-fought battle to eradicate America’s culture of police violence and sexual violence. Amending state criminal sexual conduct laws is the first step we should take to begin to ameliorate this issue.

Author Contact Information

Allison Danish: danis017@umn.edu

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