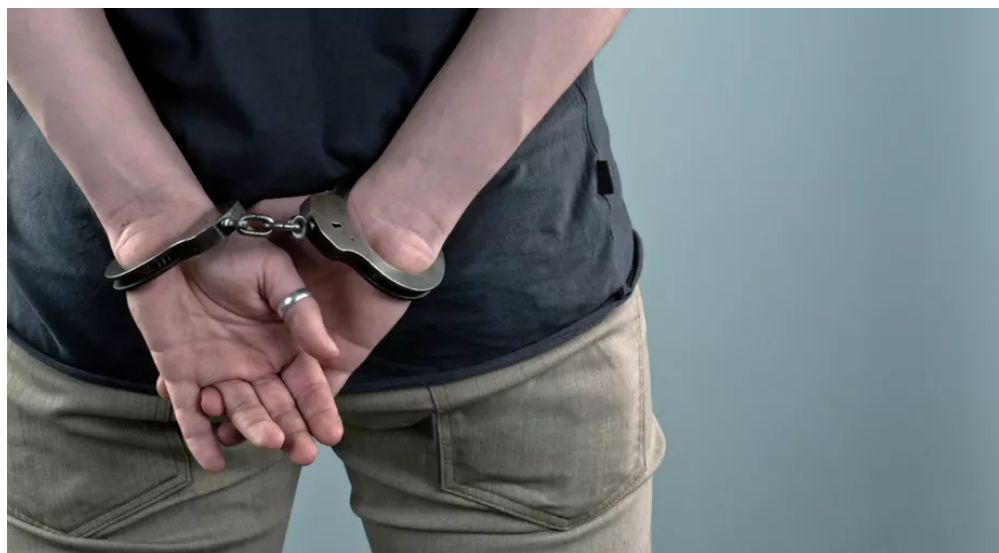


## THE CONVERSATION

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# Victims are more willing to report rape, so why are conviction rates still woeful?

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'I find the accused ...' Torin55

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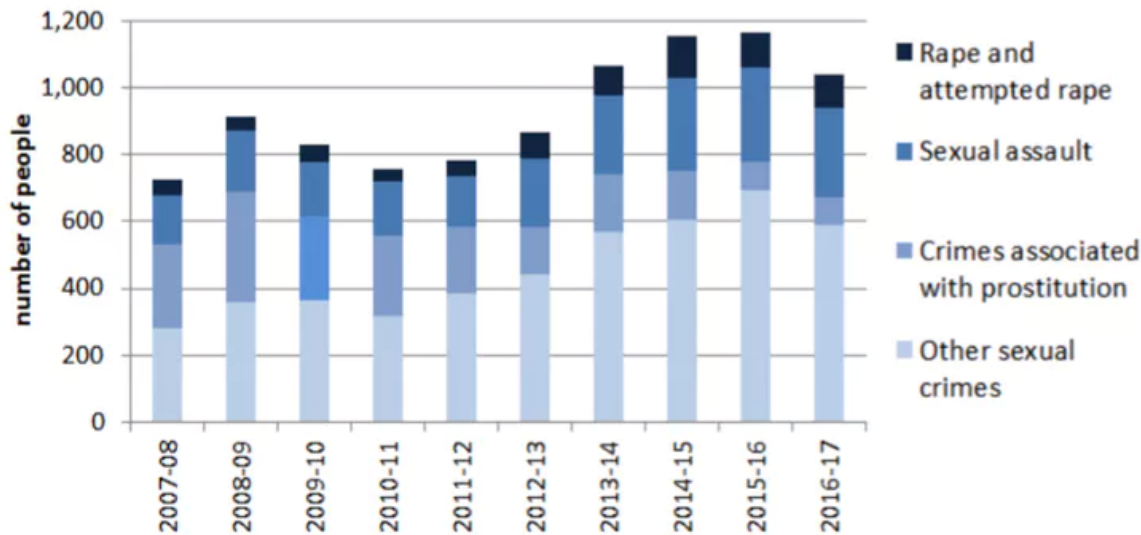
In many countries, conviction rates in cases of rape and other sex crimes are very low. According to one study of the US, Australia, Canada, England, Wales and Scotland, for example, only 7% of cases resulted in a conviction for the original offence charged, and only 13% led to a conviction of any sexual offence.

The number of rapes and attempted rapes reported to the police has generally been **increasing** in recent years, a sign that victims feel more confident in coming forward. Yet there has been no corresponding improvement in prosecutions and convictions. As a result, conviction rates have generally decreased, meaning victims have less access to justice.

Scotland, long known for woeful conviction rates for sex offences, is a good example. At first glance, its latest figures look encouraging: conviction numbers for rape and attempted rape have nearly tripled during this decade, from just 36 in 2010-11 to 98 in 2016-17.

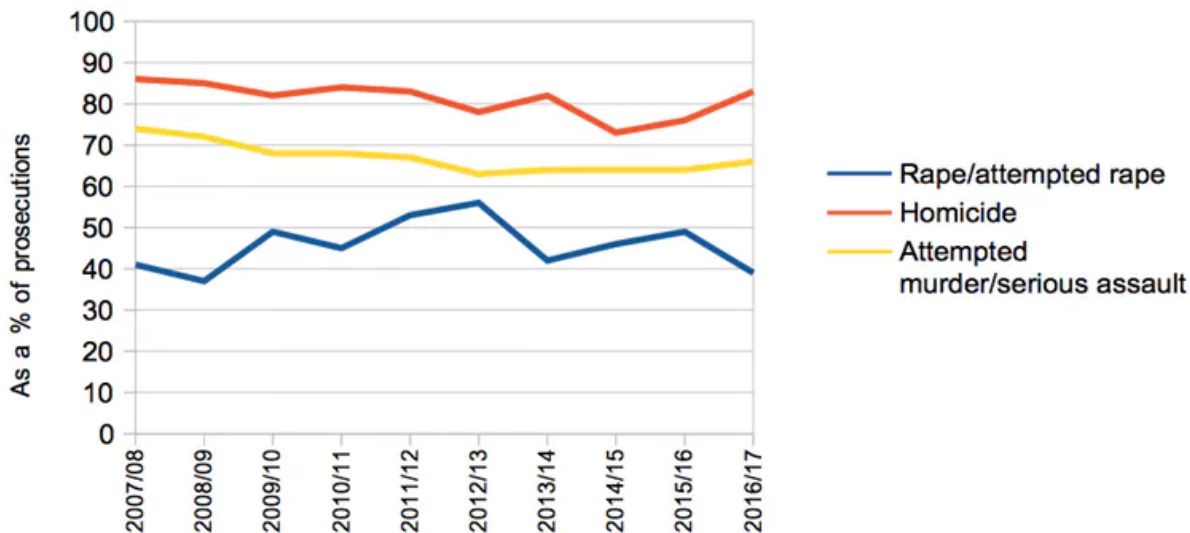
That said, conviction numbers are down for the past two years, having peaked at 125 in 2014/15. More worryingly, only 13% of the rapes or attempted rapes reported were prosecuted in 2016/17. And a mere 5% of complaints – one in 20 – actually resulted in a conviction. Rates are similar in England and Wales.

### Scottish sex crime convictions 2007-17



Scottish government

### Scottish conviction rate comparison



Scottish government

Like many countries, Scotland has a problem with what is known as attrition – the process by which the number of cases initially reported to police do not proceed through the criminal justice system. The figures are particularly concerning if the many cases that remain unreported are taken into account.

### Courageous victims

In keeping with the broader trend, Scottish victims are at least becoming more willing to come forward. As many as 1,755 rapes were reported to the police in 2016-17, a 78% increase on the 997 rapes reported in 2010-11. (That latter year followed changes to the law that broadened the definition of rape.)

It still takes great courage to report a sex crime, but Scotland has made a lot of effort to reform this area and it seems to be having an effect. Nicola Sturgeon’s administration has positioned rape as a national priority, making some £20m available between 2015 and 2018.

Police Scotland has set up a national rape task force, and dedicated specialist rape investigation units. The Scottish prosecution service has changed how rape and other sex offences are prosecuted, including a shift towards specialist prosecutors and setting up a national sexual crimes unit. Scottish judges now have to direct juries in rape cases on how to consider evidence – specifically explaining why a victim may not physically resist their attacker or report an offence immediately.

Police-led campaigns such as “We Can Stop It” have raised awareness that sex without consent is rape. Rape Crisis Scotland last year ran a high-profile, award-winning campaign, “I Just Froze”, challenging public assumptions about how a person should react if they are raped. Together with recent wider movements such as #timesup and #metoo signalling that sexual and gender-based violence are totally unacceptable, these efforts are hopefully helping.

## 'Fight or Freeze' #IJUSTFROZE



One difficulty with prosecution and conviction unique to Scotland is the evidential requirement of corroboration, which requires two different and independent sources of evidence to prove a crime. This is a particular problem for rape cases since they frequently occur in private. Under corroboration rules, victim statements alone, no matter how strong and credible, are not legally sufficient; there needs to be additional evidence to proceed.

### **Rough justice**

With sex offences currently accounting for 75% of high court workload, sexual offences are clearly core business. Yet not only is securing convictions very challenging, those seeking justice still describe their experience as “traumatic”.

Convictions alone do not redress the harms caused by rape and sexual assault – process matters, too. New research we have co-authored suggests victim’s experiences can be improved by providing dedicated rape crisis advocacy workers to support them. This is another welcome recent improvement in Scotland. There are equivalent services in England and Wales but not in many other countries.

Improvements to victim experiences continue to be hampered by the system, however. Questions must be raised about every stage in the process – particularly around how evidence is obtained and used. The use of special measures, such as victims giving their evidence from behind a screen or allowing pre-recorded video evidence, can make a victim’s experience less stressful and produce better evidence. Pre-recording is now possible in Australia, New Zealand, England and Wales, for example, but not Scotland.

There are also issues in Scotland about how evidence is used at trial – particularly regarding sexual history and character evidence. Though subject to **restrictions**, this can still be used to discredit rape complainers to a jury by drawing upon popular gender misconceptions about sexual conduct and reputation.



Progress? icedmocha


A recent review by the Inspectorate of Prosecution concluded that the “ordeal of giving evidence” is particularly acute for victims of sex crimes, with much of it related to questions of this nature. Victim support groups and legal commentators say the legislative protections are either not used in practice or not having the impact intended.

Reducing humiliation and trauma is necessary in and of itself, but if complainers give their “best” evidence and participate fully in legal processes, it should help improve conviction rates. Researchers need to better understand how the procedural safeguards are being used and experienced; this is just as important as, for example, continually raising awareness about the impact of rape or training criminal justice professionals in this area.

Comparing the reasons for attrition between different jurisdictions is far from straightforward. Variations in law around sex offences and evidence, procedure, victims’ rights, and the extent to

which stereotypes around rape persist all affect what happens on the ground.

Yet the Scottish experience certainly shows that general improvements in encouraging victims to come forward is only one aspect of a complex problem. To properly address conviction rates for rape and other sexual offences, the system needs thorough reform. We are still not even close to solving the problem.

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