

KWDI ISSUE PAPER

Research Title Analysis on Prosecutors' Office Statistics on Violence against Women (II) : Focusing on Digital Sexual Crimes and False Accusation
Research Manager Jeong-hye Kim, Associate Research Fellow (Tel: +82-2-3156-7159 / E-mail: kjhye@kwdimail.re.kr)

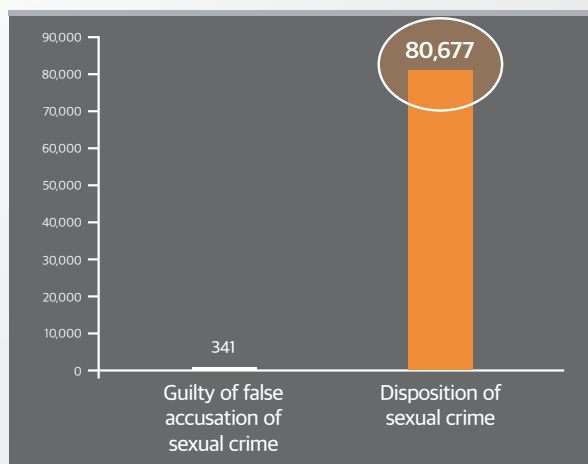
Secondary Victimization caused by 'Criminal Complaints alleging False Accusations of Sexual Crimes' - Analysis of the Prosecutors' Office Statistics on False Accusations -

Abstract

- As there are widespread claims that many sexual crimes are falsely reported, the victims are often threatened with counter accusations and are unduly perceived by the investigative organizations as making false accusations, which in turn render those victims the subject of investigation. Thus, the current research analyzed the case records of the Supreme Prosecutors' Office to understand the status of false accusation charges involving sexual crimes.
- The study examined the nature of the original cases (sexual crime) that led to the false accusation charges, as well as the scale and characteristics, the investigative leads, and the results of the disposition and ruling for the false accusation cases. The study also compared the false accusation cases with the total criminal cases as well as other false accusations unrelated to sexual crimes. In addition, the results of the disposition and ruling of false accusations were compared by investigative leads.
- The study found that the rate of indictment for false accusations of sexual crimes was extremely low, and few people were found guilty of false accusation. The results indicated that the widespread perception regarding the false accusation of sexual crime may be unjustified and that many victims of sexual crimes are exposed to secondary victimization by the threat of counter accusations.

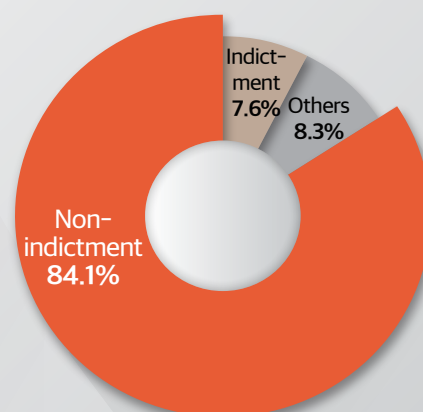
Number of people involved in the cases (2017-2018)

(Unit: Number of people)



Results of the disposition for false accusation cases

(Unit: %)



1. Issues



The widespread claims that the accusations of sexual crimes are often false, the threat of counter accusations by sexual offenders, and the investigative organizations' misperception on false accusations contribute to creating an environment in which sexual crimes are less likely to get reported. In its concluding observations on the report of the Republic of Korea, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recommended that the Republic of Korea "take all measures necessary to prevent the abuse of criminal proceedings precipitated by the bringing of false charges against victims of sexual abuse". However, no statistical analysis so far has identified the scale or the characteristics of false accusation cases on sexual crime. Therefore, the present study analyzed the prosecution's case records to examine the statistics on false accusations of sexual crimes and to understand the relevant issues.

2. Analysis



Research methods

- ▶ Using the records of the case files from the Supreme Prosecutors' Office, the study coded and analyzed 1,190 single suspect cases (excluding duplication) involving false accusation charges of sexual crime from 2017 to 2018. The study also analyzed 5,368 single suspect cases (excluding duplication) of 2017 involving false accusation charges of non-sexual crimes as a control group.



Characteristics of the original cases involving false accusation charges

- ▶ The original sexual crimes involving the false accusation charges were mostly 'adultery/rape/indecent act by force' (80.6%), followed by 'quasi-rape/quasi-indecent act by force and injury/fatality' (12.4%).
- ▶ Most of the victims of sexual crimes (those alleged of false accusations) consisted of women (91.1%) followed by men (6.1%). When the study compared the gender of those alleged of false accusations by investigative leads, the ratio of women (95.2%) was disproportionately high for the cases led by the prosecutors' discernment.
- ▶ 53 victims of sexual crimes (those alleged of false accusations) were minors, indicating that 5.2% of the suspects for the false accusations of sexual crimes were minors. Only one person out of the 44 cases involving false accusations against minors was indicted, and 26 out of 38 cases resulting in non-indictment were due to lack of evidence, indicating that underage victims of sexual crimes experienced unjust counter accusations.
- ▶ The suspects for the original sexual crime that resulted in false accusation charges were mostly male. As for the relationships between the victims of sexual crimes and the suspects, 44.9% of the cases involved

unidentifiable relationships; 8.4% involved strangers; and the remaining 46.7% involved acquaintances. This indicated that false accusation was more likely to be problematic for sexual crimes perpetrated by acquaintances.

- ▶ The study found that it was not uncommon for a third party other than the victims themselves to be alleged of false accusations. Families and relatives (37.1%) of the victims of sexual crimes accounted for the largest proportion of such cases.
- ▶ The place in which the original sexual crime took place that resulted in false accusation charges were mostly 'lodging establishment' (e.g., hotel, motel, etc.) (21.4%) followed by 'the house of the victim or perpetrator of sexual crime' (17.5%). The rate of sexual crimes that occurred at lodging establishment which led to false accusation charges was higher compared to all of the sexual crimes that occurred at lodging establishment. Such findings confirmed a stereotype that the reliability of reports on sexual crimes can be underestimated, as going to a lodging establishment is seen as consent for sexual intercourse.



Investigative leads on false accusations

- ▶ The number of single suspects involving false accusation charges increased from 536 in 2017 to 654 in 2018. The most common investigative leads were 'criminal complaint' (69.2%), followed by 'prosecutors' discernment' (27.7%). During the same period, the 'police discernment' accounted for about 70% of the total criminal investigative leads, while 'prosecutors' discernment' accounted for less than 1%.
- ▶ Among the investigative leads on false accusation cases of non-sexual crimes, the cases involving 'prosecutors' discernment' accounted for 15.6% on average. Even when considering the rule for investigations of false accusations, which emphasizes that investigations into the original incidents should precede, the proportion of cases in which prosecutors discern a need to investigate is greater in cases of false accusations of sexual crimes compared to cases of false accusations of non-sexual crimes.



Disposition for false accusations of sexual crimes

- ▶ The number of non-indicted suspects of sexual crime decreased in 2018, but the number of single suspects of sexual crime that involved false accusation charges increased compared to the previous year. In other words, the possibility of the victims of sexual crime being charged with false accusation increased as non-indictment of sexual crime increased.
- ▶ Of the reasons for non-indictment of sexual crimes, the proportion of cases rendering 'no charges' (54.5%) was more than half, which was high compared to those rendering 'no charges' (29.1%) among total non-indictment cases. This suggested that the characteristics of sexual crimes which were highly likely to result in non-indictment due to 'no charges' raised the possibility of counter allegations against false accusation or perceptions of false accusation.
- ▶ The number of people per month involved in the disposition of false accusations of sexual crimes increased in 2018 compared to the previous year. However, the number of cases involving police

discernment decreased after May 2018 compared to the previous year. This indicated a positive effect of the revised investigation manual announced on May 2018, which required the Supreme Prosecutors' Office to stop investigating false accusations of sexual crimes until a clear judgment was made on whether or not the sexual crime was committed.



Ruling of the false accusations of sexual crimes

- ▶ Among the total cases indicted of false accusations of sexual crimes, 6.1% were acquitted. The most common types of convictions were 'suspension of execution' (41.6%), followed by 'summary order' (31.1%), 'imprisonment for a limited term' (10.7%), and 'penalty concerning property' (9.6%).
- ▶ The acquittal rate for false accusations of sexual crimes was significantly higher compared to the acquittal rate for all criminal offenses during the first and second trials. However, given that the acquittal rates for false accusations of non-sexual crimes were similar to those of sexual crimes, the high acquittal rates for false accusations of sexual crimes could be attributed to the characteristic of false accusation charges in general.
- ▶ The average sentence duration for those found guilty of false accusation on sexual crime was 0.94 year, with most cases requiring sentences of less than a year. The average fine was 2,606,000 won, and the average summary order was 2,549,000 won.



Results of the disposition and ruling for false accusations of sexual crimes by investigative leads

- ▶ With regards to the indictment rates by investigative leads, most cases of prosecutors' discernment (93.0%) resulted in indictment, while 63.3% cases of police discernment led to indictment. Only 7.6% of the criminal complaints led to indictment, and none of the accusations resulted in indictment, suggesting that criminal complaints or accusations of false allegations on sexual crimes put forward by perpetrators or third parties were unlikely to result in indictment.

<Table 1> Dispositions for false accusations of sexual crimes by investigative leads (2017~2018)

(Unit: Number of persons, %)

Category	Indictment	Non-indictment	Others*	Total
Prosecutors' discernment	307	14	9	330
	93.0	4.2	2.7	100.0
Police discernment	19	8	3	30
	63.3	26.7	10.0	100.0
Criminal complaint	63	693	68	824
	7.6	84.1	8.3	100.0
Accusation	0	3	3	6
	0.0	50.0	50.0	100.0
Total	389	718	83	1,190
	32.7	60.3	7.0	100.0

* 'Others' included transfer to another department, suspension of indictment, suspension of witness, and transfer to a protection case.

- ▶ Of the false accusation cases on sexual crimes, 3.3% of the prosecutors' discernment and 16.7% of the police discernment resulted in non-indictment on the grounds of no charges, indicating that there were cases in which investigations were initiated based on the investigative organizations' discernment of false accusation despite the absence of any false accusation charge. More than half (58.5%) of the non-indicted criminal complaints had insufficient evidence, and 22.8% of the criminal complaints were dismissed.

<Table 2> Reasons for non-indictment of false accusations on sexual crimes by investigative leads (2017-2018)

(Unit: Number of persons, %)

Category	Suspension of indictment	No charge		Deemed not guilty	Absence of the right to prosecute	Dismissal	Total
		Crime not established	Insufficient evidence				
Prosecutors' discernment	3	0	11	0	0	0	14
	0.9	0.0	3.3	0.0	0.0	0.0	4.2
Police discernment	3	0	5	0	0	0	8
	10.0	0.0	16.7	0.0	0.0	0.0	26.7
Criminal complaint	12	4	482	0	7	188	693
	1.5	0.5	58.5	0.0	0.8	22.8	84.1
Accusation	0	0	3	0	0	0	3
	0.0	0.0	50.0	0.0	0.0	0.0	50.0
Total	18	4	501	0	7	188	718
	1.5	0.3	42.1	0.0	0.6	15.8	60.3

- ▶ Differences were observed in the results of ruling by investigative leads. Among the criminal complaints against false accusations of sexual crimes that were indicted, the acquittal rate was high at 15.5%. All the cases indicted by police discernment were found guilty, and 4.5% of the cases indicted by prosecutors' discernment were found not guilty.
- ▶ Out of a total of 1,190 single suspects involved in false accusations of sexual crimes during 2017-2018, only 28.7% (341 people) were found guilty, and 60.3% were not even indicted. Considering that more than 80,000 sexual crime perpetrators were investigated by the prosecution during 2017-2018 and the number of cases resulting in non-indictment were more than 30,000, the rate of false accusations on sexual crimes was extremely small.

<Table 3> Results of the disposition and ruling for false accusations of sexual crimes by investigative leads (2017~2018)

(Unit: Number of persons, %)

Category	Indictment				Non-indictment	Others (disposition)**	Total
	Not guilty	Guilty	Others (verdict)*	Sub-total			
Prosecutors' discernment	13	273	21	307	14	9	330
	3.9	82.7	6.4	93.0	4.2	2.7	100.0
Police discernment	0	19	0	19	8	3	30
	0.0	63.3	0.0	63.3	26.7	10.0	100.0
Criminal complaint	9	49	5	63	693	68	824
	1.1	5.9	0.6	7.6	84.1	8.3	100.0
Accusation	0	0	0	0	3	3	6
	0.0	0.0	0.0	0.0	50.0	50.0	100.0
Total	22	341	26	389	718	83	1,190
	1.8	28.7	2.2	32.7	60.3	7.0	100.0

* 'Others (verdict)' included the cases in which the first trials were underway, transfer to the juvenile court, and the results that could not be confirmed.

** 'Others (disposition)' included transfer to another department, suspension of indictment, suspension of witness, and transfer to a protection case.

- ▶ Among the cases in which the suspects charged with sexual crime filed criminal complaints against their victims for false accusations, a meager 5.9% (24.5 people on average per year) rendered guilty verdicts. This highlights the problem presented by perpetrators of sexual crimes falsely alleging their victims of false accusation.

3. Policy recommendations

- ✔ A false accusation is a crime that occurs when a false fact is reported for the purpose of subjecting others to criminal punishments or disciplinary actions. Therefore, it should entail an active demonstration to prove that the contents of the report are contrary to the objective truth. Victims of sexual crimes should not be unreasonably charged with false accusations simply because of the unverifiable contents of their reports or the social conventions prescribing the images of sexual crime victims.
- ✔ Although few victims of sexual crimes are charged or convicted of false accusations, the negative impact of counter accusations against the victims of sexual crimes can be significant. The threat of being charged with false accusation encourages the victims of sexual crimes to remain silent.
- ✔ The government should prevent misinterpretations of the law and the unfair practice of lodging false accusation charges on the victims of sexual crimes despite the absence of hard evidence proving that they made false reports. In particular, suspects or defendants should not resort to making counter accusations against their victims as a defensive tool. Also, lawyers' attitude of encouraging counter accusations should be recognized as a serious violation of lawyers' ethics codes. In addition, it is imperative that investigative and judicial organizations shift their perspectives on sexual crimes to prevent the victims from being falsely charged on the grounds of unjust social perceptions about the sexual crime victims.

Reference

- UN Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of the Republic of Korea, CEDAW/C/KOR/CO/8

Relevant ministry : Criminal Department 2, The Supreme Prosecutors' Office