



Review

A review of drug-facilitated sexual assault evidence: An Irish perspective

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ABSTRACT

Drug-facilitated sexual assault (DFSA) is prevalent in Western society. There is a significant degree of confusion regarding the definition and prevalence of DFSA. It is a subject with medical, scientific and legal aspects. These facets are explored in this review through a detailed examination of published data. The legal issues are defined in the context of the Irish judicial system. Several key case-law studies are presented to aid in understanding unresolved difficulties that persist in this complex field of forensics. The aim of this paper is to aid individuals from disparate disciplines to increase their evidence base in the complex and evolving issue of DFSA.

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1. Introduction

Drug facilitated sexual assault (DFSA) is a sexual assault perpetrated on an individual who has lost the capacity to consent due to intoxication. It is a complex issue involving aspects from many disciplines, including forensic science, toxicology, medicine and the legal system. The complexity involved often leads to confusion regarding the definition of DFSA and its prevalence. This review discusses the definition of DFSA, the evidence regarding the prevalence in Ireland, the substances involved in numerous jurisdictions and the legal issues and case law in an Irish context.

2. Defining DFSA

The act of rape is defined in law in Ireland in the Criminal Law (Rape) Act, 1981 and in the Criminal Law (Rape) (Amendment) Act, 1990.^{1,2} In general terms, rape is defined as unlawful sexual intercourse or certain sexual activity perpetrated on an individual where consent is not present, or where consent is not valid due to a lack of

capacity of that individual to consent. A lack of capacity can be due to age, mental capacity or due to intoxication.

Rape that is facilitated by alcohol, drugs or other intoxicants has previously been confused with what has been termed 'date rape'. The term 'date rape' was first coined by Karen Barrett in September 1982 in an article called 'Date Rape: A Campus Epidemic?' in Ms. Magazine.³ Date rape can be a specific form of DFSA where the victim is on a date with the perpetrator. There are many other situations where drugs and alcohol may be used to facilitate a sexual assault. Terms such as 'date rape drugs' have been used to describe drugs that can cause biological effects that facilitate sexual assault. Drinks with intoxicating or inhibition-reducing drugs added in order to drug a potential victim have been called 'spiked drinks'.^{4,5}

In general, there are three reasons why consent for sexual acts may be invalid. First, consent may be invalid due to the age of the individual. In all European jurisdictions an age of consent is defined. This age varies significantly between jurisdictions. Second, the individual may not be mentally capable of consenting. Third, the individual may be intoxicated and therefore may not have the capacity to consent. In DFSA, the inability to consent is due to incapacity or unconsciousness due to an intoxicating substance.⁶ Consent given while under the influence of various drugs that do not render the individual unconscious or incapacitated may also be invalid. This has been shown to be the case where, for example, the

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individual has ingested MDMA (3,4-methylenedioxy-*N*-methylamphetamine, ecstasy). In these situations, the individual may feel more empathy towards others, act in a disinhibited manner and possess a heightened sexual desire. The individual may have taken the MDMA knowingly, thus leaving themselves prone to opportunistic DFSA. There are cases where the individual may have ingested the MDMA unknowingly.⁷ The consent, if given, by the individual while under the influence of MDMA may be considered invalid in a court as the individual did not have the capacity to consent.⁸

DFSAs have been described as the surreptitious administration of a drug for the purpose of facilitating non-consensual sexual intercourse. The drug is usually administered in a drink.⁹ Others have included alcohol as one of the drugs used. The definition of DFSA can then be defined as sexual activity that occurs where consent for the activity is either absent or invalid due to the effects of drugs, which includes alcohol.¹⁰ A further expansion of the substances that can be used in DFSA includes noxious substances or chemical agents that can be employed to facilitate sexual contact.⁷

There are three separate circumstances where DFSA can occur. These are where: (i) there is an involuntary ingestion of an intoxicating substance by the victim, (ii) there is both voluntary and involuntary ingestion of an intoxicating substance by the victim and (iii) there is voluntary ingestion of an intoxicating substance by the victim.¹¹

Possibly the most comprehensive definition of DFSA comes from the (U.K.) Association of Chief Police Officers Operation Matisse report, produced in conjunction with the Forensic Science Service and Sexual Assault Referral Centres (SARCs) in 2006.¹² This report indicates that DFSA should be redefined as either proactive DFSA or opportunistic DFSA. Proactive DFSA involves the covert or forced administration of either an incapacitating substance or a disinhibiting substance to a victim. It is important to note that this definition includes administration of a 'disinhibiting' substance which may not render the victim sedated or unconscious, but may induce a state of consciousness that facilitates cooperation in sexual activity. Opportunistic DFSA is sexual assault that occurs when the victim has self-administered a substance (e.g., alcohol or recreational drugs) that facilitates an assault due to the profound intoxication of the individual. Opportunistic DFSA can occur when the victim is in a near-unconscious state or unconscious due to their own actions (Operation Matisse, 2006).

In summary, DFSA can be defined as sexual assault that is facilitated by alcohol, drugs or other intoxicating agents where consent cannot be obtained due to lack of capacity of the victim. This consent cannot be given due to intoxication or disinhibition due to the intoxicants and can be subdivided into proactive and opportunistic DFSA depending on the circumstances.

3. Prevalence of DFSA in Ireland

The prevalence of rape and DFSA in Ireland, and elsewhere, is not easy to estimate. There is a large degree of underreporting to the Gardai (the national police service of the Republic of Ireland). In the UK, it has been estimated that 85% of rape victims never report the offence to the police.¹³ In Ireland, the Rape Crisis Network state in their 2007 summary report that less than one in five (17.7%) victims of rape reported the offence to the Gardai (Rape Crisis Network National Statistics 2007: Summary Report).¹⁴ The Central Statistics Office (CSO) in Ireland provides crime statistics that include sexual offences. The rapes and sexual assaults that were reported to the Gardai between the years 2004 and 2007 are presented in Table 1.¹⁵ The trend of the total number of rapes and sexual assaults reported to the Gardai between the years 2004 and 2007 is presented in Fig. 1.¹⁵

Table 1
Rapes and sexual assaults recorded by the Gardai from 2004 to 2007.

Offence	2004	2005	2006	2007
Rape of a male or female	409	447	367	352
Defilement of a boy or girl (<17 years old)	137	123	76	77
Sexual offence involving mentally impaired person	14	13	15	12
Aggravated sexual assault	14	7	16	17
Sexual assault (not aggravated)	1098	1156	888	809
Total rapes and sexual assaults	1672	1746	1362	1267

The reported sexual offences in Ireland would suggest that either the overall number of rapes and sexual assaults has decreased between 2004 and 2007, or simply that the number of offences reported has decreased. An estimate of the actual number of rapes and sexual assaults, based on the reporting rate estimated by the Rape Crisis Network (i.e., 17.7%), would be that in 2007 there were 7158 rapes and sexual assaults in Ireland. This is nearly 20 sexual offences per day. This number is still only an estimate. The number of phone calls received by Rape Crisis centres may be more indicative of the actual number of sexual offences occurring.

In 2007, the Dublin Rape Crisis Centre received 10,155 genuine counselling calls to their 24-h helpline. Of the calls received by the helpline about 47% were regarding child sexual abuse, 43% involved adult rape, 6.8% regarding adult sexual assault, 1% regarding sexual harassment, 2.3% regarding drug rape, 0.3% regarding ritual abuse and 0.4% were about suspected abuse. The callers comprised 83% females and 17% males (Dublin Rape Crisis Centre, 2007 Statistics).¹⁴ The perpetrators of the offences, however, are male in the vast majority of cases. In 2007, the Dublin Rape Crisis Centre found that 96.2% of the alleged perpetrators of the sexual offences were male, 2.3% female and unknown in 1.5% of the cases.

The generally held perception by the public is that a rape occurs outdoors, at night and is perpetrated by a stranger. When the statistics are examined this is shown not to be the case. However, in court trials the jury often has this belief. The 2007 statistics from the Dublin Rape Crisis Centre also give the ages of the callers to their helpline and the relationship between the victims and the offenders, presented in Tables 2 and 3.

The statistics presented from the Dublin Rape Crisis Centre demonstrate that the victims of sexual assault have a wide age demographic and the offenders have a variety of relationships with the victims. The offenders are more likely known to the victims than being strangers. The 2007 statistics reveal that 2.3% of the calls received were regarding 'drug rape'. This figure gives the impression that the number of DFSAs is small. This is misleading. There is

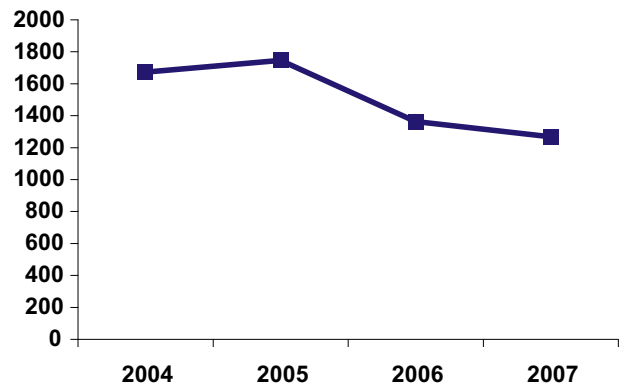


Fig. 1. Trends in total numbers of rape and sexual assaults recorded by Gardai between 2004 and 2007.

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