



# **Impervious to Change? Sexual Assault Law Reform in Canada**

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# How have feminist-inspired law reforms fared?

- Reforms to Canadian sexual assault law over the last 30 years
- Examine why so few sexual assaults result in a conviction



At best .3% of perpetrators  
are convicted...

...the rest walk away.





## Conclusion

Three decades of criminal law reform in Canada have not made any real difference.

Without a doubt, eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society. While serious efforts are being made by a range of actors to address and remedy these failings both within the criminal justice system and throughout Canadian society more broadly, this case attests to the fact that more needs to be done. Put simply, we can — and must — do better. *R v Barton*, 2019 SCC 33

# 1983

## Law reform objectives

- Violent not the sexual nature of the assault
- End discriminatory evidence rules

## Amendments

- New offence of “sexual assault”.  
Penetration not required
- Marital rape exemption repealed
- Evidence rules changed
  - Recent complaint
  - Corroboration
  - Sexual history

## 1987

### Law reform objectives

- Bring clarity on offenses against children

### Amendments

- Prohibit sexual contact where a person stands in a relationship of authority, etc with the young person
- Refined other sexual offenses involving children

# 1992

## Law reform objectives

- Reform law on consent
- Reenact a constitutionally – compliant law on use of sexual history evidence

## Amendments

- Affirmative/explicit consent standard
- Narrowed the meaning of voluntary
- Narrowed mistaken belief defense
- Refined sexual history use



CONTEMPORANEOUS

ACTIVE

CONTINUOUS

# 1996

## Law reform objectives

- Staunch applications for personal records

## Amendments

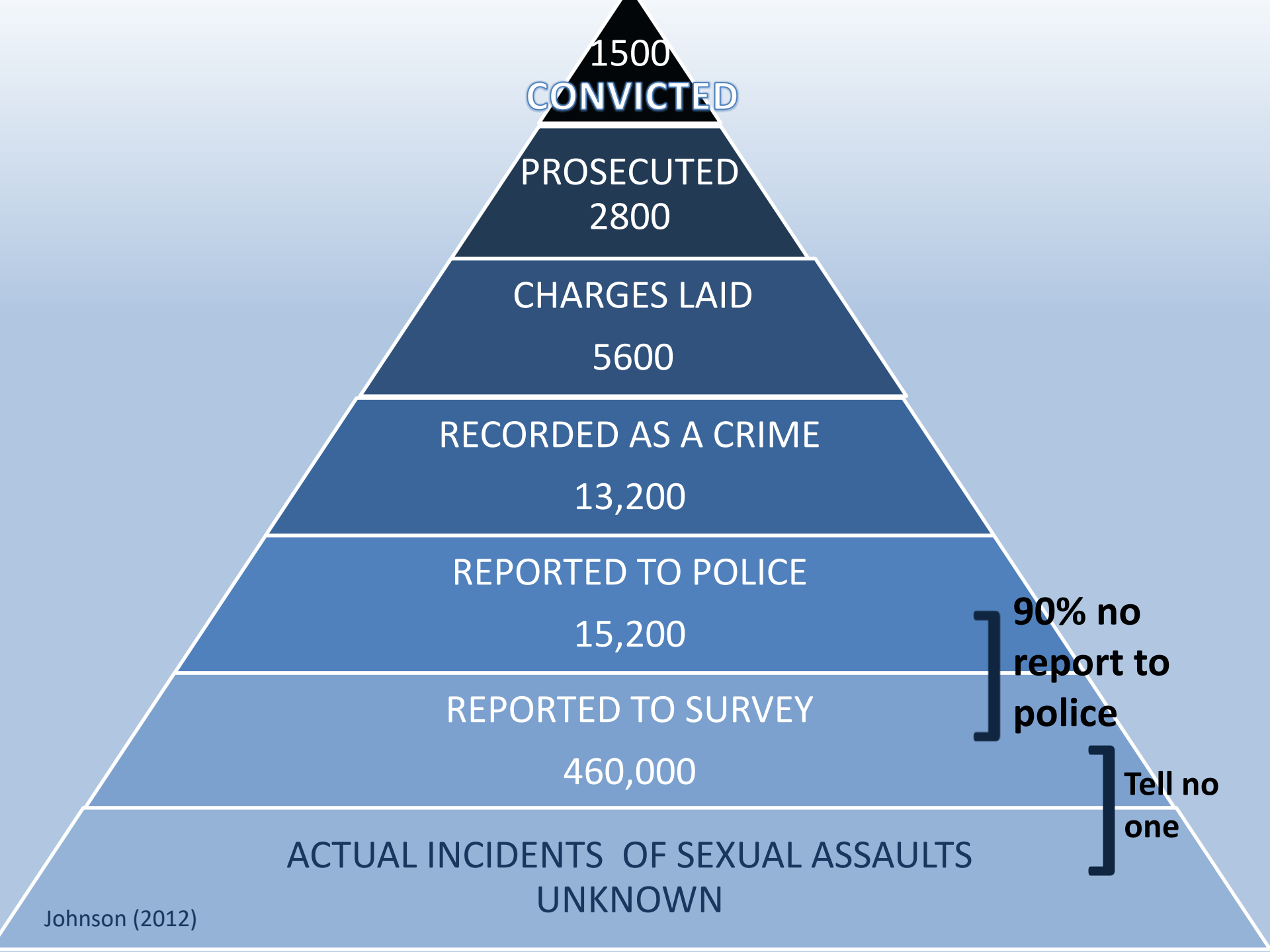
- Substantial restrictions on records use
- Procedural regime to balance the rights of the accused and the complainant

# 1998

## Law reform objectives

- To have a sexual exploitation offense appropriate for people with disabilities
- To refine law on testamentary capacity





1500

CONVICTED

PROSECUTED

2800

CHARGES LAID

5600

RECORDED AS A CRIME

13,200

REPORTED TO POLICE

15,200

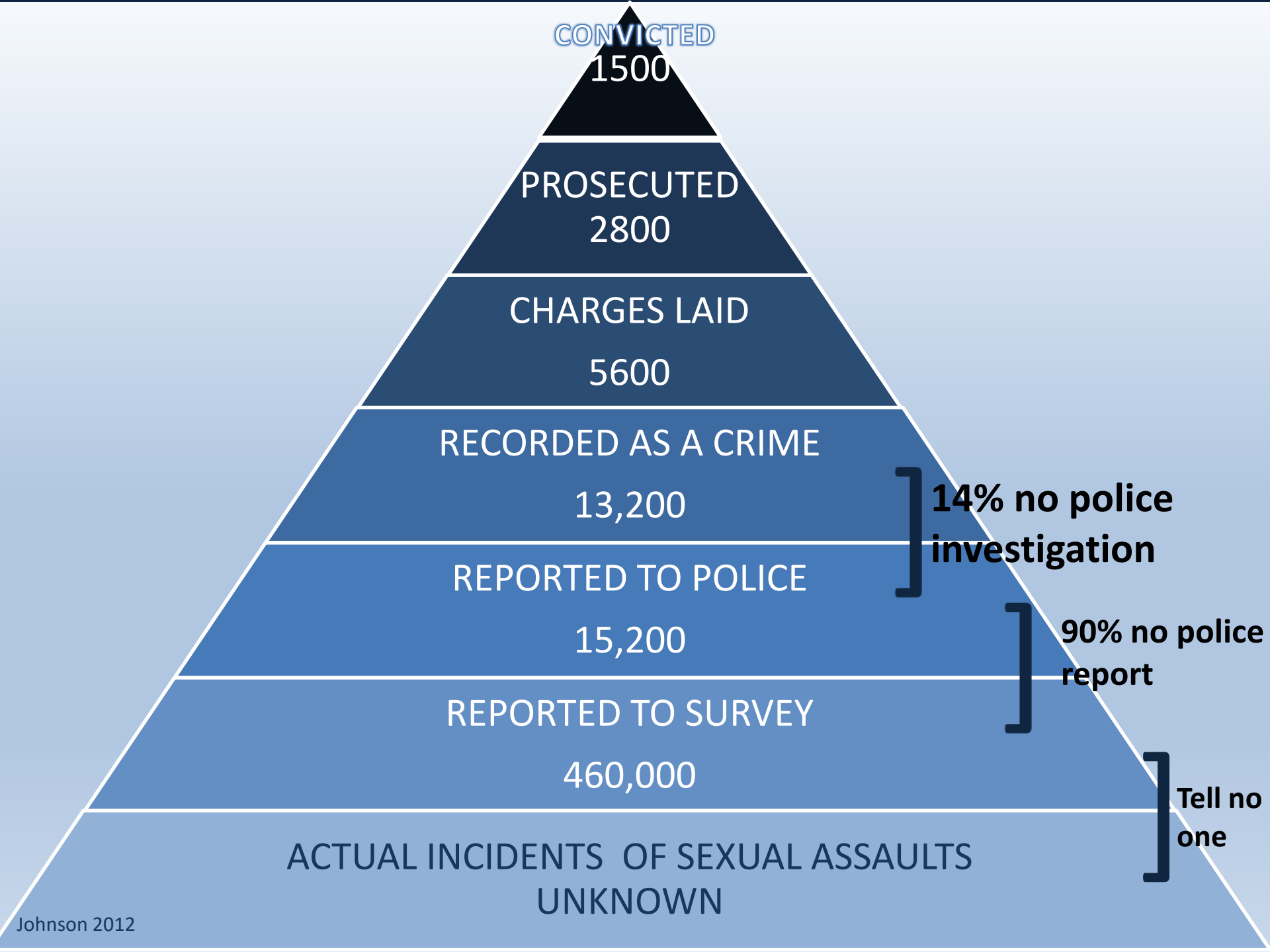
REPORTED TO SURVEY

460,000

ACTUAL INCIDENTS OF SEXUAL ASSAULTS UNKNOWN

90% no report to police

Tell no one



CONVICTED

1500

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CHARGES LAID

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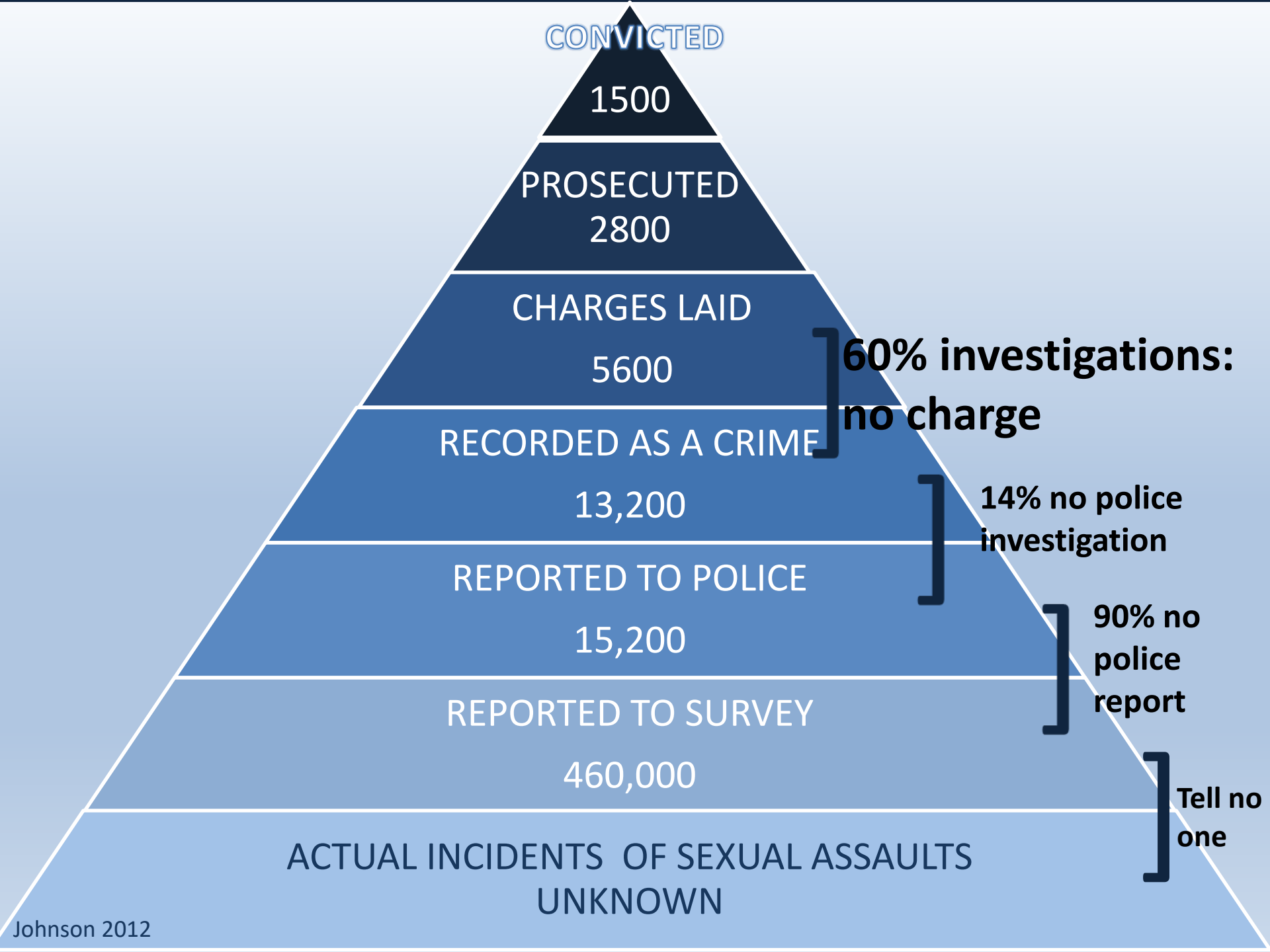
460,000

ACTUAL INCIDENTS OF SEXUAL ASSAULTS  
UNKNOWN

14% no police  
investigation

90% no police  
report

Tell no  
one



CONVICTED

1500

PROSECUTED

2800

CHARGES LAID

5600

60% investigations:  
no charge

RECORDED AS A CRIME

13,200

14% no police  
investigation

REPORTED TO POLICE

15,200

90% no  
police  
report

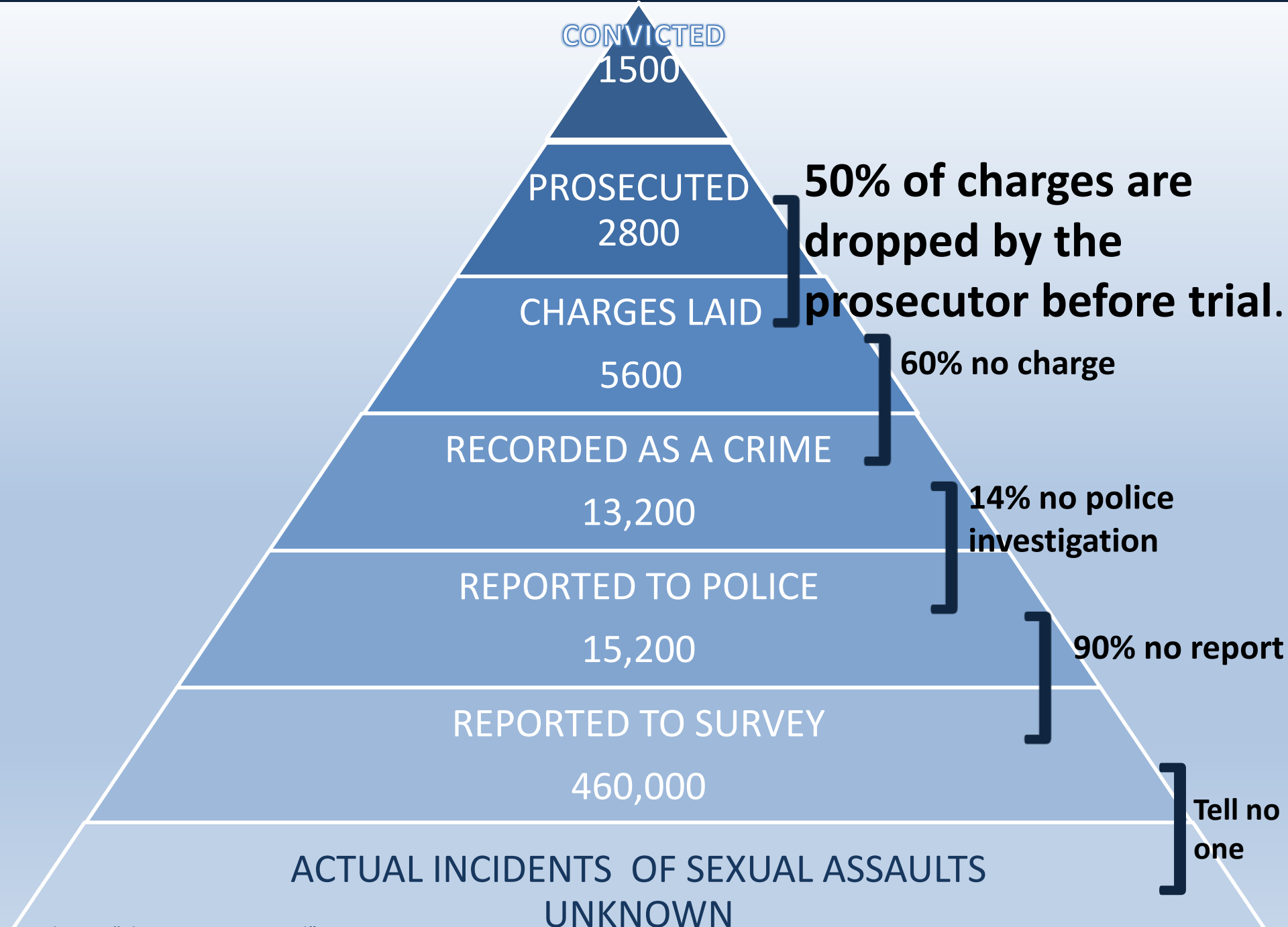
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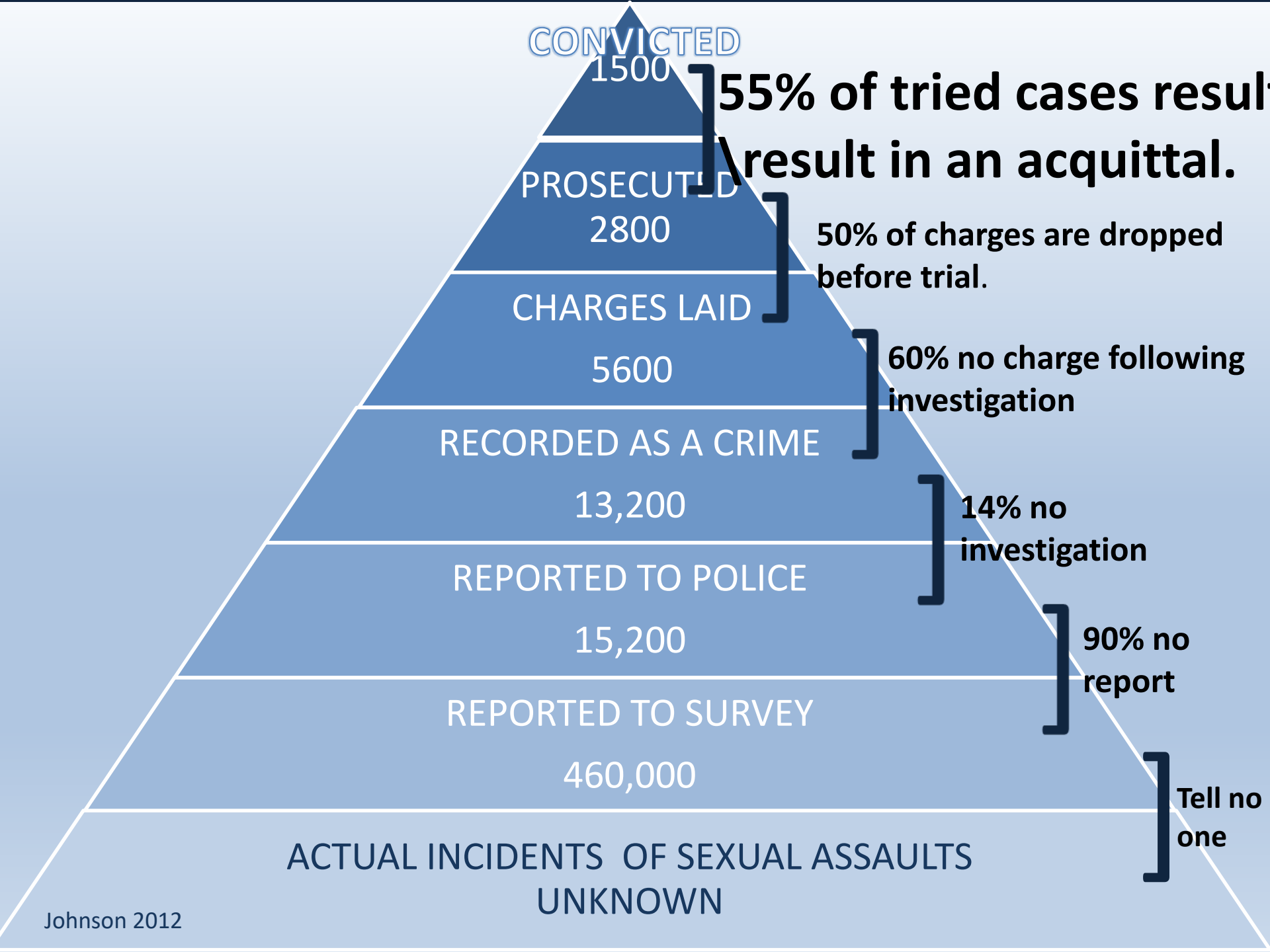
460,000

Tell no  
one

ACTUAL INCIDENTS OF SEXUAL ASSAULTS  
UNKNOWN







CONVICTED

1500

55% of tried cases result in an acquittal.

PROSECUTED

2800

50% of charges are dropped before trial.

CHARGES LAID

5600

60% no charge following investigation

RECORDED AS A CRIME

13,200

14% no investigation

REPORTED TO POLICE

15,200

90% no report

REPORTED TO SURVEY

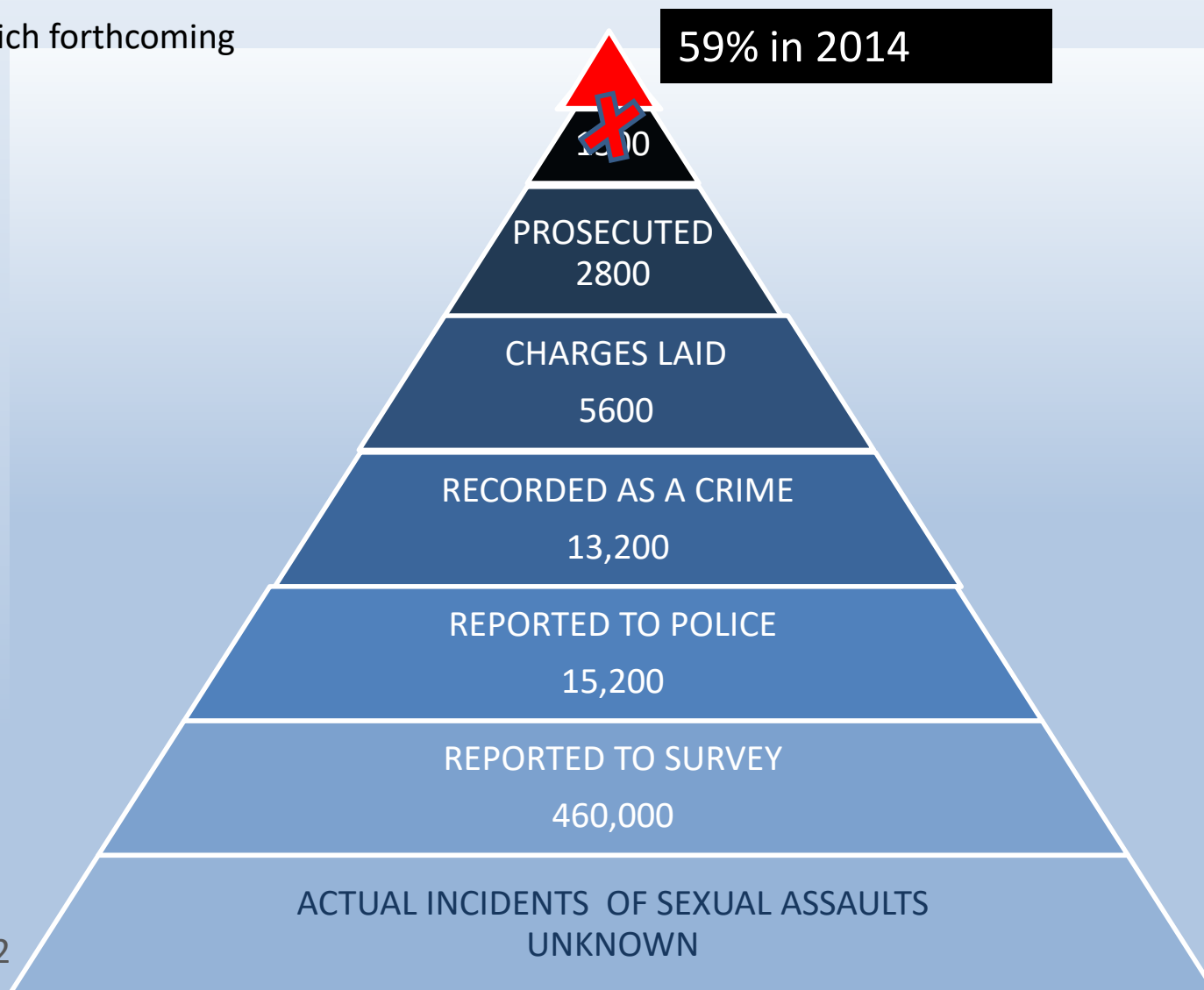
460,000

Tell no one

ACTUAL INCIDENTS OF SEXUAL ASSAULTS UNKNOWN

# Sex assault convictions are more likely than other offenses to be overturned on appeal.

Tanovich forthcoming



59% in 2014

1,200

PROSECUTED

2,800

CHARGES LAID

5,600

RECORDED AS A CRIME

13,200

REPORTED TO POLICE

15,200

REPORTED TO SURVEY

460,000

ACTUAL INCIDENTS OF SEXUAL ASSAULTS

UNKNOWN

Johnson 2012



# How have feminist-inspired law reforms fared?

- Sexual assault, per se, is not seen as injurious
- Sexual reputation history is relied on at all levels of decision-making
- Corroboration and recent complaints reforms ignored
- Affirmative contemporaneous consent is not always required
- Right to full answer and defense outweighs other considerations

# Is change “in the air”?

- Unfounded series
- #MeToo movement
- Recent Supreme Court of Canada decisions

Further, to the extent sexual activity evidence is ultimately admitted, the trial judge must explain to the jury, in clear and precise terms, the uses for which the evidence may — and may not — be used. Finally, all trial participants — including the trial judge, Crown and defence counsel, and witnesses — must hew to the specific, legitimate purpose for which the evidence has been admitted, without expanding the scope of the ruling or using the admissible evidence for inadmissible purposes. This is essential to preserving not only the rights of the accused and the complainant, but also the integrity of the trial process as a whole. R v Goldfinch, 2019 SCC 38