



End Violence Against Women International
(EVAWI)

Clearance Methods for Sexual Assault

Part 1: Basic Definitions

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This training bulletin is the first in a series developed to explain the various methods that law enforcement agencies use for clearing crime reports. In this first installment, we will outline the definition and criteria for clearance by arrest. In subsequent bulletins, we will explore the other two primary methods: exceptional clearance and unfounding. Finally, we will discuss some of the problems and challenges with the way clearance methods are used by various law enforcement agencies across the country.

What is a “Clearance Method?”

In many of our training materials, we provide recommendations for law enforcement personnel to successfully investigate their cases, but at some point investigators either reach a conclusion in a case (e.g., by referring it for prosecution) or exhaust all investigative leads without reaching any meaningful conclusion. Either way, at some point, the case needs to be “put to bed” and removed from the active investigative caseload for the investigator, unit or department. Unfortunately, there is a great deal of confusion surrounding this topic because of the different terminology and procedures used by law enforcement agencies across the country.

- To begin with some definitions, the term “clearance” refers to specific case dispositions, defined by the FBI for their [Uniform Crime Reporting \(UCR\) Program](#). These clearance methods include: “clearance by arrest” and “exceptional clearance,” as well as “unfounding.”
- The term “closure” is often used more broadly to include cases that are cleared as well as those that are closed using some administrative mechanism. It may even be used to describe cases that are still technically open but suspended or temporarily inactivated and removed from an active caseload.
- The term “cancellation” is also used differently across agencies, sometimes to refer to cases that are “cleared” and sometimes for cases that are “closed.”

UCR Program

Clearance methods are officially defined by the Uniform Crime Report (UCR) Program within the Federal Bureau of Investigations (FBI). The UCR Program is a nationwide statistical effort of over 17,000 city, county, and state law enforcement agencies that voluntarily report data on reported crimes. It was originally conceived in 1929 by the International Association of Chiefs of Police to meet a need for reliable, uniform crime statistics for the nation. Then in 1930, FBI took over collecting, publishing, and archiving those statistics. Today, several annual statistical publications are produced on the basis of UCR data, and they are widely disseminated and cited for information about crime in the United States.



For law enforcement agencies participating in the UCR Program, data on eight specific crimes (referred to as “Index Crimes”) are voluntarily provided to the FBI to be compiled with data submitted from law enforcement agencies across the country. Data is collected on how many reported Index Crimes were completed versus attempted, and information is recorded on how they were cleared using specific criteria and procedures. The three primary methods for clearance used in the UCR program are:

- (1) Clearance by arrest
- (2) Exceptional clearance, and
- (3) Unfounding.

Again, we will discuss each of these specific clearance methods used by the UCR in separate training bulletins.

Note: References to the Uniform Crime Report (UCR) guidelines come from the [Summary Reporting System \(SRS\) User Manual](#) published by the Federal Bureau of Investigations (FBI).

Clearance by Arrest

The first clearance method to be described in this training bulletin is “clearance by arrest,” where someone is arrested for completing or attempting the Index Crime, AND that person is charged with the commission of the offense, AND the case is turned over to the court for prosecution.

Unfortunately, this is a source of some confusion. Many law enforcement professionals believe that a suspect has been “charged” with a crime when a warrant is issued. Thus, it is routine practice in many police agencies to clear a case once a warrant has been issued. However, this is incorrect. In fact, a case cannot be cleared just because a warrant has been issued. To clear the case:

The suspect has to be taken into custody,
AND charged,
AND handed over to the court for prosecution.

Thus, several crime reports may be cleared with the arrest of a single person, if that person committed more than one offense. On the other hand, the arrest of several suspects may only clear a single offense, if it was perpetrated by more than one individual acting together.

Defining Arrest

There is also some debate in the field regarding what is meant by being “charged,” and whether this is something that can be done for the purposes of the UCR Program by law enforcement, or whether it refers only to charges filed by a prosecutor. We will return to

this discussion in a later training bulletin. At this point, we want to simply note that there are a few exceptions to these general criteria. The primary exceptions are the following:

- For juvenile offenders (under age 18), clearance by arrest can be claimed even when they are not physically arrested if they are cited to appear in juvenile court or before other juvenile authorities.
- A case can also be cleared by arrest if a summons to appear (often referred to as a “notify letter”) has been issued. Although different terminology may be used for this procedure, it is used when the suspect has agreed to surrender or to appear in court at a certain date or time. This agreement is reached between the suspect, prosecutor, and defense attorney, and it is documented in writing.

Clearance by arrest tends to be the most clearly defined and consistently applied method of clearance within the UCR Program. In the next training bulletin, we will discuss exceptional clearance, which is anything but clear or consistently applied.

For More Information

For more information, please see the OnLine Training Institute (OLTI) module on [Clearance Methods for Sexual Assault Cases](#). This training bulletin is an adapted excerpt from that module.





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Clearance Methods for Sexual Assault

Part 2: Exceptional Clearance

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August 2013
Updated January 2020

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This training bulletin is the second in our series explaining the methods that law enforcement personnel use for clearing crime reports. In the first installment, we defined the general concept of police clearance methods and offered a more detailed explanation of “clearance by arrest.” In this second bulletin, we will explore “clearance by exception” (also referred to as “exceptional clearance”), and in the third installment we will discuss unfounding. Finally, we will discuss some of the problems and challenges with clearance methods used by various law enforcement agencies across the country.

Exceptional Clearance

In addition to clearance by arrest, another primary method for officially clearing crime reports is referred to as "clearance by exception" or "exceptional clearance." According to [UCR guidelines](#), law enforcement personnel may clear a crime report by exception when some element beyond law enforcement control precludes issuing formal charges against the offender. These could include:

- The death of the offender.
- The victim’s refusal to cooperate AFTER the offender has been identified.
- The offender’s arrest and prosecution in a different jurisdiction.

It is therefore clear that the purpose of exceptional clearance is for police agencies to “count” cases as cleared when they have done their job, but they were prevented by some outside factor from moving forward with an arrest and prosecution.

Victim’s Refusal to Cooperate

When we discuss exceptional clearance, it is important to note that law enforcement professionals often refer to the victim’s “refusal” to cooperate with the investigation or prosecution. Others use the phrase “victim declines prosecution” (or “VDP”).

However, a better way to view this is that the victim is unsure or unable to participate in the investigation at that point in time. By characterizing the behavior as a “refusal,” it conveys a negative image that fails to recognize the very real effects of trauma and the legitimate reasons why participating in the investigation may be difficult if not impossible for many victims.

This terminology also fails to acknowledge the possibility that the victim’s inability to cooperate or participate with the investigation may change at a later time. Thus, throughout our training materials we typically avoid referring to the victim’s “refusal” to cooperate but rather his or her “inability” to participate at the time. Whether or not a case is cleared or closed, law enforcement can reopen or reactivate an investigation at any time.

Criteria for Exceptional Clearance

Returning to UCR guidelines, law enforcement personnel can only clear a case by exception if:

1. The offender is identified, AND
2. There is enough evidence to support an arrest, AND
3. The offender's location is known.

In this regard, UCR guidelines state that a case cannot be cleared simply because an arrest is not made or because the victim is unable to participate with the investigation at that time. Rather, cases that are closed with an exceptional clearance must have sufficient evidence to support probable cause.

Misunderstanding and Misuse

Unfortunately, there is evidence that some law enforcement agencies across the country are using exceptional clearance improperly, either because they cannot find the victim or because he/she is viewed as uncooperative.

There is also reason to believe that law enforcement agencies often prematurely close sexual assault cases with an exceptional clearance – sometimes before they have been thoroughly investigated – based on indications by the local prosecutor that the case will not be pursued. However, this assessment may be based on limited information and only a verbal case summary provided by the investigating officer or deputy.

Four Questions

According to the UCR guidelines, a case can only be exceptionally cleared if law enforcement personnel can answer “yes” to four separate questions. The exact wording from the UCR guidelines follows:

1. Has the investigation definitively established the identity of the offender?
2. *Is there enough information to support an arrest, charge, and turning over to the court for prosecution?*
3. *Is the exact location of the offender known so that the subject could be taken into custody now?*
4. *Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender? (Recall that these could include the death of the offender, the victim's inability to cooperate with prosecution AFTER the offender has been identified, or the offender's arrest and prosecution for another crime in a different jurisdiction).*



If the answer to each of these questions is “yes,” then the case can be cleared by exception. However, the answers to the questions depend on what is meant by the term “charging.”

Charging: Police or Prosecutors?

Most people use the term “charged” to refer to decisions made by prosecutors to file charges (i.e., prosecute) a case. However, some have argued that the UCR term refers to when a subject is arrested and booked for a violation of the penal code, thereby arguing that the suspect has been charged with a crime.

This makes sense on some level. After all, case clearances are police decisions, so it seems reasonable to argue that they should not depend on the actions of the prosecutor’s office. Moreover, law enforcement agencies must of course list the charges against a person whenever they make an arrest. Therefore, this process could be characterized as charging by police. However, in the vast majority of arrests where such booking procedures take place, they are not meaningfully distinct from the arrest itself. This observation therefore raises the question of why arrest and charging would be listed as separate criteria in the UCR definition of exceptional clearance. In this interpretation, the two are essentially indistinguishable.

Far more important, this raises the question of what clearance statistics are *supposed to be measuring*. Accepting this argument that charging refers to law enforcement, and that prosecutorial decision making is irrelevant for the purpose of police clearance decisions, this decouples UCR clearance statistics from any meaningful case outcome. For example, a case can be cleared by arrest when it is referred for prosecution, but this classification does not tell us whether it was investigated properly or whether it has reached “the end of the road” or not. A case that is cleared by arrest can be rejected by the prosecutor’s office, for reasons that have to do with the sufficiency of the investigation as well as a host of other reasons that are outside the control of law enforcement.

In addition, the prosecutor can decline to file charges and advise the police to investigate further. However, this classification does not tell us whether police followed the prosecutor’s advice and investigated further, so it could be returned to the prosecutor for review – or if the case was simply shelved as a “DA Reject,” and still cleared by arrest. In other words, this clearance ultimately says nothing about how well the case was handled.

We do not mean to suggest that law enforcement personnel should be evaluated or held accountable based on the filing decisions of prosecutors. Case clearance is in fact a police decision, and investigators should be able to “count” their arrests in police statistics regardless of whether or not suspects are prosecuted. The question is therefore how to interpret these numbers. In other words, what do these arrests *mean*? All too often, an arrest is seen as the outcome worth measuring – without any regard for what happens to the case after the arrest is made. We have serious concerns about

this, as we elaborate in an article we published in *Sexual Assault Report*. However, it is worth noting that an agency's arrest rate will reflect a number of factors – many of which are irrelevant to the facts of the case. These include both formal policy decisions as well as informal daily practices. As a result, one agency can have a high arrest rate, and another one can have a low arrest rate, but both numbers are meaningless without any indication of how thoroughly the cases were investigated and what happened to them after an arrest was made.

Note: This section is an adapted excerpt from an article we wrote entitled, "Police clearance methods: How are they currently defined – and how should they be used?" It appeared in *Sexual Assault Report, Volume 15, Number 4*, pp. 53-60, 63. Published by Civic Research Institute. All rights reserved.

For More Information

Because these issues are rather complicated, interested readers are referred to the OnLine Training Institute (OLTI) module on [Clearance Methods for Sexual Assault Cases](#). This training bulletin is an adapted excerpt from that module.

Also, please see: Joanne Archambault & Kimberly A. Lonsway (2012). Police clearance methods: How are they currently defined – and how should they be used? *Sexual Assault Report, 15 (4)*, 53-60, 63.





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Clearance Methods for Sexual Assault

Part 3: Unfounding False vs. Baseless Reports

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This training bulletin is the third in our series explaining the methods that law enforcement personnel use for clearing crime reports. In the first installment, we defined the general concept of police clearance methods and offered a more detailed explanation of “clearance by arrest.” In the second bulletin, we explored “clearance by exception” (also referred to as “exceptional clearance”). In this third installment, we discuss unfounding. We will then follow with a discussion of some of the problems and challenges with how clearance methods are used by many law enforcement agencies.

Unfounded Crime Reports

According to the Uniform Crime Reporting (UCR) Program [Summary Reporting System \(SRS\) User Manual](#), a reported offense can be cleared as unfounded “if the investigation shows that no offense occurred nor was attempted.” These cases thus remain as official crime reports and are included in the departmental statistics on sexual assault crimes that are reported to the UCR. However, they are explicitly labeled as “unfounded” cases within UCR reports on the various index crimes.

According to UCR guidelines, the statistics on unfounded cases should include crime reports that are either:

False, OR

Baseless

False Reports

UCR guidelines are clear that a report can only be determined to be false on the basis of evidence that the crime was not committed or attempted. Specifically, the *SRS User Manual* states that a case can only be unfounded if it is:

...determined through investigation to be false or baseless. In other words, no crime occurred (p.110).

According to these guidelines, a case cannot be unfounded if no investigation was conducted or if the investigation failed to prove that the crime occurred – this would be an inconclusive or an unsubstantiated investigation (although this is not a clearance category as defined in the UCR guidelines). Another way of describing this would be that the investigation produced “insufficient evidence.” However, none of these should be considered a false report. Rather:

Crime reports can only be properly determined to be false if the evidence from the investigation establishes that the crime was not completed or attempted.

While this is the actual definition of a false report for UCR purposes, it does not typically reflect the way officers and investigators tend to think of their sexual assault

investigations. It therefore requires a bit of a shift in the thinking of many law enforcement professionals and others.

Note: For a concise discussion of the issues surrounding false allegations, case unfounding, and victim recantation, a helpful a helpful [4-page document](#) is available from the [Oregon Sexual Assault Task Force](#).

Baseless Reports

Cases determined to be baseless include those that do not meet the elements of the offense and those that were improperly coded as a sexual assault in the first place. Calls often come into law enforcement agencies as a sexual assault report, but follow-up investigation reveals either that no crime occurred or that some other type of crime was actually committed (or attempted). This highlights the importance of flexibility in the process for determining whether an incident is recorded with a crime report or an informational report and what criminal offense code(s) are used. Clearly, the way a crime is reported will impact how the report will be cleared or closed.

Citizens frequently report sexual acts to law enforcement that are unwanted but do not meet the elements of a sexual assault offense. To illustrate, an adult might report to police a situation where they felt pressured or coerced into having sexual contact with another person, but the coercion did not meet the criteria for a forcible sexual assault, e.g., an adult woman is coerced into having sex when her boyfriend who said he would break up with her if she doesn't do what he asked. In cases like this, best practice is for the responding officer to document this with an informational report, and then later determine whether or not to "score" it as a crime report based on the information gathered during a thorough, evidence-based investigation. If the investigation suggests that the element of force was not met, the report would either remain as an informational report of forcible sexual assault or it could perhaps be scored as a crime report for some other lesser offense (e.g., sexual battery, sexual abuse).

However, in some situations this type of report will be officially recorded as a crime report. When this happens, the proper administrative procedure for clearing the report is to unfound it – not because it is false – but because it is baseless (i.e., the element of force has not been met). This is a common – and appropriate – use of UCR unfounding, but it is widely misunderstood.

Other Guidelines for Unfounding

In addition to these general criteria for unfounding, three additional guidelines need to be described because they are critically important.

- First, cases cannot be unfounded using the UCR criteria on the basis of findings from a coroner, court, jury, or prosecutor. The decision to unfound a case using UCR criteria can only be made by law enforcement personnel. So, investigators do not change their clearance of a case based on the decisions of a prosecutor or a verdict by a judge or jury.

- Second, UCR guidelines explicitly state that “the refusal of the victim to cooperate with prosecution, or the failure to make an arrest does not unfound a reported offense.” (Recall that the victim’s “refusal” can better be understood as an inability to participate at that time.) Although the victim’s inability to participate with a police investigation is often used as a basis for unfounding a sexual assault case, this is clearly incorrect.
- Third, a case cannot be unfounded simply because the police were unable to locate or arrest the suspect. Such factors do not establish that the crime report is (a) *false* or (b) *baseless*, so they cannot be used as the basis for unfounding it.

For More Information

For more information, please see the [OnLine Training Institute \(OLTI\)](#) module on [Clearance Methods for Sexual Assault Cases](#). This training bulletin is an adapted excerpt from that module. Also relevant is the module on [False Reports: Moving Beyond the Issues to Successfully Investigate Sexual Assault](#).





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Clearance Methods for Sexual Assault

Part 4: Police Clearance Methods/Problems with Unfounding

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This is the fourth installment in our series of training bulletins explaining the various methods law enforcement personnel use to clear their cases. In each of the previous installments, we defined one of the three primary methods: clearance by arrest, exceptional clearance, and unfounding. In this fourth bulletin, we discuss some of the problems with unfounding, and in a final installment, we explore strategies for addressing challenges in this area.

Confusion of Unfounded vs. False

As described previously, [UCR guidelines](#) state that crime reports can be unfounded either because they are (a) false or because they are (b) baseless. Previously in this series, we examined these definitions in more detail, but to summarize, a report is false if the crime was not completed or attempted. In other words, it simply never happened. On the other hand, a report is baseless if it does not meet the legal elements of a crime. Yet law enforcement agencies across the country use very different procedures for determining that a sexual assault case is in fact false or baseless.

In their [Concepts and Issues Paper](#) written to explain their [Model Policy on Investigating Sexual Assault](#), the International Association of Chiefs of Police (IACP) clearly state that a crime report can only be properly classified as false on the basis of investigative findings establishing that the crime was not committed or attempted (i.e., there is evidence that the crime did not happen).¹ Yet every day, sexual assault reports are classified as false – and improperly unfounded – because the investigation failed to substantiate the allegation or because the investigator simply did not believe the victim's account. Thus, the percentage of sexual assault reports determined to be false varies dramatically from one law enforcement agency to another.

Similarly, variations in reporting procedures will also dramatically influence the percentage of reports that are determined to be baseless. To illustrate, although it is considered best practice, an agency that has a policy requiring officers to document every single sexual assault call may end up with documented crime reports that do not actually meet the elements of the reported sexual assault offense. These crime reports will later need to be cleared, and they will likely be unfounded because they are baseless (i.e., they do not meet the elements for the offense listed in the crime report). This is in fact the appropriate clearance for this type of report, but it means that law enforcement agencies with different policies will have widely varying figures for the number of unfounded reports.

¹ See the [Concepts and Issues Paper](#) written to explain their [Model Policy on Investigating Sexual Assault](#), both of which were developed by the National Law Enforcement Policy Center of the International Association of Chiefs of Police (IACP). Both documents were released in July of 2005 and are available online at the IACP website www.theiacp.org.

As noted in the prior bulletin, we recommend that all sexual assault incidents be recorded even if there is a question regarding whether or not it meets the elements of a sexual assault offense. At least initially, this type of information is best recorded as an informational report (rather than a crime report). Then the subsequent investigation will be used to determine whether it should remain an informational report or become a crime report if the investigative findings reveal that the elements of a sexual assault offense are met. This issue is discussed in detail in the training module on [Reporting Methods](#) in our OnLine Training Institute (OLTI).

More Complications

Clearly, the percentage of both *false* and *baseless* sexual assault reports will vary from one law enforcement agency to another. However, to complicate matters even further, the UCR Program does not separate out the number of reports that are cleared because they are false versus baseless. There is therefore no way to know – based on UCR statistics – what the percentage of false reports is for any reported crime; just as there is no way to know what the percentage is for baseless reports. The UCR Program only tracks a single statistic for the number of unfounded reports for each crime, and even this is not included in their annual published reports. Unfounded statistics are only available from the UCR Program by contacting the FBI directly and asking for them.

For all of these reasons, UCR statistics on the percentage of unfounded sexual assault cases should never be used as an estimate for the percentage of false reports – because, in practice “unfounded rape can and does mean many things, with a false allegation being only one of them, and sometimes the least of them” (Kanin, 1994, p. 81). Unfortunately, this is exactly how UCR statistics are used all the time, as an answer to the question of how many reports of rape are false.

Even experts in the field have trouble distinguishing the definition of a *false* versus an *unfounded* sexual assault report. In fact, the language in the UCR itself has been unclear about this distinction, as illustrated with this excerpt:

As for all other Crime Index offenses, complaints of forcible rape made to law enforcement agencies are sometimes found to be false or baseless. In such cases, law enforcement agencies ‘unfound’ the offenses and exclude them from crime counts. The ‘unfounded’ rate, or percentage of complaints determined through investigation to be false, is higher for forcible rape than for any other Index crime. In 1995, 8 percent of forcible rape complaints were ‘unfounded,’ while the average for all Index crimes was 2 percent (Uniform Crime Report, 1995, p. 24).

This excerpt equates the terms *unfounded* and *false*, and it is easy to understand how law enforcement professionals, victim advocates, and others are often thoroughly confused. Subsequent UCR publications have clarified the issue somewhat by referring

to cases as “unfounded or false.” However, the confusion surrounding the two terms obviously remains.

Yet this confusion between the terminology of *false* and *unfounded* sexual assault reports is only one of the many problems currently seen with the use of UCR unfounding.

No Clear Criteria for Unfounding

Another problem is the lack of clearly specified criteria and procedures for the use of UCR unfounding. As previously described, UCR guidelines state that a case is only to be unfounded if it is determined after investigation to be “false or baseless.” However, there is no clear criteria for either term, so future work is needed to articulate the standards that might be used to determine that a sexual assault report is in fact false or baseless and thus unfounded. We actually hope that the OLT training modules and bulletins such as these can be used to help clarify the terms and provide guidance for investigators and supervisors struggling with these complex issues.

Lack of Training on UCR Criteria

Yet even if the UCR guidelines were crystal clear there would still be problems with unfounding because officers and investigators typically receive no training at all in the proper use of the various UCR clearance methods. Since training is not typically provided, two detectives sitting at desks directly next to each other may be following different criteria for clearing their cases – not only for unfounding but for all other clearance methods as well. To make matters worse, many supervisors do not carefully review the reports that are submitted, thus providing poor quality control and allowing for inaccuracies and inconsistencies in the clearance of sexual assault cases.

There is also evidence that some law enforcement personnel may be confused by the terminology of *unfounded* versus *unsubstantiated* – the latter term being used in child abuse cases but not for UCR coding of sexual assault cases with adult and adolescent victims. Given that many detectives and supervisors investigating adult sexual assault gained their experience in cases of child abuse, such confusion is understandable.

Problems Establishing the Elements of an Offense

As previously described, responding officers sometimes write a crime report for incidents that do not actually meet the elements of the recorded offense. Once such a crime report is completed, it has to be cleared or closed, so it is unfounded because the report is baseless. On the other hand, responding officers also sometimes lack the training or experience to realize that the incident they are investigating actually does meet the elements of a sexual assault offense. This may happen when a sexual assault does not involve the element of force, threat or fear but is instead perpetrated against a victim who is incapable of consenting to sexual acts (e.g., due to incapacitation from alcohol or drugs, or a severe disability affecting cognition or communication). When the

responding officer decides that such an incident does not meet the elements of a sexual assault offense – when it actually does – the case will not be properly recorded with a crime report at that time. Then it will not be cleared later using UCR criteria.

- This highlights the importance of following up with victims to verify the initial information obtained during the preliminary stages of the investigation. It may have been recorded incorrectly.
- It also underscores the importance of having all sexual assault reports reviewed by a supervisor, co-worker, or other colleague with specialized training in sexual assault investigation. This can help to increase both accuracy and consistency in reporting methods as well as improving the use of UCR clearance methods.

These issues are discussed extensively in the OLT modules on [Law and Investigative Strategy](#) and [Reporting Methods](#).

Insufficient Investigation and Premature Conclusions

Other problems with unfounding occur because the determination is made on the basis of insufficient investigation and/or premature conclusions on the part of the responding officer. For example, many law enforcement agencies allow responding officers the discretion to declare a complaint as unfounded after taking only an initial statement from the victim or following a routine, cursory investigation. Others allow responding officers to clear from a sexual assault call without documenting the incident in a written report of any kind. Neither of these practices is acceptable.

Officers cannot make a reliable determination regarding the validity of a sexual assault complaint with only an initial victim statement or a cursory preliminary investigation. With such limited information, the determination cannot be based on the totality of the investigative findings, and it will be influenced by the stereotype of “real rape” that can lead officers and investigators to view certain sexual assault reports with suspicion.

Pressure to Close Cases

Another source of trouble is the pressure that is often placed on law enforcement agencies and units to clear a high percentage of their cases. This is the legacy of an era within law enforcement where success has been evaluated primarily on the basis of reported crime and clearance rates. As a result, there is often pressure on officers, investigators, and supervisors to clear a high percentage of their cases, and this pressure is communicated through both informal modeling and more formal means such as performance evaluations.

This pressure may be particularly pronounced in cases where the suspect is known, because investigators are not accustomed to leaving cases with identified suspects

open. Rather than improperly shelving these cases, it is best to leave them open but suspended or inactivated. Unfortunately, some police administrators believe that cases that are inactivated or suspended (rather than cleared) indicate that their agency has not done their job properly. This is not necessarily true, and the solution simply requires communication between law enforcement and victims, advocates and the public. In reality, rates of reported crime and police clearance are typically poor indicators of the quality of the law enforcement response, investigation, and prosecution within a community, especially with sexual assault crimes.² Yet the unfounding of a high percentage of sexual assault cases can appear to be superficially beneficial to police agencies – at least in the short term. When sexual assault cases are dropped from an agency’s caseload and statistical reporting through the use of unfounding, both their caseload and statistics on reported crime are reduced. Thus, the community’s crime rate appears to decrease at the same time the agency’s clearance rate increases.

Sadly, these “benefits” may serve to reinforce the improper use of unfounding, perpetuating the practice among investigators and supervisors. However, this practice is clearly wrong, and it constitutes a potentially serious problem for public relations.

Unfounding to Make Difficult Cases “Disappear”

Although all of these factors can create problems regarding the use of UCR clearance methods, perhaps the biggest source of trouble is the use of unfounding to avoid investigating difficult cases. Sadly, officers and investigators all too often unfound a sexual assault report improperly, simply because it contains some of the “red flags” that cause police officers and others to view them with suspicion (e.g., the victim and suspect know each other or even share a prior sexual relationship, drugs or alcohol are involved, there are no obvious signs of physical force, the report is delayed, etc.). When such “red flags” are present, some officers and investigators may not believe the victim was sexually assaulted or they may view the investigation as difficult or the case as “unwinnable” and want it to simply disappear rather than devote scarce resources to another “impossible” case.

² To illustrate, detectives in a typical Sex Crimes Unit might clear 50 percent of the cases they receive. Yet rather than using this as a basis for a performance evaluation, more appropriate measures might be based on their self-initiative, investigative skills, tenacity, timeliness, and compassion. A thorough investigation may take months, using search warrants, forensic evidence, witness interviews, a search for prior victims, and pretext phone calls (one-party consent calls where allowed by law). Even if an arrest is never made and the case remains open indefinitely, the investigation may be extremely successful based on more appropriate outcome measures and explicit recognition of the realities of sex crimes investigation. In fact, an extremely high clearance rate can actually be a sign of serious trouble, as in the case of the Philadelphia Police Department, which reportedly cleared 74% of its sexual assault caseload in 1993 (see Fazlollah, 2000; Fazlollah et al., 1999a, 1999b, 1999c, 1999d). As discussed throughout this module, this exceptionally high clearance rate was only possible because of the “shell game” of statistical manipulation that was played, where detectives dumped a large percentage of their sexual assault cases in non-criminal codes such as “call for service” or “investigation of person.” For more information, please see the [OLTI](#) training module on [Clearance Methods for Sexual Assault Cases](#).

We have already discussed how such factors are not a sufficient basis for unfounding a crime report according to UCR guidelines. Rather, every single report of a sexual assault needs to be investigated thoroughly and fairly, regardless of any gut feeling on the part of the officer, investigator, or supervisor. The determination to unfound a report can only be made on the basis of findings from a thorough, evidence-based investigation.

When the Victim Recants

Yet none of these “red flags” may be as powerful a factor in predicting the use of unfounding as a victim recantation. After all, why should the officer or investigator believe that the sexual assault happened when even the victim says it didn’t?

In many agencies, victim recantation can be used as the sole basis for unfounding a sexual assault report. However, investigators need to be very cautious about using a recantation as the sole basis for determining that a sexual assault report is false.

- The reality is that many sexual assault victims recant when they encounter skepticism, disbelief or blame from law enforcement personnel, medical personnel, or others involved in responding to their complaint.
- Other victims recant because they come to believe that reporting their sexual assault will only make matters worse for them. Given that most sexual assaults are committed by someone known to the victim, reporting the crime will inevitably disrupt their personal lives and relationships. Many victims decide that the disruption and difficulty are not worth the personal costs, so they recant.
- Still other victims recant when their credibility or behavior is questioned by family members and friends. Again, these victims may decide that the possible benefits of reporting the sexual assault are not worth the price they have to pay in terms of their own lives.
- In settings such as the military, workplace, university, or college, victims may even face the possibility of sanctions for their own behavior. These could include charges of conduct unbecoming for their own use of alcohol or drugs, fraternization, or other prohibited actions. Discipline can even include possible termination from the military or workplace, or expulsion from the university or college.
- In religious communities, victims often face excessive scrutiny, shame, and a lack of support for similar behaviors.

Clearly, there are a wide range of factors that can potentially lead victims to recant their report of sexual assault. As a result, victim recantation alone should not be used as a basis for unfounding a sexual assault report, based on UCR guidelines.

No Significant Exam Findings

Similar to recantation, some law enforcement professionals will unfound sexual assault reports because no significant findings were observed during the medical forensic examination. Worse, some agencies have used the determination as a basis for turning around and billing the sexual assault victim for the cost of the forensic examination. Yet the absence of genital trauma should never be used as a basis for unfounding a sexual assault report. Most state laws specifically state that a victim does not need to be injured to establish the elements of forcible sexual assault. Furthermore, many sexual assaults have been proven to be true when the forensic examination was inconclusive, based on factors such as:

- Evidence revealed through the subsequent crime lab analysis
- Other crime scene evidence
- The testimony of witnesses
- A pattern of similar serial offenses
- A confession by the suspect
- A guilty verdict in the trial

In fact, it is worth noting that no definitive conclusions can be drawn regarding a sexual assault based solely on the presence or absence of findings during a medical forensic examination – at least until the evidence is analyzed by a crime lab. Any determination that a report is false and/or unfounded can only be made by law enforcement professionals on the basis of reviewing all of the investigative findings together.

The Bottom Line

When asked, many law enforcement professionals will say that the rate of false reporting is much higher for property crimes, arson, auto theft, and burglary rather than sexual assault – crimes where there is a lot of insurance fraud. Yet we don't see the same attitudes with these crimes as we do for sexual assault. In sexual assault cases, a report is all too often approached as if it is false until proven true.

- This attitude represents a bigger problem than any lack of training or technical expertise.
- The good news, however, is that because this attitude is the biggest source of trouble, it is the best place to create change. So, when we turn our attention in the next bulletin to addressing these challenges, it is the first place we look.

For More Information

For more information, please see the [OnLine Training Institute \(OLTI\)](#) module on [Clearance Methods for Sexual Assault Cases](#). This training bulletin is an adapted excerpt from that module. Also relevant is the module on as well as [False Reports](#) as well as [Reporting Methods for Sexual Assault Cases](#).

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End Violence Against Women International
(EVAWI)

Clearance Methods for Sexual Assault

Part 5: Recent Updates to UCR Handbook

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Sergeant Joanne Archambault (Ret.)

August 2013
Updated January 2020

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This bulletin in part 5 in a series on the topic of police clearance methods and the FBI's Uniform Crime Report (UCR) Program. As a result of this series, we learned that in June 2013, the FBI's Crime Statistics and Management Unit published an updated version of their guidelines in the [Summary Reporting System \(SRS\) User Manual](#). This training bulletin is dedicated to helping you understand some of the changes with direct implications for the law enforcement response to sexual assault.

Revised Definition of Rape

In December 2011, the UCR Program expanded the definition of rape. The old definition, in place since 1929, was not only outdated but also extremely limited, excluding a wide range of sexual assault offenses from official statistics compiled by the UCR Program. Fortunately, the new definition includes a far broader range of felony sexual assault offenses and thus offers the promise of having the UCR program – for the first time – provide a much more accurate picture of sexual assaults being reported to law enforcement agencies across the country. The new definition is:

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

One of many changes you will notice is that the word “forcible” no longer appears in the new definition of rape. There are also other differences in the types of offenses that are included in the new definition, so new scenarios have been provided by the UCR Program in order to help understand them.

Question of Exceptional Clearance

In addition, the *SRS User Manual* clarified an issue related to the definition of exceptional clearance, as well as clearance by arrest.

As you may recall from the first training bulletin in this series, law enforcement personnel can only clear a report by arrest when:

1. Someone is arrested for an offense, AND
2. Charged with the commission of that offense¹, AND
3. Turned over to the court for prosecution (*SRS User Manual*, p. 112).

On the other hand, a report can be cleared by exception when law enforcement has:

1. Definitively established the identity of the offender, AND

¹ This refers to charging by law enforcement at the time of booking and not formal charges by a prosecuting attorney.

2. Gathered enough information to support an arrest, charge, and turning over to the court for prosecution, AND
3. Identified the exact location of the offender so that that the subject could be taken into custody now, AND
4. There is some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender.²

The answer to all four of these questions must be “yes” before law enforcement can clear a case by exception. In other words, exceptional clearance is designed for use in cases that would have been cleared with an arrest – “but for” some factor that is outside law enforcement control.

Two Examples

So, for example, it is clear that the following scenario should be cleared with an arrest:

A sexual assault report is made, an investigation is conducted, and a suspect is identified and arrested. The case is referred for prosecution, but the prosecutor rejects it on the grounds that there is insufficient evidence to file charges. Discussion between the investigator and prosecutor do not reveal any new or potential investigative avenues.

This scenario meets the three criteria stated for clearance by arrest: the suspect was arrested and charged by law enforcement, and the case was turned over to the court for prosecution. The UCR guidelines have always been clear that the prosecutor’s decision regarding whether or not to file charges in a case is irrelevant to the law enforcement agency’s ability to properly clear the case by arrest.

What has been less clear historically is the following situation:

A sexual assault report is made, an investigation is conducted, and all leads are exhausted. A suspect is identified but not arrested – even though probable cause exists. The case is referred for prosecution, but the prosecutor rejects it, on the grounds that there is insufficient evidence to file formal charges – because the prosecutor does not believe the case can be proven to a jury beyond a reasonable doubt.

In this scenario, law enforcement personnel can legally make an arrest (assuming they have probable cause). However, many law enforcement agencies and prosecuting

² This could include, for example:

- The death of the offender.
- The victim’s refusal to cooperate AFTER the offender has been identified.
- The offender’s arrest and prosecution in a different jurisdiction.

attorney's offices have determined that such a practice is counter-productive.³ Because there was no physical arrest, however, some have argued that law enforcement cannot clear this case by exception – because the suspect was not arrested and charged (by law enforcement at the time of booking, not in terms of formal charges filed by a prosecuting attorney). Following this logic, the case would not be cleared and would be left open (but suspended, inactivated, or administratively closed).

UCR Offers Clarification

The new *SRS User's Manual* offers clarification on this question. The manual clearly states that a case can be exceptionally cleared when prosecution has been declined for any reason other than the lack of probable cause (see p. 116). In other words, law enforcement agencies can now clear the second scenario provided above by exceptional means, because they have met the evidentiary criteria to clear the case by arrest, but the only reason they decided not to make a physical arrest was because of the prosecutor's decision to not file formal charges.

We are pleased to see this clarification, because we believe it offers meaningful guidance for law enforcement agencies in the proper clearance of their cases.

Note: This final section includes some material adapted from: Archambault, J. & Lonsway, K.A. (2012). Police clearance methods: How are they currently defined – and how should they be used? *Sexual Assault Report*, 15 (4), 53-60, 63. Published by Civic Research Institute. All rights reserved.

For More Information

For more information, please see the [OnLine Training Institute \(OLTI\)](#) module on [Clearance Methods for Sexual Assault Cases](#). Also relevant is the module on [False Reports](#) as well as [Reporting Methods for Sexual Assault Cases](#).

Also see our more detailed article addressing the topic of police clearance methods:

Archambault, J. & Lonsway, K.A. (2012). Police clearance methods: How are they currently defined – and how should they be used? *Sexual Assault Report*, 15 (4), 53-60, 63.

³ For a detailed discussion of this issue, please see:
Archambault, J. & Lonsway, K.A. (2012). Police clearance methods: How are they currently defined – and how should they be used? *Sexual Assault Report*, 15 (4), 53-60, 63.



End Violence Against Women International
(EVAWI)

Clearance Methods for Sexual Assault

Part 6: Police Clearance Methods Quiz

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August 2013
Updated January 2020

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Before we conclude our series of training bulletins on police clearance methods, we would like to try something completely new. In this installment, we offer you a quiz to evaluate what you've learned so far. The quiz is not truly interactive, so your responses will not be recorded or scored. We will provide you with a series of scenarios and ask you to select the proper clearance method. Please make your selection before reading the commentary, to provide a realistic sense of your own knowledge in this area. Then for more information, feel free to refer to the prior training bulletins or other resource materials.

Survey Responses

Some of these scenarios were originally developed for a survey we conducted in February 2012 with 560 law enforcement professionals. Respondents included 91 executives who graduated from the International Association of Chiefs of Police (IACP) [National Law Enforcement Leadership Institute on Violence Against Women](#) and 469 law enforcement professionals contacted through the EVAWI email list. They ranged in rank from front line officers to Chiefs, and they represented agencies of all types and sizes from across the entire country (in fact, all 50 states and the District of Columbia).

The survey provided six brief scenarios involving a sexual assault report, and participants were asked to indicate how they would be cleared by personnel within their agency.

Responses offered a fascinating glimpse into the diverse practices of law enforcement agencies across the country. While consistency was seen in the responses for some scenarios, others revealed important variations in the interpretation of these clearance categories. Therefore, in the commentary following scenario responses in this training bulletin, we will incorporate some of the findings from this prior law enforcement survey.

Please note, however, that the language in the scenarios has been adapted somewhat from the original survey to be as clear as possible for the purpose of this quiz.

Scenario #1

Please read the following scenario and choose the appropriate clearance category:

A woman reports that she was sexually assaulted. Patrol officers respond, conduct a preliminary investigation, and complete a scored crime report. The suspect has not yet been identified or located. During the investigative follow-up, the woman is unwilling to come in for a follow-up interview or participate in the investigation in any way.

How should this report be cleared? (choose one)

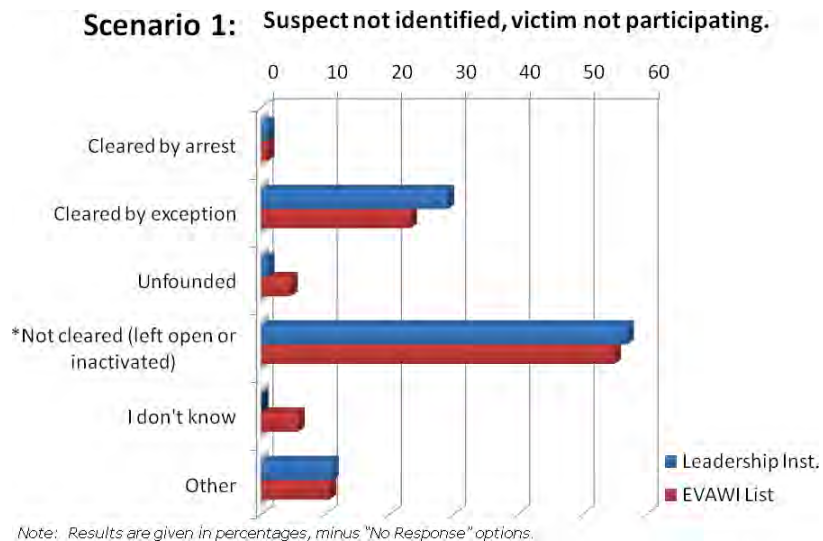
- Cleared by arrest
- Cleared by exception
- Unfounded



- Not cleared (but suspended, inactivated, or administratively closed)
- I don't know
- Other

Response: Scenario #1

The correct answer is that this report should not be cleared at all. The case will be administratively closed (and the investigation suspended or inactivated), but it will not be officially cleared according to UCR guidelines. This was the most common answer given by law enforcement personnel participating in our 2012 survey, as illustrated with the graph below. (The asterisk indicates the correct response.) Note that the blue bar displays the responses of 91 law enforcement executives who graduated from the IACP's [National Law Enforcement Leadership Institute on Violence Against Women](#) and the red bar represents the responses of 469 law enforcement personnel who responded to the survey administered via email by EVAWI.



However, you will also see that a number of survey respondents chose the second option as well – cleared by exception. This is likely related to a common misunderstanding regarding exceptional clearance. Specifically, you may recall that cases can be cleared by exception when law enforcement has identified the offender, knows the offender's location, and has enough evidence to support making an arrest, charging the suspect, and turning the suspect over to the court for prosecution – but is prevented from doing so by some factor “outside law enforcement control.” A number of examples are then provided for what such factors might be, including the fact that the “victim refuses to cooperate in the prosecution.” This is probably why several respondents chose exceptional clearance for this first scenario. However, this is incorrect because the suspect has not yet been identified or located. Therefore, law enforcement cannot answer “yes” to all four of the questions that are needed before a case can be cleared by exception. These questions are:

1. Has the investigation definitively established the identity of the offender?
2. Is there enough information to support an arrest, charge, and turning over to the court for prosecution? [In other words, is there probable cause?]
3. Is the exact location of the offender known so that the subject could be taken into custody now?
4. Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender? (Recall that these could include the death of the offender, the victim's inability to cooperate with prosecution AFTER the offender has been identified, or the offender's arrest and prosecution for another crime in a different jurisdiction).

In this scenario, the response to the first and third questions is "no," because law enforcement has not identified or located the suspect. Therefore, the report cannot be cleared by exception. The report also cannot be cleared with an arrest, since no arrest was made, and it cannot be unfounded because there is no evidence to establish that the report is false or baseless. In fact, in most cases – absent a follow-up investigation – there will be insufficient evidence to determine what the proper disposition should be. Such cases must therefore be suspended or inactivated (administratively closed but not cleared according to UCR criteria). The reality is that the victim might later decide that she is willing to participate, and then the investigation can resume.

For a discussion of exceptional clearances, please see the [Summary Reporting System \(SRS\) User Manual \(SRS\) User Manual](#) published by the UCR Program (especially pages 115-116).

Scenario #2

A sexual assault report is made, an investigation is conducted and all leads are exhausted. A suspect is identified but not arrested – even though probable cause exists. The case is referred for prosecution, but the prosecutor rejects it, on the grounds that there is insufficient evidence to file formal charges – because the prosecutor does not believe the case can be proven to a jury beyond a reasonable doubt.

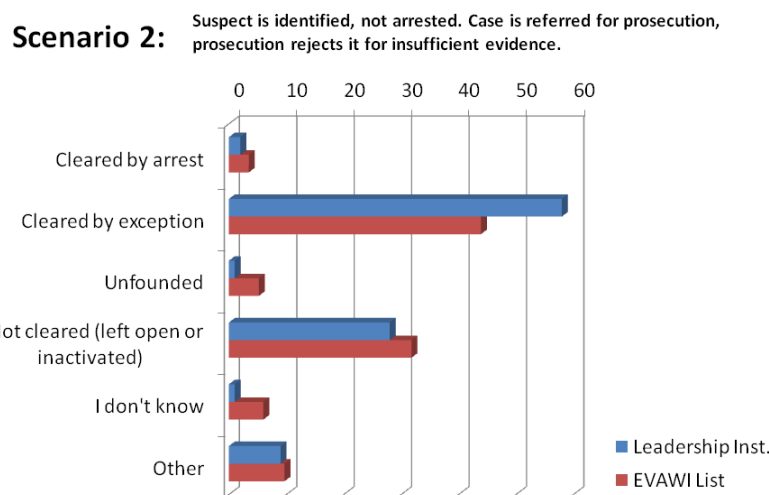
How should this report be cleared? (choose one)

- Cleared by arrest
- Cleared by exception
- Unfounded
- Not cleared (but suspended, inactivated, or administratively closed)
- I don't know
- Other



Response: Scenario #2

The correct response to this scenario is now different than it would have been before the most recent update to the [SRS User's Manual](#) in June, 2013. Prior to that time, the correct answer – according to guidance provided by staff within the UCR Program – was that the report could not be properly cleared and would only be administratively closed (with the investigation suspended or inactivated, but not cleared). That is why you will see the asterisk next to the fourth option below. However, you can see that the more common answer among survey respondents was that the case would be cleared by exception. This issue (among others) created significant debate and controversy in the field and ultimately led the UCR Program to make a number of changes to the new [SRS User's Manual](#) that was published in June, 2013.



Since the time our first survey was originally conducted in 2012, the guidance provided by the UCR Program has changed so the majority of respondents who selected “exceptional clearance” as the proper disposition for this scenario are now correct.

Again, recall from the previous response that a report can only be exceptionally cleared if a suspect has been identified and located, and law enforcement has gathered enough evidence to make an arrest, charge the suspect, and turn the case over to the court for prosecution – but this is precluded by some factor outside their control. The *SRS User's Manual* provides a list of examples for what such factors might be, and in the most recent version of this document there is a new item on the list: “Prosecution declined (for other than the lack of probable cause).” With the addition of this item to the list, the 2013 *SRS User's Manual* offers clarification of this issue that created such debate and controversy in the field. We are pleased to see this clarification, because we believe it will offer meaningful guidance for law enforcement agencies in the proper clearance of their cases and a much more accurate picture of case dispositions.

Scenario #3

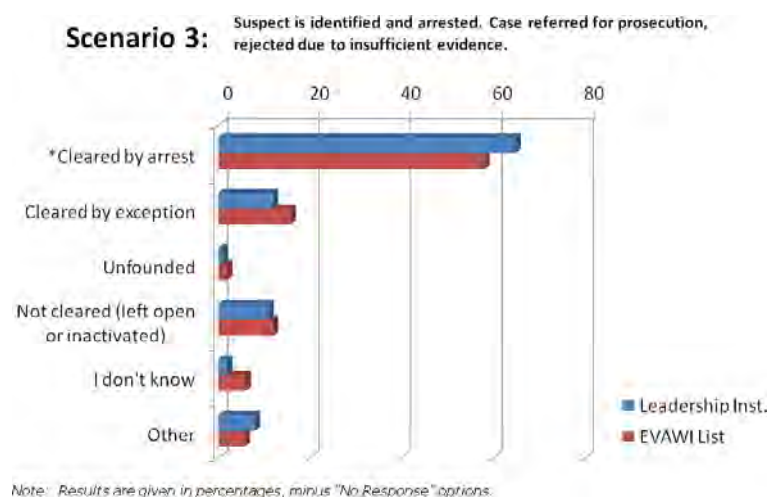
A sexual assault report is made, an investigation is conducted, and a suspect is identified and arrested. The case is referred for prosecution, but the prosecutor rejects it on the grounds that there is insufficient evidence to file formal charges. Discussion between the investigator and prosecutor do not reveal any new investigative avenues not already taken.

How should this report be cleared? (choose one)

- Cleared by arrest
- Cleared by exception
- Unfounded
- Not cleared (but suspended, inactivated, or administratively closed)
- I don't know
- Other

Response: Scenario #3

As indicated by the high degree of consensus among survey participants, the proper response in this scenario is to clear the case with an arrest. This scenario meets the three criteria stated for clearance by arrest: the suspect was arrested and charged by law enforcement, and the case was turned over to the court for prosecution. The UCR guidelines have always been clear that the prosecutor's decision regarding whether or not to file charges is irrelevant to clearing a case by arrest.



For a discussion of clearance by arrest, please see the [Summary Reporting System \(SRS\) User Manual](#) published by the UCR Program (especially pages 112-115).

Scenario #4

A woman reports that she was sexually assaulted. Patrol officers conduct a preliminary investigation, and a suspect is identified and arrested. During the investigative follow-up, the victim says that she does not want to participate in the process. The prosecutor rejects the case.

How should this report be cleared? (choose one)

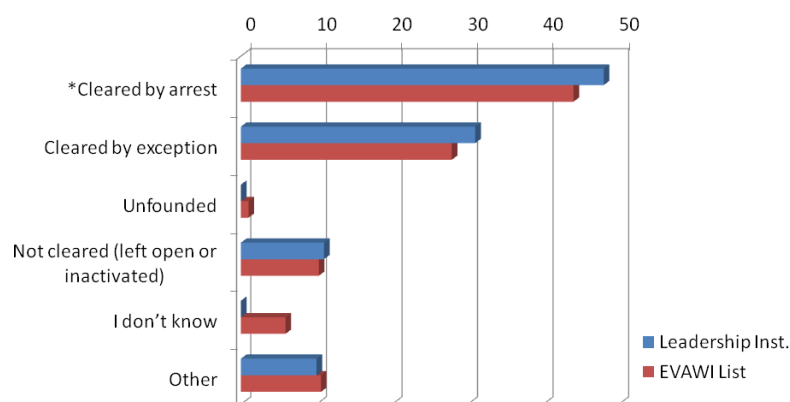
- Cleared by arrest
- Cleared by exception
- Unfounded
- Not cleared (but suspended, inactivated, or administratively closed)
- I don't know
- Other

Response: Scenario #4

Once again, the correct answer is that this report should be cleared by an arrest, because the three criteria are met: the suspect is identified and arrested, and the case is turned over to the court for prosecution (based on the arrest and booking of the suspect).

Note: In the original version of the survey, respondents were told that the case was not referred for prosecution, which is confusing given the fact that the suspect was arrested and booked. For the purpose of this quiz, the wording was clarified so the prosecutor rejected the case.

Scenario 4: Suspect is identified and arrested. Victim doesn't participate during investigation. Case is not referred for prosecution.



Note: Results are given in percentages, minus "No Response" options.

However, this scenario raises important questions of how criminal justice agencies and other community professionals should respond in such a situation, especially because it is common. First, it raises questions regarding when an arrest should be made.

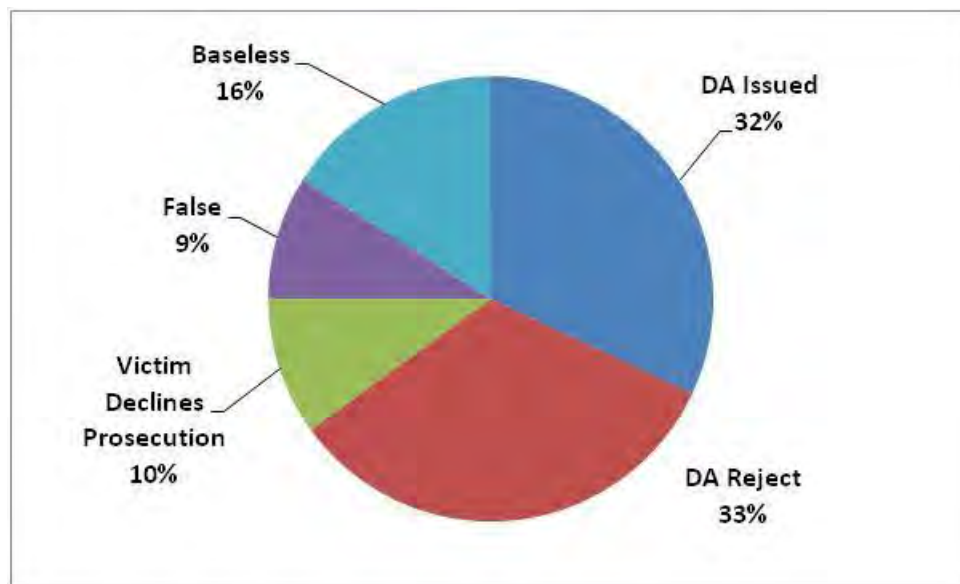
Sometimes there are very good reasons for making an arrest before referring a case to the prosecutor (e.g., the suspect posed an imminent flight risk or threat to the community). However, all too often arrests in a sexual assault case are made too quickly – at the point where a preliminary investigation has yielded evidence that is sufficient to support probable cause but not enough to support a successful prosecution. Once an arrest is made, however, the clock starts ticking – quickly. In most states, prosecutors must make a charging decision within 24-72 hours (depending on the jurisdiction), and within that timeframe, it is almost impossible to conduct the type of evidence-based investigation needed to support successful prosecution of a non-stranger sexual assault. As the International Association of Chiefs of Police (IACP) state in the [Concepts and Issues Paper](#) supporting their [Sexual Assault Investigations Model Policy](#):

Officers should be discouraged from making an immediate arrest unless there is a reason to believe that the offender may flee the jurisdiction, destroy evidence, or is posing a danger to the victim or other members of the community. This allows the officer time to locate and interview any potential witnesses and to use investigative techniques such as pretext phone calls (where allowed by law) (p. 7).

When arrests are made prematurely or without sufficient evidence to support successful prosecution, the prosecutor will most likely reject the case and the suspect will be released. The question is therefore how to interpret UCR statistics on clearance by arrest. In other words, what do these arrests *mean*? All too often, an arrest is seen as the outcome worth measuring – without any regard for what happens to the case after the arrest is made. An agency's arrest rate will reflect a number of factors, including both formal policy decisions as well as informal daily practices, and many of these are totally irrelevant to the facts of the case. As a result, one agency can have a high arrest rate, and another one can have a low arrest rate, but both numbers are meaningless without any indication of how thoroughly the crimes were investigated and whether the cases were issued or rejected by the prosecuting attorney – and why.

Therefore, one recommendation we offer in this area is for law enforcement agencies to begin tracking their case outcomes not only in terms of clearance categories but also in actual dispositions. So, for example, for cases that are cleared by arrest, an agency should also track whether the prosecutor filed formal charges or rejected the case and why (e.g., because the victim declined prosecution). We provide an example of what this might look like in the chart on the following page.





This type of detailed analysis could be conducted using a single chart, or a series of charts, and then reviewed both for the department or unit as a whole as well as for individual investigators as part of their performance evaluations.

Scenario #5

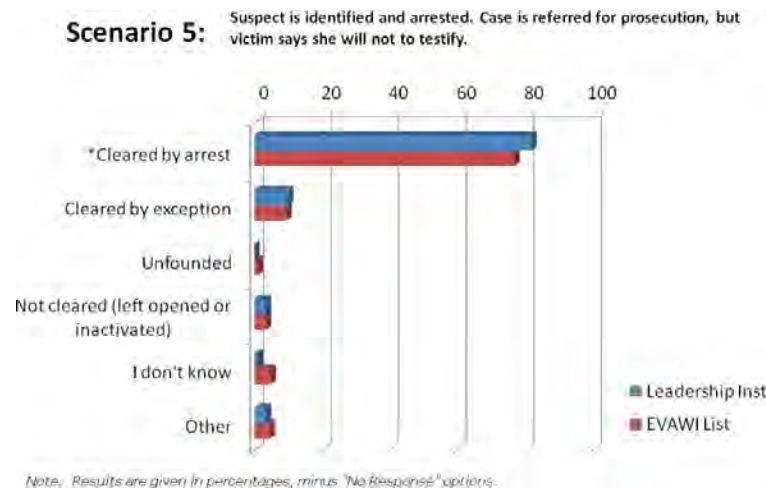
A woman reports that she was sexually assaulted. Patrol officers conduct a preliminary investigation. After investigative follow-up, a suspect is identified and arrested. The case is referred for prosecution, but when the victim is contacted by the prosecutor's office, she says she will not go to court to testify.

How should this report be cleared? (choose one)

- Cleared by arrest
- Cleared by exception
- Unfounded
- Not cleared (but suspended, inactivated, or administratively closed)
- I don't know
- Other

Response: Scenario #5

In this scenario, the correct response is again that the report should be cleared with an arrest. All three criteria for this clearance category are met: the suspect was arrested and charged (booked) by law enforcement, and the case was turned over to the court for prosecution. Regardless of whether the prosecutor files formal charges in this scenario or not, the law enforcement agency can clear the case with an arrest. This is reflected in the high level of consensus among survey responses.



In fact, the only real difference between this scenario and the prior one is the point at which the victim withdrew her participation. In this scenario she participated during the law enforcement investigation but withdrew during the process of prosecution. It therefore highlights the need to ensure that the community offers services to provide support for victims throughout the entire criminal justice process.

The reality is that the criminal justice process will inevitably be difficult and disruptive for victims, even when all of the professionals involved perform their jobs with a high degree of competence and compassion. Victims need support, which often includes victim advocacy services, provided in an ongoing way throughout the entire process to participate fully – and to facilitate their recovery process as much as possible.

Scenario #6

A young woman calls the police to say that she was raped, but when the responding officer interviews her, she says that her boyfriend yelled at her and threatened to leave her if she didn't have sex with him. The officer completed a scored crime report. However, in her follow-up interview, she clearly states that she did not experience any force or fear; she was simply upset that her boyfriend would coerce her into having sex with him.

How should this report be cleared? (choose one)

- Cleared by arrest
- Cleared by exception
- Unfounded
- Not cleared (but suspended, inactivated, or administratively closed)
- I don't know
- Other

Response: Scenario #6

Although this final scenario was not included in our original survey, the correct response is that this report should be unfounded – not because it is false, but because it is baseless. During the victim's interview, it was determined that the elements of the offense were not met. While clearly disturbing and abusive, the behavior described does not rise to the legal threshold required to meet the element of force, threat, or fear.

Conclusion

So, how did you do? If you did well, then congratulations! However, if you found it difficult to determine the proper clearance category in any of the scenarios, rest assured that you have plenty of company. The reality is that these decisions are often difficult, because real life scenarios are complex and the criteria – based on all the possibilities – are not always as clear as they seem.

We applaud the UCR Program's efforts to clarify the various clearance categories in the most recent version of the SRS User's Manual. However, we believe clarification is still needed with respect to unfounding, particularly the distinction between false and baseless reports. Given the many misunderstandings and misconceptions that surround unfounding, the UCR Program can potentially contribute real and meaningful improvements in the field.

The implications of any confusion or concern regarding clearance methods extend far beyond sexual assault to all of the offense data reported from law enforcement agencies to the UCR Program. Without consistent practices for case clearance, it is impossible to evaluate what is truly happening to crime reports in our communities.

For More Information

For more information, please see the [OnLine Training Institute \(OLTI\)](#) module on [Clearance Methods for Sexual Assault Cases](#). Also relevant is the module on [False Reports](#) as well as [Reporting Methods for Sexual Assault Cases](#).

Also see our more detailed article addressing the topic of police clearance methods:

Archambault, J. & Lonsway, K.A. (2012). Police clearance methods: How are they currently defined – and how should they be used? *Sexual Assault Report*, 15 (4), 53-60, 63.

Finally, readers may be interested in our review of outcomes in sexual assault cases, with a discussion of clearance categories, arrest data, and prosecution statistics:

Lonsway, K.A. & Archambault, J. (2012). The 'justice gap' for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18 (2), 145-168.





End Violence Against Women International
(EVAWI)

Clearance Methods for Sexual Assault

Part 7: Best Practices

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September 2013
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This is the final installment in our series of training bulletins explaining the various methods that law enforcement personnel use for clearing or closing their cases. In previous bulletins, we identified the three primary methods: clearance by arrest, exceptional clearance, and unfounding. We then explored some of the challenges with various clearance methods, particularly unfounding – and quizzed you on what you had learned so far. In this final bulletin, we focus on recommendations for best practices in this area.

Many of these recommendations have been noted in previous bulletins, and some pertain more generally to the successful investigation of sexual assault rather than narrowly focusing on police clearance methods. However, any improvements to the criminal justice response to sexual assault will inevitably lead to more accurate clearances. Our recommendations are as follows:

(1) Give responding officers, investigators, and supervisors the clear directive that all sexual assault cases are assumed to be valid unless the investigative findings establish otherwise.

This would mean that all sexual assault cases will be documented with a written report and investigated to the extent possible. This would be true, regardless of whether the report was initially recorded as a crime report or an informational report.

- Officers and investigators have all too often shared the societal myth that many (or even most) sexual assault reports are false, so victims are sometimes viewed with unwarranted suspicion. In other words, sexual assault reports are all too often seen as “false until proven true.”¹
- Instead, sexual assault victims must be given the same consideration as most other crime victims, so each and every report is assumed to be valid and investigated accordingly, unless or until the evidence indicates otherwise.

We must simply accept the reality that a relatively small percentage of sexual assault reports are false, and even if the percentage were higher, we would still need to initially approach each one as though it is valid. No matter how many “red flags” there may be in a particular report, it must be investigated thoroughly and only determined to be false if this is established by the investigative facts. If we could make this one change, we will have gone a long way toward dramatically improving the way that sexual assault victims are treated within the criminal justice system as well as the larger society.

Moreover, by approaching all sexual assault reports with the assumption that they are valid, officers and investigators will often find that victims respond with an increased

¹ See, for example, an article that appeared on the very day this training bulletin was being written: “Virginia city’s rape policy was ‘Assume the victim is lying’ until last week. By David Ferguson, August 13, 2013. *The Raw Story*. <http://www.rawstory.com/rs/2013/08/13/virginia-citys-rape-policy-was-assume-the-victim-is-lying-until-last-week/>.



openness and trust that facilitates a thorough investigation. This, in turn, can yield increased victim cooperation, better information, and more investigative leads. Then, by taking steps to reduce the likelihood of inconsistent or untrue information in the victim's statement, investigators can better distinguish reports that are false from those that are true but described with some omissions, inconsistencies, inaccuracies, or even false statements.

(2) Improve investigations with a teamwork approach.

Criminal prosecution is not the only – and perhaps not even the most important – indicator of success for a community's response to sexual assault. At least equally important is the ability of the community to determine in a coordinated way which services are most needed by victims and assist them in accessing those services.

With a teamwork approach to sexual assault response, law enforcement investigators can join other professionals in improving services for victims that will facilitate their cooperation and ultimately, their recovery. This teamwork approach will require collaboration with victim advocates, forensic examiners, prosecutors, and others involved in the multidisciplinary community response to sexual assault.

The need for teamwork may be particularly critical in those cases where a person has been victimized repeatedly. These cases can be heartbreaking, but they are often difficult to investigate and prosecute because victims with a prior history of physical, emotional and/or sexual abuse often have learned behaviors as well as negative coping mechanisms that make perfect sense in terms of their psychological response – but are perceived as challenges to their credibility within the criminal justice system. For example, many victims – particularly those abused as children – may have learned behaviors that are triggered in response to sexual victimization, including dissociation or tonic immobility. Among child victims, this is often described as “pretending to be asleep.” For adolescents or adults, it may be described as “feeling paralyzed.” Sexual victimization can also lead adolescents and adults to engage in high risk or attention-seeking behaviors, such as drinking, taking drugs, sexual promiscuity, running away, failing school, etc. Again, such behaviors are understandable as responses to traumatic sexual victimization, however they can make successful prosecution unlikely.

Multidisciplinary coordination is critical in such cases to determine how the community can best respond to the needs of these victims. This will likely include referrals for victim advocacy, mental health professionals, and other social services. Law enforcement personnel can also assist in facilitating these referrals, which can help to meet the needs of victims, particularly when investigation and prosecution are unlikely.



(3) Provide training in the new definition of rape used by the FBI's Uniform Crime Report (UCR) Program.

Again, this new definition is:

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

It is critical for criminal justice professionals and others to recognize that this definition is only used for data collection purposes within the UCR Program. It does not revise or affect in any way the statutory definition of criminal offenses in any jurisdiction.

(4) Notify officers and investigators that they cannot unfound a case based solely on the victim's initial statement or a cursory preliminary investigation.

The determination that a case should be unfounded can only be made after reviewing all of the findings from a thorough, evidence-based investigation. At the point of a preliminary investigation or a victim's initial statement, there is typically insufficient evidence to make such a determination. Therefore, a crime report should only be unfounded if the investigative findings establish that no crime was completed or attempted.

Training must also clarify the distinction between unfounded cases and cases that are "unsubstantiated" or have yielded "insufficient evidence" to pursue prosecution. Based on the definition above, unsubstantiated cases should not be unfounded, because there is not enough information to support such a determination. In fact, these terms (unsubstantiated, insufficient evidence) are not UCR clearance categories.

(5) Provide training on the definitions and criteria for the various clearance methods, including the new updates regarding exceptional clearance.

The six prior training bulletins in this series might be a helpful place to start in providing training on the various methods for clearing cases. For example, training can address the new clarification of exceptional clearance provided in the updated [Summary Reporting System User's Manual](#) published in June 2013 by the UCR Program. This manual clearly states that a case can be exceptionally cleared when an investigation yields sufficient evidence to make an arrest, but the arrest is not made, and the prosecutor declines to file formal charges on any basis other than probable cause.

Similar clarification is needed to distinguish between the definitions of unfounded, baseless, and false reports. For now, training can be based on the information included in our training bulletins, as well as the [OnLine Training Institute \(OLTI\)](#) modules on [Clearance Methods](#) as well as [False Reports](#). In these materials, we have sought to clarify the definition of unfounding, with particular focus on the distinction between

reports that are false versus baseless. However, no such clarification is currently offered by the UCR Program, and we hope that this will be corrected in the future.

(6) Begin tracking unfounded cases that are *false versus baseless*.

While pressure is needed for the UCR Program to offer a formal definition of unfounding – and to distinguish between false versus baseless reports – law enforcement agencies can nonetheless begin tracking their own statistics. By creating and applying standard criteria, agencies can train investigative personnel in the proper use of unfounding and document when cases are unfounded because they are false versus baseless. This data would not be reported to the UCR – for that purpose, the two categories would be collapsed into the single category of unfounded. However, the distinction is likely to be helpful in guiding policy and practice for the agency, as well as addressing some of the myths and misunderstandings that surround this topic. For example, such data would clearly communicate that not all unfounded cases are false reports. It might also reveal concerns with the use of unfounding that can be addressed with policy reforms. In the longer term, our hope is that the UCR Program would similarly disaggregate the data they collect on unfounded cases, to provide more helpful information to the public.

(7) Separate cases that are cleared *with an arrest versus by exception*.

In a similar vein, the UCR Program should be encouraged to report their clearance data disaggregated by whether the case was cleared with an arrest or by exception. You might recall that according to [UCR guidelines](#), law enforcement personnel may clear a crime report by exception when they have sufficient evidence to identify a suspect, make an arrest, and refer the case for prosecution, but some element beyond law enforcement control precludes issuing formal charges. These could include:

- The death of the offender.
- The victim's refusal to cooperate AFTER the offender has been identified.
- The offender's arrest and prosecution in a different jurisdiction.

Clearance data is currently reported by the UCR Program with these two categories collapsed. However, the public would be provided with a more realistic picture of law enforcement practices if they were reported separately. Therefore, individual agencies can help to pursue this goal by tracking and reporting their own data in this way.

(8) Track information about case outcomes, including whether or not cases are referred for prosecution and whether or not the prosecutor files formal charges.

Taking this logic one step further, we would like to see the UCR Program incorporate data that provides meaningful information to the public on case outcomes. For example, many individual agencies track whether their cases are referred for prosecution and whether or not the prosecutor files formal charges in a case.

As we have said many times, UCR clearance statistics are currently unrelated to any meaningful measure of case outcome. For example, a case can be cleared with an arrest or by exception, but neither classification tells us whether it was investigated properly or whether it has reached “the end of the road” within the criminal justice system. We do not mean to suggest that law enforcement personnel should be evaluated or held accountable based on the filing decisions of prosecutors. Case clearance is in fact a police decision, and investigators should be able to “count” their clearances in police statistics regardless of whether or not the cases are prosecuted. The question is how we should interpret these numbers. In other words, what do these clearance statistics *mean*?

All too often, an arrest is seen as the outcome worth measuring – without any regard for what happens to the case after the arrest is made. Yet an agency’s arrest rate will reflect a number of factors – many of which are irrelevant to the facts of the case. These include both formal policy decisions as well as informal daily practices. As a result, one agency can have a high arrest rate, and another one can have a low arrest rate, but both numbers are meaningless without any indication of how thoroughly the cases were investigated and what happened to them after the arrest was made. By improving the statistics that are tracked by agencies to reflect case outcomes, this will provide both law enforcement and the public with a more realistic picture of what is happening in the community. Then in the longer term, we can work to encourage the UCR Program to incorporate such information in the data they collect and report.

(9) Develop a standardized form to record the clearance method for each sexual assault report and include it with the investigative case files.

Once clarification and training have been provided for the various methods of clearing and closing a case, all of the relevant categories should be included on a standardized form that is used across the agency – not just within sex crimes but other units as well. The benefit of a standardized form is that it includes all of the information needed for UCR reporting. It can therefore assist officers and investigators in reviewing the case file and making an appropriate decision regarding clearances. One example of such a form is included in the appendix of our OLT module on [Clearance Methods for Sexual Assault Cases](#).

(10) Work collaboratively with Child Abuse Units to standardize the process for recording crimes of sexual violence against children and adolescents.

This effort might include using the same type of standardized form and tracking system to differentiate reports that are recorded as *unfounded* versus those that are recorded as *false* or *unsubstantiated* or resulting in *insufficient evidence* to support prosecution. By using consistent terminology and procedures, an agency will be able to provide a comprehensive picture of how all sex crimes are reported and resolved.

(11) Improve the department's internal tracking system, to better record the progress of sexual assault cases throughout the criminal justice process.

These improvements will also clarify the disposition of cases, so agency staff can have a better picture of case attrition – to understand how many cases "fall out" of the criminal justice system (and at which stage), and to document what the characteristics of those cases are. Analysis can then be used to improve responses and outcomes for cases (for example, when the victim declines to participate in the investigation and prosecution of their sexual assault).

(12) Eliminate the pressure on officers, investigators, and supervisors to clear a high percentage of their cases.

This will require addressing formal reinforcement systems, so law enforcement personnel are not rewarded for high clearance rates or punished for low clearance rates. Equally important is changing the informal atmosphere that pushes officers and investigators to clear their cases using the path of least resistance. Instead, officers and investigators should be recognized and rewarded for conducting a thorough, evidence-based investigation – even when it does not result in prosecution but is suspended or inactivated because there isn't enough information to move the case forward or prosecute the offender.

(13) Use alternative procedures for inactivating cases.

In a related vein, law enforcement agencies must also create appropriate procedures for suspending or inactivating cases that are not cleared or otherwise closed. This may mean that a large number of sexual assault cases are only administratively closed (with the investigation suspended or inactivated), because they cannot be officially cleared following UCR guidelines. Yet it may require a change in the law enforcement culture that often places a high value on clearance rates. This is particularly important given the number of states that are abolishing or extending the statute of limitations because DNA technology provides the opportunity to identify suspects years – or even decades – after the crime was committed. In fact, this type of procedure is explicitly authorized by the [UCR guidelines](#), which state that:

Departmental policy in various law enforcement agencies permits the discontinuance of investigation and the administrative closing of cases in which an investigation has been completed (p. 81).

The key here, however, is that the case can only be discontinued (or suspended or inactivated) after a thorough investigation has been conducted or when the victim is unable or unwilling to participate in the investigation.

The benefits of such a procedure can include a decrease in the inappropriate use of unfounding and exceptional clearances, as investigators and supervisors are relieved of

the pressure to clear a high percentage of their caseload. In fact, this pressure stems as much from internal factors as agency policies and practices. The reality is that many investigators and administrators are uncomfortable closing a case administratively without officially clearing it (even though the investigation has been suspended or inactivated) – because of the inaccurate perception that this means the case is unsolved or that law enforcement hasn't done their job properly. This is often especially troubling for law enforcement professionals when they know that a crime was committed, and they know who committed it – but they cannot move forward with the investigation and prosecution of the suspect.

As noted earlier, the solution to relieving this pressure and improving police practice requires improved communication between law enforcement, victims, victim advocates and the public. It is important that everyone understands that even when a thorough investigation has been conducted, there are often times when there just isn't enough evidence to present the case to the prosecutor, obtain a warrant, or make an arrest.

- Despite any discomfort investigators and administrators may feel in such a situation, it is not acceptable to unfound or clear sexual assault cases when they do not meet the criteria specified in the UCR guidelines.
- If an investigation does not meet the criteria for clearance according to the UCR guidelines, but all investigative leads have been exhausted, such cases should be suspended or inactivated.

While such cases should not be unfounded, all too often they are, and law enforcement agencies realize the tragic consequences of this error too late – when they have unfounded a sexual assault case that is later proven to be valid, and the offender went on to commit other sexual assault crimes, often for years or even decades. In this situation, prosecutors will likely have great difficulty using the unfounded case to establish prior “bad acts” when the suspect re-offends. Of course, most individuals who commit sexual assault do re-offend, so the improper use of unfounding can have a serious negative impact on the likelihood of prosecuting and convicting these offenders. If these cases are simply suspended or inactivated, they are much more likely to be able to provide evidence to assist in the successful prosecution of repeat offenders.

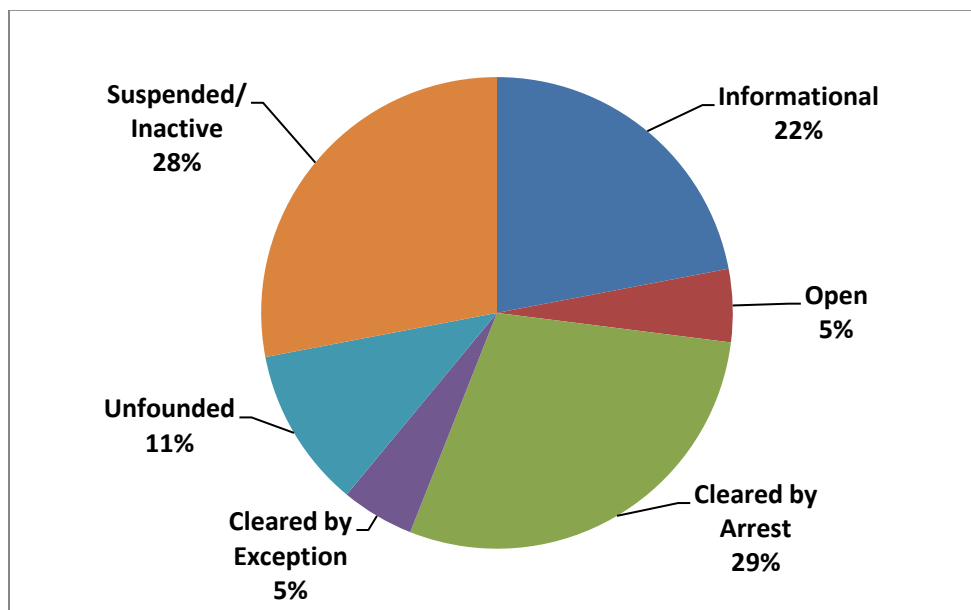
(14) Use graphics to visually review the balance of cases in the various dispositional categories.

To truly understand the entire picture of a department's or unit's sexual assault caseload, one good strategy is to view the number of cases that are closed using each of the various means. This is an important part of the review process that supervisors and managers can use, by creating a graph or chart to visually depict the balance of the department's entire caseload, broken down into the primary disposition categories of:



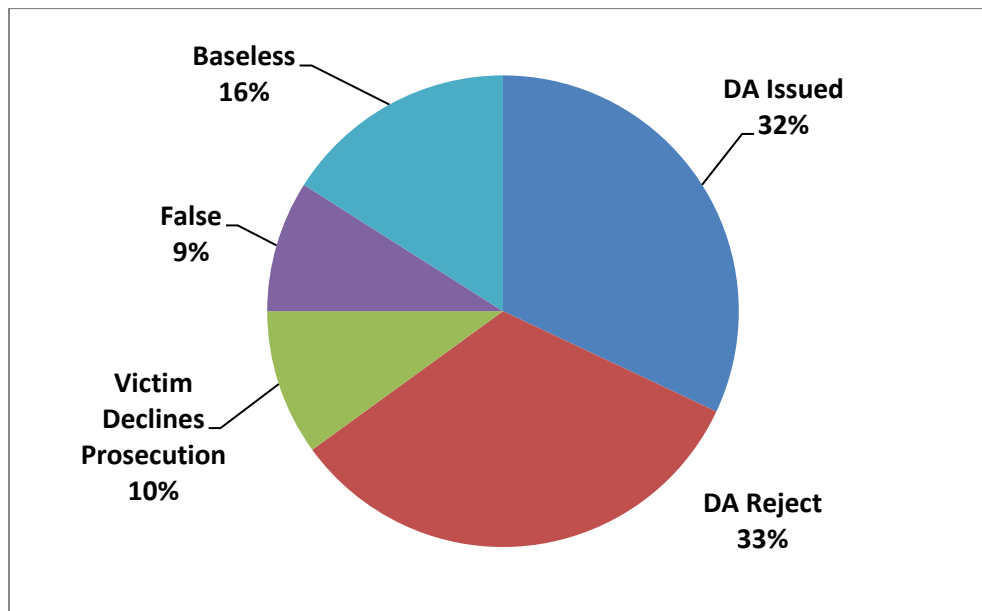
- Clearance by Arrest
- Exceptional Clearance
- Unfounded
- Suspended/Inactivated
- Informational Report, and
- Open (Cases that are currently being investigated)

Once an appropriate tracking system is established, this type of review can be conducted both for the department (or unit) as a whole, as well as for individual investigators. The following is an example of what such a chart might look:



Sample Chart #1

Supervisors can then also review the balance of an investigator's case load by examining each outcome in more detail. An example of this type of chart is presented below:



Sample Chart #2

This chart illustrates many of the more detailed categories discussed in this training bulletin. For example, a more detailed review could determine the percentage of cases cleared by arrest that were issued versus rejected by the prosecutor. This review could also include the breakdown of cases exceptionally cleared because the victim was unable to participate in the investigation or prosecution (often referred to as a “VDP”) versus other acceptable reasons (e.g., the death of the offender, the prosecution of the offender in another jurisdiction). For reasons already discussed, it is also critically important to document and review the breakdown of cases that were unfounded because they were false versus baseless.

This type of detailed analysis could be conducted using a single chart, or a series of charts, and then reviewed both for the department or unit as a whole as well as for individual investigators as part of their performance evaluation. Any investigator who has an extremely high or extremely low number of cases in any one category could be contacted for supervisory review and discussion, because such an imbalance might indicate a problem.

(11) Reward good investigations regardless of the final outcome.

Another needed change is to establish both formal and informal practices within law enforcement agencies to reward investigators for conducting a thorough, evidence-based investigation regardless of the final outcome of the case. This is especially true when a report is determined to be false. Investigators are likely to feel discouraged, frustrated, or even angry in such a situation, and supervisors must be trained to debrief their detectives and commend them for doing a good job regardless of the outcome of the case. For examples of actual performance evaluations of sexual assault

investigators that incorporate this strategy, please see the appendix of the OLT module on [Clearance Methods for Sexual Assault Cases](#).

(12) Implement a multidisciplinary review process, to ensure that established guidelines have been followed when it comes to clearance decisions, particularly unfounding.

This review process should include members in the coordinated community response to sexual assault, such as victim advocates, forensic examiners, prosecutors, and others. The purpose is not only to review the way cases are cleared, perhaps with an emphasis on unfounded cases, but also to discuss any adult and adolescent victims who are in particular need of community intervention and resources.

(13) Provide victim advocacy organizations and others in the community with information about the total number of sexual assaults that are reported and the breakdown of their case dispositions.

This is important information for the public to have, because it provides a more realistic picture of the prevalence and characteristics of sexual assaults being committed in each community. For example, this type of information was incorporated in the [Sexual Assault Risk Reduction Curriculum](#) that was developed by community partners in San Diego, California with funding provided by the Office of Community Oriented Policing Services (COPS). The curriculum was used by the Speaker's Bureau within the San Diego Police Department, which incorporated new local data each year, to ensure the community was provided with information that was accurate and up-to-date.

It is also helpful to provide community partners with detailed information on sexual assault reports and their case dispositions in order to serve as an external system of checks and balances. This can be helpful for law enforcement officers, investigators, and supervisors as they engage in ongoing efforts to improve their performance.

(14) Immediately investigate any complaints or inquiries about the outcome of any case.

Not only is this a good recommendation in terms of public relations, but the complainant in such a situation will often provide new information about the case. This can allow a supervisor or investigator to actively pursue a case that had been closed or inactivated.

For More Information

This concludes our series of training bulletins on the topic of police clearance methods. All of the training bulletins in this series are posted in our [Resource Library](#), along with others that address a wide variety of topics related to the criminal justice and community response to crimes of violence against women. For more information, please see the [OLTI](#) modules on [Reporting Methods](#) and [Clearance Methods for Sexual Assault Cases](#). You will also find more information in the section of our website dedicated to [Best Practices](#).

