



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 the six 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.

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/>.

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 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.

This new definition now appears on a newly redesigned website for the [UCR Program](#). Under *Recent Program Updates*, there is a link for information about the [New Rape Definition](#) as well as [Frequently Asked Questions](#) regarding the new rape definition.

However, 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 document 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 [OLTI](#) 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 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.

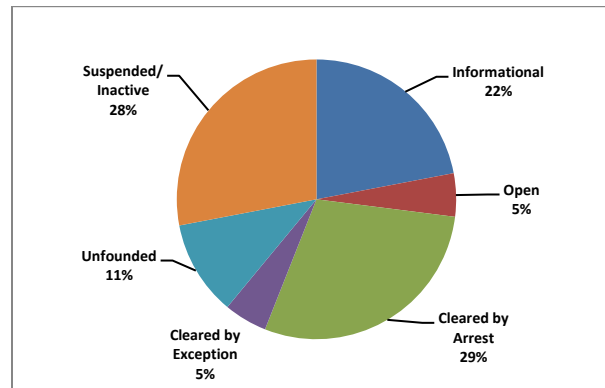
While such cases should not be unfounded, all too often they are, and law enforcement agencies realize the tragic consequences of this error too late – when they have unfounded a sexual assault case that is later proven to be valid, and the offender went on to commit other sexual assault crimes, often 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.

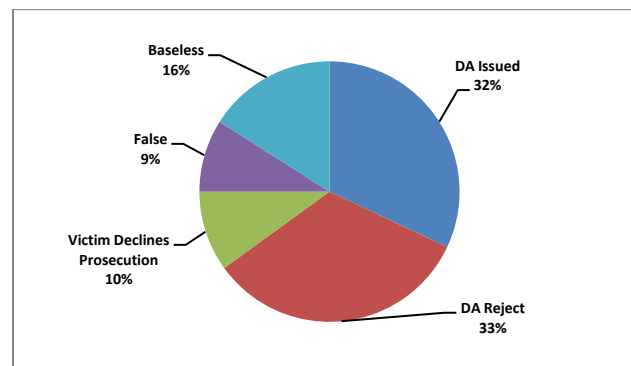
To truly understand the entire picture of a department's or unit's sexual assault caseload, one good strategy is to view the number of cases that are closed using each of the various means. This is an important part of the review process that supervisors and managers can use, by creating a graph or chart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



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:



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 [OLTI](#) 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 [archives](#), 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](#), and we encourage you to consider attending our [annual conferences](#) or one of the upcoming [regional training conferences](#). Visit our website for details.