



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. The [prior bulletin](#) in this series examines 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.

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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.

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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.

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- 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 [OLTI](#) 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.

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.

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*.

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.

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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*.

References

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