End Violence Against Women International
(EVAWI)

Clearance Methods for Sexual Assault Cases

Sergeant Joanne Archambault (Ret.)
Kimberly A. Lonsway, PhD

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OnLine Training Institute

This module is part of EVAWI's OnLine Training Institute (OLTI), which includes review exercises, practical applications, and an end-of-course test. Participants can also download a personalized certificate of completion to use for continuing education or other purposes. For more information, please see the EVAWI website.

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Authors

Sgt. Joanne Archambault (Retired, San Diego Police Department) is the Founder and Chief Executive Officer for End Violence Against Women International (EVAWI). Prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for over 22 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which investigated approximately 1,000 felony sexual assaults each year. Under her leadership, the San Diego Police Department's Sex Crimes Unit was recognized for pioneering research, groundbreaking victim-centered practices, and multidisciplinary collaboration that changed law enforcement responses to sexual assault across the nation. She also established and operated a highly successful for-profit training and consulting business for 22 years, providing expert guidance to hundreds of police departments and allied agencies, and training tens of thousands of practitioners.

In 2003, Sgt. Archambault founded EVAWI, a nonprofit organization dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. Starting from scratch, she has grown EVAWI into the premier training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders. In 2011, she achieved a dream first envisioned while working in the San Diego Police Department's Child Abuse Unit in 1985 – the launch of Start by Believing, a public awareness campaign designed to transform the way society responds to victims of sexual violence. With campaigns in all 50 US states, several US territories and protectorates, and numerous countries, this vision is now becoming a reality, changing the world for victims, one response at a time.

Dr. Kimberly A. Lonsway earned her PhD in the Department of Psychology at the University of Illinois, Urbana-Champaign. Her research career has focused on sexual violence and the criminal justice and community response systems, and she has written one book and over 100 training modules, bulletins, research articles, book chapters, and government reports on related topics. She has also trained thousands of professionals around the world, testified as an expert witness in criminal and civil court cases, and volunteered for over 15 years as a victim advocate. In 2012, she was awarded the first-ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, California. In 2003, Dr. Lonsway was invited to serve as a Founding Director for End Violence Against Women International (EVAWI), a fledgling nonprofit dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. In 2004, she assumed the role as Director of Research, and she has since helped grow EVAWI into the premiere criminal justice training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders.

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Learning Objectives

In this module, we provide information for law enforcement officers, investigators, and supervisors who make decisions regarding how to clear or otherwise close sexual assault cases. These determinations can be extremely difficult, yet many law enforcement personnel are provided little or no guidance in how to make them appropriately.

At the end of this training module, the learner will be able to:

- Identify the various ways in which a sexual assault case can be cleared or otherwise closed.
- Explore how some cases are suspended or inactivated.
- Discuss clearance methods defined by the Uniform Crime Report (UCR) program.
- Identify the criteria for *clearance by arrest*, *exceptional clearance*, and *unfounding*, according to the UCR.
- Explain the difference between an *unfounded* and a *false report*.

Introduction

Before we begin discussing the topic of clearance methods for sexual assault, it is necessary to provide some background information on the Uniform Crime Reporting (UCR) Program. This is because clearance methods are officially defined by the FBI for use within the UCR Program.

The UCR Program is a nationwide statistical effort of more than 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, the 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.

UCR statistics are often seen as the "official source" for information on crime in the US and they are often reported in the media – and then used by policymakers as well as the public to evaluate the safety of their communities and the effectiveness of their police departments.

Summary Reporting System (SRS)

For law enforcement agencies participating in the UCR's *Summary Reporting System (SRS)*, data on eight specific crimes (referred to as *Index Crimes*) are voluntarily provided to the FBI and compiled with data submitted from law enforcement agencies across the country. These offenses are: murder, forcible rape, robbery, aggravated assault, burglary, larceny/theft, auto theft, and arson. Data is collected on how many Index Crimes (both completed and attempted) were reported to a particular law enforcement agency and how they were cleared. The two primary clearance methods for the UCR program are *clearance by arrest* and *exceptional clearance*. Cases can also be *unfounded*. We will discuss each of these dispositions later in the module.

National Incident-Based Reporting System (NIBRS)

It is worth noting, however, that the FBI created an alternative data collection program designed to replace the Summary Reporting System (SRS). It is called the National Incident-Based Reporting System (NIBRS), and the FBI began its implementation in 1989. NIBRS was designed to collect data on reported crimes within 22 specific categories. One of these categories is: *Sex Offenses, Forcible - Forcible Rape, Forcible Sodomy, Sexual Assault with An Object, Forcible Fondling.* Another category is: *Sex Offenses, Nonforcible - Incest, Statutory Rape*.

NIBRS thus uses a broader definition of sexual assault than the SRS does, meaning it captures more comprehensive data on the range of sexual assault crimes that are actually reported to law enforcement each year. Because of the level of detail required for NIBRS reporting, however, it takes time for law enforcement in a state to develop the infrastructure necessary to participate. In addition, agencies have to be certified to

participate, so it is not surprising that the NIBRS program has not been as widely adopted as initially anticipated. As stated on the FBI website:

> *Agencies and state UCR Programs are constantly developing, testing, or implementing the NIBRS…Implementation of the NIBRS is occurring at a pace commensurate with the resources, abilities, and limitations of the contributing law enforcement agencies*.

While both the SRS and NIBRS are part of the UCR Program, most people referring to the "UCR statistics" are talking about the SRS rather than NIBRS. It is also worth noting that the clearance criteria are the same for both programs.

Resources: Uniform Crime Reporting (UCR) Program

For more information on the UCR Program, please visit the FBI website. Information, resources, and tools are posted for both data collection programs discussed here: the Summary Reporting System (SRS) as well as the National Incident Based Reporting System (NIBRS).

Revised Definition of Rape

The UCR Program was first established in 1929, and the definition of Forcible Rape remained the same until recently: "carnal knowledge of a female forcibly and against her will." This definition was clearly limited in scope, because it did not include sexual acts such as oral copulation, digital penetration, and sodomy. In addition, many victims (such as male victims, drug- or alcohol-facilitated rape victims, victims with disabilities, and minor victims) did not meet the criteria for Forcible Rape under UCR guidelines and thus remained invisible in UCR crime statistics.

In December 2011, the UCR Program expanded the definition of rape to the following:

> *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 (SRS User Manual*, 2013, p.32).

This definition now includes a far broader range of sexual acts, as well as the excluded victim populations mentioned above. This means they will now be classified as victims of rape and UCR crime statistics will more accurately reflect the actual number of sexual assaults perpetrated in our communities. In fact, the Bureau of Justice Statistics (BJS) estimated that offenses reported to the UCR as Forcible Rape using the old definition represent only 39% of all the sexual assaults reported to law enforcement[1].

[1] Source: Howard N. Snyder, PhD, Deputy Director, Bureau of Justice Statistics. Based on data from the National Incident Based Reporting System (NIBRS), for the period 2006-2008. Presented at the Sexual Violence Research Roundtable hosted by the National Institute of Justice (NIJ) and Office on Violence Against Women (OVW), in Arlington, Virginia, September 8-9, 2001.

Data Collection Purposes Only

It is critical to understand, however, that the recent change in the UCR definition of rape is for *data collection purposes only*. This new definition does not change state sexual assault laws, which have long included the criminal offenses of oral, anal, and digital penetration, as well as drug facilitated sexual assault. Some of the confusion has stemmed from the fact that professionals and the public who have not studied criminal law may not understand that states structure their sexual assault laws quite differently, and this has implications for how crime reports will be recorded (scored) and reported to the UCR for data collection purposes.

For example, in some states – like California – each of the various sexual assault offenses are found in separate penal code sections. In other words, there is a separate penal code section for the crime of penile-vaginal rape versus forcible oral, anal, and digital penetration. In other states – like Montana and Texas – these crimes all fall under a single penal code section. The criminal offense thus includes all sexual acts that are committed without consent.

To compile UCR data in a state like Montana, Washington or Texas (with a general penal code section for sexual assault), law enforcement agencies typically assign someone to review all of their sexual assault cases, to determine which ones meet the narrow definition of rape used by the UCR Program. For states with separate penal code sections, the task has been somewhat more straightforward. They have simply reported data to the UCR on the single crime of forcible penile-vaginal penetration. Such variation has inevitably led to inconsistencies in the UCR data submitted for the crime of rape.

Drug Facilitated Sexual Assault

To make matters even more confusing, some agencies like the Los Angeles Police Department have included drug facilitated sexual assaults in the data they provided to the UCR Program – even under the old definition of Forcible Rape. The rationale is that drug facilitation constitutes a type of force, and there is a reasonable basis for making this argument. However, most agencies have not included drug facilitated sexual assault in their UCR data, which means that inconsistencies have long been seen across states and even between local agencies within states.

In one national study, for example, Kilpatrick et al. (2007) found that 90% of sexual assaults committed within a community sample included elements of force, whereas only 72% did within a campus sample. In other words, 10-28% of sexual assaults described by victims in a campus or community setting were facilitated by drugs or alcohol, rather than perpetrated using force. UCR statistics will be significantly affected by the decision to include versus exclude these crimes.

No Change in Legal Definitions

Unfortunately, many people (especially those outside the criminal justice system) thought that the change in the UCR definition of rape actually changed the *laws defining criminal sexual assault offenses*. In other words, they thought that the change meant that the

crime of rape was now broader than it used to be, by incorporating a wider range of sexual acts and victims. This is not the case. But it is easy to understand this confusion, and it has again added to the inconsistencies seen in UCR data across various states and local law enforcement agencies.

For one thing, much of the public discussion of this new UCR definition has been unclear, misleading, or frankly inaccurate. In addition, many people looked to their state's legal definition of rape and found that it matched the old UCR definition. This is true in states like California, where the crime of rape is defined only as penile-vaginal penetration. Many people did not realize that other sexual acts and other classes of victims were covered in *separate criminal offenses defined in other penal code sections*.

The Example of Male Victims

A commonly cited example is seen with male victims. The old UCR definition of Forcible Rape clearly excluded male victims – as do many state laws specifically defining the crime of rape. Yet nonconsensual sexual penetration of a male victim is against the law in all 50 states; it just might appear in a different penal code section than the traditional definition of rape. In California, for example, rape of a male victim would be defined as a crime of sodomy or oral copulation, depending on the specific acts committed. The same is true in many other states, and this did not change with the UCR definition. What did change is whether these crimes are reported by California law enforcement agencies to the FBI for the UCR data collection program. They were not reported in the past, but now will be under the new definition.

Resources: Redesigned UCR Website and User Manual

One of many changes you will notice is that the word forcible no longer appears in the new definition. 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 an attempt to provide clarity. The revised definition of rape was incorporated into the UCR's *Summary Reporting System (SRS) User Manual* (2013), which was designed to replace both the 2004 UCR Handbook and all previous *SRS User Manuals*.

Need for Public Education

As a result of this change in the UCR definition of rape, many communities will see a dramatic increase in the number of cases reported to the UCR Program – and then publicized in the media. Crime statistics are typically reported to the public each year by Chiefs of Police as well as County Sheriffs. Communities will therefore need strong leadership and clear communication – from law enforcement executives as well as other public figures – to understand that this does not necessarily mean that more rapes have been committed. Rather, the data being reported to the FBI will include the full range of sexual assault offenses that have been committed in the community all along.

What are the Methods for Closing a Sexual Assault Case?

Throughout the OnLine Training Institute (OLTI) courses, we provide recommendations to assist law enforcement personnel in successfully investigating sexual assaults, particularly those committed by someone known to the victim. At some point, however, investigators either reach a conclusion in a case (e.g., by referring it for prosecution) or they exhaust all investigative leads without reaching any meaningful conclusion. Either way, the case needs to be "put to bed" and removed from the active investigative caseload for the investigator, department, or unit.

Unfortunately, there is a great deal of inconsistency surrounding this topic because of the different terminology and procedures used by law enforcement agencies across the country. Some of the most common terms used are: *suspending*, *inactivating*, *clearing*, *closing*, or *canceling a case.*

- The term **clearance** refers to specific case dispositions defined by the FBI for the UCR Program. These include *clearance by arrest* and *exceptional clearance*, as well as *unfounding*.[2]

- 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 also be used to describe cases that are suspended or inactivated and removed from an investigator's active caseload.

- The term **cancellation** is also used differently across agencies. It most often refers to cases that are cleared and sometimes for cases that are *closed*.

Throughout this module, we will generally use the term *clearance* to refer to the process by which cases are removed from an active investigative caseload and given a disposition that is specifically defined in UCR guidelines (*cleared by arrest*, *exceptionally cleared*, or *unfounded*).

We will then use the term *closure* more broadly, to include cases that are cleared as well as those that are closed using some other administrative mechanism. In general, we will not describe cases that are suspended or inactivated as *closed*. Rather, we will explicitly indicate whether or not we are including such cases in our discussion.

Should All Sexual Assault Reports Be Closed at Some Point?

Not all sexual assault reports should be cleared or otherwise closed, even when they are removed from an investigator's active caseload. In fact, there are a variety of different procedures that law enforcement agencies use to suspend or inactivate a sexual assault case. The specific method used will depend on a variety of factors, including whether the incident was recorded as an official crime report versus an informational report. This issue is discussed in the OLTI module on Opening Doors: Alternative Reporting Options

[2] References to the Uniform Crime Report (UCR) guidelines come from the *Summary Reporting System (SRS) User Manual* (2013) published by the FBI.

for Sexual Assault Victims For the purpose of this module, however, it is sufficient to note that a *crime report* documents an incident that meets the elements of a sexual assault offense, whereas an *informational report* is used for incidents that do not meet the elements of a sexual assault offense, at least at the time.

Crime Reports vs. Informational Reports

If a sexual assault is recorded in an official **crime report**, it will eventually need to be removed from an active investigative caseload by:

- Clearing the case using criteria specified by the FBI for the UCR Program.
- Closing the case using some other administrative mechanism.
- Suspending or inactivating the case, based upon agency policies and practices.

If a sexual assault is recorded in an **informational report**, it may not need to be cleared or otherwise closed at all. This would depend on the specific policies and practices of the individual law enforcement agency.

Resource: OLTI Module on Alternative Reporting Options

A module is available in the OnLine Training Institute (OLTI) on the topic *Opening Doors: Alternative Reporting Options for Sexual Assault* Victims. This module offers a detailed explanation of alternative reporting options such as anonymous, third-party, and non-investigative reporting, including details on how reports are handled if they are recorded as an official crime report versus an informational report.

A number of progressive law enforcement agencies and their community partners have implemented alternative reporting options in order to reduce barriers and increase victim reporting and participation with the criminal justice process. This module explores examples of programs in various communities, as well as providing a thorough overview of the key concepts and components necessary to implement alternative reporting options.

Suspending or Inactivating a Case

The specific procedures for suspending or inactivating a case will vary from one law enforcement agency to another. In some agencies, this process is informal and consists of physically moving the file from an investigator's desk to the file cabinet – or from the file cabinet to the Records Unit or a storage room, etc. In other agencies, the process is more formal, with an administrative procedure for recording the case as inactivated or suspended. In either scenario, the case has not been officially closed, but for all practical purposes it has been "put to bed" and often physically moved to another location for storage.

Unfortunately, too many agencies have a practice of clearing or closing cases improperly, in order to remove them from an investigator's active caseload. We will discuss this problem in detail later. But we want to highlight at this point that *not all sexual assault cases should be cleared or closed*. In fact, many law enforcement agencies are moving toward the practice of leaving a significant proportion of their sexual assault caseload as suspended, inactivated, or otherwise removed from an investigator's active caseload. These cases are frequently reactivated when new information emerges or there are other developments in the case. For example, the crime laboratory may return significant findings or there may be a DNA hit with a suspect in another case. A victim who was previously unable or unwilling to participate in the investigation may decide that she/he is able to do so. A witness may provide important information, or a suspect may be identified. Any of these developments may lead to further investigative progress.

Clearance by Arrest

The primary clearance method defined within the UCR Program is *clearance by arrest*. It is used when at least one person is:

- Arrested.
- Charged with the commission of the offense.
- Turned over to the court for prosecution (*SRS User Manual*, 2013, p.112).

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 two or more individuals acting together.

Clarifications and Exceptions

Some law enforcement professionals believe that a case can be cleared by arrest when *a warrant has been issued* for a suspect. In fact, this is a routine practice in many police agencies. However, according to the UCR, this is incorrect. The criteria above specify that the suspect must be (physically) taken into custody, charged, and handed over to the court for prosecution. These criteria are not met when a warrant is issued, and therefore the case cannot be cleared by arrest.

There are also a few exceptions to the general criteria. These include the following:

- For juvenile offenders (under age 18), a report can be cleared by arrest even when they are not physically arrested if they are cited to appear in juvenile court.

- A case can also be cleared by arrest if a summons to appear has been issued. This is often referred to as a *notify letter or a notify warrant*. Although different terms may be seen, the procedure 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.

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

Exceptional Clearance

Exceptional clearance is the second primary method for clearing cases. 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 elements include:

- The death of the offender.
- The victim's refusal to cooperate (if the offender has also been identified, and could be located, arrested and referred to the prosecutor if the victim had been participating in the investigation).
- The offender's arrest and prosecution in a different jurisdiction (*SRS User Manual*, 2013, p.116).

It is therefore clear that the purpose of exceptional clearance is for police agencies to be able to "count" a case as cleared when they have done their jobs, but they were prevented by some outside factor from moving forward with an arrest and prosecution.

Victim's "Refusal to Cooperate"

One of the elements that can preclude police and prosecutors from charging a suspect is described as the victim's "refusal to cooperate." Others use the phrase "victim declines prosecution" (often referred to as 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*. Characterizing the behavior as a "refusal" conveys a negative and often hostile image that fails to recognize the impact of trauma and the legitimate reasons why participating in the investigation may be difficult if not impossible for many victims. It also fails to acknowledge the possibility that the victim's inability to participate may change at a later time. Thus, throughout this module we will avoid referring to the victim's refusal to cooperate but rather identify his/her *inability to participate at the time*.

Also keep in mind that regardless of whether or not a case is cleared or closed, law enforcement can reopen or reactivate an investigation *at any time* within the statute of limitations. In some instances, an investigation might even be reopened or reactivated after the statute of limitations has expired, perhaps when another crime involving the same suspect comes to the attention of investigators or when a DNA match is found with a cold case.

Resources: State-by-State Information on Statutes of Limitations

The Rape Abuse & Incest National Network (RAINN) offers an interactive map of the US with a state-by-state summary of laws pertaining to sexual assault. This includes the laws establishing statutes of limitations for various sexual assault offenses.

Criteria for Exceptional Clearance

According to UCR guidelines, a case can be cleared by exception when law enforcement has:

- Definitively established the identity of the offender.
- Gathered enough information to support an arrest, charge, and turning over to the court for prosecution.
- Identified the exact location of the offender so that that the subject could be taken into custody now.
- There is some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender (*SRS User Manual*, 2013, p.115).

UCR guidelines are thus clear that a case cannot be cleared by exception simply because an arrest is not made or because *the victim is unable to participate in the investigation at the time*. Rather, cases can only be exceptionally cleared when the investigation has established probable cause – and they could physically arrest the suspect(s), but arrest and prosecution are precluded by some factor outside law enforcement's control.

Misunderstanding and Misuse

Unfortunately, there is evidence that some law enforcement agencies across the country use exceptional clearance improperly, either because they cannot find the victim or because he/she is viewed as "uncooperative." Some agencies also prematurely close their sexual assault cases with exceptional clearance – even before they have been thoroughly investigated – because the local prosecutor has indicated that the case will not be pursued. This is despite the fact that the assessment is based on limited information and the prosecutor is likely briefed with a verbal case summary provided by the investigating officer or deputy. None of these practices is justified.

Four Questions

UCR guidelines are designed to clarify such misunderstandings. They specify that a case can only be exceptionally cleared if law enforcement personnel can answer yes to four separate questions:

- Has the investigation definitively established the identity of the offender?

- Is there enough information to support an arrest, charge, and turning over to the court for prosecution?

- Is the exact location of the offender known so that the subject could be taken into custody now?

- 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] (*SRS User Manual,* 2013, p.115).

If the answer to each of these questions is yes, then the case can be cleared by exception.

Two Examples: Clearance by Arrest vs. Exception

To clarify the difference between clearance by arrest and exceptional clearance, a couple of examples may prove instructive. First, we offer the following scenario:

> *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 does not reveal any new or potential investigative avenues.*

This scenario meets the criteria for clearance by arrest: the suspect was arrested and charged by law enforcement, and the case was turned over to the court for prosecution. UCR guidelines have always been clear that the prosecutor's decision regarding whether or not to file formal charges against the suspect is irrelevant to the law enforcement agency's ability to properly clear a case by arrest. What has been less clear historically is the second example:

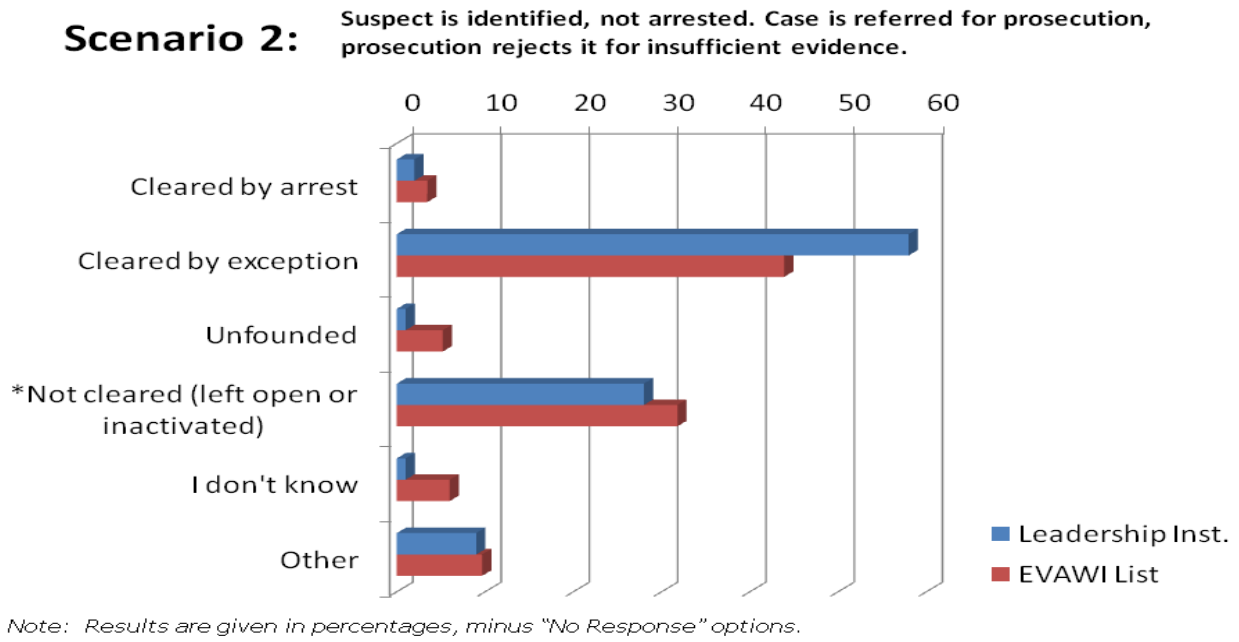
> *A sexual assault report is made, an investigation is conducted, and all leads are exhausted. A suspect is identified* ***but not arrested – even though probable cause exists****. The case is referred for prosecution, but the prosecutor rejects it, on the grounds that there is insufficient evidence 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, but many agencies and prosecuting attorneys' offices have determined that such a practice is counterproductive. (For a more detailed discussion of this point, please see Archambault & Lonsway, 2012). In the past, some have argued that law enforcement could not clear this type of case by exception, because the suspect was not physically arrested. Instead, they argued that the case should be suspended or inactivated.

The graph below illustrates this point. It is based on responses from 560 law enforcement professionals surveyed by EVAWI in February 2012. The objective was to explore how

law enforcement agencies used UCR clearance guidelines to clear their sexual assault reports. In this survey, two groups of law enforcement respondents were given the same scenario presented a moment ago and asked how they would clear or close the case. The blue bar depicts the responses of 91 executives who graduated from the International Association of Chiefs of Police (IACP) National Law Enforcement Leadership Institute on Violence Against Women. The red bar represents 469 law enforcement professionals contacted through EVAWI's list of voluntary email subscribers. The sample ranged in rank from front line officers to Chiefs, and they represented agencies of all types and sizes from all 50 states and the District of Columbia.

Results indicated that most respondents would *exceptionally clear* the report in this scenario, even though no physical arrest was made. At the time, however, UCR guidance appeared to suggest that the proper response was not to clear the case at all, but to *inactivate or suspend it*. This is indicated with the asterisk next to the fourth response option.



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

UCR Offers Clarification

In 2013, the FBI revised the *SRS User Manual* so it now provides clarification on this issue. UCR guidelines now explicitly state 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, according to the UCR, law enforcement agencies can now clear the report described in the scenario above by exceptional means, because they have met the evidentiary criteria to clear the case by arrest; the only reason they decided not to make a physical arrest was the prosecutor's decision to not file formal charges. We are very pleased to see this clarification, because it offers meaningful guidance for law enforcement agencies in the proper clearance of their cases.

Resources: PERF Report on Improving Police Responses to Sexual Assault

In 2012, the Police Executive Research Forum (PERF) published a report entitled, *Improving the Police Response to Sexual Assault*. It summarizes the topics discussed at a Summit hosted by PERF and provides background on the work that resulted in the revised UCR definition of rape. The report is available from PERF as part of their Critical Issue Series.

Unfounded Crime Reports

The third primary disposition is *unfounding*. According to UCR guidelines, a reported offense can be unfounded "if the investigation shows that no offense occurred nor was attempted" *SRS User Manual* (2013, p.111). These cases thus remain official crime reports and are included in departmental statistics on sexual assault crimes reported to the UCR. However, they are explicitly labeled as *unfounded*.

This means that a case cannot be unfounded if no investigation was conducted or if the investigation failed to prove that a crime occurred – this would be an inconclusive or an unsubstantiated investigation – yet neither of these are clearance categories as defined in the UCR guidelines). Another way of describing this would be that the investigation produced "insufficient evidence." However, unsubstantiated reports should never be unfounded.

Resource: Unfounded Crime Reports

The Kansas Sexual Assault Kit (SAKI) Initiative developed helpful guidance that accompanies their Model Policy on Investigating Sexual Assault, to provide additional clarification on "unfounded" case coding. This document explicitly defines when cases should be coded as unfounded, and when they should not.

The Oregon Attorney General's Sexual Assault Task Force (SATF) offers similar guidance in a concise yet extremely valuable 4-page document addressing issues surrounding false allegations, unfounded cases, and victim recantations.

False Reports

Based on the UCR definition above, a crime report can only be properly unfounded as *false*, if the evidence from a thorough investigation establishes that the crime was not completed or attempted. We will discuss this point in more detail later. However, it is worth noting at this point that this is not the way all officers and investigators think about their sexual assault investigations.

Resource: False Reports of Sexual Assault

For more detailed information on this topic, please see the OLTI module on *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*.

Baseless Reports

UCR guidelines do not explicitly define what a *baseless* report is, but we believe a report can be classified as baseless if it documents an incident that does not meet the elements of a criminal offense. This can happen when a report is improperly coded as a sexual assault in the first place.

In fact, calls often come into the police department as a sexual assault report, but follow-up investigation reveals either that no crime was committed or that it is was another type of criminal offense code. For example, the report may have originally been written as an attempted rape, but the investigation reveals that the correct classification is actually sexual battery. As another example, an adult might report a sexual act that was unwanted but does not meet the threshold for force, threat, or fear required to constitute a forcible sexual assault.

When such an incident is recorded as a crime report (e.g., as a forcible rape), the proper administrative procedure is to unfound it. This is not because the report is *false*, but because it is *baseless* (i.e., the element of force has not been met). This is an appropriate use of unfounding, but it is widely misunderstood. This example thus 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. We will return to this point in a later section.

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 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. This means that investigators and supervisors are not required to 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."** (Also 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 in a police investigation is often used as a basis for unfounding a sexual assault case, this is inappropriate.

- **Third, a case cannot be unfounded simply because the police were unable to locate or arrest the suspect.** Such factors do not mean that the crime report is *false* or *baseless*, so they cannot be used as the basis for unfounding it.

Problems with Unfounding

> *In practice, unfounded rape can and does mean many things, with false allegation being only one of them, and sometimes the least of them* (Kanin, 1994, p.81).

In sum, UCR guidelines state that crime reports can be unfounded either because they are *false* or because they are *baseless*. Yet law enforcement agencies across the country often follow very different procedures, and this can create a variety of problems in interpreting what these two different scenarios mean.

Difficulty Distinguishing Unfounded vs. False

A common source of confusion is the varying definitions and practices used to classify *false* versus *unfounded* reports of sexual assault. In fact, the language in the UCR itself has been unclear about this distinction, as illustrated with this excerpt:

> *The 'unfounded' rate, or percentage of complaints determined through investigation to be false, is higher for forcible rape than for any other Index crime* (Uniform Crime Report, 1996, p.24).

This 1996 excerpt equates the terms *unfounded* and *false*, and it is easy to understand how law enforcement professionals, victim advocates, and others would have a similar misunderstanding. 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.

No Clear Criteria for Unfounding

Another challenge is the lack of clearly specified criteria and procedures. As previously described, UCR guidelines state that a crime report should only be unfounded if it is determined on the basis of investigative findings to be *false* or *baseless*. However, there are 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 hope this module can be used to help clarify the terms and provide guidance for investigators and supervisors struggling with these complex issues.

Varying Interpretations and Procedures

Another concern stems from the widely varying interpretations and procedures used for UCR clearance methods. In 2005, the International Association of Chiefs of Police (IACP) published a *Concepts and Issues Paper* to explain their *Model Policy on Investigating Sexual Assault* (2005a, 2005b). In it, they clearly state that a crime report can only be classified as

false based on evidence from an investigation establishing that the crime was not committed or attempted (i.e., the crime did not happen). Despite this fact, sexual assault reports are often deemed to be false reports – and improperly unfounded – because the investigation failed to substantiate the allegation or because the investigator simply did not believe the victim's account.

This represents a barrier surrounding the definition of a false report, particularly equating the concepts of *false* and *unfounded*, as described above. Yet it also means the percentage of sexual assault reports unfounded as false reports will vary dramatically from one law enforcement agency to another, as agencies interpret the concepts differently and follow different administrative procedures as a result.

Procedural variations can also produce dramatic differences in the percentage of reports that are unfounded because they are *baseless*. For example, although it is recommended as 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 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 reports that are unfounded because they are baseless.

Given these problems with definitions and criteria, it should not be surprising that UCR statistics reveal a wide variation in the percentage of sexual assault reports unfounded by law enforcement agencies across the country. This is described in a 2010 article in the *Baltimore Sun*:

> *A review of FBI data from across the country shows significant disparities in rates of unfounded rapes. Though most have a percentage in the single digits, some cities, including New York and Cleveland, report zero – a number that experts say is just as eyebrow-raising as Baltimore's high rate. The FBI does little to monitor the accuracy of reporting* (Fenton, 2010).

This review was conducted in 2010, but it is reasonable to assume that a similarly wide range would be seen today. The FBI does not routinely publish data on the percentage of unfounded crime reports. While the numbers might change, as long as law enforcement agencies follow such different procedures for unfounding cases, the wide variability is likely to remain the same.

Ideas About False Reporting

One of the reasons why law enforcement agencies around the country have such deeply entrenched problems with their response to sexual assault is because of the powerful societal belief that women routinely lie about being raped. In fact, this notion constitutes one of the primary barriers to conducting an effective sexual assault investigation. For law enforcement professionals as well as other professionals and community members, the question of false reporting lurks in the background whenever the topic of sexual assault is raised.

Resources: Expert Interview

In this video interview, Sergeant Elizabeth Donegan describes what happens when law enforcement officers assume a sexual assault report is false.

The evidence is clear that law enforcement professionals are not the only ones who believe the myth that many (if not most) sexual assault reports are false allegations. In fact, the research documents that this particular myth is widely held in our society, and it damages the credibility of sexual assault victims seeking assistance from friends, family, social services, and the criminal justice system (see, for example, Brownmiller, 1975; Burt, 1980, 1991; Lonsway & Fitzgerald, 1994, 1995; Payne, Lonsway, & Fitzgerald, 1999; Schwendinger & Schwendinger, 1974). Yet officers and investigators typically work their cases with the assumption that this belief does not affect how they perceive victims and how they do their jobs.

In an effort to challenge this belief, many people have turned to the UCR Program and cited statistics indicating that the percentage of unfounded sexual assault reports is low – in many cases, the percentage is comparable to, or even lower than, other felony crimes. This evidence is then used to argue that very few sexual assault reports are actually false.[3] This use of UCR data is understandable, because the statistics carry a great deal of perceived credibility, especially among community members. However, the strategy is misleading at best. At worst, it contributes to an atmosphere where even law enforcement professionals are often unclear as to the true meaning of *unfounded* versus *false reports*.

In fact, there is no way to know, based on UCR statistics, what the percentage of false reports is for any type of reported crime. The UCR Program only tracks a single statistic for the number of unfounded reports, and it 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.

Moreover, the percentage of unfounded cases for any particular crime will always be higher than the number of false reports, because unfounded statistics include cases that are false as well as those that are baseless. Historically, this has contributed to the sense that false reporting is far more common than it really is. For all of these reasons, UCR statistics should never be used to estimate the percentage of false reports – for sexual assault or any other type of reported crime. The UCR Program is simply not designed to answer that particular question.

[3] To illustrate, a handout distributed by a rape crisis center is titled “MYTHS” and includes the following statements. Note how the quote uses the terms false and unfounded as if they mean exactly the same thing.
MYTH: There are more false reports of rape than any other crime.
FACT: Statistics show that the percentage of unfounded accusations in the area of rape is about 2%. This is approximately the same percentage of unfounded charges which are found in other felonies.

Resource: Gender Bias in Sexual Assault Response and Investigation

Gender bias can fuel the widely-held belief that sexual assault reports are often false. This belief, in turn, can affect the responses of professionals both inside and outside the criminal justice system. Responding professionals will inevitably make unconscious determinations about the veracity of a report – but if these judgments are wrong, they can fail to take appropriate action or draw inaccurate conclusions.

EVAWI has created a Training Bulletin series on gender bias that is designed to explore the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and the resulting stereotypes and attitudes that can influence the professional response to, and investigation of, sexual assault.

Lack of Training on UCR Criteria

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. With training rarely 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 investigations 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.

These problems with a lack of training are seen at the “back end” of an investigation, when an investigator or supervisor is deciding how to clear a case. However, the lack of training also creates problems at the “front end” of the investigation.

Problems Establishing the Elements of an Offense

There are two primary ways in which problems arise at the “front end” of an investigation, when responding officers and deputies are unable to properly identify whether an incident meets the elements of a sexual assault offense. First, responding officers sometimes write a crime report for incidents that do not actually meet the elements of the recorded offense. Since a crime report has been completed, it will need to be cleared or cancelled when the evidence establishes that the crime was not actually committed or attempted. The proper procedure is to unfound the report, because it has been determined to be *baseless*. This is an appropriate use of UCR unfounding, but the more frequently it is used, the more it can fuel the perception that false reporting is rampant, because many people equate the term *unfounded* with *false reporting*.

One way to address this problem is to record any sexual assault incident with an informational report *if there is a question regarding whether or not it meets the elements of a criminal offense*. Then the subsequent investigation will be used to determine whether or not to "score" it as a crime report later, on the basis of a thorough, evidence-based investigation. If the investigation and evidence establish that the incident does not meet the elements of a sexual assault offense, the report should either remain as an informational report or possibly be scored as a crime report for some other lesser offense (e.g., sexual battery, sexual abuse) – if the case facts warrant it.

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). If 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 and will not be properly cleared later following UCR criteria.

This highlights the importance of following up with victims to verify the initial information obtained during the preliminary stages of the investigation, as it may have been recorded incorrectly. It also underscores the importance of having all sexual assault reports reviewed by a supervisor, coworker, or other colleague with specialized training in sexual assault investigation. This can help to increase accuracy and consistency in reporting methods as well as improving the correct use of UCR clearance methods. These issues are discussed extensively in the modules on *Law and Investigative Strategy* as well as *Opening Doors*, but they are mentioned here because they often create problems for clearance decisions as well.

Insufficient Investigation and Premature Conclusions

Other problems occur when clearance decisions are made prematurely or on the basis of an insufficient investigation. 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*.

The reality is that responding 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, decisions will inevitably 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 concern 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 is evaluated primarily on the basis of reported crime and clearance rates. There is too 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. To close them, such cases are often unfounded improperly.

Rather than shelving these cases by unfounding them, a better strategy is to suspend or inactivate them. Unfortunately, some police administrators believe that cases that are inactivated or suspended – rather than cleared – make it appear as if their agency has not done its job properly. This is not necessarily true, but the solution requires effective communication between law enforcement and victims, advocates, as well as 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. Yet the unfounding of a high percentage of sexual assault cases can appear superficially to be 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 caseloads and statistics on reported crime are reduced. The community's crime rate thus 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 wrong, and it constitutes a potentially serious problem for public relations.

To illustrate, detectives in a typical Sex Crimes Unit might clear 40-60% of the cases they investigate. Yet rather than using this as a basis for a performance evaluation, more appropriate measures might be based on the detective's self-initiative, investigative skills, tenacity, timeliness, and compassion. A thorough investigation may take months, using search warrants, forensic evidence, electronic communications, social media, 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 but suspended or inactivated, an investigation may be extremely successful based on more appropriate outcome measures and explicit recognition of the complex realities of sex crimes investigations.

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, Matza, McCoy, & Benson, 1999a, 1999b, 1999c). As revealed by the *Philadelphia Inquirer*, 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 noncriminal codes such as "call for service" or "investigation of person." This practice will be discussed in detail later.

Unfounding to Make Difficult Cases "Disappear"

> *If you get a good investigation behind it, you can still get those cases charged and convicted. It doesn't make her less of a victim because she's using drugs and it doesn't make the rapist less of a threat to society because he's raping women who are on drugs*. – Marcia Blackstock, Bay Area Women Against Rape (cited in "Unfounded rape cases to get a second look from Oakland PD," 1999, p.11).

Although all of these factors can create problems regarding the use of UCR clearance methods, perhaps the biggest source of concern is the use of unfounding to avoid investigating difficult cases. All too often sexual assault reports are unfounded improperly, simply because they contain "red flags" that cause police officers and others to view them with suspicion. As described in the OLTI module on *False Reports*, these "red flags" are the characteristics of a sexual assault that are common but nonetheless seen as reasons to doubt the validity of the report. They include the following:

- The victim and suspect know each other.
- The victim and suspect have had sex before.
- The victim is an adolescent.
- No weapon was used.
- No physical violence was reported.
- There is no sign of physical injury.
- The victim is calm.
- The victim doesn't report to police for days, weeks, or even months.
- The victim reported to someone other than law enforcement.
- The victim is difficult to locate.
- There is little or no evidence to corroborate the allegation.
- The victim decides not to follow through or participate with the investigation.
- The victim changes his or her account of the sexual assault.
- The victim is uncertain or vague about the events of the sexual assault.
- The victim later recalls additional information.
- Details in the victim's story are provably false.
- The victim is not seen as credible.
- The victim was under the influence of alcohol or drugs at the time of the assault.
- The victim is suspected of being a prostitute.
- The victim is belligerent.

- The victim is homeless and/or mentally ill.
- The victim fails a polygraph examination.
- No assailant can be identified.

When any of these "red flags" are present, some officers and investigators may question whether the sexual assault report is legitimate, or they may simply view the investigation as too difficult or the case as "unwinnable." In other words, there may be an incentive to make the case disappear, rather than devoting scarce resources when successful prosecution is seen as unlikely.

Resource: Start by Believing

Start by Believing is the global campaign developed by EVAWI to transform responses to sexual assault and overcome the common belief that victims are only fabricating reports out of revenge, a desire for attention, or as an excuse for their own questionable behavior. It "flips the script" on the message victims have historically received from professionals and support people, which is: "How do I know you're not lying?"

When investigators approach each sexual assault report with a Start by Believing philosophy, they are better able to conduct thorough, evidence-based investigations; this is key to achieving due process and holding offenders accountable.

For more information, please visit the Start by Believing website.

When the Victim Recants

None of these "red flags" may be as powerful a factor in predicting the use of unfounding as when a victim recants. After all, why should the officer or investigator believe that the sexual assault happened when even the victim says it didn't?

In some agencies, a victim's 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. There are many reasons for this:

- The reality is that many sexual assault victims recant when they encounter skepticism, disbelief or blame from law enforcement personnel, health care providers, or others involved in responding to their complaint. Other victims recant when their credibility or behavior is questioned by family members and friends.

- Still other victims recant because they come to believe that reporting their sexual assault will only make matters worse. Given that most sexual assaults are committed by someone known to the victim, participating in the criminal justice process is often not worth the personal cost to the victim in terms of disruption, difficulty, and additional trauma.

- In addition, many sexual assaults are committed by intimate partners within the context of an abusive relationship. These victims are frequently threatened and humiliated by their abusive partners, and they may fear for the safety of their children as well.

- 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 may even include termination from the military or workplace, or expulsion from the university or college.

- In some religious communities, victims also frequently face excessive scrutiny, shame, and a lack of support when they disclose that they have been sexually assaulted.

Clearly, there are a wide range of factors that may lead victims to recant a sexual assault report. Recantation alone should therefore never be used as the sole basis for unfounding such a report.

No Significant Exam Findings

Another factor that has been used as a basis for (improperly) unfounding a sexual assault report is a lack of significant exam findings. Some law enforcement professionals unfound sexual assault reports because no significant findings were observed during the medical forensic examination. Worse, some agencies have used the determination that the case is unfounded as a basis for charging the victim with filing a false report or obstruction of justice and then turning around and billing the sexual assault victim for the cost of the forensic examination. One example was seen in the Sparks, Nevada case of Jennifer W., a 23-year old woman who was attending the University of Nevada at Reno. This case is described in Turvey (2005):

> *She called 911 in November of 1998 to report that a man she had met via the Internet…had abducted and raped her…The sexual assault took place in Mobly's [the offender's] home. She threatened to go to the police, but Mobly told her that nobody would believe that a rapist would drive her home; it would be her word against his. He was absolutely right. Detectives from the Sparks Police Department interviewed Jennifer for 3 hours, accused her of lying, and threatened to prosecute her unless she immediately withdrew her complaint. She continued with the complaint and directed them to look for DNA evidence in his trunk, at which point detectives laughed at her. When she was taken to the hospital for a sexual assault examination, detectives warned her that she would have to pay for the laboratory tests if the results came back negative for sexual assault, which they did* (p.212).

Tragically, Mobly was not arrested until he raped another 17-year old girl, after which he was arrested, pled guilty, and was sentenced to life in prison. However, Jennifer W. sued the Sparks Police Department, several officers, and the city of Sparks. She was awarded

a $24,999 judgment and reached an undisclosed settlement with the individual officers (Turvey, 2005).

Fortunately, this is an area where progress has been made over the last decade. With an increase in the number of specialized forensic examiner programs and enhanced cross-training between these programs and law enforcement agencies, this type of scenario is now less likely to be seen.

In fact, 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:

- A thorough investigation.
- Evidence revealed through crime laboratory analysis.
- Crime scene evidence.
- Witness testimony.
- A connection to a series of other crimes.
- A confession by the suspect.
- A guilty verdict in the trial.

In fact, no definitive conclusions can be drawn regarding a sexual assault based solely on the presence or absence of visible findings during a medical forensic examination. Conclusions might be drawn after the evidence has been analyzed by a crime laboratory. However, any determination that a report is false or unfounded can only be made by law enforcement professionals on the basis of reviewing all the investigative findings together. Otherwise, unfounding can easily be used as a means of making difficult sexual assault cases "disappear."

Other Ways that Difficult Cases Disappear

In his 2014 paper, entitled "How to Lie with Rape Statistics: America's Hidden Rape Crisis," Professor Corey Rayburn Yung offered statistical evidence that many law enforcement agencies have systematically undercounted the number of rape reports in their jurisdiction. The reasons for this are many; he describes the process as "overdetermined." As Professor Yung explains, three "difficult-to-detect techniques" have been used:

> *First, police departments exploited the UCR rule that they did not have to count reported rapes if they 'determine[d] that complaints of [rape were] unfounded or false…*

> *Second, the police departments suppressed their reported numbers by regularly classifying rape complaints as lesser offenses that were not part of the core UCR statistics sent to the FBI…*
>
> *Third, police officers in those jurisdictions often failed to create any written record that a victim made a rape compliant to eliminate the incident from the UCR data* (Yung, 2014, p.1202).

Four agencies are highlighted in Professor Yung's research, because they were the subject of highly publicized media scrutiny: Philadelphia, St. Louis, Baltimore, and New Orleans.

Undercounting Sexual Assault

> '*Why is it that women in the greater Baltimore area are more disposed to lying about sexual assault than anyplace else in America?' asked Branson of Turn Around. 'Is it in the water? What exactly would make us the ones most likely to tell a story about being sexually assaulted?*' (Fenton, 2010).

This quote in the *Baltimore Sun* reflects sarcasm, but the problem is very real and has been revealed in a variety of cities that use unfounding to make difficult sexual cases disappear.

First, the *Philadelphia Inquirer* revealed in an investigative series beginning in 1998 that the Philadelphia Police Department was unfounding *as many as half of their sexual assault reports in the 1980s*. This rate was five times the national average at the time (Bycowicz, 2010; Fazlollah, Matza, McCoy, & Benson, 1999a). A number of significant reforms were made as a result of this inquiry, including a complete reorganization of the Sex Crimes Unit and the appointment of a multidisciplinary review committee to examine all unfounded sexual assaults.

Similar investigations have now been published by the *St. Louis Post-Dispatch*, *The Times-Picayune* in New Orleans, and the *Baltimore Sun*. The US Department of Justice, Civil Rights Division even conducted their own investigation into the New Orleans Police Department (NOPD) and documented a wide variety of problems in their response to sexual assault. They subsequently began working with NOPD personnel and other national experts to remedy the situation. However, in November 2014 the Office of the Inspector General for the City of New Orleans published a report documenting egregious failures that remain on every level of the organization in their response to sex crimes. More recently, Human Rights Watch published findings from their investigation of the DC Metropolitan Police Department, suggesting serious concerns.

While the general pattern of problems found in all of these agencies was the same, the specific methods used have varied. Some of these methods will be discussed in later sections of this training module. However, there is no reason to believe these problems are unique to these agencies or communities. In fact, there is ample evidence that such problems are seen in law enforcement agencies across the country, both large and small, in urban and rural communities.

Resources: Investigative Reports on New Orleans and Washington, DC

Several of the investigations into police mishandling of sex crimes have been initiated by journalists and then covered in city newspapers. However, investigative reports are also available for two of the communities: New Orleans and Washington, DC. The investigation of the Washington, DC Metropolitan Police Department was conducted by Human Rights Watch and the published report is available from their website, along with supplemental materials such as correspondence between the two entities. An investigative report of the New Orleans Police Department's response to sex crimes was published by the US Department of Justice, Civil Rights Division.

Downgrading Sexual Assault Reports

> *The report found practices [in Washington DC] similar to those in Baltimore, New Orleans, Philadelphia, and St. Louis wherein police regularly prematurely 'unfounded' complaints, failed to document incidents, and improperly downgraded offenses* (Yung, 2014, p.1218, citing Human Rights Watch, 2013).

In addition to the problems with unfounding, the *Philadelphia Inquirer* also revealed in their investigative series that the Philadelphia Police Department was routinely downgrading sexual assault reports to lesser offenses. Many officers were even categorizing sexual assault complaints as "2701," a police code used in Philadelphia to designate a non-criminal call for service (Fazlollah, Matza, McCoy, & Benson, 1999a, 1999b, 1999c; Fazlollah, Matza, & McCoy, 1999a, 1999b, 1999c; Matza, Fazlollah, & McCoy, 1999a, 1999b).

Throughout the 1980s, as many as one-third of all sexual assaults reported to the Philadelphia Police Department ended up in such a non-criminal category. Once classified as such, a case was not investigated further, and it subsequently disappeared from the department's criminal offense statistics and active caseload. The process was so ingrained in departmental culture, it earned its own euphemism; it was referred to as "going down with crime" (Fazlollah, Matza, & McCoy, 1998).

While public outcry in Philadelphia initially led to important changes in that agency, the *Philadelphia Inquirer* documented that the shell game of statistical manipulation continued in various other guises. For example, the journalists revealed that even after investigators stopped using the non-criminal code of 2701, there was a sharp increase in the number of cases with the non-criminal code of 2625 for "investigation, protection, medical examination" (Fazlollah, Matza, McCoy, & Benson, 1999a). In fact, the unit filed more than 400 complaints over two years in this non-criminal category that was originally designed for situations where police picked up teenage runaways.

Eventually, hundreds of sexual assault complaints were re-opened for review by the Philadelphia Police Department, and many were returned to detectives for investigation (Fazlollah, Matza, & McCoy, 1999a). Unfortunately, similar problems are seen in departments around the country.

For example, the same problem was revealed by investigative journalists at *The Times-Picayune*. As in Philadelphia, officers with the New Orleans Police Department routinely downgraded sexual assault reports to lesser offenses or used noncriminal codes referred to as "Signal 21." Again, cases receiving a Signal 21 designation were not investigated and were dropped from departmental statistics. In 2008, as many as 60% of all rape reports were classified as Signal 21 cases, yet the agency did not make significant changes in their policies or practices based on the negative publicity. Changes were not seen until the US Department of Justice conducted their own investigation and mandated reforms (Maggi, 2009; US Department of Justice, 2011).

Informal "Memos," "Secret Files," and Other Tactics

Another tactic used to make difficult cases disappear is to record them in an informal "memo," store them in a "secret file," or otherwise ensure they are not documented or investigated properly. Such tactics often represent a misuse of informational reporting procedures.

As previously noted, informational reports provide a way for law enforcement to document activity or information from citizens about incidents that do not meet the elements of any criminal violation. To illustrate, patrol officers may respond to a radio call of a "Peeping Tom." However, when they arrive, they learn that the woman who called the police only heard a noise outside her bedroom window. After driving around the area, conclude that they do not see anyone or anything suspicious. This type of radio call should not result in an official crime report, but it should be documented so investigators will be aware of it if they find themselves working a series of crimes in the area (e.g., sexual assault, home invasion, burglary).

Informational reporting is thus a necessary procedure for law enforcement agencies, and it can be very effective in increasing the intelligence regarding sexual assaults and other crimes in a particular area. However, the system can create problems if an agency is filing a disproportionate number of sexual assault cases as informational reports, if they are being used inappropriately, and if they are not being reviewed by supervisors or peers with specialized expertise in sexual assault investigation.

These issues were raised in the *St. Louis Post-Dispatch* by investigative journalist Jeremy Kohler, who documented that officers with the St. Louis Police Department routinely used informal "memos" to document incidents of sexual assault – rather than official crime reports.

These memos were then filed in the area station house and not recorded or tracked within the agency's formal system. As a result of his inquiry, a total of 485 memos were converted to official reports, and the agency's rape statistics were adjusted upward by 58%. Detectives then reviewed all of the cases to see if charges were still possible. This required contacting many of the victims whose cases were recorded only in memos (Kohler, 2005a, 2005b, 2005c, 2005d).

A similar problem was found by Joshua Good at the *Atlanta Journal and Constitution*, who revealed that the Atlanta Police Department was using a "secret sex crimes file" as a dumping ground for reports the investigators viewed as difficult or dubious.

> *During the past two years, Atlanta police detectives placed certain sex crime reports in a secret file. Detectives working the graveyard shift created the file to deal with reports from women who they thought were either lying about being raped or gave police a false name. The effect was that 34 reports were not part of the city's overall crime count. The secret filing system was allegedly started just after the department was audited by the Georgia Bureau of Investigation for allegedly underreporting crimes* (Good, 2001).

However, a variety of other tactics were used by Baltimore police, including not documenting or investigating reports of sexual assault. Such cases were then typically unfounded, so they would not appear in any departmental records or UCR statistics. In fact, more than 30% of the reports of rape received by the Baltimore Police Department in 2010 were not documented in writing nor investigated beyond the initial complaint (Fenton, 2010, 2011).

Discouraging Victims and "Release Waivers"

> *Police officers tried to dissuade victims from pursuing criminal charges and questioned key portions of victims' stories before presenting the waiver form* (Yung, 2014, p.1213, citing Kohler, 2005e).

Such practices frequently co-occur with other tactics that discourage victims from reporting or participating in the investigation of their sexual assault. In Baltimore, for example, the investigative series also revealed that victims were frequently discouraged by officers from reporting their sexual assault or participating in the process of an investigation. That way, a written report would not be required (Fenton, 2010). Victims are all too often discouraged with questions that reflect a tone of doubt or blame or being subjected to an interrogation. They are threatened with prosecution for filing a false report and obstruction of justice. For adolescent victims, the officer may threaten to tell their parents if they don't "admit they are lying." The tactics vary, but the result is often the same. At that point, some officers present victims with a "release waiver to sign," which is believed to release the law enforcement agency from any liability to document or investigate the report. This was described in the *Baltimore Sun*, by referring to a specific case where a woman reported being raped at gunpoint in a vehicle with black leather seats. After being treated for vaginal bleeding, she was interviewed by police:

> *The police detective's report reflects the tone of his questioning in the hospital room: Why had she waited two hours to call police? Why didn't she flag down a squad car? Where was she coming from before she was assaulted? Who was she with? Frustrated, the woman retracted her statement and signed a new one saying that nothing had happened.*

> *No longer a rape, the incident was now classified as "unfounded," police parlance for saying the victim was lying or they do not believe a crime occurred* (Fenton, 2010).

The *St. Louis Post-Dispatch* series similarly revealed that officers within the St. Louis Police Department were "aggressively discouraging rape victims from proceeding with their cases" (Yung, 2014, p.1213, citing Kohler, 2005e). They also presented victims with "release waivers," yet the paper trail created with these forms allowed the journalists to identify reports that should have been documented and included in crime statistics – even if the victim did not want to participate in an investigation. Cases were also identified that should have been investigated further rather than unfounded on the basis of any such waiver (Kohler, 2005e).

One after another, law enforcement agencies across the country have been scrutinized for mishandling sexual assault reports. The most recent as of this writing is the investigative report published by Human Rights Watch regarding the DC Metropolitan Police Department. As a result of such negative publicity, improvements are clearly seen in many communities. However, many of the same problems remain in others – and the consequences can be tragic.

Resource: Non-Investigative Waivers

In 2019, the IACP released a resolution stating that victims should not be asked to sign non-investigate or non-prosecution statements or waivers in an effort to discourages the use of any type of form that seeks to reduce a victim's legal rights to justice and empowerment.

What Happens When Sexual Assault Reports Disappear?

> *The sheer magnitude of the missing data…is staggering. The results indicate that police undercounting is not the mere activity of a few rogue jurisdictions. For approximately one million rapes to disappear from official records is strongly indicative of systemic willful intent. Further, the focus on undercounting rape has severely altered the historical record utilized for designing effective crime policy…The lack of accurate data means that America's policy prescriptions are based upon faulty assumptions concerning the magnitude of the problem and effectiveness of the status quo programs* (Yung, 2014, p.1240-1241).

Whether a report remains undocumented, or it is improperly unfounded or exceptionally cleared, or it is dumped in a non-criminal code, informal memo, or secret file, the consequences can be tragic – not only for individual victims but also for law enforcement and the public.

- For victims whose cases are improperly unfounded or otherwise disappear, a sense of betrayal and distrust is often created with devastating effects on their recovery from the sexual assault.

- For law enforcement agencies, high rates of unfounding (or other similar methods) can lead to heightened public scrutiny and pressure to change policies and procedures. In the media scrutiny seen in communities like Philadelphia, New Orleans, Baltimore, and Washington DC, the police departments faced fallout and subsequent reforms when high rates of unfounding were revealed.

- For police and prosecutors, any sexual assault report that is unfounded will likely undermine future investigations and prosecutions involving additional victims. For example, if the report of one victim is improperly unfounded and then the victim is sexually assaulted by another suspect – or the same suspect sexually assaults other victims – successful prosecution will be more difficult. The defense will almost certainly try to introduce the "unfounded" report as evidence that the current case is also unfounded or false. In fact, the case may not even be pursued in the first place, because investigators and prosecutors will see that the victim filed a previous report that was unfounded. Without necessarily looking at the first report, they will often make the assumption that the report was false, and then further assume that the current report is false as well.

- However, this is not the only potential consequence of mishandling reports of sexual assault. Others include the false sense of reality that can be created when a law enforcement agency's statistic indicate that the rate of sexual assault is lower than it really is, and clearance rates are higher than they actually are. Many law enforcement executives, college campus administrators, and military commanding officers place great emphasis on keeping crime statistics low, and this can put pressure on officers and investigators to make sexual assault cases disappear. The public sense that sexual assault cases are not taken seriously may also reduce the willingness of future victims to report to police. This means the cycle will continue.

In fact, disappearing cases can represent a miscarriage of justice and a threat to public safety. The potential for such consequences may be seen most clearly – and most horrifically – in the example of Cleveland, Ohio, where the decomposing bodies of 11 women were found in the home of convicted sex offender Anthony Sowell. As described by *The Plain Dealer* reporter Rachel Dissell, who covered the story extensively:

> *Information later emerged that at least three women tried to report that Sowell had attacked them. The first victim reported that Sowell dragged her up a driveway and attempted to rip off her clothes…A Cleveland police detective deemed the victim not credible and the department labeled the case unfounded. A city prosecutor then decided not to pursue the case based on the detective's investigation. A second woman tried to report that Sowell attacked her, but police told her she needed to come to the police station; she did not want to do that, because there was an outstanding warrant for her arrest. She was later arrested on the warrant, after the bodies had been found in Sowell's house. At that point, she again told officers that he had attacked her, but this information was never passed on to the sex crimes unit. A third woman also accused Sowell of raping her, and although she was interviewed by police once, they could not*

> *locate her for a second interview. More than a month later, she again contacted police, and the resulting investigation led to Sowell's arrest and the discovery of the bodies in his home* (Lonsway, 2010, p.1365, citing information provided by Rachel Dissell, a reporter for the *Plain Dealer* who covered the story extensively).

Sowell was convicted of the murders of 11 women and sentenced to death. It is devastating to think that these terrible murders and an unknown number of other crimes could potentially have been prevented if the response by the Cleveland Police Department had been different.

One Investigator's Perspective

Perhaps nowhere are these issues articulated more eloquently than by retired NYPD sex crimes investigator Harry O'Reilly (1984, pp.96-97). The following excerpt summarizes many of the complex issues we have sought to untangle in this module.

The last myth I want to deal with is that of false accusations. Do we really have women running around making false accusations against innocent men? Does this happen? Are there false reports? Of course, there are, and we must always be on the alert and be aware that victims may be telling a lie.

Some women do lie, of course, but the number of women who make false reports is negligible in comparison with the number of valid complainants. In a six-month period in New York City there were around 2000 reported rapes, of which about 250 were unfounded reports. But 'unfounded' does not mean lying.

Let's see what it means: 200 of the 250 were simple administrative errors. They should never have been called rapes in the first place; for example, a woman phones the station and yells rape. The police car goes out and there's no one home. The next day a detective goes to follow the incident up and the woman says, "Oh yes, my boyfriend and I had a fight last night and I yelled 'rape.'" "Why did you yell rape?" "Because if I had yelled disorderly conduct, nobody is going to come, but if I yell rape I know damn sure that a cop is going to come in a hurry." That kind of thing is not a false rape charge, but a mild inconvenience to the police.

We are therefore left with potentially 50 liars out of a total of 2000 complainants. Of that 50, perhaps 20 cases of false report were made as some kind of attempt by the woman to protect herself against a tyrannical father or husband because she had violated some family rule, usually a time curfew, and she has to account for why she is late. Rarely in these cases, however, does she accuse a specific person; rather, she claims that some mysterious figure in the night pulled her into a car and did this awful thing to her and caused her to be two hours late in coming home.

Other times we have women who have psychological problems, loneliness being the main one, and they know if they say 'rape' the officer will come and talk with them

awhile. These women have lied, of course, but no more maliciously than has the woman with the tyrannical husband/father.

After analyzing all the 'unfounded' reports, we found that there were actually only five cases of women maliciously telling lies and deliberately falsely accusing men of rapes that had never been committed. In these cases, the women are arrested for making false accusations – false charges are crimes which must be punished. The bottom line then is that out of 2000 charges of rape, there were five proven liars. That is good enough evidence for me to conclude that most victims are telling the truth!

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 than for sexual assault – crimes where there is financial gain and 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 also the best place to focus on creating change.

How Can We Fix the Problems with Clearance Methods?

> *Our interviews with both survivors and police revealed that victims can give more detailed statements to law enforcement, remember more information, and can otherwise engage more fully with the investigation when they are not so traumatized and have adequate support* (Campbell, Bybee, et al., 2009, p.121).

Fixing these problems requires a willingness to use best practices to change how investigations are handled. Some of these best practice recommendations 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 thus follow.

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 means that all sexual assault cases will be documented with a written report and investigated to the extent possible. This thorough documentation and investigation should occur 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" (for example, see Ferguson, 2013).

We must simply accept the reality that a relatively small percentage of sexual assault reports are false; current estimates converge around 2-8% (Lisak, Gardinier, Nicksa, & Cote, 2010; Lonsway, Archambault, & Lisak, 2009). However, even if the percentage were higher, we would still need to 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 can make this one change, we will be able to dramatically improve how 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 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.

Resources: Overcoming Challenges in Victim Statements

One of the fundamental challenges to the credibility of sexual assault victims is that many, if not most, make statements to the law enforcement investigator or others that are incomplete, inconsistent, or just plain untrue. In the Best Practices section of our website, under the Victim Interview tab, there is an article entitled, *Incomplete, Inconsistent, and Untrue Statements Made by Victims: Understanding the Causes and Overcoming the Challenges.* In it, we explore the many causes of such problems and identify ways to overcome the challenges that they pose for a sexual assault investigation.

Improve Investigations with a Teamwork Approach

With a teamwork approach, law enforcement investigators can work with other professionals to improve services for victims that will facilitate their cooperation with the criminal justice process, increase access to other services, and ultimately improve their recovery. This teamwork approach requires collaboration with victim advocates, forensic examiners, prosecutors, and others involved in the multidisciplinary community response to sexual assault.

We must also keep in mind that 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. In a recent study, for example, Dr. Rebecca Campbell and colleagues found that two elements must come together for a sexual assault case to have a chance for prosecution. First, there has to be a thorough, evidence-based investigation. Second, the victim has to be willing and able to participate in the criminal justice process (Campbell, Bybee, Ford, & Patterson, 2009).

This may be especially true for adolescent victims, for whom the support of professionals as well as friends and family members determine in large part whether they will become engaged, and remain engaged, with the criminal justice system (Campbell, Greeson, Bybee, Kennedy, & Patterson, 2011).

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. 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 often seen as undermining 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, substance abuse, sexual promiscuity, running away, or failing school. Again, such behaviors are understandable as responses to traumatic victimization; however, they can make successful investigation and prosecution more difficult.

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 treatment, 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.

Ensure that Law Enforcement Agency Personnel are Familiar with the New Data Definition of Rape and the New Guidance for Exceptionally Clearing Cases Published by the FBI's Uniform Crime Report (UCR) Program.

Investigators and supervisors in particular will need to be aware of the new guidance for exceptional clearance published in the 2013 version of the *SRS User Manual.* Any personnel responsible for submitting data to the UCR Program will need to have a detailed understanding of the new data definition for rape, but others within the agency must also understand that this definition is used for *data collection purposes* only. It does not revise or affect in any way the statutory definition of criminal sex offenses in any jurisdiction. Leadership will also be needed from law enforcement and others, especially victim advocacy organizations, to help the public understand that any increase in UCR rape statistics is most likely the result of a revised definition for data collection and not an increase in sexual assault being perpetrated in the community.

Implement Policies Clearly Stating that Officers and Investigators Cannot Unfound a Case as False Based Solely on the Victim's Initial Statement or a Cursory Preliminary Investigation.

The determination that a case should be unfounded as false 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 simply not enough information to make such a determination. Therefore, a crime report should only be unfounded as a false report if the investigative findings establish that no crime was completed or attempted.

Policies and 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* or *insufficient evidence* – are not UCR clearance categories, although they are used by many agencies (especially for child abuse cases).

Provide Training on the Definitions and Criteria for the Various Clearance Methods, Including the New Updates Regarding Exceptional Clearance.

This module is 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 *Summary Reporting System User's Manual (2013).* 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. Training can be based on this module and the OLTI module on *False Reports.* In these materials, we seek 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.

Resources: Training Resources for Sexual Assault Investigation

A number of helpful tools have been developed by the International Association of Chiefs of Police (IACP), as part of their Police Response to Violence Against Women Project. These tools include a *Model Policy on Investigating Sexual Assaults*, a supporting *Concepts and Issues Paper*, and a *Supplemental Report Form* for sexual assault that includes helpful guidelines for case documentation, effective techniques for victim and perpetrator interviews, and a pocket "tip" card for officers. In the guidance provided along with the *Supplemental Report Form*, information is provided on standardized case coding and clearance practices. There is also a training video that can be used, along with a corresponding discussion guide.

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 begin tracking their own statistics at any time, using these recommendations for best practice at any time. By creating and applying standard criteria, agencies can train investigative personnel in the proper use of unfounding and document whether cases are unfounded because they are false versus baseless.

This data would not be reported to the UCR – for that purpose, the two categories need to be collapsed into the single category of *unfounded*. However, the distinction will be helpful in guiding policy and practice for the agency, as well as addressing some of the myths and misunderstandings that surround this topic. To illustrate, such data could clearly communicate that not all unfounded cases are false reports. The data 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 will similarly disaggregate the data they collect on unfounded cases, to provide more helpful information for law enforcement and the public.

Separate Cases 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. Clearance data is currently reported by the UCR Program with these two categories collapsed. However, law enforcement and the public could be provided with a more realistic picture of current practices if they were reported separately. Again, there is nothing stopping individual law enforcement agencies from pursuing this goal by tracking and reporting their own caseloads in this way.

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 filed formal charges in a case.

We believe 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 clearances are in fact police decisions, and investigators should be able to “count” their clearances in police statistics regardless of whether or not cases are prosecuted. The question is how we 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 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. Improving the statistics that are tracked by agencies to reflect case outcomes 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 together to encourage the UCR Program to incorporate such information in the data they collect and report.

Develop a Standardized Form to Record the Clearance Method for Each Sexual Assault Report and Include it with Investigative Case Files.

Once clarification and training have been provided on how to properly clear and close cases, all of the possible dispositions should be included on a standardized form that is used across the agency – not just within the sex crimes unit, but also by other units as well. The benefit of a standardized form is that it can include all of the information needed for UCR reporting. It can also assist investigators and supervisors reviewing case files and making clearance decisions.

To illustrate what this might look like, we provide a sample form below. This sample includes all of the information needed to meet the criteria for the UCR Program, so it can be used across the entire law enforcement agency to collect data on how cases are cleared. However, it also captures additional details that provide useful information on actual case outcomes. This level of detail is not cumbersome, so the form can still be used agency-wide to meet state reporting requirements. However, the more detailed information can also be used by agencies to help manage their own resources, and as a first step toward improving data collection and practices. The information can also be made readily available to the public when discussing how sexual assault reports are handled by individual agencies.

CASE CANCELLATION FORM

TYPE OF CRIME/INCIDENT □ Felony □ Misdemeanor	**CODE SECTION AND DESCRIPTION:**	**CASE #**	**INCIDENT DATE:**

VICTIM: _____ Last First Middle Initial	**IS CASE PART OF A SERIES?** □ No □ Yes	**KEY CASE #**

CANCELLATION

□ BY ARREST □ Adult □ Juvenile □ Patrol Arrest □ Detective Arrest □ DA Issued □ DA Reject (with Arrest)

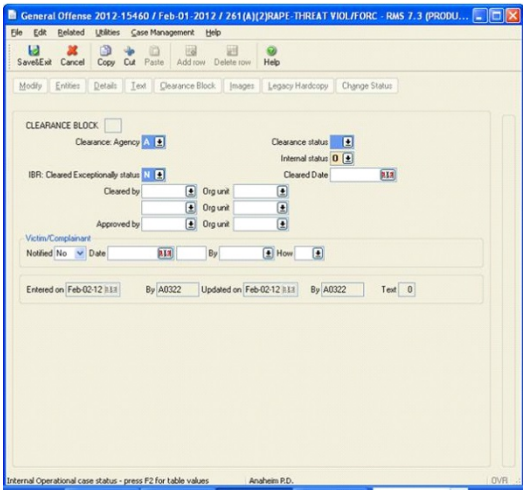
Suspect Name: _____ DOB: _____
Last First Middle Initial

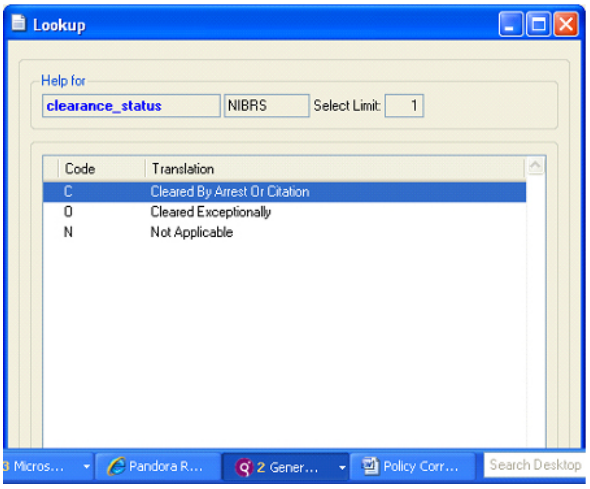
Date of Arrest: _____ Booking # _____

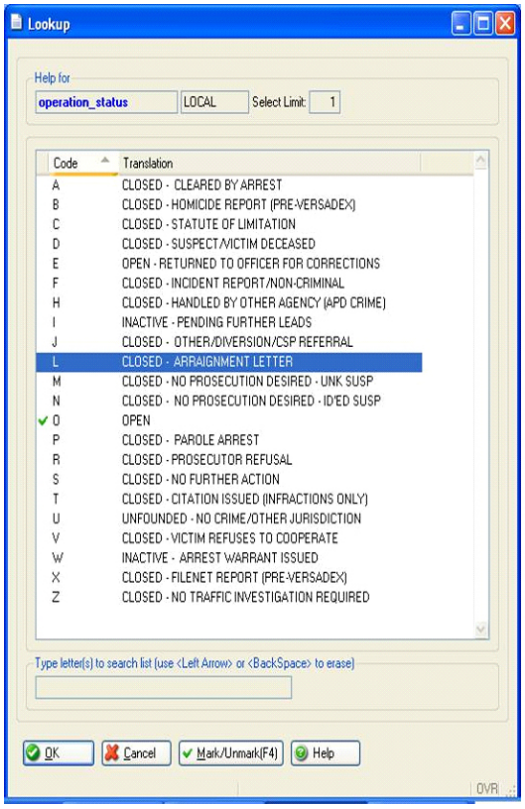
□ EXCEPTIONAL □ Victim Declines Prosecution (with Suspect ID and Probable Cause) □ DA Reject (without Arrest)
□ Beyond Statute of Limitations □ Crime Occurred Out of Jurisdiction □ Suspect Charged in Another Jurisdiction
□ UNFOUNDED □ False (Based on Investigative Findings) □ Baseless (Elements of Crime Not Met)

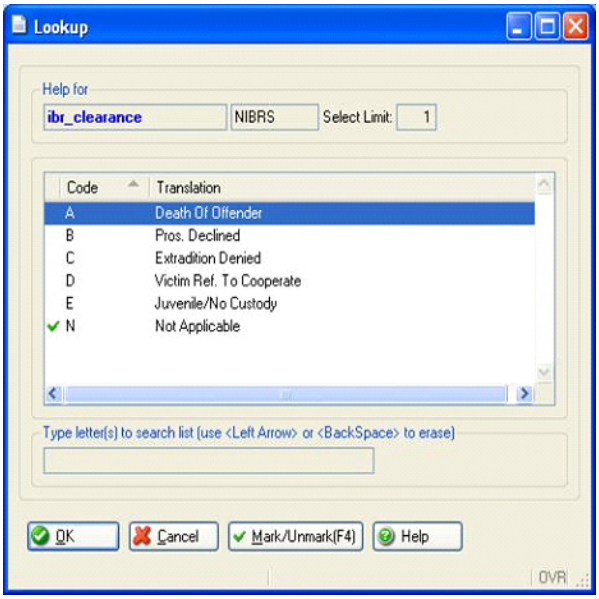
MISSING PERSON □ ADULT □ JUVENILE □ Returned (R) □ Deceased (D) □ Voluntarily Missing (V) □ Located-Detained (L) □ Arrested (A) □ Report Withdrawn/Invalid (W) □ Located-Released (X) □ Emancipated (E) □ Other □ Unknown	**PROPERTY RECOVERED** □ Full □ Partial □ Value Recovered: $ _____ □ Not Recovered Recovery Form Completed? □ No □ Yes
INVESTIGATOR:	**APPROVED BY:**

Once the data is collected on a form, it will need to be entered into a database. To provide an illustration of what this type of database might look like, we provide a series of screenshots for the computerized system used by the Anaheim Police Department in California. While the specific information captured in each agency's database might vary, it will be most useful if it includes information beyond case clearances such as additional details about the basis for the clearance and the outcome. Moreover, the data will only be meaningful and informative if there is ongoing training on the disposition categories, quality control and supervisory review. All too often clearance decisions are made and recorded in ways that are simply passed down from one investigator to another, with little or no understanding of why they are done that way.









Develop a Form for Recording More Detailed Data on Sex Crimes Cases, Including Case Dispositions, Outcomes, and Assault Characteristics.

While the previous form was designed to collect data on case clearances across an entire agency, it is extremely valuable to capture more detailed information specifically on sex crimes. The sample form provided below can be used by a Sex Crimes Unit or other unit within the law enforcement agency that is charged with investigating sexual assaults, such as a Major Crimes Unit. The data collected can be used to evaluate case dispositions for individual investigators as well as any Unit/Division as a whole.

As the example illustrates, this form includes information about case outcomes as well as characteristics of the victim, suspect, relationship (if any), and the assault itself. It is completed by the investigator at the time the final report documenting a sexual assault investigation is submitted for supervisory review. It is important that the investigator completes the form because they know the case facts best and can complete such a document within a matter of minutes. The supervisor then has the opportunity to review the investigation, and at the same time ensure that the case disposition is recorded accurately.

SEX CRIMES CASE DISPOSITION

CASE / INCIDENT #	**OFFICER / DETECTIVE:**	**BADGE #**

LOCATION OF ASSAULT:	□ Residence □ Hotel / Motel □ Street / Alley / Yard □ Parking Lot / Garage	□ Vehicle □ Park □ Field / Lot □ Other	**DISTRICT / BEAT:**

CODE SECTION AND DESCRIPTION:	**WEAPON:** □ No □ Yes	**DATE:**	**DAY:**	**TIME:**

DISPOSITION

□ BY ARREST □ Adult □ Juvenile □ DA Issued □ DA Reject (with Arrest) □ Patrol Arrest □ Detective Arrest □ Suspect Arrested □ Suspect In Custody

Suspect Name: _____ DOB: _____ Age: _____
Last First Middle Initial

Date of Arrest: _____ Booking # _____

□ EXCEPTIONAL □ Victim Declines Prosecution (with Suspect ID and Probable Cause) □ DA Reject (without Arrest) □ Beyond Statute of Limitations □ Crime Occurred Out of Jurisdiction □ Crime Charged in Another Jurisdiction

□ UNFOUNDED □ False (Based on Investigative Findings) □ Baseless (Elements of Crime Not Met)

□ INACTIVE / SUSPENDED □ Leads Exhausted □ Pending DA Review □ Unsubstantiated □ Warrant Issued □ VDP (no Suspect ID or Probable Cause)

□ REFERRED TO CITY ATTORNEY (Initially Recorded as Felony, Referred as Misdemeanor)

□ CLOSED AS INFORMATIONAL REPORT (Elements of Crime Not Established)

RELATIONSHIP (mark one)
□ Stranger (never met)
□ Brief Encounter (< 24 hours)
□ Family Member
□ Non-Stranger (e.g., co-worker, neighbor, friend)
□ Current or Former Intimate Partner

VICTIM CHARACTERISTICS (mark all that apply)
□ College/University student
□ Limited English Language (Second Language Spoken)
□ Victim is Homeless
□ Victim in Sex Trade
□ Unknown

VICTIM INJURY (mark the most serious level of injury)
□ No known physical injury (other than the sexual assault)
□ Minor physical injury (e.g., bruises, minor cuts, scrapes, or abrasions)
□ Serious physical injury (typically requiring medical care)

VICTIM GENDER
□ Male □ Female □ Transgender

VICTIM AGE:

VICTIM DISABILITY (mark only if causes serious impairment of daily functioning)
□ Unknown
□ Physical / Sensory Disability
□ Intellectual / Developmental Disability
□ Psychological / Emotional Disability
□ Other:_____

SUSPECT ALCOHOL / DRUG (mark all that apply)
□ Drugs □ Alcohol □ Mild to Moderate □ Significant

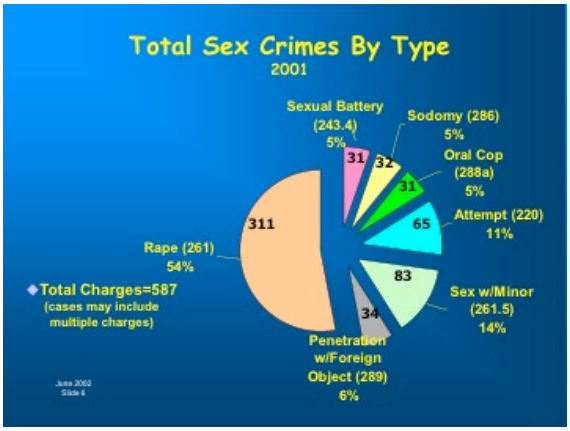
VICTIM ALCOHOL / DRUG (mark all that apply)
□ Drugs □ Alcohol □ Mild to Moderate □ Significant □ Severe Incapacitation □ Unconscious

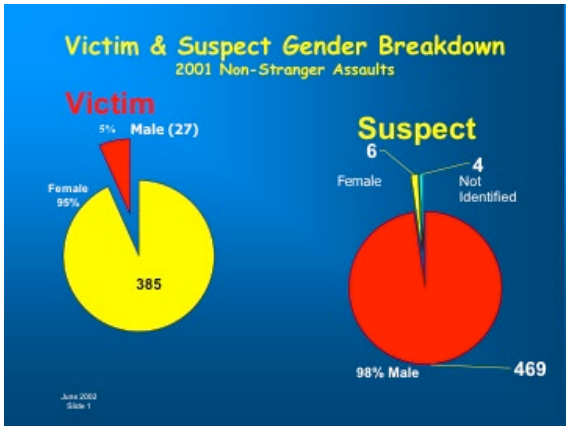
EXAMS / INTERVIEWS (mark all that apply)
Forensic Exams: □ Victim □ Suspect(s)
Initial Interviews: □ Victim □ Suspect(s) □ Witness(es)
Follow-Up Interviews: □ Victim □ Suspect(s) □ Witness(es)

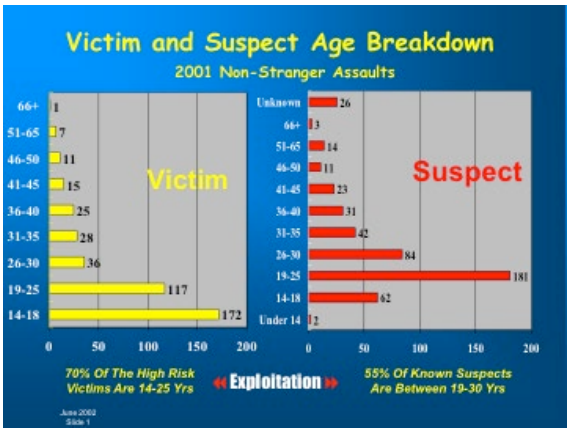
ANALYSIS REQUESTED
□ DNA □ Latent Prints
□ Toxicology □ Trace Evidence
□ Other: _____

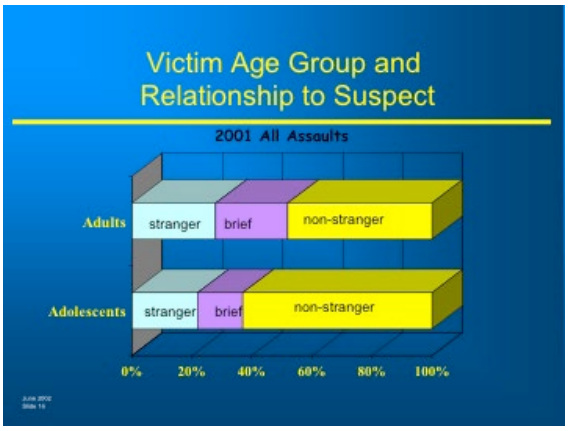
Once the form is completed by the investigator, and reviewed by a supervisor, the data should then be entered into a database maintained specifically by the Unit. At a minimum, this information should be analyzed annually, although it can be extremely helpful to do so more than once a year (e.g., quarterly). When the data is maintained in an ongoing way, conducting an analysis is a relatively straightforward matter.

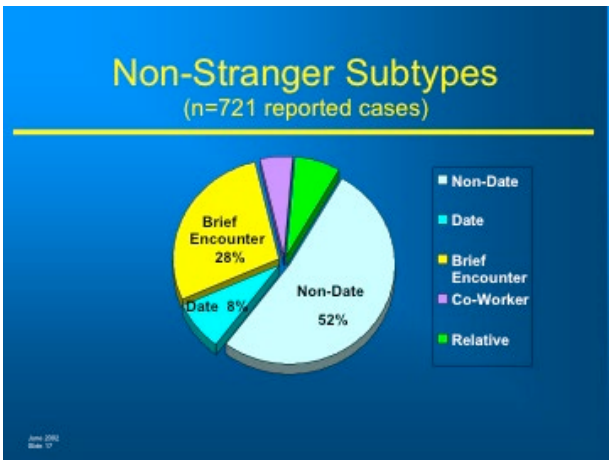
The findings are extremely useful for educating the public and professionals who respond to sexual assault on the realistic dynamics of sexual assault and how to reduce the risk of sexual assault. It can therefore be incorporated into community education programs. To provide a sense of what this might look like, we offer several sample slides from a presentation given by the Speakers' Bureau for the San Diego Police Department. Information was also incorporated in the Sexual Assault Risk Reduction Curriculum developed collaboratively for the community of San Diego by the San Diego Police Department and San Diego City Schools with research support from San Diego State University.

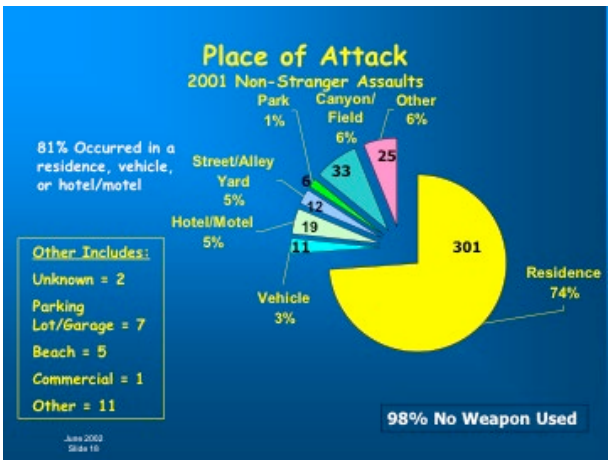


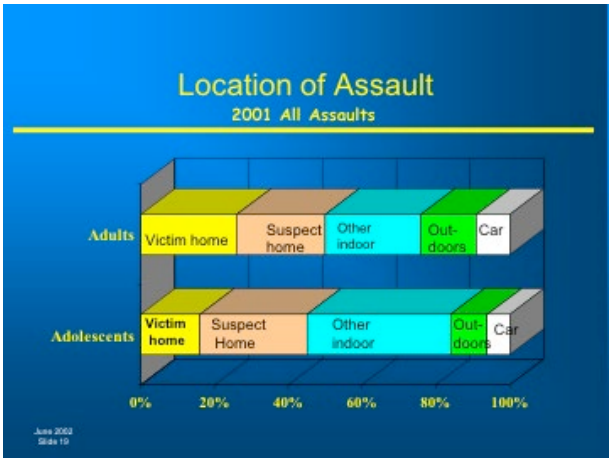


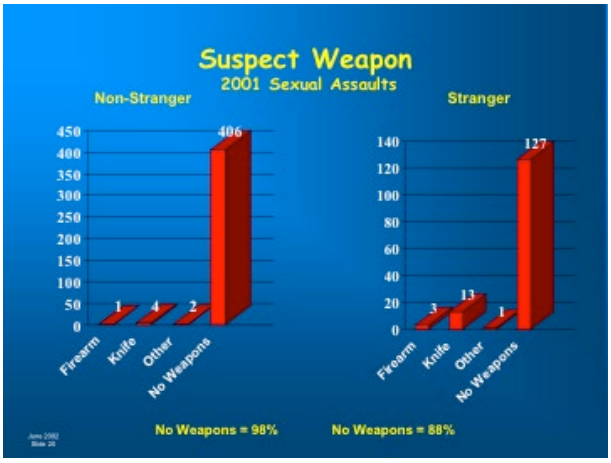


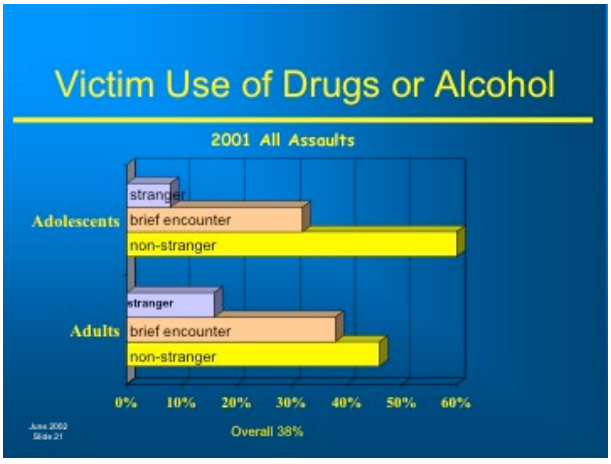


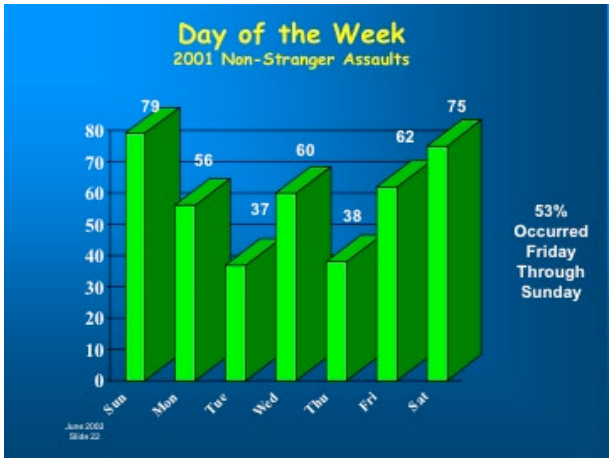

Non-Stranger Subtypes
(n=721 reported cases)
Brief Encounter 28%
Non-Date 52%
Date 8%
Non-Date
Date
Brief Encounter
Co-Worker
Relative

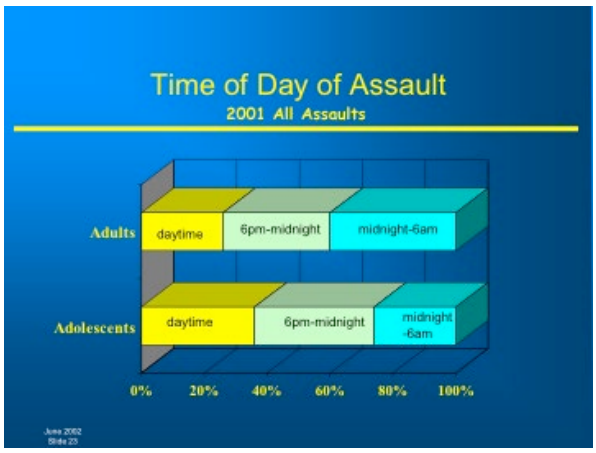

Place of Attack
2001 Non-Stranger Assaults
81% Occurred in a residence, vehicle, or hotel/motel
Park 1%
Canyon/ Field 6%
Other 6%
Street/Alley Yard 5%
Hotel/Motel 5%
Vehicle 3%
Residence 74%
301
25
33
6
12
19
11
Other Includes:
Unknown = 2
Parking Lot/Garage = 7
Beach = 5
Commercial = 1
Other = 11
98% No Weapon Used

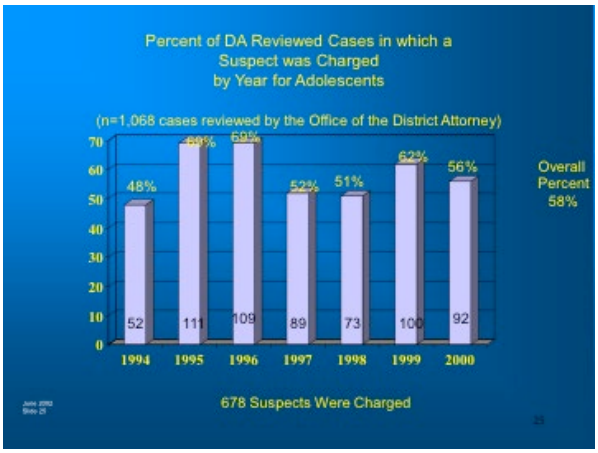

Location of Assault
2001 All Assaults
Adults
Victim home
Suspect home
Other indoor
Out-doors
Car
Adolescents
Victim home
Suspect Home
Other indoor
Out-doors
Car
0%
20%
40%
60%
80%
100%

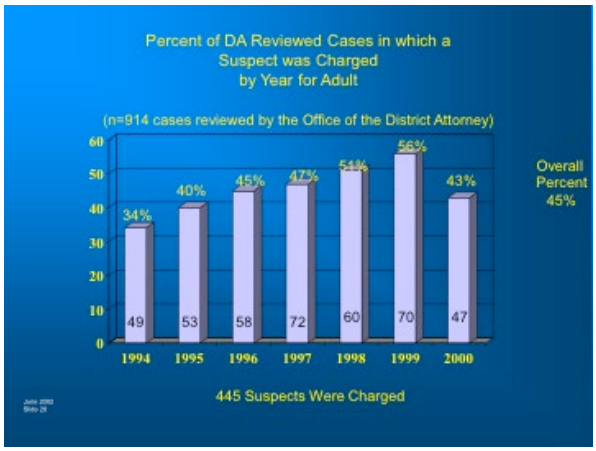

Suspect Weapon
2001 Sexual Assaults
Non-Stranger
Stranger
450
400
350
300
250
200
150
100
50
0
406
1
4
2
140
120
100
80
60
40
20
0
127
3
13
1
Firearm
Knife
Other
No Weapons
No Weapons = 98%
No Weapons = 88%

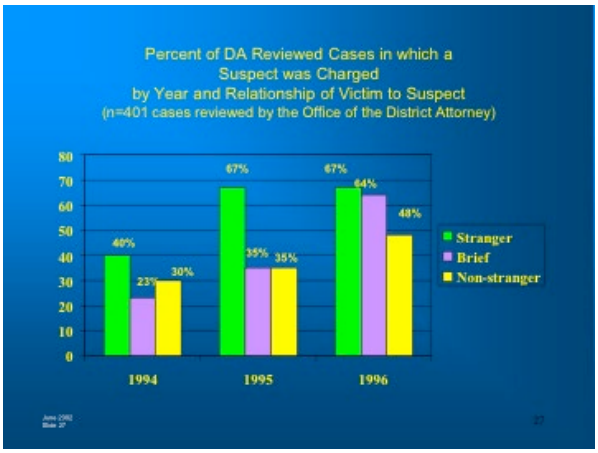

Victim Use of Drugs or Alcohol
2001 All Assaults
Adolescents
stranger
brief encounter
non-stranger
Adults
stranger
brief encounter
non-stranger
0%
10%
20%
30%
40%
50%
60%
Overall 38%


Day of the Week
2001 Non-Stranger Assaults
80
70
60
50
40
30
20
10
0
79
56
37
60
38
62
75
Sun
Mon
Tue
Wed
Thu
Fri
Sat
53% Occurred Friday Through Sunday









Resources: Making a Difference (MAD) Project Data Collection Materials

Some agencies may decide to take data collection another step further, by establishing a system for collecting detailed information across professional disciplines for a community-wide perspective. If so, we recommend starting from the materials developed for the Making a Difference (MAD) Project. In addition to background on the history and purpose of the project, information is provided about the research design, methodology, materials, basic findings, as well as tracking forms that can be adapted by any agency seeking to collect detailed information on their sexual assault cases. Separate versions of the tracking forms were developed for law enforcement, prosecution, health care, and victim advocacy. Common data variables across disciplines capture information on the victim, suspect, relationship, and assault. Then unique disciplinary variables record the specific steps taken by the professional with respect to the case, as well as the outcome and other services. These tools were developed by professionals in all of the disciplines, across eight diverse communities, and they were fine-tuned over years of use. They therefore incorporate many "lessons learned" that can benefit anyone seeking to avoid such pitfalls and begin their data collection efforts with variables and definitions that are known to be reliable and valid.

Use Graphics to Review the Balance of Cases in the Various Dispositional Categories.

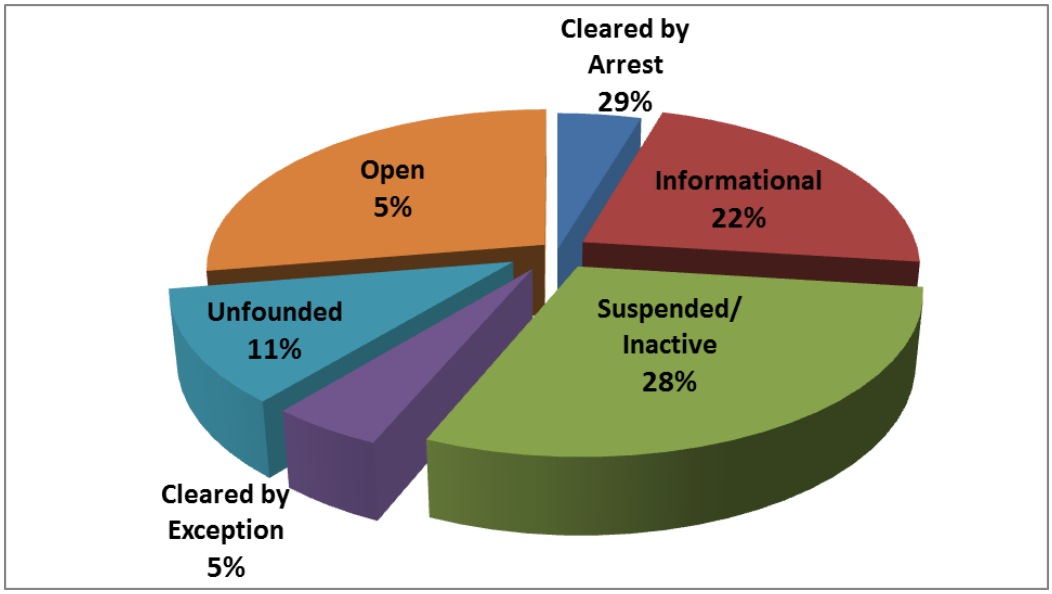
Once data is collected using standardized forms across the agency and within the investigative unit, it is possible to review statistics on case dispositions, both for individual investigators as well as for the unit and department as a whole. This is necessary to view the full picture of case attrition, to understand what is happening to sexual assault cases and how they are being resolved. It is therefore an important part of the process that supervisors and managers can use to evaluate individual performance and understand it within the context of the entire Unit or across the agency.

The first step is to create a graph or chart to visually depict the balance of primary case dispositions within the investigator's (or unit's or department's) current caseload. These primary case dispositions are:

- Open (cases currently being investigated).
- Informational Reports.
- Cleared by Arrest.
- Exceptionally Cleared.
- Unfounded.
- Suspended/Inactive.

A sample graph is provided below, to illustrate what this might look like. The data is drawn from the San Diego Police Department's Sex Crimes Unit from 1998.

Sample Chart #1: Basic Information on Case Cancellations



Most of the information needed to create this graph is drawn from the sample Case Disposition Form provided above. The figures are simply combined with the number of informational reports, open cases, and cases that have been suspended or inactivated – to offer the full spectrum of possible case outcomes. These percentages will fluctuate over time, and they will vary based on how much time is given for investigators to resolve their cases. When a certain time period is selected for analysis, for example, the number of open cases will decrease the longer a supervisor waits to calculate the case disposition figures.

Also note that the percentage of unfounded cases will be different than those often reported in other publications or sources, because this analysis includes the entire spectrum of case dispositions – including cases that are open, suspended/inactive, and recorded with an informational rather than a crime report. Anytime statistics are being compared across agencies for any case dispositions, it is critical to examine which categories are included, because the inclusion or exclusion of any particular category will potentially have a dramatic impact on the percentages that are calculated. This point can be illustrated with the data presented in the graph.

Below you will find the 1998 data from the San Diego Police Department's Sex Crimes Unit. In the second column is the raw number of cases in each disposition category. In the third column are the number of reports that are cleared by arrest, cleared by exception, and unfounded – in other words, only those clearance categories reported to the UCR Program. The percentages are then calculated in the final column; unfounded cases would be reported as representing 25%.

Case Disposition	**# Cases**	**Dispositions A: Only Including UCR Categories**	**Percentage Calculation A**
Open (cases currently being investigated)	36		
Informational Reports	175		
Cleared by Arrest	230	230	34.8%
Exceptionally Cleared	36	36	10.1%
Unfounded	89	89	**25.1%**
Suspended/Inactive	216		
Total	**782**	**355**	

The next table shows the percentages calculated with the UCR clearance categories in addition to open cases and investigations that have been suspended or inactivated. This is a common strategy that might be used by a law enforcement agency, and it results in a 15% figure for unfounded cases.

Case Disposition	# Cases	Dispositions B: Including Open and Suspended	Percentage Calculation B
Open (cases currently being investigated)	36	36	5.9%
Informational Reports	175		
Cleared by Arrest	230	230	37.9%
Exceptionally Cleared	36	36	5.9%
Unfounded	89	89	**14.7%**
Suspended/Inactive	216	216	35.6%
Total	**782**	**607**	

Most agencies would not include informational reports in their calculation, but this is necessary to show the entire range of possible outcomes for a sexual assault report. If they are included in the calculation, the percentage of unfounded cases using this data drops to 11%.

Case Disposition	# Cases	Percentage Calculation C: All Case Outcomes
Open (cases currently being investigated)	36	4.6%
Informational Reports	175	22.4%
Cleared by Arrest	230	29.4%
Exceptionally Cleared	36	4.6%
Unfounded	89	**11.4%**
Suspended/Inactive	216	27.6%
Total	**782**	

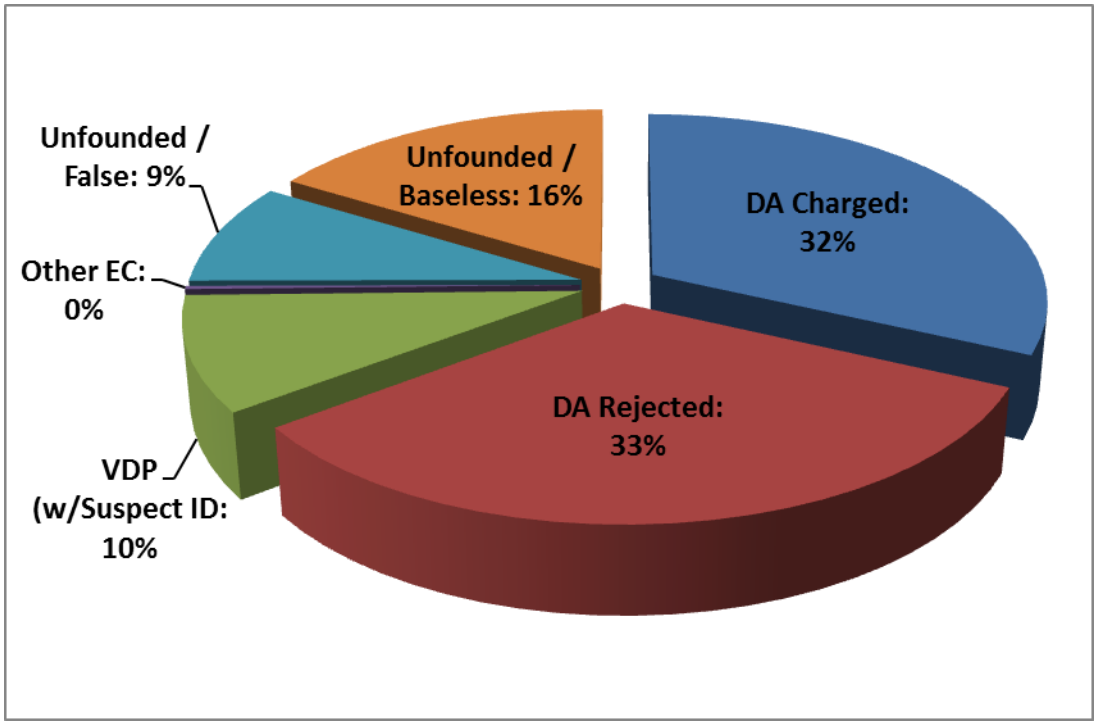
It is also important to keep in mind that the percentage of unfounded cases will include those that are unfounded because they are false as well as baseless. The number of baseless reports will often vary rather significantly as a result of agency practices for recording information and assigning a crime code. The earlier a crime code is assigned (including by 911 call takers), the more likely it will need to be changed later as information emerges during the investigation. This includes reports that are assigned a criminal offense code that are later deemed baseless.

Supervisors can also review a more detailed breakdown of case dispositions. This is illustrated in a second graph which includes only those cases that are cleared or unfounded. This graph excludes cases that are open and inactivated/suspended, as well as those recorded as informational reports. For example, a more detailed review could determine the percentage of cases cleared by arrest that were *issued/charged* versus *rejected* by the prosecuting attorney. 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 prosecuting attorney rejected the case, 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 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 then be contacted for discussion by a supervisor, because such an imbalance might indicate a problem. An example of such a chart appears below.

Sample Chart #2: Detailed Information on Case Dispositions



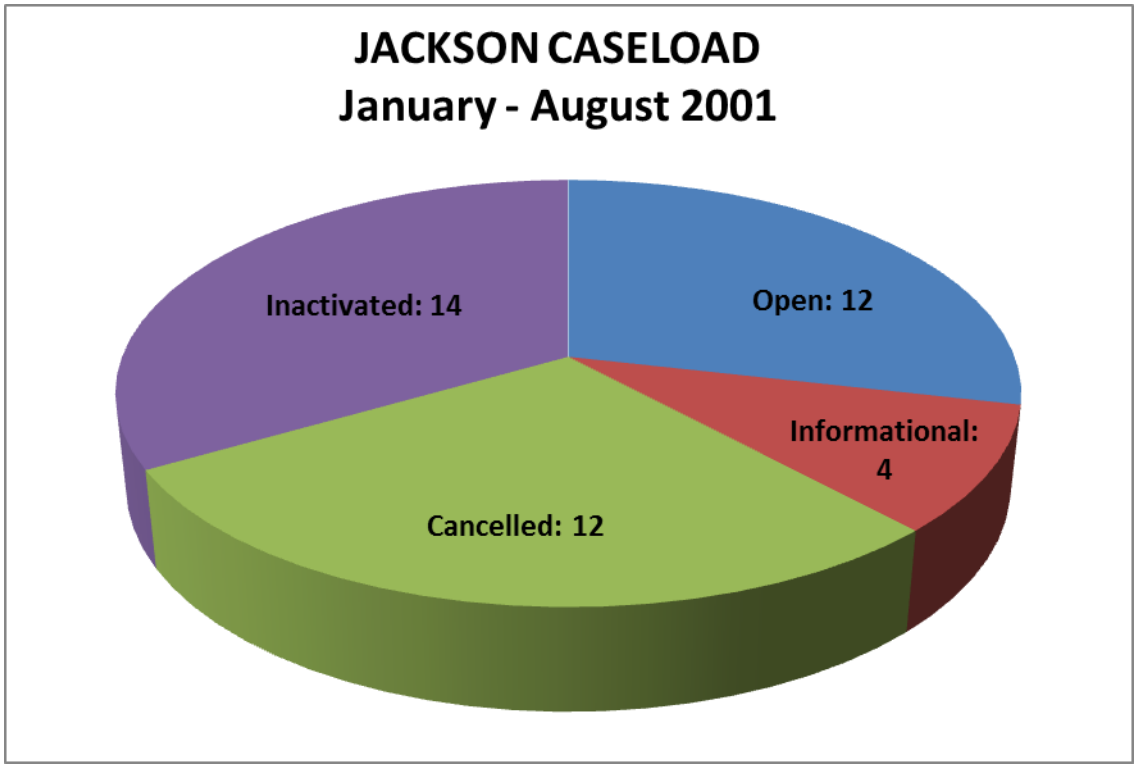
Incorporate a Review of Case Dispositions in the Performance Evaluations of Investigators and Establish Appropriate Evaluation Criteria to Recognize, Reward, and Value a Victim Centered Approach.

We have already highlighted the value of reviewing the balance of case dispositions in a sexual assault investigator's caseload. This information should then be included in their performance evaluations. It is also important to establish evaluation criteria that do not focus solely on clearance rates, to avoid placing unnecessary pressure on investigators to clear or close their cases. In many situations, the appropriate outcome is for a case to be suspended or inactivated, and this should not be the basis for a negative evaluation. To illustrate these strategies, a few examples are provided from real performance

evaluations of sex crimes investigators in the San Diego Police Department. The names of these investigators have been changed to protect their privacy, as have the dates.

First, you will see the breakdown of one investigator's caseload (42 cases) for a 9-month period of time, with the disposition categories of: Open, Inactivated, Cancelled, and Informational.

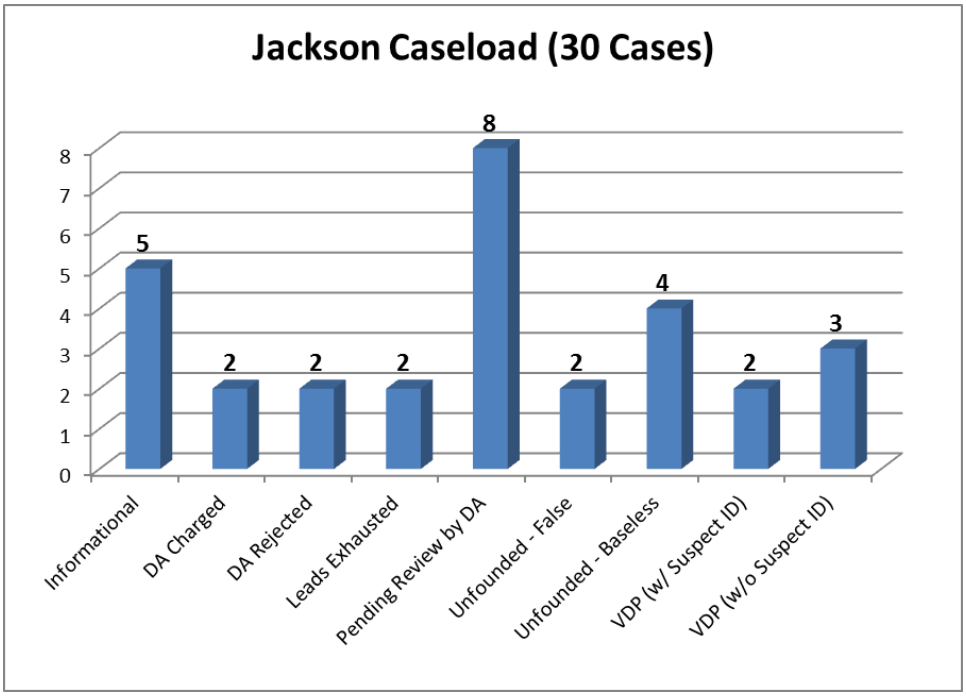
Sample Chart #3: Primary Dispositions in Investigator's Caseload



In the second graphic, you will see a more detailed breakdown of the same investigator's caseload during the same period of time, which only includes those cases that received a disposition. The categories thus include: (1) Informational; (2) DA Charged; (3) DA Rejected; (4) Leads Exhausted; (5) Pending Review by DA; (6) Unfounded – False Report; (7) Unfounded – Baseless; (8) VDP (with Suspect ID); and (9) VDP (without Suspect ID). Note that the cases referred to the District Attorney's Office are tracked by whether the case was ultimately charged or rejected (or is pending review at the time of the evaluation).

Within the unfounded category, false and baseless cases are tracked separately. In addition, cases that are denoted as VDP (i.e., victim declines prosecution) are tracked separately based on whether or not the suspect has been identified, because only those cases where a suspect has been identified can be cleared by exception using UCR criteria. In most cases without a suspect identification, the most appropriate determination is inactivation or suspension.

Sample Chart #4: Detailed Dispositions in Investigator's Caseload



Next, we provide two examples of written performance evaluations that incorporate the type of strategies discussed throughout this training module. For example, both investigators are recognized for having a high percentage of their cases referred to the District Attorney's office result in a charge, because this is an indicator that their investigations were thorough and well documented. In one example, the investigator is also rewarded for actively pursuing investigations where victims have been initially uncooperative, because he was able to establish sufficient rapport with these victims to encourage and support their participation.

Both evaluations thus place a high value on criteria that are not traditionally emphasized, including: investigative skills, understanding of the dynamics of sexual assault investigations, rapport with victims, report writing, and record keeping. By highlighting these values, this supervisor rewards sex crimes investigators for their job performance without placing undue emphasis on the specific case outcomes within the criminal justice system.

Example 1:

> *Mark was assigned to investigate 94 cases in 2006. As of the first week of January 2007, he had 29 cases pending disposition. 56% of the 25 cases he cancelled were charged by the District Attorney's office. Only 8% of his cases were cancelled because the victim declined prosecution. 4% were unfounded. The unit average for cases cancelled VDP is 20%, and 12% for unfounded. Some might argue that these statistics reflect the special circumstances involving unlawful sexual intercourse cases. However, the*

> *second detective working these same cases cancelled 26% of his cases VDP, and 19% unfounded. Only 36% of his cases were charged. I believe the data reflects Mark's understanding of the dynamics involved in sexual assault investigations. He has actively pursued many investigations where the victims have been uncooperative, and, in many cases, he has developed enough rapport with the victim that she has agreed to participate in the criminal justice system. The high percentage of cases charged also demonstrates Mark's investigative ability and his exceptional report writing skills.*

Example 2:

> *Vanessa has outstanding caseload management skills. She was assigned 86 cases to investigate in 2006, the second highest caseload in the Unit. However, when I ran the statistics around the first of February 2007, Vanessa only had 8 open cases. Another striking note is that 51, or 59% of her cases were cancelled. 43% of her cases were referred to the DA's office and 49% were issued, indicating that Vanessa's investigations are thorough and well documented. Vanessa is also very meticulous about her records. She is one of the few detectives I know who consistently goes back to check the status of the cases she has referred to the DA's office for review or warrants. She meticulously revises her paperwork to reflect the current status of each case resulting in up-to-date and accurate case status reports.*

Clearly, case outcomes are not the only measure of success within the criminal justice system. Another indicator may be found with evidence that officers and investigators are conducting thorough, evidence-based investigations, regardless of the potential case outcome. This could be evaluated by determining whether they are taking specific investigative steps, such as providing the victim with resources and referrals for support, interviewing the victim with an advocate present whenever possible, interviewing the suspect and any witnesses, obtaining search warrants when appropriate, submitting the appropriate laboratory requests to analyze evidence from the victim's body or clothing, the suspect's body or clothing, and/or the crime scene(s), etc. Another indicator of success could be establishing methods of accountability within law enforcement agencies for every sexual assault incident reported. This accountability could be assessed and enforced by determining whether all sexual assault reports are documented with a written report and investigated to the fullest extent possible. When such a practice is initially implemented, there will be an increase in the number of informational reports as well as reports that are unfounded because they are baseless. Leadership is needed to clearly communicate that this is the inevitable result of any law enforcement agency recording information on the full spectrum of information citizens provide about possible sexual assaults.

Success in this context also means that officers are not unfounding cases based on faulty methods or reasoning, such as relying solely on the victim's initial statement or a cursory preliminary investigation. In fact, any evaluation of success should include some

effort to determine whether sexual assault cases are being properly cleared using the UCR criteria. This is important because the clearance categories of unfounded and exceptionally cleared are too often used as a "dumping ground" for sexual assault cases that are viewed as dubious or difficult to investigate. For evaluation purposes, case files could thus be reviewed to determine whether clearance decisions were made prematurely, or if they were based on evidence from a meaningful and thorough investigation. These and other strategies can be developed with a focus on ensuring that criteria highlighting a victim centered approach are recognized and rewarded throughout the agency's practices.

Resources: Measuring Success in Sexual Assault Investigations and Prosecutions

Joanne Archambault examines the question of how to evaluate success in terms of a law enforcement investigation of sexual assault in an article entitled, *Evaluating and Measuring Law Enforcement Success.* For an exploration of alternative measures of success for sexual assault prosecution, please see the article written by Jennifer Long and Elaine Nugent-Borakove entitled, *Beyond Conviction Rates: Measuring Success in Sexual Assault Prosecutions.* It was published by AEquitas: The Prosecutors' Resource on Violence Against Women.

Work Collaboratively with Child Abuse Units to Standardize the Process for Recording Crimes of Sexual Violence Against Children and Adolescents.

This might include using the same type of standardized form and tracking system for sexual assault committed against adults as well as adolescents and children. However, this system will also need to accommodate important differences between the two. For example, state child abuse reporting systems typically include a dispositional category of "unsubstantiated" for reports. This is because mandated reporters are required to contact law enforcement if they have reasonable suspicion of child abuse. This is a much lower standard than the probable cause required to establish that a crime occurred.

This disposition is not available to law enforcement agencies for cases involving an adult victim (as well as most adolescents). If such a case yields insufficient evidence to support criminal prosecution – but it is not determined to be false or baseless – it should be left inactivated or suspended.

A standardized process for recording and tracking all sex crimes can build in the flexibility to accommodate such differences. Then by using consistent terminology and procedures, agencies will be able to provide a comprehensive picture of how all sex crimes are reported and resolved.

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 or prosecution of the sexual assault).

Eliminate the Pressure on Officers, Investigators, and Supervisors to Clear a High Percentage of their Cases.

This requires addressing formal reinforcement systems, so law enforcement personnel are not rewarded for high clearance rates or punished for low clearance rates. Changing the atmosphere that pushes officers and investigators to clear their cases using the path of least resistance is equally important. 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 is not enough information or evidence to move the case forward to prosecute the offender.

Use Alternative Procedures for Inactivating Cases.

In a related vein, law enforcement agencies may need to create appropriate policies 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 this 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 *SRS User Manual*, which states 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.116).

The key is that the case can only be 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 the discomfort of individual investigators as it does from agency policies and practices. The reality is that many investigators and administrators are uncomfortable

closing a case administratively without officially clearing it because of the inaccurate perception that this means the case is unsolved or that law enforcement has not 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 from law enforcement and victim advocates – with victims as well as the public. It is important that everyone understands that even when a thorough investigation has been conducted, there are often times when there just is not enough evidence to present the case to the prosecutor, to obtain a warrant, or to make an arrest.

While such investigations should not be unfounded, all too often they are, and law enforcement agencies realize the tragic consequences of the 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 reoffends. Research clearly demonstrates that most individuals who commit sexual assault do reoffend (e.g., Lisak & Miller, 2002; McWhorter et al., 2009). The improper use of unfounding can thus 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.

Reward Good Investigations Regardless of the Final Outcome.

Another change that is needed is the adoption of practices – both formal and informal – 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 case outcome. This debriefing should emphasize that the evidence of a false report was only conclusive *because a thorough investigation was conducted.*

In fact, this is the job of law enforcement, to ensure that an innocent person is not arrested and prosecuted based on a false report. This type of recognition can therefore be seen in the sample performance evaluations provided in a previous section.

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 case clearances (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.

Provide Information About the Total Number of Reported Sexual Assaults and the Breakdown of their Case Dispositions to Victim Advocacy Organizations and the Public.

This is important information for the public and community partners to have, because it provides a more realistic picture of the prevalence and characteristics of sexual assaults in each community. For example, this type of information was incorporated in the Sexual Assault Risk Reduction Curriculum 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 Sexual Assault Speakers 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.

Providing community partners with detailed information on sexual assault reports and their case dispositions also serves 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 and the public's perception of their agency.

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 will often provide new information about the case. This can allow a supervisor or investigator to actively pursue a case that had been previously closed or inactivated.

Encourage the FBI to Expand its Oversight and Accountability Over the UCR Program.

This point is perhaps best articulated by Professor Yung (2014):

> *The FBI needs to expand its oversight of data submission and training of police officers in using the UCR system. The UCR data, particularly concerning rape, is full of red flags. The FBI currently does nothing when cities report unprecedented decreases in the prevalence and rate of rape while murder incidents and rates skyrocket. Even though the UCR program is voluntary, the FBI is free to investigate irregularities in the data and, if malfeasance is found, ask police departments to address the data issues. If necessary, the FBI can assign monitors to jurisdictions with systemic irregularities in the rape data. Further the FBI needs to expand its training in the UCR system beyond the handful of officers that have presently received it. At a minimum, doing so can undermine the cultural*

> *environment that encourages statistical manipulation in many police departments across the country* (p.1249).

We agree and hope to work together collaboratively with the UCR Program and others to achieve this important goal.

Conclusion

Professor Yung (2014) concludes in his paper that "None of these proposals will be cheap or easy to implement, but the cost of inaction is too high" (p.1249). Again, we agree.

All too often we have failed as a society in our response to sexual assault. We have failed victims, by mishandling their cases and responding in ways that are damaging and unfair. Yet we have also failed the community by allowing sexual assault perpetrators to reoffend. By following the recommendations outlined in this module, we hope to change this course and forge a more successful path forward. We hope you will join in this critical movement.

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