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

**Survey Responses**

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

The survey provided 6 brief scenarios involving a sexual assault report, and participants were asked to indicate how they would be cleared by personnel within their agency. Responses offered a fascinating glimpse into the diverse practices of law enforcement agencies across the country. While consistency was seen in the responses for some scenarios, others revealed important variations in the interpretation of these clearance categories. Therefore, in the commentary following scenario responses in this training bulletin, we will incorporate some of the findings from this prior law enforcement survey.

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

**Scenario #1**

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

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

How should this report be cleared? *(choose one)*

- [ ] Cleared by arrest
- [ ] Cleared by exception
- [ ] Unfounded
- [ ] Not cleared (but suspended, inactivated, or administratively closed)
- [ ] I don’t know
- [ ] Other
Response: Scenario #1

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

![Graph showing response distribution for Scenario 1]

However, you will also see that a number of survey respondents chose the second option as well – cleared by exception. This is likely related to a common misunderstanding regarding exceptional clearance. Specifically, you may recall that cases can be cleared by exception when law enforcement has identified the offender, knows the offender’s location, and has enough evidence to support making an arrest, charging the suspect, and turning the suspect over to the court for prosecution – but is prevented from doing so by some factor “outside law enforcement control.” A number of examples are then provided for what such factors might be, including the fact that the “victim refuses to cooperate in the prosecution.” This is probably why several respondents chose exceptional clearance for this first scenario.

However, this is incorrect because the suspect has not yet been identified or located. Therefore, law enforcement cannot answer “yes” to all four of the questions that are needed before a case can be cleared by exception. These questions are:
1. Has the investigation definitively established the identity of the offender?

2. Is there enough information to support an arrest, charge, and turning over to the court for prosecution? [In other words, is there probable cause?]

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

4. Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender? (Recall that these could include the death of the offender, the victim’s inability to cooperate with prosecution AFTER the offender has been identified, or the offender’s arrest and prosecution for another crime in a different jurisdiction).

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

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

Scenario #2

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

How should this report be cleared? (choose one)

☐ Cleared by arrest
☐ Cleared by exception
☐ Unfounded
☐ Not cleared (but suspended, inactivated, or administratively closed)
☐ I don’t know
☐ Other
Response: Scenario #2

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

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

Again, recall from the previous response that a report can only be exceptionally cleared if a suspect has been identified and located, and law enforcement has gathered enough evidence to make an arrest, charge the suspect, and turn the case over to the court for prosecution – but this is precluded by some factor outside their control. *The SRS User’s Manual* provides a list of examples for what such factors might be, and in the most recent version of this document there is a new item on the list: “Prosecution declined (for other than the lack of probable cause).” With the addition of this item to the list, the 2013 *SRS User’s Manual* offers clarification of this issue that created such debate and controversy in the field. We are pleased to see this clarification, because we believe it will offer meaningful guidance for law enforcement agencies in the proper clearance of their cases and a much more accurate picture of case dispositions.
Scenario #3

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

How should this report be cleared? (choose one)

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

Response: Scenario #3

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

For a discussion of clearance by arrest, please see the Summary Reporting System (SRS) User Manual published by the UCR Program (especially pages 112-115).
Scenario #4

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

How should this report be cleared? (choose one)

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

Response: Scenario #4

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

Note: In the original version of the survey, respondents were told that the case was not referred for prosecution, which is confusing given the fact that the suspect was arrested and booked. For the purpose of this quiz, the wording was clarified so the prosecutor rejected the case.
However, this scenario raises important questions of how criminal justice agencies and other community professionals should respond in such a situation, especially because it is common. First, it raises questions regarding when an arrest should be made.

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

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

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

Therefore, one recommendation we offer in this area is for law enforcement agencies to begin tracking their case outcomes not only in terms of clearance categories but also in actual dispositions. So, for example, for cases that are cleared by arrest, an agency should also track whether the prosecutor filed formal charges or rejected the case and why (e.g., because the victim declined prosecution). We provide an example of what this might look like in the chart on the following page.
This type of detailed analysis could be conducted using a single chart, or a series of charts, and then reviewed both for the department or unit as a whole as well as for individual investigators as part of their performance evaluations.

**Scenario #5**

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

How should this report be cleared? *(choose one)*

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

**Response: Scenario #5**

In this scenario, the correct response is again that the report should be cleared with an arrest. All three criteria for this clearance category are met: the suspect was arrested and charged (booked) by law enforcement, and the case was turned over to the court for prosecution. Regardless of whether the prosecutor files formal charges in this scenario or not, the law enforcement agency can clear the case with an arrest. This is reflected in the high level of consensus among survey responses.
In fact, the only real difference between this scenario and the prior one is the point at which the victim withdrew her participation. In this scenario she participated during the law enforcement investigation but withdrew during the process of prosecution. It therefore highlights the need to ensure that the community offers services to provide support for victims throughout the entire criminal justice process.

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

Scenario #6

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

How should this report be cleared? (choose one)

- Cleared by arrest
- Cleared by exception
- Unfounded
- Not cleared (but suspended, inactivated, or administratively closed)
- I don’t know
- Other
Response: Scenario #6

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

Conclusion

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

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

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

For More Information

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

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


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