We have been sending out a series of training bulletins on the topic of police clearance methods and the FBI’s Uniform Crime Report (UCR) Program. As a result of this series, we recently learned that on June 20, 2013, the FBI’s Crime Statistics and Management Unit published an updated version of their guidelines – with a variety of changes as well as a new name.¹ We will dedicate this training bulletin to helping you understand some of the changes with direct implications for the law enforcement response to sexual assault.

### Revised Definition of Rape

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 The old definition, in place since 1929, was not only outdated but also extremely limited, excluding a wide range of sexual assault offenses from official statistics compiled by the UCR Program.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

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

### Redesigned UCR Website

This new definition now appears on a redesigned website for the UCR Program. Under the heading of Recent Program Updates on the home page of that site, there is a link for information about the New Rape Definition as well as Frequently Asked Questions.

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

### Updated UCR Handbook

The new definition of rape is also incorporated into the latest version of the UCR’s Summary Reporting System (SRS) User Manual, which was designed to replace both the 2004 UCR Handbook and all previous SRS User Manuals.

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¹ We would like to thank Carol Tracy of the Women’s Law Project in Philadelphia, Pennsylvania for providing us this information.
Question of Exceptional Clearance

In addition, the new *SRS User Manual* clarifies an issue that we at EVAWI have raised in numerous forums, such as conference presentations and published materials. This issue is related to the definition of exceptional clearance, as well as clearance by arrest.

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

1. Someone is arrested for an offense, AND
2. Charged with the commission of that offense\(^2\), AND

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

1. Definitively established the identity of the offender, AND
2. Gathered enough information to support an arrest, charge, and turning over to the court for prosecution, AND
3. Identified the exact location of the offender so that that the subject could be taken into custody now, AND
4. There is some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender\(^3\) (*SRS User Manual*, p. 115).

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

Two Examples

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

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

\(^2\) This refers to charging by law enforcement at the time of booking and not formal charges by a prosecuting attorney.

\(^3\) This could include, for example:

- The death of the offender.
- The victim’s refusal to cooperate AFTER the offender has been identified.
- The offender’s arrest and prosecution in a different jurisdiction.
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 the law enforcement agency’s ability to properly clear a case by arrest.

What has been less clear historically is the following situation:

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

In this scenario, it is clear that law enforcement personnel can legally make an arrest (assuming they have probable cause), but many law enforcement agencies and prosecuting attorney’s offices have determined that such a practice is counter-productive. Because there was no physical arrest, however, some have argued that law enforcement cannot clear this case by exception – because the suspect was not arrested and charged (by law enforcement at the time of booking, not in terms of formal charges filed by a prosecuting attorney). Following this logic, the case would not be cleared and would be left open (but suspended, inactivated, or administratively closed).

**UCR Offers Clarification**

The new *SRS User Manual* offers clarification on this question. In the June 2013 update, the document clearly states that a case can be exceptionally cleared when prosecution has been declined for any reason other than the lack of probable cause (see p. 116). In other words, law enforcement agencies can now clear the second scenario provided above by exceptional means, because they have met the evidentiary criteria to clear the case by arrest, but the only reason they decided not to make a physical arrest was because of the prosecutor’s decision to not file formal charges.

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

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

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4 For a detailed discussion of this issue, please see:

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: