

Unfounded Sexual Assaults

Recommended Processes for Investigations and Clearance Reporting

When someone reports a sexual assault, having your law enforcement agency conduct a complete and unbiased investigation is essential to enhancing public safety and pursuing justice—not just for the person who reported the assault but for the accused suspect as well.

Sexual assault has been consistently shown to be the most underreported violent crime in the United States.^{1,2} Victims cite a range of reasons for not reporting their victimizations to law enforcement, including feelings of shame and self-blame, fear of not being believed, and accusations about complicity in the crime.^{3–5} Another complexity within sexual assault reporting is possible false reporting. Research suggests that about 2%–10% of sexual assault reports are false.^{6,7} Historically, law enforcement has been more likely to label a sexual assault report as unfounded when the reporting party has a mental health issue, has a motivation to lie, provides inconsistent statements, and/or recants statements and other information.^{8–11} Because research suggests that law enforcement agencies sometimes inaccurately apply the unfounding designation, the true prevalence of false reports remains unknown.^{12,13}

Another critical step in pursuing justice is the accurate reporting of sexual assault case resolutions to the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) Program. Research has shown that inconsistencies exist in processes for determining whether a sexual assault is unfounded and officially reporting investigation outcomes.^{7,13}

This National Sexual Assault Kit Initiative (SAKI) brief focuses on *false* reports of sexual assault and provides two recommendations—one about conducting thorough investigations for all sexual assault cases, including those that may later be cleared as unfounded, and one about using accurate and consistent clearance designations. With these two recommendations in mind, this SAKI resource

- ◆ highlights current accepted practices in the investigation and clearance of unfounded sexual assaults;
- ◆ provides guidance to help ensure that accurate clearance reporting of sexual assaults—including the process that helps determine if a case is unfounded—involves a complete and impartial investigative process;

Overview of Unfounded, False, and Baseless Complaints

Designating a reported crime as unfounded is one method law enforcement can use to close a criminal investigation. The FBI's UCR Handbook, which provides instructions about crime classification and clearance reporting standards, disaggregates unfounded complaints into (1) false complaints and (2) baseless complaints.¹⁴ Notably, this resource also states that an unfounded determination should be made only following an investigation (pages 77–78). The handbook does not define the terms *false*, *baseless*, or *investigation*, but it does provide a few examples to demonstrate what qualifies as an unfounded offense.

Many other sources have attempted to provide clearer guidance and definitions. Archambault and Lonsway (2018) conducted a detailed examination of clearance methods for sexual assault cases. They defined *false reports* as reports that describe a criminal event but in which no crime was completed or attempted; they define *baseless reports* as reports that describe events that occurred but do not meet the elements of a criminal offense. Importantly, they also state that the unfounded determination must follow a *thorough* investigation (pages 18–25). Although they do not explicitly define *thorough investigation*, they do state that such an investigation could take months and include search warrants, electronic communications, witness interviews, and forensic evidence (page 26).

- ◆ offers actionable solutions to address the challenges of identifying false reports; and
- ◆ covers recommended processes for
 - conducting a thorough investigation on all sexual assault cases, including those that may be cleared as unfounded, and
 - using accurate and consistent clearance designations.

To ensure a consistent and victim-centered response to sexual assault, law enforcement agencies must apply standards that (1) use impartial methods for investigating sexual assault complaints and (2) are transparent and objective in their case closure determinations. Following

these standards will help law enforcement achieve the following goals:

- ◆ Promote justice and law enforcement legitimacy in communities.
- ◆ Lead to decisions that are based on accurate, complete, and standardized data—benefitting both law enforcement and public policy.
- ◆ Improve the response to sexual assault.

The following sections detail recommended procedures and standards for conducting a thorough investigation prior to determining that a sexual assault complaint may be false.

Recommendation: Complete thorough sexual assault investigations for all cases.

A complete or thorough investigation requires (1) comprehensive initial and follow-up interviews of all individuals initially identified as victims, suspects, or witnesses and (2) identification, collection, and processing of evidence—when applicable. The SAKI brief *Core Standards for Sexual Assault Investigations* outlines this process.

During an investigation and prior to potentially closing the case as unfounded, it is essential that law enforcement adheres to the following five fundamental practices.

1. Conduct comprehensive and trauma-informed interviews with all identified persons.

Information that these individuals provide during interviews is the foundation of an investigation. Ensuring that these interviews are conducted in a trauma-informed manner helps investigators determine the facts and move the case to the next step.

2. Collect all inculpatory and exculpatory physical, forensic, and digital evidence.

Understanding the importance of following through on all pieces of information that will potentially further the case is essential. Information gained from any potential crime scene, person, or other source can confirm or refute information previously provided by any party—including the individuals initially identified as a victim, suspect, or witnesses.

3. Follow up on all germane information that is discovered during the investigation process.

Investigations evolve over time. New and valuable pieces of information will be presented through various means (e.g., interviews, crime scene). Such information can be critical and needs to be addressed, vetted, and

documented. If any information suggests the report is false, pursuing this information is crucial for the sake of a complete investigation and an accurate clearance.

4. Ensure that all information collected during the investigation is completely and accurately documented.

Documenting all investigative steps in a clear, concise, and accurate manner creates a permanent record of all law enforcement actions. Such documentation helps support conclusions drawn from the complete investigation.

5. Conduct a final technical review of the completed investigation

Prior to officially closing a case with an unfounded determination, have experts and colleagues conduct a case review. For unfounded cases, consider formalizing a practice whereby supervisors review investigative actions to help provide additional perspective, offer assurance that sound and thorough strategies were properly used, and endorse conclusions drawn from the complete investigation process.

Recommendation: Apply accurate clearance designations by considering the following key topics.

These fundamental practices are possible under ideal circumstances; however, a commonly understood notion is that there are often additional factors and considerations for sexual assault investigations, particularly for unfounded cases. The following sections highlight common challenges faced by those pursuing sexual assault investigations, including investigations that may be for unfounded cases, and possible solutions to these challenges.

1. Understanding responses to trauma and crime reporting

Sexual assault victims respond to trauma in many ways—including providing inconsistent statements, having limited memory of events and related details, and showing a lack of emotion. These are all valid responses; however, some of these responses may mirror the reactions of an individual who falsely reports a crime. Misinterpreting these reactions can lead to faulty investigative conclusions. For this reason, it is essential that case closure and unfounding decisions are made only after a complete and impartial investigation.

2. Supporting victims' hesitancy to participate in the criminal justice process

Some victims may request additional time before they choose to participate in an investigation. Investigators should respect and honor these requests. Investigators should also be sensitive to the possibility that victims may have engaged in illicit behavior in conjunction with the assault (e.g., drug use or prostitution) that may make them hesitant to speak about their experiences. Such survivors may fear being blamed for their victimization—or worse, being prosecuted for their actions (e.g., underage drinking). Law enforcement should work to encourage transparency by reassuring victims that their actions are not under investigation.

Finally, the investigative process itself may present barriers to participation. For example, multiple interviews with patrol officers, medical personnel, investigators, and attorneys often add to the victim's trauma. As such, employing a trained victim advocate is a valuable investigatory tool for supporting the victim's ability to aid investigations. For these reasons, it should not be presumed that delays in reporting or perceived hesitancy to report indicates a false complaint.

3. Evaluating investigative information and resolving investigative conflicts

When evidence does not clearly contradict a sexual assault report, evaluating the investigative conflicts that may arise can be challenging. Both false and validated sexual assault reports involve inconsistent statements, an unwillingness to cooperate or prosecute, and recantation; therefore, it is important that these situations not be used as the sole basis for an unfounded designation. Law enforcement agencies can improve the accuracy of their closure decisions by taking the following actions:

- Applying law enforcement's informed understanding of trauma
- Following through on all investigative avenues
- Adhering to clear foundational investigative practices
- Developing an evidence-based set of predictive indicators to help differentiate false reports from validated crimes.

For example, after first identifying common areas of uncertainty in sexual assault investigations, law enforcement agencies can review prior cases and other associated evidence to better understand the prevalence of given circumstances and the relationships between known case characteristics and investigative outcomes.

Using this type of informational data to drive case decision-making improves the quality of decisions.

4. Increasing transparency through appropriate use of the unfounded designation

Law enforcement has faced public scrutiny for labeling various sexual assault reports as false. Although justified at times, the fear of negative publicity causes some law enforcement agencies to avoid using the unfounded designation by—for example—prematurely clearing sexual assaults by exceptional means or leaving the crime report as unsolved, despite evidence to support an unfounded closure. Such practices are detrimental to the larger goal of providing thorough, transparent investigations and accurate, consistent reporting data within and across agencies.

Conversely, some law enforcement agencies overuse the unfounded designation by applying it before conducting a thorough investigation. This results in the increased likelihood that certain sexual assaults will be designated as false, which denies justice for real victims and erodes trust in the legal system.

Conclusion

To improve law enforcement's response to sexual assault, steps must be implemented to create more clarification and consistency surrounding the use of the unfounded case designation. This SAKI brief summarized evidence about the

- ◆ prevalence of false reports,
- ◆ need for a complete investigation to determine a complaint's falsehood,
- ◆ benefits derived from the accurate and transparent reporting of all sexual assault closure decisions, and
- ◆ steps law enforcement agencies should take to
 - ensure justice for sexual assault victims and offenders and
 - foster legitimacy in their communities.

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