

**Unfounded Cases
and False Reports:
A Complex Problem**

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**Unfounded Cases and
False Reports of SA**

- ❖ A complex problem
- ❖ Consequences of problem
- ❖ How many reports are false?
- ❖ Best practice recommendations

Confusion Over Definition

International Association of Chiefs of Police:

“The determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted.”

Source: IACP Concepts and Issues Paper: *Investigating Sexual Assaults*. July, 2005.

Confusion with “Unsubstantiated”

- “Unsubstantiated” = insufficient evidence to determine whether or not crime occurred
- Not a clearance category for UCR purposes, but used in regular language and child abuse reports
- **“UNSUBSTANTIATED” DOES NOT EQUAL “FALSE”**
 - “INSUFFICIENT EVIDENCE” DOES NOT EQUAL FALSE

Confusion with “Unfounded”

- “Unfounded” = UCR definition includes both false reports and “baseless” reports
- “Baseless” = incident does not meet the elements of the crime (but is presumed truthful)
- **“UNFOUNDED” DOES NOT EQUAL “FALSE”**

CANNOT unfound based on:

- Insufficient evidence to prove SA happened
- Suspicion that the report is false (“red flags”)
- Victim changes his / her account of events
- Refusal of the victim to cooperate
- Failure to locate suspect or make an arrest
- Findings of prosecutor, jury, judge, coroner

Other Problems with “Unfounded”

- Very different criteria used for unfounding
 - No training for officers in UCR categories
 - Lack of supervision w/ clearance decisions
 - Inconsistent across / even within agencies
 - Decisions often made prematurely

Other Problems with “Unfounded”

- Agencies do not track false vs. baseless
 - No way to estimate percent of false reports
 - Again, “unfounded” does not equal “false”
 - Yet unfounded stats used this way all the time

Other Problems with “Unfounded”

- Pressure on officers to clear cases
 - Evaluations based on clearance rates
- Used to make difficult cases “disappear”
 - When officer doesn’t believe victim
 - When victim recants, withdraws from CJS
 - When parts of the report are false
 - When no significant medical findings

Consequences of Problem

- In individual cases
 - Victim feels betrayed, spreads the word
 - Perpetrator given a "free pass" to rape again
 - Evidence cannot be used in a future case
- Wider impact on community
 - Misinformation about real dynamics of SA
 - Other victims do not report
 - Police departments face scrutiny if caught
 - High rates of unfounded further fuel suspicion of SA

How Many Reports are False?

- Estimates that are unreliable:
 - UCR statistics on unfounded cases

National Unfounded Rates

- | | |
|--------------------|------------------|
| ➤ Philadelphia 18% | ➤ Los Angeles 6% |
| ➤ Chicago 17% | ➤ San Diego 6% |
| ➤ San Antonio 14% | ➤ Detroit 4% |
| ➤ Dallas 11% | ➤ Phoenix 2% |
| ➤ New York 8% | ➤ Houston .5% |

How Many Reports are False?

- Estimates that are unreliable:
 - Anecdotal evidence (asking for estimates)
 - Unverifiable sources (e.g., NYC 2% study)
 - Misinterpreted data (e.g., confusion of computing % of unfounded vs. all reports)
 - Misquoted experts (e.g., Linda Fairstein)
 - **The famous Kanin (1994) study**

The Kanin (1994) Study

- Most frequently cited study
 - Especially on websites and by defense attys
- Percent of false reports over 9 years
 - Reports from one small police department
 - Determination made by police officers
 - No method of evaluating or verifying decision
 - No check on bias of police or author

The Kanin (1994) Study

- Decision based on victim recantation
- Used or threatened polygraph in all cases
 - No surprise that 41% of victims recanted
 - Practice violates guidelines of IACP and DOJ
- In an “addenda,” states that data from 2 universities found 50% false report rate

Reliable Research

- EAW International “MAD” Study
 - Data from 8 U.S. communities
 - All sexual assault cases, 18-24 months
 - Law enforcement personnel trained in clearance categories (esp. false vs. baseless)
 - 2,059 cases with known case dispositions
 - **7.1% were classified as false reports**

Reliable Research

- The Boston Study (Lisak et al., in press)
 - Major northeastern university
 - All 136 sexual assault cases from 1998-2007
 - 2 independent teams of coders
 - Reviewed each case report
 - Interviewed investigators
 - **5.9% were classified as false reports**

Reliable Research

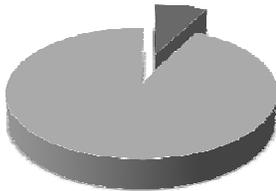
- British Study (Kelly, Lovett & Regan, 2005)
 - 2,643 cases reviewed over 15 year period
 - Reviewed case files, reports, some interviews
 - 8.2% classified as false reports by police
 - **2.5% classified as false reports** by researchers using standardized criteria from police manual: “a clear and credible admission by the complainant” or “strong evidential grounds”

Reliable Research

- Australian Study (Heenan & Murray, 2006)
 - 812 cases reported to police in Victoria
 - Used quantitative and qualitative analysis
 - **2.1% were classified as false reports**

Conclusion: Reliable Research

Of all reports of sexual assault, less than 8% are false.



“Real” False Reports

- Even if we tend to overestimate their frequency, no one will deny they occur
 - Damage extends well beyond the case
 - Previous research on potential indicators based on FBI (stranger, high profile cases)
 - No rigorous empirical research on actual characteristics of false reports

Determining a Report is False

- A report should only be seen as suspect when a number of indicators are present
- Truth is in the facts

Responding to a Suspected False Report

- Act on suspicion only if concerns are very serious, based on investigative facts
- Devastating if suspicion is misplaced
 - Destroys trust and eliminates prosecution
 - Challenge must be with supportive tone
 - Allows for correction, clarification if wrong

Case Story: A community in fear

- High profile, false report in St. Paul, MN



To prosecute or not?

- Advantages of prosecuting false report
 - Exonerate innocent person who was arrested, booked, subjected to forensic examination
 - To address very high profile cases
 - Can seek restitution for agency expenses for hundreds of hours of investigative effort
 - Reduce community fear
 - Help law enforcement professionals deal with the negative impact

To prosecute or not?

- Disadvantages of prosecuting someone for filing a false report, even if justified
 - Media coverage fuels juror suspicion
 - Chilling effect - deters future victims from reporting

To prosecute or not?

- Difficult to justify the time / expense for prosecuting this misdemeanor offense
- Use investigative facts already in the case file

To prosecute or not?

False reports typically the result of serious psychological and emotional problems

- Extremely frustrating situations, but perhaps best handled with referrals for social services

Best Practice Recommendations

1. Offer definitions / training on false reports, unfounded cases, recantations, and unsubstantiated investigations

- AG's office can take the lead to offer a position paper like Oregon Attorney General's Office Sexual Assault Task Force
- www.oregonsatf.org/resources/positionpapers/html

Best Practice Recommendations

2. All SA reports documented with written report / investigated to the extent possible

- Not seen as "false until proven true"
- Assigned number for case tracking
- Crime report vs. informational report

Best Practice Recommendations

- 3. Cannot unfound SA report based on preliminary investigation or initial interview
 - Need evidence from thorough investigation
 - If investigation is inconclusive, cannot be false

Best Practice Recommendations

- 4. Follow up with all SA victims to verify information and conduct investigation
 - Provide multiple opportunities to respond
- 5. All SA reports reviewed by supervisor
 - Or co-worker, colleague with special training

Best Practice Recommendations

- 6. Provide training in clearance methods
 - Open
 - Cleared by Arrest
 - Cleared by Exception (DA Reject, VDP)
 - Cleared as Unfounded
 - Suspended / Inactivated
 - Informational Reports

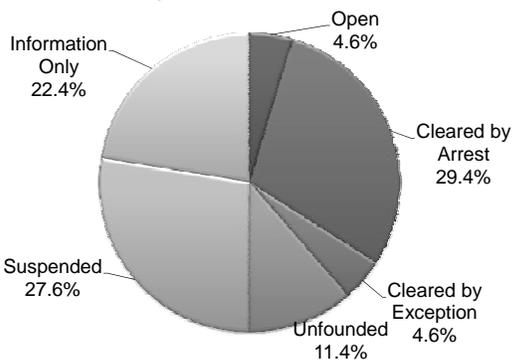
Best Practice Recommendations

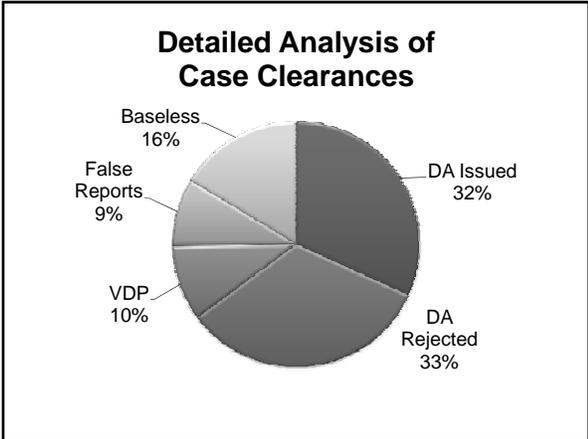
7. Use the same standard form to record clearance method for each SA case
- Include form in all investigative case files
 - Not just UCR definition of "forcible rape"
 - Track unfounded cases as false vs. baseless

Best Practice Recommendations

8. Supervisors need to review dispositions of all SA cases for balance

Primary Case Dispositions





- ### Best Practice Recommendations
9. Eliminate pressure to clear % of cases
- Formal review systems and informal culture
 - Create internal processes to tell stories that challenge common misperceptions
 - Reward thorough investigations, regardless of case outcomes

- ### Best Practice Recommendations
10. Suspend / inactivate cases if needed
- UCR Guidelines: "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."*

Benefits of Suspending or Inactivating Cases when Needed

- Relieves pressure to clear cases
- Decreases improper use of unfounding
- More likely to assist in prosecution later

- Many agencies re-open unfounded cases as the result of a lawsuit or complaint by the victim and then determine that they were legitimate upon further investigation.

Best Practice Recommendations

11. Improve tracking system, to track progress of SA cases through CJS
 - Track attrition, identify / address problems

12. Work with Child Abuse Units to standardize recording crimes of sexual violence against children and adolescents

Best Practice Recommendations

13. Improve response w/ team approach
 - Prosecution not only indicator of success
 - Multidisciplinary outreach for victims whose cases are not likely to be prosecuted
 - Critical in cases of repeated victimization

14. Multidisciplinary and multi-level review for unfounded cases to ensure they are cleared properly

Best Practice Recommendations

- 15. Address issues proactively, not in crisis
 - Cross-training between professionals
 - Regularly invest in relationship building across disciplines and practitioners
 - Create multi-disciplinary case review – for highly successful, but difficult cases – what factors caused the outcome?
 - Facilitate a investigative response culture that encourages questioning and learning at both the practitioner and organizational level

Best Practice Recommendations

- 16. Provide rape crisis centers and others with the total number of SA's that are reported and how they were disposed
- 17. Immediately investigate complaints or inquiries about the outcome of any case
- 18. Develop clear protocols for communicating case disposition to victims

Outcomes of Change

- Clearer definitions / standards / language
- Better investigations – organizational learning
- More accountability with peer review
- Improved trust levels and utilization of system partners, especially advocacy
- Investigators train first responders
- Reduced reinforcement of inaccurate perceptions

For more information:

- EAW International (www.evawintl.org)
 - On-Line Training Institute module on false reports
- Oregon Attorney General's position paper
 - www.oregonsatf.org/resources/positionpapers/html
- APRI Voice article on false reports:
 - www.oregonsatf.org/resources/positionpapers/html
- Email:
 - Kim Lonsway: Kim@evawintl.org
 - Paul Schnell: Paul.Schnell@ci.stpaul.mn.us
