



FALSE REPORTS AND CASE UNFOUNDING

Recommendations for Law Enforcement Response[†]

This position paper on best practice reflects the views of the Criminal Justice Committee and was approved by the membership of the Attorney General's Sexual Assault Task Force (Task Force) on January 22, 2009.

Law enforcement is responsible for determining whether reports of sexual assault meet the criteria of a criminal offense as determined by the state criminal code. This responsibility includes determining the credibility and, ultimately, the investigative outcome of sexual assault reports. Investigative outcomes include case clearance methods as defined by the Federal Bureau of Investigation, as well as case closure methods, which are usually defined by individual law enforcement agencies. **Case unfounding** is a clearance method that includes, but is not limited to, cases that are determined to be false reports. Unfortunately, case unfounding may also be used improperly to denote cases that are believed or assumed to be false, rather than factually proven to be false. The Criminal Justice Committee developed this position paper to provide guidance to law enforcement agencies in determining a false report and recommended use of case unfounding as an appropriate method of case clearance.

Definitions

- A **False Report** is a report, to a law enforcement agency, of a sexual assault crime that an investigation factually proves never occurred.
- **Case Unfounding** is defined by the Federal Bureau of Investigation, Uniform Crime Reporting, as a method of case clearance utilized for reports that are found to be false or baseless.
 - A false report has the meaning listed above.
 - A baseless report is a reported sexual assault that does not meet the elements of a crime (often the result of mistake of law or insufficient information collected during the initial report).

Identifying False Reports and Using Case Unfounding

Identifying a false report of sexual assault requires a thorough investigation that factually proves that a criminal sexual offense neither occurred nor was attempted. While case unfounding is an appropriate method of case clearance when a case has been determined to be **false**, it is not an appropriate method of case clearance for reported incidents where the investigation was unable to corroborate or substantiate a sex crime. Using case unfounding as a clearance method when there is insufficient corroboration to prove or disprove a report of sexual assault is improper.

While case unfounding also includes reported incidents that are **baseless**, or do not meet the elements of a crime, baseless does not include reports where the suspect cannot be identified, the victim is unavailable for follow-up, or there are no investigative leads. Rather, these cases are best closed using an administrative case closure method such as *unsubstantiated*, *suspended*, *closed*, or *inactivated*.

Examples of improper use of case unfounding as a clearance method include:

- Cases of “he said, she said” where the victim and suspect both agree that sexual contact occurred but a criminal offense cannot be corroborated or substantiated.
- Reports of sexual assault that are later recanted -- a victim recantation alone is **not** sufficient investigative corroboration to prove that a reported incident of sexual assault did not occur.
- Reported incidents of sexual assault where a motive for falsifying a report can be identified (e.g. pregnancy, unfaithfulness, STIs, etc.)
- Victim statements that are inconsistent, partially untrue or omit information.
- Cases where the victim is unavailable for follow-up or refuses to participate in the investigation.
- Cases where the suspect cannot be identified.
- Cases where the victim cannot or does not remember what happened, e.g. drug-facilitated sexual assault.
- Cases where the victim suffers from a developmental disability, mental illness or dementia.

Because victim recantation is frequently used by victims as a method to halt criminal justice involvement and participation, it is not in and of itself verification that a sex crime did not occur.¹ Victim statements are often inconsistent and may also include partial truths and omissions. It is the investigator’s responsibility to piece together a factual account of the assault, including an explanation of why there may be inconsistencies, partial truths and omissions. Finally, there may be situations in which a motive for falsifying a police report is legitimately identified, however, motive alone is not sufficient proof that a sex crime was not committed or attempted.

The Sexual Assault Training Institute (SATI) has trained over 500 law enforcement officers across Oregon. False reports are the issue most often raised by participants during SATI trainings.

Below is a typical exchange between an Instructor and participant.

- Participant – *Maybe some areas/agencies don’t see that many false reports but my agency has found that anywhere from 30-70% of reports of sexual assault are false.*
 - Instructor – *Did sexual contact occur between the parties involved in these reports? And were there any eye witnesses to the incident?*
 - Participant – *Yeah, the alleged perpetrator said it was consensual and no, there weren’t any eye witnesses.*
 - Instructor – *Both the victim and the suspect agreed that there was sexual contact but the victim reported force and the suspect reported consent?*
 - Participant – *Yes.*

Given the information that is available, this report cannot be determined false – this is not a reported crime that has been factually proven to not have occurred nor been attempted. Rather, this case is appropriate for administrative case closure as an unsubstantiated case (assuming that a thorough investigation was unable to prove that a crime was committed).

¹ Attorney General’s Sexual Assault Task Force, *False Allegations, Case Unfounding, and Victim Recantations in the Context of Sexual Assault*, Position Paper (2008).

Considerations for Referring a False Report for Prosecution

While it is often assumed that false reports are made with deliberate deceit by alleged victims who want to exact revenge on a sexual partner or who are attempting to cover up “bad” behavior (e.g. unfaithfulness), there are actually many other circumstances in which a false report might be made. For instance, a report could be made by an individual, such as someone with a developmental disability, mental illness or dementia, who, due to her susceptibility to suggestion, coercion or confusion, reports an untrue incident.² It may be very clear that no harm was intended; rather, the reporter was compelled to make a report, or subject to influence by others. In cases of cognitive or mental disability (including dementia), an individual may report an incident that actually occurred years before, but is believed by the individual to be contemporary.

It is recommended that the following considerations be used in order to determine whether to pursue a reporter for filing a false report of sexual assault:

Consideration	Analysis
1. Was the reporter compelled to make the report?	If the reporter was compelled or confused, do not refer for prosecution.
2. Did the reporter initiate making the report (or was the report made by a family or friend)?	If the report was made by a third party and not at the request of the victim, do not refer for prosecution.
3. Did the report and/or investigation result in harm to another person (e.g. arrest, public shame, etc.)?	If the report/investigation was not public and/or no arrest was made, do not refer for prosecution.
4. Did the investigation result in the use of significant agency resources?	If the report/investigation did not use significant resources, do not refer for prosecution.

In most cases there is not an emergent need to arrest or cite an individual for initiating a false report. It is therefore recommended that law enforcement discuss potential false report referrals with the prosecutor’s office and any other relevant community partners (or even a SART if appropriate) to ensure a thorough and appropriate response.

Given that the majority of victims of rape and sexual assault never report being sexually assaulted, law enforcement and prosecutors are encouraged to thoughtfully assess the need for pursuing false reporting charges.³ It is important to consider the impact that publicly pursuing a false reporting charge will have on the willingness of victims to report crimes of sexual assault. It is arguably a greater public interest to prioritize increasing reporting of sexual assault, and conducting and completing thorough investigations than pursuing false reports that were not made with deliberate deceit.

² It is important to note that persons with disabilities are at a substantially higher risk of victimization as compared to the larger population. For example, persons with developmental disabilities have a 4 to 10 times greater risk of victimization than people without disabilities, and children with any sort of disability are more than twice as likely to be physically abused and nearly twice as likely to be sexually abused. Cheryl Guidry Tyiksa, *Working with Victims of Crimes with Disabilities*, U.S. Department of Justice, Office of Justice Programs (1998).

³ The Bureau of Justice Statistics estimates that only 33% of victims ever report their rape. Timothy C. Hart and Callie Rennison, *Reporting Crime to the Police 1999-2000*, Bureau of Justice Statistics Special Report (March 2003).

Training

In order to provide the best services to victims and to manage cases most effectively, it is incumbent upon agencies to ensure personnel are regularly and appropriately trained in order to fully understand proper use of unfounded as a method for case clearance, and to ensure the policies are being followed.

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