



This training bulletin is the second in our series explaining the methods that law enforcement personnel use for clearing crime reports. In the [first installment](#), we defined the general concept of police clearance methods and offered a more detailed explanation of “clearance by arrest.” In this second bulletin, we will explore “clearance by exception” (also referred to as “exceptional clearance”), and in the third installment we will discuss unfounding. Finally, we will discuss some of the problems and challenges with clearance methods used by various law enforcement agencies across the country.

Exceptional Clearance

In addition to clearance by arrest, another primary method for officially clearing crime reports is referred to as “clearance by exception” or “exceptional clearance.” According to [UCR guidelines](#), law enforcement personnel may clear a crime report by exception when some element beyond law enforcement control precludes issuing formal charges against the offender. These could include:

- 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.

It is therefore clear that the purpose of exceptional clearance is for police agencies to “count” cases as cleared when they have done their job, but they were prevented by some outside factor from moving forward with an arrest and prosecution.

Victim’s Refusal to Cooperate

When we discuss exceptional clearance, it is important to note that law enforcement professionals often refer to the victim’s “refusal” to cooperate with the investigation or prosecution. Others use the phrase “victim declines prosecution” (or “VDP”).

However, a better way to view this is that the victim is unsure or unable to participate in the investigation at that point in time. By characterizing the behavior as a “refusal,” it conveys a negative image that fails to recognize the very real effects of trauma and the legitimate reasons why participating in the investigation may be difficult if not impossible for many victims.

This terminology also fails to acknowledge the possibility that the victim’s inability to cooperate or participate with the investigation may change at a later time. Thus, throughout our training materials we typically avoid referring to the victim’s “refusal” to cooperate but rather his or her “inability” to participate at the time. Whether or not a case is cleared or closed, law enforcement can reopen or reactivate an investigation at any time.

Criteria for Exceptional Clearance

Returning to UCR guidelines, law enforcement personnel can only clear a case by exception if:

1. The offender is identified, AND
2. There is enough evidence to support an arrest, AND
3. The offender's location is known.

In this regard, UCR guidelines state that a case cannot be cleared simply because an arrest is not made or because the victim is unable to participate with the investigation at that time. Rather, cases that are closed with an exceptional clearance must have sufficient evidence to support probable cause.

Misunderstanding and Misuse

Unfortunately, there is evidence that some law enforcement agencies across the country are using exceptional clearance improperly, either because they cannot find the victim or because he/she is viewed as uncooperative.

There is also reason to believe that law enforcement agencies often prematurely close sexual assault cases with an exceptional clearance – sometimes before they have been thoroughly investigated – based on indications by the local prosecutor that the case will not be pursued. However, this assessment may be based on limited information and only a verbal case summary provided by the investigating officer or deputy.

Four Questions

According to the UCR guidelines, a case can only be exceptionally cleared if law enforcement personnel can answer “yes” to four separate questions. The exact wording from the UCR guidelines follows:

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?
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).

If the answer to each of these questions is “yes,” then the case can be cleared by exception. However, the answers to the questions depend on what is meant by the term “charging.”

Charging: Police or Prosecutors?

Most people use the term “charged” to refer to decisions made by prosecutors to file charges (i.e., prosecute) a case. However, some have argued that the UCR term refers to when a subject is arrested and booked for a violation of the penal code, thereby arguing that the suspect has been charged with a crime.

This makes sense on some level. After all, case clearances are police decisions, so it seems reasonable to argue that they should not depend on the actions of the prosecutor’s office. Moreover, law enforcement agencies must of course list the charges against a person whenever they make an arrest. Therefore, this process could be characterized as charging by police. However, in the vast majority of arrests where such booking procedures take place, they are not meaningfully distinct from the arrest itself. This observation therefore raises the question of why arrest and charging would be listed as separate criteria in the UCR definition of exceptional clearance. In this interpretation, the two are essentially indistinguishable.

Far more important, this raises the question of what clearance statistics are *supposed to be measuring*. Accepting this argument that charging refers to law enforcement, and that prosecutorial decision making is irrelevant for the purpose of police clearance decisions, this decouples UCR clearance statistics from any meaningful case outcome. For example, a case can be cleared by arrest when it is referred for prosecution, but this classification does not tell us whether it was investigated properly or whether it has reached “the end of the road” or not. A case that is cleared by arrest can be rejected by the prosecutor’s office, for reasons that have to do with the sufficiency of the investigation as well as a host of other reasons that are outside the control of law enforcement.

In addition, the prosecutor can decline to file charges and advise the police to investigate further. However, this classification does not tell us whether police followed the prosecutor’s advice and investigated further, so it could be returned to the prosecutor for review – or if the case was simply shelved as a “DA Reject,” and still cleared by arrest. In other words, this clearance ultimately says nothing about how well the case was handled.

We do not mean to suggest that law enforcement personnel should be evaluated or held accountable based on the filing decisions of prosecutors. Case clearance is in fact a police decision, and investigators should be able to “count” their arrests in police statistics regardless of whether or not suspects are prosecuted. The question is therefore how to interpret these numbers. 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. We have serious concerns about this, as we elaborate in an article we published in *Sexual Assault Report*. However, it is worth noting that an agency’s arrest rate will reflect a number of factors – many of which are irrelevant to the facts of the case. These include both formal policy decisions as

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well as informal daily practices. 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 cases were investigated and what happened to them after an arrest was made.

Note: This section is an adapted excerpt from an article we wrote entitled, "Police clearance methods: How are they currently defined – and how should they be used?" It appeared in *Sexual Assault Report*, Volume 15, Number 4, pp. 53-60, 63. Published by Civic Research Institute. All rights reserved.

For More Information

Because these issues are rather complicated, interested readers are referred to the [OnLine Training Institute \(OLTI\)](#) module on *Clearance Methods for Sexual Assault Cases*. This training bulletin is an adapted excerpt from that module.

Also please see: Joanne Archambault & Kimberly A. Lonsway (2012). Police clearance methods: How are they currently defined – and how should they be used? *Sexual Assault Report*, 15 (4), 53-60, 63.