

POLICY *brief*

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Justice Denied: The Improper Clearance of Unsolved Crimes by the Maricopa County Sheriff's Office

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INTRODUCTION

One of the most effective ways to measure a law-enforcement agency's performance is by the percentage of crimes it solves, known in legal circles as its "clearance rate." Criminal investigations can be cleared in one of two ways: by arrest or by "exception." Clearances by exception must meet rigid criteria that the FBI has used for 80 years. Essentially, the perpetrator must be known to the police but cannot be apprehended due to special circumstances such as the suspect's death. Although the criteria governing exceptional clearance are clear and objective, some law-enforcement agencies skirt the rules of exception to clear cases that do not meet the criteria, essentially declaring unsolved crimes solved to inflate the agency's clearance rate. Clearing cases that have not been solved deprives crime victims of justice and may compromise public safety.

The recent Goldwater Institute report "Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office" presented substantial evidence that the Maricopa County Sheriff's Office (MCSO) is improperly clearing cases by exception, possibly on a very large scale.¹ The *East Valley Tribune*, in its Pulitzer Prize-winning investigative series, reported that in 2006 MCSO closed three times as many cases by exception as by arrest. The *Tribune* investigated MCSO case files and found that many were cleared without investigation.² MCSO officials told the *Tribune* that an internal investigation was ongoing.³ But two years later the *Arizona Republic* reported that MCSO only cleared 18 percent of its 7,200 cleared cases by arrest,⁴ suggesting that the misuse of exceptional clearance may be unabated. The Goldwater Institute has urged the Legislature to require local law-enforcement agencies to report and post current and accurate crime statistics, including clearance rates broken down by arrests and exceptional clearances.⁵

This supplemental brief was precipitated by the emergence of a real-life victim of MCSO's improper clearance of a serious crime.

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Clearance Standards

Arizona law directs the Arizona Department of Public Safety (DPS) to “collect information concerning the number and nature of offenses committed in this state and of legal steps taken in connection with these offenses,” in addition to other data.⁶ Arizona Revised Statutes § 41-1750(D) requires “chief executive officers of law enforcement agencies of this state or its subdivisions [to] provide to the department, such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.” The Federal Bureau of Investigation in turn requires statistics on the number of crimes cleared,⁷ and directs that the state program “must conform to the national UCR Program standards, definitions, and information.”⁸

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The FBI has established clear requirements for clearing crimes by exception. Under FBI standards, a case may be cleared by exception only if a law-enforcement agency can answer each of the following four questions in the affirmative:

1. Has the investigation definitely 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?

Examples of the fourth criterion include the perpetrator’s death or denial of extradition.⁹ As the FBI emphasizes, “Detection of the offender is an essential of every exceptional clearance In all cases if the case is to be considered cleared, he must be identified as the offender and an attempt made to obtain him.”¹⁰ It violates FBI standards to close a case by exception unless all four criteria are met.¹¹

Abigail Brown's Story

In 2001, when Abigail Brown was 14, she reported that she was the victim of statutory rape by older boys at a party. MCSO was in charge of the investigation. The MCSO investigator reported that the victim had not reported the rape for seven months, had consumed alcohol, engaged in consensual sex with another male at the party, and could not positively identify the perpetrator.¹² Due to those “technicalities,” the investigator declared the case exceptionally cleared. By FBI standards, MCSO should not have cleared the case by exception because no perpetrator was identified. Instead of keeping the case open or suspending it, MCSO considered and reported the crime as solved.

Years later, with the assistance of pro bono counsel, Ms. Brown, now a young adult residing in Massachusetts, asked MCSO and the Maricopa County Attorney to reopen the investigation. A Maricopa County prosecutor later determined that the statute of limitations had run out during the 16-month period after the investigation was reopened. Ms. Brown has come forward publicly in the hope that future victims of sexual assault will have their crimes fully investigated and the perpetrators brought to justice.

By FBI standards, MCSO should not have cleared the case by exception because no perpetrator was identified.

Retired Mesa master police officer Bill Richardson, who writes frequently on crime policy issues in Arizona, reviewed the MCSO investigation notes and exceptional clearance in the Abigail Brown case. He concluded that the circumstances clearly did not meet applicable requirements for clearance by exception. Moreover, Richardson observed, “The investigation conducted by MCSO was delayed, incomplete and showed a strong bias against the female victim.”¹³

Abusing Clearance by Exception

Abigail Brown's situation does not appear to be unique. The *Tribune* covered the 2006 case of a 15-year-old girl who reported that she had been raped in a ditch in El Mirage. Paramedics took her to a hospital, where it was determined the girl had been sexually assaulted. A month later, MCSO closed the case by designating it “exceptionally cleared,” even though no suspect was identified and it

appeared no investigation had taken place.¹⁴

Abuse of exceptional clearance is not limited to MCSO. In 2004, the Broward County, Florida Sheriff's Office was embroiled in a scandal over the misuse of clearance by exception. For years, the Broward County Sheriff's Office reported clearance rates far higher than national or local norms. Investigations revealed that many cases were "solved" with the stroke of a detective's pen," with thousands of cases cleared without arrests and without meeting the requirements for exceptional clearance. The Broward County controversy led to investigations both within the department and by the State Attorney's Office.¹⁵

Especially noteworthy is the fact that during the period in which the Broward County Sheriff's Office apparently was abusing the process, the percentage of its cases cleared by exception ranged from 15.5 percent to 24.7 percent.¹⁶ By comparison, MCSO cleared as many as 75 percent of cases by exception in 2006, and as many as 82 percent in 2008, according to *Tribune* and *Republic* reports.¹⁷ Anything approaching those numbers would be shocking given the extremely narrow and prescribed circumstances in which exceptions can be used to clear cases.

MCSO's practice of declaring unsolved cases solved presents a clear, present, and urgent danger to public safety in Maricopa County.

Recommendations

MCSO's practice of declaring unsolved cases solved presents a clear, present, and urgent danger to public safety in Maricopa County. We make the following recommendations to determine the extent of the problem, remedy it, and prevent it from recurring in MCSO or elsewhere in Arizona.

1. MCSO should clearly state its policies on clearing cases; release the results of any internal investigations concerning misuse of exceptional clearance and inadequate investigation of sexual assaults; and describe what steps it is taking or will take to conform to FBI standards for exceptional clearance and to ensure that sexual assaults and other serious crimes are fully investigated.

2. The Maricopa County Attorney and Arizona Attorney General should investigate MCSO's practices regarding exceptional clearance to determine and ensure compliance with FBI standards.
3. The Legislature should amend its crime reporting statutes to require the separate reporting of clearances by arrest and clearances by exception, and direct DPS to randomly audit cases cleared by exception from law-enforcement agencies around the state to ensure compliance with FBI standards.

Every victim, along with the public as a whole, deserves full investigations of serious crimes. They deserve transparency from law-enforcement agencies so that they can determine performance based on clear, complete, and uniform statistics. What happened to Abigail Brown should never happen to any Arizonan. Fortunately, her willingness to come forward and lend a human dimension to a serious lapse in law-enforcement responsibilities may help improve the future course of law enforcement in Arizona.

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NOTES

1. Clint Bolick, "Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office," Goldwater Institute Policy Report no. 229, Dec. 2, 2008, pp. 5-7., <http://www.goldwaterinstitute.org/Common/Img/Mission%20Unaccomplished.pdf>
2. Ryan Gabrielson, "Reasonable Doubt Part IV: Public Safety Shortchanged Throughout County," Tribune, July 12, 2008.
3. Gabrielson, "Reasonable Doubt Part IV," <http://www.eastvalleytribune.com/story/120637>
4. J.J. Hensley, "How Sheriff's Office Stacks Up," Arizona Republic, Oct. 3, 2008,.
5. Bolick, 16-17.
6. A.R.S. § 41-1750(A)(2), <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/41/01750.htm&Title=41&DocType=ARS>
7. Federal Bureau of Investigations, Uniform Crime Reporting Handbook (revised 2004), p. 5, <http://www.fbi.gov/ucr/handbook/ucrhandbook04.pdf>
8. Handbook, 4.
9. Handbook, 80-81.
10. FBI, "National Incident-Based Reporting System, Frequently Asked Questions, Incident-Specific Information," April 2009, p. 3 (quoting Uniform Crime Reporting, A Complete Manual for Police, Revised (1929), pp. 47-48), http://www.fbi.gov/ucr/downloadables/nibrs_specific_2008.pdf
11. Handbook, 81.
12. Documents relating to the investigation of Abigail Brown's case are available at www.victimpower.com.
13. E-mail from Bill Richardson to Clint Bolick (May 12, 2009).
14. Gabrielson, "Reasonable Doubt."
15. Paula McMahon, Shannon O'Boye, and John Maines, "Crime-Reporting Problems at BSO Extensive," *Newsday.com*, Nov. 14, 2004.
16. McMahon, et al., "Crime-Reporting Problems at BSO Extensive."
17. Gabrielson, "Reasonable Doubt."

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