



INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

SEXUAL ASSAULT RESPONSE

POLICY AND TRAINING CONTENT GUIDELINES

EXECUTIVE SUMMARY

The complexities of sexual assault warrant the full attention of law enforcement and the criminal justice system. Law enforcement have the ability to support victims, hold offenders accountable, and prevent future acts of violence. Creating, implementing, and training on a comprehensive department policy that addresses sexual assault ensures that an agency is prepared to effectively respond to and successfully prepare these complex cases, and reinforces the safety of the community it serves.

This resource provides law enforcement with issues, procedures, and recommendations to consider when developing a policy related to sexual assault as well as accompanying training content. A sexual assault policy provides agency members with direction and support, helps ensure the safety of victims, agency members, and community members, and aims to hold perpetrators accountable.

Over the past few years, knowledge and understanding about the crime of rape has expanded. In 2011, FBI Director Robert S. Mueller approved an updated definition of rape. The new definition, “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” better reflects the realities of sexual assault and will provide a better understanding of sexual violence in the United States.

There are still many misperceptions about victims and perpetrators of sexual assault and victims are often unwilling to report sexual assault for fear of not being believed or because they think they will be blamed for the crime. In small communities and rural areas, reporting may be even more difficult as victims in these communities often find themselves located at great distances from law enforcement agencies, social services, and medical care facilities. Because victims in a smaller community may know law enforcement officers, they may decide that it is too difficult to report the crime or call for support.¹

Law enforcement professionals must work to help prosecutors, jurors, and all community members understand the behavior of sexual assault victims and perpetrators and how these differ from the myths and stereotypes. If an attack involved no overt physical force, police can help explain a victim’s submission out of fear by conducting a comprehensive interview in which the victim describes in detail what he/she was thinking and feeling during the assault. If the victim was incapacitated as a result of voluntary alcohol or drug use, law enforcement officers can help show why this is an issue of increased vulnerability rather than culpability.

Included in these policy and training guidelines are many areas for improvement that aim to strengthen the investigation and prosecution of sexual assault crimes. Most of the suggested enhancements are the result of thorough police investigations, comprehensive interview techniques, a focus on the offender’s actions, and diligent work to establish rapport and trust with victims. Law enforcement agencies and investigators need to ensure that sexual assaults involving acquaintances and intimate partners are pursued as vigorously as those perpetrated by strangers. Responding officers

¹ Susan H. Lewis, *Unspoken Crimes: Sexual Assault in Rural America* (National Sexual Violence Resource Center, A Project of the Pennsylvania Coalition Against Rape, 2003), <http://www.nsvrc.org/publications/nsvrc-publications/unspoken-crimes-sexual-assault-rural-america> (accessed August 14, 2015).

and investigators must take a professional, victim-centered approach to sex crimes and to investigating these crimes in a manner that restores the victim's dignity and sense of control, while decreasing the victim's anxiety and increasing the understanding of the criminal justice system and process. Virtually all sexual assault victims want validation from the authorities that the crime occurred, and this may be a more critical element of a successful response and investigation than a criminal prosecution or conviction. Regardless of the investigative results, responding officers and investigators have the power to help a person heal from sexual assault.

DOCUMENT OVERVIEW

This document provides essential background material and supporting details to provide a greater understanding of the developmental philosophy and implementation of the sexual assault policy and accompanying training. It also addresses investigative procedures and promising practices for working with victims of sexual violence. The information is designed to assist law enforcement leaders in tailoring a department policy to the requirements and circumstances of their own communities and agencies.

The primary objectives of a sexual assault policy are to:

- Identify procedure and practice guidelines for a trauma-informed, victim-centered, multi-disciplinary response to adult (18 years of age) sexual assault cases and thorough investigation of the crime
- Articulate the significant role and responsibilities of all department members throughout the sexual assault response and investigation
- Illustrate strategies that postpone judgment regarding the validity of a case until a thorough investigation is completed
- Highlight methods to minimize further physical and psychological trauma to victims of sexual violence by creating a respectful, objective response
- Articulate the opportunity for forensic examination and comprehensive medical care to the sexual assault victim
- Encourage a coordinated community response and ensure all victims are offered free and confidential support, social service referrals, and information from a trained sexual assault victim advocate
- Identify strategies to hold suspects accountable by keeping the investigation focused on their behavior and actions

Additionally, a comprehensive sexual assault policy aims to enhance public confidence in the reporting and investigative processes, thereby encouraging all sexual assault victims to report the crime. Because of the special considerations involved in sexual assault investigations, this document is all-inclusive and encourages a multidisciplinary, coordinated community response, including advocacy support during the first response, investigation, and prosecution stages. This document, used in conjunction with a Sexual Assault Supplemental Report Form (**Appendix A**), is designed to help ensure a fair, unbiased, and comprehensive investigation.

ELEMENTS OF A SEXUAL ASSAULT POLICY

A comprehensive sexual assault policy should address the following key elements:

1. Dispatch/Call Taker Response
 - a. Victim response to trauma
 - b. Initial facts and immediate safety of victim
 - c. Vital information to gather for responding officer/detectives
 - d. Victim support details
 2. Responding Officer Duties
 - a. Emergency/initial response
 - b. Assisting the victim and victim interactions
 - c. Evidence collection and crime scene processing
 - d. Documentation
 3. Supervisor Duties
 - a. Assisting officers
 - b. Report review
 - c. Officer mentoring and accountability
 4. Evidence Collection
 - a. Chain of custody
 - b. Drugs and alcohol
 - c. DNA
 - d. Technology
 - e. Evidence considerations of non-stranger and stranger assault
 5. Victim Interviews
 - a. Preliminary/initial interview
 - i. Victim advocates
 1. Role of the advocate
 - ii. Initiating the interview
 - iii. Impact of trauma
 - iv. Interview questions and techniques
 - v. Investigative strategy
 - vi. Addressing possible defense strategies
 1. Denial
 2. Mistaken identity
 3. Consent
 - vii. Safety planning with the victim
 - viii. Resources for the victim
6. Suspect Interviews
 - a. Background/criminal history check
 - b. Timeline development
 - c. Interview considerations
 - d. Pretext phone calls
7. Victim Rights
 - a. Confidentiality and privacy
 - b. Participation in the investigation
8. Sexual Assault Medical Forensic Examinations
 - a. Role of the investigating officer
 - b. Role of the forensic examiner
 - c. Coordination with forensic examiner
 - d. Considerations for drug-facilitated sexual assault
9. Suspect Forensic Exams
 - a. Protocol for examination
 - b. Role of the forensic examiner
 - c. Evidence collection
10. Report Writing
 - a. Documentation
 - b. Impact of trauma
 - c. Language
 - d. Case coding/decisions
11. Sexual Assault Response and Resource Teams (SARRTs)
12. Victim Advocates
13. Working with the Prosecutor
 - a. Arrest and prosecution decisions
 - b. Evidence-based prosecution
14. Alternative reporting methods
15. Consideration for specific populations/communities

SEXUAL ASSAULT

Estimates of the prevalence of sexual assault in the United States vary due to differences in data collection, definitions, and calculations. According to the National Crime Victimization Survey (NCVS), there was an average of **300,170** victims (age 12 or older) of rape and sexual assault in 2013.²

The article *Making Sense of Rape in America: Where Do the Numbers Come From and What Do They Mean?* (2004) explains that accurate

estimates of rape are difficult to obtain because many rape victims are reluctant to disclose the experience.³ Additional factors that hinder an accurate estimation include: different ways of defining and measuring rape; different population groups measured; different time frames; and a variation in units of analysis in reporting statistics (i.e., within a given time frame, the number of people raped vs. the total incidents of rape). Victims often are reluctant to report or disclose information about the assault that occurred. They may fear that their sexual assault report will not be believed or taken seriously for many reasons, including but not limited to: they knew their assailant; they are related to or closely acquainted with the assailant; they are intimidated by the assailant's position, power, or social status; they engaged in drug or alcohol use; they put themselves at risk by actions such as entering a stranger's automobile or apartment; they have an arrest record or an outstanding warrant; or they were engaged in illegal activity (e.g., using drugs, underage drinking, sex work, etc.) at the time of the offense. These same factors that deter victims from reporting have been demonstrated to influence the complaint-filing and charging decisions of police and prosecutors.⁴

Sexual assault is motivated by power and control and is a crime of violence against a person's body and will. Sexual assault perpetrators target, test, and groom victims and use psychological and physical tactics to victimize individuals. All individuals, regardless of race, age, gender, ability, or social-economics, can be victims of sexual assault. Research and experience inform us that sexual assault is one of the most underreported violent crimes in society. When reported, law enforcement should respond with a comprehensive criminal investigation that is victim-centered, suspect-focused, and seeks to collect and corroborate as much evidence as possible.

Contrary to the stereotype of "real rape" as an assault by a stranger committed with a weapon and physical force, research and law enforcement experience demonstrate that the following represent some of the realistic dynamics of sexual assault crimes:

² Jennifer L. Truman and Lynn Langton, *Criminal Victimization, 2013*, NCJ 247648 (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, September 2014) <http://www.bjs.gov/content/pub/pdf/cv13.pdf> (accessed on August 14, 2015).

³ Dean G. Kilpatrick and Kenneth J. Ruggiero, *Making Sense of Rape in America: Where Do the Numbers Come From and What Do They Mean?* (National Crime Victims Research and Treatment Center, Medical University of South Carolina, September 2004), 1, http://www.vawnet.org/assoc_files_vawnet/makingsenseofrape.pdf (accessed August 14, 2015).

⁴ Wayne A. Kerstetter, "Gateway to Justice: Police and Prosecutor Response to Sexual Assaults against Women," *The Journal of Criminal Law and Criminology* 81, no. 2, (1990): 267-313; Jeffrey S. Spears and Cassia C. Spohn, "The Effects of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases," *Justice Quarterly* 14, no. 3 (1997): 501-524.

- Most sexual assault victims are acquainted with the suspect(s) in some way, yet they rarely expected intimacy with the suspect(s)
- Most victims do not report sexual assault to law enforcement authorities; men are even less likely to report sexual assault to the police than are women
- Victims rarely report to the police first; usually they go first to a close friend or relative, a health care provider, or a victim advocate
- Many women are victims of repeated rape and sexual assault
- Victims often delay reporting a sexual assault for days, weeks, months, or even years, and many never disclose it to anyone, including their closest friends
- The police are more likely to be notified of sexual assaults that are committed by strangers than by someone the victim knows
- Stalking, monitoring, and surveillance are often precursors to sexual assault
- Sexual assault perpetrators rarely use weapons and rarely use physical force, relying instead on verbal threats, intimidation, and exploitation of a victim's vulnerabilities
- Victims' emotional reactions may include confusion, shame, and embarrassment
- Victims may lie about specifics of the sexual assault because they fear that their actions may have contributed to the sexual assault or that they will be blamed
- The trauma of victimization can increase chances for substance abuse, sleeping and/or eating disorders, mental health issues, inappropriate sexual behavior, suicide, and/or running away
- Few victims are physically injured to the point that emergency medical attention is needed
- Alcohol and/or drugs are involved in a high percentage of sexual assaults
- Individuals who have been previously victimized may be unable to defend themselves due to the past trauma the assault triggers and the fear they experience during the current assault

Officers and investigators play a significant role in both the victim's willingness to participate in the investigation and his or her ability to cope with the emotional and psychological aftereffects of the crime. As such, it is especially important to approach these cases from a nonjudgmental perspective so as not to suggest to the victim that he or she is in any way to blame or responsible for the crime. Like all reported crimes, every sexual assault investigation should be initiated with the belief that the allegation is true; a thorough investigation is required to determine the facts.

False Allegations

Although many individuals, including some officers and investigators, believe that false complaints are frequent, research shows that only a small percentage of sexual assault complaints are false. No officer or investigator should ever assume that a complaint is false. The determination that a reported sexual assault is false can be made only if the evidence establishes

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. This determination can be made only after a thorough investigation.

that no crime was committed or attempted, and this determination can be made only after a thorough investigation has been completed. A report should not be labeled as "false" as a result of the initial victim interview or perceived victim reaction. It is important not to confuse false allegations with unsubstantiated allegations; a report can only be deemed false when supported by evidence that the crime was not committed

or attempted, whereas allegations can be deemed unsubstantiated when an investigation fails to prove that a sexual assault occurred.

Further, officers should not conclude that a victim who recants or is reluctant to prosecute has falsely complained. There are many reasons why a victim may not wish to pursue a complaint; the victim may be overwhelmed by the traumatic event, feel disbelieved by the criminal justice system or fear having the details of the assault in the public sphere. In cases where the suspect is known to the victim, there may also be intimidation or fear of retaliation.

Serial Perpetration

According to Dr. David Lisak, forensic consultant, trainer, and lecturer on sexual assault, one of the most important characteristics of non-stranger rapists and the one that has enormous implications for sexual assault response and investigation, is that the majority of rapists are serial offenders. This information highlights the need to thoroughly and aggressively investigate all reported cases of sexual assault based on the fact that there is a likelihood that the perpetrator is a serial offender who has committed prior rapes and who will rape again in the future.⁵

⁵ *Sexual Assault in the Military*, Before the U.S. Commission on Civil Rights, 113th Cong. (January 2013) (statement of David Lisak, University of Massachusetts, Boston, Department of Psychology), <http://www.eusccr.com/Transcript%20of%20briefing%20on%20Military%20Sexual%20Assault-FINAL.pdf>; U.S. Commission on Civil Rights, *Sexual Assault in the Military* (September 2013), http://www.usccr.gov/pubs/09242013_Statutory_Enforcement_Report_Sexual_Assault_in_the_Military.pdf (both accessed on August 14, 2015).

DEFINITIONS

Consent: Words or overt actions by a person who is legally and functionally competent to give informed approval, indicating a freely given agreement to engage in sexual acts.

Examiner: The health care provider conducting the sexual assault medical forensic examination. Many communities refer to their sexual assault examiners by more specific acronyms based upon the discipline of practitioners and/or specialized education and clinical experiences, including Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), and Forensic Nurse Examiner (FNE).⁶

Rape: The FBI Uniform Crime Reporting (UCR) Program definition of rape is “[p]enetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

SART/SARRT: Sexual Assault Response Team (SART), also known as Sexual Assault Response and Resource Team (SARRT). A SART/SARRT varies by community but is typically a multidisciplinary team that provides immediate, specialized response to victims of recent sexual assault. The team typically includes health care personnel, law enforcement representatives, victim advocates, social service agencies, and prosecutors. Many SARRTs meet monthly and frequently engage in systems reviews to ensure that the best victim-centered services are being provided in their communities.

Sexual Assault: For the purposes of this document, the term includes all felony crimes of sexual violence. Specific statutory definitions of sex crimes vary by state. In most states, crimes of felony sexual assault include attempted or completed sexual contact or penetration as described below:

- Penile-vaginal penetration
- Contact between the genitals and mouth
- Contact between an anus and a penis
- Penetration of the vagina or anus with a foreign object

Sexual assault generally constitutes a felony when one of the following conditions exist:

- Lack of consent of the victim
- Force was used or threatened, even if there is lack of physical injury to the victim
- The victim did not have the capacity to legally give consent to sexual behaviors due to illness, disability, or physical or mental condition
- The victim was intoxicated or unconscious as a result of drugs or alcohol and was therefore unable to give informed consent at the time of the sexual act
- The victim was under the age of legal consent at the time of the sexual act

Sexual Assault Medical Forensic Exam: An examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients. The examination includes:

- Gathering information from the patient for the medical forensic history
- A head to toe examination

⁶ U.S. Department of Justice, Office on Violence Against Women, *National Protocol for Sexual Assault Medical Forensic Examinations*, 2d ed., NCJ 228119 (April 2013), <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf> (accessed August 14, 2015).

- Coordinating treatment of injuries
- Written documentation of biological and physical findings
- Collection of forensic and physical evidence from the patient and documentation of findings
- Information, treatment, and referrals for sexually transmitted infections (STIs), pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns (as applicable)
- Discharge instructions
- Follow-up, as needed, to provide additional treatment, or collect additional evidence.

Victim Advocate: This term applies to a wide range of service providers, rape crisis counselors, social workers, victim witness providers within a prosecutor's office, and law enforcement officers, including departmental victim assistants. Advocates are trained to assess and address the needs of the victim as well as provide counseling, advocacy, resources and information, and support. Depending on the primary functions of the advocate, the level of confidentiality and privilege they have will vary and should, therefore, always be understood by each member of the sexual assault response team and communicated to the victim.

TRAINING AND PERSONNEL SELECTION

Training is necessary for all personnel who have contact with sexual assault victims, including dispatch/communications and initial responders, as well as those who investigate these crimes. All officers should receive ongoing training that specifically addresses the realities, dynamics and investigations of these crimes, and legal developments pertaining to sexual assault. Responders at every level need to recognize that they are accountable to the victim.

Officers should receive training in several core areas, including sexual assault crimes, victims, suspects, investigations, and resources available to victims. These specific issues should be covered:

Sexual Assault Crimes

- Complexities of sexual violence, specifically victim and perpetrator realities and occurrences
- Drug and alcohol facilitated sexual assault, including information on passing out and blacking out
- Technology used to facilitate sexual assault crimes including social media
- Additional crimes that occur in the context of sexual assault such as, but not limited to, strangulation, stalking, domestic violence, kidnapping, and threats
- Stranger vs. non-stranger sexual assault

Sexual Assault Victims

- Impact and effect of traumatic events on victims
- Victim empowerment and victim-centered response including the importance of advocacy support
- Commonly exhibited victim behaviors, balanced with an understanding that everyone reacts differently
- Cultural considerations and special needs populations
- Effective interviewing and questioning

Training for Communication/Dispatch

- Communicating with victims and language barriers
- Information to gather from victims
- Critical information to relay to responding officers
- Steps to convey to victims regarding evidence preservation (if applicable)
- Impact of the traumatic event on the victim and victim reaction
- Role in prosecution

Investigations

- Department Sexual Assault Investigations Policy and Procedures
- Objective investigation and interview strategies that focus on the perpetrator's actions, including pre- and post-assault behaviors
- Preliminary investigations including guidelines for first responders
- Proper evidence collection and documentation, including DNA and the sensory details as explained by the victim
- Technology used pre, during, and post assault, including the use of social media
- Effective strategies for interviewing witnesses
- Thorough documentation and report writing, and effective and accurate language,
- Medical evidence and experts

- Additional requirements that may apply to sexual assaults that occur in confinement or institutional settings

Sexual Assault Suspects

- Realities of sexual assault perpetrators
- Victim targeting, testing, and **grooming** by perpetrators⁷
- The high incidence of serial perpetrators
- Interviewing and interrogation

Grooming: Behaviors designed to build trust with victims and break down defenses in order to increase opportunities for sexual assault, minimize victim resistance, reduce disclosure, and decrease detection. These behaviors may include: gaining access to individuals, threats, isolation, testing boundaries, secrecy about the relationship, and controlling the relationship.

Resources Available

- IACP Sexual Assault Supplemental Report Form (Appendix A)
- IACP Training Key: Pretext Phone Calls in Sexual Assault Investigations (Appendix B)
- IACP Sexual Assault Investigative Guidelines (Appendix C)
- IACP Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide (Appendix D)
- IACP Sexual Assault Roll Call Training Video: Bringing Sexual Assault Offenders to Justice
- Local community support and resources available in your area

When an agency has a dedicated sexual assault unit, careful consideration should be taken when selecting personnel to staff it. Officers selected for this specialized detail should possess the following attributes and experience:

- Strong interpersonal communication skills
- Strong analytical and assessment abilities
- Strong written communication skills
- Knowledge of and comfort with speaking about sexual violence
- Experience interviewing victims of interpersonal violence
- Experience investigating crimes against persons
- Comprehensive understanding of evidence (physical and psychological) in sexual assault cases

⁷ The National Center for Victims of Crime, "Grooming Dynamic," <http://www.victimsofcrime.org/media/reporting-on-child-sexual-abuse/grooming-dynamic-of-csa> (accessed August 14, 2015).

DISPATCHER OR CALL-TAKER RESPONSE

Dispatchers and call-takers may be the first person with whom the victim will speak following a sexual assault. As such, it is vitally important that these individuals are prepared to competently address evidentiary considerations while thoughtfully responding to a victim who may be in crisis. To assure appropriate handling of sexual assault calls, as well as officer safety, dispatchers and call-takers should receive specialized training in the dynamics of sexual assault (see ***Training and Personnel Selection*** section for suggested topics).

Policy content considerations for dispatchers or call-takers:

- The immediate safety of the victim should always be the top priority.
- The appropriate priority rating should be applied to the call. Sexual assault reports should be handled as a priority even though it is common for a victim to delay reporting by hours or even days, and injuries at that point may not be life threatening.
- Communications personnel need to elicit the initial facts of the situation and determine whether the victim or others are in life-threatening danger or in need of emergency medical attention. The call taker should dispatch emergency medical assistance as necessary.
- Due to the trauma of a sexual assault, a victim reaching out for assistance may be in crisis; behaviors can range from hysteria, crying, and rage to laughter, calmness, and unresponsiveness. There isn't one typical reaction; it is important to refrain from judging or discounting any victim. All victims must be treated with respect and sensitivity.
- When a caller reports a sexual assault that just occurred, communications personnel shall follow standard 911 protocol for emergency response.
- Additionally, information about the suspect's relationship to the victim, weapon use, injuries, suspects access to weapons, and history of violence shall be obtained.
- In order to minimize victim frustration, it is important for the call taker to explain that the questions being asked will not delay the dispatch of an officer to the caller's location.
- Communications personnel shall explain to the caller that questions will not delay an officer's response to the caller's location, and do the following to ensure critical information is not lost:
 - Ask whether the victim has bathed, douched, urinated, brushed teeth, or made other physical changes; call taker should advise against doing so but be mindful that sexual assault victims often feel ashamed or guilt because of something they did or did not do relating to the sexual assault.
 - Ask the victim to use a clean jar to collect it should they have to urinate; direct the victim to put the jar in a freezer, if possible.
 - Ask the victim to collect any clothing that was worn during the assault and, if possible, place in a paper bag. Instruct victim not to wash the clothing.
 - Let the victim know that other evidence may still be identified and recovered so the crime should still be reported if the victim has bathed or made other physical changes; support the victim and let them know they have done nothing wrong by taking care of themselves.
- Relay all vital information to responding officers and supervisors, including possible language or communication barriers, weapons in possession of the suspect, past or current orders of protection, and any additional information that will enhance the safety of victims and officers as outlined in their 911 agency policy.
- Victims of a drug-facilitated sexual assault may report blackouts, gaps in memory, and general uncertainty as to whether or not an assault occurred. Continued, patient questioning by the call taker is encouraged and can help elicit important details

There isn't one, typical reaction demonstrated by victims of sexual assault; it is important to refrain from judging or discounting any victim, and all must be treated with respect and sensitivity.

- If the call is about a crime in progress or a crime that just occurred, the call taker should obtain information from the caller to assist in identifying and apprehending the suspect.
- Sexual assault crimes may involve more than one jurisdiction; call takers should follow agency policy concerning multi-jurisdictional case coordination.
- The 911 tape and any excited utterances made by the caller, as well as a computer printout if possible, should be preserved according to department procedures for the investigation.
- Remain on the phone with the victim until officers arrive on the scene, even in the case of delayed report.

DELAYED REPORTING

Delayed victim reporting is common in sexual assault cases due to many factors, including the trauma experienced, fear, shock, denial, self-blame, and/or uncertainty regarding whether the event constitutes a sexual assault. While the reasons for a delayed report need to be documented, a delay in reporting should be considered normal and not seen as evidence that the victim is lying about the assault.

Frequently, threats, coercion, and other actions of the suspect deter the victim from notifying the police immediately. Victims may also minimize the incident that occurred. In an effort to better understand the reason for the delayed report, officers should ask questions about the reasons for the delayed report, but take care to avoid inquiries that could be perceived as judgmental or accusatory. The reasoning behind the delayed report has the potential to lead to additional charges for the suspect. Regardless of when the report is made, officers shall conduct a thorough investigation.

INITIAL OFFICER RESPONSE

Law enforcement officers may be the first point of contact for the victim after a sexual assault has occurred. Contact with the first responders is critical to the victim's recovery as well as the victim's decision as to whether or not to move forward in the criminal justice system.

Emergency Response

As part of the emergency response, officers shall:

- Make contact with the victim as soon as possible to address safety concerns and summon emergency medical assistance if needed.
- Determine if a crime is being reported and document the basic information needed to begin the investigation.
- Evaluate the scene for people, vehicles, or objects involved, as well as possible threats.
- Locate, secure, and protect the crime scene to ensure that evidence is not lost, altered, or contaminated. If consent from the victim or suspect is not given, a search warrant based on probable cause should be executed prior to collecting evidence.
- Determine the resources needed and request assistance from detectives, field evidence technicians, and/or crime laboratory personnel, if available, and the prosecuting attorney when appropriate.
- If the suspect is not on the scene, begin a search for him or her and make contact when appropriate.
- If the suspect is on the scene, temporarily detain or arrest him or her, as appropriate, based on reasonable suspicion and/or probable cause.
- If the suspect is detained, record any and all pre- and post-Miranda statements and admissions from the suspect as well as under what circumstances they were made (i.e., if made spontaneously or in response to specific questions posed by law enforcement or other personnel on the scene).
- Consideration should be given to the fact that the suspect is a crime scene and may contain forensic evidence that is be critical to the investigation. A search warrant based on probable cause should be considered and a sexual assault nurse examiner, or similar, requested to collect evidence from the suspect.

Assisting the Victim

Though it's necessary to address the scene, potential evidence, and suspects, officers must be sensitive to the difficulty of the situation for the victim. Officers should take the following actions when interacting with victims:

- Reasonable efforts should be made to allow the victim to determine the location, time and date where the initial report is made to law enforcement.
- Express understanding, display patience, and provide respect for the victim. Attempt to establish trust and rapport.

Absent exigent circumstances, family members and interested parties should not be used as interpreters prior to contacting the victim advocacy organization. Victim advocates should not be used as interpreters, because this places them in the position of assisting with the law enforcement investigation rather than focusing on their victim-support role. It is critical that law enforcement agencies work with victim advocacy organizations and others to explore ways to provide comprehensive services for special populations, including the hearing impaired and those who do not speak English.

- Commend the victim for reporting the crime and comfort her or him throughout the process.
- Recognize that a victim may be experiencing the impact of the traumatic incident and may not be willing or able to immediately assist with the criminal investigation.
- Contact a victim advocate as soon as practicable. This will ensure the victim is assisted throughout the reporting and investigative processes. The victim may wish to have a family member, friend, or other support with them throughout the process.
- Because conversations with system or community advocates may be privileged, investigating officers must understand that unless there is a written waiver, a victim advocate cannot disclose information from the victim, even if it would significantly impact the investigation or prosecution of the case.
- As part of a community-coordinated response, work with local support agencies to develop information and resources that can be shared with victims of sexual assault. National agencies such as the including the Rape, Abuse, and Incest National Network (RAINN) National Sexual Assault Online Hotline (<https://ohl.rainn.org/online/> or 1-800-656-HOPE) are also helpful. Operators can connect callers with the rape crisis center closest to the victim's location.
- If available, request a response from investigations.
- Clearly explain the reporting process including the roles of the first responder, investigator, and anyone else with whom the victim will likely interact.
- Limit the preliminary interview to questions that will establish only the basic facts of the assault; this will help the victim by limiting repetitive questioning by follow-up investigators.
- Strong consideration should be taken when determining to audio/video record the initial statement. See pages 22-23 for additional information.
- Potential witnesses must be identified and isolated. If there are numerous potential witnesses (e.g., at a fraternity house, party, or nightclub), an officer should be assigned to monitor the witnesses and prevent them from talking to each other.
- Officers should identify and record the names of any witnesses who might have left the scene prior to their arrival.
- Responding officers must ensure that the crime scene is photographed prior to processing. The investigation of every sexual assault should also include a detailed diagram of the crime scene(s). Videotaping can be helpful—especially in the case of a complicated or extensive crime scene; these are not for public release.
- Record observations of the individuals involved, including the demeanors of the suspect, victim, and witnesses.

Be mindful:

- The first contact after a sexual assault is crucial to a victim's recovery and healing.
- Sexual assault victims may bond with the first responding officer; explaining the roles of individuals with whom the victim may interact with may ease the transition between them.
- As part of a community-coordinated response, work with local support agencies to develop information and resources that can be shared with victims of sexual assault.
- Limit the preliminary interview to questions that will establish only the basic facts of the incident that occurred.
- Strong consideration should be taken when determining to audio/video record the initial statement as well as subsequent interviews.
- The traumatic event experienced by the victim may have a significant impact on detail recollection, memory, and recall.

- Investigators shall collaborate with victims during the investigative process and respect a victim’s right to request certain investigative steps not be conducted. Criminal investigations should be conducted at a pace set by the victim, not the law enforcement officer.
- Document the appearances of the suspect and victim including any visible injuries.
- Document complaints of pain and non-visible injuries.
- Ask about and document signs/symptoms of strangulation.
- If a forensic medical exam is needed and the victim consents, arrange for transportation to the designated facility. Consider the victim’s body a crime scene; ensure the chain of custody remains intact during transportation.
- Discuss intimidation with the victim, including identifying and reporting it. Provide examples of subtle forms of intimidation, and a safe way for the victim to contact law enforcement. Ensure the victim is aware that intimidation can come from the suspect or others.
- A victim’s right to keep their assault confidential shall be respected by law enforcement officers. If legally permissible, no person (outside of a law enforcement agency) shall be notified that the victim has reported without the victim’s consent. This includes interviewing identified witnesses and perpetrators.

Strangulation

Non-visible injuries

- *Difficulty breathing/unable to breathe, hyperventilation*
- *Raspy voice, hoarse voice, coughing, unable to speak*
- *Trouble swallowing, painful swallowing*
- *Neck pain*
- *Nausea, vomiting*
- *Involuntary urination and/or defecation*
- *Fainting/light-headedness*
- *Headaches, head “rush”, ears ringing*
- *Disorientation, memory loss, “spaced out”*

Visible injuries

- *Petechiae (pinpoint red spots about the area of constriction)*
- *Hemorrhaging, bruising*
- *Scratch marks, scrapes, abrasions*
- *Bloody nose, broken nose*
- *Fingernail impressions*
- *Swelling of neck or face*
- *Pulled/missing hair, bumps on head*
- *Skull fracture*
- *Swollen tongue, swollen lips*

ROLE OF THE SUPERVISOR

Effective supervision plays a key role in ensuring comprehensive responses to and investigation of sexual assaults. Though this is important for victims, it is also important for ensuring compliance with department policy and accountability. First-line supervisors shall demonstrate a thorough understanding of victim issues and proper response by subordinates.

Supervisors shall:

- If requested by officer, or when deemed necessary, respond to assist officers investigating incidents of sexual assaults.
- Officers must respond in an objective, professional, non-judgmental manner; supervisors must ensure line officers are aware of these expectations.
- Help locate both agency and community resources to effectively investigate the assault that occurred.
- Encourage problem-solving partnerships between the department and community organizations, such as rape crisis centers and forensic examination programs, to foster cooperation and better support victims.
- Review all sexual assault police reports for accuracy, consistency, and victim-centered response.
- Encourage officers to look for co-occurring and interconnected crimes when responding to sexual assault.
- Ensure officers and investigators understand case coding and appropriately code sexual assault cases.
- Conduct after action reviews and sexual assault case audits to ensure officers and investigators are conducting comprehensive, victim-centered, perpetrator-focused investigations.
- Create on-going training opportunities for department members to improve the skills needed to properly investigate sexual assault.
- Work to increase communication between law enforcement and prosecutors to ease the transition for victims moving from the investigation phase to prosecution.
- Incorporate victim service issues and response to victims of sexual assault into performance evaluations, and award and promotion recommendations of department members.
- Hold members accountable when they behave in a way that is not in-line with the values and the mission of the department regarding sexual assault investigations.
- Regularly share victim services information at roll-call and staff briefings. This education and training should be on-going and can also be done in the field with officers when not answering calls for service.
- Recognize and reward officers for providing effective victim services.

EVIDENCE COLLECTION

If officers do not have adequate training and tools for processing the crime scene, they should request the assistance of or direction from crime scene technicians and forensic scientists when available.

Considerations for Evidence Collection

Responding officers shall:

- Secure and protect the integrity of the evidence.
- Ensure that the chain of custody is followed by properly marking, packaging (including, where appropriate, placing the evidence in a waterproof container submerged in ice or placed in a freezer), and labeling all evidence collected, including:
 - Clothing worn at the time of the assault and immediately afterward, especially the clothing worn closest to the genitals, including undergarments, pants, and shorts. Each item of clothing must be packaged separately in paper bags.
 - Photographs and diagram(s) of the entire crime scene(s). Digital photography is the preferred method.
- Photographing and videotaping of the victim's injuries (if any), visible and nonvisible, with the assistance of alternative light sources should be coordinated as part of the Sexual Assault Medical Forensic Exam. When photographing the victim:
 - Seek consent from the victim to photograph non-genital injuries (if any).
 - Discuss the presence of an advocate or support person.
 - Be sensitive in order to help maintain the victim's dignity; this may mean using drapes or other techniques to maintain some privacy.
 - If requested by the victim, summon a same-sex officer to take the photographs.
 - As part of most Sexual Assault Nurse Examiner (SANE) protocols, photographs of the genitalia may be taken. The custody and care of handling this evidence is critical. Avoid presenting these photos to personnel not involved in the investigative process.
- If the victim declines a medical exam, but photographs would be helpful to document non-genital injuries, explain how the photographs can strengthen the investigation. With the victim's permission, continue to collect other evidence that may be useful in a future investigation.

Drugs and Alcohol

Officers should be familiar with the signs and symptoms of drug or alcohol facilitated sexual assault, and remain open to the possibility that these factors may have contributed to the incident. These cases present unique challenges to both police and prosecutors, and the responding officer plays a particularly crucial role—especially in the collection, identification, and preservation of critical perishable evidence. A victim of a drug-facilitated sexual assault may display a range of symptoms that could include memory loss, gaps in time, dizziness, confusion, drowsiness, slurred speech, impaired motor skills, impaired judgment, reduced inhibition and a general uncertainty as to whether or not an assault occurred or details of the event(s). The victim may also appear intoxicated or hung-over. As a result, the victim may be extremely anxious during the course of the interview.

When an officer or investigator suspects that a sexual assault may have been facilitated by drugs or alcohol, the officer/investigator should:

- Determine the time of the incident as soon as possible in order to make decisions regarding the collection of urine and blood samples for toxicology testing. It is best to collect samples as a precautionary measure; if the samples are not needed they can be discarded.
- Assess the scene for evidence that may help support the suspicion of drug/alcohol facilitated sexual assault such as drinking glasses, alcohol bottles or cans, or other related items.

- Remain patient and maintain an open mind while listening to the events as the victim recalls them.
- Avoid suggestive questions while conducting the interview.
- Ask victims to articulate how they felt or what they had been doing prior to losing consciousness.
- Identify and interview any witnesses who might have seen or spoken with the victim before, during, or after the assault. Often, it is the witness who can establish time frames, confirm unusual behavior, provide critical facts, and identify potential sources of information.
- Identify additional evidence that may be located in the suspect's residence, vehicle, place of employment, locker, and so forth. This evidence may include such items as the drugs themselves, ingredients used to make the drugs, drug or rape-drug literature and recipes, Internet correspondence, drug packaging and bottles, and/or photographs and videotapes of victims.

Officers shall introduce the potential need for a sexual assault forensic examination (SAFE). The victim's health and wellness should be emphasized, and officers should explain the importance of SAFE for investigative, apprehension, and prosecution efforts. The decision is voluntary; officers shall neither coerce victims to receive the forensic examination, nor provide samples for drug screening and toxicology. Officers shall inform victims that toxicology results can only be used to determine the possibility of alcohol or drug facilitated sexual assault. Law enforcement should not charge individuals that have filed a sexual assault complaint with a crime relating to alcohol or drug use based on the toxicology results, nor should it be concluded that a crime did not occur based solely on a negative toxicology screen.

DNA

DNA evidence plays a crucial role in sexual assault investigations. The last decade has seen incredible advances in the evolution of DNA technology and its use in law enforcement investigation and prosecution. In addition to victim and suspect bodies and clothing, there are many other potential sources, including condoms, sheets, blankets, pillows, and bottles/cans that may contain biological evidence such as blood, sweat, tissue, saliva, hair, and urine. Officers and detectives should receive comprehensive training from qualified instructors on the proper collection of DNA evidence.

To properly collect DNA evidence, officers shall:

- Wear appropriate protective gear, to include, but not limited to gloves, booties, and face mask
- Use sterile gloves and change between each item collected
- Use sterile swabs, papers, solutions, and tools
- Collect, package, and label each item separately
- Avoid touching areas where DNA evidence may exist
- Avoid talking, sneezing, and coughing over evidence
- Air dry evidence before packaging
- Put evidence into fresh paper bags or envelopes, and avoid using plastic as items that are not thoroughly dried may deteriorate and/or mold

Technology

- Due to advancements in technology, evidence can be obtained by examining sources of digital forensics, including security cameras and systems, computers, tablets, cameras and recording devices, cell phones, and other electronics that transmit, receive, or store messages, images or recordings.
- Officers and investigators should explore other sources of digital evidence, including social networking sites, blogs or forums, hidden video recording devices, and computer spyware programs as part of a comprehensive evidence-gathering investigation.
- Responding officers should always look for evidence of, investigate, and document monitoring, surveillance, targeting and grooming behaviors employed by the suspect through technological means. These are often employed by perpetrators as precursors to sexual assault. These behaviors often include the elements of additional criminal acts, including stalking.

Non-stranger Assault

Some suspects do not deny that sexual intercourse occurred but rather assert that it was voluntary and with the consent of the victim. Thus, evidence of particular importance in such cases includes:

- Lack of consent by the victim, which can include physical behavior, verbal statements, or other circumstances surrounding the assault.
- Historical relationship issues including: how the victim and suspect are acquainted, past assaults, verbal/emotional abuse, coercion, threats, financial abuse, and/or stalking.
- Genital or non-genital injury, no matter how slight. Be aware that injury is not always required and, even when present, is not necessarily indicative of an assault.
- Detailed account of the victim's thoughts and feelings during the assault.
- Sensory evidence and peripheral details of the victim's experience in accordance with a trauma-informed interview.
- The suspect's course of conduct, including selection and grooming processes, contrived circumstances, and pre- and post-assault behaviors, including any communication should be documented.
- Suspects' grooming behaviors are often overlooked; ensure proper documentation of information the victim shares about the perpetrator's behavior towards him/her even if you think it is insignificant.
- The use of drugs or alcohol by the suspect to create victim vulnerability.
- Threats made by the suspect.
- Coercive behavior displayed by the suspect.
- Information regarding the environment in which the assault took place, including isolation and soundproofing.
- The victim's behavior and thoughts after the assault, including changes in routine, depression, mood instability, sleep and diet disturbances, flashbacks, nightmares, and stress. Be aware that not all victims will exhibit these behaviors and may not report a change in routine.

Stranger Assault

Evidence in stranger-perpetrated sexual assault often centers on identification pending the processing of DNA evidence. Therefore, investigative strategies must remain flexible. Response to an identity defense will typically require evidence such as DNA and trace evidence, latent fingerprints, photographic lineups, social media, and circumstantial evidence.

Identifying Evidence of Co-occurring and Interconnected Crimes

Just as sexual assault can occur in the context of other crimes, other crimes can occur in the context of sexual assault. Crimes commonly interconnected with sexual assault are domestic violence, stalking, false imprisonment, threats, fraud/extortion, property damage, human trafficking, kidnapping, witness intimidation, gang violence, criminal damage, and burglary. Investigators should always look for and be open to evidence suggesting co-occurring, serial, and interconnected crimes. This will help investigators gain a complete understanding of what occurred, and can ultimately be helpful in efforts to hold perpetrators accountable.

"Most rapists who are prosecuted are convicted on a single count of rape. However, when researchers have granted immunity to offenders in exchange for a truthful account of their sex offending history the reality of rape emerges. In one study, the average number of victims for each rapist was seven, and in another study, it was eleven."

*Understanding the Predatory Nature of Sexual Violence,
Dr. David Lisak, Ph.D.*

Identifying and Locating Witnesses and Suspects

Depending on the victim's emotional and physical state, initial questions concerning the assault and the suspect- both physical description and potential location- should be limited. Responding officers and follow-up investigators should identify and interview potential witnesses, bearing in mind that there will be a minimum of three crime scenes: the victim, the suspect, and the place(s) where the assault occurred. Identifying events that transpired prior to and after the assault is critical in locating additional witnesses and physical locations that may lead to additional evidence. It is vitally important that the outcry witness, also known as the fresh complaint witness- the first person(s) the victim told about the sexual assault- is identified and interviewed.

VICTIM INTERVIEWS

Sexual assault investigations typically include at least two interviews with the victim: a preliminary interview and a second, in-depth interview. These interviews should be conducted by trained department personnel.

Preliminary Victim Interview

The initial interview should be brief. At this stage, the objectives are to determine whether a crime is being reported and document the basic information needed to begin an investigation. The inquiry should be limited so as to avoid, or at least minimize, repetitive questioning of the victim. Officers should address any special needs of the victim, such as communication or mobility and consider cultural differences, cognitive ability, and other factors that may impact the victim's ability and willingness to provide details. Law enforcement should also notify the victim advocate of these factors.

During the initial response, the officer contributes to the immediate and long-term recovery of the victim and lays the foundation for mutual cooperation and respect on which a successful interview is built. The officer shall first establish the elements of the sexual assault and potentially co-occurring crimes, and identify suspects, witnesses, evidence, and crime scenes. The officer should convey to the victim that the preliminary interview is intended to be neither comprehensive nor final; additional interviews will be necessary as the investigation develops.

Responding officers shall refrain from asking the victim if he or she would like to press charges at the preliminary interview. The victim shall not be asked to sign documentation waiving the right to do so at a later date; if the victim chooses not to press charges immediately following the incident, the option should remain open in the event that he or she feels better able to participate at a later time. Because victims may be reluctant to contact law enforcement at a later time due to shame or embarrassment, officers should follow-up with victims to discuss options, answer additional questions, and determine whether or not the victim has decided to press charges.

Role of a Victim Advocate

Every effort shall be made by the first responding officer or the investigating officer to contact a victim advocate as soon as possible. Victims of sexual assault should be given the opportunity to make their own decisions about advocate involvement. To ensure a smooth transition of assistance, the officer will introduce the victim advocate to the victim. This is an opportunity for the victim to decide if he or she wants the victim advocate present during the course of the initial investigation, including the preliminary interview, as well as throughout the reporting and investigative processes. The victim may choose the advocate to be with them only for certain parts. If the victim declines assistance from an advocate, the advocate and/or investigator should document this and provide the victim with written referrals for community resources specifically designed to help victims of sexual assault.

Victim Interview Protocol

- Throughout the interview process, it is important to ensure that the victim is involved in decision-making regarding when and where interviews are conducted.
- Depending on the amount of time between the assault and when it is reported, and the amount of support the victim may have received, she or he may still be in crisis and experiencing symptoms of trauma. Officers should be aware of the signs of trauma, including fragmented memory, gaps in memory, or an exhibition of a range of behaviors that may change over time as the victim processes the event.

- Victims react differently to traumatic events, and responses that may seem counterintuitive shall not be construed to negatively impact a victim’s credibility.
- Be mindful that when drugs and/or alcohol are involved in the assault, the victim may have limited recollection or be unable to give a complete account of the crime. Not knowing the details of what happened may exacerbate both the trauma of event that occurred and the symptoms of trauma experienced by the victim.
- Preliminary information shall be collected promptly if the victim is coherent and able.
- Given the circumstances and purpose of an initial response, it may not be necessary to audio or video record the preliminary statement. Officers should take notes and explain to the victim the purpose of doing so. See pages 26-27 for additional information on video/audio recording.
- Officers shall:
 - Be patient and maintain an open mind while listening to the victim’s account
 - Display professional conduct at all times
 - Be an impartial fact finder
 - Acknowledge the impact of the traumatic event on the victim during the interview
 - Remember that victims may struggle with gaps in memory
 - Avoid leading questions; ask open ended questions that invite a narrative response
 - Avoid pushing for a chronological account of what occurred
 - Avoid victim blaming questions (“why did you...?” why didn’t you...?”)
 - Use simple terminology appropriate to the victim’s age, maturity, language, and cognitive ability
 - Avoid using jargon, acronyms, or police, medical, or legal terms
 - When referring to body parts and actions, ask the victim what terms he or she prefers

Before conducting an interview with any individual, it is important to consider what the person understands and how the person expresses themselves. It is imperative that investigators determine if any accommodations are needed including specific physical accommodations, language interpreters including an American Sign Language interpreter, communication book or pictures, individualized communication device, computer, or other available communication tools. Additional time may need to be allotted for these interviews. Investigators need to work closely and patiently with the victim to ensure that all details are captured correctly. In some situations, it may be necessary for law enforcement to ask the victim if there is someone who can help facilitate communication and dialogue; this should be a person trusted and selected by the victim.

Prior to initiating the initial interview, the officer shall:

- Tend to the victim’s immediate health and safety concerns.
- Express empathy and an interest in the victim’s well-being.
- Accommodate the victim’s request for a support person, including a family member or friend, but be aware that a family member or intimate partner may be an intimidating presence; the victim may need support and assistance to prevent them from observing the interview.
- If the support person requested by the victim is a potential witness, explain that he or she cannot be present during the interview along with the reasons why. If the victim’s support person is excluded, offer the victim an opportunity to identify someone else, including an advocate, to be present.
- Answer questions about reporting and the criminal justice process.
- Allow the victim to accept or decline all and any services. A thorough investigation should be conducted regardless of whether or not a victim accepts or declines services.
- Inform the victim of the need for and importance of full disclosure, including any and all recent drug or alcohol use. Explain that the focus of the investigation is the sexual assault as opposed to laws that may have been violated by the victim, including a minor in possession of alcohol, the purchase, possession, or consumption of illegal drugs, or acts of prostitution or sex work.
- When appropriate, officers should interview any witnesses who might have seen or spoken with the victim and/or suspect before, during, and/or after the assault.

- Secure a private location, never public, for the interview that is comfortable, safe, and free from distractions.

During the initial interview, the officer shall*:

- Obtain contact information for the victim, including temporary accommodations (if needed), and a back-up emergency contact in case the victim cannot be located.
- Ask the victim what they are able to report or remember about their experience, even if they cannot do so in a sequential manner.
- Ask victim how he or she felt during the incident. Sometimes victims dissociate or freeze, rendering them incapable of doing or saying anything during the incident. Ask the victim how they are feeling at the time of the interview. This information and documentation of the victim's fear, confusion, and feelings may be helpful if the victim later remembers additional information or changes the order of events of the assault.
- Allow the victim to provide an uninterrupted account/narrative if possible; document this account.
- Revisit the possibility of a support person for victims who initially declined the offer.
- Explain that this first interview is preliminary and that other professionals involved in the investigation, including forensic examiners, detectives, evidence technicians, and prosecutors may have additional questions.
- Preserve the victim's statements as they are first spoken; they should not be sanitized out of concern that the victim will be misunderstood or misrepresented. Keep recorded details unbiased.
- Officer notes can be placed in the report but are not for public release.

**Depending on department size and structure, the initial interview may be limited to just the victim info, a short synopsis of the assault, and suspect information.*

At the conclusion of the initial interview, the officer shall:

- Give the victim the investigator's contact information.
- Encourage the victim to contact the investigator with any additional information or evidence explaining that as a result of a traumatic event it is common to remember additional details following the interview.
- Be aware that visible evidence of injury may appear later. Inform the victim that the investigator should contact the victim routinely and follow-up in order to photograph and document injuries.
- Discuss acts that may constitute intimidation from the suspect and others, and tell the victim how to safely report intimidation.
- When applicable, ensure that the process of obtaining a protection order is clearly explained and victim requests to obtain orders are supported.
- Provide written referrals for victim service organizations and/or advocates.
- If a SANE exam is to be completed, provide transportation when reasonably possible.
- Inform the victim about next steps in the investigation and the criminal justice process.

Investigative Strategy

There are three primary defenses to the charge of sexual assault: denial, mistaken identity, and consent. Officers should be familiar with these potential defenses and the ways in which each might impact the investigation.

In preparing for the interview, the investigator shall develop an investigative strategy based on the nature of the assault and the defenses likely to be asserted by the defendant (denial, mistaken identity, or consent). This strategy should help to guide the questions and evidence collection efforts. Critical evidence collection efforts include evaluating whether a pretext phone call (**See Appendix B**) is appropriate and re-photographing injuries to document changes in visible injuries.

Follow-Up Victim Interview

The purpose of the follow-up interview is to capture the impact of the event by gathering further information, including the context of all behaviors exhibited by the suspect and victim, and victim coping strategies, experience of fear, sensory details, and the feelings they may have experienced. The victim's perspective can provide compelling evidence, especially in the absence of physical evidence. Prior to a follow-up interview, the investigating/follow-up officer should consult with agency personnel who responded to the scene, retrieve communications tapes and printouts, and review all reports and evidence. The investigating officer should coordinate with relevant agencies, assistance organizations, service providers, and/or sexual assault response professionals to address the needs of the victim and to discuss the best means for keeping the victim informed. Victim advocates or rape crisis counselors can be particularly helpful to both the victim and the investigating officer by providing the victim with the emotional support and information needed to make informed decisions throughout the interview process.

The follow-up interview protocol is as follows:

- A comprehensive follow-up interview shall be conducted after the victim has been medically examined and treated, and personal needs have been met.
- Barring exigent circumstances requiring identification of suspects, and whenever practical, the follow-up interview should be conducted after the victim has had the opportunity to have at least one, preferably two, full sleep cycles. Research suggests that memory of a traumatic event may be facilitated when the person has had time to rest. A victim may experience short-term memory impairment as a result of the traumatic event; sleep will allow the victim to begin to recover, increasing the quantity and accuracy of memory. However, if the victim wishes to do the interview immediately, the investigator should accommodate the request.
- Arrange for equipment to video/audio record the interview to allow the investigator to focus on listening. The investigator shall explain the purpose of the recording and seek the victim's consent to do so.

Be mindful:

In accordance with the Violence Against Women and Department of Justice Reauthorization Act of 2013 ("VAWA 2013") provisions, and the potential impact this can have on victims, officers and/or investigators **will not require victims of sexual assault to submit to a polygraph test or other truth-telling devices.**

The decision to audio and/or video tape victim statements should be done in consultation with a prosecutor in order to weigh the advantages and disadvantages of the practice. Once the determination is made, this practice should become department policy and followed consistently. There are advantages and disadvantages to recording follow-up interviews.

Advantages: Recording better captures information that hand written notes may not; recordings can highlight and exemplify to the victim that you are carrying out a thorough, comprehensive investigation; recording can allow the investigator to be more engaged and part of the conversation instead of focusing on note taking; recording allows victims to speak their own words to the prosecutor, judge, and jury; and, recording allows the investigator to listen to the victim's account and experience of the event multiple times.

Disadvantages: Due to the impact of the traumatic event, in a recording the victim may not present or “act” like the jury expects a victim of sexual assault to behave; due to the trauma experienced, the victim’s account may be inconsistent with consequent information obtained or remembered, or may lack details which can lead to their credibility being challenged; it is not possible to video tape each and every encounter with a victim and so the evidence recorded will only be an incomplete part of the victim statement; victims may feel that the investigator does not believe them and is trying to “lock” them into a statement; the need for audio/video equipment may remove control from the victim as to where and when to hold the interview, thus disempowering a victim; investigators may be more prone to using the video/audio recordings as a substitute for a comprehensive report; and, due to caseloads, many prosecutors are unable to read police reports until just prior to trial/grand jury thus may not have time to view lengthy recorded witness statements.

Prior to initiating the follow-up interview, the investigator shall:

- Identify an area to conduct the interview that is convenient and comfortable for the victim.
- Provide or arrange for transportation for the victim when needed.
- Arrange for the advocate to attend follow-up interview(s) if the victim wishes to continue to work with the advocate. If the advocate is unavailable, the victim can choose to proceed without an advocate, wait until the advocate is available, or proceed with a different advocate or support person (ground rules for additional individuals must be established prior to the interview).

During the follow-up interview, the investigator shall:

- Introduce him/herself and their role in the investigation.
- Commend the victim for reporting the crime, and support the victim throughout the interview.
- Discuss the purpose and scope of the follow-up interview.
- Confirm the contact information for both the victim and the investigator.
- Explain the victim’s rights, including confidentiality.
- If the determination has been made to video/audio record the interview, explain the reasoning for doing so and request the victim’s consent.
- Discuss arrest decisions including an explanation of the status of the case.
- Continually explain why the questions are important to the investigation, especially for particularly sensitive lines of inquiry. Also explain the need to capture specific information to meet criminal code requirements for charging.
- Ask the victim to describe everything he or she is able to recall about the assault and related events. Allow the victim to provide the statement without interruption, if possible. Note the following:
 - Details about the suspect’s behavior.
 - If the suspect was known by the victim, capture behavioral changes of the suspect (pre, during and post assault).
 - If the suspect was known by the victim, a behavior change at some point leading the victim to change what might have started as consensual to that of coercion, fear and/or force.
 - The suspect’s size and strength compared to the victim.
 - The location where the assault took place including any isolation strategies used by the suspect.
 - Actions, threats (real, perceived, or implied), gestures, coercion, and other behaviors used by the suspect to cause a victim to submit.
 - Ways in which the victim said “no”, both verbally and non-verbally. For example, crying, pushing the suspect away, or turning away from the suspect.

- Ask the victim what he or she felt rather than asking questions that blame the victim for the assault that occurred. For example, ask “What did you feel might happen if you tried to get away?” rather than “Why didn’t you try to get away?”
- Ask about the sensory experiences of the victim, including smell, touch, sound and taste.
- Repeat what the victim says in the order in which he or she said it to confirm that the account is accurately recorded. Identify new information or developments that require clarification.
- Clarify inconsistencies with previous accounts of the assault in a nonthreatening manner; interview for clarification, do not interrogate.
- Document the victim’s actions and response to the sexual assault (pre, during and post assault) including the victim’s state of mind during the assault.
- Document specific statements made by the perpetrator as reported by the victim.
- Document the nature of the relationship between the victim and suspect (if any).
- Inquire about any circumstances that may indicate the use of drugs and/or alcohol to facilitate the sexual assault, including memory loss, disorientation, severe illness, or hallucinations experienced by the victim.
- Ask if any prescription drugs were taken.
- Inquire about and document any pre- or post-assault contact, monitoring, stalking or other behaviors of the suspect that caused the victim to question his or her safety.
- Discuss witness intimidation and manipulation (by the suspect or the suspect’s family, friends, or associates) with the victim including how to recognize it and how to report if it occurs.
- Help the victim develop a safety plan, if there are safety concerns, and encourage the victim to call the police if the suspect violates any criminal or court orders, or if the suspect (or the suspect’s family or associates) contacts the victim in any way (in-person, phone, social media, etc.).
- Encourage the victim to work with an advocate to continually monitor their safety.
- Acknowledge that disclosure is a process, not an event, and that more details may be recalled as time passes.

At the conclusion of the follow-up interview, the investigator shall:

- Evaluate impounded evidence and determine which items might have probative value based on the interview and other information.
- Submit a lab service request such as DNA, biology, trace, or toxicology based on the assessment of the evidence, when appropriate.
- Present the complete case file, including forensic results, as soon as available to the prosecuting attorney for review, if jurisdictionally appropriate. Work collaboratively with the prosecutor’s office to develop the case.
- Continue to support the victim throughout the process. Apprise him or her of future investigative and prosecutorial activities that may require their involvement.

CONTACTING AND INTERVIEWING SUSPECTS

Sexual assault suspects are known to be manipulative, and, as such, training is recommended for officers that will be tasked with interviewing and interrogating these individuals. In addition to effective interrogation strategies, training should also provide officers with a comprehensive understanding of sex offender behavior and conduct. Responding officers should keep in mind that sexual assault perpetrators purposefully, knowingly, and intentionally select victims who are accessible and whom they believe lack credibility and will not be believed. The investigator should also keep in mind these crimes are about power and control.

Prior to contacting the suspect, officers shall:

- Conduct a background check and criminal history for victim and officer safety. They should specifically look for accusations, criminal charges, and convictions for interconnected crimes, especially crimes involving violence. Investigators should consider an NCIC search request that shows all law enforcement contacts.
- Conduct a pretext or confrontational call or messaging depending on jurisdictional statutes (**See Appendix B**). This can be an effective investigative tool in non-stranger sexual assault cases. Involvement of a victim in a pretext phone call or messaging to the suspect should take into consideration the victim's emotional and physical state. A victim advocate should be present whenever possible to offer support. Officers should receive training on implementing and conducting these calls. Officers should consult with legal counsel, or the prosecutor's office, to ensure lawful procedures and admissibility for recorded phone conversations.
- Develop a timeline of pre- and post-assault behaviors and communications that can be used to confront the suspect.
- Develop an investigative strategy. Suspect interviews should continue until probable cause is developed, the suspect confesses, or the suspect invokes rights under Miranda. While confession is the ultimate goal of the suspect interview, most cases are solved based on provable lies, partial admissions, and/or implausible accounts.

Suspect interview considerations:

- It is important to allow the suspect an opportunity to provide an account of the incident, and critical that every identified suspect is interviewed. Officers shall assess the circumstances for either a non-custodial interview or a custodial interview.
- Audio and video record the entire interview.
- Successful sex crimes investigators need to recognize common theories of sexual assault offenses and strategize their investigation around the defense that is most likely to be raised, but they must be flexible in case an alternative charge is offered or the defense strategy is something other than expected.

The investigator should begin the interview with questions intended to gather basic information. Then consider questions to clarify facts and that are non-accusatory but will encourage the suspect to talk and reveal his or her motivations and thought processes while committing the crime. For example: “Why do you think the victim would say this occurred?”



Determine whether the suspect’s statements have merit; look for and investigate inconsistencies in his or her account. Unlike the victim, the suspect is not adversely affected by trauma resulting from this incident. While the victim’s account may be incomplete or out of sequence, the suspect’s statement should be complete and orderly.



Identify areas where the suspect is vague and where he or she is extremely detailed. Confront the suspect with the facts and evidence you have gathered. Provide choices that are acceptable to the suspect and allow him/her to admit to the crime that occurred. The investigator should use tactics putting themselves in a position of authority and minimize the suspect’s perception of self.



Minimize the suspect’s behaviors in an effort to build rapport with the suspect and to encourage a statement (“tell me about this miscommunication between you and the victim” rather than “she says you raped her”).



Determine whether the suspect’s statements have merit; look for and investigate inconsistencies in his or her account. Unlike the victim, the suspect is not adversely affected by trauma resulting from this incident. While the victim’s account may be incomplete or out of sequence, the suspect’s statement should be complete and orderly. Note whether the suspect is answering the questions posed, deflecting, omitting, or placing blame on someone or something else.



Directly confront the suspect when his or her statements do not make sense or are inconsistent with the evidence or victim/witness statements.



Ensure questions posed to the suspect are being responded to. Ask clarifying follow-up questions to avoid ambiguous and elusive answers.



Directly confront the suspect at the point where the victim and suspect accounts diverge.



Ask the suspect how someone might express or demonstrate non-consent



Clearly document the suspect’s statement and explanations, including unclear responses and when the suspect is unable to provide an answer to a question.

PROTECTING VICTIM RIGHTS: CONFIDENTIALITY, ARREST AND PROSECUTION DECISIONS

Confidentiality and Other Rights

Privacy issues concern crime victims throughout the criminal justice process. During the investigation, officers shall work with victims and explain the limitations of confidentiality as well as attempts to protect the confidentiality of the victim's information to the maximum extent possible by law and policy. Victims should also be provided information regarding:

- Protections afforded to crime victims by the state which may include the right to have their name withheld from public record as well as information that will become part of the public record versus facts that will remain confidential.
- The possibility of media coverage and information regarding sexual assault crimes available to the media. If applicable, provide victims with information regarding local media agreements or policies preventing them from disclosing the names of sexual assault victims.
- What to do in the event that the victim, witnesses, or third parties are harassed or intimidated by the suspect or others. The investigator should remain open to the possibility that the suspect may monitor or stalk the victim. The victim should be advised to call 911 in an emergency.
- The crime report number, as well as contact information for the reporting officer (including identification or badge number) and lead investigator (or person handling the follow-up).
- Arrest decisions, victim compensation, emergency protective orders, court dates, and parole or release dates.

If the victim is a student of an institution of higher education, the institution is federally mandated to conduct administrative inquiries, and is responsible for conducting administrative inquiries and taking required steps to correct discriminatory impact. These responsibilities can conflict with criminal investigations. Local and college/university police departments should work collaboratively with institutions of higher education to avoid potential conflict between criminal investigations and the laws that govern the institution. Law enforcement agencies should develop and continually review Memoranda of Understanding (MOU) and/or Letters of Understanding with each college/university in their jurisdiction.

Prosecution Decisions

In the immediate aftermath of a sexual assault, many victims experience symptoms of trauma that impair their ability to make decisions regarding whether or not to proceed with the investigation related to the event that occurred. If the victim declines investigation or prosecution at this time, officers shall not ask him or her to sign any forms or notices waiving the right to do so at a later date. It is, however, appropriate to introduce a victim's rights form, and/or petition for a restraining order (if needed) at this time.

When the Victim Chooses Not to Participate in the Investigation

The department shall respect a victim's decision not to be involved in criminal justice proceedings, or his or her inability to do so, and always be willing to offer continued assistance and referrals. Officers should explain the statute of limitations, if applicable, for criminal charges and that a victim can contact the department within that time to reopen the investigation. All information gathered should be documented and be retrievable at a later date or in the case that the suspect re-offends with another victim. The investigator should let the victim know

that he/she will be re-establishing contact with the victim at a later date to inquire about decision to prosecute and answer any additional questions.

Recantation

It is not uncommon for a sexual assault victim to reconsider their report to law enforcement and question their participation in the criminal justice system. Victims may feel they have no other option but to recant in order to disengage from the system. A victim-centered approach recognizes the tremendous courage of victims who come forward and the personal cost to those who participate in the criminal justice system. It is critical for investigators to understand that recantation of any or all aspects of the initial disclosure is not necessarily indicative of a false report. Various influences affect a victim's willingness and/or ability to participate, including:

- Feelings of embarrassment, fear and/or shame
- The desire to put the assault behind them
- Frustration in repeating the details
- Fear of facing the suspect in court
- Pressure from family, friends, the suspect, peers, or others
- Pressure from cultural and/or religious upbringing or beliefs
- Concern that the assault be made public
- Fear of not being believed

Victims who recant or decline participation in the investigation should not be asked to sign a non-prosecution statement. Asking a victim to do so may deter him or her from returning at a later date. If the evidence clearly indicates a crime has occurred, the case should remain open but inactive.

SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS

Victim-centered care is paramount to a successful forensic examination of sexual assault victims. When law enforcement is the victim's first contact, a timely, professional forensic examination increases the likelihood that injuries will be documented and properly treated, and that evidence will be collected to aid in the investigation and prosecution of sex suspects. Evidence from the medical forensic exam can normally be collected up to 120 hours (5 days) after the assault, but it's possible to gather evidence and identify injuries beyond that time, especially if the victim is injured, bleeding, or experiencing pain (this may vary by jurisdiction). If the incident happened more than 120 hours ago, there should be an individual evaluation to determine if a medical forensic exam is appropriate. When uncertain, officers should seek the guidance of a local sexual assault forensic examiner. Keep in mind, victims may have non-visible injuries or infections requiring diagnosis and treatment, or pregnancy.

Victims who have been strangled or who experienced a loss of consciousness during the assault that occurred should always be examined by medical professionals.

Investigating Officer Actions

- Explain the purpose of the medical forensic examination and its importance to the victim's health and wellness, and to the investigation. Provide the victim with general information about the procedure, and encourage the victim to seek further detail and guidance from the examiner. Officers/investigators cannot deny a victim the opportunity to have a forensic examination completed.
- Inform the victim that they cannot be charged for the cost of administering the forensic exam.
- Inform the victim that with the SANE they have the right to decline any or all parts of the examination.
- Articulate to the victim the evidentiary purpose of the various components of the exam; clearly explain that the case may be more difficult to prosecute without forensic evidence.
- Inquire whether the victim will consent to a forensic examination.
- Advise the victim that the forensic examiner will collect all clothing that was worn during or immediately after the sexual assault (depending on SANE protocols). Assist in arranging for clothing the victim may need after the examination.
- Ask the victim whether there is anyone who should be called to accompany him or her to the exam and facilitate contact.
- Address any special needs of the victim, such as communication or mobility, and notify the victim advocate of them.
- With the victim's consent, notify a victim advocate when a forensic examination is to be conducted so that he or she can provide support.
- Transport the victim to the designated medical facility.
- Obtain a signed release from the victim for access to SANE medical records.
- Encourage a victim who is unwilling to undergo a forensic exam to consider medical attention, including testing for pregnancy and sexually transmitted infections.

Coordination with the Forensic Examiner

Responding officers shall coordinate with other professionals such as forensic examiners and criminalists to determine whether a forensic examination is indicated.

- Prior to a forensic examination, the investigating officer shall brief the examining nurse or physician about the details of the sexual assault, as they are known at that time.
- The primary purpose of the exam is medical diagnosis and treatment. Officers should not be present during any part of the exam, including during the medical history. Statements made for the purpose of medical diagnosis and treatment may be admitted at trial. However, the presence of a law enforcement officer during any part of the exam can result in a legal ruling that the nature of the exam

changed from providing medical care to investigating a crime, making statements of the patients inadmissible in a subsequent trial.

- Upon conclusion of the exam, the officer should request any findings that may assist with the investigation.
- The police report shall contain a copy of the sexual assault medical forensic exam report and a summary of the findings that note significant information or details of injury; these are not for public release.
- After the examination, evidence collected during the sexual assault medical forensic exam shall be turned over to law enforcement. It is critical to ensure that the evidence has been properly sealed and labeled.
- A chain of custody for the sexual assault medical forensic exam evidence shall be established and the evidence shall be prepared for storage in accordance with existing protocols.
- The sexual assault medical forensic exam evidence shall be impounded as the department's evidence policy dictates and sent to the appropriate laboratory for processing.
- Proceeding with or conducting a thorough investigation shall not be contingent upon laboratory findings. To the extent possible, investigations should be ongoing while awaiting laboratory results.
- Victims should be informed that charges may apply for medical treatment required beyond the forensic medical exam.

Drug-Facilitated Sexual Assault Considerations

- If a drug-facilitated sexual assault is suspected, it is critical to obtain the first urine after the assault occurred from the victim as soon as possible. If fewer than 24 hours have transpired since the assault, attempts should be made to obtain a blood sample for toxicology in accordance with the examination protocol.
- Illegal substance abuse by victims, including underage drinking, shall never be used to discredit or discourage the victim from reporting the assault. The department's priority is to thoroughly investigate sexual assault, not prosecute victims for misdemeanor violations.
- Because of the delay in reporting most sexual assaults, it's essential to work with laboratories capable of identifying very low levels of drugs commonly used in sexual assault in blood and urine.

Reimbursement for the Examination

The Violence Against Women and Department of Justice Reauthorization Act of 2013 ("VAWA 2013"), provides that states may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred on account of such an exam, or both" (the "VAWA 2005 forensic examination requirement"). Under this provision, a state must ensure that victims have access to an exam free of charge or with full reimbursement, whether or not the victim chooses not to report the crime to the police or otherwise cooperate with the criminal justice system or law enforcement authorities.

Forensic Examination for the Collection of Evidence from the Suspect

Departments should work with other agencies and community organizations to establish protocols dictating where forensic examinations of suspects will take place and by whom, which agency or organization will cover the cost, and what steps will be involved. The evidence collected can be critically important to the investigation. Ideally victim and suspect examinations will take place in different locations; if this isn't possible, the examinations should be done at different times to ensure that the victim and the suspect do not encounter each other.

The protocol for the suspect examination is as follows:

- Prior to or immediately after the preliminary suspect interview, investigators should photograph any injuries (offensive and defensive) and/or other bodily parts to corroborate victim and witness information.
- The investigating officer shall determine whether a forensic sexual assault examination should be conducted. Depending on the type of contact reported, the suspect's body may be a better source of evidence than the victim's.
- A search warrant, with specific details about what evidence will be collected, should be prepared and requested in order to collect evidence from the body of the suspect and his or her clothing. If the suspect voluntarily consents to evidence collection procedures, it should be documented in the police report. Having a search warrant prepared in advance will eliminate the opportunity for the suspect to destroy or alter evidence if consent is denied.
- If the suspect is not in custody and there is no warrant, the investigator shall clearly document his or her freedom to decline any part of the examination and to leave at any time.
- First-line officers and supervisors shall be trained in buccal cell collection (cells located inside of a person's cheek) for DNA profiling. Cotton-tipped swabs or other buccal DNA collectors shall be readily available to investigators in the field. Prior to collection, the suspect must provide signed consent.

Evidence Collection

- As applicable, the investigator, evidence technician, or forensic examiner should strongly consider penile swabbing, pubic hair combings, and other potential DNA evidence.
- In addition to possible DNA, the suspect's sexual assault examination can provide information about the suspect's clothing, appearance, scars, tattoos, piercings, and other identifiable marks that may be important throughout the investigation.
- Law enforcement should keep in mind that evidence may have been transferred from the victim to the suspect during the assault, just as evidence transfers from the suspect to the victim. Seize all clothing worn by the suspect during the assault, particularly any clothing touching the genital area of the suspects.
- Examination of the suspect can also help identify signs of force, struggle, or injury.
- The forensic examiner shall document the suspect's medical history and injuries, and collect biological and trace evidence from the suspect's body.
- If in custody, the suspect shall be given Miranda warnings before being asked medical history questions by the forensic examiner or investigator.
- If the suspect invokes his or her right to remain silent, the examiner shall refrain from asking medical history questions but continue documenting visible injuries and collecting appropriate specimens.
- Both the examiner and accompanying investigating officer shall document any spontaneous statements made by the suspect regardless of whether or not he or she is in custody or has been given Miranda warnings.

REPORT WRITING FOR SEXUAL ASSAULT CASES

Officers should be aware that reports are used for more than mere documentation of incidents. Reports are used by defense attorneys to craft the suspect's defenses, by prosecutors to determine charging decisions, by advocates to develop safety plans with victims, by judges to set or deny bail, by community corrections to set probation parameters, as well as others. Reports may also be released to victims and the media. As such, the following should be considered when writing reports in sexual assault cases:

- Document every response to or investigation of a reported sexual assault by completing a narrative report and a properly coded offense report, whether or not an arrest is made. It is recommended that officers and investigators also complete a Sexual Assault Supplemental Report Form (**See Appendix A**) to augment the narrative report.
- As accurately as possible, use the victim, witness, and/or suspect's own words in written reports by using quotations wherever possible. Do not sanitize or clean-up the language used by the victim.
- Capture details necessary to establish any premeditation/grooming behavior by the perpetrator, coercion, threats and/or force, and traumatic reaction during and after the incident (e.g. victim demeanor, emotional response, changes in routines or habits), and/or any attempts to intimidate or discourage the victim from reporting the assault.
- Document the details of the crime by asking the victim what they thought, felt, and feared at the time of the assault; what they experienced before, during, and after the sexual assault; how the experience changed throughout the event (consensual to non-consensual); and what they saw, smelled, tasted, heard and touched during the incident.
- Document the victim's condition as observed by the officer. Avoid the use of vague words; instead use accurate descriptors.
- Fully document fear by recording all fight, flight, freeze, or submit reactions the victim expressed or exhibited before, during, and after the assault. Victims may freeze (not be able to resist physically); this may be an indicator of fear and trauma.
- Silence should not be construed as consent. Resistance can be communicated through more than words. Detail and describe what "no" looked like by documenting the victim's subtle and overt actions.
- Detail and describe what fear felt like for the victim in his or her own words.
- Create a timeline to show the effects of the traumatic event on post-assault behavior and actions of the victim as compared to previous behavior (i.e. in a non-stranger case, the victim no longer goes to the gym that the suspect belongs to, will not be in the same room as the suspect, or the victim drops out of school, etc.)
- Accurately document all information provided by the victim even if it does not cast him or her in a positive light.
- Every effort should be made to avoid using consensual language, words that imply mutual participation, and terms of affection (such as participated, engaged in, caressed) unless they are direct quotes (in which case, place them in quotation marks); instead, describe the specific actions, behaviors, and conduct of the suspect as they align with the specific elements of the crimes.
- Exclude officer opinion and judgment from the written report.
- If a consensual encounter turned non-consensual, clearly document the details of how and when the suspect's behavior changed and how the victim expressed or demonstrated non-consent to the continued acts.
- Include any observations or witness statements that corroborate the victim's or suspect's account of the events that occurred.

Case Coding for Uniform Crime (UCR) Reporting and Local Jurisdictional Requirements

The FBI requires jurisdictions participating in the Uniform Crime Reporting (UCR) system to report the number of rape and other sexual assault complaints, and case disposition (founded, unfounded, or cleared by arrest or by exceptional means). The amount of information required depends on whether the jurisdiction reports based on the Summary Reporting System (SRS) or National Incident-Based Reporting System (NIBRS). Local jurisdictions may adopt case coding systems to facilitate this reporting and/or to track cases based on local crime definitions. Accurate labeling of sex crimes and clearance categories is essential to properly capturing the crimes that occurred. Procedures for both UCR and local coding are outlined below.

UCR Reporting

To correctly report numbers of rape and sexual assault crimes to the UCR system, jurisdictions must first accurately identify the crime under state law in a way that allows it be counted properly for UCR purposes. All penetration and attempted penetration crimes will go into the UCR SRS rape category which is defined as “[p]enetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” NIBRS, under the categories rape, sodomy, sexual assault with an object, includes the same crimes as the summary reporting system plus fondling. All reports should be accepted as valid unless evidence proves otherwise after a complete investigation.

UCR reporting includes data about case clearance. A case may be cleared under the UCR in three ways:

- **Arrest:** a case is cleared by arrest when at least one person is arrested, charged with the commission of the offense and turned over to the court for prosecution.
- **Exceptional clearance:** a case is exceptionally cleared only after a complete investigation and only when:
 - The investigation has definitely established the identity of the suspect;
 - There is enough information to support an arrest, charge, and turning over to the court for prosecution;
 - The exact location of the suspect is known so the suspect can be taken into custody now; and
 - There is some reason outside of law enforcement control that precludes arresting, charging and prosecuting the suspect. Examples include death or extradition of the suspect, victim refusal to cooperate with the prosecution and prosecution is declined for reasons other than probable cause. Not all cases in which a victim does not participate in the investigatory process should be closed as exceptionally cleared. Victims of sexual assault may not want to participate for many reasons, some of which include that they are traumatized, fear retaliation, think they are not being believed, or fear that the facts of their assault will become public. In such cases, if the evidence clearly indicates a crime has occurred, the case should not be closed as exceptionally cleared but should be placed in an open, but inactive, status.
- **Unfounded:** A case is unfounded only after a thorough investigation shows that an offense is false or baseless in that no crime occurred or was attempted:
 - Unfounded, baseless: A case does not meet the elements of a crime or was improperly coded as a sexual assault.
 - Unfounded, false: Evidence obtained through an investigation shows that a crime was not committed or attempted.

If a victim recants his or her allegation, it is important to know that this is not necessarily indicative of a false complaint. Some individuals may recant because of intimidation and fear of retaliation, particularly when the accused is a current or former intimate partner. Teens may also recant to avoid parental

discipline. Under neither of these circumstances should an individual be charged with falsely reporting a crime. Clearance decisions should be based on careful analysis of evidence identified through an investigation and should be reviewed and approved by a supervisor.

Local jurisdiction coding systems

Call-takers, officers and investigators will ensure that a tracking number is assigned for every reported sexual assault offense and document each offense in writing.

Not all sex crimes that are reported to local jurisdictions are reported to the UCR. Sex crimes other than rape, sodomy, sexual assault with an object, and, in NIBRS jurisdictions, fondling, are reported to the UCR only when an arrest is made. Jurisdictions should keep records of all sex crimes recognized in their criminal code that are reported to them.

Jurisdictions may adopt categories such as inactive for status of cases that are criminal in nature but have not been solved, are not unfounded, and the investigation has gone as far as it can to date. Such a case is removed from the active caseload but remains technically open pending possible future investigative developments.

Jurisdictions may adopt case categories for types of reports that do not fit into any of the crime categories. Such non-crime categories must be used with caution and be reviewed by supervisors. There have been instances when crimes have been inappropriately coded as non-crimes, resulting in non-investigation.

EFFORTS TO ENCOURAGE REPORTING AND ENHANCE PUBLIC TRUST AND TRANSPARENCY

The process of reporting a sexual assault is difficult for victims. Law enforcement should consider partnering with community organizations and advocates to create a more supportive atmosphere for victims throughout the reporting and investigation process.

- **SART/SARRT:** provides immediate, specialized response to victims of recent sexual assault, support during the medical examination, and medical care and follow-up. The team typically includes health care personnel, law enforcement representatives, victim advocates, social service agencies, and prosecutors.
- **Victim Advocates:** provide counseling, advocacy, referrals, resources and information, and support. They may also act as liaisons with SANEs, law enforcement, and other criminal justice members throughout the investigation and adjudication process.

In the aftermath of a sexual assault, a victim may fail to self-identify as a rape or crime victim. Further, he or she may feel that he/she does not have the emotional or physical capacity to commit to a full investigation and a court trial. Departments should establish systems to capture blind reports, anonymous reports, third party reports, and on-line report options to allow victims to take the investigative process one step at a time. This will allow time for the victim to process the aftermath of the assault, establish trust with an investigator, and become comfortable with the investigative process.

- **Anonymous reports:** departments should establish a system for collecting, documenting, and maintaining evidence while allowing the victim time to recover, consider options, and decide how they would like to proceed.

Departments should also consider developing community partnerships to conduct confidential external reviews of sexual assault investigations to ensure victim centered services and comprehensive investigations.

Departments should work with multidisciplinary partners to collect, manage, and analyze data regarding sexual assault reporting, medical care, response, investigations, prosecutorial charging decisions, trials, pleas, convictions, and sentencing to stay current and measure effectiveness.

Departments should work with community partners and advocacy to develop victim surveys or other opportunities to provide feedback.

Departments should analyze and use data to assist in updating policy, identifying training needs, and counseling and commending employees.

Departments should consider including victim support information, including agency policies and contact, community referrals, and resources on the agency website in an easily accessible location.

ADDITIONAL TOPICS FOR CONSIDERATION

Sexual assault is a complicated crime. The preceding policy and training guidelines provide information regarding sexual assault generally; please note that there are numerous populations that have particular needs that law enforcement should take into consideration when working with, including children, elderly, male victims, individuals with disabilities (physical, mental, or communicative), lesbian, gay, bisexual, or transgender individuals, non-native English speakers, trafficked individuals, and others. Departments are encouraged to collaborate with local community organizations to develop comprehensive protocols to effectively and thoroughly address the needs of various populations. Local police departments are encouraged to partner with colleges and universities in their jurisdiction to create memorandum of understanding or letters of agreement to establish communication and implement effective plans to address sexual assault crimes.

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Content recommendations were submitted by a multidisciplinary group of subject matter experts including prosecutors, law enforcement, advocates, sexual assault nurse examiners, and national training and technical assistance providers. Departments are encouraged to use this document to establish department policy and training content customized to their agency and jurisdiction. Every effort has been made by the IACP National Law Enforcement Leadership Initiative on Violence Against Women staff and partner subject matter experts to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered when developing policy and protocols. In addition, the formulation of specific agency policies and training content must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors.

Sexual Assault Supplemental Report Form

- It is recommended that the Sexual Assault Supplemental Report be used in the reporting, recording and investigation of *all* alleged sexual assault incidents, **for each and every incident reported**
- Supervisory review of all sexual assault cases is encouraged
- This form is not intended for use when the victim is a minor

Agency		ORI		Incident #		Case #			
Name of Person Who Contacted Police <i>(optional on information reports)</i>				Method Report Received <input type="checkbox"/> 911 Call <input type="checkbox"/> Non-emergency number <input type="checkbox"/> Online <input type="checkbox"/> Other <i>(describe)</i> _____					
Address of Person Who Contacted Police				City		State	Zip Code		
Telephone: Home		Work		Cell		Email			
Relationship to Victim			Others Present with Victim During Interview						
Location of Interview <input type="checkbox"/> Hospital <input type="checkbox"/> On Scene <input type="checkbox"/> At Department <input type="checkbox"/> Other <i>(describe)</i> _____									
Dates									
Date of Report <i>(mm/dd/yyyy)</i>		Time of Report		Date(s) of Incident <i>(mm/dd/yyyy)</i>		Time of Incident From To			
Victim <i>Victim's identifying or contact information may be exempt from disclosure under the Freedom of Information Act and Crime Victim's Rights Act or if this is a blind report.</i>									
Last Name			First Name			Middle Name			
Any Aliases			Primary Language		Special Needs, Disability, Requests, etc.				
Race/Ethnicity		Sex <input type="checkbox"/> M <input type="checkbox"/> F	Date of Birth <i>(mm/dd/yyyy)</i>		Height	Weight			
Address				City		State	Zip Code		
Telephone: Home		Work		Cell		Email			
Emergency Contact			Emergency Contact Telephone		Best Way to Safely Contact Victim				
Victim Demeanor Observed at Time of Interview <i>(select all that apply)</i> <i>Include detailed description in narrative</i>									
<input type="checkbox"/> Afraid/Fearful	<input type="checkbox"/> Confused	<input type="checkbox"/> Shaking/Trembling	<input type="checkbox"/> Other <i>(describe)</i> _____						
<input type="checkbox"/> Angry	<input type="checkbox"/> Flat Affect	<input type="checkbox"/> Tearful/Crying							
<input type="checkbox"/> Calm/Controlled	<input type="checkbox"/> Nervous/Agitated	<input type="checkbox"/> Withdrawn/Quiet/Flat Affect							
Are there any injuries? <i>If yes, detail in narrative</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed		Does the victim report pain? <i>If yes, describe</i>			<input type="checkbox"/> Y <input type="checkbox"/> N	
Were weapons used to hurt/injure/threaten? <i>If yes, detail in narrative</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed		Does the victim believe she/he may have been drugged? <i>If yes or unsure, detail in narrative</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Unsure	
Did the victim voluntarily consume alcohol within 24 hours of incident? <i>If yes, detail in narrative</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed		Did the victim voluntarily take other controlled substance within 96 hours of incident? <i>If yes, detail in narrative</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed	
Has sexual abuse by suspect been ongoing? <i>If yes, how long?</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed		Any other known or possible victims? <i>If yes, list names and contact information</i>			<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed	
Victim Assistance Checklist									
<input type="checkbox"/> Victim's Personal Safety Concerns Addressed	<input type="checkbox"/> Sexual Assault Victim Rights and Services Information Provided	<input type="checkbox"/> Victim Given Department Contact Information	<input type="checkbox"/> Crime Victim's Rights and Compensation Information Provided						

Incident Information

Location of Interaction Before Assault(s) *(detail in narrative)*

Location(s) of Assault(s) *(detail in narrative)*

Locations Suspect Took Victim After the Assault(s) *(detail in narrative)*

Type of Coercion/Force/Fear Involved *(select all that apply)*

- | | | |
|---|---|--|
| <input type="checkbox"/> Disregarding the victims' stated or otherwise communicated lack of consent | <input type="checkbox"/> Victim was incapacitated (see below) | <input type="checkbox"/> Threat of death |
| <input type="checkbox"/> Verbal pressure/coercion | <input type="checkbox"/> Presence of weapon | <input type="checkbox"/> Abduction |
| <input type="checkbox"/> Position of authority (teacher, supervisor, boss, parent) | <input type="checkbox"/> Stalking | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Threat of physical force or violence | <input type="checkbox"/> Physical restraint | |
| | <input type="checkbox"/> Physical force | |

Describe all types of coercion/force/fear involved. *(Include detailed description in narrative)*

Type of Assault *(select all that apply)*

- | Attempted | Completed | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Rape (penile/vaginal penetration against the will, by force, threat, or intimidation) |
| <input type="checkbox"/> | <input type="checkbox"/> | Forced sodomy (penile/anal penetration against the will, by force, threat, or intimidation) |
| <input type="checkbox"/> | <input type="checkbox"/> | Forced oral-genital contact (oral copulation) |
| <input type="checkbox"/> | <input type="checkbox"/> | Forced sexual penetration with an object or finger |
| <input type="checkbox"/> | <input type="checkbox"/> | Sexual battery (forced touching of intimate parts, fondling, kissing, oral contact but not penetration) |
| <input type="checkbox"/> | <input type="checkbox"/> | Physical assault/battery |
| <input type="checkbox"/> | <input type="checkbox"/> | Strangulation |
| <input type="checkbox"/> | <input type="checkbox"/> | Other _____ |

Additional Crimes to be Investigated:

Victim Incapacitated or Incapable of Consenting or Communicating Unwillingness to Engage in Sexual Contact Due to: *(select all that apply)*

- | | | |
|----------------------------------|---|---|
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental incapacity | <input type="checkbox"/> Unconsciousness or sleep |
| <input type="checkbox"/> Alcohol | <input type="checkbox"/> Physical incapacity | <input type="checkbox"/> Other <i>(describe)</i> |
| <input type="checkbox"/> Drugs | <input type="checkbox"/> Subordinate position | |

Initial Investigation

Victim Medical Treatment *(select all that apply)*

	Where	By Whom	Date
<input type="checkbox"/> First aid rendered	_____	_____	_____
<input type="checkbox"/> Medical exam	_____	_____	_____
<input type="checkbox"/> Forensic exam/rape kit	_____	_____	_____
<input type="checkbox"/> Admitted to hospital	_____	_____	_____
<input type="checkbox"/> Will seek own	_____	_____	_____
<input type="checkbox"/> Declined	_____	_____	_____

Suspect Forensic Exam Conducted? Y N Follow up needed If yes, by whom? _____ Date _____

Photos	Taken By	Date Taken	Digital	Polaroid	35 mm	Video
<input type="checkbox"/> Victim injuries	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Suspect injuries	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Crime scene(s)	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Property damage	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Evidence Collected *(select all that apply)*

- | | By Whom | Location Stored | Analyzed |
|---|---------|-----------------|---|
| <input type="checkbox"/> Physical evidence <i>(i.e. clothing, sheets, tissue)</i> <i>(list)</i> _____ | _____ | _____ | Y <input type="checkbox"/> N <input type="checkbox"/> |
| <input type="checkbox"/> Property damage <i>(list)</i> _____ | _____ | _____ | Y <input type="checkbox"/> N <input type="checkbox"/> |
| <input type="checkbox"/> Weapons <i>(list)</i> _____ | _____ | _____ | Y <input type="checkbox"/> N <input type="checkbox"/> |

	Victim	Attached	Suspect	Attached		Victim	Attached	Suspect	Attached
911 print out	<input type="checkbox"/>	<input type="checkbox"/>			Suspect polygraph	<input type="checkbox"/>		<input type="checkbox"/>	
Forensic exam report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pretext phone call	<input type="checkbox"/>		<input type="checkbox"/>	
Toxicology report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					

Follow up needed, specify _____

Suspect Photocopy and complete the following information for each suspect on a separate page and attach to the report.

No. of Suspects	Last Name (Suspect # _____)		First Name		Middle Name	
Aliases			Height	Weight	Hair Color	Eye Color
Race/Ethnicity	Sex M <input type="checkbox"/> F <input type="checkbox"/>	Date of Birth (mm/dd/yyyy)	Social Security No.		Driver's License No./State	
Address			City		State	Zip Code
Telephone: Home		Work	Cell		Email	
Primary Language (if not English)		Suspect's Defining Characteristics (i.e. tattoos, scars, physical disabilities, etc.)				
Suspect on Scene Y <input type="checkbox"/> N <input type="checkbox"/>		Suspect Arrested Y <input type="checkbox"/> N <input type="checkbox"/> If Yes, Arrest Number				
Suspect Conduct Prior to Incident (select all that apply) Include detailed description as gathered from interviews of suspect, victim, and associated persons in narrative						
<input type="checkbox"/> Grooming (i.e. targeting vulnerability, testing boundaries, building trust)		<input type="checkbox"/> Monitoring victim (tracking patterns of conduct)				
<input type="checkbox"/> Electronic contact (i.e. internet, text messaging)		<input type="checkbox"/> Providing alcohol/controlled substances				
<input type="checkbox"/> Isolating victim		<input type="checkbox"/> Other (describe) _____				
Relationship to Victim (select all that apply)			Suspect Demeanor as Observed at Time of Interview (select all that apply) Include detailed description in narrative			
<input type="checkbox"/> Recent acquaintance		<input type="checkbox"/> Domestic partner		<input type="checkbox"/> Parent of victim		
<input type="checkbox"/> Casual acquaintance of victim		<input type="checkbox"/> Married		<input type="checkbox"/> Relative of victim		
<input type="checkbox"/> Friend (non-romantic)		<input type="checkbox"/> Legally separated		<input type="checkbox"/> Position of authority		
<input type="checkbox"/> Internet relationship		<input type="checkbox"/> Divorced		<input type="checkbox"/> Co-worker		
<input type="checkbox"/> Planned first meeting/date		<input type="checkbox"/> Father of children		<input type="checkbox"/> Stranger		
<input type="checkbox"/> Intimate partner/dating		<input type="checkbox"/> Cohabiting		<input type="checkbox"/> Other (describe) _____		
<input type="checkbox"/> Former intimate partner/dating		<input type="checkbox"/> Neighbor		_____		
Did the Suspect Consume Alcohol Within 24 Hours Prior to Incident? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative Follow up needed <input type="checkbox"/>		Did the Suspect Take Controlled Substances Within 96 Hours Prior to Incident? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative Follow up needed <input type="checkbox"/>		Visible Suspect Injuries? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		

Suspect History

	Y <input type="checkbox"/> N <input type="checkbox"/>	Date(s)	Type(s)
Arrest record	Y <input type="checkbox"/> N <input type="checkbox"/>	_____	_____
Prior sexual assault offenses	Y <input type="checkbox"/> N <input type="checkbox"/>	_____	_____
Prior use of weapons in a sex related offense	Y <input type="checkbox"/> N <input type="checkbox"/>	_____	_____
Currently on probation	Y <input type="checkbox"/> N <input type="checkbox"/>	_____	_____
Currently on parole	Y <input type="checkbox"/> N <input type="checkbox"/>	_____	_____
Subject of protection order(s)	Y <input type="checkbox"/> N <input type="checkbox"/>	_____	_____

Associated Persons Photocopy and complete the following information for each witness on a separate page and attach to the report.

Last Name (Witness # _____)		First Name		Middle Name		
Aliases			Height	Weight	Hair Color	Eye Color
Race/Ethnicity	Sex M <input type="checkbox"/> F <input type="checkbox"/>	Date of Birth (mm/dd/yyyy)	Social Security No.		Driver's License No./State	
Address			City		State	Zip Code
Telephone: Home		Work	Cell		Email	
Relationship to Victim (see above categories)			Relationship to Suspect (see above categories)			
Aware of Incident Y <input type="checkbox"/> N <input type="checkbox"/>		Contact with Victim Prior to Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		Contact with Suspect Prior to Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		
Present During Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative			Contact with Victim After the Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative			
Did Victim Disclose Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		Contact with Suspect After the Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative			Did Suspect Disclose Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative	

Interview History

	Date(s)	Time	Location	Officer Initials
Victim	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Suspect(s)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Associated Person(s)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Case Review Checklist *Select all that apply*

<input type="checkbox"/> Follow-up photos taken of the victim's injuries <i>(mm/dd/yyyy)</i> _____ <input type="checkbox"/> Available witness(es) interviewed <input type="checkbox"/> Witness(es) provided a written statement <input type="checkbox"/> Unable to contact or interview the following person(s) _____ _____ <input type="checkbox"/> Case referred to the prosecutor's office <i>(mm/dd/yyyy)</i> _____	Contacts Initiated by Police <i>(select all that apply)</i> <input type="checkbox"/> Community-based advocate <input type="checkbox"/> Dept./Victim/Witness advocate <input type="checkbox"/> Language translation <input type="checkbox"/> Medical <input type="checkbox"/> Mental health <input type="checkbox"/> Probation/Parole <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other agency _____	Contacts Initiated by Victim <i>(select all that apply)</i> <input type="checkbox"/> Community-based advocate <input type="checkbox"/> Medical <input type="checkbox"/> Mental health <input type="checkbox"/> Other _____							
Evidence Follow-Up <i>(select all that apply)</i>									
Forensic exam results	Victim	Attached	Suspect	Attached	Toxicology results	Victim	Attached	Suspect	Attached
DNA results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Officer Printed Name _____ Rank _____ Badge Number _____

Officer Signature _____ Date (mm/dd/yyyy) _____

Investigator Printed Name _____ Rank _____ Badge Number _____

Investigator Signature _____ Date (mm/dd/yyyy) _____

Supervisor Printed Name _____ Rank _____ Badge Number _____

Supervisor Signature _____ Date (mm/dd/yyyy) _____

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Officer Narrative (See next page)

Narrative Report Checklist

Describe and Document:

- How case was received
- Observations on approach—document what you saw, heard, etc.
- Spontaneous statements and demeanor at time of statement
 - Victim
 - Victim during transport
 - Suspect
 - Suspect during transport and booking
- Injuries of all parties
 - Type and extent
 - How the injuries occurred
- Interview and provide detailed account of incident
 - Victim
 - Suspect
 - Witness(es), esp. first disclosure
 - Medical personnel
- Drugs/alcohol used/involved
- Weapons used/involved
- Coercion, force, fear
- Crime scene and physical evidence
- Actions taken (i.e. evidence collected, arrest decision, exams, follow up photographs and interviews)
- Documents included with report (search/arrest warrants, affidavits, subpoenas, 911 print-out, pretext phone call synopsis, transcripts, crime lab reports, victim/suspect forensic exam reports, photos, etc.)

<i>Officer Printed Name</i>	<i>Rank</i>	<i>Badge Number</i>
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<i>Officer Signature</i>	<i>Date (mm/dd/yyyy)</i>
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Training Key® #574

Pretext Phone Calls in Sexual Assault Investigations

The “pretext” phone call is an investigative tool that can be used in a wide variety of criminal investigations. It can be especially effective in sexual assault investigations, including drug-facilitated rapes.

Introduction

In this context, a pretext phone call is simply a tape-recorded telephone call between the victim and the suspect. The call is usually initiated by the victim, under the supervision of a law enforcement officer, preferably the lead investigator or case agent. The suspect is unaware that the call is being recorded. This technique may be referred to by different terms, including “confrontational calls,” “pretext calls,” “taping,” and “consensual taping.”

The purpose of a pretext phone call is to elicit incriminating statements from the suspect. A suspect will frequently talk to the sexual assault victim about the incident if he believes the victim is alone and no one else is listening. The tape recording resulting from an effective pretext call gives the investigator leverage during the subsequent interview of the suspect because the investigator can confront the suspect with the recorded statements the suspect made during the call.

Statements obtained as the result of a pretext call can be powerful evidence in court and are sometimes key evidence linking the suspect to the crime. However, depending on the victim and the circumstances, a pretext call can be traumatic for the victim and the victim may not be able to handle the emotional consequences a pretext call can create. Therefore, when considering its use, officers should pay close attention to the emotional strength of the victim and ensure that she is well aware of the potential effects and reactions such a call may elicit.

Some states prohibit recording phone calls. However, some of these states exempt law enforcement officers from these laws when the officer is acting within the scope of official duties. For example, California Penal Code Section 633 provides such an exemption. Some states require that court authorization be obtained before recording a call. If there is any question about the legality of record-

ing calls in one's jurisdiction, the investigator should check with the department's legal officer, local prosecutor and/or state laws.

Depending on the laws of the jurisdiction and policy of the agency, officers may want to consider asking the victim to sign a consent form prior to making the pretext call. This form can also include language to protect the officers, agency and employing jurisdiction from potential liability in relation to any later claims by the victim, such as claims relating to emotional injury.

No two cases are alike. Some suspects are extremely dangerous and associate with other dangerous people. This *Training Key* provides some suggestions for the investigator to consider. However, the foremost consideration must be the safety of the victim. No set of suggestions could address all the safety issues that might arise in a given case. Therefore, as with any investigative step, the investigator should proceed with caution.

Necessary Equipment

Standard audio cassette recorder. The recorder should have a microphone input jack and an ear plug jack. Handheld recorders work well, as pretext calls are frequently made from locations other than the investigator's office.

Ear plug. An ear plug allows the investigator to listen to both parties to the call while the call is in progress.

A device to connect the tape recorder to the phone for recording purposes. Specifically, a phone recording control device that connects directly between the phone line and the modular jack on the phone. It also plugs into the microphone/input jack of the tape recorder. This device is simple to use and provides dependable recording and excellent audio pick-up of both parties to the call. It can be purchased at electronic equipment stores for approximately \$20. Avoid using the suction cup devices sometimes used to record calls as they can result in poor quality tapes or worse. For example, in

some cases such devices have only recorded the voice of the witness working with the police and not the suspect's voice.

Victim Interview and Related Considerations

It is imperative that the investigator interview the victim in detail before making a pretext call. Information obtained from the interview will help the investigator formulate questions for the victim to ask the suspect. The information will also help the investigator analyze the statements made by the suspect during the recorded pretext call. The investigator should be familiar with all aspects of the case, including witness statements.

An effective pretext call can only be conducted if the victim is willing to cooperate and prepared to encounter the suspect. Keep in mind that it may be too traumatic or embarrassing for some victims to converse with the suspect effectively. And, as previously noted, when deciding whether to make a pretext call, consider the emotional effect the pretext call might have on the victim. If the victim is willing to make a pretext call, consider having a counselor or victim's advocate available to help the victim deal with emotional concerns prior to and immediately after the call.

Undercover Pretext Calls

Depending on the circumstances, the investigator may consider using an undercover police officer (or a friend of the victim) to pose as the victim for purposes of the pretext call. Obviously, if the suspect knows the victim well, the suspect may detect a difference in the voice and undermine the effectiveness of the call. However, the undercover agent or friend might be able to explain that away. For example, the undercover officer or friend might "explain" that she has been upset, has been crying, and/or has not been sleeping well.

During the undercover pretext call, the suspect may request the victim's phone number so that he can call the victim. In planning the undercover pretext call, consideration must be given to a phone number, if any, to give the suspect in the event this happens.

If someone poses as the victim for the purposes of the pretext call, the implications of this to the victim and the victim's safety must be carefully considered, discussed with the victim, and addressed. For example, after the pretext call, the suspect may attempt to make contact with the actual victim. The victim and investigators must be prepared for this possibility.

When to Make the Pretext Call

The best time to make the call will depend upon the circumstances of the case. A pretext call does not have to be initiated immediately following the crime. Indeed, it can be initiated days, weeks, or even months after the incident. In some instances, a long delay may cause the suspect to think he got away with it, and he might be more willing to talk about the incident. Depending on the circumstances, multiple pretext calls may be appropriate.

In lengthy investigations, one should consider initiating the pretext call on a date which coincides with the anniversary date of the crime or on some other date on which the suspect might be thinking about the victim. For example, if the suspect knows the victim well, the victim might call the suspect on the victim's birthday.

Preferably, a pretext call should be made before the suspect becomes aware of the investigation. However, even if the suspect knows of the investigation, a pretext call may be an appropriate tactic, especially in cases where the evidence is not yet strong enough to provide probable cause for a warrant and to potentially obtain a conviction.

When a suspect is represented by an attorney, the legal principles applicable to contacts with represented persons must be followed. Under such circumstances, no direct or indirect contact with the suspect should be undertaken by law enforcement, or anyone working under the direction or control of law enforcement, without the express authorization of a prosecutor.

If the investigator is concerned that the suspect would immediately think that a phone call from the victim is a trap, initiate the call on a weekend, or late at night, when the suspect might be off guard and less suspicious.

If the resources are available, surveil the suspect's house and learn when the suspect normally returns home from work or other activities. Then, on another day, have the surveillance team in place and the victim ready to place the call. When the surveillance team reports that the suspect is home, direct the victim to initiate the call. This procedure may minimize the stress and inconvenience of making a pretext call, only to learn that the suspect is not at home. Also, calling the suspect the moment he gets home from work might catch the suspect off guard. Finally, by using this procedure, the surveillance agents can testify that the suspect was home at the time of the call and, thereby, provide additional evidence that it is the suspect's voice on the tape.

Preparing for the Pretext Call

In sexual assault cases, the victim frequently knows the suspect. Pretext calls can be effectively used in many cases of this type. If the suspect is a complete stranger to the victim, a pretext call may not be possible, as the suspect may become suspicious about how the victim got his phone number. However, if there is not yet enough evidence to proceed further with the investigation, there is little to lose by making the call and concocting a story to ally this suspicion. Be creative. For example, the victim may tell the suspect that a friend of a friend knows him, and that's how she got his number.

Prepare a list of questions and statements the victim can use to encourage the suspect to talk about the incident. Review this list with the victim. It should be made clear to the victim that the purpose of the call is to obtain incriminating statements by the suspect. Formulate questions and statements in anticipation of what the suspect may say to the victim (for example, admissions, denials, apologies, evasiveness). These questions should be recorded on paper so that, if necessary, the victim can refer to them during the call. This could be critical because many victims become nervous during the call and forget what to say. Remind the victim to let the suspect do most of the talking, and to avoid interrupting him.

To help prepare the victim for possible responses by the suspect, practice or role play the questions and potential responses with the victim. This will help the victim avoid sounding like she is reading from a script during the call. The practice sessions should be as realistic as possible, even to the extent of having the victim call the investigator on a different line and converse with the investigator in a manner that simulates what the actual conversation may sound like. The more the victim practices under realistic conditions, the better prepared the victim will be to effectively conduct the pretext call.

During the pretext call the victim should avoid harsh, accusatory questions like, "Why did you rape me!?" A suspect's usual answer to this type of question is, "I didn't rape you." A suspect may admit he took advantage of the unconscious victim, but he doesn't want to be associated with the likes of a rapist or a criminal. Instead, the victim might ask the suspect something like this:

“Why did you have sex with me after I pushed you away and told you to stop?”

or

“You knew I was out of it and didn’t know what was going on, but you had sex with me anyway. Why?”

This type of question is more likely to elicit an incriminating statement. Avoid nebulous questions like, “Why did you do it?” Try to be more specific. A lack of denial by the suspect may be as incriminating as an admission. In some jurisdictions, the laws of evidence have a specific term to describe evidence that establishes that someone failed to deny an accusation under circumstances that called for a denial had the person been innocent. The term for that evidence is an “admission by silence.” See, for example, *United States v. Aponte*, 31 F.3d 86, 87 (2d Cir. 1994).

Under the circumstances, it may be in the public interest for the victim to make misrepresentations to the suspect. For example, if the suspect asks the victim if she told the police what happened, she can tell him, “No.” However, the victim should not make threatening statements such as, “If you don’t admit you raped me, I’m going to call the police and have you arrested.”

When planning a pretext call, one should arrange to place the call from a location that is well-suited for that purpose. For example, some law enforcement agencies have automatic answering devices on their nonundercover phone lines, devices that, among other things, inform the caller that he has reached the law enforcement agency. Because some suspects use Caller ID and automatic return calling, such phone lines should not be used. In most cases, the call can be made from the victim’s residence.

Finally, the victim should not be under the influence of alcohol or drugs that could affect her judgment, thought processes, or emotional stability during the pretext call.

Making the Pretext Call

Following is a short checklist to keep in mind when making a pretext call:

- Make sure there is nothing in the room to distract the victim, such as unnecessary persons or ringing phones. Silence all police radios, cellular phones and beepers. Also, make sure that public address systems, fish tank motors, and anything else that can cause noise or electronic interference are turned off.

- Ensure that the victim is prepared for the various possibilities when placing a call. For example:

- The pretext call may be “answered” by an answering machine.
- The line may be busy.
- The suspect may have call waiting and answer the pretext call while placing someone else on hold.
- Someone other than the suspect may answer, and the suspect may or may not be home.
- The suspect may answer, but other persons may be in the room with the suspect or the suspect may have visitors.
- The suspect may answer, and he may be alone.
- The suspect may answer, and he may be alone, but he may report that he doesn’t have the time to talk.

- If the recorder is battery operated, make sure that fresh batteries are installed.

- Attach the recording equipment to the phone, and test it to make sure it is working properly.

- Attach the ear plug to the recorder in order to listen in on the call.

- Record an introduction on the tape to document the date, time, case number, victim’s name, and other necessary information.

- Before placing the call, double-check the recorder to make sure it is turned on and placed in the record mode.

When the victim reaches the suspect, the investigator should listen carefully to both sides of the conversation and assist the victim by pointing to questions on the list that the victim should ask the suspect. The investigator should have a note pad handy to jot down additional questions that the victim can pose to the suspect as the conversation develops.

Usually a pretext call should not last longer than about 30 minutes. The victim should remain focused on talking about the incident. If the conversation drifts too far into other subject areas the tape may be of little evidentiary value.

Once the call is completed, the tape becomes evidence and should be handled with the same care as any other piece of physical evidence.

Other Considerations

In the event that only a pager number is available for the suspect, it may be necessary to wait with the victim by the phone until the suspect calls back. If, within a reasonable period of time, the wait is deemed to be too time consuming or unproductive, consideration should be given to installing recording equipment on the victim’s phone and leaving the equipment with the victim in case the suspect should call her at a later time. In this situation, the victim is acting as an agent of the police. While this procedure is valid in some jurisdictions it may not be in others. Prior to utilizing this procedure, investigators should be assured that it is legally acceptable in their jurisdiction.

If the recorder is attached to the victim’s phone and is left with the victim, responsible officers should do the following.

- Give the victim thorough instructions on how to operate the recorder.

- For evidentiary purposes, carefully test the device, ensure that it is able to record sound, instruct the victim on how to use the device and then document that you performed these steps.

- If the victim has more than one phone, remind the victim of the fact that she will need to remember to pick up only the phone that is connected to the recording device. Otherwise the victim will need to give an excuse to the suspect to explain why she needs to change phones.

- If the victim disconnects all her phones except the one with the recording device, the victim will not have to worry about picking up the wrong phone.

Again, consider the victim’s emotional state when deciding whether she is capable of talking to the suspect without your presence, support, and assistance.

Leaving a recording device attached to the victim’s phone. Perpetrators have been known to initiate contacts with their victims. If this is a possibility, consideration should be given to attaching the recorder to the victim’s phone as soon as possible. Likewise, even if the suspect has already been arrested for the rape, consider attaching a recorder to the victim’s phone if there is any reason to believe that the suspect or one of his associates may try to call her. Keep in mind that a defendant, even a defendant in jail, may be both interested in and capable of calling his victim.

If there is a possibility that the suspect or one of his acquaintances may visit the residence of the victim, consideration must be given to hide the recording equipment. This situation could arise in a variety of circumstances, particularly when the victim and the suspect are acquainted, have friends or acquaintances in common, or are members of the same family. The safety of the victim is of particular concern in this regard. It is not meant to suggest that the victim try to record a face-to-face conversation with the suspect, which may present practical, safety and legal issues.

If later the victim is able to complete the pretext call, the tape should be retrieved as soon as possible to prevent loss or accidental destruction and to minimize evidentiary challenges relating to alleged tampering or chain-of-custody issues. Normal chain-of-custody procedures should be followed.

The following is a transcript of an actual pretext phone call used in a sexual assault investigation.

POLICE DEPARTMENT INVESTIGATOR'S REPORT

Date (occur):

Time (occur):

Location:

Subject: PD Crime Case #

Detective's Name:

Today's date is December 3, 2000, time is 1630 hours. I am with [victim's name] and we will be attempting a pre-text phone call to [suspect's name].

V:denotes victim

S:denotes suspect

V:Hello?

S:Did somebody page?

V:Gerald?

S:Yes.

V:Hi.

S:What up?

V:How are you?

S:Um. Fine. Getting ready to go to work.

V:Oh, you are? Can you talk for like a few seconds or minutes?

S:Okay.

V:Um, you know how you didn't use a condom?

S:Um-hmmm.

V:Um. I'm like worried cause I was supposed to like start my period like last weekend.

S:Well then you go down to Planned Parenthood. And tell them the situation and they can give you something to take care of that if, in fact, you are.

V:Well. I don't like have any money.

S:It doesn't cost you anything.

V:Oh, it doesn't?

S:No.

V:Well, what should I do if I am?

S:You tell them the situation.

V:Uh-huh.

S:What they do...tell them you need the morning after pill and they'll give it to you and you take what you have to take and it'll induce your period. In other words, it'll make you have your period. Within seven days.

V:Oh.

S:But just go in there and you fill out paperwork and tell them you don't have any insurance and you don't want your parents to know about it and if they ask you where can they contact you at, you tell them to contact you on your pager. And then you tell them...fill out all the information...and then you tell them what the situation is, they'll check you out. They'll give you a pregnancy test and then just tell them you need the morning after pill. You take it like you're supposed to and what it does is, it causes you to have your period.

V:Well, um, so...you're saying I should like have an abortion like.

S:Well, it's not necessarily an abortion, but it just prevents you from, your body to accepting it, if, in fact, you are pregnant. It just prevents your body from accepting it.

V:Well, could I go like do that alone? Cause you know I'm only 15 and so...

S:You can do it alone because when I told Ann, like, you know, Ann had the same problem when she went out with this one guy. A different Ann, not the Ann that Nadia knows, a different Ann. And uh, she had a problem, the same thing, and she thought she might have missed her period, but it was somewhat normal and you can miss your period for like a week or two. What she did was, after she missed it, a couple days, she went down to Planned Parenthood and said that she's only 14, I think. Yeah, 14 or 15, something like that. She went down and told them she didn't want her parents knowing because they didn't know she was having sex and so she went down and then she told them she needed the morning after pill because she might, she might be and she can't have it. She said, "I don't want my boyfriend knowing about it. You know the guy I had sex with" and so she went down and they gave her the morning after pill and she took it, like seven pills you have to take, and then you take it. And then what happens is it makes your body start having like your normal period.

V:Then when we had sex, did you pull out when you comed.

S:Yes, I did.

V:Okay.

S:But, it isn't abnormal that you miss your period because she missed hers like by a week. She got worried, she went in and she took this. They're like, there are several pills you take, they give you in a little packet, it doesn't cost you anything. They ask for you to make a donation, but what you do is, you take it. And it starts making you like having your period. And you have them for like seven days. Cause, how long is your normal period?

V:Um, about six days.

S:Six days? Okay. You'll be on it for about seven days, seven to eight days, somewhere around there. And then after you take for...you just read the directions, you take it and once it's gone, it's, that's it.

V:Well, also Ann is kinda worried that she has an STD and she doesn't know if it's from you or Tim, but it could be from you because I'm kind of hurting down there too.

S:Well, it isn't from me because I just got my test results back. They did a physical. And they do a full physical and so and they did a blood test and a urine test and I came with nothing.

V: Did you wear a condom when you had sex with Ann?

S:What?

V:Did you wear a condom when you had sex with Ann?

S:Um, first time yes, second time, no. But the second time was on the same day, I think it was.

V:Yeah?

S:But she said that she...first of all, I don't think she has an STD. First of all, I think it's because, when usually, when somebody has sex with someone who is, well, a lot larger than somebody they had sex with before, it does hurt, because when I had sex with Nadia, she said it hurt for like a couple hours and then like the first time, she said it hurt for a couple days. When I had sex with her, she said it hurt for a couple days. But, I don't have anything because I just got my test results back yesterday. I don't have anything. I gotta go back in on December 8th, to take another physical for my doctor.

V:Uh-huh.

S:That includes also they do blood, they do a blood test.

V:All right. Well, I better...

S:I'm fine. Tim you probably have to worry about. Uh, she told me that she didn't have sex, like she didn't have sex with Tim because he just couldn't get it up. And that day, after that, the day that she had sex with Tim, she had sex after I had sex with her.

V:Um-hmmm.

S:So, if she contracted something, that would be on her.

V:Um-hmmm.

S:Because...is it still hurting?

V:For who?

S:It is?

V:For me?

S:Yeah.

V:Yeah.

S:So like what kind of pain do you feel?

V:Well, like it hurts for me to go pee and like it stings really...

S:...a urinary infection.

V:Hmm.

S:The only thing you can really catch from a guy is like gonorrhea, but it wouldn't affect your urine. That's more of a bladder type of infection. The only thing you can really catch from a guy is like

crabs or um, it is possible to catch like gonorrhea, but girls don't get the same as guys do, it doesn't hurt when you pee, that's a bladder infection.

V:Gerald?

S:What?

V:I gotta go because my parents are gonna be home soon. I'll go to Planned Parenthood and I'll tell you if I am or not. Okay?

S:Okay. And if you don't want to have it, like you don't want to keep it. Then uh, go down to Planned Parenthood and tell them, you know, if you are, in fact, and that pill thing doesn't work.

V:Um-hmmm.

S:Then...I don't see why it wouldn't, but if it doesn't work and you want to have an abortion, go to Planned Parenthood and tell them you want to have an abortion and you can't afford it and they'll take care of it.

V:Okay.

S:But let me know what's going on either way. Okay?

V:All right.

S:I got to get going to work. Okay?

V:Uh-huh.

S:Okay, bye.

V:Bye.

Acknowledgement

Detective Harold Eisenga, San Diego, California, Police Department Sex Crimes Unit prepared this *Training Key*.

The author wishes to thank the following persons for assistance in reviewing this document: FBI Behavioral Science Unit, Supervisory Special Agents Joe Harpold, Sharon Smith, George DeShazor and Unit Chief Stephen Band, Ph.D. Also, special thanks to Robert Lipman, a trial attorney with the Narcotic & Dangerous Drug Section of the Criminal Division of the U.S. Department of Justice, all of whom provided invaluable input to the development of this document.

questions

The following questions are based on information in this *Training Key*. Select the one best answer for each question.

1. Which of the following is *false* concerning pretext phone calls?
 - (a) A pretext phone call should be made before the suspect becomes aware of the investigation.
 - (b) The victim has to be present while the pretext phone call is made.
 - (c) The investigator must interview the victim in detail before making a pretext call.
 - (d) Some states prohibit recording phone calls.
2. When is the best time to make a pretext phone call?
 - (a) Between 2-3 days of the reported incident.
 - (b) Between 2-3 months after the reported incident.
 - (c) On the 1 year anniversary that the incident took place.
 - (d) The best time to call will depend on the circumstances of each individual case.
3. Which of the following is the purpose of using a pretext phone call?
 - (a) To determine whether the victim is telling the truth.
 - (b) To determine what other criminal activity the suspect is involved in.
 - (c) To provide an opportunity for the victim to confront the suspect.
 - (d) To elicit incriminating statements from the suspect.

answers

1. (b) The victim has to be present while the pretext call is made. This is false; a victim does not have to be present, in fact, the pretext phone call can be made by an undercover officer.
2. (d) The best time to call will depend on the circumstances of each individual case.
3. (d) The pretext phone call is used to elicit incriminating statements from the suspect.

have you read...?

“Investigating Sexual Assaults Part I: Elements of Sexual Assault & Initial Response” International Association of Chiefs of Police, *Training Key #571*, Alexandria, VA 22314 (2004).

This document addresses investigative procedures and best practices for investigating sexual assaults and working with victims of sexual violence.





IACP Sexual Assault Incident Reports

INVESTIGATIVE STRATEGIES

The following guidelines and interview strategies are based upon national best practices regarding sexual assault incident investigations and were developed in collaboration with local, state, and federal law enforcement, prosecutors, advocates, medical, and forensic professionals. The goal of these guidelines is to support officers and departments in preparing sexual assault cases for successful prosecution through detailed case documentation and thorough investigations.

NOTE: These guidelines are not intended for use when the victim is a minor.

Standardizing Case Coding and Clearance Practices

Throughout the country sexual assault cases are coded according to different criteria using varied terminology, resulting in confusion and miscommunication within the criminal justice system about these crimes. With the goal of building stronger sexual assault cases and attaining higher rates of prosecution, uniformity in case coding terminology and reporting procedures will create common professional standards.

Assign a tracking number for every reported sexual assault offense and document each report in writing.

- Even if an incident does not meet the elements of a sexual offense, a written report should be saved as an information report. Preserving information reports affords potential pattern identification with serial offenders, a return to cases as more information develops, and promotes supervisory review.

All reports should be taken as valid unless evidence proves otherwise.

- Do not rush to decide if a report is an information or crime report. This decision should be based on evidence collected through the investigation.
- A report should not be labeled “false” or unfounded as a result of the initial victim interview or perceived victim reaction to the sexual assault.
- Victims of sexual assault may recant or decline prosecution for various reasons (e.g. fear of retaliation by the offender, concern about not being believed, hesitancy regarding the criminal justice system, and loss of privacy). A victim’s reluctance to participate is neither indicative of a false report nor reason to forego a strong, evidence-based investigation.
- Case coding and clearance decisions should be based on careful analysis of evidence identified through an investigation.

Case Cleared: An open case is investigated and proceeds through the criminal justice system, or no formal charges are issued due to elements beyond law enforcement control (i.e. death of offender, prosecutor declines to take the case after an offender has been identified, offender is arrested but will be prosecuted in a different jurisdiction).

Case Inactivated/Unsubstantiated Report: A case is removed from the active caseload but remains technically open pending possible future investigative developments.

Information Report: Incident that does not currently meet the elements of a crime but the information is filed/preserved for future evidence or criminal connections.

Case Unfounded: An investigation shows that an offense was not committed or attempted. Cases can be coded as unfounded because they are either baseless or false.

Unfounded, baseless: A case does not meet the elements of a crime or was improperly coded as a sexual assault.

Unfounded, false: Evidence obtained through an investigation shows that a crime was not committed or attempted.

Report Writing

Strong sexual assault cases require strong written reports. A thorough report will identify on-scene evidence and document details from the victim's and suspect's accounts of the incident. This will assist those investigating to overcome consent challenges and serve to refresh memories for court testimony. A high level of detail in the report and in the officer narrative will help move a case towards prosecution.

When writing the report:

Ask the victim to describe the assault, listing as many details and feelings as possible.

- It is critical to capture the details necessary to establish elements such as premeditation/grooming behavior by the perpetrator, coercion, threats and/or force, and traumatic reaction during and after the incident (e.g. demeanor, emotional response, changes in routines or habits).
- Document the elements of the crime by asking the victim to tell you what they thought, felt, and feared at the time of the assault.
 - What was the victim experiencing before, during, and after the sexual assault?
 - What did the victim see, smell, taste, hear, or touch during the incident?
- Document the victim's condition as observed.
- Fully document fear by recording all fight, flight, or freeze reactions the victim exhibited. For example, the victim may describe feeling unable to move.
- Silence is not consent. "No" or resistance is communicated through more than just words. Detail and corroborate what "No" looked or felt like for the individual victim in your report (e.g. looking away, closing eyes, positioning or moving body).

- Create a timeline to show trauma/post-assault behavior of the victim in context of previous behavior. For example, document dramatic physical changes such as weight loss/gain or reported changes in daily routines and/or work performance.

Document all information given by the victim, even if it does not cast them in the best light.

- The reality is that victims who may be judged as unreliable witnesses may have been chosen by the perpetrator for that reason.
- Use the victim's exact words and place those words in quotations. Do not sanitize or "clean-up" the language used by the victim. Altered language may be used against the victim or officer in court.
- Every effort should be made to exclude officer opinion in the written report and to avoid asking leading questions. This can compromise the integrity of the entire report and the credibility of the victim and officer. It is normal for a victim to not know or remember complete details; do not try to fill in the gaps for them.
- If the victim was incapacitated as a result of voluntary alcohol or drug use, show why this is an issue of increased vulnerability rather than culpability.

Report Writing Considerations and Potential Suspect Defenses

The following are four common sexual assault defenses and strategies to counter these defenses in the written case report.

Denial: Collect and document evidence to establish that (nonconsensual) sexual contact did occur

Identity: Collect and preserve DNA samples from the victim and suspect, and other physical evidence from the crime scene(s); document witness statements

Consent: Document fear, force, threat, coercion and/or inability to consent

Impeachment by Contradiction: Document any changes in victim/witness statements, especially as additional details are recalled following the initial trauma/shock of the assault

NOTE: Because the majority of sexual assaults are perpetrated by someone the victim knows (even if just briefly or casually), the difficulties in prosecution are not based upon whether the correct suspect has been identified or sexual contact occurred. The burden for the prosecution is proving that the **act was non-consensual** (i.e. the perpetrator claims that the contact was consensual).

If the facts obtained from the investigation indicate use of force by the perpetrator, document using language that reflects this.

- If at some point a consensual encounter turned non-consensual, ask the victim to describe details about how and when the perpetrator's behavior changed.
- Documentation should reflect a lack of consent. Avoid wording that implies consent. For instance, "he forced his penis into her vagina" denotes lack of consent while "he had sex with her" implies consensual intercourse.
- In documenting force, be specific. "He threatened me" is vague. List the specific threats that were made, tones used, gestures and/or looks given.
- Victims may not be able to resist physically. This may be an indicator of force or fear and should be documented.
- Perpetrators of sexual assault generally use only as much violence as needed to attain submission. Force

or violence may not be overt if the perpetrator can commit the crime by using lesser means (i.e. a weapon isn't needed when you can use threats, alcohol, etc.)

- The mere presence of a perpetrator and/or the verbal tactics they employ can be seen as force and should be documented as such. An example of this is the *Use of Force Continuum* utilized by law enforcement that starts with the mere presence of an officer, followed by verbal commands. Should an individual comply with either of these, no additional force would be needed or justified.

If your department has specialized investigators:

- The first responder should conduct a preliminary interview gathering just enough information to determine whether the elements of a crime have been met and by whom.
- The in-depth interview should be left to the investigator in order to decrease account repetition and reduce the possibility of inconsistent information that could be used against the victim's credibility in court.

Victim Interview

Due to the particularly intimate and intrusive nature of sexual assault, the interview process may be difficult both for the victim and the officer. Recognize the significance the victim's initial contact with first responders and investigators will have on their trust in the criminal justice system. The treatment the victim receives during the interview may impact the victim's decision to go forward with the case.

To gather information from the victim, it is important to:

Respect the victim's immediate priorities.

- Attend to the victim's immediate health and safety concerns and questions about reporting and the criminal justice process before beginning the interview.
- Victims have a right to accept or decline all services. This does not mean that a thorough investigation should not be conducted.
- Help victims gain back a sense of control by involving them in the decision of when and where to hold the interview.

Build a rapport with the victim.

- Victims may know little about the investigative process and may find the criminal justice system confusing, intimidating, or even frightening. Explain all processes during each step of the interview and investigation. This creates transparency and trust for the victim while helping to restore the victim's sense of control.

- Assure the victim that they will not be judged and that the information reported is being taken seriously.

- Victims of sexual assault often blame themselves. Reassure victims that, regardless of their behavior, no one has the right to sexually assault them.

Ask the victim if they would like to have a support person present for the interview.

- It is best practice to allow victims to have an advocate or a support person of their choosing present during the medical exam and/or law enforcement interview. Ask the victim privately who they would like present and take action to support their wishes.
- While victims are entitled to have someone with them during the interview, look for signs of:
 - Hesitation from the victim in revealing all of the details of the assault in front of someone with whom they are close, like a spouse or parent.
 - Controlling or intimidating behavior by the support person towards the victim.
- Provide victims with written contact information for community referrals.

Forensic Medical Exam Payment

Under a provision of the VAWA Reauthorization Act of 2005 (U.S.C.A. § 3796gg), states must ensure that victims of sexual assault have access to a forensic medical exam, free of charge or with full reimbursement, even if the victim chooses not to report the crime to the police or otherwise participate with law enforcement authorities or the criminal justice system.

To be eligible for VAWA S.T.O.P. formula grant funds, all states must be able to certify in good faith that they are in compliance with the statutory eligibility requirements within VAWA on or before January 5, 2009.

Information about this 2005 statute and additional up-to-date information is available at: www.mcasa.org/C/4/C4.htm or at www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf

Recognize the impact of trauma and how this affects an individual's behavior.

- People react differently to trauma. Lack of emotion or the presence of emotion is not an indicator of the legitimacy of the assault, and either is common.
- Research shows that most victims of sexual assault never make a report to law enforcement. Of the victims who report, the majority do so after some delay. A delay in reporting should never deter a thorough investigation. A skillful prosecutor will be able to overcome any disadvantage a delay in reporting might cause when making the case in court.
- Most victims experience continuing trauma which may affect their physical, emotional, social, and economic state of being.
- Victims may experience difficulty remembering all the details of the sexual assault due to traumatic response. This does not mean they are lying or leaving out details intentionally. Often with time and as trauma recedes, details will emerge.
- After sufficient time to conduct a thorough investigation, schedule a follow-up interview to gather any information the victim may have missed or not recalled earlier and to ask about or clarify additional information learned.
 - Unless there are exigent circumstances requiring an arrest or identification, delaying the follow-up interview will generally enhance the investigation and the quality of information obtained.

Do not polygraph victims.

- The practice of submitting victims of sexual assault to a polygraph exam intimidates victims and destroys the trust victims and the community have with law enforcement. Polygraphing negatively affects law enforcement's chance to successfully investigate sexual assault crimes.

- It is important to note that the 2005 federal Violence Against Women Act has mandated that jurisdictions will no longer be eligible for S.T.O.P. formula grant funds if their policy or practice is to ask or require adult, youth, or child victims of sexual assault to submit to a polygraph examination or other truth telling device as a condition for taking the report, proceeding with the investigation of the crime, or pursuing charges.

Provide victims with information on how to obtain medical treatment and undergo a forensic exam.

- Explain the medical significance of a sexual assault forensic examination, including testing for sexually transmitted infections and HIV.
- Notify the victim of locations where a sexual assault forensic examination is available in the community. If department policy allows, transport the victim to the local rape crisis center or hospital.
- Should a victim initially decline a forensic medical examination, provide information as to where the victim may obtain an exam at a later time.
- Physical evidence can be collected up to 120 hours (in some states) following a sexual assault. The victim should be advised, however, that critical physical evidence and documentation of injuries may be lost with a delayed exam.

Do not pressure the victim to make any decisions regarding participation in the investigation or prosecution during the initial interview or initial stages of the investigation.

- Sexual assault victims are often reluctant to actively participate with case proceedings. Document any information the victim shares, as this may aid in the identification and apprehension of a serial offender.

- A victim's right to change their mind regarding moving forward with the investigation and prosecution should only be constrained by the statute of limitations. Even then, the victim may serve as a witness in another case involving the same suspect, so an interview and investigation should always be conducted.

- Pressuring a reluctant victim to sign a form stating that they are not interested in prosecution and will not hold the agency accountable for stopping the investigation is poor practice and is potentially damaging to an agency.
- Victim follow-up builds trust with victims and sends a message to the community about the seriousness with which an agency handles sexual assault crimes.

Suspect Interrogation

While investigative emphasis has historically focused on the victim's behavior, the reality of these crimes is that the suspect is often known to the victim and thus can be identified easily. An effective investigation will concentrate on gathering as much evidence as possible on the suspect.

Focus the investigation on the suspect rather than the victim.

- As with other crimes, focus should remain on the suspect, not on the victim's character, behavior, or credibility.
- If the suspect invokes the constitutional right to remain silent, investigating officers must still evaluate the circumstances of the assault in order to anticipate the suspect's defense strategy.

Allow the suspect ample opportunity to give an account of the incident.

- Many perpetrators of sexual assault will provide information in an attempt to justify their actions.

- Pretext phone calls are a strong tool to be considered when the victim and suspect know each other. The transcript from a monitored call can provide useful evidence as facts are corroborated and the suspect makes admissions or gives improbable statements. (See *Resources*, page 8)

Obtain consent or acquire a court order to secure a suspect forensic exam for probative evidence.

- Like the victim, the suspect's body carries evidence and can potentially confirm aspects of the victim's account (e.g. identifying marks, injuries).
- In some jurisdictions, a suspect forensic exam can be done incident to arrest or by requesting a court order for non-testimonial evidence.

Non-Stranger Sexual Assault

It is important for law enforcement to recognize that "stranger rape" (when the perpetrator is a complete stranger to the victim) is not the norm. 2005 Bureau of Justice Statistics indicate that 73% of reported female rape or sexual assault victims were assaulted by someone they knew. A non-stranger can be anyone who is in some way known to the victim. While it may be someone with whom the victim has had a long-standing relationship or friendship, it could also be someone who has made himself known to the victim within hours of the assault or someone who has established a casual acquaintance.

Investigation

Strong sexual assault investigations are supported by physical evidence and do not rely solely on the victim or the perceived credibility of the victim. Remember, the overall intent of any investigation is to be fair, balanced, and thorough. Gather all physical and testimonial evidence.

Build trust by partnering with the victim, showing respect, and remaining non-judgmental.

- A victim-centered approach will aid the interview process and allow for as much evidence to be gathered as possible.
- In most cases the suspect is familiar to the victim, so the victim may be able provide corroborating details and evidence.
- Remind the victim that, due to the nature of trauma, it is typical not to remember all of the details of the sexual assault. Think out loud with the victim to identify new information in the victim's account that may be used as evidence. This process may help jog additional memories.

Thoroughly investigate and document the suspect's conduct prior to the assault.

- Grooming behavior which may be indicative of premeditation is often used to test, select, and isolate victims and to make the potential victim feel comfortable and able to trust the perpetrator.
 - Why did the suspect choose this victim?
What might make her/him less credible and/or more vulnerable?
 - How did the suspect create a situation to build trust?
 - Did the suspect monitor the victim physically or through electronic means?
 - What was the role of alcohol and/or drugs?
 - Did the suspect isolate or attempt to isolate the victim?
 - Why was the specific location for the assault chosen?
- Sexual assault cases are typically portrayed as “he said/she said” but in reality are often “he said/**they said**” cases. Perpetrators of this crime frequently have a history of acts of sexual violence. Previously unreported offenses may be found by interviewing the suspect's social circles, current and former partners.

- Prior victims should be interviewed and their statements included in the current investigation.

Do not overlook the importance of witness statements/testimony.

- Victims will often confide in someone (e.g. a close friend). These individuals are considered “outcry witnesses” and their statement can provide powerful corroboration.
- Suspects often boast or brag about their sexual encounters to a friend or friends. These individuals are also considered “outcry witness” and their statement(s) can provide powerful corroboration of the details of the assault.

Keep in mind the co-occurring nature of violence against women crimes. What other crimes may have been committed?

- Sexual assault may occur in the context of domestic violence.
- Monitoring and surveillance are often pre-cursors to sexual assault. Look to see if stalking charges may apply.
- Remain open to the possibility of drug-facilitated sexual assault. Victims of a drug-facilitated assault may report black-outs, gaps in time and memory, and a general uncertainty as to whether or not an assault occurred.
- Additional crimes to look for include: theft, property damage, false imprisonment, human trafficking, kidnapping, abduction, administering an illegal substance, poisoning, witness tampering, etc.

Ensure every report, including every information report, is reviewed.

- Establish and train officers on guidelines and procedures adopted by the agency.
- Create a system to review the coding and clearing of sexual assault cases with particular attention to reports determined to be false or unfounded.

Working With Vulnerable Populations

Predators prey upon the vulnerabilities of others; therefore, victimization is often higher among certain populations. When investigating a sexual assault, be aware of particular issues that may face certain populations (i.e. age, culture, disabilities, gender, language) and how this might affect the way a victim makes decisions and responds to law enforcement.

Examples of vulnerable populations include:

- American Indians
- Immigrants, documented and undocumented
- Individuals in prostitution
- Individuals with disabilities
- Individuals with substance addictions
- Individuals with limited English proficiency
- Individuals who have previously been sexually assaulted
- Lesbian, gay, bisexual, transgender individuals
- Minors
- Senior citizens

A few tips to keep in mind:

- Not all disabilities are visible. Victims may have physical, sensory, or mental disabilities, or a combination of disabilities.
- Culture can influence how people view or understand “sexual assault” and feel about law enforcement. Be aware that beliefs about gender, sexuality, sexual orientation, race, religion, etc. may vary greatly between cultures.
- Questions about sexual assault are very intimate and may be difficult to discuss. Such a personal violation may create feelings of embarrassment and shame. These feelings may be intensified in some cultures such as those where the loss of virginity prior to marriage can be socially devastating.
- American Indian communities may have their own laws regarding sexual assault in addition to or in place of relevant state or federal laws.
- If English is not the victim’s first language, offer to arrange unbiased, independent translation. Do not rely on family members, children, the suspect, or any other associated parties to serve as an interpreter.
- Those who are lesbian, gay, bisexual and transgender identified may have specific privacy needs depending on whether the individual is “out” to others in their lives. Sensitivity and awareness about the particular obstacles and barriers victims of same-sex sexual assault face in reporting is of critical importance.

IACP Resources

To obtain electronic or printed copies of the following resources at no cost, visit www.theiacp.org or email stopviolence@theiacp.org.

Tools

- IACP Sexual Assault Supplemental Report Form, 2008

Model Policy

- Investigating Sexual Assault, IACP Model Policy & Concepts and Issues Paper, 2005

Training Keys

- “Investigating Sexual Assault Part I: Elements of Sexual Assault & Initial Response”, IACP Training Key # 571, 2004
- “Investigating Sexual Assault Part II: Investigative Procedures”, IACP Training Key # 572, 2004
- “Investigating Sexual Assault Part III: Investigative Strategy & Prosecution”, IACP Training Key # 573, 2004
- “Pretext Phone Calls in Sexual Assault Investigations”, IACP Training Key # 574, 2004

Every effort has been made to ensure that this document reflects the most current thinking and comprehensive information on the crime of sexual assault. A wide array of feedback was solicited, and many subject matter experts contributed their knowledge. In particular, we appreciate and acknowledge the contributions of: Joanne Archambault, Kim Lonsway, and Anne Munch.

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Addressing Sexual Offenses and Misconduct by Law Enforcement:

EXECUTIVE GUIDE



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Professor Roger Goldman

Saint Louis University School of Law

Dr. Lorraine W. Greene, Psychologist

Metropolitan Nashville Police

Chief Kimberly S. Lettner

Virginia Division of Capitol Police

Rachel Lloyd, Executive Director

Girls Educational and Mentoring Services

Timothy Maher, Director

Outreach Program, University of Missouri-St Louis

Chief Russell Martin

Delaware Police Department

Susan Nichols, Director

ILETSB Executive Institute, Western Illinois University

Chief David W. Nye

Fredericksburg Police Department

Susan D. Reed, Criminal District Attorney

Bexar County District Attorney's Office

Major Charles Skurkis

Pennsylvania State Police Department

Patsy Taylor, Director

Louisiana Protective Order Registry

Major Hector Velez

Prince George's County Police Department

Professor Samuel Walker

School of Criminology, University of Nebraska

Susan Weinstein, Writer/Researcher

Grand Strategies, Inc

IACP Fellows

Jeffrey Ebersole

Captain – Loudoun County Sheriff's Office

Fellow – IACP Research Directorate

Charles Hoffman

Lieutenant – Prince William County Police Department

Fellow – IACP Research Directorate

IACP Project Staff

Deborah Chandler,

Former Policy and Training Coordinator

Aviva Kurash, Program Manager

Michael Rizzo, Project Manager

Nancy Turner, Sr. Program Manager

IACP Executive Staff

Daniel Rosenblatt, Executive Director

James McMahon, Deputy Executive Director

John Firman, Research Center Director

IACP National Working Group on Sexual Offenses by Police Officers

Carrie Abner, Project Director

Council of State Governments

American Probation & Parole Association

Dan Clark, Director of Professional Training

Cleveland Rape Crisis Center

Tracy Dahmer Farris, Director

Domestic Violence and Sexual Assault Project

LA Dept of Justice, Office of Attorney General

Chief Bernadette DiPino

Ocean City Police Department

Chief Judge Arthur Gamble

Polk County Courthouse

Lieutenant Terence M. Gibbs

Philadelphia Police Department

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“It is imperative to the protection of citizens’ civil rights and the trust communities place in law enforcement that policies be adopted as part of a clear statement that sexual misconduct will not be tolerated.”

—Chief David Nye, Fredericksburg Police Department, VA

Introduction

The problem of sexual misconduct by officers warrants the full attention of law enforcement leadership. It represents a grave abuse of authority and a violation of the civil rights of those victimized.* Law enforcement agencies and executives have a duty to prevent sexual victimization, to ensure it is not perpetrated by their officers, and to take every step possible to ensure the safety and dignity of everyone in the community.

When an incident of sexual misconduct involving a law enforcement officer is reported, it presents one of the most difficult challenges a law enforcement executive can face. Therefore, it is imperative that executives prepare through agency mission, policy, and training to proactively address and prevent incidents. Leaders must demonstrate to their officers and their community a consistent, focused effort to identify and eliminate misconduct through the institutionalization of a zero tolerance position.

Sexual misconduct within an agency may be indicative of a need for systemic and cultural changes. Creating and implementing a policy are key steps to ensure an agency is prepared to respond to allegations, reinforce officer accountability, and ultimately prevent abuses of power.

Accountability of Law Enforcement: Under the ‘Color of Law’

* According to 18 U.S.C. § 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten or intimidate another person in the free exercise of any right or privilege provided to another by the Constitution or laws of the United States. Similarly, 18 U.S.C. § 242 makes it a crime for a person who is acting under the color of law to willfully deprive another person of any right or privilege provided to another by the Constitution or laws of the United States. Under § 242, acts performed under the “color of law” include those conducted by federal, state, and local law enforcement officials within their lawful authority and any act conducted while the official is pretending to act in accordance with his or her official duties. The types of misconduct covered by these laws include: excessive force, sexual assault, intentional false arrest, and the intentional fabrication of evidence resulting in a loss of liberty to another. Enforcement of these provisions does not require that any racial, religious, or other discriminatory motive exists.

How to Use this Guide

This guide has been created to promote an understanding of the complexities of sexual offense and misconduct cases involving officers and to encourage the proactive adoption of policy and prevention efforts within law enforcement agencies.

Within this guide, references to misconduct are intended to encompass criminal offenses as well as non-criminal sexual conduct that is inappropriate, unprofessional, and damaging to the public confidence in the department.

This guide’s reference to officers is intended as an inclusive term for all sworn agency employees. Departments are encouraged to apply these strategies to all employees, civilian and sworn, as appropriate.

Background

Recurring accusations of sexual offenses implicating law enforcement officers were noted with concern by the Office on Violence Against Women of the U.S. Department of Justice which funded the IACP to examine the problem of sexual offenses and misconduct and to develop resources to assist law enforcement leaders in investigating and preventing incidents.

IACP's work in the 1990's to address domestic violence committed by law enforcement officers uniquely situated the Association to explore this serious problem and issue recommendations to the field. In 2007 the IACP hosted a roundtable discussion during the Association's 114th Annual Conference in New Orleans to learn from department leaders about situations they confronted and the resulting problems. Over seventy executives chose to attend this moderated discussion that was closed to the media. The range of concerns and incidents many had faced in their own agencies made it clear that sexual offenses and sexual misconduct committed while officers were on or off duty necessitated focused attention and a proactive response.

As a leadership organization with a history of addressing difficult issues in law enforcement including civil rights, racial profiling, immigration, and the use of force, the IACP took on the work of addressing sexual offenses and sexual misconduct committed by officers with an intent to develop tools to assist the profession and prevent abuses of power. Building from a variety of tools created to address the crime of sexual assault including Sexual Assault Investigative Guidelines, a Model Policy on Sexual Assault, and a roll call training video on preparing sexual assault cases for effective prosecution, the IACP assembled a multidisciplinary working group to guide efforts to examine sexual offenses committed by law enforcement officers. Through a process of study and discussion, the working group drafted this guide to assist executives. Following outside review by victim advocacy and criminal justice professionals, including some law enforcement leaders who attended a 2007 roundtable discussion on this matter and others who are alumni of the IACP's National Law Enforcement Leadership Institute on Violence Against Women, recommendations were explored and this guide finalized.

Overview

The Reality Facing Law Enforcement

While the vast majority of law enforcement personnel perform honorable and conscientious work on a daily basis, the reputation of their respected profession is tarnished by just one incident of sexual misconduct.

Cases of sexual misconduct committed by law enforcement grab the attention of the public and media because such offenses are particularly egregious violations of trust and authority. Situations where officers engage in sexual misconduct and victimize those they are sworn to protect and serve amount to civil rights violations. Reported and investigated cases of sexual misconduct by officers appear all too frequently in the news. Regardless of the rate of occurrence, the problem is real.

Headlines

The following sample of 2009 and 2010 cases in the news highlights the variety of ways sexual misconduct by law enforcement can manifest itself.

- After a sheriff from an agency in a great plains state was sentenced to 79 years in prison for sexually abusing numerous female inmates and drug court defendants, the municipality was found liable for \$10 million in damages.
- A police chief and assistant chief from a small department in the midwest were each sentenced to 25 years in prison for raping a woman in a bar after hours while off duty. The convictions, which

were supported by evidence including admissions, require them to serve at least 14 years before being eligible for parole, and they will be on the state sex offender registry for the rest of their lives.

- Following an investigation by the FBI, an officer with a west coast agency received a nine year federal prison sentence for sexually assaulting a motorist and violating her civil rights. The officer admitted in court that he took the victim in his patrol car to an isolated parking lot away from the traffic stop and assaulted her while armed and in his full police uniform. The victim left her job after the officer twice went to her workplace to warn her he was watching her.
- A police officer from an agency in the west received one year in jail for fondling a woman he had in custody and was transporting to a hospital for a psychiatric evaluation. The department had previously received a complaint that this officer made sexual comments to a woman during a traffic stop.
- A major city police department in the eastern United States settled a lawsuit alleging that an off-duty officer who was in uniform working security at a nightclub lifted a woman's skirt and "offensively touched" and assaulted her while escorting her from the club.
- A small western department suspended an officer for inappropriate conduct after he sent text messages and a picture of himself to a rape victim. Prior to being suspended, he had been assigned to investigate sex crimes and was demoted for having an intimate relationship with a victim.

This list of cases is troubling and indicates that this problem can and does occur in every section of the country.

Definitions

Sexual misconduct by law enforcement is defined as any behavior by an officer that takes advantage of the officer's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person. It also includes any communication or behavior by an officer that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming an officer and violates general principles of acceptable conduct common to law enforcement.¹

The limited research to date has focused on criminal sexual misconduct committed by officers while on duty. However, in recent years concern has extended to additional forms of sexual misconduct that include adult consensual sexual contact while on duty, voyeuristic behavior, and non-sexual contacts (e.g., unnecessary call backs to crime victims and witnesses).

The various forms of sexual misconduct by law enforcement, some of which are criminal acts, may be directed at colleagues, citizens, detainees, juveniles, and crime victims or witnesses.² Forms may include, but are not limited to, the following:

1. sexual contact by force (e.g., sexual assault, rape);
2. sexual shakedowns (e.g., extorting sexual favors in exchange for not ticketing or arresting a citizen);

¹ This definition is adapted from one developed by Timothy M. Maher, professor of criminology and criminal justice at the University of Missouri at St. Louis.

² In 1994, researcher Allen Sapp developed seven individual categories of police sexual offenses (Sapp, Allen, D., "Sexual Misconduct by Police Officers," *Police Deviance*, Cincinnati, OH: Anderson Publishing, 1994), and Timothy Maher added an eighth based on his research. (Maher, Timothy M., "Police Sexual Misconduct," *Contemporary Policing: Controversies, Challenges and Solutions*, Los Angeles, CA, Roxbury Publishing Company, 2004, pp. 327-338).

"There are hundreds of thousands of police officers doing a wonderful job out there, and to protect them, we need to respond aggressively when officers violate the community's trust."

**— Chief Bernadette DiPino,
Ocean City Police Department, MD**

3. gratuitous physical contact with suspects (e.g., inappropriate or unnecessary searches, frisks or pat-downs);
4. officer-initiated sexual contacts while on duty;
5. sexual harassment of colleagues/co-workers;
6. engaging in citizen-initiated sexual contact while on duty;
7. sexual behavior while on duty (e.g., masturbation, viewing and/or distributing pornographic images, sexting);
8. voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons);
9. unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-professional reasons); and
10. inappropriate and unauthorized use of department resources and/or information systems for other than legitimate law enforcement purposes.

Further complicating a full understanding of the scope of the problem is due in part to the reluctance of victims to report to authorities. In addition to experiencing the trauma of the violation, victims struggle with feelings of humiliation and fear retaliation or not being believed. Another reason it is difficult to gauge the extent of the problem is because accused officers will resign, expecting to avoid a complete administrative investigation. These officers might then be hired by another agency where they may continue to commit offenses against colleagues and/or citizens. Therefore, it is imperative that a complete investigation is carried out whether or not the accused officer resigns.

Putting the scope of the problem aside, it is certainly clear that sexual misconduct by officers requires the attention of law enforcement leaders. Law enforcement executives are responsible for establishing and maintaining a healthy culture within their agencies and need to recognize that elements of law enforcement culture can contribute to the proliferation of sexual misconduct and its subsequent minimization. This requires leaders to consistently look to identify and prevent even the most subtle forms of misconduct which left unchecked can encourage widespread abuses and adversely affect the law enforcement agency and profession. Through their own words and actions, leaders must embody the highest standard of professionalism for their officers.

The Culture of Law Enforcement

Within the policing profession some conditions of the job may inadvertently create opportunities for sexual misconduct. Law enforcement officers (1) have power and authority over others; (2) work independently; (3) sometimes function without direct supervision; (4) often work late into the night when their conduct is less in the public eye³; and (5) engage with vulnerable populations who lack power and are often perceived as less credible (e.g., juveniles, crime victims, undocumented people, and those with addictions and mental illness). Furthermore, some people are so impressed by and attracted to the authority the uniform and badge represent that they will seek to engage officers in sexual relations in order to have a vicarious connection to the power of the profession.⁴

“It is the agency executive’s responsibility to foster an environment in which ethical behavior is expected and each member of the department is held accountable for meeting those standards.”

**—Chief Russ Martin,
Delaware Police Department, OH**

³ Lettner, Kimberly S., “Developing Policies to Address Police Sexual Misconduct,” Richmond, VA, University of Richmond, 2004, pp. 12-13; and Maher, Timothy M., “Police Sexual Misconduct: Female Police Officers’ Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, pp. 263-282.

⁴ Discussion at IACP Focus Group, Alexandria, VA, March 15, 2010.

Within the profession, the existence of a law enforcement culture of allegiance and loyalty forms an important backdrop against which officers risk personal safety to protect and serve the public. While admirable in circumstances that are legitimate to effective policing, these principles may lead to the belief that fellow officers will protect or provide cover in questionable circumstances. This could result in situations where unprofessional and even illegal behavior is tolerated out of a misplaced sense of loyalty. Over the past decade, work by professional leadership organizations, including the IACP, with law enforcement officials on ethics, accountability, and peer-to-peer mentoring have done much to mitigate this potential.

Sexual misconduct within the ranks must be recognized so agencies can then take appropriate administrative and criminal actions to deter and prevent future incidents⁵, promote healthy environments and build community trust. Failure to identify misconduct and enforce accountability for even seemingly minor indiscretions may not only empower the officer, but may also encourage those who have knowledge of, or were witness to, the behavior to commit similar or more serious offenses. Tolerance at any level will invite more of the same conduct. Therefore, it is critical that law enforcement executives ensure that every reported incident of sexual misconduct is investigated thoroughly and all employees with knowledge of sexual offense(s) who fail to report it are held accountable.

Sexual Harassment in the Ranks

Historically law enforcement has been a male-dominated profession; today women comprise just 18% of state and local law enforcement (LEMAS, 2007). As a minority within the profession, women are sometimes subjected to sexually harassing behavior from colleagues that seems designed to challenge their right to work in law enforcement. Legal liability for sexual harassment in the workplace was established in the 1980's and, as a result, once an employer is informed about actions of an employee, they can be held accountable if they fail to stop such behavior or allow the creation of a hostile work environment. Agency leadership needs to be aware of subtle as well as overt aspects of internal agency culture directed at those in the minority, whether along the lines of gender, race, religion, sexual orientation, or nationality, that may negatively shape the job climate. The potential for these attitudes to spill over and affect the perception and treatment of members of the public should also be recognized and addressed. In addition to shaping the culture with their priorities, standards, and expectations, leaders need to proactively monitor the culture within their agencies and establish employee reporting mechanisms that provide protections from retaliation.

Leadership Actions

Considering a Policy

Any type of officer misconduct erodes trust in, and respect for, the profession. When a leader fails to ensure the adequate monitoring of officer actions or disregards complaints or concerns about officer conduct, the department in effect condones the misconduct and enables it to proliferate. It is the leader's responsibility to ensure that policies to address and prevent sexual offenses are implemented; that all employees regularly receive effective training (*see page 11*); and that roles, responsibilities, and professional standards are communicated clearly and reinforced consistently throughout the department.⁶ Through strong leadership and policies, agency employees at all levels can be held accountable for their actions.

While strong policies prohibiting sexual harassment are necessary, relying on existing sexual harassment policies to cover matters of sexual misconduct involving members of the public is

⁵ Maher, "Police Sexual Misconduct" pp. 327-338, citing Sapp.

⁶ Walker, Samuel and Dawn Irlbeck, "Driving While Female: A National Problem in Police Misconduct," Omaha, NE, University of Nebraska, 2002, p. 3

completely inadequate. Similarly, provisions covering conduct unbecoming an officer are generally insufficient, for example, to address the full range of predatory or stalking behaviors that can be precursors to assaults but may appear to be reasonable surveillance actions as part of an investigation.

Two reasons are commonly offered by executives as to why they would resist instituting a sexual misconduct policy or program. First, they report that there is no sexual misconduct problem in their agency. This may be an indicator of an undetected or denied problem. Leaders must be aware of the potential and willing to implement policy and procedures for monitoring and intervening proactively. Second, because policies are typically “incident driven,” they admit they are unlikely to develop a policy until one is absolutely necessary.⁷ To merely address issues and behaviors after they arise is an ineffective operating model and a lapse in critical oversight that can create significant liability while risking the public’s trust and confidence.

As the profession has learned through community policing, proactive problem solving is much more effective than reactive problem solving. Therefore, it is incumbent on law enforcement leaders to pro-actively implement a well-crafted policy and clear plan to ensure that everyone understands the agency’s position and their specific roles and responsibilities. An agency leader may choose to make a public statement about the agency’s position by posting the policy on the department website as part of a transparency effort that will serve to reinforce a commitment to accountability.

Law Enforcement Authority

In order to combat the abuse of authority by employees, the community corrections field has adopted the principle that no on-duty sexual activity by corrections staff is permissible. All 50 states, the District of Columbia, Guam, and Puerto Rico have laws criminalizing sexual contact between corrections staff and jailed/imprisoned individuals, and many community corrections agencies have implemented internal policies on the subject.⁸

Given law enforcement’s authority to detain and arrest citizens, a profession-wide position prohibiting on-duty sexual activity seems fundamental. Agencies already addressing this problem specifically prohibit all on-duty sexual conduct. In addition, agencies should also restrict consensual off-duty sexual activity from occurring on department property (e.g., within buildings or vehicles). A number of departments, including the Colorado State Patrol, Maryland State Police, Pennsylvania State Police, and Virginia Capitol Police, have instituted comprehensive policies that prohibit employees from engaging in any on-duty sexual behavior or off-duty sexual behavior on workplace premises.

Because off-duty conduct by officers can potentially undermine the efficiency and effectiveness of an agency and lead to abuse of authority, agency leaders have a vested interest in setting parameters and managing agency risk. Court rulings support reasonable and appropriate efforts to regulate off duty behavior and activities.

Agency Authority

Law enforcement leaders should directly address the problem of sexual misconduct by instituting a zero-tolerance standard and demonstrating that allegations will be promptly and thoroughly investigated. Any meaningful policy addressing sexual misconduct and offenses should state that an abuse of authority is grounds for disciplinary action, up to and including termination.⁹ In keeping with efforts undertaken by the corrections field, local law enforcement executives should establish an agency wide culture of accountability and seek commitments from key stakeholders, including their governing body, police unions and their members, to support this standard.

⁷ Maher, Timothy M., “Police Chiefs’ Views on the Nature, Extent and Causes of Police Sexual Misconduct,” *Police Practice and Research: an International Journal*, Vol. 9, 2008, pp. 239-250.

Maheer, Timothy M., “Police Sexual Misconduct: Female Police Officers’ Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, p. 265.

⁸ *Preventing and Responding to Corrections-based Sexual Abuse: A Guide for Community Corrections Professionals*, Washington, DC, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2009, p. 10.

⁹ Lonsway, Kimberly A., “Preventing and Responding to Police Sexual Misconduct,” *Law and Order*, Herndon Publishing Co., 2009, p. 8.

An agency's policy should be written with input from the state licensing board or Peace Officer Standards and Training Board (POST), a local prosecutor, CALEA, and victim service providers in the community.

An effective department policy aimed at deterring sexual misconduct should include:

1. the reason for the written policy;
2. definitions of various sexual offenses;
3. strategies to prevent sexual misconduct (e.g., applicant screening and accountability standards);
4. specific measures the agency will take to foster professional behavior (e.g., supervision and training);
5. a structured process for accepting, documenting, and responding to reported incidents and conducting administrative and criminal investigations; and
6. the range of possible disciplinary sanctions, should allegations of sexual misconduct be sustained.¹⁰

A written policy should include provisions to protect employees who report allegations from any retaliation. It also should stipulate disciplinary action for any employee who has knowledge of and fails to report sexual misconduct by a member of the department, except when the officer is the victim. The policy should affirm the department's intent to conduct a thorough investigation of every reported allegation even when the victim is reluctant to participate.

Agency policy can be augmented with specific preventive/protective strategies that can serve as deterrents. For example, some agencies require that traffic stops be recorded or videotaped and that officers provide dispatch with timing for the start and finish when transporting a citizen/arrestee. Additionally, a policy should specify that employee electronic communication and internet postings, which affect professional credibility, will be regularly conducted.¹¹

Prison Rape Elimination Act and Custodial Situations

Because offenses often occur when an individual is in custody, it is essential that police agencies, especially those with holding facilities, be aware of the 2003 Prison Rape Elimination Act (PREA). PREA was enacted to address sexual misconduct in all custodial settings, including police lock-ups, holding facilities and jails*. According to recent statistics, "25 percent of local police departments operate temporary lockup facilities for overnight detention of adults in a location separate from a jail, 13 percent operate juvenile lockups, and 9 percent of local police departments are responsible for operating a jail."** Under PREA, numerous national standards have been drafted for the prevention, detection, response, and monitoring of sexual misconduct in lock-ups. These standards, when finalized, will apply to law enforcement. It is critical that all law enforcement executives are cognizant of the standards and aware of the implications of PREA for their agencies.

* For more information, log on to www.ojp.usdoj.gov/programs/prisonrapeelimination.htm.

** McCampbell, Michael S., "Update and on the Prison Rape Elimination Act," *The Police Chief Magazine*, International Association of Chiefs of Police, Alexandria, VA, March 2011.

Hiring

Through a rigorous selection process, law enforcement agencies should recruit and hire individuals who demonstrate high standards of integrity by screening out those who do not exhibit the ethical characteristics necessary for the profession. This can be achieved through a combination of (1) medical, psychiatric, psychological, polygraph and integrity testing; (2) detailed personal interviews; and (3) thorough background investigations that include a review of social networking websites.

¹⁰ Lettner, "Developing Policies to Address Police Sexual Misconduct," pp. 8-9.

¹¹ For more information, logon to www.theiacp.org and see IACP Social Media Project and Model Policy.

The professionals conducting the examinations and interviews should be knowledgeable about and specifically screen for patterns of inappropriate behavior or attitude as well as prior sexual offenses. Any candidate found through these processes to have a history of sexual misconduct or unacceptable sexual activities should be deemed ineligible for employment.

When considering experienced personnel for hire from other agencies, the hiring agency should require candidates to sign a full-disclosure waiver that enables previous places of employment to provide in-depth references and copies of the officer's complete internal affairs file and all employment files, including details contained in any non-disclosure agreement and circumstances surrounding separations from service. This practice can prevent experienced officers who are facing potential charges from moving to another agency prior to being disciplined or terminated. Additionally, agencies should contact the state licensing boards or POSTs¹² in the states where the officers previously worked to determine whether the officer had been disciplined.

Forty-four state POSTs have the authority to revoke peace officer certification due to misconduct. In some states, there must be a criminal conviction in order to revoke; in others, certification may be revoked for misconduct after a hearing before an administrative law judge. Issues arise when an accused officer who has engaged in misconduct is either terminated or allowed to resign from his or her current agency, and that department does not report the reasons for the termination or resignation. The result is that the officer may be hired by another agency in the state that is unaware of the problems in the prior department. Also, these officers may seek employment in other states, which raises the problem of interstate movement of unfit officers. Currently, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) operates the National Decertification Index (NDI). The NDI includes the names of officers who have been decertified. Currently only twenty-nine state POSTs contribute names to the NDI. All state POSTs may query the NDI, and POST directors may authorize law enforcement executives to query the NDI. Since the NDI only gathers information concerning de-certifications, information on discipline of a less serious nature, such as a suspension of the certificate, must be gathered by contacting the state POST directly. Some states, like Florida, publish quarterly the names of the officers and any disciplinary action taken by POST against the officer. This allows other jurisdictions to check the list before hiring an officer from Florida.

Training

Ethical considerations should be woven into all aspects of training, education, policies, and procedures, along with law enforcement's role in upholding civil rights. Initial academy instruction on the ethics of appropriate conduct should be reinforced at in-service opportunities and training for new supervisors and field training officers (FTO).

It is the responsibility of law enforcement leadership to ensure that training, including academy curricula, covers the definition of sexual misconduct to include criminal and non-criminal behavior. Department-specific training should cover a review of the policy, response to sexual misconduct, and information on behaviors that are prohibited by the policy. Discussions using hypothetical scenarios and role-playing exercises can help officers anticipate and think through situations that warrant an ethical response and understand when their responsibilities under agency policy come into play. The administration of pre- and post-training tests will help the agency gauge the increased knowledge and understanding imparted through the training.

“Training in ethics, integrity and discretion should begin in the police academy and continue on a regular basis until the officer retires.”

—International Association of Chiefs of Police,
“Building Trust between the Police and the Citizens they Serve: An Internal Affairs Promising Practices Guide for Law Enforcement,” Washington, DC, U.S. Department of Justice, Office of Community Oriented Policing Services, 2010, p. 11

¹² For the name of the licensing body or POST in any state, logon to www.iadlest.org.

Because FTOs help shape the character of individual officers, each FTO must receive in-depth training on: (1) the agency policy, procedures, and discipline related to sexual misconduct; (2) indicators of sexual misconduct; (3) how to support the department's zero-tolerance stance on sexual misconduct; and (4) how to respect boundaries and confront challenging circumstances that may be encountered on the job.

When under consideration for a promotion, an officer's direct supervisor and the agency's human resources staff should be consulted for input. With supervisory positions, including Field Training, newly promoted employees must receive training on: (1) the department's sexual misconduct policy; (2) guidelines for how to respond to sexual misconduct by employees;¹³ (3) criminal and civil liability for the department and governing body; (4) public relations and protocol for dealing with the media; and (5) criminal and administrative investigations.

Evaluations and Early Intervention Systems

Supervisors are in a unique position to detect warning signs and patterns of sexual misconduct by officers. Specific training on indicators of sexual misconduct and strategies for effective oversight of officer conduct should be provided to those with supervisory responsibilities. Consistent employee reviews and follow-up are essential to monitoring behavior. However, if an officer is demonstrating problematic behavior, the supervisor should not wait for the officer's scheduled review to address the situation. The supervisor must act immediately to address the behavior in question, offer support and/or referrals, fully document the situation, and provide required notification up the chain of command. Supervisors should periodically remind officers of their professional obligation to report knowledge of sexual misconduct by a member of the department.

Since part of the authority with which law enforcement is entrusted involves access to systems of information, supervisors should be tasked with monitoring officer access for non-professional, personally-motivated reasons. Additionally, periodic audits of each officer's traffic stops and final call dispositions are essential for identifying problematic patterns. Random checks of department-issued cell phones and computers should be built into oversight plans in accordance with contracts governing officer rights. Agencies can incorporate into existing systems newly available software designed to identify pornographic images on electronic devices, as feasible, and assign monitoring responsibilities to internal investigations. Periodic reviews of personal information and pages on social networking websites should be conducted to ensure nothing potentially compromising or questionable is posted on the internet.

Early intervention systems are helpful for monitoring, identifying, and preventing problem behavior and electronic communications (e.g., email, text messaging). These systems come in many forms, but generally they collect, review, and analyze data on each officer, thereby enabling the identification of troubling patterns of behavior or suspicious trends that might otherwise go undetected. Such was the case in a midwestern state capital city where a police officer was disciplined and received special training after a review of his traffic stops revealed that 89 percent over a four-month period were of female drivers.¹⁴

When an officer demonstrates any inappropriate or suspicious behavior (*see ten forms of sexual misconduct and offenses, pp. 3-4*), a psychological fitness-for-duty examination should be required and arranged promptly. This is particularly important when the conduct does not rise to the level of termination or criminal conduct but for which sufficient cause for concern exists. Examination conclusions will need to be addressed in terms of the officer's assignments and supervision.

¹³ Lonsway, "Preventing and Responding to Police Sexual Misconduct," p. 3.

¹⁴ Walker and Irlbeck, "Driving While Female," p. 3

Incidents and Investigations

Any and all allegations or suspicions of sexual misconduct must be accepted by the designated authority within the agency and investigated in a timely fashion. Dispatchers along with all members of the department need specific direction and training on protocols for accepting, documenting, forwarding, and processing reports or complaints against an officer. Officers approached with

complaints should be required by department policy to provide citizens with complaint forms, document the information received, and pass the complaint through proper channels.

“[S]exual misconduct that is not documented, investigated and adjudicated often escalates.”

—Lonsway, Kimberly A., “Preventing and Responding to Police Sexual Misconduct,” Law and Order, Herndon Publishing Co., 2009, p. 2

Reports or Complaints

It is imperative to have procedures in place in order to effectively handle incident reports or complaints concerning officers. The process¹⁵ must be:

1. comprehensive, where an agency investigates all complaints received, including those that are anonymous or from third parties;
2. accessible, where the procedures for making a report or filing a complaint are streamlined and not burdensome to the individual complainant and information about the rights of law enforcement personnel and the public to file a complaint and the procedures for doing so are widely available;
3. fair, where the officer accused of misconduct is treated respectfully and receives a detailed investigation into the allegation;
4. thorough, where the investigation is complete enough to determine validity of complaints and identify and unfound those that are false; and
5. transparent, where a formal process to accept complaints exists, and all personnel know how to handle a complaint.

Once a report or complaint is received, it should be documented (preferably electronically) and protected in a secure file, apart from regular personnel records.¹⁶ Documentation and preservation of findings in personnel and internal affairs files, even with unfounded or exonerated outcomes, is necessary for future investigations in order to support the identification of patterns of behavior and progressive discipline as necessary.

Having comprehensive cross-jurisdictional memoranda of understanding in place with surrounding agencies will ensure timely notification of an incident involving a department employee in another jurisdiction. It will also provide guidance to officers responding to reports involving employees from other departments, including provisions for notifying the employing agency.

With transparency as a goal, the subject officer should be notified promptly of the complaint either in writing or by other means of communication unless the criminal investigation would prohibit it or be compromised. This notification should include the nature of the allegation, a copy of the complaint, and the name and contact information of the assigned investigator. The confidentiality of the victim's information should be protected to the maximum extent possible by law and department policy. All parties who are interviewed, including witnesses, as part of the investigation should be cautioned about the potential for retaliation and instructed how to report such actions to the department.

¹⁵ Adapted from the following: Commission on Accreditation for Law Enforcement Agencies' (CALEA) Standard No. 52.1.1; CALEA Accreditation Standard No. 52.1.4; *Preventing and Responding to Community Corrections Based Sexual Abuse*, p. 48; and IACP, “Building Trust between the Police and the Citizens they Serve,” p. 21.

¹⁶ CALEA Accreditation Standard No. 52.1.2.

The Investigation

Complaints of officer sexual misconduct will be received directly or tracked into the Internal Investigations Unit or to a member of the command staff who handles internal investigations. Upon initial assessment, if it is evident that criminal allegations are involved, an immediate referral should be made to the criminal investigations unit or lead criminal investigator.

Reports of incidents or crimes alleging officer sexual misconduct may come to the agency through communications (e.g., 9-1-1 or non-emergency systems) and should result in immediate notification of criminal investigations and internal investigations by the supervisor in charge.

All criminal cases will require an administrative investigation also be conducted. In order to preserve the integrity of investigations, especially in high-profile cases, the chief may want to seek the services of a neighboring department or state police to conduct either the administrative or criminal investigation. The propriety of the investigation is less likely to be questioned when an outside investigative agency is involved. The administrative and criminal investigations can be conducted simultaneously as separate, parallel investigations. The agency leader should ensure a firewall is maintained between the administrative and criminal investigations and that the accused officer's rights are upheld especially in accordance with *Garrity v. New Jersey*.¹⁷

The investigative process should be transparent to both the complainant and the accused officer. All procedures should be victim-centered and include periodic updates, and uphold the accused officer's rights set forth in collective bargaining agreements. A member of the command staff should serve as the principal point of contact for the complainant to share information and respond to questions.

Victims may be reluctant to report an incident and/or participate in the investigation for a variety of reasons, including trauma of the incident; fear of not being believed; retaliation from the perpetrator or other officers; and previous bad experiences with law enforcement. These same reasons may account for why a victim recants or seeks to withdraw a complaint. A victim's reluctance to participate in an investigation is neither indicative of a false allegation nor reason to forego a thorough investigation. A detailed investigation should uncover unethical or illegal conduct just as it will reveal unfounded claims.

As part of the investigation, efforts should be made to identify and interview any additional victims. Following the initial filing of criminal charges against the accused officer, an agency can seek to identify additional victims through the use of media outlets. All subsequent reports of incidents will require documentation and investigation.

The agency leader must monitor the investigation for signs of retaliation and harassment directed against a complainant or an employee who reported knowledge of sexual misconduct, including abuse of the complaint procedure and violations of confidentiality guidelines.¹⁸ Parties to the case must be cautioned about the possibility of intimidation, retaliation, and/or coercion and advised on steps to take to report such actions (e.g., immediate notification of the department, preservation of evidence). Within a designated time period (usually after a few weeks and again after 60 days), the complainant should be asked by the point of contact about any intimidation or retaliation. Victims should be provided with information and referrals to the court to petition for orders of protection as needed.

If the accused officer is not placed on administrative leave pending the outcome of the administrative and/or criminal investigations, the officer's assignments should be considered carefully. In the event of administrative leave, a transfer of the accused officer's case knowledge will be important to the continuation of official agency business. Arrangements should be undertaken to reassign the subject officer's cases.

Law enforcement executives have a range of administrative options and tools available to reduce the likelihood of further sexual misconduct or retaliation. Employing these options in a consistent

¹⁷ 385 U.S. 493 (1967).

¹⁸ Lonsway, "Preventing and Responding to Police Sexual Misconduct," p. 8.

and timely manner is crucial to victim safety and community confidence, as well as the well-being of the officer and the efficient operation of the department. The executive should consider issuing an Administrative Order of Protection¹⁹ to support clear communication with the accused officer(s) and reinforce accountability.

If an employee resigns during the investigation, the investigation must still be completed and decisions regarding the findings and administrative sanctions that would have otherwise been imposed should be documented in the employee's personnel and internal affairs files.

The agency leader should track the complaint through to its conclusion(s).

Dispositions

Affirming the findings of the investigations is the responsibility of the law enforcement executive. When an administrative investigation is sustained, even if the misconduct was not determined to have been criminal or the criminal outcome has not yet been determined, the accused officer should be informed in person and in writing and offered the opportunity to respond to the administrative findings.

Following the officer's response to the administrative findings, the executive should consider the full range of sanctions for the officer found to have violated department policy. Before deciding how to address the issue with the officer, an examination of human resource policies, state and local laws, and collective bargaining agreements that may be in effect should ensure compliance with legal and contractual rights. It is important to understand in determining discipline that the confidence in the officer may have been severely compromised by a violation of department policy and, therefore, termination may be the most appropriate option. Disciplinary decisions should be communicated to the officer in person and in writing.

When an allegation of sexual misconduct is sustained but termination is not warranted, demotions, re-assignment, and/or unpaid leave are possible administrative sanctions the law enforcement executive can impose. Sanctions should be severe enough to reinforce the agency's zero-tolerance position. Discipline short of termination should include a warning of termination for any subsequent misconduct and be referenced in writing as part of an employee's regularly scheduled review.

Criminal investigation findings should conform to one of the following determinations in keeping with the FBI's Uniform Crime Report:

1. Unfounded: the allegation was investigated and found devoid of fact or false;
2. Exonerated: the act occurred but was lawful and consistent with policy;
3. Not sustained: the evidence was insufficient to either prove or disprove the allegation; or
4. Sustained: the evidence was sufficient to prove the allegation.

Once a finding concerning the criminal investigation is reached, the agency leader or designated principal point of contact should ensure the complainant is notified. The accused officer should be notified in writing.²⁰ If the criminal allegation is upheld through the investigation, the prosecutor will need to be consulted concerning charging actions.

“Behavior that violates power, authority and ethical standards generally associated with law enforcement undermines the criminal justice system and betrays the public trust.”

—Timothy M. Maher,

“Police Sexual Misconduct: Female Police Officers' Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, pp. 263-282

¹⁹ Valle, Glenn, Chief Counsel, New York State Police, Albany, NY, “Administrative Orders of Protection: A Chief's Best Tool for Victim Safety”, *The Police Chief Magazine*, November 2000, <http://www.theiacp.org/LinkClick.aspx?fileticket=RNf31dIKLFk%3d&tabid=372>

²⁰ CALEA Standard 52.2.8.

Any officer who has been found guilty of committing a sexual offense must be terminated immediately. In the event of a termination, the officer should be notified by the executive in person and in writing. Because of the heightened risk for violence at the point of termination, the department should ensure a lethality assessment is conducted and adequate precautions taken to protect against violence in the workplace or retaliatory violence against those who reported the allegations. It is critical that the officer be given information and referrals on available support services.

Some states may require reporting to the state licensing board or POST even when the officer is not terminated but has resigned or been given discipline short of termination. To prevent the officer from continuing in law enforcement, the state licensing board or POST should be notified promptly about the officer's termination to pursue decertification, as applicable.²¹

Victims

All levels of law enforcement should treat anyone who alleges sexual misconduct with professionalism and dignity. From the onset, it is essential that citizens making reports or filing complaints are shown respect and their allegations are taken seriously throughout the investigative process. The way an agency receives and responds to each complaint or report will impact the willingness of other crime victims to come forward and will be noted by members of the department.

The reasons why authority figures may engage in inappropriate and sometimes criminal behavior are varied, and each case is unique. Predators select victims based on vulnerabilities and a perceived lack of credibility, and therefore, victimization is often higher among certain populations including: (1) minors; (2) individuals in prostitution and/or the commercial sex industry; (3) individuals under the influence of drugs or alcohol; (4) immigrants and undocumented persons; (5) individuals with limited English proficiency; (6) people with mental illness or developmental challenges; (7) individuals with physical disabilities; and (8) those who have been victimized previously. Agencies should not query the criminal history of the complainant, and references about the complainant's criminal history should not be included in internal agency reports.

It is important to note that although a majority of the victims are female, men and boys are also victimized. Some victims of sexual offenses may not view themselves as victims. Conduct that a victim may deem to be flattering attention or empathetic concern may be inappropriate, nonetheless. A 16-year-old in an Explorer Program may not think that a "romantic relationship" with the 25-year-old sworn officer who oversees the program is inappropriate. Whether or not a minor feels that the interaction is consensual, a state's statutory rape laws may make any sexual contact illegal. A victim who is compromised due to alcohol, drugs, mental illness, or disability may under state law be unable to give consent for sexual contact. In every case, the investigator must actively attempt to engage the victim in the investigation and offer contacts and referrals for services available in the community. It should also be recommended to a victim that an order of protection be sought from the court if safety concerns exist.

The law enforcement executive should designate a principal point of contact to address the needs and concerns of the victim. These include: (1) Safety: law enforcement must protect victims from intimidation and educate them on how to decrease their likelihood of re-victimization; (2) Support: law enforcement must ensure that victims receive current and accurate referral information about victims' services; (3) Information: law enforcement must provide victims with information about their

"I feel that I have been given a life sentence... I frequently have intrusive memories of the assault... I cringe every time I see... a male officer in uniform, or a law enforcement vehicle. I am not the same person I was before the assault and I might never be that person again."

—Survivor of Sexual Assault by Law Enforcement

²¹ For more information about POSTs or decertification, see Resources section of this publication.

rights, the criminal justice process, and resources available to them; (4) Access: law enforcement agencies must ensure that information is readily available in languages that represent the populations in the community and attend to the special needs and circumstances of various victims; (5) Continuity: law enforcement must have sustained partnerships with victim service providers and allied criminal justice professionals; (6) Voice: law enforcement must empower victims by encouraging a dialogue with them; and (7) Justice: law enforcement must work in the best interests of victims to protect their safety and rights.²²

The zero-tolerance sexual offense policy should set forth clear guidelines of how to support victims and provide a setting/environment in which a victim can feel safe reporting the victimization. Some victims have reported that although his or her complaint was taken by a compassionate officer, the environment of the cubicle in which the information was taken was uncomfortable due to the close proximity of others or the presence of pornographic images. Another victim complained that while she was being taken into custody and handcuffed, she was asked out on a date by a member of the department. A good example of how to educate officers in these and other important areas is the “Tools for Tolerance for Law Enforcement” (Simon Wiesenthal Center- www.toolsfortolerance.com) curriculum which is designed to train officers on how to deliver a more effective level of service to members of the public. Awareness training such as TTLE enables law enforcement to identify and address problems before they may become criminal in nature. Nonetheless, in order to establish an environment in which a victim feels secure enough to report mistreatment, law enforcement should receive ethics and sensitivity training as a matter of course.

Collaboration

Criminal Justice System Collaboration

Collaboration among criminal justice system partners and allied professionals is of utmost importance. Following the adoption of a policy to address sexual misconduct, agency leaders should reach out to prosecutors and victim assistance personnel to inform them of the agency’s position of zero tolerance and plan for responding to reported incidents and complaints.

One of the most important criminal justice partnerships is between law enforcement and victim assistance representatives who work within the criminal justice system. These representatives can include victim-witness coordinators, victim advocates, or department-based victim service personnel. Although department advocates cannot provide confidentiality to victims because they are required to discuss relevant information obtained from the victims with investigators, these advocates can provide much needed services to victims by guiding them through the maze of the criminal justice system, securing resources they need, and providing counseling referrals. Specifically, the department’s victim advocates not only help victims navigate the process of filing a complaint and ensure follow-up, but they can also act as liaisons between victims and the agency and educate officers about the impact of trauma on crime victims. Departments that cannot afford to employ advocates should work closely with community-based victim service agencies.

Additionally, during any criminal investigation of an officer, the agency should appoint a liaison to work closely with the prosecutor’s office and follow processes established for working on any high-profile case (*see p. 11 for cross-jurisdictional assistance with case investigation*).

²² IACP, “Enhancing Law Enforcement Response to Victims: A 21st Century Strategy,” Washington, DC, U.S. Department of Justice, Office for Victims of Crime, 2008, pp. 23-24.

Community Collaboration

Once a policy has been implemented, law enforcement leadership should support continuous dialogue and working relationships with victim service agencies in order to promote an understanding of the department's zero-tolerance position. Collaboration with victim service agencies in the community can encourage the reporting of incidents. Victim advocates need to know that the department takes allegations seriously and wants to receive information about any incidents or offenses, with the consent of the victim, even if communicated through a third party.

Although confidentiality laws may prohibit the sharing of information, community-based advocates can provide long-term counseling and support for victims, as necessary. When working with these advocates, whether or not a department has its own victim advocates, it is recommended that the department establish a memorandum of understanding with each organization to which it subsequently refers victims.

Law enforcement personnel and allied professionals should seek opportunities for cross training and other types of information exchanges. For example, prosecutors, sworn personnel, and victim advocates should participate in one another's specialized trainings (e.g., statewide conferences) and meetings (e.g., roll calls) to obtain a broader perspective on the issues of sexual assault, harassment, and misconduct. Additionally, they should spend time with one another on their respective "turfs." In order to understand the intense nature of police work, victim advocates should accompany officers on ride-alongs. In turn, officers can use this extended time with the advocate to obtain information about the advocate's role in assisting victims. When possible, officers should be involved in training victim service agency staff and volunteers, and they should be included in the drafting of a department's position and policy addressing sexual misconduct.

To get out the message that a law enforcement department takes incidents of sexual misconduct seriously and encourages those with information about offenses to come forward, agency leaders need to actively engage the community. Law enforcement leaders should build awareness of the department's policy and zero-tolerance position, including the posting of the policy on the agency's website. Information shared should include the methods and procedures for reporting an incident and filing a complaint (*see pg. 10*). Proactive outreach can happen through multiple avenues, including citizen academies, town hall meetings, and public relations efforts. These efforts at transparency will not only combat inappropriate behavior but also contribute to building community trust and confidence.

Conclusion

Members of law enforcement are in a unique and visible position in the communities they serve. They are entrusted with the authority to enforce laws and protect citizens' civil rights. Central to the executive's responsibility to the community is the proactive enforcement of ethical standards of conduct and officer accountability. Leaders must establish zero-tolerance policies to address and prevent sexual misconduct and reinforce the expectation of integrity through meaningful training and effective supervision.

"Along with effective supervision, agency guidelines can reinforce standards of conduct and accountability and provide necessary safeguards."

—Major Charles J. Skurkis, Pennsylvania State Police, PA Director, Bureau of Integrity and Professional Standards

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http://www.incite-national.org/media/docs/7715_toolkitrev-sexualassault.pdf

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Websites/Resources

International Association of Directors of Law Enforcement Standards and Training (IADLEST)
www.iadlest.org

National Decertification Index (NDI)
<https://www.pocis.net/NDI/default.php>

Prison Rape Elimination Act (2003)
<http://www.ojjdp.gov/about/PubLNo108-79.txt>

IACP Tools and Policies

Sexual Assault Incident Reports: Investigative Strategies
<http://www.theiacp.org/LinkClick.aspx?fileticket=PxEJMvQbU7c%3d&tabid=392>

Sexual Assault Supplemental Report Form
<http://www.theiacp.org/LinkClick.aspx?fileticket=CHt0qVEWYus%3d&tabid=392>

Sexual Assault Model Policy
<http://www.theiacp.org/tabid/299/Default.aspx?id=1133&v=1>

Domestic Violence by Police Officers Model Policy
<http://www.theiacp.org/tabid/299/Default.aspx?id=1130&v=1>

Enhancing Law Enforcement Response to Victims: A 21st Century Strategy
www.responsetovictims.org

Guidelines to Address Officers Under Orders of Protection
<http://www.theiacp.org/LinkClick.aspx?fileticket=IABVVd%2bgJNw%3d&tabid=87>

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**International Association
of Chiefs of Police**

515 North Washington Street
Alexandria, VA 22314-2357
www.theiacp.org

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