

## SEXUAL ASSAULT INVESTIGATIONS

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**SEXUAL ASSAULT INVESTIGATIONS**

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**POLICY**

The policies and objectives of the Department in responding to a report of sexual assault are as follows:

- To minimize the traumatic experience suffered by the victim;
- To ensure the speedy apprehension and conviction of the rapist;
- To reduce the opportunity for the crime of rape to occur by educating the public in preventive measures;
- To cooperate with local social service and non-profit agencies, schools, hospitals, and community groups in rape reporting and prevention programs; and
- To impress upon the public that the role of the police in investigating reports of rape or attempted rape is to provide a professional response with concerned and competent attention to the needs of the victim.

**PROCEDURES****I. DISPATCHER RESPONSE**

A. Communications personnel play a critical role in obtaining important information from the reporting party. The information obtained is pivotal in determining the initial police response and ensuring the appropriate personnel are dispatched. The dispatcher should respond in a calm and supportive manner while simultaneously obtaining, at a minimum, the following information:

1. Name, address, and telephone number of the reporting party;
2. If reporting party is not the victim, obtain the name, address and phone number of the victim, his/her current location, and status (safe, injured, alone, etc.);
3. The caller's relationship to the victim and the caller's basis of knowledge;
4. Whether a weapon was used during the assault. If yes, what type;
5. The suspect's current location and status (safety issues, aware of police involvement, etc);
6. Detailed information regarding the identity and/or description of the suspect (e.g. name, gender, physical description, clothing, vehicle description);
7. The relationship between suspect and victim (if any);

B. Dispatchers shall:

1. Dispatch immediate medical assistance if needed;
2. If it's determined to be an "active" scene, promptly dispatch patrol officers to the victim's location and to the crime scene (if different);
3. If, in the dispatcher's assessment, the victim is in imminent danger, advise the victim to move to a safe location (e.g. to the home of a neighbor or family friend, a police station, a church) as long as relocating can be accomplished with minimal risk;
4. If the assailant has fled the scene, broadcast as much identifying information as quickly as possible;
5. Furnish the responding officers with any available information with special consideration given to:

- a. dangerousness of the offender;
  - b. specifics about the incident;
  - c. past domestic violence events and/or assaultive behaviors (prior criminal history, other relevant sources); and
  - d. if in possession of a firearms license.
6. If possible, remain on the line with the victim until patrol officers arrive on scene;
7. If, for some reason communications cannot be maintained, tactfully advise the victim against bathing, douching, eating, drinking, changing clothes, or touching anything at the scene. The victim of the assault is now analogous with a crime scene;
8. If the victim has changed clothes, advise them not to wash the clothes and to leave them as they are;
- 9. NOT** cancel a law enforcement response to a complaint of sexual assault, regardless of a request to cancel;
10. If a request to cancel is made during the initial response, advise the responding officers of this request; and
11. Record and preserve the victim's "excited utterances" and 911 tapes for evidentiary purposes.

## II. POLICE RESPONSE

### A. GENERALLY

1. What occurs during the initial stages of an investigation is critical to the success of the investigation and cannot be overstated.
2. The initial responder's primary areas of responsibilities are:
  - Victim/witness safety;
  - Crime scene preservation;
  - Minimal facts interview;
  - Identifying and locating witnesses and suspects;

- Documentation of initial response and observations; and
  - Support service notification.
3. The medical treatment and well-being of the victim should be the first priority. The lapse of time between the sexual assault and the report of the sexual assault will potentially impact the likelihood, type and quality of evidence recovery from the body of the victim and/or perpetrator. If the assault occurred within five days (120 hours) of the report, an evidence collection kit should be collected. In addition, depending on the facts of the assault, there may be additional evidence which can be obtained.
  4. In keeping with a trauma-informed approach, be professional, empathetic, and patient when interacting with the victim.
  5. If the victim is alone, inquire if there are family, friends, or a rape crisis counselor/advocate they want contacted. If the victim's clothing needs to be seized as evidence, attempt to arrange for a fresh set of the victim's own clothes to be made available.

## B. VICTIM / WITNESS SAFETY

As part of the emergency response, officers shall:

1. Request an ambulance for transport to a hospital if there is observable injury to the victim or if the victim is complaining of injury;
2. Strongly encourage a sexual assault exam be conducted by a Sexual Assault Nurse Examiner (SANE) and advise the victim of their rights under G.L. c. 209A and 258E, if appropriate;
3. Arrange for medical exams, if possible, at an identified SANE site;
4. Show understanding, patience and respect for the victim's dignity and attempt to establish trust and rapport;
5. Evaluate the scene for suspects, vehicles, or objects involved, as well as for possible threats;
6. Initiate a search for the suspect when appropriate;
7. Be cognizant of the victim's concerns for safety/threats and be reassuring and

comforting;

8. Communicate all vital information to the Patrol Supervisor and other responding officers, including any possible communication barriers or special circumstances; and
9. Notify appropriate protective service agency (DCF, DPPC, Elder Affairs, DPH) if abuse is suspected.

### C. MINIMAL FACTS INTERVIEW

1. Sexual assault investigations involving adult victims will typically include, at a minimum, a preliminary interview and a subsequent, in-depth interview. The primary purpose of the preliminary interview is to establish whether a crime has occurred. The interviewing officer should conduct a minimal facts interview and obtain basic information similar to investigating any other offense (e.g. who, what, where, when, how).
2. During the initial interview with adult victims, the responding officers should:
  - a. Ensure victim's safety and provide appropriate referrals (e.g. rape crisis/medical services);
  - b. Establish the elements of the crime(s);
  - c. Identify any and all witnesses and suspect(s);
  - d. Identify possible locations of evidence and crime scene(s);
  - e. Identify additional interviews to be conducted; and
  - f. Advise a supervisor of additional resources and/or personnel needed (e.g. crime scene services, crime lab, etc.).
3. A victim of a sexual assault may bond with the responding officer. If the responding officer intends to request assistance from a sexual assault investigator (as directed by departmental protocol), the officer should explain his/her role as the first responding officer to the victim. It is important for the initial officer to further explain what the victim may expect from the responding investigative team and to assist with that transition.

### D. CRIME SCENE PRESERVATION

1. Responding officers should assume the existence of multiple crime scenes. It is the responsibility of the responding officer to elicit information from the victim as to the location of the primary, secondary, and possible tertiary crime scenes.

Once identified, this information should be communicated to a supervisor to ensure that any additional crime scenes are secured and steps are taken to prevent evidence from being lost, altered, destroyed, or contaminated.

2. Responding officers should also identify, if possible, the first person the victim told about the sexual assault. This person will eventually need to be contacted and interviewed by the officer in charge of the investigation.

#### E. IDENTIFYING AND LOCATING WITNESSES AND SUSPECTS

Questioning the victim about the assault, the description of the suspect(s), and the details regarding the assault should be limited. Responding officers should only question the victim enough to obtain a complete description of the suspect(s), whether or not a weapon was used, vehicles used, direction of flight, and names, addresses and telephone numbers of other potential victims/ witnesses.

#### F. LANGUAGE / COMMUNICATION BARRIERS

If the victim(s), witness(es) or suspect(s) do not speak English, avoid using children or other interested parties as interpreters unless there is an emergency. Officers can call **QWEST**, a multilingual communications network for use by police departments at **888-892-2850** for interpretive language services 24 hours a day.

#### G. DOCUMENTATION OF INITIAL RESPONSE

1. Responding officers should document the initial police response, the information communicated by witnesses, who processed the scene(s), and who seized evidence.
2. During the initial documentation of witness statements, specifically the victim's statements, responding officers should attempt to conduct a minimal facts interview. If the victim begins to provide details of the assault, officers should capture the exact words used by the victim to describe the assault. Also, officers should specify the sexual acts which occurred and with which body parts or objects.
3. When there is no opportunity to interview witnesses, contact information should be obtained so the witness can be contacted and interviewed at a later date. Consider audio recording the interview(s); however, audio recorded

statements should be in accordance with the Department policy and the District Attorney's Office. Having witness write out their statement is strongly discouraged.

4. Be sure to consider and preserve all forms of evidence that is not directly elicited from a statement such as 911 calls, public video surveillance systems, spontaneous utterances, etc.

## H. INVESTIGATION SUPPORT SERVICES

1. Once the responding officer has assessed the victim's safety, preserved the scene(s), transmitted any relevant information for immediate broadcast, conducted a preliminary interview, established that a crime has been committed, identified other victim/witness or possible suspects, and identified the potential crime scenes, the responding officer must then ensure that the Sexual Assault Investigator and/or a detective is requested to process any potential crime scenes.
2. It is recommended that the State Police is contacted to assist in processing any potential crime scene.

## I. ADDITIONAL CONSIDERATIONS OF RESPONDING OFFICERS

1. As the responding officer, in making the decision to arrest, the level of exigency and the probable cause to arrest should be assessed. Whenever possible, all officers are encouraged to consult with a representative of the District Attorney's Office prior to making felony arrests.
2. The responding officer should:
  - a. Ensure that mandated reporters adhere to required protocol and file reports of suspected abuse, when applicable.
  - b. Remember his/her obligations surrounding domestic violence and be sure to advise a victim of his/her rights under G.L. c. 209A.
  - c. For sexual assault committed by a non-intimate partner (i.e. classmate, coworker, neighbor) advise the victim of his/her rights under G.L. c. 258E;
  - d. If necessary, activate the Emergency Judicial Response System (EJRS); and

- e. If called to an emergency room, first consult with hospital staff to determine the victim's status, how the report came in, and other relevant information. If the victim traveled to the hospital by ambulance, obtain the names of the ambulance and staff in case future interviews are needed.

### III. THE ROLE OF THE SEXUAL ASSAULT INVESTIGATOR

#### A. GENERALLY

1. Specific to sexual assault investigators, pursuant to G.L. c. 41, § 97B, officers conducting sexual assault investigations SHALL have completed a course of training as prescribed by the Municipal Police Training Committee.
2. The sexual assault investigator will have primary control over the case and will be responsible for ensuring that a complete and comprehensive investigation is conducted.
3. Upon being assigned the case, the investigator should accomplish the following initial tasks:
  - Speak with the responding officer(s) to obtain a baseline story and determine what has been completed;
  - If the victim has not yet received medical treatment, make appropriate arrangements as needed and assure appropriate support referrals have been made;
  - Ensure steps have been taken to preserve any crime scenes and/or evidence;
  - If there are unprocessed potential crime scenes, determine if a search warrant is needed prior to processing any crime scene;
  - Coordinate the dispatch of support services such as crime scene services;
  - Obtain the names and contact information of any possible witnesses;
  - Ensure all interviews are conducted in a timely manner, including the suspect interview;
  - Ensure proper documentation of the investigation is completed and that all reports are complete and free of judgment and opinion.

#### B. VICTIM INTERVIEW

##### **1. PRACTICAL ASPECTS OF THE INTERVIEW**



It is strongly discouraged that friends or family be present during the victim interview. The presence of an advocate should be determined on a case-by-case basis or as determined by the victim.

## **2. LOCATION OF THE INTERVIEW**

The interview should be conducted in a comfortable room where there will be minimal interruptions or distractions. If the ideal is not possible, the investigator should attempt, at a minimum, to ensure the victim's comfort. This can be accomplished by the simplest means, such as providing reassurance, even in the worst physical surroundings.

## **3. GENDER OF INTERVIEWER**

If the victim requests to speak with an interviewer of a different gender, every effort should be made to accommodate them and provide the requested gender interviewer. Do not assume a police officer who is the same gender as the victim is automatically the best person to conduct the interview.\_

## **4. DOCUMENTING THE VICTIM INTERVIEW**

- a. There is no "best" method of documenting the victim interview; however, the following factors should be considered:
  - The District Attorney's Office of jurisdiction and your police department's policy;
  - The victim's preference (i.e. the victim may be uncomfortable with the statement being recorded); and
  - Physical/linguistic/cultural limitations of victim.
- b. It is recommended that the statement be documented by either the officer actively asking questions or the second officer in the room. The practice of having the victim manually write out their own statement is strongly discouraged as it may lead to statements which are generally insufficiently detailed and/or incomplete. If the victim does choose to write out his/her own statement, the interviewing officer should review the statement with the victim to assure accuracy of detail and resolve any inconsistencies or unanswered questions.

## **5. CONDUCTING THE INTERVIEW**

- a. Two officers should conduct the interview, if possible.
- b. The tone of the interview should be reassuring and poised.
- c. Officers conducting the interview should take an inventory of any personal bias, nervousness, or barriers they may have which might inhibit their ability to conduct the interview. If a bias is recognized, discuss the issue or concerns with a supervisor for resolution.
- d. When conducting an interview of a victim, the manner of questioning should be in an open-ended format as much as possible. The information sought should include questions regarding the following:
  - Name, date, time of interview;
  - Description of the offense (details);
    - When the offense occurred (establish time line-- details of dates, months or significant events);
    - Details of the sexual assault and acts (use quotations, victim's own words/language);
    - Physical description of offender including identifying body marks, freckles, tattoos, scars, birth marks;
    - Smells such as cigarettes, cologne, body odor, something else;
    - Did the victim describe the "feelings" they experienced during the sexual assault (pain, worry, sadness, scared, nothing or something else);
    - Manner used to complete the crime (hand, fingers, penis, mouth, object, something else);
    - Information about how the assault ended and what caused it to end;
    - Any conversation, communication, or statements by the perpetrator either before, after, or during the assault;
    - The degree of force, threat, coercion if any used to effect the assault; Weapons used (describe weapon, brought to scene or picked up there); Manner which weapon was used during the sexual assault;
    - What the victim and offender did after the assault
  - Relationship between the victim and suspect if any (in detail; may explain a delay in disclosure);
  - Identify any and all witnesses and suspect(s);
  - Identify additional interviews to be conducted as the investigation

- develops; and
- Other relevant information that might assist in bolstering the victim's veracity.

## **6. SAFETY, LEGAL, AND OTHER CONSIDERATIONS**

- a. During the interview process, be aware of safety considerations for the victim, any children, or potential secondary victims/witnesses.
- b. In addition to safety considerations there are circumstances which may legally require law enforcement officers to act. These may include:
  - Advising the victim of his/her rights pursuant to (G.L. c. 209A and 258E); and
  - Mandatory referrals.
- c. The victim should be made aware of the community-based services, rape crisis centers, and court services which may be available to the victim.

## **7. CONCLUDING THE INTERVIEW**

- a. Once the victim's safety is assured, the interview is concluded, and support services have been recommended and/or obtained, the final interaction with the victim is extremely important. Explain to the victim what they can expect next from the criminal justice system. Be honest about the court process, potential police action, and what the victim's needed participation may be in the future.
- b. Explain to the victim that if, after the interview, they remember something, it is perfectly normal and okay. The investigator should provide the victim with a mechanism to contact him/her with future information or questions. The investigator should also ensure that the victim has someone available for support. The investigator should explain to the victim about the role of the victim/witness advocate and how they can assist the victim, as well as potential victim compensation resources available through the Attorney General's Office.

# **IV. IDENTIFYING AND INTERVIEWING WITNESSES**

## **A. WITNESS INTERVIEW - OVERVIEW**

1. Upon arriving on scene, officers should obtain the names and contact information of potential witnesses. Officers should take detailed, concise statements which capture basic information. The statement should be in either a written report or audio/video recorded and pursuant to the Department's protocols for such statements or those of the District Attorney's Office.
2. As with victim statements, it is recommended that the witness NOT be left to write out his/her own statement. If the witness does write out his/her own statement, the officer conducting the interview should review the statement with the witness to assure accuracy of detail, resolve any inconsistencies, or unanswered questions. Any witness statements should be signed and dated by the witness providing the statement.
3. In concluding the interview with the witness, explain to them that, if after the interview, they remember something that it is perfectly normal and okay. Officers should provide the witness with a mechanism to contact them with future information or questions.

## B. FIRST COMPLAINT WITNESS

1. Under the **First Complaint** doctrine, the first person told by the victim of an alleged sexual assault may testify about the fact of the "first complaint" and the circumstances surrounding the making of that first complaint, including the following:
  - Observations of the victim during the complaint;
  - Events or conversations that culminated in the complaint;
  - Timing of the complaint;
  - Other relevant conditions that might help a jury assess the veracity of the victim's allegations or assess specific defense theories as to why the complainant is making a false allegation.
- When speaking with a first complaint witness, attempt to video and/or audio record the interview. Be sure to include the following:
  1. Name, date, time of interview;
    - Circumstances under which the complainant first reported the sexual offense;
    - Events/conversations that culminated into disclosure;

- Other potential witnesses or persons present during the offense (details);
  - Description of where offense occurred (details);
  - When the offense occurred (establish time line-- details of dates, months or significant events);
  - Details of the sexual assault and acts (use quotations, if applicable);
  - Describe the demeanor of the victim during their disclosure/recounting of the event (tone, emotions etc.);
  - Did the victim describe the “feelings” they experienced during the sexual assault (pain, worry, sadness, scared, nothing or something else);
  - Manner used to complete the crime (hand, fingers, genitals, mouth, object, something else);
  - Information about how the assault ended and what caused it to end;
  - What the victim and offender did afterwards and why;
  - Any conversation or communication which occurred between the victim and the perpetrator either before, after or during the assault;
  - Weapons used (describe weapon, brought to scene or picked up there);
  - Manner in which the weapon was used during the sexual assault;
  - The degree of force, threat, coercion if any used to effect the assault;
  - Relationship between the victim and suspect if any (nature in detail; may explain a delay in disclosure);
  - Circumstances in which the first complaint was made;
  - Other relevant information that might assist in bolstering the victim’s veracity; and
  - Information on why the victim decided to tell the person, at that time and place.
- If possible, officers should document the exact words spoken by the victim to the first complaint witness communicating the assault. It is recommended that when possible, the interview should be videotaped and/or audiotaped.

## 2. CHILD WITNESS

- C. Sexual assaults are very personal and can often involve other family members as direct or indirect witnesses. Do not dismiss or overlook the child witness when investigating sexual assaults. Not only can the child witness be an important source of information but there may be other safety and well-being needs that should be considered.
1. The preferred method of interviewing a child witness is at a Child Advocacy Center (CAC) by a forensic interviewer. However, if circumstances don’t allow for that arrangement, the following protocols should be adhered to:

2. Conduct a “minimal facts” interview to determine probable cause or safety issues;
  - Avoid using a child as an interpreter unless it is an emergency and no alternative exists;
  - Provide referrals for appropriate services; and
  - Make all necessary filings and referrals pursuant to G.L. c. 119, § 51A, to the Department of Children and Families (DCF).

## • SUSPECT INTERACTION

### V. DECISION TO ARREST OR NOT ARREST

- A. The safety of the victim or other potential victims should be paramount in any decision to arrest. Additionally, officers should take into consideration the risk of flight by the suspect and the safety of officer(s), as well as any mandatory obligations required under the Department’s policy on **Domestic Violence** and G.L. c. 209A.
  1. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that a crime occurred. The decision to arrest must be based on whether probable cause exists that the crime occurred, not on whether the victim wishes to seek complaints or wishes to testify at a future date.
  2. If the above issues are not present or manageable, do not feel obligated to rush or make an immediate arrest just because you have probable cause to do so. Look at the specific circumstances of the case and consider conducting a non-custodial interview of the suspect prior to any warrant or arrest.

### 3. INTERVIEWING THE SUSPECT

- B. ALWAYS attempt to interview a suspect even if the suspect is likely to be uncooperative or deny the allegations.
  1. When conducting any suspect interview, it is strongly recommended that two officers are present and that the interview is conducted in a setting where they will not be disturbed. The best practice and preferred method is to audio and/or video record the interview.

2. Officers should refer to the Department's policy on ***Interrogating Suspects and Arrestees*** as need be.

### 3. CRIME SCENE MANAGEMENT AND EVIDENCE COLLECTION

#### VI. GENERALLY

- A. Given the critical role physical evidence can play in any criminal investigation, especially sexual assault investigations, proper documentation, collection and preservation of physical evidence is essential.
  1. Two of the most critical steps in any criminal investigation are the management of the crime scene and the collection and preservation of physical evidence. To identify a starting point, investigators must rely on their own observations in conjunction with victim and witness statements. These sources serve as a road map to navigating the crime scene(s).

#### 2. CRIME SCENE MANAGEMENT

- B. In reported sexual assaults, investigators must immediately consider the existence of, at a minimum, three crime scenes:
  1. The victim;
    - The locations where the assault occurred; and
    - The offender.
  - In addition, investigators must consider other possible locations where other types of evidence or "transfer evidence," may be found. This often results in additional locations being processed as crime scenes. Documentation of evidence and the crime scene can take on many forms but of critical importance is the written report describing the condition of the scene upon discovery. It should be noted if any items were moved or altered and by whom. Documenting the reason for the contamination and by who will help preserve the integrity of the remaining scene and any additional evidence that is located.
  2. Once the crime scene(s) have been identified, they must be secured. This will preserve the integrity of the evidence, and allow time for appropriate personnel to arrive on-scene for processing.

3. Crime scenes should be photographed and potentially diagrammed as found and at the time of discovery, especially if there is risk of destruction or disturbance. Pictures bring an image and corroborative element to the case which can never be as effectively communicated by words alone.
4. Although many of the reported sexual assaults are delayed disclosures, investigators should never discount the possibility of recovering physical evidence. Sexual assault evidence, by its nature, has a higher likelihood of remaining intact for extended periods of time (e.g. fluids, DNA, etc.).

## 5. CONSIDERATIONS BEFORE PROCESSING THE SCENE

- C. There are a number of things to consider before processing a crime scene. These include:

1. Is a search warrant/consent needed? If yes, be aware of the necessary language required to obtain appropriate forensic evidence.
  - Is there an external exigency such as weather or rapid deterioration which requires immediate documentation/collection?
  - Notification of crime scene and lab services.
- Additionally, while processing the scene, protective gear should be worn to preserve the integrity of the evidence (e.g. booties, gloves). A single officer should be assigned to identify and record anyone who enters an active scene in a Crime Scene Log.

## 2. FUNDAMENTALS OF PROCESSING A CRIME SCENE

### **D. DOCUMENTATION OF THE CRIME SCENE**

The most effective method of documenting the crime scene as discovered is through photographs and video. An overall depiction of the scene should be documented prior to any evidence being tagged or removed. When photographing evidence be sure to include established points of reference, and some mechanism of measure, to give context to the observer of the photograph at a future date. Another method of providing context is to diagram evidence in accordance with fixed points of reference so the location can be recreated if necessary.

### **1. TYPES OF EVIDENCE - CONSIDERATIONS**



2. The decision to seize items as evidence should be guided by the investigation, investigator's observations, legal authority and the victim/witness statements.
  - a. Though physical evidence, especially from sexual assault crime scenes can take many forms, the following list is provided as an example of items investigators might consider during the course of their investigations:
    - b. Bedding/bath;
      - Clothing/Material;
      - Swabbings/fluids (vaginal, rectal, oral, digital, penile, etc.);
      - Hairs/fibers;
      - Fingerprints;
      - Impressions (tire/footwear);
      - Digital evidence
      - Electronic communications including social media;
      - Writings/recordings;
      - Cell phones/communication devices;
      - DNA reciprocals (drinking glasses, toilet, sinks, tissues, toothbrushes, etc.);
      - Restraints/Inserted objects; and
      - Condoms/Tampons.

- **CLOTHING / MATERIAL AS EVIDENCE**

3. The victim's and assailant's clothing and any bedding or items where the assault occurred can frequently contain important physical evidence since garments/materials are absorbent surfaces, or surfaces which traces of foreign matter may be deposited or cling. Items such as blood, semen, saliva, hairs, or textile fibers may be transferred to the victim during physical contact. While foreign matter can be washed or worn off the body of the victim, the same substances may be found intact on clothing or material for a considerable length of time following the assault.
  - a. Damage in the form of rips, tears, or other destructive characteristics to clothing/material may also be significant. Those items may be evidence of the use of force or resistance.
  - b. Collected materials can also serve as a standard for comparing trace evidence retrieved from other evidentiary items, thereby connecting the

suspect, victim and crime scenes.

### **c. CONDOM TRACE EVIDENCE**

4. Today's high-level awareness of the spread of various sexually transmitted diseases coupled with the media attention to the ever-improving use of DNA in identifying perpetrators of unsolved crimes has increased the use of condoms by sexual assault offenders.
  - a. Although the use of condoms may significantly reduce the chance of retrieving seminal fluid, there are other types of equally important trace evidence that may be recovered. Condoms are made from a variety of synthetic and natural materials. Latex rubber is the most popular. Condom manufacturers add particulates (powders), lubricants, and spermicides to their products. Residues of those substances are referred to as condom trace evidence. Condom trace evidence can be recovered from sexual assault victims during the medical examination process.
  - b. The identification of condom trace evidence may assist investigators and prosecutors in proving penetration, even in the absence of seminal fluids. To assist the forensic laboratory in the analysis of condom trace evidence, investigators should make every effort to collect all condom-related evidence including, but not limited to:
    - c. Used condoms;
      - Unused condoms;
      - Condom wrappers;
      - Partial or empty boxes of condoms;
      - Tissues from the trash;
      - Lubricants; and
      - Evidence inside/outside of condom.

### **• PACKAGING**

5. The manner in which evidence is packaged is critical because it can directly affect the degradation or preservation of the evidence. If the evidence is not properly packaged and protected from contamination, it can be rendered virtually useless even if the best identification and collection practices have been adopted.
  - a. Investigators should adhere to the following with respect to the packaging of

evidence:

- b. Each item should be packaged separately;
  - Hairs, fibers, or other trace evidence, should be placed in a paper envelope and sealed with evidence tape; and
  - Clothing and other evidence specimens must be sealed in paper or cardboard containers as the use of plastic could result in the destruction of evidence.
  - All evidence packaging must be properly sealed with evidence tape.
  - At a minimum, all evidence should be labeled identifying the content, date and time located, date collected and by whom, agency and case number.
- If the clothing/material/tampons/condoms are wet, the items should be air dried before being packaged. When transporting such evidence to a secure, drying location, placing it temporarily in plastic bags is acceptable practice. The container or bag used to transport the wet evidence to the drying location, as well as the drop cloth placed under the wet evidence, should also be submitted for processing.
- c. Careless packaging can result in one garment/item accidentally contaminating another potentially making it impossible for the examiner to accurately interpret the findings. To prevent cross- contamination, each garment must be placed in a separate paper bag.

#### **d. CHAIN OF CUSTODY**

It is critical to document the chain of custody of all evidence identified and collected. This is accomplished by completing an evidence log upon the collection of evidence and any time it is moved or it changes possession from the date and time of collection. The evidence log should contain, at a minimum, the date and time it was collected/transferred, the name of the person who both took and lost possession of the evidence, a description of the evidence and a department name and case number. This documentation practice must be adhered to each time the evidence is handled or it may result in loss of evidence at trial.

### **6. MASSACHUSETTS SEXUAL ASSAULTS EVIDENCE COLLECTION KITS (MSAECK) AND THE SEXUAL ASSAULT NURSE EXAMINER (SANE)**

- 7. The victim's body may have both observable and unobservable evidence.

This critical evidence is best collected in a hospital by a Massachusetts Sexual Assault Nurse Examiner (SANE) utilizing the Massachusetts Sexual Assault Evidence Collection Kit (MSAECK).

- a. SANEs undergo specialized training, providing them with advanced skills in sexual assault patient care, forensic exam assessment, and evidence collection. Although SANEs are not in every Massachusetts hospital, SANEs are positioned widely throughout the Commonwealth and usually work in high volume hospitals/medical centers.
- b. Police officers should refer sexual assault victims to SANE sites to access specialized services whenever possible. SANEs are available 24 hours a day, seven days a week to designated SANE sites and will respond when a sexual assault patient presents at an emergency department within five days (120 hours) of the assault. All hospitals across the Commonwealth are given SANE Protocols to follow when collecting evidence in the event a SANE is not available.
- c. If the victim seeks care at a SANE site before contacting the police, the SANE will ask the patient if they wish to make a police report. In these instances, the SANE may initiate police contact to facilitate the patient's report of the crime. SANEs' specialized and unique training make them a valuable resource to the investigator and can often facilitate the victim's reporting of the assault within the emergency department. A best practice, if timing allows, is for the SANE and the investigating officer to obtain a history of the assault from the patient together. This practice will decrease the number of times a victim will have to recount their experience.
- d. The average SANE exam will take approximately three to four hours and cannot be interrupted once the evidence collection is started. SANEs obtain written consent from victims for every step of the evidence collection process using six detailed MSAECK forms.
- e. As of April 2015, there are 17 MSAECK steps to the evidence collection process. Comprehensive toxicology testing may take place if appropriate based on the case facts and circumstances of the case. Also completed is a physical assessment (including a pelvic exam), evidence collection, forensic photography, medication education and administration, and the coordination of discharge and follow-up care.
- f. Time is important in sexual assault evidence collection:

- g. Investigators should attempt to collect a known DNA standard from any consensual partners from the 5 days (120 hours) prior to collection of the MSAECK.
  - Evidence on a patient aged 12 years and older can be collected up to 5 days (120 hours) after the assault. Evidence can be collected even if the victim has bathed and or showered since the assault.
- In addition to the Sexual Evidence Collection Kit, toxicology samples are packaged in the Massachusetts Comprehensive Toxicology Kit and turned over to law enforcement with the MSAECK for transport to the Massachusetts State Police Crime Lab. It is imperative that kit pickup and transport occur as soon as possible to maintain evidence integrity.
- h. If there is suspicion that a drug was used to facilitate the commission of a sexual assault, specific toxicology testing is available to victims, with their consent, within 96 hours of the assault. The collection of urine and/or blood through the use of a Comprehensive Toxicology Kit, as a part of the MSAECK, is available at most hospital emergency departments.
- i. Victims can have toxicology testing completed even if they do not report the assault to the police. In these circumstances, toxicology results will be made available through a phone system which the victim is given access to at discharge. The victim can call the provided number to obtain the results approximately six weeks after collection. After receiving the results, the victim may then decide to initiate a police report.
- j. In addition to the collection of valuable forensic evidence, victims may also be concerned about potential medical risks. Prompt medical attention provided in the emergency department is critical to the victim's health and wellbeing. Medications can be prescribed to prevent pregnancy, HIV, and other sexually transmitted illnesses from occurring.

**k. INTERVIEWING MEDICAL PERSONNEL**

- 8. Medical personnel and Sexual Assault Nurse Examiners (SANEs) may have important information to share related to the assault and medical assessment of the victim post examination. However, federal and state law may require the victim to provide explicit consent in order for the attending medical personnel/SANE to disclose any information.

- a. The role of the medical provider/SANE conducting a forensic examination is to document the patient's account of the assault and any physical findings. This may also include photo-documentation of non-genital injuries.
- b. Medical providers/SANEs collect forensic evidence by swabbing areas of the victim's body, often based on history as reported by the victim. Such evidence is often not visible to the naked eye. It is important to recognize that for a variety of reasons, the majority of sexual assaults do not result in physical injury and the lack of observable trauma does not mean that an assault did not occur.
- c. Furthermore, in assaults in which physical trauma is reported, injuries may not be observable to the medical personnel/SANE at the time of their examination. Victims who report their assault to law enforcement should be encouraged to notify law enforcement if injuries become visible in the following days. Follow-up photographs may be obtained by the appropriate LE photographer at that time. Medical providers/SANEs do not conduct forensic testing or analysis of any evidence collected.
- d. If a victim is transported by ambulance, investigators are encouraged to obtain copies of the run sheets and interview ambulance personnel as appropriate.

**e. EVIDENCE IDENTIFICATION**

All collected evidence from the MSAECK and Massachusetts Comprehensive Toxicology Kit is identified with one specific kit number whether the case is reported by the victim to the police or not. This kit number identifies the victim's evidence collection encounter and is how the evidence kit(s) are tracked. If the victim chooses to directly report the incident to the police, his/her name is noted on the kit. In cases when evidence is collected, but not reported to the police, a kit number will be the only identifier. In this circumstance, there should be no victim name on the kit. The victim is provided the kit number upon discharge and is instructed that the kit number identifies the kit and the evidence collected.

**9. DISPOSITION OF THE MASSACHUSETTS SEXUAL ASSAULT EVIDENCE COLLECTION KIT**

10. Following the collection of medical evidence, the sealed MSAECK(s) are refrigerated and any clothing or other evidence is bagged and stored

separately at the medical facility. The hospital will contact the police department of jurisdiction to facilitate the transfer of the kit and other evidence from the medical facility to the crime lab.

- a. It is the responsibility of the investigator to deliver the kit and other evidence to the nearest Massachusetts State Police Crime Laboratory as soon as possible to avoid the destruction of vital evidence. The investigator must ensure that the kit is refrigerated and that the chain of custody is maintained.
- a. Evidence must be collected even if the patient decides not to report the sexual assault to the police.
- b. It is the responsibility of the police department of jurisdiction where the assault occurred to pick up and transport the evidence to the crime lab, in a timely fashion, whether or not the case is reported at the time of the exam.
- c. If there are extenuating circumstances associated with the investigation or legitimate reasons the local police cannot transport the sexual assault kit and/or evidence, the Massachusetts State Police should be contacted for the transport of evidence.
- d. Unreported cases may be reported at a later date. MSAECKs are retained for fifteen (15) years, during which time the victims may decide whether they want to report the assault to the police and have the evidence analyzed.
- e. In the event the alleged sexual assault occurs out of state but the forensic exam is performed in Massachusetts, the closest Massachusetts State Police barracks should be contacted for the transportation of the kit and any associated evidence to the crime lab.

#### **f. SUSPECT EVIDENCE COLLECTION**

- g. Through arrest, consent, or search warrant, investigators may have an opportunity to collect evidence and/or biological specimens from the suspect's body or clothing. If performed before the degradation of biological material, the examination may link the suspect to the crime. Through accurate documentation and collection of blood, hair, nails, wounds, body fluids or other evidence, examination of the suspect may corroborate the victim's account of the assault.

11. If the suspect voluntarily consents to a forensic examination, the appropriate consent forms should be signed. If the suspect does not voluntarily consent to such an examination, a search warrant/court order may be necessary and should specify all the evidence to be collected. A copy of the search warrant/court order needs to be present and submitted to the technician prior to the collection of evidence. A copy of the order/search warrant must be shown to the suspect at the time the search is conducted and the suspect should be given an opportunity to read it. A supervisor and/or the District Attorney's Office should be consulted to ensure proper legal requirements have been met.
  - a. Genetic material from the victim detected on the suspect's body or clothing may also corroborate allegations that a sexual assault occurred. Additionally, a swabbing of the suspect's penis may retrieve secretions from the mouth, vagina or rectum of the victim. In cases involving digital penetration, swabbing of the suspect's fingers or scrapings/clippings of the suspect's fingernails may retrieve secretions originating from the various body cavities of the victim. In addition, don't overlook the possibility of swabbing less obvious areas of the body which may have been handled (e.g. legs, wrists, neck, etc.).
  - b. Photograph the suspect, naked if necessary. If seizing the suspect's clothing, be sure to first photograph him/her fully clothed then photograph each item of evidence separately once removed. Be respectful and provide the suspect with appropriate clothing or cover once done. The facts and circumstance of the case will impact which evidentiary items are relevant for seizure. Be sure to consider any legal restrictions and/or requirements prior to seizure of evidence to minimize the chance of suppression at trial. Ensure proper packaging and chain of custody procedures are adhered to.
  - c. Regardless of what facility is used for evidence collection, the suspect and victim should never encounter one another. The security and safety of the victim and potential medical technician/examiner should also be taken seriously. Law enforcement should be present during the suspect's entire examination and processing for evidence collection.
  - d. The officer should expect that only the evidence listed on the search warrant will be collected. In the event that additional evidence is identified during the course of the forensic evaluation, an additional search warrant may be required and then served prior to the collection of that evidence (e.g. not in plain view). In the event this occurs, contact the District Attorney's Office for



consultation; however, it may be permissible to detain the suspect while the second search warrant is obtained.

- e. A Sexual Assault Evidence Collection Kit should never be used when collecting evidence from sexual assault suspects. The kits are for the collection of evidence from victims ONLY and do not provide for the collection of all the necessary specimens from sexual assault suspects.
- f. It is the responsibility of the investigating law enforcement agency to ensure that the evidence is collected in a proper manner and that it's delivered to the crime laboratory in a timely fashion.

**g. CHAIN OF CUSTODY**

To prevent the loss, or misplacement of evidence at the time of kit pick-up, officers should expect hospital emergency staff to ask for identification for documentation purposes. Police officers picking up evidence should be prepared to provide hospital staff with their name and identification/badge number. This practice is to protect the integrity of the chain of custody and is to comply with evidence transport guidelines.

**h. COMBINED DNA INDEX SYSTEM (CODIS)**

- 12. The nation-wide standardization of forensic DNA analysis provides the ideal platform for crime labs to share DNA information derived from evidence and sexual offenders. Using the Federal Bureau of Investigation's Combined DNA Index System (CODIS), DNA profiles obtained from body fluids, stains, or other evidentiary sources of DNA with unknown offenders may be linked to other cases or known offenders. This has allowed crime labs to scientifically document known sex offenders.
- 13. A DNA profile derived from evidence may lead investigators to the identity of a single assailant, multiple offenders, or link multiple cases. The information obtained from a CODIS report serves as an invaluable investigative tool lead helping direct investigator to potential offenders.
  - a. DNA profiles must meet eligibility requirements before being submitted to CODIS.

## b. ADDITIONAL INVESTIGATIVE TOOLS AND RESOURCES

### c. ELECTRONIC EVIDENCE

VII. In any investigation, investigators must consider all electronic media and storage devices as potential sources of evidence and insight into the circumstances of the case. In doing so, the investigator should consider the following:

- A. Is digital evidence potentially involved in the crime?
  - 1. Survey the scene for digital evidence, including phones, cameras, computers, thumb drives and other external storage devices.
  - If there a question as to the location of the suspect or victim at the time of the crime, and they routinely carry their cell phone on their person, cell site location information (CLSI) can be gained with a search warrant.
  - Interview victim/witnesses as to the use of these devices. Text or social media communication between victim and suspect, before and after the crime has occurred, can carry evidentiary value.
- Identify all locations of potential digital evidence:
  - On-scene (e.g. phones, computers, data storage devices)
  - On-line (e.g. Internet Service Providers, “cloud” storage services)
  - Other locations (e.g. in possession of victim or suspect)
- Determine search authority:
  - Consent, plain view, search warrant, exigency, etc.
  - Electronic Communication Privacy Act (ECPA)
- The digital crime scene may include information stored by service provider and may require a Preservation Order followed by a search warrant.
- Always be cognizant of the fact that some devices can be erased or otherwise tampered with from remote locations. Care should be taken to protect devices from any incoming signals (e.g. use of a Faraday bag or switching of the device to “airplane mode”).
- There can often be technological nuances and search warrant requirements associated with electronic storage devices and evidence recovery. Therefore, it is strongly recommended that a computer forensic unit and/or the District Attorney’s Office is consulted prior to handling or seizing such evidence.

### • ELECTRONIC MONITORING - PROBATION

2. The Massachusetts Probation Service Electronic Monitoring (ELMO) provides a critical level of services designed as an alternative to incarceration. Law Enforcement agencies may request ELMO information, by submitting a written request to [Elmo.Inforequests@jud.state.ma.us](mailto:Elmo.Inforequests@jud.state.ma.us) from a verifiable Law Enforcement agency email address. Probation typically responds within 24 to 48 hours. Please note that ELMO will supply GPS information "For Investigative Purposes Only".

**B. IMMEDIATE NEED:** In the interest of public safety, if a Law Enforcement agency makes an urgent request (i.e. AMBER Alerts, Major/Catastrophic events, and requests for real time locations of specific monitored offenders for the purpose of serving a warrant or effectuating an arrest) and provides verifiable credentials (such as the main phone number of the requesting agency, the officer's badge number, contact information, and that the Officer is currently assigned to investigate the matter at hand) information for investigative purposes may be provided immediately.

1. If an agency is requesting a point tracking search (Crime Correlation) for a particular location, this request should include a defined period of time and should disclose for what purpose the request is being made. All requests should be sent to [Elmo.Inforequests@jud.state.ma.us](mailto:Elmo.Inforequests@jud.state.ma.us). Law enforcement may also contact ELMO directly at 978-365-2970 for assistance.

## 2. COURT ORDERS / GRAND JURY SUBPOENAS

In certain circumstances such as obtaining financials, phone records, medical records, or other documentation, court orders and/or grand jury subpoenas may be necessary. These requests must be coordinated with the District Attorney's Office.

## 3. POLYGRAPH EXAMINATIONS

- C. The use of polygraph examinations can be an effective and reliable tool to include or exclude an individual as a suspect in criminal investigations. The use of polygraph examinations for victims is strongly discouraged except in cases where there is a reasonable basis to believe the victim is making a false claim or report. In addition, the use of or the suggested use of a polygraph examination should not be used as a condition of proceeding with an investigation, charge, or prosecution of an offense.

- D. In Massachusetts, the results of polygraph exams are inadmissible in criminal trials and may not be used for any purpose or in any capacity for criminal prosecution. In addition, the submission to, or failure to submit to, a polygraph examination is inadmissible in court.

## 1. SEX OFFENDER REGISTRY BOARD (SORB)

The Sex Offender Registry Board (SORB) is the state agency responsible for compiling and maintaining a database of convicted sex offenders and classifying each offender. The SORB is an important partner with local law enforcement to ensure sex offender registration and compliance enforcement. The SORB is also an excellent resource for law enforcement offering investigative support. They have access to records and information regarding offender histories which may not be available through traditional data base searches (e.g. Triple III, BOP etc.).

## 2. OUTSIDE DOCUMENTATION

- E. The use of outside agency documents and reports can be powerful circumstantial evidence to corroborate your investigation. Consider checking the following sources for information regarding the suspect or possible suspects:

F. Board of Probation record (BOP);

1. Interstate Identification Index (III) (federal Criminal History Record Information);

- Incident reports from other arrests and/or law enforcement involvements;
- Field interrogations reports (FIO reports);
- Employment records;
- Military records;
- Educational documents;
- Passports and travel documents;
- Probation/Parole records;
- Financial records;
- 911/Turret tapes;
- Outside video;
- Professional boards (e.g. medicine, education);
- Department of Transitional Assistance;
- Department of Children and Families;
- Disabled Persons Protection Commission;
- Rental information; and
- GPS, and electronic monitoring transponders.

- The above is not an exhaustive list. The limits and constraints of investigative tools and resources are only as limited as an investigator's imagination, so utilize all available resources. Assemble as comprehensive and professional investigative package as possible.

## • OTHER INVESTIGATIVE CONSIDERATIONS

### 2. HIGH PROFILE INVESTIGATIONS

Sexual assault investigations cross all social, economic, and professional boundaries. Because of these intersections, an investigator may be placed in delicate or difficult situations. The investigator's job is to investigate and report the facts as they are found. The investigator's ability to be impartial and ensure the victim is treated fairly and with dignity is paramount. If an investigation creates a real or perceived conflict, the best practice may be to have the case handled by an independent and detached party. Consult the Department policy, supervisor, and/or the District Attorney's Office when such situations arise.

### VIII. MEDIA RELATIONS AND INTERACTION

- A. When addressing the media regarding any criminal investigation or pending criminal case, it is recommended that the investigator consult the Department's policy and guidelines and ensure that the information contained in the log is appropriate for public dissemination. Coordinate any press releases with the District Attorney's Office where warranted or as prescribed by the Department policy.
- B. Aside from the legal restrictions that prohibit the release of information regarding victims of sexual assault, there are often a myriad of other issues and concerns which may be present for the victim. These include the ongoing threat of and/or risk of continued domestic and sexual violence or retaliation. Safety risks may require additional layers of protection and precaution by law enforcement to protect the identity and location of the victim.
1. There are several Massachusetts General Laws which impact public dissemination and media disclosure. The primary statute which affects law enforcement is G.L. c. 265, § 24C. This statute states that the portion of records of any court or any police department in the Commonwealth or any of their political subdivisions which contain the name of a victim in an arrest,

investigation, or complaint for rape or assault with intent to rape, shall be withheld from public inspection, except with consent of a justice of such court where the complaint or indictment would be prosecuted. Said portion of the court record or police record shall not be deemed to be a public record. In addition to the above, it is also important to be cognizant of the added legal restrictions surrounding the release of information regarding juveniles.

## 2. TRAINING

All sworn and communications personnel shall be trained in this policy, and shall review and refer to ***Training Bulletin 2.06*** relative to Sexual Assault Investigations for additional training and guidance.

## **APPENDIX INDEX**

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- 3. JANE DOE, INC. MAP OF VICTIM RELATED SERVICES
- IX. NETWORK OF SEXUAL ASSAULT & DOMESTIC  
VIOLENCE SERVICE PROVIDERS IN MASSACHUSETTS
- A. SEXUAL ASSAULT NURSE EXAMINER SITES

(See printed copy of policy for Appendix A - C)