

# **Michigan Model Policy: The Law Enforcement Response to Sexual Assault**

*Adults and Young Adults*



This policy was developed as a project of the  
Michigan Domestic and Sexual Violence  
Prevention and Treatment Board

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**Questions or Technical Assistance:**

For an electronic version of these documents that can be edited or technical assistance in adapting the policy or appendices, please contact the Michigan Domestic and Sexual Violence Prevention and Treatment Board at 517-241-7103 or [mdsvptb@michigan.gov](mailto:mdsvptb@michigan.gov).

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# PREFACE

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The State of Michigan Sexual Assault Model Policy Working Group was created by the Michigan Domestic and Sexual Violence Prevention and Treatment Board to draft a resource for law enforcement agencies that represents best practices for the effective response to, and investigation of, the sexual assault of adults and young adults. The policy was drafted as a statewide resource with the understanding that individual law enforcement agencies will need to adapt it to the needs of their department based on size, department structure, and available resources. The policy also includes changes to Michigan law that go into effect in April of 2015 including the Sexual Assault Kit Submission Act, MCL 752.931 et. seq., and the Sexual Assault Victim's Access to Justice Act, MCL 752.951 et. seq.

## Policy Goals:

- Ensure that sexual assault cases are properly and ethically investigated in an unbiased and truth seeking manner that will support a fair and accurate decision in the criminal justice system.
- Reduce the physical and psychological trauma to the victim of sexual violence by responding in a compassionate, sensitive, and non-judgmental manner.
- Incorporate comprehensive investigation practices that focus on the actions and choices of the offender, not the actions or inactions of the victim.
- Encourage a coordinated community response to sexual assault through coordination of the criminal justice response with medical and supportive services for victims of sexual assault.

Because the policy was intended as a model to be used across the state, local law enforcement agencies will need to adapt it to include locally developed policy provisions for working with a community-based sexual assault program, Sexual Assault Nurse Examiner (SANE) Program, or local emergency room. There are several sections in the document indicated by red text in *[brackets]* where local information can be inserted—see policy pages 3, 10, 17, and 30.

The law enforcement agencies that have been the most successful in responding to sexual assault have been those agencies that work in a coordinated way with these community-based sexual assault programs. Such a coordinated response can ensure that victims have confidential advocacy and counseling services available during the immediate law enforcement response, during the medical forensic examination, and on a follow up basis. Accordingly, it is recommended that the model policy be adopted through a coordinated process that includes such organizations and that the final policy includes specific references to those organizations.

For an electronic version of these documents that can be edited or technical assistance in adapting the policy or appendices, please contact the Michigan Domestic and Sexual Violence Prevention and Treatment Board at 517-241-7103 or [mdsvptb@michigan.gov](mailto:mdsvptb@michigan.gov).

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## Acknowledgments

In drafting the policy, the working group relied on the expertise of its members and it drew from policies and resources developed by other states and national organizations. We would like to acknowledge the following organizations and resources which directly influenced the final policy.

- International Association of Chiefs of Police. *Investigating Sexual Assault Model Policy and Guidelines*, 2005.
- State of New Hampshire Governor's Commission on Domestic and Sexual Violence. *New Hampshire Model Protocol for Response to Sexual Assault Cases*, 2012.
- The Commonwealth of Massachusetts Executive Office of Public Safety and Security. *Adult Sexual Assault Law Enforcement Guide*, 2009.
- Ashland Police Department, *You Have Options Program*.
- End Violence Against Women International, *Training Bulletins*.
- Human Rights Watch. *Improving Police Response to Sexual Assault*, 2013.
- New Mexico Coalition of Sexual Assault Programs. *Responding to Sexual Violence: A Guide for Law Enforcement in New Mexico*, 2012.
- North Dakota Department of Health. *North Dakota Model Law Enforcement Sexual Assault Policy*, 2011.

# DISPATCH/ CALL TAKER RESPONSE

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*Sexual assault is a traumatic experience that can cause victims to display a variety of emotional and behavioral responses ranging from crying and anger to laughter, calmness, or unresponsiveness. There is no one typical reaction, so it is vitally important to refrain from judging or disregarding any victim's report based on their demeanor. Demonstrate patience and respect at all times.*

## A. Call Priority

1. Treat sexual assault calls as high priority calls regardless of the length of time between the call to 911/dispatch and the incident of sexual assault. It is not uncommon for victims of sexual assault to report the assault days, weeks, months, or even years after the assault. It is important that these calls are still prioritized and responded to immediately to affirm to the victim that their call is important and will be taken seriously.

## B. Establish Initial Information

1. Location
2. Nature of emergency
3. Identity of the caller
4. Caller safety
5. Victim's need for medical assistance
6. Suspect information
7. Weapons

## C. Evidence Preservation Considerations

1. If the victim has not already done so, advise the victim not to wash, brush teeth, change clothes, gargle and/or clean anything from which evidence might be collected. It is not uncommon that time will have passed between the assault and the call to 911 and, as a result, the victim may have engaged in many of the above self-care activities, such as showering. It is important to reassure the victim that law enforcement and healthcare providers may still be able to collect evidence and that they did nothing wrong by taking care of themselves.
2. If the victim describes black out, loss of consciousness, or if they believe they have been drugged, collecting a urine sample can be very important; some drugs are metabolized very quickly and may only be detected from an early urine sample. If the victim reports any of these circumstances, advise the victim that if they need to urinate, they should collect urine in a clean container to give to the responding officer.

## D. Additional Procedures

1. Whenever possible, stay on the line with the victim to provide additional information and assistance until an officer arrives at the scene.

- a. Have the victim tell you what happened, but do not press the victim for details. Demonstrate empathy for the caller at all times. In addition, avoid statements that could sound judgmental or blaming. The victim's ability to think clearly and to articulate what happened may be impeded by the trauma of the assault. Victims may have difficulty recalling events chronologically. Do not be concerned if the victim's recall of events sounds confusing.
2. If you need to get off of the phone with the victim before officers arrive, advise the victim of the officers' expected arrival time.
3. Do not cancel an officer dispatch at the request of the victim regardless of whether the request is made during an initial or follow-up call. Advise the responding officer of the request, so that the officer can determine whether the victim's request was made voluntarily by the victim.
4. Follow the appropriate departmental procedure for preserving the recording of the call for the investigation.

**POLICY NOTE:**

If the department frequently experiences significant delays in response time, a policy should be developed that provides dispatchers with guidance on managing a delayed response and connecting victims with health and supportive services—such as a referral to receive a medical forensic exam or a referral to the community-based sexual assault crisis service provider.

# IMMEDIATE LAW ENFORCEMENT RESPONSE

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*The attitude and conduct of the responding officer is key to gaining the victim's trust and participation. The victim will assess the officer's demeanor and language for reaction. Approach the victim in a respectful, supportive manner. Remain objective and non-judgmental.*



**RESOURCES AVAILABLE:**     **FIRST RESPONDER CHECKLIST** (Appendix A)  
   **SAMPLE VICTIM NOTICE CARD** (Appendix B)  
   **SEXUAL ASSAULT: A TRAUMA INFORMED APPROACH** (Appendix K)

## A. Emergency Response

1. Respond immediately to the location of the victim, which may or may not be the crime scene. If needed, summon emergency medical assistance. If the victim is not at the crime scene, determine the location of the crime scene(s).
2. Request assistance from detectives, field evidence technicians, crime laboratory personnel, and the prosecuting attorney when appropriate.
3. Evaluate the scene for people, vehicles, or objects involved, as well as for possible threats.
4. Secure the crime scene to ensure that evidence is not lost, changed, or contaminated. See p. 28 "Crime Scene(s) and Other Evidence Collection."
5. Begin the search for the suspect when appropriate.

## B. Assisting the Victim

1. **Support:** Ask if there is anyone that the victim would like to contact.
2. **Community support services:** Contact an advocate from *[insert name and contact information for a community-based sexual assault program, if available (coordinate with the sexual assault program to ensure the availability of these services as part of policy adoption process)]*.
3. **Medical/forensic examination:** If the victim has been assaulted within the last 120 hours (5 days), encourage the victim to have a Sexual Assault Medical Forensic Examination.
  - a. Contact *[insert contact information for local emergency room or Sexual Assault Nurse Examiner program (coordinate with the provider to ensure the availability of these services as part of policy adoption process)]* to arrange for an examination. *[Insert preferred Sexual Assault Nurse Examiner Program]* is the preferred examination provider, but all hospitals are required by law to provide and examination or arrange for the provision of the examination for anyone who has been assaulted within the previous 120 hours (5 days). MCL 333.21527.
  - b. Inform the victim that they cannot be charged for evidence collection.
  - c. Provide the victim with transportation to the examination, if necessary or requested.
  - d. See p. 10 for more information about the medical forensic examination.
4. **Convey understanding:** Convey your understanding of the seriousness of the crime.
  - a. Often a victim may view reporting a sexual assault as a risk. They do not know how they will be treated or if they will be believed. It is critical that the responding officers communicate appreciation to the victim for reporting, regardless of the officer's initial impression of the case.

- b. The first responder should convey and maintain a relaxed, friendly tone. Do not express surprise, disgust or disbelief or other emotional reactions.
- c. Ensure the victim that this case is important and it will be thoroughly investigated.

### C. Understanding Sexual Assault and Victim Response to Trauma

1. Individuals respond to trauma in a variety of ways. Victims may display a range of demeanor and emotions from crying and distress, to extremely calm and/or seemingly cheerful.
2. Trauma can affect a victim's ability to give a detailed or chronological statement. A person experiencing trauma often will recall and/or disclose information over a period of time as memories are triggered and as trust is established with responders.
3. Do not make judgments about credibility based on a victim's demeanor or inability to articulate a chronological narrative.
4. Be aware that offenders typically choose victims based on a perceived lack of credibility or perceived vulnerability knowing that this will make others doubt the victim's report of the assault (vulnerabilities may include age, status, alcohol consumption, or other circumstances). See p. 22, "Understanding Sexual Assault Offenders."

### D. Understanding Alcohol or Drug Facilitated Sexual Assault

1. Drug or alcohol facilitated assault occurs when a person is made vulnerable or incapacitated by ingestion of drugs or alcohol. Ingestion can be voluntary or without the victim's knowledge. Alcohol is by far the most commonly used substance in these cases.
2. A victim's voluntary use of an illegal substance, or alcohol in the case of a minor, should not be a factor in determining whether or not the sexual assault was perpetrated.
3. Victims for whom alcohol/drugs were a factor in the assault may experience confusion, drowsiness, impaired judgment and/or impaired motor skills, among other symptoms. Following an assault, victims may:
  - a. Think they have been assaulted, but are not sure.
  - b. Report a level of intoxication that does not match the amount of alcohol/drugs they consumed.
  - c. Have unexplained injuries or rearrangement of clothing.
  - d. Report that they "feel" like there has been sexual penetration or contact but don't remember it.
4. Be aware that the offender may have facilitated the victim's intoxication or chosen the victim based on intoxication level hoping it would undermine the victim's ability to resist the assault, remember the assault, and that it would reduce the likelihood that the victim would report the assault. Offenders may hope that others will use the presence of alcohol or other substances as a reason to disregard or disbelieve the report.

#### BEST PRACTICE:

A good investigation focuses on the actions, choices, and behaviors of the offender. Remind the victim that they are not responsible for the assault even if alcohol or other substances may be involved.

## E. Preparing for the Minimal Fact Victim Interview

*Sexual assault investigations typically include both a preliminary victim interview in the response phase and a subsequent in-depth interview in the investigative phase. The preliminary interview is intended to be a **minimal fact interview** to establish location and the elements of the crime. It is best practice to conduct a second investigative interview, even when the first responder and the investigator are the same person. This practice allows the victim to recover from the initial assault and for memory to begin to consolidate after the trauma.*

1. **Assessment:** Determine whether an initial interview is necessary or appropriate at this time based on the victim's condition, future availability, and the availability of a detective or other specially trained personnel to conduct the initial interview.
2. **Child Advocacy Center/Child Forensic Interview:** For victims of child sexual abuse or victims with developmental disabilities utilize the child forensic interviewing protocol or child advocacy center.
3. **Secure a private location:** The location should be safe for the victim and free from distractions. This may include going to the police department, hospital, or SANE program.
  - a. Ask the victim if they are comfortable in the proposed interview location. Allow the victim to make the determination about interview location, whenever possible.
  - b. If responding to a hospital, ensure privacy by requesting a private room rather than remaining in a trauma area waiting room. Law enforcement should not be in the examination room during the forensic examination when the health provider is examining the victim.
  - c. If the victim walks into the law enforcement department to report a sexual assault, do not take the report in a public area or in the presence of unnecessary persons. Use an interview room, conference room, or other location to ensure comfort and privacy.
4. **Support person:** Accommodate the victim's wish to include a support person or advocate from a community-based sexual assault program in the initial interview, if appropriate and available.
5. **Special accommodations:** Assess any special needs of the victim and accommodate when possible, such as the need for an interpreter (not a friend or family member).
6. **Polygraph:** It is against the law for an officer to ask a sexual assault victim to take a polygraph examination or to inform the victim of the option of taking a polygraph examination. MCL 776.21
7. **Written statement:** Do not require the victim to provide a sworn statement. Do not ask the victim to write out their own statement about the incident instead of conducting an interview. Honor a victim's request to write a statement, however the officer must still complete an interview.
8. **Prosecution Inquiry:** Do not ask the victim if they want to pursue prosecution. It is neither reasonable nor realistic to expect the victim to be able to make an informed decision about their future involvement in the criminal justice process at this stage.

## F. Conducting the Minimal Fact Interview

1. **Explain interview:** Tell the victim that the purpose of the preliminary interview is to gather **limited facts** and that a thorough investigative interview will be completed at a future time. If the interview will be recorded inform the victim.
2. **Obtain victim contact information:** Obtain phone number(s) or other contact information where it is safe to call the victim. Obtain name and contact information for persons or family members that can reliably reach the victim in the future.
3. **Minimal fact interview technique—Ask the victim:**
  - a. “Help me understand what you are able to remember about your experience?” or “Tell me what happened; start wherever you think it makes sense to start.”
  - b. Allow the victim to describe what occurred without interruption.
4. **Gather information from the victim’s narrative:** If the victim’s narrative does not provide it, ask follow-up questions such as “Tell me more about \_\_\_\_\_” or “Help me understand \_\_\_\_\_” or “What else are you able to remember about \_\_\_\_\_,” to gather the below information:
  - a. The elements of the crime.
  - b. The suspect(s) identity, including remarkable identifying characteristics (i.e., scars, odors, tattoos, birth marks, unusual or distinctive physical features).
  - c. The crime scene(s), including where the assault started and where it ended.
  - d. Information regarding any weapons used.
  - e. Any injuries to the victim.
  - f. Any injuries to the suspect, specifically any injuries inflicted by the victim.
  - g. If indicated by the victim, document whether any drugs or alcohol were involved in the crime including how the suspect may have used or provided drugs or alcohol to facilitate the crime.
  - h. Determine existence/location of additional evidence such as:
    - physical evidence related to the assault (i.e., clothing, bedding, condoms, objects, tampons).
    - text messages, electronic postings, photographs or videos that may have been taken that reveal the assault, or pre/post-assault conduct of the suspect.

### BEST PRACTICES:

**DO NOT** employ traditional suspect methods used for detecting deception with victims. In the wake of a trauma, the victim should not be subjected to a lengthy or detailed interview, nor should they be “tested” for credibility.

**DO NOT** ask questions of quantity. Don’t ask how many times or how long, instead ask “you told me \_\_\_\_\_; did that happen once or more than once?”

**DO NOT** press the victim if they are unable to provide answers to all of these questions in the preliminary interview.

#### **5. Concluding the preliminary interview**

- a. Inform the victim about the next steps in the investigation. If possible, schedule a follow-up investigative interview or let the victim know when they can expect to be contacted.
- b. Encourage the victim to contact you or the appropriate investigator if they remember any additional information or evidence prior to the investigative interview. Assure the victim that it is not unusual to remember additional information with the passage of time.
- c. Inform the victim what to do if they feel unsafe or if they are contacted directly or indirectly by the suspect, or by the family and friends of the suspect.
- d. Help secure immediate safety after the interview including arranging transportation to a safe place if needed.

### **G. Providing the Department's Victim's Rights Notice Card**

1. Provide the victim's rights notice card to the victim within 24 hours of initial contact. Review the appropriate referrals and rights on the card. Certain notices are statutorily required by the Sexual Assault Victims' Access to Justice Act, MCL 752.953, and the Crime Victims' Rights Act, MCL 780.753. See Appendix B, "Sample Victim Notice Card."

### **H. Additional Responsibilities and Considerations for First Responders**

1. A written report must be completed. See p. 8, "Report Writing."
2. Consider conducting a neighborhood canvass to locate witnesses. Initial interviews should be completed with any on-scene witnesses. In determining whether to conduct initial witness interviews or to postpone to a later date, the officer should consider the circumstances of the assault and a victim's interest in maintaining privacy in the immediate aftermath of the assault.
3. Follow the appropriate procedure for preserving any audio visual recordings, such as the 911 call or officer in-car audio/video.
4. Preserve other recordings and electronic evidence such as surveillance cameras, cell phone data, or information on social media. See p. 29, "Electronic Evidence."
5. Follow agency policy for retrieving sexual assault evidence kit from the hospital emergency room or Sexual Assault Nurse Examiner (SANE) program. See p. 10, "Processing and Submitting"
6. Determine if immediate suspect arrest or contact will be made by considering the circumstances of the case, public safety, loss of critical evidence, and victim safety concerns. Consider consulting with supervisor, detective or other specially trained personnel. See p. 23, "Arrest Decision" and p. 30, "Suspect Forensic Examination."



# REPORT WRITING

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*Effective prosecution of sexual assault cases relies in part on a strong written report. A thorough report will identify on-scene evidence and document details from the victim's and the suspect's accounts of the incident. This will assist to overcome defense challenges and serve to refresh memories for court testimony.*



## **RESOURCES AVAILABLE: SUGGESTED GUIDELINES ON LANGUAGE USE FOR SEXUAL ASSAULT** (Appendix C)

### **A. Officer Responsibilities**

1. The initial responding officer shall complete a report. Any officer who interviews a witness, victim, or suspect, identifies evidence, or processes a crime scene shall write his or her own report detailing the actions they took, including any referrals provided to the victim.
2. All reports shall be completed prior to going off duty.
3. The investigating officer shall prepare an investigative report and follow-up reports regarding the incident.
4. The complete report, which shall include the initial report and supplemental reports, shall be compiled and shall be reviewed by the supervisor.

### **B. Documenting the Initial Response**

1. List the primary and alternative contact information (i.e., additional phone numbers, etc.) where it is safe to call the victim or where messages can be safely left. Include information about the victim's preferred safe contact methods.
2. Record the name, address, and phone number of two close friends or relatives who will know the victim's whereabouts 6-12 months from the time of the investigation.
3. If parties do not speak English, note what language they do speak for the benefit of other staff attempting to contact them.
4. If you use an interpreter to obtain a statement, document the interpreter's identity and contact information. When available, audio record the victim's statement and the interpretation.
5. Do not require the victim to provide a sworn statement. Do not ask the victim to write out their own statement about the incident instead of conducting an interview. Honor a victim's request to write a statement, however the officer must still complete an interview.

#### **POLICY NOTE:**

Victims or third parties should typically be allowed to make a restricted or information only report, or an anonymous report, if requested. The best way to implement this type of response is in coordination with a community-based sexual assault program.

#### **BEST PRACTICE:**

Well-documented victim primary contact information and alternative victim contact information is critical.

6. Be aware during initial interactions with the victim that they may make statements that have evidentiary value as excited utterances:
  - a. **Document observable physical/emotional condition that accompanied the utterance:** Document all observations of the victim's appearance and emotional condition, even if the emotions exhibited are inconsistent with officer's expectations such as a flat affect or giggling.
  - b. **Document excited utterances:** Document the excited utterances exactly, using quotes if appropriate.
7. Capture the exact words used by the victim and suspect to describe the assault. Specify the penetration or contact with specific references to body parts and/or objects used. Use quotation marks to denote direct quotes.
8. Avoid language of consent ("had sex" "performed/engaged in oral sex" "had intercourse") to describe non-consensual sexual contact. Rather describe the actions of the suspect using objective language which references specific body parts.

#### **BEST PRACTICE:**

**DO:** Include specific observations and details, not judgments or conclusions: **"the victim was tearful and trembling"** rather than just "upset."

**DO:** Use active language, such as: **"the suspect put his forearm across victim's chest to hold her down"** rather than the passive "the victim was held down."

**DO:** Use objective language to describe actions, such as **"the suspect penetrated the victim's anus with his fingers"** rather than consensual language such as "had sex," "oral sex," "fondling," or "foreplay."

**DO:** Describe the incident as **"the crime, the offense, the sexual assault, or the reported assault"**, rather than the "alleged assault."

# SEXUAL ASSAULT EVIDENCE KIT AND EXAMINATION

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## A. Sexual Assault Medical Forensic Examination

1. **Understanding and explaining the examination to the victim:** A sexual assault medical forensic examination typically includes a medical history, a physical examination, treatment for injury, and prophylactic treatment for pregnancy or sexually transmitted diseases. If a victim chooses, forensic evidence is also collected through the use of a sexual assault evidence kit (SAEK). Sexual assault medical forensic examinations are typically performed by a Sexual Assault Nurse Examiner (SANE) Program, if available, or at a local hospital emergency room.
  - a. **Right to an examination:** Victims have the right to receive a medical forensic examination and have evidence collected, even if they do not want to participate in the criminal justice process. MCL 18.355(10).
  - b. **Time for examination:** Health facilities must offer the examination and evidence collection to any person stating that they have been assaulted within the previous 120 hours (5 days). If the victim agrees, the health facility must perform or have performed the examination and evidence collection. MCL 333.21527.
  - c. **Examination payment:** Victims cannot be billed for evidence collection and the accompanying medical forensic examination. MCL 18.355(2).
7. **Referral for examination and SAEK:** If the victim has been assaulted within the last 120 hours (5 days), encourage the victim to have a Sexual Assault Medical Forensic Examination.
  - a. Contact *[insert contact information for local emergency room or Sexual Assault Nurse Examiner program]* to arrange for an examination. *[Insert preferred Sexual Assault Nurse Examiner Program]* is the preferred examination provider, but all hospitals are required by law to provide and examination or arrange for the provision of the examination for anyone who has been assaulted within the previous 120 hours (5 days). MCL 333.21527.
  - b. Inform the victim that they cannot be charged for evidence collection.
  - c. Provide the victim with transportation to the examination, if necessary or requested.
2. **Examination:** Law enforcement should not be present when the health provider is conducting the examination. However, if the examination is being conducted on an inmate, take appropriate safety measures including the presence of an officer during the examination, if necessary.

## B. Processing and Submitting Evidence Kit for Forensic Testing

1. **Retrieve/transport sexual assault evidence kit (SAEK):**
  - a. **From the health facility:** SAEKs that have been released by the victim to the department must be retrieved by the department from the health provider or SANE program within 14 days of the department receiving notice that a SAEK has been released. MCL 752.934.
  - b. **From another jurisdiction:** If the department is notified by another law enforcement agency that it is in possession of a SAEK associated with a sexual assault that took place

within the department's jurisdiction, the department has 14 days to retrieve the SAEK from that law enforcement agency. MCL 752.934.

2. **Chain of custody:** The department is responsible for maintaining chain of custody for the SAEK after it has been collected from the healthcare provider or referring jurisdiction. Obtain documentation of the chain of custody from the healthcare provider or referring jurisdiction prior to taking possession of the SAEK.
3. **Assign criminal complaint to SAEK:** If the sexual assault took place within the jurisdiction of the department, the department must match the SAEK to an existing complaint number or assign a complaint number to the SAEK. If an investigation hasn't already begun, an investigator should be assigned to make contact with the victim.
4. **Jurisdiction:** If it is determined that the assault took place in a different jurisdiction, the department shall notify that jurisdiction as soon as possible. The department must inform that jurisdiction within 14 days of taking possession of the SAEK. The appropriate jurisdiction must retrieve the SAEK and copies of the appropriate documentation within 14 days of being notified. MCL 752.934.
5. **Crime laboratory testing:** The department responsible for investigating the incident must assign a complaint number and submit the SAEK to the Michigan State Police crime laboratory or another accredited laboratory for forensic testing within 14 days of taking possession of it. MCL 752.934.

## C. Storing and Preserving SAEK after Forensic Testing is Complete

1. The department is also responsible for storing/preserving the SAEK after the completion of forensic testing.
  - a. **Conviction/incarceration:** The SAEK must be stored and preserved for the period of time that any person is incarcerated in connection with that case. MCL 770.16.
  - b. **All other cases:** The SAEK should be stored until the expiration of the statute of limitations. If the SAEK will be destroyed prior to the expiration of the statute of limitations, the victim must be notified 60 days prior to its destruction. MCL 752.935.

# INVESTIGATIVE PHASE

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*In many Michigan jurisdictions, the responding officer will also transition into the role of lead investigator for the investigative phase of the case. Lead investigators have primary control over the case and are responsible for ensuring that a complete and comprehensive investigation is conducted.*



**RESOURCES AVAILABLE:**    **SAMPLE SUSPECT INFORMATION FORM** (Appendix D)  
   **SAMPLE INVESTIGATOR RECORDS CHECK LIST** (Appendix E)  
   **NCIC OFFLINE SEARCH REQUEST** (Appendix F)

## A. Responsibilities of Lead Investigator

1. If a lead investigator responds to the scene, take control of the scene and coordinate the investigation.
2. Speak with the responding officer(s) to obtain a baseline account and to determine what has been completed. Review all written reports and the forensic medical report from the health provider, if available.
3. If the victim has not yet received medical treatment, make appropriate arrangements as needed and ensure that appropriate support referrals have been made. See p. 10, “The Sexual Assault Evidence Kit (SAEK) and Examination.”
4. Ensure that steps have been taken to preserve any crime scene(s) and/or evidence. When necessary, secure warrants to process crime scene(s). See p. 28, “Crime Scene(s) and Other Evidence Collection.”
5. Ensure that, if a sexual assault evidence kit has already been collected, the kit has been assigned a complaint number and is submitted to a crime laboratory for forensic testing. See p. 10, “Processing and Submitting the Completed SEAK.”
6. If not already done so, obtain written documentation of the chain of custody from the healthcare provider or referring jurisdiction for the period of time prior to the department taking possession.
7. Begin investigation of the suspect including a criminal history check, prior police contacts, and other available records. See Appendix D, “Suspect Information Form,” Appendix E, “Investigator Records Checklist,” and Appendix F, “NCIC Offline Search Request.”
8. Be aware that there may be a parallel university or college proceeding arising out of the same incident. Gather whatever information is available from that investigation or proceeding.
9. Contact the victim and set up a time to complete the investigative phase victim interview.
10. If not completed by responding officer, follow the appropriate procedure for preserving any audio/video recordings, such as the 911 call, or officer in-car audio/video. Preserve other recordings and electronic evidence such as surveillance cameras, cell phone data, or information on social media. See p. 29, “Electronic Evidence.”

# INVESTIGATIVE PHASE VICTIM INTERVIEW AND INTERACTION

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*An in-depth follow-up interview should be conducted after the victim has been medically treated, personal needs have been met, and the victim has had some time to rest after the initial report. The goal of the follow-up victim interview is to get as thorough a statement as possible at that time. However, as time passes the victim may recall more information. Ongoing communication with the victim after the investigative interview is essential to a successful investigation.*



**RESOURCES AVAILABLE:**    **SAMPLE VICTIM NOTICE CARD** (Appendix B)  
   **SERIAL SEXUAL PERPETRATOR PROFILE QUESTIONS** (Appendix G)  
   **SEXUAL ASSAULT EVIDENCE KIT TESTING IN MICHIGAN: WHAT VICTIMS HAVE A RIGHT TO KNOW** (Appendix H)  
   **ADULT SEXUAL ASSAULT: A TRAUMA INFORMED APPROACH TRAINING VIDEO AND FACILITATOR'S GUIDE** (Appendix K)

## A. Understanding Sexual Assault and Victim Response to Trauma

1. Individuals respond to trauma in a variety of ways. Even when a significant period of time has passed after the assault, victims may display a range of demeanors and emotions from crying, and distress, to extremely calm and/or seemingly cheerful when talking about the assault.
2. Trauma can also affect a victim's ability to give a detailed or chronological statement. Persons experiencing trauma often will recall and/or disclose information over a period of time as memories are triggered and as trust is established with responders and/or the interviewer.
3. Do not make judgments about credibility of the sexual assault victim based on their demeanor or inability to articulate a chronological narrative.
4. Be aware that offenders often choose victims based on a perceived lack of credibility or perceived vulnerability, such as alcohol consumption, knowing that this will make others doubt the victim's report of the assault. See p. 22, "Understanding Sexual Assault Offenders."

## B. Preparing for the Follow-up Victim Interview

1. **Location:** Choose a location that is convenient, accessible, and comfortable for the victim. The investigator shall provide or arrange for transportation for the victim, when needed.
2. **Special accommodations:** Assess any special needs of the victim and accommodate when possible, such as the need for an interpreter. The use of friends or family members as interpreters should be avoided, if at all possible. Victims may feel uncomfortable disclosing some information in front of friends or family. Additionally, those not trained as an interpreter may summarize or paraphrase instead of interpreting the victim's statement word for word.
3. **Recording:** The interview should be conducted in a place and in a manner that allows the officer to listen to the victim and accurately record the incident. If appropriate and available, arrange for equipment to audio or video record the interview. Explain the need to record or video tape the interview to the victim.

4. **Make the victim comfortable:** Convey your understanding of the seriousness of the crime. Maintain a relaxed, friendly but professional atmosphere. Assure the victim that their case is important and will be thoroughly investigated. Treating the victim with respect will develop rapport and result in a more thorough and accurate statement.
5. **Explain interview:** Discuss the purpose and scope of the interview.
6. **Review and update victim contact information:** Review phone number(s) or other contact information. Review alternate contact persons that can reliably reach the victim in the future.
7. **Review case status:** Provide an explanation of the status of the case, addressing, if applicable, arrest decisions.
8. **Photographs:** Identify any need for additional photographs, including follow-up photographs of injuries.

### C. Conducting a Trauma Informed Follow-up Victim Interview

1. Begin with an open-ended question and allow a free narrative to follow. Opening questions such as the following are the most effective: **"Help me understand what you are able to remember about your experience?" "Tell me what happened, start wherever you think it makes sense to start."**
2. Allow the victim to describe what occurred without interruption.
3. Do not suggest feelings or responses. For example, do not say "I know this is hard." Instead, acknowledge their feelings and emotions and say something like **"I talk about these sorts of things all the time; I'm not uncomfortable; anything you say is ok in this room."**
4. Once the victim has completed their free narrative, continue by investigating the incident(s), using the following prompts when necessary:
  - a. Avoid asking questions of quantity. For example, don't ask "how many times did this happen?" and "how long did it last?" Instead say **"You told me \_\_\_\_ [repeat event specified by the victim] \_\_\_\_, did that happen one time or more than one time?"**
  - b. Address inconsistencies respectfully. **"You told me \_\_\_\_ [repeat event specified by the victim] \_\_\_\_ and then you told me \_\_\_\_\_. Can you help me understand?"** Keep in mind not all inconsistencies need to be resolved in the victim interview because the thorough investigation may uncover answers that would be unavailable or unknown to the victim.
  - c. **You said \_\_\_\_\_. Tell me more about that.**
  - d. **What else can you remember/tell me about \_\_\_\_\_?**
  - e. **Help me understand \_\_\_\_\_.**
  - f. **What was your thought process while \_\_\_\_\_ was happening?**
  - g. **What are you able to tell me about \_\_\_\_\_ (5 senses, smelled, heard, etc...)?**
  - h. **Tell me about deciding to tell about what happened.**
  - i. **I want to understand how people found out about what happened. Who is the first person you told?**
  - j. **Is there anything you cannot forget about the experience?**

## D. Anticipating Defense Challenges During the Victim Interview

If the victim's narrative does not provide it, explore the following areas consistent with the anticipated theory of the case and the victim's narrative:

### 1. The consent defense— "It was consensual."

- a. The victim's thoughts and beliefs just prior to and during the assault, for example any fears that the victim may have had about the suspect, environment, or situation.
- b. Words, statements, or conversation between the victim and the suspect before, during or after the assault.
- c. Whether there was a point when the suspect's behavior changed.
- d. Coercive or manipulative behavior by the suspect—implied threats, tone of voice, gestures, looks given, actual threats, or force employed.
- e. Any words or actions prior to or during the assault that may have indicated the victim's lack of consent (e.g. victim pushing against suspect, victim turning head away, victim crying, holding legs together).
- f. The feelings or reactions experienced by the victim (e.g. pain, sadness, worry, scared, nothing, or something else).
- g. Details of the assault and acts; the manner used to complete the crime (e.g. finger, penis, mouth, object, something else).
- h. Information about how the assault ended and what caused it to end.
- i. What the victim did after the assault.
- j. What the suspect did after the assault.
- k. Explore ways in which the victim's behaviors and activities may have changed in the days, weeks, and months after the assault (e.g. dramatic physical changes such as weight loss/gain, attendance or performance at work or school, or changes in daily routine). These are potential indicators of the impact of trauma.

### 2. The denial defense— "It didn't happen." If the suspect claims that that sexual penetration or contact didn't happen, corroborating the details of the victim's account are important. The victim interview should include the above information in anticipation that the suspect may eventually claim consent if DNA and trace evidence points to the suspect.

## BEST PRACTICE:

**DO:** Be particularly aware of how the suspect may have exploited or created victim vulnerability and accessibility.

**DO:** Continue to use open ended questions and do not suggest answers.

**DO:** say:

- Tell me more about that...
- Tell me your thoughts when...
- Help me understand what you mean...

**DO NOT ask "why"** – this can feel blaming to victims.

**DO NOT** interrogate the victim. This is not the time to determine if the victim can withstand the rigors of cross-examination at trial.



3. **The identity defense—“It wasn’t me.”** This typically arises in cases where the victim and the suspect do not know each other. The victim interview should include the following, but also include the above information in anticipation that the suspect may eventually claim consent if DNA and trace evidence point to the suspect:
  - a. Physical description/identity of the suspect including identifying body marks, tattoos, scars, birth marks, and smells from cigarettes, cologne, body odor, or something else.
  - b. Establish timeline in order to address potential alibi.
  - c. Obtain as much information as possible about the suspect’s method of operation in order to compare it to other available information (i.e., VICAP).

## **E. Interviewing Considerations for Alcohol/Drug Facilitated Sexual Assault**

1. **Understanding alcohol/drug facilitated assault:**
  - a. Drug or alcohol facilitated assault occurs when a person is made vulnerable or incapacitated by ingestion of drugs or alcohol. Ingestion can be voluntary or without the victim’s knowledge. Alcohol is by far the most commonly used substance in these cases.
  - b. A victim’s voluntary use of an illegal substance, or alcohol in the case of a minor, should not be a factor in determining with the sexual assault was perpetrated.
  - c. Victims for whom alcohol/drugs were a factor in the assault may experience confusion, drowsiness, impaired judgment or impaired motor skills, among other symptoms. Following an assault, victims may:
    - Think they have been assaulted, but are not sure.
    - Report a level of intoxication that does not match the amount of alcohol they consumed.
    - Have unexplained injuries or unexplained rearrangement of clothing.
    - Report that they “feel” like there has been sexual penetration or contact but don’t remember it.
  - d. Be aware that the offender may have facilitated the victim’s intoxication or chosen the victim based on intoxication level hoping it would undermine the victim’s ability to resist, remember, and/or reduce the likelihood that the victim would report the assault. Offenders hope that others will use the presence of alcohol or other substances as a reason to disregard or disbelieve the report.
2. **Interview after drug/alcohol facilitated assault should explore:**
  - a. Prescriptions or over the counter medication taken by the victim;
  - b. Recreational substances voluntarily consumed;
  - c. Victim’s past experience with alcohol or other substances, to assess tolerance and if the reported level of intoxication is consistent with victim’s expectations;
  - d. Amount consumed by victim and by the suspect;
  - e. Other people with the victim prior to assault;
  - f. Thoughts, tastes, sounds, feelings, or body sensations experienced by the victim; and
  - g. Timeline of events.

## F. Exploring Sources of Additional Evidence During the Victim Interview

1. **Physical evidence:** Identify physical evidence related to the assault (e.g. clothing, bedding, condoms, tampon, toilet tissue or other item used to clean up after the assault).
2. **Electronic evidence:** Identify text messages or electronic postings by any person regarding the incident on Twitter, Facebook, or other social media.
3. **Photographs:** Identify photographs that may have been taken prior to, during, or after the assault.
4. **Other witnesses:** Identify whether anyone else witnessed the assault, pre-assault, or post-assault conduct by the suspect.

## G. Exploring Serial Perpetration During Victim Interview

Research has shown that a significant number of sexual assaults are committed by serial offenders. The investigator should ask questions about the offender that may lead to additional victims, whose testimony may be used in trial as “other acts” evidence to support the prosecutor’s case-in-chief. If the victim is familiar with the suspect, consider asking questions such as:

1. Tell me who the suspect is or has been in a relationship with. Tell me about problems in those relationships.
2. Tell me where the suspect is currently working and if they have had problems at work.
3. Tell me about where the suspect likes to hang out, exercise, go to the bar, go to school.
4. **See Appendix G, “Serial Sexual Perpetrator Profile Questions” for a comprehensive list of questions.**

## H. Concluding the Follow-up Victim Interview

1. Inform the victim about the next steps in the investigation. Let the victim know when they can expect to be contacted again.
2. Provide the victim with appropriate contact information for you.
3. Encourage the victim to contact you if they remember any additional information or evidence. Assure the victim that it is common to remember additional information with the passage of time.
4. Inform the victim what to do if they feel unsafe or if they are contacted directly or indirectly by the suspect, or by family and friends of the suspect. Suspect contacts should be documented as a supplemental report.
5. Discuss any safety concerns that the victim may have. Refer victim to *[insert name and contact information for local community-based sexual assault program, if available]* to provide victim with supportive and counseling services.
6. Ensure that the victim has received the Department’s Victim’s Rights Card which includes the notices required by the Sexual Assault Victims’ Access to Justice Act, MCL 752.953, and information required by the Crime Victims’ Rights Act, MCL 780.753.

## I. Communication with the Victim

*Victim participation enhances the success of the criminal investigation and eventual prosecution. The investigator's ability to maintain trust and encourage victim participation in the criminal process is built on rapport and open communication with the victim.*

1. **Proactive ongoing contact:** The lead investigator should maintain contact with the victim until the final resolution of the case and proactively notify the victim of significant updates.
2. **Victim consultation:** When appropriate, the victim should be consulted about witness interviews or other investigative decisions that may impact victim safety or privacy. This can build trust with the victim and restore the victim's sense of control.

## J. Information Requests under the Sexual Assault Victim's Access to Justice Act

1. **Victim requests for case status information, MCL 752.955:** The department must respond to victim requests for the following information as long as the disclosure does not impede or compromise the investigation:
  - a. contact information for the investigating officer;
  - b. the current status of the case;
  - c. whether the case has been submitted to the prosecutor for review; and
  - d. whether the case has been closed and the documented reason for closure.
2. **Victim request for forensic testing results, MCL 753.956:** The department must respond to victim requests for the following information about the forensic testing results as long as the disclosure does not impede or compromise the investigation:
  - a. when the kit was submitted to the forensic laboratory for testing;
  - b. whether a DNA profile of a suspect was obtained;
  - c. whether a DNA profile of the suspect was entered into a databank; and
  - d. whether the DNA profile resulted in a CODIS "hit."
3. **Forensic Information Handout, MCL 753.956:** Victims who have requested forensic testing results must be provided with a copy of, or access to, information regarding the meaning of these results. See Appendix H, "Sexual Assault Evidence Kit Testing in Michigan: What Victims Have a Right to Know."
4. **Responding to requests for information under the act, MCL 752.954:** Officers should communicate with the victim in the manner indicated by the victim (e.g. phone, e-mail, etc.). The department can require the victim's first request for information be in writing, but subsequent requests from the victim do not need to be in writing.

## K. Considerations for Victim Mental Health Records

1. Do not ask the victim to sign a release for mental health records. The victim's mental health records are privileged and protected from discovery under MCR 6.201(C). Any decision regarding the release of a victim's mental health records should be made by a court only after a hearing is conducted. For additional assistance with this issue, please consult with the prosecutor.

## **L. Victim Recantation or Victim's Choice to not Participate in Criminal Justice Process**

### **1. Understanding victim recantation or victim choice to not participate:**

It is not uncommon for sexual assault victims to be reluctant about participating in the criminal justice system. Victims who are reluctant often feel they have no other choice but to withdraw or recant in an effort to disengage from the criminal justice system. Law enforcement may take a victim-centered approach by recognizing the tremendous personal cost to victims who participate in the criminal justice system and understanding that withdrawing from the process or recanting one or more aspects of a prior statement does not necessarily mean the victim made a false report. Various factors may influence why a victim may recant or be unwilling to participate. Among those influences are:

- a. A victim's feeling of embarrassment, fear, or shame.
- b. A victim's desire to put the assault behind them, avoid answering questions, avoid repeating the story or facing the suspect in court.
- c. Pressure from the suspect, friends, family or community.
- d. Pressure from cultural and/or religious communities.
- e. Concern or confusion about the likely outcome of a prosecution.
- f. Concerns about not being believed.
- g. An unsupportive experience with responding professionals.

### **2. Responding to victim a recantation or a to victim's choice not to participate in the criminal justice process:**

- a. The officer should do their best to conduct as much of an investigation as possible so that the case can proceed if/when the victim is ready to participate at a later time or if more information becomes available.
- b. If a victim stops communicating with the investigator, investigators should attempt to contact the victim by phone, email, mail or residence check. If no contact can be made, all attempts to reach the victim should be documented.
- c. The victim should be advised that an inability or decision not to participate in prosecution at this time doesn't mean the case cannot go forward in the future.
- d. Recantation by itself does not mean that the allegations made in the initial disclosure never took place.
- e. A victim's inability to participate in an investigation, or a victim's recantations of their prior statements, without additional factors or circumstances, are not by themselves sufficient reasons to close a case.

# WITNESS INTERVIEWS

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*Sexual assault is rarely witnessed by others. However, valuable evidence can be obtained from individuals who witness pre-assault or post-assault conduct or statements of the suspect or the victim. Do not overlook acquaintances and co-workers of the suspect, who may report similar accusations from other victims, or have witnessed relevant pre-assault or post-assault conduct by the suspect.*

 **RESOURCES AVAILABLE:**    **SERIAL SEXUAL PERPETRATOR PROFILE QUESTIONS** (Appendix G)

## A. Potential Witnesses

1. **Conduct witnesses:** Evidence from persons who witnessed the assault, or more likely, persons who witnessed pre-assault or post-assault conduct of the victim or suspect. Evidence from other individuals to gain information about the character of the suspect.
2. **Other acts witnesses allowed under MRE 404b:** Evidence from victims of similar acts/assaultive conduct committed by the suspect may be admissible, regardless of whether the similar acts/assaultive conduct was reported, charged or convicted.
3. **Disclosure witnesses:** The first person to whom the victim disclosed is a key witness, as are any other persons to whom the victim disclosed prior to reporting the crime to law enforcement. Be aware that a victim's disclosures to helping professionals such as a psychologist, clergy, counselor, or advocate from a community-based sexual assault program are confidential and those professionals may not legally be able to share information without the victim's consent.

## B. Interview Considerations

1. The witness's relationship to the victim and/or suspect.
2. If appropriate, explore:
  - a. The first person the victim told about the assault. Explore disclosure statements, help-seeking statements, first disclosure statements of the victim to the witness.
  - b. If the suspect is unknown, physical description of the suspect including identifying body marks, freckles, tattoos, scars, birth marks, and smells from cigarettes, cologne, body odor, or something else.
  - c. The pre-assault conduct or statements of the suspect which might indicate that the suspect targeted or groomed the victim (e.g. supplying alcohol to the victim or isolating the victim).
  - d. The condition/intoxication of the victim and the suspect during pre or post assault interactions.
  - e. Post-assault conduct and actions of the victim that are consistent with a traumatic experience and inconsistent with consensual sex such as:
    - fleeing the scene, unresponsive affect, heightened emotions, absence from school, work, or other commitments, rejecting social contact, fear, excessive startle response or hyper-vigilance, difficulty sleeping, changes in appearance or routine, increased drug or alcohol use, and/or problems with trust.

**3. Additional evidence:**

- a. Physical evidence related to the assault.
- b. Text messages or electronic posting regarding the incident on Twitter, Facebook, or other social media.
- c. Any photographs that may have been taken prior to, during, or after the assault.
- d. Whether anyone else witnessed pre-assault, assault, or post-assault conduct by the suspect.

**C. Exploring Serial Perpetration During Witness Interviews**

Research has shown that a significant number of sexual assaults are committed by serial offenders. The investigator should ask questions about the offender that may lead to additional victims, whose testimony may be used in trial as “other acts” evidence to support the prosecutor’s case-in-chief. If the witness is familiar with the suspect, consider asking questions such as:

1. Tell me who the suspect is or has been in a relationship with. Tell me about problems in those relationships.
2. Tell me where the suspect is currently working and if they have had problems at work.
3. Tell me about where the suspect likes to hang out, exercise, go to the bar, go to school.
4. **See Appendix G, “Serial Sexual Perpetrator Profile Questions” for a comprehensive list of questions.**

# SUSPECT INVESTIGATION AND INTERACTION

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*An offender focused investigation examines and scrutinizes the actions and choices of the offender. This approach recognizes that the majority of sexual assaults are committed by repeat or serial offenders who are practiced at remaining undetected and avoiding accountability.*



**RESOURCES AVAILABLE:**    **SUSPECT INFORMATION FORM** (Appendix D)  
   **INVESTIGATOR RECORDS CHECK LIST** (Appendix E)  
   **NCIC OFFLINE SEARCH REQUEST** (Appendix F)  
   **MCOLIS: STANDARDS FOR AUDIO VISUAL RECORDING** (Appendix I)  
   **PRETEXT PHONE CALLS IN SEXUAL ASSAULT INVESTIGATIONS**  
   (Appendix J)

## A. Understanding Sexual Assault Offenders

The majority of sexual assaults are committed by someone known to the victim—a casual acquaintance, a coworker, a friend-of-a-friend, an intimate partner, or a relative. Understanding the tactics used by offenders in these situations is critical to a successful investigation. Research on non-stranger sexual assault demonstrates that these offenders typically:

1. Are proficient at identifying potential victims, choosing victims based on a perceived lack of credibility or perceived vulnerability such as age, status, alcohol consumption, or other circumstances that can cause others to doubt the victim’s report of the assault.
2. Test victims’ boundaries for vulnerability and ease of access.
3. Use manipulation, cunning, and/or threats to accomplish the assault, with force only as a backup.
4. Use alcohol or drugs purposefully to make victims more vulnerable.
5. Isolate the victim through the use of manipulation and coercion.
6. Use only enough force or violence as necessary to frighten or intimidate the victim into compliance, and rarely use weapons.

## B. Preliminary Considerations

1. Always attempt to interview the suspect, even if the officer believes that the suspect will deny the allegations, claim consent, or will decline to be interviewed. The suspect may corroborate small details of the victim’s account and surrounding circumstances, and these pieces of “micro-corroboration” can end up having a significant impact on charging decisions and the outcome of prosecution.
2. Conduct as much of the investigation of the incident and of the suspect as possible before the interview. The investigating officer should be familiar with the suspect’s background, including:
  - a. Criminal history and history of any interactions with the criminal justice system, such as convictions, arrests, reports of uncharged acts, traffic citations, probation/parole status and records, information available on the SOR, and DD79 file, through an NCIC offline search, and information from other officers who know or have previously investigated the suspect.

Conduct a check of the suspect's criminal history, prior police contacts, and other available records. See Appendix D, "Suspect Information Form" and Appendix E, "Investigator Records Checklist."

- b. Information from family, friends, neighbors and co-workers about the suspect in general, about other reports of sexual assault by the suspect, about behaviors and statements of the suspect before and after the assault that is the subject of the current investigation. See Appendix G, "Serial Sexual Perpetrator Profile Questions."
  - c. Information from social media sites, e-mail accounts, cell phone records, and other electronic communications, some of which may be publicly available or available through friends or associates of the suspect, and some of which may require subpoenas or search warrants. See Appendix F, "Investigator Records Checklist."
3. Consider whether a pretext phone call or other electronic communication is a viable investigatory tool before contacting the suspect. See Pretext Calls, below.

### **C. Arrest Decision**

1. In making a decision whether to arrest the suspect on probable cause or to request a warrant, the officer should consider:
  - a. The uncorroborated account by the victim can constitute probable cause.
  - b. The safety of the victim and other potential victims. Consider whether the suspect has an ongoing relationship with the victim or continued access to the victim, and whether the suspect knows that a police report has been made.
2. While the officer should consider the wishes and concerns of the victim, the officer should not pressure the victim about the arrest decision. The officer should make the decisions about the investigation, probable cause and arrest.

### **D. Interviewing/Interrogating the Suspect**

1. **Prior to the interview:**
  - a. **Deciding when to Interview**

The decision as to when to interview a suspect must be made on a case-by-case basis and will be influenced by several factors including:

    - the suspect's relationship to the victim;
    - whether the suspect is a flight risk;
    - whether the report of the assault is immediately post-assault or is a delayed report;
    - whether the investigating officer believes the suspect interview can be delayed while the officer conducts a comprehensive investigation;
    - the possibility that the suspect will fabricate a narrative or alibi;
    - the destruction of or loss of evidence.



- b. **The location of the interview**
    - When the suspect is in custody, Miranda warnings must be given. If the suspect is not in custody, the officer must make it clear to the suspect that they are free to leave at any time during the interview.
    - Conducting the interview at the police station, away from the suspect's home or place of employment, can provide the investigating officer with the most control over the interview.
    - As with the victim interview, the suspect interview should be conducted in a location that is quiet and free from distractions and interruptions.
  - c. **Recording the interview:**
    - Make an audiovisual date-and-time stamped recording if the suspect is in custodial detention for a major felony. A major felony means a felony punishable by life, life or any term of years, or a statutory maximum of 20 years or more, or a violation of third degree criminal sexual conduct. See Appendix I, "MCOLES Standards for Audio Visual Recording."
2. **Conducting the interview.** Interview first, then interrogate as needed. An interview is a non-accusatory question and answer session. The goal of an interview is to gather information and make an assessment of the suspect's credibility. During the interview, the suspect should be talking most of the time.
- a. Begin with an introductory statement and initial questions that build rapport and gather background information (e.g., name, employment, marital status, and other basic social history questions in a conversational manner).
  - b. Transition to the topic at hand (the allegation). Ask the suspect a direct question about the allegation. Introducing the topic in this way helps the officer gauge the suspect's confidence entering into the interview, as it may result in a weak denial by the suspect, and helps ensure that the suspect has a clear understanding of the accusation.
  - c. After the suspect has responded to this initial direct question, ask an open ended question, like **"Tell me what did happen,"** or **"Tell me everything that happened that night."** Allow the suspect to provide their narrative freely, with as little interruption as possible. Then follow up to clarify ambiguous or unclear information and fill in gaps in the narrative.
  - d. Elicit as much detail as possible from a suspect. Ask the suspect about his activities for the 24 hours prior to and the hours following the sexual assault. Seemingly unimportant details may provide necessary links to other pieces of evidence or information that can be used to uncover inconsistencies in previous or subsequent statements.
  - e. Do not immediately challenge lies or inconsistencies offered by the suspect. Let the suspect develop and add details to them. Often, the details can be used later to dismantle the lies and may increase the likelihood of an admission or confession. A well-documented lie can be very powerful evidence for prosecution.
  - f. Lock-in the suspect's narrative. Have the suspect confirm the accuracy and completeness of the narrative before confronting the suspect with inconsistencies, inaccuracies, admissions, or information from other sources that contradict or conflict with the suspect's account.

Follow up on contradictory or inconsistent statements: **“Help me understand when you said \_\_\_\_, because then you said \_\_\_\_\_. Can you explain that more?”**

- g. Do not expect the suspect to immediately make a full and complete confession. The suspect may make one or more partial admissions which, when considered in light of all other information, may corroborate the victim’s account. For example, the suspect may state that at first the victim said no and pushed him away but then later consented to sexual contact or penetration.
  - h. If the suspect is claiming that the victim consented to the sexual contact, find out the basis for that belief; what words or actions indicated that the victim had consented.
  - i. Consider offering as a polygraph as an interview technique to gauge the suspects reaction. If the suspect agrees to a polygraph, the interview/interrogation should still be continued before conducting the polygraph.
3. **Transitioning from the interview to the interrogation.** The purpose of an interrogation is to confront the suspect in an accusatory manner to address discrepancies and inconsistencies in an effort to obtain incriminating statements or a full confession from a person whom the investigator believes has been deceptive during an interview. During an interrogation, the officer will be talking the majority of the time.
- a. The investigator will make a determination on whether to proceed to an interrogation based on the facts of the case and the outcome of the interview.
  - b. Remember, even the suspect presents a credible narrative, that does not necessarily discredit the initial report of the crime.
4. **Conducting the interrogation:**
- a. The interrogation should begin with a confident statement by the officer, such as: “I have reviewed the case file and the facts show that you held down [the complainant]’s arms and put your penis in her vagina. What I want to understand is why this happened.” The interviewer can employ themes that were developed earlier during the interview, such as “This was a one-time mistake.”
  - b. Select a theme based on the suspect’s answers to the interview questions. The theme is used to obtain an admission and should be based on the suspect’s statements.
  - c. Be persistent. Expect that it may take time to reach admission during the interrogation. Do not end the interrogation early based on the suspect’s initial denials.
  - d. Validate any confessions by having the suspect recap the incident and provide additional details.

## **E. Polygraph Considerations**

1. A polygraph is not a substitute for a thorough investigation and interview/interrogation.
2. A polygraph is not admissible in court, but the polygraph interview process can be a useful investigative tool.
3. Once charged, the suspect has a statutory right to a polygraph. MCL 776.21
4. Provide the polygraph examiner with a copy of the police report and ensure that the test questions developed cover the relevant topic/crime.
5. If the suspect is already charged or has invoked their right to an attorney, only conduct a post-polygraph interview or interrogation after consulting with the prosecutor.
6. If the suspect is found to be deceptive (fails the polygraph) and has not invoked the right to an attorney, proceed with an interrogation. This interrogation can be conducted by the polygraph examiner or the detective. While the polygraph itself is not admissible, a post-polygraph admission or confession is.

## **F. Pretext Phone Calls/Communication**

1. The purpose of a pretext phone call is to solicit and record incriminating statements from the suspect. The suspect may talk to the victim about the assault if they believe that no one else is listening and is not aware the call is being recorded. Statements made by the suspect in an effective pretext call may be used as admissions in later proceedings, and/or give the investigating officer leverage through which to obtain admissions or other incriminating statements during the suspect interview.
2. When the suspect is represented by an attorney on the allegation at hand, legal principles applicable to contact with represented persons should be followed. No direct or indirect contact should be made with the suspect by law enforcement or by anyone working at the direction or with the guidance of law enforcement. Consider consulting with the prosecutor.
3. When involving the victim in a pretext phone call to the suspect, carefully consider the victim's emotional and physical state. A pretext phone call can result in secondary victimization of the victim, causing additional trauma. Under no circumstances should a victim be required to participate in a pretext phone call.
4. Discuss potential outcomes for the call with the victim, emphasizing that it is not their fault if the call does not go well or as planned.
5. The investigator should ask the victim if they want a third-party support person, such as a victim advocate or other appropriate support person to be present. The officer should meet with the support person ahead of the scheduled call to make clear what the role of the support person will be, and to ensure that the support person does not interfere with the process of the call.
6. The investigating officer should work closely with the victim to determine the most effective time for the call (e.g., when the suspect would be least suspicious of the purpose of the call) and to develop the questions or statements the victim will make during the call. Pretext phone calls can be effective anytime after the assault.
7. The investigating officer should familiarize themselves with the method of conducting a pretext phone call. Pretext calls should be made with appropriate equipment and technology to allow

for clear recording of both victim and suspect, for the investigating officer to hear both victim and the suspect as the call is in progress, and to ensure that the suspect is unable to identify that the call is being placed as part of the law enforcement's investigation. Best practice would be to have the incoming call be identified on suspect's phone as coming from the victim's phone or some other phone that the suspect would associate with the victim's use.

8. Consider preparing a list of statements that the investigator can direct the victim to use during the call. The investigator should be near and/or next to the victim during the call in order to offer support and guidance during the call. The investigator may prompt the victim with next questions or prompt them to be silent for a moment so that the suspect will speak.
9. Consider using other electronic methods for pretext communications, for example social media or texting. Secure necessary search warrants and subpoenas in advance or shortly after communication to preserve the communication and for authentication purposes.

# CRIME SCENE(S) AND OTHER EVIDENCE COLLECTION

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*When the suspect is unknown to the victim, physical evidence can assist investigators to determine the suspect's identity. Physical evidence can also be important in cases where the suspect is known to the victim. It can corroborate the victim's statements, demonstrate lack of consent, demonstrate a suspect's use of alcohol, refute the suspect's statements, and demonstrate force or coercion. Small corroborations can often demonstrate victim credibility.*

## A. Crime Scene Evidence

1. **Considerations prior to processing the crime scene:**
  - a. Determine the location of the crime scene(s). Once the crime scene(s) is identified, this information should be communicated to a supervisor to ensure that the other scenes are secured and steps are taken to prevent evidence from being lost or destroyed.
  - b. Consider whether a search warrant needs to be obtained.
  - c. For major or complicated crime scenes, follow agency policy to contact crime scene technicians or the Michigan State Police to assist in processing the scene.
2. **Processing the crime scene:**
  - a. Create visual documentation of the crime scene including photographs, digital recording, or diagrams.
  - b. Conduct a detailed search for evidence based on an evaluation of the possible types of physical evidence which may be present, such as:
    - Biological evidence that includes DNA may be found in suspected semen, bed sheets, tampons or sanitary pads, and facial or toilet tissue.
    - Other physical evidence that could corroborate the victim's account such as weapon(s), condom wrappers, bedding, cigarette butts, or electronic evidence like computers.

## B. Known Suspect DNA Samples

1. **Arrest sample.** Under MCL 28.171 suspects arrested for sexual assault must provide a DNA sample that is sent to CODIS. This sample is collected upon arrest utilizing the CODIS collection kit provided by the Michigan State Police Crime Laboratory.
2. **Case work sample.** If the investigation requires a DNA sample from the suspect, a separate reference sample must be collected from the suspect after consent or search warrant. This is separate from the arrest sample collected under MCL 28.171. Case work samples should be collected by utilizing a DNA buccal collection kit or a simple long handled cotton swab and envelope. The CODIS collection kit must not be used to collect this sample because CODIS is computer read and case work samples are analyzed by scientists.

## C. Electronic Evidence

1. **Security cameras.** Identify surveillance cameras or other recordings from locations that can document the assault, pre or post-assault conduct. Sources of surveillance video include: ATM cameras, casinos, nightclubs, restaurants, apartment complexes, hotels, convenience stores, gas stations, parking structures, businesses with exterior surveillance, etc.
2. **Social media and messaging.** Determine the suspect's social media identifiers. Review the suspect's publicly available content to establish the existence of evidence such as pictures, videos, timelines, or content mentioning the victim or the circumstances surrounding the assault. Note any persons responding (i.e. commenting, liking, re-tweeting) to social media communication and consider them as a potential witness. If review of the suspect's publicly available content reveals potential evidence:
  - a. Secure a screen shot of the content.
  - b. If the victim has access to non-public portions of any social media (e.g. is a Facebook friend) used by the suspect, ask the victim to log-in and look at available posts, pictures and communications. Take a screen shot or otherwise download and preserve any potentially relevant information. Do not ask the victim to reveal their password or other log-in identifiers.
  - c. With the victim's permission, review and document messages from the suspect to the victim that are in the victim's possession and reveal information about the assault, pre- or post-assault conduct.
  - d. If there is a concern that electronic evidence stored by a provider will be deleted or removed, contact the provider immediately through that provider's preferred methods (these methods are typically available to law enforcement online). Consult with the prosecutor and provider, and follow up with a search warrant.
3. **Cell phone location data.** Cell phone service providers maintain historical location/usage data that can confirm suspect, victim, or witness location. If location information is necessary, consult with the provider and prosecutor on securing relevant data.
4. **The suspect's cell phones, computers, or other personal electronic devices.** Consider whether there is reason to believe that the suspect's or another's cell phones, computers, or other personal electronic devices contain videos, pictures, communications, or other information that document the assault, pre- or post-assault conduct. Consult with a forensics unit and/or the prosecuting attorney to secure a search warrant to examine these device(s).
5. **Search warrants for third party service providers:**
  - a. Each provider has its own procedure for responding to requests for data from law enforcement. The procedures are typically available online and should be used as a guide when making any request.

## D. Suspect Forensic Examination

*A suspect forensic exam entails evidence collection from the body of the suspect.*

1. In some cases, appropriate investigation will include seeking a forensic examination of the suspect's body. Contact *[insert name and contact information of facility that provides suspect examinations, if available (consider coordinating with facility to ensure the availability of these services as part of policy adoption process)]* to arrange a suspect examination.
2. Consider the following when making the determination about seeking a suspect exam:
  - a. What is the length of time since the assault occurred?
  - b. What was the nature of the assault? (Note that there may be circumstances when a suspect forensic exam is appropriate even though suspect may have admitted the sexual contact or confessed.)
  - c. Does the victim believe they may have injured the suspect?
3. Search warrant:
  - a. A search warrant should be obtained to collect evidence from the body of the suspect if the suspect is in custody or refuses to consent.
  - b. If the suspect consents to such evidence collection procedures, complete and obtain the suspect's signature on a consent form.
  - c. If the examination is being conducted pursuant to consent rather than a search warrant, the investigator shall clearly document the suspect's freedom to decline any part of the examination and to discontinue the exam at any time. To continue the examination, obtain a search warrant.
4. Conducting the forensic exam:
  - a. Contact *[facility that provides suspect examinations at phone number, if available]* to arrange a suspect examination. Consider an advance agreement with a local medical facility or SANE program.
  - b. The examination should not be conducted in the same room where the victim was examined.
  - c. Photograph the suspect including injuries, unusual tattoos, markings, or distinctive features.

# SUPERVISORY RESPONSIBILITIES

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*The supervisor plays an important role in sexual assault cases, and these cases often require unique investigatory and interview methods that may require additional guidance and supervision.*



**RESOURCES AVAILABLE:**    **FIRST RESPONDER CHECKLIST** (Appendix A)  
   **SAMPLE VICTIM NOTICE CARD** (Appendix B)  
   **IN SERVICE TRAINING VIDEO AND FACILITATORS GUIDE: ADULT**  
   **SEXUAL ASSAULT: A TRAUMA INFORMED APPROACH.** (Appendix K)

## A. Policy and Direct Supervision

1. Provide ongoing and in-service training opportunities to ensure patrol officers and detectives are familiar with the policy, understand victim response, and comply with statutory requirements.
2. Review all suspected sexual incident reports, regardless of whether it will be forwarded to detective/arrest made/or warrant requested.
3. Ensure that the first responder/investigator has completed all steps outlined in this policy and other department procedure.
4. Ensure that the investigating officer re-contacts the victim in person or by phone an appropriate time after the initial report to conduct a follow-up interview or inform the victim of the status of the case.
5. If the investigation determines probable cause, ensure that the case is referred to a prosecutor and meet with the prosecutor, as required.
6. Ensure any follow-up requests from the prosecutor are completed.
7. Review all case closure determinations to ensure policy/procedure regarding case closure has been followed correctly.
  - a. Notify officers and investigators that they cannot close a case as unfounded based solely on the victim's initial statement or a cursory preliminary investigation.
  - b. Review investigators' caseloads to ensure no officer has a disproportionate number of unfounded cases or cases in which the victim no longer participates.
  - c. Document and review incidents that are presented as unfounded, including those where it is unclear if the legal elements of sexual assault are met.
  - d. Do not pressure investigators to clear a high percentage of cases.



# APPENDICES AND ADDITIONAL RESOURCES

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**Appendix A:** First Responder Checklist

**Appendix B:** Sample Victim Notice Card

**Appendix C:** Suggested Guidelines on Language Use For Sexual Assault

**Appendix D:** Suspect Information Form

**Appendix E:** Investigator Records Check List

**Appendix F:** NCIC Offline Search Request

**Appendix G:** Serial Sexual Perpetrator Profile Questions

**Appendix H:** Sexual Assault Evidence Kit Testing in Michigan: What Victims Have a Right to Know

**Appendix I:** MCOLES: Standards for Audio Visual Recording

**Appendix J:** Pretext Phone Calls in Sexual Assault Investigations

**Appendix K:** Adult Sexual Assault: A Trauma Informed Approach. In-service Training Video and Facilitator's Guide

## Other Available Investigative Resources

- **Sex Offenders: Dynamics and Interview Techniques**, developed by the National Center for Women in Policing available at:  
[http://www.mincava.umn.edu/documents/acquaintsa/participant/offender\\_orig.pdf](http://www.mincava.umn.edu/documents/acquaintsa/participant/offender_orig.pdf)
- **Forensic Exams for Sexual Assault Suspects**, by Sgt. Joanne Archambault Retired San Diego Police Department, available at <http://www.evawintl.org/ArchivedBulletins.aspx>.
- **Michigan Prosecutors' Sexual Assault Prosecution Manual**, developed by the Prosecuting Attorneys Association of Michigan and the Domestic and Sexual Violence Prevention and Treatment Board.



# SEXUAL ASSAULT FIRST RESPONDER CHECKLIST

## Michigan Model Policy on the Law Enforcement Response to Sexual Assault

**The Basics:** Individuals experiencing the trauma of sexual assault can display many emotions from crying to calm or seemingly cheerful. Trauma can also affect a victim's memory and ability to give a detailed or chronological statement. These are normal biological response to trauma. A traditional interview approach, focused on a chronological narrative, can make the impact of the assault worse without resulting in good information. First responders should conduct a minimal fact interview initially, to be followed by an in depth interview at a later date. The focus should be on victim safety and comfort, establishing trust, and documenting what the victim can remember. The officer does this by being attentive to the victim's comfort and by reassuring the victim that they are believed and that their concerns are taken seriously.

### Show Caring and Understanding

I am sorry for what happened to you . . .

Thank you for reporting . . .

#### ☐ Assisting the victim

- Ask if there is anyone that the victim would like to contact
- Contact an advocate from a community-based sexual assault crisis program, if available

#### ☐ Sexual Assault Forensic Medical Examination

- Refer victim to local emergency room /SANE for assaults within the previous 120 hours
- Tell the victim that they cannot be charged for the evidence collect and examination—It is free
- Tell the victim that they can have an exam regardless of whether they wish to talk to law enforcement

#### ☐ Obtain Safe Contact Information for Victim

- Include alternate contact information and individuals who can reliably reach the victim in the future

#### ☐ Secure Private Location for Brief Interview

- Accommodate wish to include a support person
- Accommodate special needs such as an interpreter (not a friend or family member)
- Use child advocacy center for victims of child sexual abuse or persons with a developmental disabilities

#### ☐ Conduct a Brief Minimal Fact Interview

- Ask: Help me understand what you are able to remember about your experience
- Allow victim to talk without interruption

**Ask: Help me understand what you are able to remember about your experience . . .**

#### ☐ Identify and Document from Victim's Narrative

- The elements of the crime
- Who did this and where they are now?
- Where did it start and where did it end?
- Were there any threats, expressed or implied weapons shown/objects threatened?
- The victim's observable emotional condition and excited utterances
- Victim and suspect injuries, observed and described
- Potential witnesses to pre and post assault conduct and anyone the victim may have told
- Drugs/alcohol involved in crime, if identified by victim
- Existence of and location of additional evidence both physical and electronic (bedding, condoms, clothing, videos, photos, electronic messages)

**Avoid Asking "Why," Instead Say**

**Tell me more about that . . .**

**Tell me your thoughts when . . .**

**Help me understand what you mean . . .**

#### ☐ Concluding

- Provide victim with the required statutory notices and contact information for you and or assigned detective
- Explain next steps and, if you are the primary investigator, schedule a follow up in depth interview
- Complete a written report



**Polygraph:** Do not ask the victim to take a polygraph examination. MCL 776.21

**Written statement:** Do not ask the victim to write out a statement in place of conducting an interview.

**Prosecution Inquiry:** Do not ask the victim if they want to pursue prosecution at this time.



## Michigan Sexual Assault Victim's Access to Justice Act, MCL 752.953

### Victim Notice Requirements

Within 24 hours after the initial contact between a sexual assault victim and the investigating law enforcement agency, that agency must give the sexual assault victim a written copy of, or access to, the information required by the Sexual Assault Victim's Access to Justice Act, MCL 752.953. A law enforcement agency can comply with the Sexual Assault Victim's Access to Justice Act by providing a sexual assault victim with a written copy of, or access to, the following information:

1. Contact information for a local community based sexual assault victim services program, if available, and contact information for the local Sexual Assault Nurse Examiner (SANE) program or local emergency room.
2. The notices required by the Crime Victim's Rights Act, MCL 780.751 et. seq.
3. Statements substantially similar to the following:
  - a. You can have a sexual assault medical forensic examination and have evidence collected using a sexual assault evidence kit even if you do not want to participate in the criminal justice system or cooperate with law enforcement.
  - b. You cannot be billed for the cost of administering the sexual assault evidence kit. If you receive a bill for these services, contact the Michigan Crime Victim Services Commission at 517-373-7373.
  - c. You have the right to ask the investigating law enforcement agency for the contact information for the detective or investigating officer assigned to the case, the current status of the case, whether the case has been submitted to the prosecuting attorney for review, and whether the case has been closed and the documented reason for closure.
  - d. If you had a sexual assault evidence kit collected and released to law enforcement, you have a right to ask the investigating law enforcement agency for the following information: when the sexual assault evidence kit was sent to a forensic laboratory for testing; whether a DNA profile was obtained from the sexual assault evidence kit; whether a DNA profile was entered into CODIS; and whether a DNA profile resulted in a CODIS hit.
  - e. Your legal rights include the right to go to court and file a petition requesting a personal protection order (PPO)/restraining order to protect you from the perpetrator. The PPO could order the perpetrator not to have contact with you and include other specific conditions.

Please find attached:

1. **Sample Victim Notice Card #1:** A standalone victim notice card with only the information required under the Act, and
2. **Sample Victim Notice Card #2:** A sample victim notice card that includes notices not only for the Sexual Assault Victim's Access to Justice Act, MCL 752.9531 et. seq., but also notices required by the Crime Victim's Rights Act, MCL 780.751 et. seq., and domestic violence notices required by MCL 764.15c.

Your agency can comply with the Act using either of these formats, or it can make the required information (above) available to victims by incorporating this information into your already existing victim notice cards.



## Sample Notice Card #1

Pocket Sized bi-fold (outside)

Sexual Assault Victim's Access to Justice Act, MCL 752.953, including the Crime Victim's Rights Act, MCL 780.751 et. seq.

### Resources

Emergency Medical Services

[Contact Information]

Sexual Assault Medical Forensic Examination

[Contact Information]

Sexual Assault Crisis Program

[Contact Information]

National Sexual Assault Hotline: 800-656-HOPE (4673)

Domestic Violence Program

[Contact Information]

National Domestic Violence Hotline: 800-799-SAFE (7233)

Information about emergency shelter, counseling services, and the legal rights of domestic violence and sexual assault victims is available from these resources.

Other Victim Resources

[Contact Information]

[Contact Information]

[Contact Information]

[Contact Information]

[Sample Police Department]

### Rights and Resources for Victims of Sexual Assault

Responding Officer	Badge Number
Responding Officer	Badge Number
Incident Number	

## Sample Notice Card #1

Pocket Sized bi-fold (inside)

Sexual Assault Victim's Access to Justice Act, MCL 752.953, including the Crime Victim's Rights Act, MCL 780.751 et. seq.

### Information for all Crime Victims

1. You may be eligible for crime victim's compensation benefits. To apply, fill out an application available from the **Crime Victim Services Commission at 517-373-7373**.
2. If you would like to be notified of an arrest in your case or the release of the person arrested or both, you should call **[law enforcement agency and telephone number]** and inform them.
3. If you are not notified of an arrest in your case, you may call this law enforcement agency at **[law enforcement agency's telephone number]** for the status of the case.
4. You can contact the **[prosecuting attorney's office name and phone number]** to obtain information about victim's rights.

**[Responding Police Agency]**

**[Address/Phone Number of Responding Police Agency]**

**[Prosecuting Attorney's Office]**

**[Address/Phone Number of Prosecutor's office]**

**Crime Victim's Services Commission**

P.O. Box 30026, Lansing, MI 48909

1-517-373-7373

### Information for Victims of Sexual Assault

1. You can have a sexual assault medical forensic examination and have evidence collected using a sexual assault evidence kit even if you do not want to participate in the criminal justice system or cooperate with law enforcement.
2. You cannot be billed for the cost of administering the sexual assault evidence kit. If you receive a bill for these services, contact the Michigan Crime Victim Services Commission at 517-373-7373.
3. You have the right to ask the investigating law enforcement agency for the contact information for the detective or investigating officer assigned to the case, the current status of the case, whether the case has been submitted to the prosecuting attorney for review, and whether the case has been closed and the documented reason for closure.
4. If you had a sexual assault evidence kit collected and released to law enforcement, you have a right to ask the investigating law enforcement agency for the following information: when the sexual assault evidence kit was sent to a forensic laboratory for testing; whether a DNA profile was obtained from the sexual assault evidence kit; whether a DNA profile was entered into CODIS; and whether a DNA profile resulted in a CODIS hit.
5. Your legal rights include the right to go to court and file a petition requesting a personal protection order (PPO)/restraining order to protect you from the perpetrator. The PPO could order the perpetrator not to have contact with you and include other specific conditions.



Sample Notice Card #2

Pocket Sized Tri-fold (outside)

Sexual Assault Victim’s Access to Justice Act, MCL 752.953, the Crime Victim’s Rights Act, MCL 780.751 et. seq, Domestic Violence Notices, MCL 764.15c

Law Enforcement Information

[Responding Police Agency]  
[Address/Phone Number of Responding Police Agency]

Responding Officer	Badge Number
Responding Officer	Badge Number
Incident Number	

[Prosecuting Attorney’s Office]  
[Address/Phone Number of Prosecutor’s office]  
Crime Victim’s Services Commission  
P.O. Box 30026, Lansing, MI 48909  
1-517-373-7373

Resources

Emergency Medical Services  
[Contact Information]  
  
Sexual Assault Medical Forensic Examination  
[Contact Information]  
  
Sexual Assault Crisis Program  
[Contact Information]  
National Sexual Assault Hotline: 800-656-HOPE (4673)  
  
Domestic Violence Program  
[Contact Information]  
National Domestic Violence Hotline: 800-799-SAFE (7233)  
  
Information about emergency shelter, counseling services, and the legal rights of domestic violence and sexual assault victims is available from these resources.  
  
Other Victim Resources  
[Contact Information]  
[Contact Information]  
[Contact Information]

[Sample Police Department]

Rights and Resources  
for  
Victims of Crimes

## Sample Notice Card #2

### Pocket Sized Tri-fold (inside)

Sexual Assault Victim's Access to Justice Act, MCL 752.953, the Crime Victim's Rights Act, MCL 780.751 et. seq, Domestic Violence Notices, MCL 764.15c

#### ☐ Information for all Crime Victims

1. You may be eligible for crime victim's compensation benefits. To apply, fill out an application available from the **Crime Victim Services Commission at 517-373-7373**.
2. If you would like to be notified of an arrest in your case or the release of the person arrested or both, you should call **[law enforcement agency and telephone number]** and inform them.
3. If you are not notified of an arrest in your case, you may call this law enforcement agency at **[law enforcement agency's telephone number]** for the status of the case.
4. You can contact the **[prosecuting attorney's office name and phone number]** to obtain information about victim's rights.

#### ☐ Information for Victims of Domestic Violence

1. You may obtain a copy of the police incident report for your case by contacting the law enforcement agency at the phone number previously shown.
2. Your legal rights include the right to go to court and file a petition requesting a personal protection order to protect you or other members of your household from domestic abuse which could include restraining or enjoining the abuser from doing the following:
  - Entering onto premises.
  - Assaulting, attacking, beating, molesting, or wounding you.

- Removing minor children from you, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- Engaging in stalking behavior.
- Purchasing or possessing a firearm.
- Interfering with your efforts to remove your children or personal property from premises that are solely owned or leased by the abuser.
- Interfering with you at your place of employment or education or engaging in conduct that impairs your employment relationship or your employment or educational environment.
- Engaging in any other specific act or conduct that imposes upon or interferes with your personal liberty or that causes a reasonable apprehension of violence.
- Having access to information in records concerning any minor child you have with the abuser that would inform the abuser about your address or telephone number, the child's address or telephone number, or your employment address.

Your legal rights also include the right to go to court and file a motion for an order to show cause and a hearing if the abuser or perpetrator is violating the protection order and has not been arrested.

#### ☐ Information for Victims of Sexual Assault

1. You can have a sexual assault medical forensic examination and have evidence collected using a sexual assault evidence kit even if you do not want to participate in the criminal justice system or cooperate with law enforcement.
2. You cannot be billed for the cost of administering the sexual assault evidence kit. If you receive a bill for these services, contact the Michigan Crime Victim Services Commission at 517-373-7373.
3. You have the right to ask the investigating law enforcement agency for the contact information for the detective or investigating officer assigned to the case, the current status of the case, whether the case has been submitted to the prosecuting attorney for review, and whether the case has been closed and the documented reason for closure.
4. If you had a sexual assault evidence kit collected and released to law enforcement, you have a right to ask the investigating law enforcement agency for the following information: when the sexual assault evidence kit was sent to a forensic laboratory for testing; whether a DNA profile was obtained from the sexual assault evidence kit; whether a DNA profile was entered into CODIS; and whether a DNA profile resulted in a CODIS hit.
5. Your legal rights include the right to go to court and file a petition requesting a personal protection order (PPO)/restraining order to protect you from the perpetrator. The PPO could order the perpetrator not to have contact with you and include other specific conditions.



## Training Bulletin: Words Matter

### *Suggested Guidelines on Language Use for Sexual Assault*

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#### Introduction

We all know that words matter, and this can be especially true when we are talking about sexual assault. In this training bulletin, we are sending out a document that was originally developed to provide guidance on language use for the authors and editors of *Sexual Assault Report*, a publication that we co-edited for five years. (We are currently in the process of editing our last issue, and passing the torch of leadership to others.)

Because this document is likely to be helpful to just about anyone working in this field, we have adapted it for this purpose. We believe these recommendations for language use can improve our verbal and written communications as professionals in the field, helping us to provide information in ways that maximize our accuracy and clarity – and to avoid common tendencies that can create confusion, perpetuate misinformation, and contribute to a climate of doubt and victim blame.

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#### Referring to the Crime, and Avoiding the Word “Alleged”

The word “alleged” will generally be avoided, given the historical context of skepticism for reports of sexual assault. In some instances, the offense will simply be described as a “rape” or a “sexual assault,” following standard conventions within the criminal justice system. It may also be described as the “crime,” “offense,” “reported sexual assault,” etc.

Many people say they use the word “alleged” to refer to sexual assault cases, because they have not reached a final resolution within the criminal justice system (e.g., conviction of the defendant). This is consistent with the presumption that all defendants are innocent until proven guilty. However, it is important to keep in mind that only a miniscule percentage of sexual assaults ever make their way through the entire criminal justice process. Moreover, exhausting the appeals process can take years and even decades. In other words, almost all sexual assaults remain “unresolved” by the legal system, and it would be inappropriate to refer to all such reports (or even disclosures) of sexual assault as “alleged.”

Equally important, this practice is not generally used for any type of crime other than sexual assault.

#### Describing Sexual Acts

Every effort will be made to avoid using the language of consensual sex to describe acts of sexual abuse and assault. For example, terms such as the following will be avoided because they convey a degree of mutual consent and/or minimize the

## Training Bulletin: Words Matter

### *Suggested Guidelines on Language Use for Sexual Assault*

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seriousness of the acts: “sexual intercourse,” “had sex,” “oral sex,” “fondling,” “massaging,” “foreplay,” etc. Instead, objective language will be used to describe the specific body parts and sexual acts involved: “penile-vaginal penetration,” “he rubbed his penis on her vulva,” “the defendant penetrated the victim’s anus with her fingers.”

Other phrases will be avoided when they appear to place agency for the sexual act on the victim rather than the perpetrator. Problematic phrases include: “the victim performed oral sex on the defendant.” Rather, objective language will be used to describe the specific body parts and types of contact involved, including the element of force or coercion if it is present. For example: “The defendant forced his penis into the victim’s vagina,” or “After the defendant threatened to hurt him, the victim stopped resisting, enabling the defendant to penetrate the victim.” Alternatively, the legal term may be used: “the defendant raped the victim,” again with the understanding that this conclusion may not reflect the final resolution of the case within the legal system.

### **Referring to the Perpetrator, Suspect, Defendant**

When referring to a legal case, the defendant will generally be named, following standard conventions for the legal field, and also reflecting the reality that criminal legal cases are identified, filed, and retrieved using the defendant’s name. This will typically include the defendant’s full legal name (first, middle, and last name). One exception to this general rule is when the identification of the defendant would also lead to the identification of the victim (e.g., when the defendant is the victim’s spouse, parent, or sibling). In these situations, the defendant might be identified using only initials, or with a first name and an initial for the last name. Alternatively, the defendant may simply be identified on the basis a relationship to the victim or another household member (e.g., the victim’s mother’s boyfriend).

When referring to the criminal justice system, the word “perpetrator” will generally be used only when a sexual assault conviction represents the final resolution of a case. This would be the case, for example, when a defendant has been convicted. Otherwise, the defendant will typically be referred to by name or described using the specific legal standing at the appropriate point in the narrative (e.g., “suspect” prior to the filing of charges, or “defendant” during the pendency of a case).

Outside the criminal justice context, the word “perpetrator” will be used to refer in general terms to those who commit sexual offenses (e.g., “Sexual assault perpetrators typically use instrumental force, not gratuitous physical violence.”)

### **Civil Legal Cases**

When referring to a civil legal case, the language use will differ from the criminal justice context. For example a tort or divorce case may name the victim or the victim’s parent(s) in its heading. Child protection cases are usually filed under the child’s name (or initials or an acronym), but sometimes they are filed under the protective parent’s

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name. As a policy, however, a victim's name should not be used in connection with any sexual assault case (civil or criminal), except in exceptional instances where this reflects the stated preference of the victim.

### **Referring to the Victim**

Also following standard legal conventions, the term "victim" will typically be used when referring to the context of the criminal justice system. Only in exceptional instances will the phrase "alleged victim" be used, and its use must be justified by unique circumstances. The terms "accuser" or "prosecutrix" are not appropriate, unless they are used in a direct quote from another source and cited appropriately.

Other terms may be preferred by authors in other professional disciplines or contexts. For example, those in the health care profession will generally use the term "patient," because it is oriented toward their mission. Victim advocates and other social service providers may use alternative terms, depending on their professional mission and philosophy; these could include "client," "survivor," etc.

Victims will generally not be named in our writing, except in circumstances where this reflects the stated preference of the victim. In some instances, the victim will simply be referred to as "the victim" or some other neutral identifier in relation to the defendant (e.g., girlfriend, wife, daughter, foster son, nephew, neighbor). In other situations, the victim's initials may be used (typically in cases involving child victims). In still others, a pseudonym will be used (e.g., "Jane Doe"). Typically, the referent used in a written article (such as a case review) will reflect the language from the original court decision.

### **Active Language**

In general, active language will be preferred over passive forms. An example of passive language would be: "The victim was thrown against the wall" or "The victim was pushed, causing him to strike his head against the table." Alternative versions using active language would include: "The defendant threw the victim against the wall," and "The defendant pushed the victim, so his head struck the table."

On occasion, a similar problem may occur when language implies agency that is not warranted given the common dynamics of sexual assault victimization. For example, it would be problematic to state that the victim "delayed reporting" if he/she did not contact law enforcement for several days after the sexual assault. While this may be described as a "delayed report" in the criminal justice context, alternative wording can be used to describe the victim's response to the sexual assault in ways that do not carry the connotation of active obstruction of the criminal justice process. To illustrate: "The victim disclosed to her mother the day after the assault and then contacted law enforcement two weeks later."

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Finally, the word “experience” is not preferred for describing victimization. An example would be the following statement: “A woman who experiences sexual assault in addition to physical violence is more likely to be killed than a woman experiencing physical violence only.” Better wording more accurately captures the reality of victimization. To illustrate: “A woman subjected to sexual assault in addition to physical violence is more likely to be killed than a woman subjected to physical violence only.”

### **Statement, History, and Story**

Authors should avoid using the term “story” when referring to the victim’s statement or account of events, given the connotation of skepticism conveyed. Other terms are more appropriate, such as “account,” “statement,” or even “the victim’s description of the sexual assault,” etc. The term “history” is often used when describing the victim’s account of the event for health care providers. For example: “The Sexual Assault Nurse Examiner took the victim’s history before collecting evidence.”

### **Strangled vs. Choked**

The term “strangled” will be used, rather than “choked,” to accurately describe an act of force. The term “choked” actually refers to a blockage within the victim’s windpipe (e.g., food stuck in the throat), although it is commonly mistaken as referring to an act of strangulation.

### **Referring to Victims with Disabilities**

Approximately one in five people have a disability. It is a minority group that one can join at any time, and in fact most people will join if they live long enough. When referring to victims with disabilities it is therefore important to use respectful language, or what is referred to as “People First Language.” People First Language puts the person before the disability and acknowledges that victims with disabilities have a great deal in common with other victims. Having a disability can be one part of the human experience and therefore, such language conveys that a person *has* a disability, not that he or she *is* the disability. For example, a person *has* cerebral palsy rather than a person *is* cerebral palsied.

Other examples of People First Language include describing someone as:

- a person who uses a wheelchair, rather than “wheelchair bound”
- a person with an intellectual disability, rather than “mentally retarded”
- a person with a disability, rather than “the disabled”
- a person with mental illness, rather than “insane”

Other terms that should be avoided when possible include references to Mental Age. Some standardized tests for intelligence and adaptive functioning include a Mental Age comparison. Mental Age scores or age equivalent scores have sometimes been used



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to describe adults with intellectual disabilities as children or “functioning as a seven year old.” This reference does not accurately describe the person and their abilities or limitations and should be avoided. One possible exception is when referencing official documents that use such language. In that situation, the language can be used as long as it is clearly attributed to the original source. However, it is best to include a note or discussion to convey that the term is not the most accurate or appropriate.

In general, there is no disability label or diagnosis that describes a specific person. Just as each person with diabetes is unique, so is each person with autism. Also, each person’s experience is unique. It is therefore best to avoid words designed to elicit pity or a patronizing attitude, and rather to use language that communicates an attitude of respect for all victims.

### **Flexibility and Reasonableness**

While these preferences are stated for the wording of articles or case reviews, it is worth noting that some degree of flexibility is required. Sometimes problematic wording is included in the original text of a court decision and retained in the case review; this can be noted using quotation marks or other means. In other situations, it can be difficult to avoid problematic language for a variety of reasons. Therefore, a standard of reasonableness will be used to evaluate wording of case reviews and other articles in light of these general standards.

### **Conclusion**

We believe these recommendations for language use can improve our verbal and written communications as professionals in the field, helping us to provide information in ways that maximize our accuracy and clarity. Ultimately, the goal is to avoid common tendencies that can create confusion, perpetuate misinformation, and contribute to a climate of doubt and victim blame.







## SUSPECT INFORMATION FORM:

This form completed by: \_\_\_\_\_

Badge #: \_\_\_\_\_

### *The data on this form was obtained from*

Name:	Date of Birth:
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*If more than one suspect and names are unknown, identify by a number. Place a XX in the box if information is unknown. N/A in box if not applicable.*

### **Biographical Information**

Last Name (or #):	First Name:	Middle Name:
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	Date of Birth:	Race/Ethnicity:
Social Security #:	Driver's License #/State:	SID/FBI:
Primary Language:	Gang Affiliation:	Relationship to Victim:
Aliases:	Probation/Parole:	Other:

### **Description**

Height:	Weight:	Hair Color:
Eye Color:	Facial Hair:	Hair Length:
Body Build:	Tattoo(s):	Scars/Marks:
Jewelry:	Complexion/Skin Color:	Speech/Accent:
Physical Disability:	Other:	

Is there a picture available of the suspect? ☐ Yes ☐ No  
(If yes, attach)

### **Vehicle**

Plate:	State:	Year:	Color:
Make:		Model:	
Stickers/Modifications:		Other:	

<b><i>Clothing at time of incident</i></b>		
Shirt:	Pants:	Shoes:
Jacket:	Hat:	Bag:
Dress:	Gloves:	Other:
General Clothing Style:		
<b><i>Suspect Contact Information</i></b>		
Current Address:		
Cell Phone #:	Home Phone #:	Work Phone #
Other:		
<b><i>Current or Past Employment/Residence/School: Circle One</i></b>		
Employer/Residence/School Name:		
Location/Address:		
Employer/Residence/School Name:		
Location/Address:		
Employer/Residence/School Name:		
Location/Address:		
Employer/Residence/School Name:		
Location/Address:		
Employer/Residence/School Name:		
Location/Address:		
Employer/Residence/School:		
Location/Address:		
<b><i>Electronic Information: If applicable, identify where item is normally stored</i></b>		
E-mail (s):	Facebook:	Other:
Cell phone description:	Computer Description:	
Does the suspect own a camera or video camera?		

# INVESTIGATOR RECORDS CHECKLIST

Case #: \_\_\_\_\_ Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Suspect / Other: \_\_\_\_\_

☐ CCH: \_\_\_\_\_ Yes / No      Felon: \_\_\_\_\_ Yes / No

Returned States: \_\_\_\_\_

Notes:

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☐ Agency Database      Yes / No

Case #'s: \_\_\_\_\_

Notes:

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☐ Jail /JDH Records      Yes / No      Booking Photo: Yes / No

Notes:

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☐ Court Records      Yes / No

Notes:

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☐ NCIC Offline      Yes / No

Notes:

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☐ **Child Welfare Records** Yes / No  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_

☐ **DMV** Yes / No States: \_\_\_\_\_  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Social Media** Yes / No Username: \_\_\_\_\_  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Web Search** Yes / No Username: \_\_\_\_\_  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Child Advocacy Center Database** Yes / No  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Public Records Database** Yes / No  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_

☐ **SA/DV Advocacy Database** Yes / No  
Notes:  
\_\_\_\_\_  
\_\_\_\_\_





# NCIC National Crime Information Center

## The Off-line Search

Revised March 2005

**T**he National Crime Information Center (NCIC) is a nationwide computerized information system that includes millions of records for stolen property, wanted persons, missing persons, and unidentified persons records. Through the NCIC

System, local, state, and federal criminal justice agencies across the United States, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada have instant access to all available records. In addition, special provisions allow several other foreign nations limited access to records stored in the database.

On-line inquiries conducted by law enforcement personnel can quickly retrieve accurate information, thereby increasing the probability of criminal detection. However, an on-line inquiry alone may be inadequate in certain investigative situations. In such cases, agencies may have to request off-line searches of the NCIC database. This can be done by contacting the FBI's Criminal Justice Information Services (CJIS) Division staff at (304) 625-3000 or via e-mail at IOAU@leo.gov.

An off-line search is a special technique that can be used to obtain information not available through an on-line inquiry. The results may provide relevant investigative information. For example, an off-line search of the NCIC transaction log can reveal if an inquiry was made on a particular individual or item of property. This could assist an investigator in locating an item of property, determine the proximity of an individual to a crime scene, substantiate or discredit an alibi, or trace the route of a person of interest. The CJIS Division personnel can search active and purged NCIC databases off-line using one or more of the information fields contained in the record to determine if a record for an individual or item of property is, or ever has been, entered. For example, nonunique personal descriptors, such as sex, height, weight, estimated age, and hair color can be used in searches for wanted, missing, or deceased person records. Through the use of "wildcard" characters, the CJIS Division staff can search fields when only partial information is available, such as license plate and vehicle identification numbers.

The following examples demonstrate instances where an off-line search—specifically tailored to the needs of the individual investigation—provided vital information that led to the case being solved.

### EXAMPLE #1

Early on the morning of April 21, 1995, investigators with the Oklahoma City Bombing Task Force provided the CJIS Division staff with the name and birthdate of suspect Timothy McVeigh and requested them to return all available information as quickly as possible in connection with the investigation of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City.

A transaction log search indicated that on April 19, 1995, approximately 90 minutes after the bombing, the Oklahoma State Highway Patrol had made an NCIC inquiry on Mr. McVeigh. With this information, investigators determined that the inquiry was the result of a traffic stop of Mr. McVeigh for speeding and operating a vehicle without a license plate. After the inquiry, Mr. McVeigh was jailed on a weapons charge and was in custody when the Task Force notified the Oklahoma State Highway Patrol of its interest. Mr. McVeigh was later arrested, charged, convicted, and executed in connection with the bombing.

#### **EXAMPLE #2**

In early 1999, a Field Investigations Office of the New York Division of Motor Vehicles (NYDMV) noticed a discrepancy in the vehicle identification number (VIN) of a 1961 Jaguar. The NYDMV then contacted the CJIS Division staff and requested an off-line search.

Based on a partial VIN obtained from further examination of the vehicle, a purged record search produced a 1981 stolen vehicle record for the same 1961 Jaguar. New York authorities recovered the automobile, valued at \$100,000.

#### **EXAMPLE #3**

After an informant gave an FBI Agent information about an organized drug group operating between Arizona and the Midwest, the CJIS Division staff conducted continuous transaction log off-line searches on names that the informant provided from January 1994 to February 1996. The staff found inquiries that verified the suspected geographic travel patterns of many of the subjects.

This information aided local and federal authorities in securing indictments of the individuals for conspiracy to distribute marijuana. Local and federal authorities subsequently searched the suspects' property and recovered cash and drugs valued at \$350,000. Nine individuals were arrested.

#### **EXAMPLE #4**

As part of an international racketeering investigation, an FBI Agent contacted the CJIS Division staff requesting lists of active and purged records of stolen Harley-Davidson motorcycles. Police in Denmark mounted a nationwide raid and used these listings to aid in the identification of stolen motorcycles. The raid resulted in the arrest of four individuals, all working for import companies, and the seizure of 192 Harley-Davidson motorcycles valued at \$5 million. Members of Denmark's Hell's Angels Motorcycle Club, as well as others, were subsequently charged with Knowingly Purchasing Stolen Goods.

#### **EXAMPLE #5**

The CJIS Division staff provided valuable lead information in an investigation of a missing female. The staff conducted a transaction log search on the missing person's

name and license plate for the 5 days before law enforcement officials had entered a record containing her personal data into the NCIC. The results included a query on the license plate from a neighboring police department while the vehicle was parked at a local motel.

Law enforcement personnel checked the motel and found that the vehicle was still there. The motel's desk clerk provided information that led the officers to a motel room where they found two men associated with the vehicle. They also found in the room a female who had been reported missing in a separate incident. The investigator's search of the vehicle's trunk revealed blood that was identified to be that of the owner who was then presumed to be a homicide victim. The police held the two men as murder suspects.

The two subjects eventually entered into a plea agreement. Each pled guilty to one count of First-Degree Murder and one count of Kidnapping. They were sentenced to life without the possibility of parole. Based on information provided by the murderers as a condition of the plea agreement, law enforcement officials subsequently recovered the body of the missing female.

#### **EXAMPLE #6**

In 1999, the Palm Beach County (Florida) Multi-Agency Auto Theft Task Force was formed to address the problem of organizations stealing and dismantling vehicles in Palm Beach County and adjacent areas. The Task Force's investigation revealed that more than 200 Chevrolet Corvettes had been stolen in Palm Beach County alone since 1994. As a result, the Task Force requested that the CJIS Division staff provide daily listings of records for Corvettes reported stolen to Palm Beach County agencies during a crucial 2-week period of the investigation.

The 6-month investigation came to a climax when search warrants were executed for two residences and a business where Chevrolet Corvettes were allegedly being received and dismantled. The recovered vehicles, accessories, and parts—all in the process of being shipped to locations as distant as South Africa—had an estimated value in excess of \$1 million. The 60 off-line searches that contained descriptive information of the vehicles assisted the Task Force in the identification of items recovered during the searches. The investigation eventually resulted in the arrest of three individuals who were charged with Grand Theft Auto, Operating a Chop Shop, and Dealing in Stolen Property.

#### **EXAMPLE #7**

Police were called to a private residence after the owner was found dead. Detectives subsequently determined that the individual was a homicide victim but found no evidence identifying the perpetrator.

After weeks of questioning family members and neighbors, the detectives began to suspect a stepson who lived several hundred miles away in a different state. Though the stepson claimed he was not in the area when the homicide occurred, a neighbor reported seeing a vehicle with out-of-

state license plates near the victim's home around the time of the incident.

Working with investigators from the Department of Motor Vehicles, the detectives were able to obtain a list of vehicles matching the description provided by the neighbor. Further investigation revealed that one license plate belonged to the girlfriend of the stepson. When confronted with the fact that her car may have been used in the commission of a crime, the girlfriend admitted the stepson had borrowed her car during the month the killing had occurred.

The detectives requested an off-line search of the transaction log to determine whether the vehicle had been queried within several days before or after the homicide.

The off-line search revealed that an agency in the county where the homicide occurred had made several inquiries. The detectives subsequently contacted the officer who requested the license check. His log indicated he had stopped the vehicle, questioned several occupants after seeing them drinking, and issued tickets. When this evidence was presented to the stepson, he confessed to the murder and also implicated the victim's son. This off-line search assisted in the arrest of two murderers.

#### **EXAMPLE #8**

An FBI field division contacted the staff of the CJIS Division to request an emergency off-line search of the transaction log. The case concerned a kidnapping with a ransom demand. The staff searched the transaction log for the victim's name and license plate number from the date of last contact to the current day. The results indicated that Texas authorities had queried the license plate several times.

The FBI Agent contacted the officer who had conducted one of the license plate inquiries. The officer advised him that the driver of the vehicle was suspected of robbing a convenience store and that officers had been following the vehicle throughout the day.

The driver was the lone occupant of the vehicle and his physical description was very similar to that of the alleged kidnapping victim. The Agent sent photographs and other pertinent information to Texas to assist the officers in the robbery investigation.

Following a second robbery, the suspect led law enforcement officers on a high-speed car chase that ended when the suspect's vehicle crashed. Officers could not use a photograph of the suspect taken at the time of the accident because facial injuries suffered by the suspect in the crash left him unrecognizable by witnesses. However, a photo provided by the FBI from the kidnapping investigation was then shown to the witnesses. They identified the suspect, and law enforcement officers issued a warrant and formally arrested the suspect on two counts of Robbery and one count of Extortion for the fabricated kidnapping.

#### **EXAMPLE #9**

On February 6, 2003, a woman reported her two brothers and their pickup truck missing from the Navajo Indian Reservation in Indian Wells, Arizona. On March 7, a man came across partial human remains about a mile from the victims' home. The FBI and Navajo Police conducted a joint crime scene investigation and found two shallow graves with the bodies of the missing men. Three days later, an FBI Agent with the Flagstaff Resident Agency (RA) of the Phoenix, Arizona, Field Office contacted the CJIS Division to request an off-line search to help find the vehicle.

The CJIS Division's staff conducted an off-line search of the January to March 2003 transaction log based on the vehicle's license plate and vehicle identification number. The search produced inquiries from the Tempe, Arizona, Police Department; the U.S. Border Patrol in Yuma, Arizona; and the Yuma County Sheriff's Department. The FBI Agent contacted the Tempe Police Department and learned that on January 24, the truck had been parked illegally and towed to an impound lot. The Agent then went to the towing company and found out who paid the fee to get the vehicle out of the impound lot. The Agent then contacted the U.S. Border Patrol in Yuma. Officers there told the Agent that on February 2, they had stopped the vehicle with three men inside. One of the men in the truck had an outstanding warrant in an unrelated case in Holbrook, Arizona, so Border Patrol officers turned the man over to the sheriff's department. The sheriff's department also impounded the truck.

On March 13, the FBI Agent located and questioned one of the three men from the truck. He told the agent that the two men in the truck told him they killed two people in Indian Wells and provided a suspect's name. When the FBI Agent interviewed the suspect on March 26, the man implicated the second suspect. The Agent then charged both individuals with First-Degree Murder of the two brothers. According to the RA, "the suspects would not have been identified, nor charged [without the off-line search]. The search saved hundreds of man hours of investigative time and truly resulted in the resolution of this case."

#### **CONCLUSION**

The NCIC off-line search is designed to provide law enforcement with investigative leads. Agencies that want an off-line search should contact the CJIS Division at (304) 625-3000, send an administrative message to The International Justice and Public Safety Information Sharing Network, also known as NLETS, with DCFBIWAQ9 as the destination Originating Agency Identifier, or send an e-mail to IOAU@leo.gov. Agencies are asked to complete a survey included with the results of each search in order to assist the FBI in evaluating the usefulness of the NCIC's off-line search program.

## NCIC/III OFF-LINE SEARCH REQUEST FORM

Date of Request \_\_\_\_\_ Name of Requester \_\_\_\_\_  
Agency's ORI \_\_\_\_\_  
Telephone Number (     ) \_\_\_\_\_ Facsimile Number (     ) \_\_\_\_\_  
Agency's E-mail \_\_\_\_\_  
Type of Investigation \_\_\_\_\_ Case Number \_\_\_\_\_  
Type of Search Requested \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Time Frame for Search \_\_\_\_\_

### PERSON:

Name(s) and Date(s) of Birth \_\_\_\_\_  
\_\_\_\_\_  
Social Security Number(s) \_\_\_\_\_  
Other Identification Number(s) \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_

### VEHICLE:

License Plate(s) \_\_\_\_\_  
License Plate State(s) \_\_\_\_\_  
Vehicle Identification Number(s) \_\_\_\_\_  
Make \_\_\_\_\_ Model \_\_\_\_\_  
Vehicle Year(s) \_\_\_\_\_  
Vehicle Color(s) \_\_\_\_\_

### ARTICLE/GUN:

Serial Number(s) \_\_\_\_\_  
Description \_\_\_\_\_

### BOAT:

Boat Hull Number(s) \_\_\_\_\_  
Description/Manufacturer(s) \_\_\_\_\_

**After completing this form, agencies should send it to the CJIS Division's Investigative and Operational Assistance Unit (IOAU) staff via facsimile at (304) 625-5393. For additional information about requesting an off-line search, agencies should contact the IOAU at (304) 625-3000; e-mail <ioau@leo.gov> or via the NLETS to ORI/DCFBIWAQ9.**





## Serial Sexual Perpetration Profile Questions

Often the answers you receive from these questions will allow you to obtain subpoenas for information that will assist in corroborating serial perpetration, identifying a method of operation and/or aid in identifying additional victims. The pronoun "he" is used but "she" can be substituted depending on your suspects gender. By using "tell me" as opposed to "does" you are facilitating a narrative response as opposed to a yes/no response.

- Tell me about who he is currently in a relationship with.
- Tell me who he has been in a relationship with in the past.
- Tell me about problems he has had in his relationships.
- Tell me about where he is currently working.
- Tell me about the co-workers he hangs out with.
- Tell me where he has worked in the past.
- Tell me about any problems he has had at work.
- Tell me about who he hangs out with.
- Tell me where he likes to hang out.
- Tell me about what sports he likes to play and who he plays with.
- Tell me about his hobbies.
- Tell me about the bars he goes to.
- Tell me about where he likes to work out/exercise.
- Tell me about any places he is no longer allowed to go.
- Tell me about what schools he has attended.
- Tell me about places he has lived in the past.
- Tell me about any roommates he has had.
- Tell me about where he travels to.
- Tell me about any time he has applied for something and not been accepted.
- Tell me about any groups he is associated with.
- Tell me about his family.
- Tell me about any problems he has had with his family.
- Describe his personality.
- Tell me what makes him mad.
- Tell me how he reacts to authority.
- Tell me about a time you've seen and/or heard about him being violent.
- Tell me about how he gets along with others.
- Tell me what you hear him say about women.
- Tell me about his interaction with women.
- Tell me about how he reacts when something doesn't go his way.
- Tell me something he has asked you to keep secret.
- Tell me about a time that he worried you.
- Tell me about something he did that you were not okay with.



# SEXUAL ASSAULT EVIDENCE KIT TESTING IN MICHIGAN: WHAT VICTIMS HAVE THE RIGHT TO KNOW

## A Victim's Right to Information

Under Michigan law, a sexual assault victim has the right to know:

- **When the Sexual Assault Evidence Kit was sent to a crime lab for testing;**
- **Whether a DNA profile (DNA evidence) was obtained from the Sexual Assault Evidence Kit;**
- **Whether a DNA profile was entered into CODIS (a case evidence database);**
- **Whether a DNA profile resulted in a CODIS hit.**

The police agency investigating the sexual assault is required to provide this information to the victim, if available.

However, in some circumstances, the police agency may wait to share it if providing the information would somehow impede or compromise the investigation. MCL 752.956.

## What is a Sexual Assault Medical Forensic Exam?

This sexual assault medical forensic exam includes a collection of a medical history, a physical examination, treatment for injury, and preventative treatment for pregnancy and/or sexually transmitted diseases. If a victim consents, forensic evidence is also collected through the use of a sexual assault evidence kit. This exam is typically performed at a local hospital emergency room or by a Sexual Assault Nurse Examiner (SANE) Program. Healthcare providers must offer the exam to any person indicating that they have been sexually assaulted in the previous 120 hours (5 days). MCL 333.21527.

## What is a Sexual Assault Evidence Kit (SAEK)?

A Sexual Assault Evidence Kit, or SAEK, is a box that contains swabs, envelopes, instructions and forms. If a victim agrees, the SAEK is used during a sexual assault medical forensic exam to collect possible DNA evidence. DNA evidence can be found in semen, saliva, hairs, or blood that may be on a victim's body or on items like clothing. This evidence may be used in the criminal investigation and prosecution.

## Does a victim have to pay to have a SAEK collected or tested?

No. It is against the law to require a victim to pay for the cost of collecting or testing evidence in a SAEK. MCL 18.355a.

## Where does the SAEK go after collection?

If the victim gives permission and signs a form to release the SAEK, the SAEK will be given to the police. Police then send the SAEK to a crime lab for testing. If the victim does not want to release the SAEK, the healthcare provider must store it for one year.<sup>†</sup> In most cases, a SAEK stored by a healthcare provider cannot be given to police or tested unless the victim later decides to release it. MCL 752.933.

## Are all released SAEKs sent to a crime lab for testing?

Yes.<sup>‡</sup> If a victim has released the SAEK to police, the police are required to send the SAEK to a crime lab for testing within a certain period of time, typically two weeks. A crime lab has 90 days to test the evidence. This can take longer if the process involves more than one police agency or the lab has limited resources. MCL 752.934.

## *A victim has the right to ask when the sexual assault kit was sent to a crime lab for testing.*

## What will the crime lab test for?

A scientist will test the samples collected in the SAEK for DNA evidence. If there is enough DNA in the sample, a DNA profile is developed. A DNA profile is like a fingerprint that can help identify a suspect. In some cases, a DNA profile may also identify the DNA of a consensual sexual partner.

## *A victim has the right to ask police if DNA profile (DNA evidence) was obtained from the Sexual Assault Evidence Kit.*

<sup>†</sup> The mandate to store unreleased SAEKs for one year only applies to SAEKs collected after March 31, 2015.

<sup>‡</sup> Only SAEKs released after March 1, 2015 are mandated to be submitted to a crime laboratory for testing.

## What if there is no DNA evidence?

Lack of DNA evidence does not mean that the sexual assault didn't happen. There are many reasons why DNA may not be present. As one example, the offender may not have left any DNA or the offender may have left too little DNA.

**DNA evidence is not always necessary for a sexual assault conviction.** DNA is only one piece of evidence in an investigation. Other types of evidence include victim and witness statements, pictures of injuries, phone records, and other physical evidence.

## What if there is DNA evidence?

If a crime lab detects enough DNA evidence, it will develop a DNA profile (DNA fingerprint) and enter that DNA profile into a national database called CODIS.

*A victim has the right to ask if a DNA profile was entered into CODIS.*

## What is CODIS?

The COmbined DNA Index System, or CODIS, is a system of national, state, and local databases administered by the FBI. CODIS allows crime labs to compare SAEK evidence to DNA profiles from known criminal offenders and arrestees. They can also compare SAEK evidence to DNA evidence from unknown suspects in other crimes. CODIS has proven crucial in solving crimes by:

- Identifying unknown suspects;
- Linking DNA profiles from more than one crime to find serial offenders; and
- Eliminating suspects.

## What is a 'hit' in CODIS?

When a DNA profile is put in CODIS it is compared to offender profiles that are already in CODIS. When a DNA profile is linked to an offender or a different crime scene it is called a 'hit.' There are two types of hits: (1) a 'hit' to an identified offender; or (2) a 'hit' to a DNA profile developed from crime scene evidence where the offender is still unknown.

*A victim has the right to ask police whether a DNA profile resulted in a CODIS 'hit.'*

**A 'hit' in CODIS does not necessarily mean that the case is solved or that the case will automatically go to trial.** DNA is only one piece of evidence in an investigation. If the offender's name is unknown, a 'hit' that leads to an offender identity can be very important. Other times, a 'hit' can add to existing evidence and build a stronger case by identifying a serial offender.

## Does a victim's DNA go into CODIS?

No. The CODIS database is made up of DNA profiles from individuals convicted of or, in some states, arrested for particular crimes. It also includes DNA profiles of the possible perpetrators from crime scene evidence.

## What about the DNA profile of a consensual sexual partner?

If the DNA profile identifies a recent consensual sexual partner, rather than the offender, that profile may be removed from CODIS. A victim can talk to the police about this process.

## How can a victim find out where the SAEK is or DNA testing results?

A victim can contact the police investigating the sexual assault. If the police do not provide the information, a victim can contact a local community based sexual assault program or the prosecutor's office for assistance.

Incident Number/Case Number	
Law Enforcement Agency/Investigator Name	Phone
Law Enforcement Agency/Investigator Name	Phone
Sexual Assault Services Program	Phone

National Sexual Assault Hotline: 800-656-HOPE (4673)

# **Michigan Commission on Law Enforcement Standards**

## **Standards for Audiovisual Recording**

### **Standard 1: Recording Capability**

Audiovisual equipment shall:

- Use a digital recording format;
- Capture at least 24 frames per second;
- Be compatible with a universal playback system;
- Have the capability for an authorized user to redact a copy of the original digital evidence;
- Export duplicate recordings in the original format;
- Allow for a compressed file sharing copy without loss of picture/audio quality;
- Record, without user intervention, at least a continuous 6-hour event; and
- Playback recordings in original quality, without loss of picture/audio integrity.

### **Standard 2: Camera**

Video cameras must:

- Record in color;
- Have a minimum of 452 horizontal lines of resolution; and
- Be positioned so all individuals within the interrogation room are captured.

### **Standard 3: Microphone**

Audio recording equipment shall:

- Record simultaneously with the video for recording and archiving;
- Be positioned to capture voices of individuals within the interrogation room; and
- Be of a quality to accurately record all verbal communication taking place in the interrogation room.

### **Standard 4: Date/Time Stamp**

Recording systems shall:

- Continually record the time/date stamp as metadata; and
- Be administrator-configurable to allow or disallow visual display.

### **Standard 5: Agency Policy and Procedure**

Michigan law enforcement agencies shall establish operational guidelines for the audiovisual recording of interrogations identified in law. The guidelines shall include:

- Procedures for audiovisual recordings;
- Miranda rights within the recording;
- The treatment of recordings as evidence;
- The secured storage of audiovisual recordings;
- Procedures for the copying of recordings;
- Procedures for the retention and/or destruction of recordings; and
- How the recording equipment is tested and verified.

### **Standard 6: Geographic Accessibility**

The geographic accessibility requirement shall be met by an agency if all of the following occur:

- Equipment meeting MCOLES audiovisual standards is reasonably accessible by an agency; and
- There is a mutual agreement in place for use of another agency's audiovisual equipment in effect; and
- The location housing the audiovisual equipment is considered to be a place of detention as defined in the Act.



# 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*.

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# 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.



# IN-SERVICE /ROLL CALL

## TRAINING VIDEO

### Adult Sexual Assault: A Trauma Informed Approach

### Law Enforcement Facilitator's Guide

**Introduction:** This training video was designed so that it can be used in a brief in-service training or two short training sessions as part of roll call or shift change briefings at your agency. The training provides an overview of how trauma impacts victims and how law enforcement first responders can implement a **trauma informed** response and approach to sexual assault survivors. The training video features Dr. Rebecca Campbell, Chief Tom Tremblay (Ret.) and law enforcement professionals from across Michigan. The video is available on YouTube as a training resource for law enforcement and allied professionals: **Part I:** <http://youtu.be/CnIXzD2pYSA> (13 minutes); **Part II:** <http://youtu.be/O0Om695cHjq> (9 minutes); **Part I and II combined:** <http://youtu.be/gtWD1XJrhNo> (22 minutes). **Request a DVD copy of the video by calling 517-335-6388.**

**Using the Video:** The following is a suggested way to show the video and assist your officers in integrating the information learned from the video into their work:

#### **If Part 1 and Part 2 of the video will be shown in two short sessions:**

##### **Day 1 (video length 13 minutes)**

- **Introduce Part I of the video:** While you are watching the following video, please do the following:
  - Write down one piece of information that is new or surprising to you;
  - Think about a case, sexual assault or otherwise, where you have seen behavior consistent with the response(s) to trauma talked about in the video.
- **Show part one of the video:** (13 minutes) available at: <http://youtu.be/CnIXzD2pYSA>
- **After the video:** Ask for volunteers to answer the following questions:
  - What information was new or surprising to you?
  - (If time allows) Think about a time when you, a family member, an associate, or a victim you responded to had been involved in a critical incident (such as a car accident or assault). Did you experience or see any of the trauma reactions that you learned about today?

##### **Day 2 (video length 9 minutes)**

- **Introduce Part II of the video:** While you are watching part two of this video, write down one thing that you will do differently on your next sexual assault call, and why.
- **Show part two of the video:** (9 minutes) available at: <http://youtu.be/O0Om695cHjq>
- **After the video:** Ask for volunteers to answer the following questions:
  - Tell me one thing that you will do differently on your next sexual assault call, and why?



### **If Parts 1 and 2 will be shown in one 30 minute in-service training session:**

- **Introduce the video:** While you are watching the following video, please do the following:
  - Write down one piece of information that is new or surprising to you;
  - Think about a case, sexual assault or otherwise, where you might have seen behavior consistent with the response(s) to trauma talked about in the video.
  - Write down one thing that you will do differently on your next sexual assault call, and why.
- **Show the entire the video:** (22 minutes) available at: <http://youtu.be/gtWD1XJrhNo>
- **After the video:** Ask for volunteers to answer the following questions:
  - What information was new or surprising to you?
  - (If time allows) Think about a time when you, a family member, an associate, or a victim you responded to had been involved in a critical incident (such as a car accident or assault). Did you experience or see any of the trauma reactions that you learned about today?
  - Tell me one thing what you will do differently on your next sexual assault call, and why?

### **If you have 45 minutes or more in-service training to show and discuss the video**

Show and then discuss Part 1, and then show and discuss Part 2, using the same instructions and follow up questions as you would if showing Parts 1 and 2 on separate days (see above).

### **Post-viewing test questions for use with computer based or online training:**

#### **Questions to be answered after Part 1 of the Video:**

1. The stress chemicals released by the body during trauma of sexual assault may result in victims:
  - a. Freezing during the assault.
  - b. Feeling drained of energy, lethargic during and after the assault.
  - c. Having fragmented memory of the assault.
  - d. Having lots of energy to fight back or flee the assault.
  - e. **Any of the above.**
2. **True** or False: A sexual assault victim's emotional demeanor after the assault could range from numb to tearful to angry to giggling to matter-of-fact, or anything in between.
3. When interviewing a victim of sexual assault, it is common for officers to observe the following:
  - a. The victim can relay the narrative of the assault in a chronological, consistent narrative.
  - b. The victim is able to clearly explain why she or he did or said the things she or he did before, during and after the assault.
  - c. **The victim's memory is fragmented, with additional or different facts being remembered over time.**
  - d. None of the above.
4. **True** or false: While the victim's memory of the sexual assault may be fragmented and disorganized due to the neurobiological response to trauma, the accuracy of those memories is intact.

## Questions to be answered after Part 2 of the Video:

1. True or **False**: When you are interviewing a victim of sexual assault, you should ask the victim, “Why?” whenever you don’t understand why the victim did or didn’t do something.
2. It is important for officers responding to a sexual assault victim to:
  - a. Tell the victim that the officer believes them.
  - b. Let the victim know that you are sorry this happened to them.
  - c. Allow the victim to tell what they remember without insisting on a chronological narrative.
  - d. **All of the above.**
3. **True** or False: Research indicates that **how** an officer responds to a sexual assault victim has a significant effect on the victim’s short-term and long-term mental health.
4. If the victim’s account sounds confusing, what you are most likely seeing is:
  - a. **Evidence of trauma to the victim.**
  - b. Evidence of deception by the victim.
  - c. Evidence of drug use by the victim.
  - d. None of the above.
5. Instead of asking, “Why?” an officer can do the following to explore the reasons for a victim’s actions:
  - a. Ask the victim to “tell me more about what was happening when . . . .”
  - b. Ask the victim to “tell me about your thought process when . . . .”
  - c. Ask the victim to “tell me what you were feeling when . . . .”
  - d. **All of the above.**
6. **True** or False. Every victim responds differently to sexual assault—there is no right or wrong way to respond.



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