



IACP

Sexual Assault Incident Reports

INVESTIGATIVE STRATEGIES

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

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

Standardizing Case Coding and Clearance Practices

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

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

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

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

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

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

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

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

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

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

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

Report Writing

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

When writing the report:

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

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

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

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

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

Report Writing Considerations and Potential Suspect Defenses

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

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

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

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

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

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

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

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

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

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

If your department has specialized investigators:

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

Victim Interview

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

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

Respect the victim's immediate priorities.

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

Build a rapport with the victim.

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

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

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

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

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

Forensic Medical Exam Payment

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

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

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

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

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

Do not polygraph victims.

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

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

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

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

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

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

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

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

Suspect Interrogation

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

Focus the investigation on the suspect rather than the victim.

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

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

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

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

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

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

Non-Stranger Sexual Assault

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

Investigation

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

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

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

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

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

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

Do not overlook the importance of witness statements/testimony.

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

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

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

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

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

Working With Vulnerable Populations

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

Examples of vulnerable populations include:

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

A few tips to keep in mind:

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

IACP Resources

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

Tools

- IACP Sexual Assault Supplemental Report Form, 2008

Model Policy

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

Training Keys

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

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