



End Violence Against Women International  
(EVAWI)

# Investigating Sexual Assault Against People with Disabilities: How to Develop an Investigative Strategy

Kimberly A. Lonsway, PhD  
Sergeant Joanne Archambault (Ret.)  
Shirley Paceley, MA  
Christine Herrman, JD

December 2015  
Updated September 2021

## **Public Domain Notice**

Unless something is excerpted directly from a copyrighted source, all the material in this document is in the public domain and may be reproduced or copied without specifically requesting permission from End Violence Against Women International (EVAWI) or the authors. Any direct quotes or excerpts should be properly cited, however. No one may reproduce or distribute this material *for a fee* without the specific, written authorization of End Violence Against Women International (EVAWI).

## **Electronic Access**

The publication may be downloaded from End Violence Against Women International's [Resource Library](#).

## **Recommended Citation**

Lonsway, K. A., Archambault, J., Pacey, S., Herrman, C. (2021). *Investigating Sexual Assault Against People with Disabilities: How to Develop an Investigative Strategy*. End Violence Against Women International.



## Authors

**Dr. Kimberly A. Lonsway** earned her PhD in the Department of Psychology at the University of Illinois, Urbana-Champaign. Her research career has focused on sexual violence and the criminal justice and community response systems, and she has written one book and over 100 training modules, bulletins, research articles, book chapters, and government reports on related topics. She has also trained thousands of professionals around the world, testified as an expert witness in criminal and civil court cases, and volunteered for over 15 years as a victim advocate. In 2012, she was awarded the first-ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, California. In 2003, Dr. Lonsway was invited to serve as a Founding Director for End Violence Against Women International (EVAWI), a fledgling nonprofit dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. In 2004, she assumed the role as Director of Research, and she has since helped grow EVAWI into the premiere criminal justice training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders.



**Sgt. Joanne Archambault** (Retired, San Diego Police Department) is the Founder and Chief Executive Officer for End Violence Against Women International (EVAWI). Prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for over 22 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which investigated approximately 1,000 felony sexual assaults each year. Under her leadership, the San Diego Police Department's Sex Crimes Unit was recognized for pioneering research, groundbreaking victim-centered practices, and multidisciplinary collaboration that changed law enforcement responses to sexual assault across the nation. She also established and operated a highly successful for-profit training and consulting business for 22 years, providing expert guidance to hundreds of police departments and allied agencies, and training tens of thousands of practitioners.



In 2003, Sgt. Archambault founded EVAWI, a nonprofit organization dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. Starting from scratch, she has grown EVAWI into the premier training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders. In 2011, she achieved a dream first envisioned while working in the San Diego Police Department's Child Abuse Unit in 1985 – the launch of Start by Believing, a public awareness campaign designed to transform the way society responds to victims of sexual violence. With campaigns in all 50 US states, several US territories and protectorates, and numerous countries, this vision is now becoming a reality, changing the world for victims, one response at a time.

**Shirley Pacey** is the founder and director of Blue Tower Training in Decatur, IL. Blue Tower has resources in 48 states and 15 countries; she has spoken in over 30 states as well as in Iceland and Guam. Ms. Pacey has worked with people with disabilities for 40 years and has a Master's degree in Clinical Psychology. She is on the Editorial Board of Sexual Assault Report. Ms. Pacey is a Project Advisor to the National Center for Criminal Justice and Disabilities. She also served on a national roundtable to develop a national strategy to end sexual abuse of children with disabilities.



Ms. Pacey developed the WE CAN Stop Abuse Curriculum for people with developmental disabilities and authored My Body My Choice as well as numerous book chapters and articles, music CDs, and DVDs. Ms. Pacey serves on the Illinois Imagines Team that facilitates systems change to enhance the response to survivors of sexual assault who have disabilities. Ms. Pacey also serves on the Illinois Family Violence Coordinating Council Responding to Survivors with Disabilities Committee which developed the first and only model statewide protocols for law enforcement and prosecutors in responding to victims with disabilities. Ms. Pacey also serves as Project Coordinator of Envision Illinois, which addresses domestic violence in the lives of people with all kinds of disabilities. Ms. Pacey also provides inspirational trainings and coaching. She also published the book, Living Joy-Fully.

**Christine Herrman** has over two decades of working to end violence against women. She started her career as a victim advocate and community services coordinator at a domestic and sexual violence program in her hometown of Ketchikan, Alaska. In that role, she provided prevention education and victim services to communities in the area, including towns, logging camps, Native villages, and settlements. Christine attended law school at Duke University, where she established a collaboration between the local rape crisis center and law students to provide advocacy services to sexual assault victims. After graduating from law school in 1999, Christine returned to the Pacific Northwest, where she served as a prosecutor in King County, Washington, focusing on sex crimes and crimes against children. In 2008, Christine assumed leadership of the Oregon Attorney General's Sexual Assault Task Force, a statewide nonprofit organization that provided training and technical assistance to professionals in Oregon and nationwide on prevention of and response to sexual violence. Christine recently joined the Vera Institute of Justice in New York City as Project Director in the Center on Sentencing and Corrections. In this role, she is working on national technical assistance and research projects related to the conditions of confinement of vulnerable individuals, including one addressing the overreliance on segregation and one providing assistance to facilities implementing the Prison Rape Elimination Act. Christine is a member of the board of directors of the Oregon Crime Victim's Law Center, and a member of CounterQuo.



Typically, police officers are taught to approach victims with disabilities and the investigation “like they would in any other case.” The hope is that victims who have a disability will be treated with the same respect as other victims, and this is an important goal we all need to support. However, when training for law enforcement focuses solely on respect, police officers are left wondering what they should actually *do* when they are assigned to investigate a crime against a person with a disability.

This training bulletin is drawn from the OnLine Training Institute (OLTI) module entitled: [\*Successfully Investigating Sexual Assault Against People with Disabilities\*](#). The module offers extensive information, beginning with an overview of the prevalence of sexual assault committed against people with disabilities. Various stages of the investigation are described next, including the initial response and preliminary investigation, the detailed follow-up interview(s) with the victim, and other steps taken to identify additional evidence and witnesses. Specific attention is paid to the task of evaluating the victim’s general capabilities as well as specific capacity to consent to sexual acts.

In this training bulletin, we offer an introduction to this topic by explaining how to develop an investigative strategy in a sexual assault case where the victim has a disability. We will begin by describing the legal elements that must be met in various types of sexual assault cases, regardless of whether or not the victim has a disability.

## **Establishing Legal Elements**

For any type of criminal offense, there are a number of legal elements that must be met to pursue successful prosecution. For example, the most commonly reported form of sexual assault is forcible penile/vaginal penetration, where the two primary elements are:

1. Sexual penetration (no matter how slight), and
2. Force, threat or fear.

Another common type of sexual assault involves a sexual act committed against someone who is incapable of consenting due to drugs or alcohol. In this scenario, the fundamental legal elements are:

1. Sexual contact or penetration took place,
2. The victim was unable to give consent because of incapacitation due to drugs or alcohol, and
3. The suspect knew or should have known the extent of the victim's impairment.

In addition, some states require that the suspect personally administer the drug (or alcohol) to the victim for the act to qualify as a drug facilitated sexual assault.

## Inability to Consent to Sexual Acts

As with incapacitation due to drugs or alcohol, cognitive impairments (such as intellectual disabilities, traumatic brain injury, and dementia) can temporarily or permanently prevent a person from being able to legally consent to sexual activity. In such cases, investigators and prosecutors must establish that:

1. Sexual contact or penetration took place,
2. The victim was unable to give consent because of the severity of the cognitive impairment, and
3. The suspect knew or should have known the extent of the victim's impairment.

### **SARRT Tip:**

Sexual assault investigation protocols should include planning for cases where the victim has a cognitive disability, especially when the impairment is severe or profound. This will include appropriate health care and advocacy services.

In theory, a consent defense cannot be raised in such a case. However, there is no clear legal standard for establishing how severe a cognitive impairment must be to render an individual incapable of consent, so this must be established with evidence gathered during a thorough law enforcement investigation.

Much of the existing training for law enforcement on people with disabilities focuses on topics such as how to use *People First Language*, and how to express respect, empowerment, and patience toward them. These are extremely important topics. Professionals are often specifically told *not* to focus on the victim's disability, and instead to focus on a person's abilities. However, when evaluating a sexual assault committed against a person with a severe or profound cognitive disability, the investigation *must* focus on the disability, as well as any evidence or corroboration that the suspect was aware of the victim's disability. This is because these factors are legal elements of the criminal offense.

This training bulletin offers a variety of investigative strategies that can be pursued when an investigator responds to a suspected sexual assault against a person with a disability. In fact, many, if not most cases, require a combination of investigative strategies.

## Developing an Investigative Strategy

Investigating a sexual assault against a person with a disability can be uniquely challenging, because the strategy will vary depending on whether the victim has a physical or sensory disability, a cognitive or intellectual disability, and/or a disability impacting communication or mental health. It will also depend on the severity of the disability, because the nature and extent of the victim's disability determines what legal elements must be established to successfully investigate and prosecute the case. If there are drugs or alcohol involved in the sexual assault, this will also need to be considered. This includes medications taken by, or administered to, the victim.

The selection of an investigative strategy can therefore be framed as a series of questions, rather than a simple or straightforward choice. We offer a few of these questions in this training bulletin, to help guide investigators and prosecutors in considering the full range of information and evidence that could ultimately be important in this type of case.

### **Is the Suspect a Caregiver?**

First, investigators should ask whether the suspect is a caregiver for the victim. If the jurisdiction has a law prohibiting sexual contact on the basis of a caregiver relationship, this can be the most straightforward scenario for an investigator or prosecutor to pursue. This is because there are only two primary elements that must be proven:

1. The suspect's role as a caregiver.
2. The sexual acts committed by the suspect against the victim. Of course, any evidence of force, threat, or fear will still be documented if it is present.

Information will also be gathered on any drugs or alcohol that may have been involved. We will address these issues in another question below. However, if there is no law in your jurisdiction that prohibits sexual contact in a caregiver relationship, the case will need to be investigated using other strategies outlined below.

### **Does the Victim have a Cognitive Impairment that is Severe or Profound?**

The next determination is whether or not the victim is capable of consenting to sexual activity, based on a cognitive disability that is *severe or profound*. This is no simple task, and we dedicate a significant portion of the OLT module to providing guidance to help make this determination.

For more information, please consult the OLT module, [Successfully Investigating Sexual Assault Against People with Disabilities](#). The module covers strategies to evaluate an individual's general capabilities, as well as their specific capacity to consent to sexual acts. In addition, Appendix C provides detailed information about the various levels of severity for intellectual disability, as defined by the most recent version of the *Diagnostic and Statistical Manual (DSM-5)*, published by the American Psychiatric Association (2013).

When a victim of suspected sexual assault has a severe or profound cognitive impairment, the criminal offense is based on the person's inability to consent to sexual acts. As a result, the investigative strategy will focus on documenting the extent of the victim's impairment. Specifically, three things must be established:

1. The sexual act(s) committed by the suspect,
2. The victim's lack of capacity to consent to sexual activity, and

3. The suspect's knowledge of the victim's level of impairment.

Proof of force is not needed to establish an element of this offense, but it is always advisable to collect and document evidence of force when it is available. The same is true for drugs and alcohol; this factor is not directly relevant for the three legal elements outlined above, but it may be critically important for other purposes.

Keep in mind that even when investigators assume that the victim's cognitive impairment is severe or profound, other experts may make a determination that it is not. The case will then revert to a standard consent defense, with evidence needed to establish the element of force or incapacitation (e.g., by using drugs or alcohol).

**Does the Victim have a Cognitive Impairment that is Mild or Moderate?**

When victims have a *mild to moderate* level of cognitive impairment, they will typically be seen as having the capacity to consent to sexual activity. Law enforcement will therefore need to investigate the case to determine if the evidence undermines a consent defense, by documenting evidence of force, threat, or fear – or incapacitation of the victim due to drugs or alcohol. A disability may be framed as something that increased the victim's vulnerability and is relevant to the question of force. However, the disability itself will not be directly relevant to establishing a legal element of the crime.

**Unsure about the Severity of the Victim's Cognitive Impairment?**

For investigators unsure about the severity of a victim's cognitive impairment, it is best to start from a position that the investigation may take any of these paths – and collect all of the information or evidence that could be relevant. In fact, investigators will often be uncertain about this question during the beginning stages of an investigation. Frequently, it will be evident that victims have some level of cognitive impairment, but a key point of contention during the investigation and prosecution will be whether it is significant enough to preclude the person from being able to consent to sexual activity.

If the information and evidence gathered during a thorough investigation supports a position that the victim is *incapable* of consenting to sexual activity, this will form the basis of the investigation and prosecution strategy. On the other hand, if the information and evidence appear to suggest that the victim *can* legally consent to sex, the case will revert to a standard consent defense and evidence will be needed to establish the element of force or incapacitation (e.g., using drugs or alcohol).

**Were Drugs or Alcohol Involved?**

Investigators should seek to determine whether drugs or alcohol played a role in the sexual assault. This includes the misuse of prescription medications, which are often easily accessible to those who care for people with disabilities or illnesses.

Perpetrators frequently use prescription drugs to facilitate sexual assaults, either by rendering their victim's unconscious or incapacitating them to the point where they cannot physically resist or cognitively process the perpetrator's actions. Drugs are also used to prevent victims from disclosing their abuse and to reduce the chance that any disclosures will be taken seriously or investigated properly. The investigation of this question may also lead to additional charges for crimes related to the illegal possession of drugs, misuse of prescription medications, or the provision of drugs or alcohol to victims who are minors or have disabilities.

### **Is the Disability Unrelated to the Victim's Capacity to Consent?**

Finally, there are a number of physical, cognitive, and communication disabilities that will not have any impact on the victim's capacity to consent. For example, if the victim is blind or hard of hearing, this is irrelevant to the question of whether the person can consent to sexual activity.

These cases will therefore be investigated using the same general strategy as any other sexual assault where a consent defense is anticipated. Evidence will be gathered to overcome the consent defense, either by establishing the element of force, threat, or fear – or documenting the victim's incapacitation, typically due to drugs or alcohol. As described above, the evidence may suggest that the victim's disability increased his/her vulnerability and may be relevant to the question of whether force, threat or fear was used to perpetrate the sexual assault. However, it will not directly establish a legal element of the offense.

Of course, investigators should also prepare for the possibility that another defense will be raised, including a denial of the sexual acts or a claim of misidentification. Evidence to establish the sexual acts and identify the perpetrator is always important.

## **For More Information**

For more information on investigating sexual assault against people with disabilities, please consider registering for the interactive training module in the [Online Training Institute \(OLTI\)](#) or printing out the standalone [document](#). Please note, however, that the document version does not include the review exercises or test questions that are included in the OLTI. After successfully completing the module in the OLTI and passing the end-of-course test, you can also download a personalized certificate of completion.

## **References**

American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*. Arlington, VA, American Psychiatric Association.