



End Violence Against Women International
(EVAWI)

Investigating Sexual Assault Against People with Disabilities

Part 1: How to Develop an Investigative Strategy

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Authors

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This training bulletin is the first in a series developed from the law enforcement perspective, to improve the investigation and prosecution of sexual assaults perpetrated against people with disabilities. This information is designed to be helpful for any professional whose work intersects with the criminal justice system, to ensure that people with disabilities who are victimized have equal access to information, programs, and services – and that they are treated with fairness, compassion, and respect. Everyone involved in the criminal justice and community response system plays a critical role in providing that access and fair treatment.

Responding to Victims with Disabilities

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 designed to provide the information, resources, and referrals that officers and investigators need to improve the response to crime victims with disabilities, particularly those who have been sexually assaulted.

OnLine Training Institute (OLTI)

The material provided in this training bulletin series is drawn from the OnLine Training Institute (OLTI) module entitled: [*Successfully Investigating Sexual Assault Against People with Disabilities*](#). The OLTI module offers more extensive, detailed information, beginning with an overview of the prevalence and impact 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. We then offer a section focusing exclusively on the sexual assault of victims who have cognitive disabilities, with particular emphasis on intellectual disabilities. The module concludes with a section on victims who have physical, sensory, or communication disabilities, as well as victims who have mental illnesses or other disability issues.

In this first training bulletin in the series, we draw from this module by offering information on how to develop an investigative strategy in this type of case. However, we begin by explaining 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](#). In particular, 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.

Up Next

Developing an investigative strategy is only one aspect of how to successfully investigate sexual assault against people with disabilities. In upcoming training bulletins, we will discuss how to evaluate the victim's general capabilities as well as the specific capacity to consent to sexual activity. We will also outline strategies to prepare for and conduct a detailed follow-up interview with the victim, and we will explore what professionals can do to effectively communicate with victims who have various types of disabilities.

For More Information

This training bulletin is an adapted excerpt from the OnLine Training Institute (OLTI) module entitled: *Successfully Investigating Sexual Assault Against People with Disabilities* by Sgt. Joanne Archambault (Retired, San Diego Police Department), Kimberly A. Lonsway, PhD., Shirley Pacey, MA, and Christine Herrman, JD.

For more information, you can register for the interactive training module in the [OLTI](#), or you can print out the document in our [Resource Library](#). 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.

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Investigating Sexual Assault Against People with Disabilities

Part 2: Evaluate the Victim's General Capabilities

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This is the second installment in our series of training bulletins on the investigation of sexual assault committed against people with disabilities. In the first installment, we provided an overview on how to develop an investigative strategy when the victim has a disability, including information on establishing the legal elements of a sexual assault offense. We also discussed how cognitive impairments (such as intellectual disabilities, traumatic brain injury, and dementia) may be an element of the offense, because they can temporarily or permanently prevent a person from being able to legally consent to sexual activity.

SARRT Tip:

One helpful project that can be undertaken by a community SARRT is to produce an "investigation guide" that can be accessed by law enforcement officers on their mobile data terminals (MDTs), so it is available when responding to a call and conducting a preliminary investigation of a suspected sexual assault committed against a person with a disability.

In this installment, we discuss how to conduct a preliminary evaluation of the victim's general capabilities, when the victim has some type of intellectual or developmental disability. While any disability the victim has can affect a sexual assault investigation, only those affecting cognition and communication have the potential to constitute a legal element of the crime. The question is whether the impairment is severe enough to prevent the person from being able to legally consent to sexual activity.

This initial evaluation will not serve as the final determination regarding the victim's capacity, to be argued in court by prosecutors, defense attorneys, and expert witnesses. It will not even address the specific question of whether the victim has the legal capacity to consent to sexual acts. This determination will take place later, during the more formal assessment of victim capacity during a detailed, follow-up interview as well as an assessment performed by a clinician.

Rather, this initial evaluation should focus more generally on the victim's capabilities and functioning in daily life – because this will guide what happens next in terms of what crime is being investigated, what information and evidence should be sought, and what steps need to be taken to protect the victim's safety.

Information for Responding Officers

Clearly, law enforcement officers have numerous responsibilities and training requirements that prevent them from becoming experts at everything they are required to respond to on a daily basis. For example, an officer may be responding to a radio call involving a person with a disability at 11:00 at night or 3:00 in the morning, long after most people have left their offices for the day. In that situation, an initial decision regarding the victim's capabilities will need to be made without the professional support that might be available from 9:00 to 5:00, Monday through Friday. Fortunately, this type of initial evaluation *can* be successfully conducted by responding officers, as long as they have training to prepare them for the situation and tools they can use to help.

For responding officers, the best place to start is by recognizing that there is some fact or observation causing them to suspect that the victim has a severe cognitive impairment. Otherwise, they would not even be considering it as relevant to the case. In other words, as a responding officer you can begin by asking yourself what leads *you* to believe that the victim has a cognitive impairment of some kind – and then document those facts.

The next question is whether there are trusted people who can assist with this initial evaluation of the victim's general capabilities. Because so many people with a cognitive disability depend on others for daily assistance, caregivers can often provide basic information about a victim's capabilities. Does the victim live with her/his parents? In a group home? If so, those caregivers may be a good place to start for gathering information.

Care must be taken, however, to respect the victim's privacy as much as possible. For instance, it may be possible to explain the nature of the crime you are investigating to caregivers or others, while still withholding certain details to protect the victim's privacy. It is also critical to avoid unwittingly using a possible suspect in this role of gathering information about the victim. This can be challenging during the initial stages of an investigation when it is not yet clear what crime has been committed, let alone who might be a suspect. In these early stages, it may also remain unclear what motivations might exist for other people to assist – or interfere – with the investigation.

Questions to Evaluate General Capabilities

Responding officers can then proceed by asking victims a number of questions to assess their general capabilities. These questions will also solicit information about the victim's relationship with the suspect as well as family members and other caregivers. For example, victims can be asked questions such as the following:

- Who decides what you are going to eat for dinner?
- Do you ever make dinner reservations?
- Who decides when it's time for you to go to bed?
- If you wanted to go to the store, how would you get there?
- If you wanted to buy something at the store, how would you do that?
- Do you have money of your own?
- Do you go to school?
- What do you learn at school?
- Can you read?
- Can you write your name?

For victims who have a cognitive disability, it is important to get a sense of whether they can make informed choices when presented with options. Also critical is whether they can say “no” to unwanted activity of any kind, particularly if it involves someone in a position of authority (Kennedy & Niederbuhl, 2001).

Up Next

Assessing the victim's general capabilities is the first aspect of evaluating a person's capacity during the course of a sexual assault investigation. In the next installment, we will discuss how to formally evaluate the victim's ability to consent to sexual acts.

For More Information

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Part 3: Evaluating Capacity to Consent to Sexual Acts

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This is the third installment in our series on successfully investigating sexual assault against people with disabilities. In the previous installment, we introduced the topic of how to evaluate a victim's general capabilities during the course of a sexual assault investigation. This is relevant when the victim's cognitive disability might be severe enough to preclude the ability to consent to sexual acts. If this is the case, the victim's lack of capacity to consent constitutes a legal element of the crime. In this installment, we continue this topic by discussing the more formal assessment of a victim's specific capacity to consent to sexual acts.

Severe or Profound Cognitive Disabilities

While any disability the victim has can affect a sexual assault investigation, only cognitive disabilities have the potential to constitute a legal element of the crime. The question is whether the impairment is severe enough to prevent the person from being able to legally consent to sexual activity. If so, the investigation must establish three legal elements:

1. Sexual contact or penetration was committed by the suspect against the victim.
2. The victim lacked the capacity to consent to the sexual activity, based on a severe cognitive impairment.
3. The suspect knew, or should have known, the severity of the victim's cognitive impairment.

In theory, a consent defense cannot be raised in such a case. However, there is no "bright line" for establishing how severe a cognitive impairment must be to render an individual incapable of consent. This must be determined based on the evidence gathered during a thorough law enforcement investigation, including a current assessment of the victim's disability and a formal evaluation of the victim's capacity to consent.

Conducting a Formal Evaluation of Capacity to Consent

There are a number of characteristics that influence an individual's ability to consent to sexual activity, including their IQ, adaptive behavior, and current sexual behavior, as well as any sex education they may have received (Kennedy & Niederbuhl, 2001). Various tests are used around the country to evaluate such characteristics and make this determination. Knowing what test is used in your jurisdiction will guide the questions that need to be addressed during the law enforcement investigation.

On the following page, we provide a summary of the various tests for capacity to consent that are used in each state. The material is adapted from Morano (2001), but it has been updated with new information as of December 2013.

| Name of Test | States that Use This Test |
|---|--|
| <p>Nature of Conduct: This test requires that a person have an understanding of the sexual nature of any sexual conduct as well as the voluntary aspect of such activity, in order to be considered capable of consent.</p> | <p>Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Texas, and Utah.</p> |
| <p>Nature and consequences: This test requires that a person understand both the nature and consequences of a sexual act in order for consent to be valid. Additionally, the individual must understand the potential risks of sexual behavior, including negative outcomes such as unwanted pregnancy or sexually transmitted infections.</p> | <p>Alabama, Alaska, Arizona, Arkansas, Indiana, Iowa, Kansas, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and Wyoming</p> |
| <p>Morality test: This test necessitates that a person have a moral understanding of sexual activity in addition to understanding its nature and consequences for consent to be valid.</p> | <p>Colorado, Hawaii, Idaho, Illinois, New York, and Washington</p> |
| <p>Totality of circumstances: This test requires the fact finder to examine all of the relevant circumstances to determine whether the victim was capable of consenting to the sexual acts in question.</p> | <p>Illinois</p> |
| <p>Evidence of mental disability: This test must consider “evidence of mental disability.”</p> | <p>Connecticut, Maryland, Massachusetts, Michigan, Mississippi, Missouri, South Dakota, West Virginia, and Wisconsin</p> |
| <p>Judgment test: This test is used to determine whether the individual can give knowing and intelligent consent to sexual activity.</p> | <p>Georgia and Minnesota</p> |

Law enforcement professionals are not required to become experts in determining a victim’s capacity to consent to sexual activity. However, understanding the test used in a particular jurisdiction can help guide officers and investigators in the type of information that should be gathered to help others make that determination. For more detailed information on each of these tests, please see the OLT Module entitled: [Successfully Investigating Sexual Assault Against People with Disabilities](#).



Specific Questions That Can Be Asked

While the specific questions asked during an assessment will vary based on the test used in a particular jurisdiction, it will be important to begin by establishing what terms the victim uses for male and female genitalia. Once these terms are established, the interviewer should use the same words the victim does and proceed by asking questions such as the following:

- What do boys/girls do with that part of their body [using the victim's terms]?
- Do you have a _____?
- What do you call it when a man puts his _____ inside a woman's _____? Do you know a name for that?
- What is sex?
- Why do people have sex?
- Where do babies come from?
- If a woman wants to have a baby, what does she do?
- If a woman wants to stop from having a baby, what does she do?
- Do boys have babies?
- When a man does that, does he like it? Does a woman?

Other questions can address whether the victim understands that people can contract a disease from sexual activity, is able to differentiate between appropriate and inappropriate times and places to have sex and recognizes situations or people that may pose a threat (Kennedy & Niederbuhl, 2001).

Up Next

Now that we have provided an overview of how to evaluate the victim's general capabilities as well as their specific capacity to consent to sexual acts, we transition to the topic of the victim interview. In the next two bulletins, we will provide information on how to prepare for, and conduct the detailed follow-up interview with a victim who has an intellectual or developmental disability.

For More Information

This training bulletin is an adapted excerpt from the OnLine Training Institute (OLTI) module entitled: *Successfully Investigating Sexual Assault Against People with Disabilities* by Sgt. Joanne Archambault (Retired, San Diego Police Department), Kimberly A. Lonsway, PhD., Shirley Pacey, MA, and Christine Herrman, JD.

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End Violence Against Women International
(EVAWI)

Investigating Sexual Assault Against People with Disabilities

Part 4: Preparing for the Detailed, Follow-Up Interview with the Victim

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December 2015

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This is the fourth installment in our series on successfully investigating sexual assault against people with disabilities. In a previous installment, we discussed how to develop an investigative strategy in various types of cases involving a victim with a disability. We also offered a number of suggestions for investigating a case specifically involving a victim with a cognitive disability, including how to evaluate the victim's general capabilities in daily life and the specific capacity to consent to sexual acts.

In this installment, we discuss one of the most important components of a sexual assault investigation – the detailed, follow-up interview conducted with the victim. Much of this information pertains specifically to victims who have a disability affecting cognition or communication, but some material is also relevant for victims who have other types of disabilities. In general, our goal is to provide a number of factors to consider when preparing for the interview, to ensure that the individual needs of the victim are met in advance.

When to Schedule the Follow-Up Interview

In general, we recommend that the detailed, follow-up interview is scheduled a day or two after the assault was committed (or initially reported), to allow time for the victim's acute trauma levels to subside. However, when the victim has a disability it is often necessary to wait even longer, so the investigator can conduct background research, prepare for the interview, and access any community resources available.

Interviews should be scheduled to accommodate the victim whenever possible. Participation in the criminal justice process is difficult enough, without creating additional challenges associated with employment, child care, or other life arrangements. By accommodating the victim's needs and schedule, your efforts can go a long way toward supporting their participation in the process and holding more offenders accountable.

Once these objectives are met, the interview should be scheduled for as soon as practically possible. This is done to prevent memory loss on the part of the victim, but also to defend against any claim that someone unduly influenced the victim's statement (e.g., family members, caregivers, or other professionals involved in the case).

Conduct Background Research

To begin preparing for the interview, start by conducting background research on the victim. Depending on the type and severity of the disability, this might include talking with family members, caregivers, social service professionals, and other people who know the victim, to find out about the victim's living situation and work environment, as well as their abilities, habits, likes, dislikes, etc. In other words, you need to evaluate whether the victim's disability impacts her/his ability to understand and communicate. This will provide critical information regarding any accommodations that might be needed, including communication aids and services. It is also important to get a sense for how victims typically function, as well as how this might change when they are under stress. You will also want to ask care providers about any medications the victim may

be taking. This information may determine when the interview should be scheduled. Other steps can also be taken to increase the victim's ability to participate successfully in the interview. For example:

Many individuals with disabilities need to follow a strict schedule for taking their medication, and for resting, exercising, and eating. It is important to accommodate this regimen as you make plans for the interview. Some individuals with disabilities adhere to a strict time schedule and become upset or distressed when changes in their routine occur.

Therefore, it is best to know if these factors exist and to schedule the interview for a day or time when the victim will be less distressed or distracted. Those who know the victim best can provide information about the victim's schedule and can offer your insight about the level of flexibility you will need to exercise to complete the interview (Office for Victims of Crime, 2011, p. 15).

In general, the goal is to discover whatever information is available that will help you and the victim during the interview – and to avoid anything that might be harmful.

Write Key Interview Questions in Advance

If the victim has a disability affecting cognition or communication, the next step is to write key interview questions in advance. If the interview questions are not written ahead of time, investigators have to formulate them “on the spot,” as ideas occur to them. As a result, they will likely revert to their standard patterns of communication, which are not likely to be effective for victims with cognitive or linguistic challenges.

If the victim has a difficult time understanding the questions and/or providing accurate responses, this reduces the chance that a thorough investigation will be conducted. This in turn makes it difficult to corroborate the victim's statement, which lessens the odds of successful investigation and prosecution. Regardless of whether misunderstandings are on the interviewer's part or the victim's, they are likely to be seen as inconsistencies and used by the defense as a basis to challenge the victim's credibility.

Follow-up questions will still need to be asked spontaneously during the interview, based on information provided by the victim, because investigators cannot anticipate the exact course any interview will take. These questions can be reviewed by someone who knows the victim personally or has professional expertise in the victim's specific type of disability. Based on this review, the questions may need to be revised, to increase the likelihood that the victim will be able to understand the questions and provide a clear response. This process of review and revision has the potential to significantly improve the victim's ability to participate effectively in the interview and provide accurate information.

Evaluate the Need for Accommodations

For a sexual assault victim with a disability, an appropriate accommodation might mean the difference between being able to participate in a successful investigation and prosecution – versus one that ultimately fails to provide the victim equal access to the criminal justice system. A number of factors are therefore worth considering. One is whether a specialist is needed to assist with communications, particularly if the victim's disability is severe. If the victim uses some kind of assistive communication aid or device, it will be necessary to identify what it is and learn how it works before using it in the interview. If a sign language interpreter or other service is needed, a qualified person will need to be located as soon as possible to perform the task.

Sometimes an accommodation that would help a particular victim is well-known to that person and their caregivers. In this case, it may be quickly identified and mobilized. In other situations, however, family members and caregivers may have adapted their mode of communication with the victim for so long they are not even aware of what they are doing anymore. By observing victims when they communicate with family members or caregivers, it is often possible to gather a great deal of information about how to best communicate with them.

Consider Using a Forensic Interviewing Specialist

Another consideration is whether a forensic interviewing specialist should be used to conduct the detailed, follow-up interview. These specialists will most often be used to interview victims who have a severe disability affecting cognition or communication.

Forensic interviewing specialists are typically social workers or other child abuse professionals who are trained to use the skills and techniques needed to successfully interview young children. For example, they will ask questions in a way that can be understood by a person with limited cognitive abilities and experience, by using concrete language and avoiding leading questions. They are also trained to use tools such as drawings and anatomically correct dolls if this will help the victim communicate more effectively.

Because of their training and specialized background, forensic interviewing specialists may be able to more easily access and use communication devices. They may also be better able than the investigator to dedicate the amount of time needed to conduct the most effective interview with a person who has a cognitive or communication disability. When a forensic interviewing specialist conducts an interview, it can be monitored by

SARRT Tip:

Protocols for sexual assault investigation should identify which types of cases with an adolescent or adult victim with a disability are appropriate for the services of a forensic interviewing specialist. MOUs can then be established between the relevant agencies. SARRTs can also work with forensic interviewers to ensure that interview rooms generally used for children are also appropriate for use with adolescent and adult victims.

the investigator and prosecutor, as well as any representatives from Child or Adult Protective Services or other social service agencies. These professionals can typically observe the interview through a one-way mirror or live video feed, so they can pass along questions to the interviewer using written notes, text messages, or a listening device in the interviewer's ear. At an appropriate point, the interviewer can also take a break and ask observers whether they have any additional questions or issues that need clarification.

There is currently some debate regarding which types of cases should involve the services of a forensic interviewing specialist. In most jurisdictions, they are used only for forensic interviews with children. However, given their unique skills and expertise, it is reasonable to suggest that forensic interviewing specialists should also be used with adolescent and adult victims who have cognitive or communication disabilities that are severe or profound.

Select the Appropriate Setting and Prepare to Record the Interview

The site for the detailed, follow-up interview should be selected with care. It should be safe and comfortable for the victim, as well as private, quiet, and free from distractions. It must also meet law enforcement requirements for officer safety and confidentiality. Other concerns include space considerations for wheelchairs and/or interpreters, as well as advocates or other support people who will be present (Office for Victims of Crime, 2011). However, the decision regarding where to conduct the interview will also be related to the question of whether it will be audiotaped or videotaped.

For most victims, the primary concern when selecting a location for the interview should be their comfort level. Victims will typically feel most comfortable in a setting that is safe and familiar, such as their own home. This is therefore the type of location where they will be able to participate most effectively during the detailed, follow-up interview. If home is the site of their abuse, however, a better choice might be the home of another family member or loved one. Another option is an agency or facility that has a room where victims will feel comfortable and secure.

When the interview is conducted in such a setting, it should be audio or videotaped or to preserve the best record. As the victim and investigator are getting to know each other and settling into the interview, the investigator can let the victim know this is happening and explain why. For example, the investigator could say something like:

I am going to record our conversation today, so I can give you my full attention and not worry about writing down everything you say. I want to be able to listen to you carefully and know the information you provide will be accurately recorded. Okay? Great. I'm going to start the tape now.

When victims have a severe cognitive or communication disability, the entire scenario is quite different. In these cases, a forensic interviewing specialist will typically be needed, and the interview should be conducted in a facility specifically designed for this purpose.

This type of facility will be designed to be accessible for people with a variety of physical disabilities and be equipped for one-way observation and videotaping of the interview. In fact, observation and videotaping will likely be part of the standard operating procedure for conducting such an interview. This is done for a number of reasons:

It provides documentation of the victim's responses, demeanor, characteristics, and other important data on the date of the interview. The trial may come many months or even years later, so the video captures the victim's statement and ability to participate in the interview (Office for Victims of Crime, 2011, p. 14).

The recording will also document the fact that leading questions were not asked, so it can protect against any later claim that the victim was unduly influenced during the interview.

Victims may or not may not be able to provide consent for videotaping, depending on the level of their cognitive impairment. Remember that the reason this type of interview protocol is being followed is because the victim has a severe or profound cognitive disability. However, every effort should be made to advise victims of this fact and explain it using the same general strategy outlined above. The language will likely be different, but the goal is the same – to help victims understand what is happening and why, and to allow them the opportunity to provide consent to the extent possible.

Up Next

There are many factors to consider when preparing for the detailed follow-up interview with a victim who has a disability. By learning more about individual victims and their disabilities in advance, you can ensure that any necessary accommodations are put in place prior to the victim's interview and help to create an environment that meets the victim's individual needs – this ultimately makes it possible to conduct a successful interview.

In the next installment, we continue the topic of the detailed follow-up interview with a sexual assault victim and provide a number of tips and tools to use to increase the likelihood of success.

For More Information

This training bulletin is an adapted excerpt from the OnLine Training Institute (OLTI) module entitled: *Successfully Investigating Sexual Assault Against People with Disabilities* by Sgt. Joanne Archambault (Retired, San Diego Police Department), Kimberly A. Lonsway, PhD., Shirley Paceley, MA, and Christine Herrman, JD.

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References

Office for Victims of Crime (2011). *Victims with Disabilities: The Forensic Interview – Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities* (First Edition April 2007, Revised July 2011). [57-minute video and 72-page guide]





End Violence Against Women International
(EVAWI)

Investigating Sexual Assault Against People with Disabilities

Part 5: Conducting the Detailed Victim Interview

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December 2015

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This is the fifth installment in our series of training bulletins on successfully investigating sexual assault against people with disabilities. In the previous installment, we discussed the importance of conducting background research and evaluating the need for possible accommodations to prepare for the detailed follow-up interview with a victim who has a disability. In this bulletin, we provide a number of specific tips and tools for conducting this interview. Once again, much of this information pertains specifically to victims who have a disability affecting cognition and communication. However, some of the material is also relevant for sexual assault victims who have any type of disability.

Allow Enough Time

Investigators should begin by recognizing that more time may be needed to interview a person with a disability than might be needed for other victims. However, with sufficient patience, time, and investigative skill, victims with a disability can have equal access to the criminal justice system when they are victims of crime.

After conducting your background research, it is time to meet with the victim to establish rapport, observe communication patterns, practice using any communication aids, and gain comfort in the situation.

Introduce Yourself and Address Concerns

When you begin talking with a victim who has a disability, start by introducing yourself, explaining who you are, and emphasizing that you are there to help. If the initial report was made by a third party, the next step will be to find out whether the victim actually wants to talk to you. This can help to establish rapport, because it demonstrates that you are treating the victim with respect and not assuming that the third party speaks on his or her behalf.

When victims do not want to talk with the investigator, they can be asked why. The resulting discussion may reveal some misunderstanding that can be clarified or other concerns that can be addressed. If their fears can be alleviated with respect and compassion, victims may decide they are willing to talk with you. However, victims should never be forced to talk with you if they do not want to.

Acknowledge the Victim's Ordeal

Acknowledge the ordeal that the victim has endured, with statements like: "I'm sorry that this happened to you." This helps establish empathy and creates an open and nonjudgmental demeanor. This is also an appropriate time to address any fears or self-blame expressed by the victim.

For victims who appear to blame themselves for the sexual assault, you can stress the seriousness of the incident and emphasize that it is not their fault.

Sexual assault is never the victim's fault. We take these issues very seriously, and I will do everything I can to get you the help you need.

Determine Who Will Be Present

For victims who have a disability, it is important that they are allowed to decide whether they want a support person with them during the interview, to provide support and encouragement. In fact, this is recommended for any victim of sexual assault, not just those with disabilities; they should be offered the option of having a victim advocate or other support person present during the law enforcement interview.

Sometimes having a support person can help a victim provide better information. For victims with a disability, however, this may be a necessity. A family member, caregiver, or other staff person may be needed to assist with communication and generally facilitate the victim's cooperation. As long as the victim expresses a wish to have the person present, and the person is not disruptive, the benefit of having them included is usually well worth the presence of an additional person in the room.

On the other hand, there will be situations where sexual assault victims *do not want* a particular person present, but they do not feel comfortable saying so in front of that person. This can be especially challenging when the victim has a disability, because family members and caregivers will often expect to be in the room with them. They may even be accustomed to "speaking for" the victim. Therefore, investigators must be very careful to avoid asking the victim whether or not to include a support person while that person is present. You will need to find a way to ask victims privately whether or not they want a particular person to present in the room with them during the interview.

Of course, support people should not be included in the interview if there is any reason to believe they might be a suspect in the case or otherwise motivated to cover up for the suspect or the organization where the assault was committed. Unfortunately, this is easier said than done because such motivations are not always clear during the early stages of an investigation. However, it should be one of the highest priorities to try and make this determination.

Explain the Role of Support People

Whoever is going to be in the room as a support person, it is critical that their role is clearly explained – both to the support person as well as the victim. For example, it must be clear that they are there to provide emotional support to the victim and to facilitate the victim's communication and cooperation, but not to provide responses to

questions that are directed toward the victim. They should also be advised not to take notes or write reports to document any part of the interview.

Help the Victim Feel Comfortable

Beyond determining who will be present, other steps can be taken to ensure that the victim is comfortable during the detailed, follow-up interview. For example, you can offer victims water or another beverage, indicate where the restroom is, and ask for their consent to conduct the interview. Let victims know you will be taking breaks from time to time and explain that they can ask for a break whenever they want one.

Another thing you can do to help victims feel comfortable is to increase your own comfort level:

If you have had little interaction with individuals with disabilities, the person's physical appearance may initially cause you some difficulty or discomfort. This is normal and only requires for you to adjust. Soon, you will find that after greater exposure to people with differences these feelings will subside and disappear (Office for Victims of Crime, 2011, pp. 9-10).

Some have even recommended that you can increase the victim's comfort level by having materials available in the interview room they can handle and touch, "such as drawing paper, pencils, and stress balls" (Office for Victims of Crime, 2011, p. 18).



Ask Victims What They Want and Need

Another basic strategy is to ask victims what they want and need in a particular situation. This includes how the person would like you to refer to their disability, what assistance they need, and how you can most effectively communicate with each other:

Most victims would prefer to answer these few questions upfront rather than endure your uneasiness or be uncomfortable themselves throughout an entire interview. Your respectful and sensitive questions will ensure that the language you use and the accommodations you make are appropriate, not detrimental (Office for Victims of Crime, 2008, p. 15).

However, do not ask questions merely to satisfy your own curiosity. For example, if a crime victim was blinded in an accident as a child, it would not be necessary or appropriate to ask detailed questions about the event or its impact on the person's life – unless it is relevant to the assault. Your questions should focus on the victim's needs and specific accommodations to address the issues at hand.

Evaluate the Victim's Ability to Participate

While observing the victim's communication patterns, keep in mind that any medications they are taking may have side effects that could affect their ability to participate in the interview. This could include memory loss, decreased concentration and a loss in cognitive functioning. Sometimes they may resemble the effects of drug or alcohol use (e.g., staggering gait or slurred speech). While this might be misperceived as the result of drinking or drug use it may actually be the effect of a neurological disability, a mental or emotional disturbance, or hypoglycemia (US Department of Justice, 2006).

Other problems may also be observed in the victim's communication patterns. For example, the victim may have trouble following your conversation or producing coherent thoughts. Victims may also slur their words or even fall asleep during the interview. In this situation, it will be critical to determine whether the problem is the result of the victim's disability or any medications they have been given. Check with the caregiver or treatment facility to find out what medications the victim was given and what time they were administered.

If the problem is the result of medications, there may be another day or time that would be better for the interview. Investigators should be flexible about scheduling, so victims can provide the most accurate and reliable information possible.

However, it is also possible that medications were deliberately administered with the goal of inhibiting the victim's ability to participate in the interview. In fact, this may be the same medication that was given to the victim to facilitate the sexual assault or impair the victim's memory. If there is reason to suspect that the victim is being deliberately medicated to impede the investigation, law enforcement may need to take a number of measures: taking the victim into protective custody, obtaining a blood sample for toxicological analysis, and expanding the investigation to look into this question as well as other forms of possible abuse.

Assess for Abuse or Coercion

You should also be looking for signs to indicate whether the victim is able to communicate openly. As in cases involving domestic violence, elder abuse, and child abuse, investigators must carefully consider whether the victim can provide information without pressure, coercion, or undue influence by caregivers or others. This requires watching for signs that the victim is being abused or coerced into not disclosing information to authorities.

These signs could include the caregiver:

- Isolating the victim from the outside world, family or friends
- Speaking for the victim
- Ignoring or not speaking to the victim, or emotionally isolating the victim

- Not touching or comforting the victim
- Threatening or intimidating the victim
- Acting defensively
- Behaving intrusively, or not allowing the victim to have any privacy
- Displaying a negative attitude toward people with disabilities
- Handling the victim roughly
- Showing hostility, agitation, and/or volatility
- Cursing, screaming, insulting and/or calling the victim names
- Resisting outside help, refusing to apply for aid or services (adapted from the New Mexico Coalition, n.d.)

When such behaviors are observed, law enforcement will need to expand the investigation to determine whether the victim is in fact being abused or coerced.

Allow Additional Time When Needed

Especially for victims who have disabilities affecting cognition and/or communication, it will be important to allow plenty of time for the detailed, follow-up interview.

In most cases, you will be able to complete the interview in one sitting. However, due to either cognitive or communication disabilities, there may not be enough time in one interview to gather all the information you need. Be prepared to schedule several shorter interviews to accommodate the needs of victims who have disabilities. They may tire, become too upset, or for other reasons be unable to answer all of your questions in one session (Office for Victims of Crime, 2011, p. 15).

Keep these factors in mind as you schedule and plan to interview the victim.

Up Next

Now that we have provided background on how to prepare for and conduct the detailed follow-up interview, our final installment in this series will offer specific strategies to help communicate effectively with sexual assault victims who have disabilities.

For More Information

This training bulletin is an adapted excerpt from the OnLine Training Institute (OLTI) module entitled: *Successfully Investigating Sexual Assault Against People with Disabilities*, by Sgt. Joanne Archambault (Retired, San Diego Police Department), Kimberly A. Lonsway, PhD, Shirley Pacey, MA, and Christine Herrman, JD.

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For detailed information on how to conduct a successful interview with a sexual assault victim, you can also see the [OLTI](#) module entitled, *Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault*.

For guidance specifically focused on interviews conducted by forensic interviewing specialists with sexual assault victims who have a disability, there is a DVD and guidebook published by the [Office for Victims of Crime](#) (2011).

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End Violence Against Women International
(EVAWI)

Investigating Sexual Assault Against People with Disabilities

Part 6: Techniques for Effective Communication

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Sgt. Joanne Archambault (Retired, San Diego Police Department) is the Chief Executive Officer for EVAWI. In 2003 prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for almost 23 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which had 13 detectives and was responsible for investigating approximately 1,000 felony sexual assaults each year. Sgt. Archambault has provided training for tens of thousands of practitioners, policymakers and others – both across the country and around the world. She has been instrumental in creating system – level change through individual contacts, as well as policy initiatives and recommendations for best practice.



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

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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.



This is the final installment in our series on investigating sexual assault against people with disabilities. Previously, we provided tips on how to develop an investigative strategy and an overview of how to evaluate a victim's general capabilities as well as the specific capacity to consent to sexual acts. We also offered recommendations on how to prepare and conduct the detailed follow-up interview of a victim with a disability affecting cognition or communication.

In this installment, we describe techniques to effectively communicate with a victim who has any disability that may impact his or her ability to understand you, or your ability to understand the victim.

Start with the Assumption You Can Communicate

First, you should start from the assumption that you can have a normal conversation with the victim. Unless the victim has a severe cognitive or communication disability, you should be able to communicate effectively, even if it takes a while to become accustomed to the victim's "speech patterns, inflections, and accent" (Office for Victims of Crime, 2011, p. 21).

You should also allow sufficient time for this natural process, but monitor the length of the interview, because this can become burdensome for victims (Office for Victims of Crime, 2011). Also try to "focus on what the person is saying, rather than how she/he is saying it" and "do not try to finish the individual's sentences or thoughts (SafePlace, 2007).

If You Cannot Understand the Victim

If you find that you cannot understand the victim, no matter how hard you try, do not pretend that you do. Seek clarification using the strategies offered by SafePlace (2007):

Wait: Listen to the whole sentence or phrase. Wait for a second and try to relax. Let the conversational context help you.

Repeat: Simply repeating the sentence or thought may be enough. There are times, though, when repeating will not help because the speaker is not going to be able to change the way a specific word is pronounced. If repeating does not work, move on to another strategy.

Rephrase: Ask the individual to try and express the same thought using various words. Often, the misunderstanding hinges on one or two words in a sentence.

Identify: Which part of the sentence or thought was misunderstood. If you know most of the phrase and can identify which part(s) are unclear, you might try repeating what you know, and ask him/her to focus on finding a way to communicate just the part you did not get.

Spelling: Once you have located the word you do not understand, ask the individual to spell it for you. It usually just takes the first few letters of the word to clear up the confusion.

Writing: You can ask the person to write it down, or you can write down what you heard.

Getting help: if nothing else is working, you may want to ask the person if there is someone who might assist in communications (SafePlace, 2007, pp. 63-64).

If you do have someone assist with communications, however:

Carefully consider whether this other party is safe or will have opinions that influence her/his interpretations. Do not allow this person to add to or critique the crime victim's comments, or comment about the crime itself. The crime victim must know that you believe her/his own statements (SafePlace, 2007, p. 64).

When to Switch Interviewers

When none of these strategies work, then it may be time to switch interviewers. Guidance for this difficult situation is offered by the Office for Victims of Crime (2008):

You may need to call in someone as an interpreter who knows the individual and is not invested in any way in the outcome of the interview, such as a teacher or speech therapist. If this is necessary, the interpreter must be briefed on what is expected of him or her during and after the interview. The interpreter may require debriefing following the interview, both for the person's psychological well-being and for issues of confidentiality that may concern the victim. In the best circumstances, the new interviewer would have been observing the interview (Office for Victims of Crime, 2011, pp. 21-22).

Specific Techniques for the Interview

Assuming the interview will continue, some additional recommendations are adapted from Dr. Nora Baladerian's (1998a) work and the Office for Victims of Crime (2008):

- Except for very brief interactions, try to position yourself at eye level with the person you are talking with. You may need to squat or sit down to communicate with someone who is sitting.
- Begin the conversation with general information to establish rapport and observe communication patterns. Keep in mind that all human beings are more difficult to understand when they are distressed. By starting an interview with topics that are

general or not directly related to the sexual assault, this can allow time for both parties to feel more comfortable.

- Discussion relating to general information or shared interests should be kept relatively limited, so it does not seem like you are focusing on trivial matters at such a traumatic moment in their lives.
- Make regular eye contact with – and speak directly to – the person from whom you are obtaining the information, not the support person or interpreter. This can be hard to do, because we are accustomed to making eye contact with the person we are actually speaking to. However, it is important to remember that the interpreter or support person is not the person you are actually speaking to.
- Proceed with rapport building. Ask general questions, use active listening, and get to know the person as an individual. Active listening requires the listener to pay attention to not only what is said, but how it is said. Reflecting back to the victim what you think is being said – and finding out how the person feels – can be helpful for understanding the communication and establishing rapport.
- If the person is an adult, communicate with the person like an adult and use a normal tone of voice. Do not speak like you might to a child, using a condescending tone or terms of endearment.
- Do not touch the victim or exhibit affectionate behaviors normally reserved for friends and family such as hugging, hand holding, or patting.
- Make sure to allow sufficient time for the person to respond to you, both for questions and other prompts. For example, if you extend your hand for a handshake, give the person time to respond by extending her or his hand in return. If you ask a question, allow ample time for the person to respond before speaking again.
- Explain that most sexual assault victims do not report to police or participate in a criminal prosecution, so you realize it took courage for them to do so. Let victims know you are honored that they trusted you enough to talk to you.
- Before terminating an interview, thank the victim for the information and assistance that she/he provided, and let the victim know what will happen next. This sets the tone for future interactions.
- Give the victim the case/incident number and your own contact information or the contact information for the investigative unit so he or she can follow-up if needed.
- Make sure victims and support people have received written information on resources and referrals for community agencies.



Conclusion

In this training bulletin series, we offered a number of tips and tools you can use when investigating a sexual assault against a person with a disability. We also provided recommendations you can use to successfully plan and execute a detailed, follow-up interview with the victim by ensuring that the victim's needs are met and incorporating best practice recommendations for gathering accurate information. In this final installment, we focused on strategies to incorporate respectful and effective communication practices when interviewing victims who have one or more disabilities.

We hope the information provided in this training bulletin series has increased your understanding of how to successfully investigate and prosecute a sexual assault committed against a person with a disability. The ultimate goal is to improve our responses to crime victims with disabilities and enhance their access to safety and justice.

For More Information

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