



# Fitchburg State University Police Department

**Subject: SEXUAL ASSAULT  
INVESTIGATIONS**

**General Order**

Reference: **Massachusetts 2017 Adult Sexual Assault Law  
Enforcement Guide**

Rescinds : **Section 36 & 83**

# 13.3.5

**Effective Date:**  
February 3, 2021

**Review Date:**

**By Order of:** Michael J. Cloutier, Chief of Police

**PURPOSE:**

Although each investigation will undoubtedly present with different circumstances and challenges, the following guidelines are intended to serve as a guide for law enforcement professionals when investigating adult sexual assaults. A timely, pragmatic, and sensitive law enforcement response is paramount. It improves a community's confidence in the police, increases reporting levels, and strengthens investigations thereby facilitating more successful prosecutions. The goal is to establish a standard or best practice to which investigations are conducted thereby creating a thorough, trauma-informed response regardless of the investigative jurisdiction.

The following three core principles should be embraced when investigating sexual assault cases and serves as the foundation for the guidelines:

- Trauma informed responses;
- Thorough and sound investigations; and
- Interagency cooperation.

Crimes of sexual assault often occur in private and with no witnesses. Therefore, the details of the assault are usually a recounting of events from two differing perspectives; the perpetrator and the victim. Because of this dynamic, interviews should be obtained from all persons who may have secondary knowledge or circumstantial information about the assault. Sexual assaults should be investigated in a similar manner as other crimes against the person using common sense, sensitivity, and practicality.

For the purposes of this general order an “Adult” is considered to be anyone 18 years of age, or older, except where otherwise defined by statute.

### **POLICY:**

Fitchburg State University prohibits any member of the university community, male or female, from sexually assaulting another employee, student or other person having dealings with the institution. The Fitchburg State University Police Department will investigate allegation of sexual assault with a trauma informed responses; thorough and sound investigations; and utilizing interagency cooperation.

### **PROCEDURES:**

#### **A. SEXUAL ASSAULT INVESTIGATIONS**

Each case is markedly different and presents its own circumstances and challenges. Remember, as an investigator your resourcefulness and ability to identify, locate, and retrieve witness statements and evidence is only as limited as your imagination, so follow up every possible lead and suspicion. You never know what evidence you may recover unless you try.

##### **1. Categorization of Investigations**

Most sexual assault investigations can be classified into two categories: consent or identity cases. Of additional importance is whether the assault was facilitated by some type of intoxicating substance.

###### *a. “Lack of consent” Cases*

In the majority of sexual assault cases, the victim knows the identity of the assailant. That prior contact with the offender can often become a major factor in the case and significantly impact the victim’s mental health, their willingness to report, and how the system(s) respond. In such cases, investigating officers should take particular note of:

- 1) Any physical or verbal resistance on the part of the victim;
- 2) Any victim injury, no matter the location on the body (remember to keep in mind obligations under MGL c209A and 258 E);
- 3) The victim’s thoughts just prior to and during the assault with an emphasis regarding any fear that the victim may have had surrounding the assailant, environment, or situation;
- 4) Nature of relationship between victim and perpetrator
- 5) Alcohol or drug use by the victim; and
- 6) If the victim was unconscious or incapacitated at the time of the assault.

###### *b. “Unknown identity” cases*

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An identity case, where the victim does not know the identity of the assailant is less common and often is a stranger on stranger type of assault. In these cases, the primary challenge is identifying the perpetrator. Explicit details from the victim regarding the description, manner, and communications from the assailant are of particular importance. The assailant may have been previously arrested or may have committed similar crimes in the same fashion (Modus Operandi or MO in the past). Investigators should focus on obtaining as much information about the assailant as possible. Officers should:

- 1) Obtain a detailed physical description of the offender including identifying marks such as tattoos, clothing, and any other distinctive characteristics (e.g. odors, tattoos, accents, teeth);
- 2) Document the exact words used by assailant and assess the crime scene to determine if this particular assault is consistent with M.O. of a suspect previously arrested for a similar crime or an on-going series of assaults;
- 3) Identify and collect any forensic evidence; and
- 4) Utilize available DNA samples to identify suspects.
- 5) Vehicle description/ registration information.

### c. *Substance Facilitated Sexual Assault (Consent)*

- 1) Research indicates that non-stranger offenders often target intoxicated victims and that a high percentage of victims are intoxicated on alcohol when they are assaulted. **These types of cases have a high prevalence on college campuses.** The use of drugs/alcohol does not mitigate criminal culpability nor should the victim's sobriety be used as a reason to disbelieve the victim's report of the sexual assault. Additionally, a victim's alcohol/drug use should not be used to discredit and discourage the victim from reporting the assault. The priority is to conduct a thorough investigation of the sexual assault rather than focusing on any misdemeanor, substance abuse violations by the victim.
- 2) Although alcohol remains the primary means used to lower victim's inhibitions, various drugs can also be mixed with the alcohol or other beverages without the intended victim's knowledge, ultimately resulting in their incapacitation. Often, the narcotic substances used to subdue the victim are odorless, colorless, and tasteless making it difficult for the victim to detect the presence of the drug when covertly slipped into a drink. Although the drugs may be fairly short acting, they can provide a skilled perpetrator with more than sufficient time to persuade an already intoxicated victim to leave a public area for a more private location. Once at a private location, the unsuspecting and incapacitated target can easily fall victim to a sexual assault.

- 3) In addition to the alcohol and/or narcotics impacting the victim's ability to consent to the sexual act, often the effects of the drugs can induce what is known as retrograde amnesia. This condition often makes it difficult for a victim to recall the assault specifics, how or when the victim was drugged, or even that an assault occurred at all.
- 4) These cases tend to be challenging to investigate and prosecute because of:
  - a) The victim's apparent lack of physical resistance to the assault;
  - b) Sometimes inconsistent statements by the victim;
  - c) Memory blackouts or no concrete memory of the assault at all ;
  - d) The victim is unaware of their movement/ walking etc; and
  - e) Possible delays in reporting.
- 5) In cases involving drug-facilitated assaults, prompt testing is required to determine and document the presence of narcotics – since degradation of those substances occurs rapidly.

### 2. Reporting Challenges

- a. As with many crimes, the successful prosecution of a sexual assault is often predicated on the victim's willingness to report the crime to provide enough detailed information for the case to be fully investigated. This detailed information about the offense establishes the foundation and framework for the investigation.
- b. One crucial obstacle to overcome is the ability to get detailed information while minimizing trauma to the victim. Oftentimes, subjecting victims to duplicative detailed interviews may be necessary during the investigation. However, this must be balanced with the knowledge that multiple interviews may exacerbate victims' insecurities about being believed, potentially re-traumatize them, and may result in conflicting or inconsistent statements which could potentially undermine the victim's credibility in the ensuing prosecution. It is important that investigators are mindful of the dynamics of sexual violence as well as the systemic, cultural, and social barriers that may discourage a victim from reporting or continuing involvement with an investigation following a report.
- c. Even with a relatively straightforward allegation of sexual assault, investigators may face some challenges including:

#### 1) *Gender Bias:*

Gender bias, both internally and externally, is a form of discrimination which may result in Law Enforcement agencies providing less protection to certain victims on the basis of gender, failing to respond to crime that disproportionately harm a particular gender, or offering less robust services due to gender stereotypes.

In December, 2015, the Department of Justice produced new guidance to help Law Enforcement agencies better address gender bias in their response to sexual

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assault and domestic violence. They identified eight key principles to lessen gender bias by law enforcement and the agencies they represent.

### EIGHT KEY PRINCIPLES:

- i. Recognize and address biases, assumptions and stereotypes about victims.
- ii. Treat all victims with respect, and employ interviewing tactics that encourage a victim to participate and provide facts about the incident.
- iii. Investigate sexual assault or domestic violence complaints thoroughly and effectively.
- iv. Appropriately classify reports of sexual assault or domestic violence.
- v. Refer victims to appropriate services.
- vi. Properly identify the assailant in domestic violence incidents.
- vii. Hold officers who commit sexual assault or domestic violence accountable.
- viii. Maintain, review and act upon data regarding sexual assault and domestic violence.

### 2) *Anonymous Reporting:*

The decision by a victim not to report a sexual assault, or to file an anonymous report with law enforcement, may occur for a variety of reasons.

Pursuant to MGL c112, § 12A½, regardless of the victim's decision to report the assault to law enforcement, when a victim seeks medical treatment, the hospital is required to report the assault to the law enforcement entity of the jurisdiction using a Provider Sexual Crime Report (PSCR) **without reference to the patient's name or address.**

### 3) *Victim Recantation:*

- i. Recantations include a retraction or withdrawal of a reported sexual assault. They are routinely used by victims to disengage the criminal justice system response and are therefore not, by themselves, indicative of a false report. Victims may not realize the toll that a criminal investigation and trial will take on them mentally, emotionally, physically, and financially. As a result they may want their involvement in the process to end. Moreover, since most cases of sexual assault are committed by someone known to the victim, pressure from the offender or concern for the offender's well-being may also be a factor.
- ii. Even in situations where the decision is made not to pursue a criminal complaint, victim referrals for medical and emotional services should be made and/or recommended. In many instances, an officer with insight, awareness and sensitivity can uncover the catalyst for the victim's recantation and assist the victim in deciding whether or not to go forward with the case.
- iii. As stated above, if the only indication that the victim may not have been truthful is that their story has been recanted, the investigator should not automatically conclude that the initial report was false. Recantation does not mean that the

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allegations made in the initial disclosure never occurred. There may be numerous reasons a victim recants their original statement.

### 4) *Unfounded or baseless report:*

One in which a reported sexual assault does not meet the elements of the crime. It is critical to recognize that a report determined to be unfounded is not synonymous with a false allegation or report. This is often an error of law meaning that the reporter believed that they were the victim of a crime but, based on the elements of the statute, they were not.

### 5) *False Reports:*

- i. The prevalence of false reporting of sexual assault is between 2% and 10%. This statistic is comparable to other major crime reports. Investigators must always conduct a thorough, evidence based investigation. Only when sufficient evidence is established that a sexual assault did not happen should a report be determined to be false.
- ii. This is consistent with guidance provided by the FBI Uniform Crime Report (UCR) on methods for clearing cases. Specifically, the UCR Handbook states that a case can only be unfounded if it is “determined through investigation to be false or baseless. In other words, no crime occurred”.
- iii. If a situation does arise where all parties involved; police, prosecutor, and victim witness advocate, agree that sufficient evidence exists to judge the report as unfounded or false, the reporting party should be informed of the outcome of the investigation in a manner consistent with department protocol.

### 6) *Immigration Implications:*

- i. A survivor of sexual assault who has unstable immigration status faces additional barriers to reporting. Perpetrators of sexual assault prey on a variety of vulnerabilities of a victim including unstable immigration status -- often by making threats to have the victim turned over to immigration authorities should the victim report the crime to law enforcement. Additionally, shame surrounding the victimization and/or fear of rejection by a cultural community coupled with realities in a victim's home country where reports of sexual assault or domestic violence may not be taken seriously all exacerbate a victim's reluctance to report.
- ii. Victims who are undocumented overwhelmingly report the strong fear of deportation as a primary barrier to reporting crimes. Reassuring a victim that reporting to law enforcement will not trigger adverse immigration enforcement can alleviate this barrier. Officers should be aware of appropriate protocols for interviewing and assisting non-English-speaking victims. Undocumented victims of crimes may have relief available to them under immigration law.

### 7) *Military Personnel:*

If, during the course of your investigation, it becomes apparent that the victim is a member of any branch of the military, it is recommended that you provide the victim with the contact information for the Department of Defense's Safe Helpline (1-877-995-5247 or <https://www.safehelpline.org>). If, during the course of your investigation, it becomes apparent that the subject is a member of any branch of the military, it is recommended that his or her Sexual Assault Response Coordinator or Judge Advocate General be informed. Sexual Assault is a punishable offense in the military and, in addition to being held accountable by the civilian law enforcement system, offenders may be subject to penalties enforced by the Department of Defense.

### 8) *Jurisdictional Issues/Courtesy Reports*

As with any reported crime, one of the first facts an investigator must determine is if the reporting party is in the correct jurisdiction. If it becomes apparent to the investigator that the sexual assault occurred outside their jurisdiction, the receiving department should take the initial report (minimal facts interview) and assess the victim's safety. The officer should also offer the victim all the support services and referrals afforded to any victim that would be reporting an assault in their own respective jurisdiction. After taking the initial report, the investigating officer should notify and make a soft hand-off to the department of jurisdiction and help coordinate the transition to the other jurisdiction.

## B. INVESTIGATION DOCUMENTATION

1. No one portion of any investigation can stand on its own. Investigations are dynamic, interactive, compilations of information and evidence. However, without proper documentation, your hard work will never take form and provide a concrete picture of what occurred. Your ability to communicate the facts, circumstances, and events of the investigation can be the difference between a successful or failed prosecution.
2. The importance of documenting your investigation cannot be overstated. The documentation produced will serve several purposes, as it will:
  - a. Create a record of the facts and circumstances while they are fresh in victim/witnesses mind;
  - b. Serve as a mechanism to refresh the police officer's and witnesses recollection of events;
  - c. Potentially serve as the foundation for criminal complaints and legal action (e.g. search warrants); and
  - d. Become adopted as testimonial evidence at trial should a witness become incapacitated or legally unavailable to testify at a future date.

### 3. Methods of Documentation

Although the written report is often the primary format used in most investigations, officers need to consider other forms of documenting the investigation, especially in cases where you may need to document crime scenes, evidence, and victim injuries.

### 4. Written Reports

- a. Reports should be written to communicate the facts to the reader in a clear and concise manner. A detailed, chronological accounting of events is the most effective way to write a report and facilitates the reader's ability to follow what occurred and what investigative steps were taken.
- b. The content documented in the witness statements should be as close to verbatim as possible, especially for the victim and suspect statements. This practice accomplishes two objectives. First, by documenting the actual words used, a pattern of behavior by the offender may be revealed or it may link an offender to multiple cases. Second, using the exact words rather than paraphrasing better communicates what the victim and/or offender was thinking or feeling at the time of the assault.
- c. Also of significant importance is documenting a detailed and precise description of the victim's demeanor and state of mind. For example, if the victim is "visibly shaking and crying" then document it as such versus stating the victim was "upset." It may be months or years from the date of report to trial, and details are important. Do not rely on memory alone.
- d. It is also important to document the environment in which an interview occurs. For example, document the number of officers present, the tone of the interview, how the officers were dressed, who was seated where, if breaks/ refreshments were afforded the suspect (e.g. drink, bathroom). By creating a separate and distinct report which communicates the tone and environment in which the suspect is interviewed, several potential bases for motions to suppress the defendant's statement can be avoided while simultaneously demonstrating a complete and comprehensive investigation.
- e. You should always follow your departmental protocols; however, written reports should not contain any speculation, opinion, or include an officer's thought process. Reports should be free from spelling, punctuation and grammatical errors. All reports should be proof read prior to submission. Presentation is very important and can impact the perception of the officer's thoroughness, competency, and professionalism. Reports should not contain police jargon and slang should be kept to a minimum. This will assist readers who are non-law enforcement professionals to better understand the content of the report.

### 5. Audio Recordings



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- a. As a police officer, you should familiarize yourself with the expected practices and legal requirements for recording interviews by consulting your supervisor and/or the district attorney's office of jurisdiction.
- b. The use of audio recordings should be limited to suspect interviews. Recording witnesses or victims should not be a standard practice – and only done after consultation with the district attorney's office.
- c. The use of audio recordings allows the interviewer to keep an even flow to the interview without asking the suspect to repeat themselves or slow down. In addition, by recording the interview you ensure that all the information provided by the individual is captured. This protects officers against allegations of omitting details and conversely documents details which, at the time of the interview, may not have seemed important.
- d. If a suspect refuses to have their statement recorded, the officer should record the refusal (if practical) and document it on a refusal form.
- e. Once being recorded, the officer should:
  - 1) Identify themselves and the interviewee, state the date, time, and location the interview is being conducted. Inform the suspect of any applicable rights (such as Miranda).
  - 2) Document that the person knows that they are being recorded and agree to same.
- f. When audio recording statements, there are a few important points to remember. If the individual physically demonstrates information, the interviewer needs to verbally explain what is being demonstrated. For example, if a suspect demonstrates the length of the knife using their hands, be sure to put on record that "the suspect showed a distance of approximately six inches."
- g. Additional considerations include making sure that you have good, working equipment, having enough privacy so that the recording will not be constantly interrupted, and ensuring you make a working copy of the original and secure the original into evidence.

### 6. Photographic Documentation

- a. Photographically documenting a crime scene, evidence, or injury is critical in criminal investigations, especially sexual assault cases. Photos bring the scene to life for jurors and the corroborative element can help alleviate the burden on the victim. In addition, photographing the scene and evidence prior to recovery demonstrates thoroughness by the police and helps eliminate challenges to the integrity of the investigation.
- b. If you have access to a crime scene unit, it is recommended that it be utilized. This will ensure items are photographed according to scale and captured in a manner which provides context to the entire scene. In addition, if photographing injuries, there may

be certain lighting and technology which capture different conditions better. Time aged photos may also be relevant.

- c. When documenting evidence through photographs, be sure to take an overall photo, a mid-range photo, and a close up photo. This provides a contextual basis for the evidence being displayed. In addition, include a ruler or some mechanism of measure to provide a basis of size of the item being displayed.
- d. If the victim needs to be photographed, be sure to explain to the victim why photographing them is important. Conduct yourself in a professional manner at all times affording the victim the utmost privacy and dignity.

### 7. Video Recordings

Video recordings are much like photographic documentation but can be more effective at capturing the big picture. This is especially true when trying to capture such things as distances, location of objects, spatial relationships, and paths of entry or egress.

### 8. Sketches/Diagrams

Sketching a scene is helpful when there is no access to photographic equipment or when documenting outside scenes. Using sketches and triangulation will assist in pinpointing the exact location of a recovery site at a later date.

## C. INITIAL LAW ENFORCEMENT RESPONSE

1. Reports of sexual assaults can come from numerous sources and through multiple channels. Most reported sexual assault will be delayed reports; days to years. Regardless of the reporting mechanism or the time between the assault and the report, individuals taking the report should react calmly and with purpose.
2. Remember that you represent your police department and the law enforcement profession. The first interaction the reporting party has with the “system” will set the tone and potentially impact his or her willingness to participate in the remainder of the investigation. Responding professionals should be compassionate and non-judgmental, encouraging the victim to participate in sharing facts about the incident. Each and every report should be taken seriously and must be thoroughly investigated until it reaches its natural conclusion.
3. If the reported case is determined to be an “active” scene and requires an immediate response, the initial considerations should include first and foremost:
  - a. The safety of the victim and the public;
  - b. The safety of the responding police and emergency personnel; and
  - c. The preservation of the scene(s) and any physical evidence that may exist.

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4. Again, most reports will be delayed disclosures but in either scenario (immediate or delayed) the following information applies:

### 5. Dispatch

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

- a. Name, address, and telephone number of the reporting party;
- b. If reporting party is not the victim, obtain the name, address and phone number of the victim, his/her current location, and status (safe, injured, alone, etc);
- c. Identify caller's relationship to victim and the caller's basis of knowledge;
- d. Dispatch immediate medical assistance if needed;
- e. If it's determined to be an "active" scene, promptly dispatch patrol officers to the victim's location and to the crime scene (if different);
- f. If, in the dispatcher's assessment, the victim is in imminent danger, advise the victim to move to a safe location (e.g. to the home of a neighbor or family friend, a police station, a church) as long as re-locating can be accomplished with minimal risk;
- g. Determine if a weapon was used during assault. If yes, what type;
- h. Determine the suspect's current location and status (safety issues, aware of police involvement, etc);
- i. Obtain detailed information regarding the identity and/or description of the suspect (e.g. name, gender, physical description, clothing, vehicle description);
- j. If the assailant has fled the scene, broadcast as much identifying information as quickly as possible;
- k. Determine the relationship between suspect and victim (if any);
- l. Furnish the responding officers with any available information with special consideration given to:
  - 1) dangerousness of the offender;
  - 2) specifics about the incident;
  - 3) past domestic violence events and/or assaultive behaviors (prior criminal history, other relevant sources); and
  - 4) if in possession of a firearms license.

- m. If possible, remain on the line with the victim until patrol officers arrive on scene;
- n. If for some reason communications cannot be maintained, the victim should also be tactfully advised against bathing, douching, eating, drinking, changing clothes, or touching anything at the scene. The victim of the assault is now analogous with a crime scene;
- o. If the victim has changed clothes, advise them not to wash the clothes and to leave them as they are;
- p. Do NOT cancel a law enforcement response to a complaint of sexual assault, regardless of a request to cancel;
- q. If a request to cancel is made during the initial response, advise the responding officers of this request; and
- r. Record and preserve the victim's "excited utterances" and 911 tapes for evidentiary purposes.

### 6. First Responding Law Enforcement Officer

- a. What occurs during the initial stages of an investigation is critical to the success of the investigation and cannot be overstated. The first responding officer sets the tone of the investigation which can directly impact the victim (positively or negatively) and the likelihood of an arrest and conviction.
- b. The initial officer needs to be thorough but prepared, in all likelihood, to pass off the investigation to a certified sexual assault officer. The initial responder's primary areas of responsibilities are:
  - 1) Victim/witness safety;
  - 2) Crime scene preservation;
  - 3) Minimal facts interview;
  - 4) Identifying and locating witnesses and suspects;
  - 5) Documentation of initial response and observations; and
  - 6) Support service notification.
- c. The medical treatment and well-being of the victim should be the first priority. The lapse of time between the sexual assault and the report of the sexual assault will potentially impact the likelihood, type and quality of evidence recovery from the body of the victim and/or perpetrator. If the assault occurred within five days (120 hours) of the report, then an evidence collection kit should be conducted. In addition, depending on the facts of the assault, there may be additional evidence which can be obtained.
- d. In keeping with a trauma-informed approach, be professional and empathetic when interacting with the victim. Remember that sexual assaults, whether by a stranger or a

known assailant, are the most personal type of violation a victim can suffer. Be patient with the victim and aware that all victims exhibit or react differently so do not judge or dismiss the victim's credibility based on the external behaviors and emotions exhibited. Be cognizant that a victim may not be ready to speak with law enforcement about the incident. This is especially prevalent in cases where a 3rd party has reported the incident to the police (i.e. parent, friend). Good rapport built at this stage may impact the victim's willingness to report at a later time.

- e. If the victim is alone, inquire if there are family, friends, or a rape crisis counselor/advocate they want contacted. If the victim's clothing needs to be seized as evidence, attempt to arrange for a fresh set of the victim's own clothes to be made available.

### 7. **Victim/Witness Safety**

As part of the emergency response, officers shall:

- a. Request an ambulance for transport to a hospital if there is observable injury to the victim or if the victim is complaining of injury;
- b. Strongly encourage a sexual assault exam be conducted by a Sexual Assault Nurse Examiner (SANE) and advise the victim of their rights under MGL c 209A and 258 E if appropriate (see Domestic Violence Law Enforcement Guidelines 2017);
- c. Conduct medical exams, if possible, at an identified SANE site show understanding, patience and respect for the victim's dignity and attempt to establish trust and rapport;
- d. Evaluate the scene for suspects, vehicles, or objects involved, as well as for possible threats;
- e. Initiate a search for the suspect when appropriate;
- f. Be cognizant of the victim's concerns for safety/threats and be reassuring and comforting;
- g. Communicate all vital information to the Patrol Supervisor and other responding officers, including any possible communication barriers or special circumstances; and
- h. Notify the appropriate protective service agency (DCF, DPPC, Elder Affairs, DPH) if abuse is suspected.

### 8. **Minimal Facts Interview**

- a. Sexual assault investigations involving adult victims will typically include, at the minimum a preliminary interview and a subsequent, in-depth interview. The primary purpose of the preliminary interview is to establish whether a crime has occurred. The interviewing officer should conduct a minimal facts interview and obtain basic

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information similar to investigating any other offense (e.g. who, what, where, when, how).

- b. During the initial interview with adult victims, the first responding officers should:
  - 1) Ensure victim's safety and provide appropriate referrals (e.g. rape crisis/medical services);
  - 2) Establish the elements of the crime(s);
  - 3) Identify any and all witnesses and suspect(s);
  - 4) Identify possible locations of evidence and crime scene(s);
  - 5) Identify additional interviews to be conducted; and
  - 6) Advise a supervisor of additional resources and/or personnel needed (e.g. crime scene services, crime lab, etc).
- c. A victim of a sexual assault may bond with the responding officer. If the responding officer intends to request assistance from a sexual assault investigator (as directed by departmental protocol) the officer should explain their role as the first responding officer to the victim. It is important for the initial officer to further explain what the victim may expect from the responding investigative team and to assist with that transition.

### 9. Crime Scene Preservation

- a. First responding officers should assume the existence of multiple crime scenes. It is the responsibility of the responding officer to elicit information from the victim as to the location of the primary, secondary, and possible tertiary crime scenes. Once identified, this information should be communicated to a supervisor to ensure that any additional crime scenes are secured and steps are taken to prevent evidence from being lost, altered, destroyed, or contaminated.
- b. Also of significant importance is identifying the first person ("first complainant") the victim told about the sexual assault. This person will eventually need to be contacted and interviewed by the officer in charge of the investigation.

### 10. Identifying and Locating Witnesses and Suspects

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

### 11. Language/Communication Barriers

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

### 12. Documentation of Initial Response

- a. Proper documentation of the initial police response, the information communicated by witnesses, who processed the scene(s), and who seized evidence, are all critical to a successful prosecution.
- b. During the initial documentation of witness statements, specifically the victim's statements, attempt to conduct a minimal facts interview but if the victim begins to provide details of the assault, it is strongly recommended that you capture the exact words used by the victim to describe the assault. Also, specify the sexual acts which occurred and with which body parts or objects. This is extremely important because it provides a roadmap for potential evidence and/or crime scenes and is critical in establishing what crimes were committed. It may also help provide insight into the dynamics of the assault itself.
- c. When there is no opportunity to interview witnesses, contact information should be obtained so the witness can be contacted and interviewed at a later date. Consider audio recording the interview(s); however, audio recorded statements should be in accordance with your departmental policy and the District Attorney's Office of jurisdiction. Having witnesses write out their statement is strongly discouraged.
- d. Be sure to consider and preserve all forms of evidence that you may not directly elicit from a statement such as 911 calls, public video surveillance systems, spontaneous utterances, etc.

### 13. Investigation Support Services

- a. Once the responding officer has assessed the victim's safety, preserved the scene(s), transmitted any relevant information for immediate broadcast, conducted a preliminary interview, established that a crime has been committed, identified other victim/witness or possible suspects, and identified the potential crime scenes, the responding officer must then ensure that the proper personnel are requested to process any potential crime scenes.
- b. It is recommended that your own department's crime scene personnel or the State Police Crime Scene Services Section be contacted to assist in processing any potential crime scene.

### 14. Additional Considerations of First Responding Officers

As the first responding officer, in making the decision to arrest, the level of exigency and the probable cause to arrest should be assessed. Whenever possible, all officers are encouraged to consult with a representative of the District Attorney's Office prior to making felony arrests. Additionally, the officer should:

- a. Ensure that mandated reporters adhere to required protocol and file reports of suspected abuse when applicable. See Mandated Reporting

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- b. Remember your obligations surrounding domestic violence and be sure to advise a victim of their rights under MGL c209A.
- c. For sexual assault committed by a non-intimate partner (i.e. classmate, coworker, neighbor) advise the victim of their rights under MGL c 258E;
- d. If necessary activate the Emergency Judicial Response System (EJRS); and
- e. If called to an emergency room, first consult with hospital staff to determine the victim's status, how the report came in, and other relevant information. If the victim traveled to the hospital by ambulance, obtain the names of the ambulance and staff in case future interviews are needed.

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

1. Specific to sexual assault investigators, **pursuant to MGL 41 s97B**, officers conducting sexual assault investigations **SHALL** have completed a course of training as prescribed by the Municipal Police Training Committee. Whether you are the detective responding to the scene after an initial report of a sexual assault or you are assigned to investigate a sexual assault after a delayed disclosure, the following section is designed to provide direction and guidance during your investigation.
2. As the lead investigator, you will have primary control over the case and will be responsible for ensuring that a complete and comprehensive investigation is conducted. Upon being assigned the case, the lead investigator has initial considerations and responsibilities which include information as outlined in the previous section and to include but are not limited to:
  - a. Speaking with the first responding officer(s) to obtain a baseline story and to determine what has been completed;
  - b. If the victim has not yet received medical treatment, make appropriate arrangements as needed and assure appropriate support referrals have been made;
  - c. Ensure steps have been taken to preserve any crime scenes and/or evidence;
  - d. If there are unprocessed potential crime scenes, determine if a search warrant is needed prior to processing any crime scene;
  - e. Coordinate the dispatch of support services such as crime scene services;
  - f. Obtain the names and contact information of any possible witnesses;
  - g. Ensure all interviews are conducted in a timely manner, including the suspect interview;



- h. Ensure proper documentation of the investigation is completed and that all reports are complete and free of judgment and opinion.

### E. **Victim Interview**

Police officers are often confronted with less than ideal circumstances and have to adapt to the conditions presented. In keeping with a trauma-informed approach, deliberate consideration and decisions about the practical aspects of the interview cannot be overstated. It is strongly discouraged that friends or family be present during the victim interview. The presence of an advocate should be determined on a case by case basis, or as determined by the victim. Remember, the hardest part of the interview will be building trust and rapport with your victim. However by developing both, you will make the person being interviewed more comfortable and the interview easier.

### F. **Location of the Interview**

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

### G. **Gender of Interviewer**

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

### H. **Documenting the Victim Interview**

1. There is no "best" method of documenting the victim interview. However, there are certain considerations which should guide your decision. Factors influencing your decision include:
  - a. The District Attorney's Office of jurisdiction and your police department's policy;
  - b. The victim's preference (i.e. the victim may be uncomfortable with the statement being recorded); and
  - c. Physical, linguistic, and cultural limitations of victims.
2. It is recommended that the statement be documented by either the officer actively asking questions, or the second officer in the room. You are strongly discouraged from having the victim manually write out their own statement as it may lead to statements which are generally insufficiently detailed and/or incomplete. If the victim does choose to write out

their own statement, the interviewing officer should review the statement with the victim to assure accuracy of detail and resolve any inconsistencies or unanswered questions.

### I. Conducting the Interview

1. The ideal number of police officers conducting the interview is two. One is less than preferable for a variety of reasons, the least of which is officer protection. More than two is strongly discouraged. Asking the victim to recount details of an assault is difficult enough but to ask them to do so in front of numerous people will only act as an inhibitor and detract from the interview.
2. The tone of the interview should be reassuring and poised. Be aware of your body language and how it can impact the comfort level of a victim, (e.g. an exposed weapon may create discomfort for the victim).
3. Officers conducting the interview should take an inventory of any personal bias, nervousness, or barriers they may have which might inhibit their ability to conduct the interview. If a bias is recognized, discuss the issue or concerns with a supervisor for resolution.
4. When conducting an interview of a victim, the manner of questioning should be in an open-ended format as much as possible. The information sought should include questions regarding the following:
  - a. Name, date, time of interview;
  - b. Description offense (details);
    - 1) When the offense occurred (establish timeline--details of dates, months or significant events);
    - 2) Details of the sexual assault and acts (use quotations, victim's own words/language);
    - 3) Physical description of offender including identifying body marks, freckles, tattoos, scars, birthmarks;
    - 4) Smells such as cigarettes, cologne, body odor, something else;
    - 5) Did the victim describe the "feelings" they experienced during the sexual assault (pain, worry, sadness, scared, nothing or something else);
    - 6) Manner used to complete the crime (hand, fingers, penis, mouth, object, something else);
    - 7) Information about how the assault ended and what caused it to end;
    - 8) Any conversation, communication, or statements by the perpetrator either before, after, or during the assault;
    - 9) The degree of force, threat, coercion if any used to effect the assault; Weapons used (describe weapon, brought to scene or picked up there); Manner which weapon was used during the sexual assault;
    - 10) What the victim and offender did after the assault

- c. Relationship between the victim and suspect, if any (in detail; may explain a delay in disclosure);
- d. Identify any and all witnesses and suspect(s);
- e. Identify additional interviews to be conducted as the investigation develops; and
- f. Other relevant information that might assist in bolstering the victim's veracity.
- g. Be cognizant of the framework in which the questions are asked. The "why" types of questions, although sometimes important, may feel judgmental to the victim. Either consider rephrasing the question or explain to the victim the need to ask the questions and why you are seeking that specific information.

### J. Safety, Legal and Other Considerations

1. During the interview process, be aware of safety considerations for the victim, any children, or potential secondary victims/witnesses.
2. In addition to safety considerations there are circumstances which may legally require law enforcement officers to act. These may include:
  - a. Advising the victim of their rights pursuant to (MGL c 209A and MGL c 258E); and
  - b. Mandatory referrals. See section on Mandated Reporting.
3. It is important to make the victim aware of the community based services, rape crisis centers, and court services which may be available to the victim.

### K. Concluding the Interview

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

### L. Added Barriers to Reporting

Sexual assault is prevalent in all communities but is a crime that often goes unreported. In addition to the shame and stigma which prevents many victims from reporting, some victims face extraordinary barriers that officers should be aware of. Individual factors and circumstances such as age, gender, culture/ethnicity, disability, sexual orientation, immigration status, and prior criminal involvement are only some potential unique obstacles. Special sensitivity to victims who need to overcome added barriers when reporting sexual assaults will set a positive foundation for all subsequent law enforcement interactions.

### M. IDENTIFYING AND INTERVIEWING WITNESSES

#### 1. Witness Interview- Overview

- a. Upon arriving on scene, it is important to obtain the names and contact information of potential witnesses. Although this is a sexual assault case, you can rely on your training and experience from other types of investigations and apply it to sexual assault investigations. Take detailed, concise statements which capture basic information. If at all possible, the statement should be in either a written report or audio/video recorded. This decision should be guided by your own department's protocols or those of the District Attorney's Office of jurisdiction.
- b. As with victim statements, it is recommended that the witness NOT be left to write out their own statement. If the witness does write out their own statement, the officer conducting the interview should review the statement with the witness to assure accuracy of detail, resolve any inconsistencies, or unanswered questions. Any witness statements should be signed and dated by the witness providing the statement.
- c. In concluding your interview with the witness, explain to them that, if after the interview they remember something, that it is perfectly normal and okay. Provide the witness with a mechanism to contact you with future information or questions.

#### 2. First Complaint Witness

- a. One unique element in dealing with witnesses in sexual assault cases is the ability to use the testimony of "first complaint" witnesses. In *Commonwealth v. King*, 445 Mass 217 (2005), the Massachusetts Supreme Judicial Court revamped and renamed "fresh complaint" to the doctrine of "first complaint." This decision has resulted in a profound change in the way sexual assaults are investigated. Under the new "first complaint" doctrine, a witness to a sexual assault victim's "first complaint" of the crime may testify about:
  - 1) The facts of the first complaint;
  - 2) The details of the crime; and
  - 3) The circumstances surrounding the disclosure of the first complaint.

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- b. First complaint testimony may only be used for a limited purpose to assist the jury in assessing and determining the victim's credibility about the alleged sexual assault. The testimony may not be used to prove the truth of the allegations.
- c. Law enforcement officials, investigators, medical personnel, social workers, dispatchers and civilians may all qualify as "first complaint" witnesses if they are the first person the victim told about the assault.
- d. An officer should not discount other witness statements which fail to meet the legal definition of a "first complaint" witness. Their information may be equally relevant and useful during the investigation and/or at trial in another capacity. There are a number of exceptions which may permit someone other than the "first complaint" witness to testify including:
  - 1) Original first complaint witness is unavailable;
  - 2) First person told is incompetent;
  - 3) First person told is too young to testify meaningfully;
  - 4) First encounter that the victim has with the first person does not amount to a complaint; and
  - 5) There is a complaint, but the listener has an obvious bias or motive to minimize or distort the victim's remarks.
- e. When speaking with a first complaint witness, attempt to video and /or audio record the interview. Be sure to include the following:
  - 1) Name, date, time of interview;
  - 2) Circumstances under which the complainant first reported the sexual offense;
  - 3) Events/conversations that culminated into disclosure;
  - 4) Other potential witnesses or persons present during the offense (details);
  - 5) Description of where offense occurred (details);
  - 6) When the offense occurred (establish timeline-- details of dates, months or significant events);
  - 7) Details of the sexual assault and acts (use quotations, if applicable);
  - 8) Describe the demeanor of the victim during their disclosure/recounting of the event (tone, emotions etc.);
  - 9) Did the victim describe the "feelings" they experienced during the sexual assault (pain, worry, sadness, scared, nothing or something else);
  - 10) Manner used to complete the crime (hand, fingers, genitals, mouth, object, something else);
  - 11) Information about how the assault ended and what caused it to end;
  - 12) What the victim and offender did afterwards and why;
  - 13) Any conversation or communication which occurred between the victim and the perpetrator either before, after or during the assault;
  - 14) Weapons used (describe weapon, brought to scene or picked up there);
  - 15) Manner which weapon was used during the sexual assault;
  - 16) The degree of force, threat, coercion if any used to effect the assault;

- 17) Relationship between the victim and suspect if any (nature in detail; may explain a delay in disclosure);
  - 18) Circumstances in which the first complaint was made;
  - 19) Other relevant information that might assist in bolstering the victim's veracity; and
  - 20) Information on why the victim decided to tell the person, at that time and place.
- f. Documenting the exact words spoken by the victim to the first complaint witness communicating the assault is critical. Remember, what may seem to be inconsequential information at the time of the interview may prove to be crucial information at a later time and help portray a full and complete picture. It is also recommended that when possible, videotape and /or audio tape the interview.

### N. SUSPECT INTERACTION

#### 1. Decision to arrest or not arrest

- a. The safety of the victim or other potential victims should be paramount in any decision to arrest. Additionally, officers should take into consideration the risk of flight by the suspect and the safety of officer(s), as well as any mandatory obligations required under the domestic violence guidelines and MGL c209A.
- b. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that a crime occurred. The decision to arrest must be based on whether probable cause exists that the crime occurred, not on whether the victim wishes to seek complaints or wishes to testify at a future date.
- c. If the above issues are not present or manageable, do not feel obligated to rush or make an immediate arrest just because you have probable cause to do so. Look at the specific circumstances of the case and consider conducting a non-custodial interview of the suspect prior to any warrant or arrest.

#### 2. Interviewing the Suspect:

- a. ALWAYS attempt to interview a suspect even if you believe the suspect will not speak with you or will deny the allegations. Small corroborations of surrounding events can make a big difference.
- b. When conducting any suspect interview, it is strongly recommended that two officers are present and that the interview is conducted in a setting where they will not be disturbed. The best practice and preferred method is to audio and/or video record the interview.
- c. The goal of the interview should be to get at least a baseline statement from the suspect. Officers should let the suspect relate their entire statement before shifting to an interrogation style, if the shift occurs at all.

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- d. Prior to starting an interview, the first question the investigators should ask themselves is which, if any, legal requirements are mandated. This will help to ensure that statements made by the defendant are admissible in future legal proceedings. The most common legal requirements at this stage are correlated to whether there is a “custodial interrogation.” There are many circumstances which may not initially appear to be custodial but, in fact, meet the legal definition and requirements of a “custodial interrogation.”
- e. In general, the following are examples of places/circumstances which may qualify as custodial:
  - 1) Police station;
  - 2) Jail/Prison; and
  - 3) Suspect’s home if the suspect is under arrest, or if police are there to execute a search warrant.
- f. It is important that the suspect’s statement about the sexual assault and the circumstances surrounding the entire occurrence and relationship be obtained and documented carefully. Very often the criminal prosecution of a sexual assault hinges on the victim’s word against the suspect’s word. The tipping point in successful prosecutions can often be the corroboration of the more benign details of the victim’s statement which brings credibility and credence to their entire statement. Small corroborations often end in big results.
- g. Each of the following legal requirements requires their own separate and distinct waiver. You are encouraged to consult with your District Attorney’s Office of jurisdictions with any questions:

### 3. *Miranda Warnings*

- a. It is vital that law enforcement know how to determine when Miranda warnings are required. The consequences of failure to advise a suspect of these warnings can result in the suppression of any statements made by the suspect. See *Miranda v. Arizona*, 384 436 (1966).
- b. There are two controlling factors as to whether Miranda warnings must be given. If one or the other is absent then Miranda is not legally required. They are as follows:
  - 1) The person is in formal “custody,” or deprived of freedom of action in any significant way; or
  - 2) The police, or an agent of the police, are communicating with the suspect whether through direct questioning or its functional equivalent, to elicit testimonial evidence or information.

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- c. If the suspect invokes his right to remain silent and/or requests the presence of counsel at any time, the request must be honored and all questioning must immediately cease.

### 4. *Six Hour Rule*

Under *Commonwealth v. Rosario*, 422 Mass 48 (1996), an otherwise admissible statement is not to be excluded as evidence on the ground of unreasonable delay in the defendant's arraignment, if the statement is made within six hours of the arrest (day or night), or if, at any time, the defendant makes an informed and voluntary written or recorded waiver of his right to be arraigned without unreasonable delay.

### 5. *Electronic Recordings of Interviews/Interrogations*

- a. In *Commonwealth v. DiGiambattista*, 422 Mass 423 (2004), the Supreme Judicial Court held that a statement or confession obtained by police during a custodial interrogation at a place of detention, whenever practical, should be electronically recorded. Failure to do so will not result in the suppression of the statement; however, it will most likely result in a strong jury instruction advising jurors to view the statement with "great care." See **Audio Recordings**.
- b. Regardless of the suspect's decision to be recorded or not, a waiver to record or not record should be provided to the suspect and his/her decision documented. This advisement and waiver is separate and distinct from the Miranda and Six-hour rule waivers.
- c. In general, it is good practice to:
  - 1) Record as early as possible, including any Miranda consent/refusal;
  - 2) Try to record unobtrusively;
  - 3) Record the complete interrogation; and
  - 4) Preserve the audio recording.
- d. It is advisable to avoid starting and stopping the interview tape. If it is not feasible to leave the recording running, officers should make a record on the recording that explains interruptions, and, if possible, have the suspect confirm the nature of the interruption on the recording.

### 6. *Other Procedural Requirements*

As with any arrest, all individuals taken into custody should be afforded all rights according to standard booking procedures.

## O. **CRIME SCENE MANAGEMENT AND EVIDENCE COLLECTION**

1. In many violent crimes, obtaining statements from the victim and witnesses is a critical first step in learning what occurred. An equally critical link that can provide irrefutable and



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corroborative evidence as to what occurred is the physical evidence obtained from the crime scenes.

2. When the identity of the assailant is unknown to the victim, the physical evidence becomes even more critical because it may provide investigators with both the identity of the offender and support the allegation that a sexual assault occurred.
3. Additionally, whether or not the victim knew the assailant, prosecutors often look to the forensic evidence to bolster their case by using it to not only help convince the jury that the victim did not give consent, but also to refute the defendant's version of events. Small corroborations often equal victim credibility.
4. Given the critical role physical evidence can play in any criminal investigation, especially sexual assault investigations, proper documentation, collection and preservation of physical evidence is essential. Police Departments are strongly encouraged to use a crime scene services unit or law enforcement officers who are specifically trained in evidence documentation and collection.
5. Two of the most critical steps in any criminal investigation are the management of the crime scene and the collection and preservation of physical evidence. To identify a starting point, investigators must rely on their own observations in conjunction with victim and witness statements. These sources serve as a road map to navigating the crime scene(s).

### 6. **Crime Scene Management**

- a. In reported sexual assaults, investigators must immediately consider the existence of, at a minimum, three crime scenes:
  - 1) The victim;
  - 2) The location(s) where the assault occurred; and
  - 3) The offender.
- b. In addition, investigators must consider other possible locations where other types of evidence or "transfer evidence," may be found. This often results in additional locations being processed as crime scenes. Documentation of evidence and the crime scene can take on many forms but of critical importance is the written report describing the condition of the scene upon discovery. It should be noted if any items were moved or altered and by whom. For example, Emergency Medical Technicians may need to make an immediate entrance to render medical aid which results in the disturbance of the scene and evidence. Documenting the reason for the contamination and by who will help preserve the integrity of the remaining scene and any additional evidence that is located.
- c. Once the crime scene(s) have been identified, they must be secured. This is an obvious but critical step. Not only does it preserve the integrity of the evidence, but

it allows time for appropriate personnel to arrive on scene for processing. This is also the appropriate juncture for the Crime Scene Log to be started.

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

### 7. Considerations before Processing the Scene

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

### 8. Fundamentals of Processing a Crime Scene

The manner in which evidence is collected, transferred and stored is critical to how well the forensic scientist can utilize the evidence to help reconstruct the crime:

#### a. *Documentation of the Crime Scene*

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

#### b. *Types of Evidence – Considerations*

- 1) As stated earlier, the decision to seize items as evidence should be guided by the investigation, investigator's observations, legal authority and the victim/witness statements.

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2) Because of the nuances and individualized facts of each case, it is impossible to provide a complete list of all possible evidentiary items. Though physical evidence, especially from sexual assault crime scenes can take many forms, the following list is provided to elicit thinking and expand the scope of items investigators might consider during the course of their investigations:

- a) Bedding/bath;
- b) Clothing/Material;
- c) Swabbings/fluids (vaginal, rectal, oral, digital, penile, etc.);
- d) Hairs/fibers;
- e) Fingerprints;
- f) Impressions (tire/footwear);
- g) Digital evidence
- h) Electronic communications including social media;
- i) Writings/recordings;
- j) Cell phones/communication devices;
- k) DNA reciprocals (drinking glasses, toilet, sinks, tissues, toothbrushes etc);
- l) Restraints/Inserted objects; and
- m) Condoms/Tampons.

### c. *Clothing/Material as Evidence*

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

### d. *Condom Trace Evidence*

- 1) Today's high-level awareness of the spread of various sexually transmitted diseases coupled with the media attention to the ever-improving use of DNA in identifying perpetrators of unsolved crimes has increased the use of condoms by sexual assault offenders. Just as a burglar often wears gloves to avoid leaving fingerprints at a crime scene, the sexual perpetrator may use a condom to avoid leaving DNA from semen on the body or clothing of the victim.

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- 2) Although the use of condoms may significantly reduce the chance of retrieving seminal fluid, there are other types of equally important trace evidence that may be recovered. Condoms are made from a variety of synthetic and natural materials.
- 3) Latex rubber is the most popular. Condom manufacturers add particulates (powders), lubricants, and spermicides to their products. Residues of those substances are referred to as condom trace evidence. Condom trace evidence can be recovered from sexual assault victims during the medical examination process.
- 4) The identification of condom trace evidence may assist investigators and prosecutors in proving penetration, even in the absence of seminal fluids. To assist the forensic laboratory in the analysis of condom trace evidence, investigators should make every effort to collect all condom-related evidence including, but not limited to:
  - a) Used condoms;
  - b) Unused condoms;
  - c) Condom wrappers;
  - d) Partial or empty boxes of condoms;
  - e) Tissues from the trash;
  - f) Lubricants; and
  - g) Evidence inside/outside of a condom.

### e. *Packaging*

- 1) The manner in which evidence is packaged is critical because it can directly affect the degradation or preservation of the evidence. If the evidence is not properly packaged and protected from contamination, it can be rendered virtually useless even if the best identification and collection practices have been adopted.
- 2) The following are some simple concepts to keep in mind when collecting evidence:
  - a) Each item should be packaged separately;
  - b) Hairs, fibers, or other trace evidence, should be placed in a paper envelope and sealed (without licking the seal); and
  - c) Clothing and other evidence specimens must be sealed in paper or cardboard containers as the use of plastic could result in the destruction of evidence.
  - d) All evidence packaging must be properly sealed with evidence tape.
  - e) At a minimum, all evidence should be labeled identifying the content, date and time located, date collected and by whom, agency and case number.
- 3) If the clothing/material/tampons/condoms are wet, the items should be air dried before being packaged. When transporting such evidence to a secure, drying

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location, placing it temporarily in plastic bags is acceptable practice. The container or bag used to transport the wet evidence to the drying location, as well as the drop cloth placed under the wet evidence, should also be submitted for processing.

- 4) Careless packaging can result in one garment/item accidentally contaminating another potentially making it impossible for the examiner to accurately interpret the findings. For example, if semen in the female victim's underpants is inadvertently transferred to her shirt after collection, the detection of semen on the shirt may mistakenly appear to contradict the victim's account of what occurred. To prevent cross-contamination, each garment must be placed in a separate paper bag.

f. *Chain of Custody*

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

g. *Massachusetts Sexual Assaults Evidence Collection Kits (MSAECK) and the Sexual Assault Nurse Examiner (SANE)*

- 1) It is important to consider that the victim's body may have both observable and unobservable evidence. This critical evidence is best collected in a hospital by a Massachusetts Sexual Assault Nurse Examiner (SANE) utilizing the Massachusetts Sexual Assault Evidence Collection Kit (MSAECK).
- 2) SANEs undergo specialized training, providing them with advanced skills in sexual assault patient care, forensic exam assessment, and evidence collection. Although SANEs are not in every Massachusetts hospital, SANEs are positioned widely throughout the Commonwealth and usually work in high volume hospitals/medical centers.
- 3) Police officers should refer sexual assault victims to SANE sites to access specialized services whenever possible. SANEs are available 24 hours a day, seven days a week to designated SANE sites and will respond when a sexual assault patient presents at an emergency department within five days (120 hours) of the assault. All hospitals across the Commonwealth are given SANE Protocols to follow when collecting evidence in the event a SANE is not available.
- 4) If the victim seeks care at a SANE site before contacting the police, the SANE will ask the patient if they wish to make a police report. In these instances, the SANE

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may initiate police contact to facilitate the patient's report of the crime. SANEs specialized and unique training make them a valuable resource to the investigator and can often facilitate the victim's reporting of the assault within the emergency department. A best practice, if timing allows, is for the SANE and the investigating officer to obtain a history of the assault from the patient together. This practice will decrease the number of times a victim will have to recount their experience.

- 5) The average SANE exam will take approximately three to four hours and cannot be interrupted once the evidence collection is started. SANEs obtain written consent from victims for every step of the evidence collection process using six detailed MSAECK forms.
- 6) As of April 2015, there are 17 MSAECK steps to the evidence collection process. Comprehensive toxicology testing may take place if appropriate based on the case facts and circumstances of the case. Also completed is a physical assessment (including a pelvic exam), evidence collection, forensic photography, medication education and administration, and the coordination of discharge and follow-up care.
- 7) Time is important in sexual assault evidence collection:
  - a) Investigators should attempt to collect a known DNA standard from any consensual partners from the 5 days (120 hours) prior to collection of the MSAECK.
  - b) Evidence on a patient aged 12 years and older, can be collected up to 5 days (120 hours) after the assault. Evidence can be collected even if the victim has bathed and or showered since the assault.
- 8) In addition to the Sexual Evidence Collection kit, toxicology samples are packaged in the Massachusetts Comprehensive Toxicology Kit and turned over to law enforcement with the MSAECK for transport to the Massachusetts State Police Crime Lab. It is imperative that kit pickup and transport occur as soon as possible to maintain evidence integrity.
- 9) If there is suspicion that a drug was used to facilitate the commission of a sexual assault, specific toxicology testing is available to victims, with their consent, within 96 hours of the assault. The collection of urine and/or blood through the use of a Comprehensive Toxicology Kit, as a part of the MSAECK, is available at most hospital emergency departments.
- 10) Victims can have toxicology testing completed even if they do not report the assault to the police. In these circumstances, toxicology results will be made available through a phone system which the victim is given access to at discharge. The victim can call the provided number to obtain the results approximately six weeks after collection. After receiving the results, the victim may then decide to initiate a police report.

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11) In addition to the collection of valuable forensic evidence, victims may also be concerned about potential medical risks. Prompt medical attention provided in the emergency department is critical to the victim's health and wellbeing. Medications can be prescribed to prevent pregnancy, HIV, and other sexually transmitted illnesses from occurring.

### h. *Interviewing Medical Personnel*

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

### i. *Evidence Identification*

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

### j. *Disposition of the Massachusetts Sexual Assault Evidence Collection Kit*

- 1) Following the collection of medical evidence, the sealed MSAECK(s) are refrigerated and any clothing or other evidence is bagged and stored separately at the medical facility. The hospital will contact the police department of jurisdiction to facilitate the transfer of the kit and other evidence from the medical facility to the crime lab.
- 2) It is the responsibility of the investigator to deliver the kit and other evidence to the appropriate crime laboratory as soon as possible to avoid the destruction of vital evidence. In the case of an examination done when the alleged assault has occurred in Boston, the MSAECK will be transferred to the Boston Police Crime Laboratory. All other MSAECKs are taken to the nearest Massachusetts State Police Crime Laboratory. It is important to note that this differs from the protocol for toxicology kits, all of which are transferred to the Massachusetts State Police Crime Laboratory, regardless of the location of the alleged assault. The investigator must ensure that the kit is refrigerated and that the chain of custody is maintained.
  - a) Both in Massachusetts and by Federal requirement, evidence is collected even if the patient decides not to report the sexual assault to the police.
  - b) In Massachusetts, it is the responsibility of the police department of jurisdiction where the assault occurred to pick up and transport the evidence to the crime lab, in a timely fashion, whether or not the case is reported at the time of the exam.
  - c) If there are extenuating circumstances associated with the investigation or legitimate reasons the local police of jurisdiction cannot transport the sexual assault kit and/or evidence, the Massachusetts State Police should be contacted for the transport of evidence.
  - d) Unreported cases may be reported at a later date. MSAECKs are retained for indefinitely, during which time the victims may decide whether they want to report the assault to the police and have the evidence analyzed.
  - e) In the event the alleged sexual assault occurs out of state, but the forensic exam is performed in Massachusetts, the closest Massachusetts State Police barracks should be contacted for the transportation of the kit and any associated evidence to the crime lab.

### k. *Suspect Evidence Collection*

- 1) Through arrest, consent, or search warrant, investigators may have an opportunity to collect evidence and/or biological specimens from the suspect's body or clothing. If performed before the degradation of biological material, the examination may link the suspect to the crime. Through accurate documentation



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and collection of blood, hair, nails, wounds, body fluids or other evidence, examination of the suspect may corroborate the victim's account of the assault.

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

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

i. *Chain of custody*

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

m. *Combined DNA Index System (CODIS)*

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

### P. **ADDITIONAL INVESTIGATIVE TOOLS AND RESOURCES**

Below are some additional considerations which may assist in corroborating the statements and facts you gather throughout the course of your investigation.

#### 1. **Electronic Evidence**

- a. The use of technology, particularly cell phones, in our daily lives has expanded immensely over the last ten years. Cell phones and other devices such as tablets and laptops have become a primary method of communication between people. In addition to both verbal and written communications, people also use these devices daily to capture and store images, post information about their activities and whereabouts on social media, and keep lists of contacts and acquaintances. These devices hold a

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great deal of information which, if obtained and recovered properly, may prove to be relevant and powerful evidence in your investigation.

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

### 2. Electronic Monitoring - Probation

- a. The Massachusetts Probation Service Electronic Monitoring (ELMO) provides a critical level of services designed as an alternative to incarceration. ELMO uses technology as a tool for monitoring probationers, parolees, and litigants. This 24

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hour/7 day a week operation provides structure, accountability, and monitoring of the participants – with the goal of changing behavior, ensuring compliance of court orders, and enhancing public safety in the community.

- b. Law Enforcement agencies may request ELMO information, by submitting a written request to [Elmo.Inforequests@jud.state.ma.us](mailto:Elmo.Inforequests@jud.state.ma.us) from a verifiable Law Enforcement agency email address. Probation typically responds within 24 to 48 hours. Please note that ELMO will supply GPS information “For Investigative Purposes Only”.

- c. *Immediate Need*

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

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

### 3. Court Orders/ Grand Jury Subpoenas

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

### 4. Photo Arrays

If you have an identification case, be sure to conduct identifications either through photo arrays, line-ups, or show-ups. All three methods have strict legal requirements which should be adhered to in order to ensure admissibility in court. If you are unsure of the proper identification protocols, consult with a supervisor or with the District Attorney’s Office of jurisdiction for specific department guidelines for photo array protocol. Photo Arrays procedures may also be found in General Order 13.2.2 Eyewitness Identification.

### 5. Polygraph Examinations

- a. The use of polygraph examinations can be an effective and reliable tool to include or exclude an individual as a suspect in criminal investigations. The use of polygraph examinations for victims is strongly discouraged except in cases where there is a reasonable basis to believe the victim is making a false claim or report. In addition,

the use of or the suggested use of a polygraph examination should not be used as a condition of proceeding with an investigation, charge, or prosecution of an offense.

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

### 6. Sex Offender Registry Board (SORB)

- a. The mission of the Sex Offender Registry Board is to promote public safety through educating and informing the public in order to prevent further victimization. This is accomplished through registering and classifying convicted sex offenders by risk of re-offense and degree of danger, and making identifying information of those offenders who live work and/or attend institutions of higher learning in the communities of the Commonwealth available to the public.
- b. The SORB is the state agency responsible for compiling and maintaining a database of convicted sex offenders and classifying each offender. The SORB is an important partner with local law enforcement to ensure sex offender registration and compliance enforcement. The SORB is also an excellent resource for law enforcement offering investigative support. They have access to records and information regarding offender histories which may not be available through traditional database searches (e.g. Triple III, BOP etc.).

### 7. Outside Documentation

- a. The use of outside agency documents and reports can be powerful circumstantial evidence to corroborate your investigation. Consider checking the following sources for information regarding your suspect or possible suspects:
  - 1) Board of Probation record (BOP);
  - 2) Interstate Identification Index (III) (federal Criminal History Record Information);
  - 3) Incident reports from other arrests and/or law enforcement involvements;
  - 4) Field interrogations reports (FIO reports);
  - 5) Employment records;
  - 6) Military records;
  - 7) Educational documents;
  - 8) Passports and travel documents;
  - 9) Probation/Parole records;
  - 10) Financial records;
  - 11) 911/Turret tapes;
  - 12) Outside video;
  - 13) Professional boards (e.g. medicine, education);
  - 14) Department of Transitional Assistance;
  - 15) Department of Children and Families;
  - 16) Disabled Persons Protection Commission;

- 17) Rental information; and
- 18) GPS, and electronic monitoring transponders.

b. The above is not an exhaustive list. The limits and constraints of investigative tools and resources are only as limited as your imagination, so utilize all available resources. Assemble as comprehensive and professional investigative package as possible. If you are unsure of the proper protocols to obtain any of the above information, you should consult with a supervisor or with the District Attorney's Office of jurisdiction.

### **Q. OTHER INVESTIGATIVE CONSIDERATIONS**

#### **1. High Profile Investigations**

Sexual assault investigations cross all social, economic, and professional boundaries. Because of these intersections, you may be placed in delicate or difficult situations. Examples include investigating police officers, public officials, or individuals who hold positions of power. Your job is to investigate and report the facts as you find them. Your ability to be impartial and ensure the victim is treated fairly and with dignity is paramount. If an investigation creates a real or perceived conflict, the best practice may be to have the case handled by an independent and detached party. Consult departmental policy, your supervisor, and/or the District Attorney's Office of jurisdiction when such situations arise.

#### **2. Media Relations and Interaction**

- a. When addressing the media regarding any criminal investigation or pending criminal case, it is recommended that you consult your department guidelines and ensure that the information contained in the log is appropriate for public dissemination. Coordinate any press releases with your District Attorney's Office of jurisdiction where warranted or as prescribed by departmental policy.
- b. Aside from the legal restrictions that prohibit the release of information regarding victims of sexual assault, there are often a myriad of other issues and concerns which may be present for the victim. These include the ongoing threat of and/or risk of continued domestic and sexual violence or retaliation. Safety risks may require additional layers of protection and precaution by law enforcement to protect the identity and location of the victim.
- c. There are several Massachusetts General Laws which impact public dissemination and media disclosure. The primary statute which affects law enforcement is MGL c 265, § 24C. This statute states that the portion of records of any court or any police department in the Commonwealth or any of their political subdivisions which contain the name of a victim in an arrest, investigation, or complaint for rape or assault with intent to rape, shall be withheld from public inspection, except with consent of a justice of such court where the complaint or indictment would be prosecuted. Said portion of the court record or police record shall not be deemed to be a public record.

- d. In addition to the above, it is also important to be cognizant of the added legal restrictions surrounding the release of information regarding juveniles.

### 3. Mandated Reporting

Mandated reporters are individuals who, when acting in their professional capacity, learn about abuse and/or neglect or suspect abuse/neglect and are by law, required to report their suspicions to the appropriate protection agency. Oral reports should be immediately filed and a written report should follow within 48 hours. Police officers are mandated reporters.

- a. *Vulnerable Populations:* There are four agencies charged with the protection of certain vulnerable groups of individuals under Massachusetts law. These agencies are:
  - 1) **Department of Children and Families (DCF)** which acts to protect children under the age of 18;
  - 2) **Disabled Persons Protection Commission (DPPC)** which acts to protect persons with disabilities between the ages of 18 to 59 years old who as a result of the disability is wholly or partially dependent on others to meet his/her daily living needs;
  - 3) **Executive Office of Elder Affairs (EOEA)** which acts to protect elders age 60 and older; and
  - 4) **Department of Public Health (DPH)** which acts to protect individuals of all ages residing in hospitals and long term care facilities.
- b. Mandated reporters play an important role in preventing continued abuse of existing victims and in preventing abuse of potential victims. The law provides mandated reporters with immunity from civil or criminal liability as long as the report was made in good faith. See appendix for a detailed list of mandatory reporting requirements.

## R. SEXUAL ASSAULTS AT COLLEGES AND UNIVERSITIES

### 1. Overview

- a. Sexual assault on college campuses is a widespread, growing problem. According to the 2014 White House Task Force report on the issue of campus sexual assault in the United States, one in five women who attend a college or university will become a victim of sexual assault. Issues pertaining to the institution's legal requirements, physical environment, and campus culture can present unique challenges for the criminal investigation.
- b. Procedurally, investigators need to be aware of legal requirements that colleges and universities are bound by when they become aware of complaints of sexual assault. The Jeanne Clery Disclosure of Campus Security Policies and Campus Crime Statistics Act (Clery Act), the Violence Against Women Reauthorization Act of 2013

(VAWA), and Title IX of the Educational Amendments of 1972 (Title IX), all contain requirements for certain actions, such as notice to the campus community and sometimes even a concurrent, judicial investigation, that need to be undertaken by the institution in response to these complaints. Becoming familiar with and understanding these requirements can help prevent conflict between the criminal investigators and the school administration.

- c. Environmentally, a college or university can be very different from the city or town where it is located. On-campus residence halls and buildings are typically high-density areas, which can increase the likelihood of locating witnesses. Many campuses also utilize technology such as surveillance cameras and access-control devices, which can contain data useful to the investigation. In addition, the campus environment is likely to provide robust support resources for the victim/survivor. Therefore, a working knowledge of these resources can help the investigator to assist the victim/survivor through the investigation process.
- d. Culturally, the campus environment has a typically youthful population, many of whom are just learning to live day-to-day without direct parental supervision. This adjustment often leads to high-risk behaviors such as increased substance abuse, a high susceptibility to peer pressure, and an over willingness to trust other community members. Substance-facilitated sexual assaults occur at an alarming rate at colleges and universities with approximately half of all rapes experienced by college students involve alcohol use, knowingly or unknowingly consumed by perpetrator or victim.

### 2. Jurisdiction/Collaboration

- a. The structural makeup of Law enforcement at colleges and universities can take many forms. Some campuses maintain their own police departments with full-time, fully-sworn officers who are trained and equipped to handle incidents of sexual assault. Others will maintain a security department that will provide a presence to protect the campus, but will rely on the municipal police or the Massachusetts State Police to conduct criminal investigations. It is essential for investigators to know exactly where the jurisdictional boundaries for each incident lie and who will be the lead in the investigation.
- b. It is recommended that the local police departments establish a Memorandum of Understanding (MOU) with the colleges/universities in their area. The purpose of these MOUs is to clearly establish expectations and responsibilities between the campus administration, campus law enforcement, and city/town/state law enforcement. An MOU regarding sexual assault investigations should include, but not be limited to the following:
  - 1) A clear definition of jurisdictional boundaries
  - 2) An established system of information sharing between the involved entities regarding reports of sexual assault
  - 3) A response plan for incidents of sexual assault, including identifying the primary responders as well as expectations for assistance



- 4) A plan for providing/obtaining support resources for the victim
- c. Having a clearly-established plan beforehand reduces the likelihood of conflict between the criminal investigators and the institution and will facilitate a smoother investigation.

### 3. Institutional Responsibilities

- a. Federal Laws such as The Jeanne Clery Disclosure of Campus Security Policies and Campus Crime Statistics Act (Clery Act), the Violence Against Women Reauthorization Act of 2013 (VAWA), and Title IX of the Educational Amendments of 1972 (Title IX), are what establish best practices and responsibilities for colleges and universities when dealing with reports of sexual assault. Failure of the institution to comply with these laws can result in hefty fines and loss of federal funding.
- b. Among the many requirements set forth by these laws are:
  - 1) Timely notification to the community if the reported crime is believed to cause an ongoing risk.
  - 2) In cases where the suspect is a student or employee of the institution, the institution is obligated to take immediate mitigating action to protect the victim and any other member of the community. This can include re-location, suspension, or expulsion.
  - 3) A resolution process must be established for investigation and adjudication of offenders by the rules of the institution. This will include a hearing process during which both suspect and victim may be interviewed regardless of the status of any ongoing criminal investigation.
  - 4) Yearly requests for local police departments to provide crime data on a variety of specified crimes, including sexual assault.
- c. Some of these requirements pose unique circumstances for investigators. For example, there can be several legitimate reasons to control the disclosure of information related to ongoing investigations, yet federal law requires the institution to inform their community (see above). It can also be challenging for police to get a statement from suspects who feel that they are already being “punished” by being relocated from their residence hall or suspended from their institution.
- d. These challenges can often be overcome by establishing a cooperative relationship with the institution (and the establishment of MOUs as discussed in the preceding section). An investigator must be aware that reports of sexual assault will trigger mandatory responses from colleges and universities and it is best for the victim and the investigation to avoid conflict whenever possible. Working with the institution, it can be possible to satisfy the Federal requirements without negatively impacting the investigation.

### 4. Potential Advantages of the College/University Environment

- a. Despite the aforementioned challenges that can come with conducting a sexual assault investigation on a college campus, there can also be a variety of advantages to conducting an investigation within that environment. Knowledge of these can assist both the investigator and the victim during the investigative process.
- b. If your victim is a student at a college/university, the institution will be able to offer them assistance in coping with the assault. Some of the resources available to students can include:
  - 1) No-contact orders
  - 2) Counseling services
  - 3) Re-location from their current residence hall
  - 4) Academic accommodations, such as a change of classes or re-scheduling of tests
  - 5) Ability to temporarily withdraw from the institution, without penalty, while under the stress of the investigation/prosecution
- c. Each institution should have a staffer assigned as their “Title IX Coordinator”, as well as an office that oversees the campus resolution. These are the offices that will be assisting victims of sexual assault; they should be included in any MOUs and would be the people who your victim would most likely be in contact with to obtain services through the institution.
- d. In addition to having the ability to directly provide resources to the victim, the college campus can typically offer advantages to an investigator in terms of information and technology. Among these may be:
  - 1) Biographical/contact information for involved parties, including local addresses, cell phone, and email contact\*
  - 2) Vehicle information if one of the involved parties has a vehicle with an on- campus parking pass
  - 3) Video surveillance systems
  - 4) Access control systems that can indicate who/when gained access to a building or area
- e. \*Some information held by the institution is protected under the Family Educational Rights and Privacy Act (FERPA). Methods for access to the records/technology listed above should be clearly established in your department’s MOU with the institution.

### 5. Campus “Culture”: Considerations for the Investigator

- a. The average campus environment consists of a resident student population that is predominately between the ages of eighteen and twenty-two. Many of these students

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are living away from their parents or guardians for the first time. These factors, especially when combined with stereotypes of campuses as a “party” atmosphere, can lead to high-risk behaviors concerning substance abuse and sexual activity.

- b. Investigators who are involved with sexual assault cases on college campuses should be aware that the following factors may come in play:
- 1) Roughly half of all rapes experienced by college students involve alcohol use knowingly or unknowingly consumed by perpetrator or victim. If the perpetrator or victim report having attended a social event or party prior to the criminal act, the investigator should consider questioning others who were at that event in regards to what beverages/substances were provided to patrons, and if anyone reported unusual circumstances as a result of consumption.
  - 2) The intentional use of drugs or alcohol to impair the victim’s ability to consent is a practice that is utilized during both stranger and acquaintance assaults. If the investigation reveals, in a timely manner, that the victim may have ingested a substance that contributed to the assault, the investigator should consider requesting a drug screening.
  - 3) Drinking games, commonly played at social events on college campuses, can be a way for victims to consume more alcohol than they can handle without realizing it. Games such as “beer pong”, “quarters”, “flip cup”, and “King’s cup”, among many others, can contribute to rapid intoxication and impair a victim’s capacity to give consent. These games can also be used by more experienced drinkers to incapacitate those who have a lower tolerance for alcohol.
  - 4) Colleges and universities typically foster a strong “community” atmosphere which can lead to a false sense of security. Leaving doors and windows unlocked, allowing strangers access to a room, etc. can be seen as “irresponsible” behavior but are often common practices when students feel that they can trust others simply because they are fellow students.
- c. Colleges and universities can prove to be challenging places to conduct a sexual assault investigation, especially when not prepared for the nuances of the environment. Gaining knowledge of the institution’s legal and procedural requirements, as well as an understanding of the institution’s resources and aspects of student life, can help navigate this environment and improve the chances for a successful investigation. This knowledge is best gained beforehand; opening channels of communication with the institution and establishing a well-written Memorandum of Understanding should be a priority for police agencies who will conduct investigations within the campus environment.

Approval:

  
\_\_\_\_\_  
Chief of Police

02/03/21  
Date