Successfully Investigating Acquaintance Sexual Assault
A National Training Manual for Law Enforcement

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The Preliminary Investigation

Acknowledgments

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Introduction

When first responding to the scene of the crime, officers should use professional judgment and follow state law and department policies and procedures in determining a proper response to the radio call. Officer and victim safety must always be the first priority.

Because officers are expected to have a general understanding of the techniques for conducting a preliminary investigation, the following are intended to represent only those aspects of the preliminary investigation that are unique to sexual assault cases.
Some departments have developed a reference card for officers to keep with them, so a brief summary of departmental protocol is available for use on a sexual assault call. Such a card could be developed on the basis of this module, as well as state law and local policy.

**Initial contact with communications**

Communications personnel should be trained to ask whether a sexual assault victim has bathed, douched, urinated or otherwise altered her physical self, or engaged in any activity that may have contaminated or destroyed valuable evidence such as semen, saliva, hairs, etc.

- If the victim states that she has not engaged in any of these activities, it is important for the call taker to request that the sexual assault victim not do so and clearly explain the reason for the request.

- If, however, the victim has engaged in any of these behaviors it is important to make sure that she does not feel stigmatized for having done so. Communications personnel should thus gently explain how to avoid further contaminating evidence.

- Although it is routine in many jurisdictions to save a copy of all 911 communications, officers should make sure that a copy of the tape is available for any sexual assault case.

  See the module on communications for appropriate procedure by call takers and dispatch personnel.

**Avoid making judgments about the victim or case**

Police and communications personnel should refrain from judging a sexual assault victim or case based on information obtained from the victim or reporting party. Every victim responds differently depending on their own background, personality and the circumstances of the assault and so it is impossible - and inappropriate - to judge the validity of the claim based only on this preliminary information. (Refer to the module on "Victim Impact" for a complete discussion on common reactions and experiences of women who have been sexually assaulted.)

- People from every profession have biases and stereotypes that they often unintentionally begin to process when information is received. For example, if the victim doesn't sound "hysterical enough" some police or communications personnel might question whether the assault actually happened.

- Be aware of this very dangerous tendency to prejudge victims and cases, and make every effort to keep an open mind when responding to evaluate a sexual assault.

The bottom line is this: regardless of your "gut" feelings regarding a particular victim or case, proper investigative procedures must be followed for every sexual assault reported.
Responding to a hot call

When responding to a hot call and approaching the scene, be alert to people, vehicles, or objects that may be connected to the crime. Evaluate the scene for possible threats. For example, determine whether the suspect is still in the area, whether weapons were/are present, whether witnesses are hostile, etc. Follow departmental policy and maintain the primary focus on victim and officer safety at all times.

Responding to a delayed report

As we have stated repeatedly, most victims delay reporting their assault to police - if they report at all. For this reason, it is imperative that the responding officer be patient regarding any hesitancy by the victim.

• On the one hand, it is important to document the reason for the delay (e.g., shame, embarrassment, fear, etc.).

• However, officers must be sensitive to the fact that questions about the delay may cause the victim to feel you are blaming her or that you don't believe her.

  Keep in mind that many state laws allow victims to report to police up to several years after the sexual assault. For this reason, officers must be familiar with the statute of limitations in their state for each specific crime classification; in many cases, this will depend on the age of the victim at the time of the assault.

Investigative approach for delayed reports

Always remember that a delayed report should not deter a thorough investigation.

• For example, determine who the victim first told about the sexual assault. Outcry witnesses, spontaneous statements, or excited utterances can all be critical to corroborating the victim's allegations.

• Make sure you ask the witness exactly what was said by the victim as well as the victim's appearance and demeanor at the time of the disclosure.

• Determine whether the victim still has the clothing worn during or after the assault.

• Evaluate the need for a search warrant of the suspect's home if that is the location of the assault.

• Question the victim to determine if she has knowledge of any photographs or videotape that might have been taken during the assault.

• Also ask the victim if the suspect might have taken something during the assault, or if the victim might have left something in the suspect's home (e.g., an earring or panties).

• Question the victim about anything that might corroborate the victim's report.
Standard elements of the preliminary investigation

Ensure that the victim is safe

Evaluate the need for emergency medical care. If emergency medical care is needed, paramedics will transport the victim to the nearest trauma facility. Reassure the victim that she is safe and that her physical and emotional well-being is a top priority.

Make initial contact with the victim

During the initial contact with the victim, make every effort to ensure that she is as comfortable as possible. Avoid standing over the victim during this initial contact. Use simple terminology and avoid cop/legal jargon. Be sensitive of your body language and watch the victim's body language for signs of distress. Avoid reacting negatively to statements made by the victim. Use the victim's own terminology and clarify the meaning of slang terms for your report.

During both initial and follow-up contact with the victim, follow guidelines provided in the module on victim interviews.

Establish that a crime has occurred

At this time, only minimal information is needed to confirm that the victim was sexually assaulted. However, you need to learn enough information to establish the elements of the crime(s), identify witnesses, suspect(s), potential evidence, and the crime scene. Again, consult the module on victim interviews for guidelines on how to professionally elicit such information.

If the suspect is present

If the suspect is present (more likely when responding to a hot call than a delayed report) and he has been identified, detain him and remove him from the scene. Determine if the offender denies having sex with the victim or whether he admits to having consensual sex. It is important to discover this information as soon as possible since it will determine the investigative strategies you need to use to properly investigate the sexual assault.

Consult the module on offender dynamics and interview techniques for suggestions on how to handle these contacts.

Determine the "type" of sexual assault committed

As discussed at length in the module in law and investigative strategy, it is critical for officers to determine which "type" of sexual assault has been committed because this will every aspect of the investigation.

• For example, one type of sexual assault is perpetrated when the victim is unable to consent to sexual activity because she is unconscious, asleep, or comatose.
In these cases, your investigation will focus on information that corroborates the victim’s level of intoxication. For example, you would want to document whether the victim was vomiting or whether witnesses last saw the victim being carried out of the bar by the suspect. (For further information, see the module on drug facilitated sexual assault).

- A second "type" of sexual assault occurs when the victim is incapable of giving consent because of a mental disorder, developmental disability, or physical disability.

This type of case requires that the investigating officer establish whether the victim has the intelligence capable of understanding the act, its nature, and its possible consequences. The investigation must also support the fact that the offender knew the victim was incapable of giving effective consent at the time of the assault. (For more information on this topic, see the module on special populations, including victims with developmental and other types of disability.)

- The most common form of reported sexual assault is forcible, meaning that the sexual acts were perpetrated using force or threat.

In this type of case, the officer will need to document the presence of force or threat during the sexual activity. It is important to get statements from the victim regarding what she was thinking and feeling during the assault, to demonstrate that she submitted out of fear and did not consent.

For an expanded discussion of the various types of sexual assault, the defense that is most likely to be raised, and the type of evidence required to overcome this defense - see the module on law and investigative strategy.

Officers must clearly understand that the investigation of each "type" of sexual assault requires corroboration of an entirely different nature. In other words, the information needed to prove the elements required for these investigations is unique to that specific crime.

Anticipate a defense based on identification versus consent

In addition to these various "types" of sexual assault, cases also differ in whether the suspect is likely to raise a defense based on identification or consent. For this reason, it is important to determine as soon as possible whether the suspect is likely to deny sexual contact with the victim or claim that she consented.

- Even if the suspect invokes his constitutional right to remain silent, officers must evaluate the circumstances of the assault to anticipate the suspect’s defense strategy.

- For example, officers can look at factors such as the relationship between the victim and the suspect, whether evidence links the offender to the victim, whether a witness can link the offender to the victim or scene, and whether evidence or witnesses can corroborate a lack of consent.

Again, consult the module on law and investigative strategy for a discussion of how an anticipated defense strategy affects the investigation of sexual assault.
Request additional resources if possible

When responding to any sexual assault crime, do not hesitate to request additional resources. Officers must be able to assess personnel and equipment needs to ensure thorough and efficient crime scene processing and evidence collection.

- A single officer cannot effectively manage the scene, witnesses, the victim and suspect(s) in a sexual assault case without assistance.

- Consider requesting assistance from supervisors, detectives, K-9 Units, air support, outlying law enforcement agencies and crime lab personnel.

Depending on the size of your agency and resources, consider using fire and paramedics to record license plates of vehicles, stand by with the victim, or secure a scene until the appropriate personnel arrives to assist. Advise responding officers how to approach the scene to prevent contamination of evidence.

Contact victim advocacy services

As soon as practical, officers should contact the victim advocacy services in their jurisdiction. In the majority of cases in which the report is delayed, this contact can and should be made almost immediately - especially if the victim has reported to a hospital or police department.

With a hot call, some victim advocacy services will report to the crime scene to assist the victim throughout the preliminary investigation. In other cases, advocates do not respond to the crime scene but can meet the victim at the hospital or police department. Depending on the type of assault and the length of time the victim will have to remain at the scene to assist with identifying suspect(s) and evidence.

- If victim advocates are unable to respond to the crime scene, consider utilizing a crisis interventionist, police chaplain, emergency medical technician or other trained professionals/resources within your community.

- When contacting victim advocacy or other professional services, assess any special needs of the victim, such as restoring communication or mobility, or the need for an interpreter. Be sure to notify the advocate of any special needs the victim might have, such as language differences or difficulties, mental or physical impairment, the need for a male advocate, etc.

Identify and secure the crime scene

Identify and secure the crime scene(s) to ensure that evidence is not contaminated or destroyed. Limit crime scene access to essential personnel and record identity and information for anyone who enters or leaves. Also determine whether there is a secondary crime scene.

- As an example, if the victim left the actual location of the assault, this secondary location will likely have evidentiary value. The victim might have left the scene of the assault and gone home to immediately change clothes.
• In this case, the clothing the victim put on following the assault -- especially clothing worn closest to the genital structures (e.g., panties, nylons, pants, and shorts) -- can be more important for producing evidence than the clothing worn at the time of the assault. (These must be collected in paper bags, not plastic. See the supplementary materials on evidence collection and storage.)

Of course, the victim's body is always one crime scene. Since evidence deteriorates as time passes, victims should be transported for a forensic examination as soon as practically possible. This forensic examination must never be conducted by the officer; it is conducted by medical personnel, following guidelines outlined in the module on the forensic examination.

In addition, the clothing left at her house and the actual scene of the assault must also be identified and processed for evidence. Crime scenes must be processed exhaustively, because once a crime scene is abandoned there is the potential for evidence to be lost or destroyed. Furthermore, a search warrant may be necessary for further access.

Finally, when identifying and securing crime scenes it is important to remember not to overlook vehicles. If the assault occurred inside a vehicle the vehicle should be impounded for later processing by your crime laboratory (depending, of course, on departmental policy).

**Evaluate the need for a search warrant**

Search warrants should be obtained if:

• The assault took place in the suspect's home and written consent cannot be obtained.

• Probable cause has been developed in the case of a stranger assault and you believe you can locate clothing the suspect might have worn at the time of the assault. Items to list in such a search warrant would include trace evidence, masks, paraphernalia such as foreign objects, lubricating substances and items used for bondage, videos, pictures, weapons, property or souvenirs the suspect might have taken from the victim.

• A drug was used to facilitate the assault and you believe that evidence of the drug or its production might be found in the suspect's home, car, place of employment or school locker. This might include ingredients used to make the drug such as GHB or literature about the effects of a drug and its use as a "date rape drug."

• Depending on your jurisdiction, you may need a search warrant to conduct a sexual assault examination with the suspect and to obtain necessary biological reference samples such as blood and saliva.

Do not hesitate to obtain the appropriate warrants needed to complete a proper search for all relevant evidence.

**Identify and collect potential evidence**

Potential evidence in a sexual assault case includes:
• Crime scene photographs
• Suspect and victim clothing
• Biological evidence, (e.g., blood, semen, saliva from the victim and suspect)
• Materials from which biological evidence might be collected (e.g., bedding, towels, carpet, sofa cushion)
• Other evidence (e.g., discarded items, articles left at the scene, condoms, foreign objects)
• Trace evidence, (e.g., hairs, fibers, debris)
• Fingerprints, footprints, tire tracks, tool marks.

Although most of the evidence listed above is traditionally used to identify an assailant, note that some items may also be used to document force or threat.

• Both the victim and suspect's clothing should be examined for tears or signs of force.
• Blood can also be used to corroborate the use of force, although it is traditionally thought of as identification evidence.

*Evidence collection in a consent case*

If the victim was forcibly assaulted and you anticipate a consent defense, your investigation should focus on collecting evidence to corroborate the use of force or threat to perpetrate the assault. For example, the officer should determine:

• If there is evidence of forced entry or disturbance, such as an overturned table or broken glass
• Whether the victim called for help, and whether anyone heard her pleas for help
• Whether there was loud music playing, and if so, how loud it was
• Whether there was an obstacle preventing witnesses from seeing the assault, if it appears that witnesses should have been able to see something
• Whether the victim was injured in any way
• Whether the suspect was injured

*Photograph the crime scene*

Photographs and/or video documentation is critical to depict the scene as you first saw it, including the condition and location of recovered evidence. Such visual documentation is also especially helpful to the prosecutor in court.
• Make sure the crime scene is photographed prior to processing.

• Prepare a detailed diagram, including the location of potential evidence.

• Many detectives like to have Polaroids for investigative purposes and to immediately have available for the prosecuting agency. However, 35mm photographs should always be taken in addition to any Polaroids.

• A video camera is also helpful, especially in the case of a complicated or extensive crime scene.

*Identify and isolate any witnesses*

If there are numerous potential witnesses -- for example at a fraternity party, RAVE party, or night club -- assign one officer to monitor the witnesses in order to prevent them from talking to each other and to collect some form of identification from each person present. Record names, addresses, telephone numbers and other contact information.

Keep in mind that although there will rarely be eyewitnesses to the sexual assault, there may be any number of corroborating witnesses, such as a neighbor who heard a scream, or the gas station attendant who noticed the victim crying in her car.

• Also be sure to identify and document the names of any witnesses who might have left the scene prior to your arrival.

It is especially important that the victim be questioned about who she first told about the assault. This person(s) must be identified and interviewed. These outcry witnesses can be used to boost the credibility of the victim, especially in the case of a delayed report or in a consent defense.

*Conduct a preliminary interview with the victim*

Once the scene is manageable and the victim is as comfortable as possible, conduct a preliminary interview with the victim. This interview should take place in privacy and without distractions.

• If the victim would like to have a rape crisis advocate or support person with her, every effort should be made to provide such support.

• Please see the module on victim interviews for more detailed information and guidance on how to successfully question the victim about the assault.

Make sure the victim understands you might ask her questions to which she does not know the answer. Reassure her that this is okay and she can tell you when she doesn’t know or if she needs time to think about the answer. Your questions will most likely include the following:

• Did the suspect ejaculate? If so, where? (Explain that this is not an element of the offense but indicative of where evidence might be located.)

• Did the victim or suspect wipe their genitals with a tissue, sheet or item of clothing?
Did the suspect wear a condom?

Was a lubricant used? If so, did the suspect bring his own or was it the victim's?

Did the victim scratch or bite the suspect? (Reassure the victim that you are not blaming her if she did not actively resist, but you need to know what to look for during the suspect examination if the suspect is apprehended.)

Were drugs or alcohol used to facilitate the sexual assault? If so, a blood and urine sample should be obtained as soon as possible.

Does the victim know the suspect?

If the suspect was a stranger, note the length of time the victim was exposed to him and the conditions under which this contact took place. For example, determine what kind of lighting was present, whether the suspect wearing a mask or a disguise, whether the victim's head or eyes were covered at any time during the assault, whether the suspect attacked her from behind, etc.

If the suspect fled the scene, how did he leave and what was his last direction of travel?

Did the suspect take anything belonging to the victim?

Will the victim be returning to her home or where she can be contacted by detectives?

When documenting the victim's statements, do not sanitize them. Preserve them -- they are important. For example, if she says, "that bastard John Dollard did this to me!" record this statement verbatim. Do not indicate that "the victim identified John Dollard as the suspect."

Document all facts and observations, including the physical and emotional condition of the victim. Be specific when describing the condition of the victim. For example, indicate that the victim was tearful and trembling, rather than just "upset," or that the victim’s shirt was torn and shoe was missing rather than noting that she appeared "disheveled."

Consider the victim's physical and emotional well being

Make sure to offer transportation for the victim to and from the hospital. Never leave the victim stranded.

Always let the victim know you are there to help her. Although you are charged with being an unbiased fact finder and historian, it is helpful and appropriate for you to tell the victim that you are sorry this happened to her.

When attempting to establish the elements of the crime (e.g., force or threat) ask open-ended questions such as "What were you thinking or feeling?" This type of question is better than one that conveys judgment, such as, "Why didn't you scream, fight or call the police?" Be patient and clear when asking questions.
Although you will be extremely busy coordinating the crime scene and the investigation, take a few moments to explain the procedures to the victim. The use of a multi-disciplinary team is extremely helpful for this purpose because an advocate can provide emotional support to the victim and take the time to explain what you are doing and why.

**Assess the need for forensic examination of the victim**

First responders must determine whether a forensic sexual assault examination should be obtained for the victim. The following are offered as guidelines for this assessment, however, officers should of course refer to departmental policies and community protocol.

- A sexual assault examination should be obtained if the penile/vaginal penetration, penetration with a foreign object, or sodomy occurred within 72 hours of the report.

- A sexual assault examination should be obtained if the assault was reported within 12 hours for fellatio, and longer for cunnilingus, depending on the amount of force and whether the victim has bathed or other acts occurred.

- Do not hesitate to authorize an examination beyond 72 hours if the victim is complaining of pain or bleeding. Also consider the type of sexual assault and the age of the victim when assessing the need for forensic examination (e.g., prepubescent or post menopausal, the victim’s prior sexual experience, and the amount of force used by the suspect).

The examining nurse or physician should be briefed about the details of the assault as you have come to know them. You should also arrange for a briefing with the same nurse or physician after the examination.

- Make sure you compare notes with the nurse or physician as to the type of assault reported. Many victims will disclose acts to medical personnel (e.g., sodomy or oral copulation) that they might not immediately share with law enforcement out of embarrassment. If additional information is revealed, make sure you discuss this new information with the victim.

The examiner should alert you of any obvious forensic findings, such as carpet fibers, or other debris that might be connected to your crime scene. Finally, be sure to carefully document the findings of the examination.

   Even if a forensic examination is not authorized by law enforcement, encourage all sexual assault victims to get medical attention, including testing for pregnancy and sexually transmitted diseases.

**Identifying and locating the suspect**

If the suspect is outstanding, broadcast the crime committed, the identity or description of the suspect including any vehicle involved, which direction the offender was last seen headed, and whether the suspect is known to be armed.
If the suspect has not been identified but is believed to be in the area, determine whether you will conduct a curbstone line-up (show up). If a curbstone line-up is conducted, make sure the victim is offered some distance from the suspect, as she is likely to feel frightened and/or threatened by the procedure.

- As an example, have the suspect stand in front of the wall to a building. Place the victim in the front seat of a patrol car.

- An officer must be present to record the exact statements of the victim at the time of the line-up, for example: "That's him. I'm absolutely positive," or "I think that's him but I'm not totally sure."

- Note the date and time of the identification, the distance between the victim and the suspect, the lighting, and any obstructions that are present. Also note the length of time it took for the victim to make a positive identification.

Officers need to be cognizant of possible attacks to the show-up identification, to address these concerns and ensure that appropriate procedures are followed. For example, officers must be aware of the potential ramifications of any comments made to the victim about the person in custody, whether the suspect was in handcuffs or in the back seat of a patrol car, etc. Depending on the circumstances of the assault, handcuffs might be appropriate, however, officers need to be aware of the suggestibility of such acts and document the reasons for them in their report.

**Determine whether an immediate arrest should be made**

Depending on the policies of your department and prosecuting agency, the following factors need to be considered when determining whether an immediate arrest should be made:

- The type of assault
- Protection of the victim
- Potential flight risk
- Protection of the public
- Destruction of evidence

When the report is delayed it is likely that much of the physical evidence will have deteriorated and witnesses will be unavailable at the time of the report.

- For this reason, it may be advisable to postpone an arrest in a case of delayed reporting, in order to allow time for locating and interviewing any witnesses.

- In these cases, it is also beneficial to consider the benefits of a non-custodial versus custodial interview (see the module on suspect interviews).
Finally, postponing an arrest can allow the officer to determine whether a search warrant or other tactics (such as a pretext phone call) could be used to develop incriminating evidence. (Again, see the module on suspect interviews for additional tactics and more specific guidelines.)

**Conduct a preliminary suspect interview**

If the suspect has been arrested, read him his Miranda rights and obtain a statement about what happened. In the initial stages of the investigation, this should be a non-threatening interview.

- Your purpose should be to obtain as detailed a statement as possible.
- This means you should not be doing all the talking or attempting to convince the suspect how much you know about what really happened.
- Listen and document.

Depending on the policies of your department and prosecuting agency, consider audio taping the interview in the field. See the module on suspect interviews for further information.

**Assess the need for forensic examination of the suspect**

Immediately following the preliminary suspect interview, determine whether a forensic sexual assault examination should be obtained. Consider the length of time since the assault occurred, the nature of the assault, whether the victim believes she injured the suspect, and the likelihood that evidence, cells, or fluid were transferred from the victim to the suspect.

- Regardless of the length of time, DNA reference samples (i.e., blood and or saliva) should be obtained from the suspect.
- Depending on your state’s laws and departmental policy, a search warrant may be needed prior to the suspect's forensic examination.

Many departments find it helpful to develop a "checklist" or other guidelines to assist first responders in the preliminary investigation of sexual assault. Two examples of such forms are provided in the appendix. The first is from San Diego Police Department and the second is from Denver Police Department.