

First Edition

***North Dakota
Model
Law Enforcement
Sexual Assault
Policy
September 2011***

Developed in collaboration with the following grant partners:

North Dakota Department of Health
Minot State University, Rural Crime and Justice Center
University of North Dakota, Tribal Judicial Institute
North Dakota Council on Abused Women's Services /
Coalition Against Sexual Assault in North Dakota
Multi-Disciplinary Advisory Committee from across North Dakota

Sexual assault affects victims of all ages, races, ethnicities, religions, abilities and sexual orientations. Its impact on victims can be life-long and can touch individuals, friends, families, workplace and communities.

This policy is intended to be adapted by individual agencies and presents best practice responses. Technical assistance is available through the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota (NDCAWS/CASAND) to assist law enforcement agencies with the adaptation process.

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Policy Statement

The purpose of this model policy is to:

- Establish guidelines for an effective law enforcement response to reports of sexual assault
- Reduce the incidence of and improve the response to sexual assault in local communities by setting forth best practices which encourage a consistent and effective law enforcement response by:
 1. Acknowledging and validating the experience of victims of sexual assault
 2. Investigating effectively to build strong cases against sexual assault suspects
 3. Supporting and empowering victims of sexual assault through effective collaborations
 4. Documenting sexual assault allegations thoroughly and accurately to assure effective prosecution and the successful delivery of services

History of the Development of the Sexual Assault Model Policy

The North Dakota Department of Health, Division Injury Prevention and Control Division initially received Grants to Encourage Arrest (GTEA) funding through the Department of Justice's Office on Violence Against Women (OVW) in September of 2004, and contracted with NDCAWS/CASAND to carry out the goals and objectives of the grant.

Through the work of the Statewide Advisory Committee and the project partners, the *North Dakota Model Law Enforcement Domestic Violence Policy* was created and distributed across the state. The model policy was also endorsed by the North Dakota Office of Attorney General (2005), the North Dakota Chief's of Police Association and the North Dakota Sheriff's Association (2006).

As a result of the success of the domestic violence model policy, the North Dakota Department of Health along with project partners NDCAWS/CASAND, Minot State University, Rural Crime and Justice Center (RCJC) and University of North Dakota, Tribal Judicial Institute (TJI) again requested funding from OVW in 2008, this time to create a sexual assault model policy.

The process began in February, 2009, with the gathering of the Statewide Advisory Committee to discuss and formulate the development of a sexual assault model policy. At the same time, RCJC conducted a survey of law enforcement agencies in North Dakota to determine whether or not they had a sexual assault policy. The majority of the agencies stated they would be interested in receiving the model policy upon completion. In addition, many also indicated their interest in training once the policy was complete.

These statements were a strong indicator of the importance of pursuing a sexual assault model policy and training related to that policy. Unlike domestic violence, there is no statutory mandate for law enforcement to have a sexual assault policy in North Dakota. Therefore, the fact that agencies were interested in receiving not only the policy but subsequent training speaks volumes.

Since February, 2009, the Statewide Advisory Committee has meet on multiple occasions, in August and October, 2009, and again in April and June, 2010. In addition, in September 2010 a subcommittee met to review and expand upon the policy. During this time the committee received assistance from the International Association of Chiefs of Police (IACP) and the Prosecuting Attorney's Association of Michigan. The committee has continued to evolve and to collaborate to create this sexual assault model policy.

Definitions

“Coercion” means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance. **N.D.C.C. § 12.1-20-02**

“Domestic violence / sexual assault organization” means “a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.” **N.D.C.C. § 14-07.1-01 (3)**

“Law enforcement officer” means “a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigation of violations of law.” **N.D.C.C. § 14-07.1-01(6)**

“Object” means anything used in commission of a sexual act other than the person of the actor. **N.D.C.C. § 12.1-20-02**

“Probable cause” to justify an arrest means facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing in the circumstances shown, that the suspect has committed, is committing, or is about to commit (in the case of a threat) a crime. Probable cause is frequently referred to in cases and statutes as “reasonable grounds.” (Black’s Law Dictionary, 2000)

“Sexual act” means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required. **N.D.C.C. § 12.1-20-02**

“Sexual contact” means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires. **N.D.C.C. § 12.1-20-02**

“State” means “a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.” **N.D.C.C. § 14-07.4-01 (7)**

“Victim” means “a natural person who has suffered direct or threatened physical or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.” **N.D.C.C. § 12.1-34-01(8)**

From: North Dakota Century Code (NDCC) for complete list of related rules and statutes see Appendix A.

Critical Preparatory Information for Victims

In situations in which an advocate is unavailable at the scene or at the hospital, the following information should be reviewed by law enforcement with the victim prior to proceeding with an interview, examination, or investigation of a sexual assault. *See Appendix B2.*

Victims' Rights:

- A victim has a right NOT to report the sexual assault to law enforcement.
- A victim has the right to receive a forensic examination at no cost to the victim.
- A victim has a right to refuse to have a forensic examination or to make a report to law enforcement, regardless of age.
- A victim has a right to refuse to answer questions from law enforcement related to the assault and cannot be compelled to submit to a polygraph examination, even if she/he is under the age of 18.
- A victim has the right NOT to answer questions related to being involved in criminal activity, including the use of alcohol or drugs.

Important Information for Victims: to be shared when relevant and appropriate

- A forensic medical examination is an examination that can be performed on a victim to gather evidence of the crime, at no cost to the victim. *See Appendix B3.*
- The examination will be conducted as privately as possible and may take between 2-4 hours and includes photographs and internal and external genital examinations.
- There may be long delays in the criminal process.
- The victim may have to testify in court; there may be a plea, or the case could be dismissed.
- The victim will be responsible for medical costs that are not part of the forensic medical examination.
- The victim cannot be prosecuted for illegal drug use and underage drinking which is discovered as part of a forensic medical examination. (N.D.C.C. § 12.1-34-07)
However, a victim *can* be prosecuted if illegal drug use or underage drinking is determined by means other than the forensic medical examination.
- Court intervention to provide protective services, such as arrest of the defendant and issuance of orders prohibiting contact, can happen fairly quickly.

- Victim identification information entered into the law enforcement agency's data system is subject to North Dakota's open records law (N.D.C.C. § 44-04) and may be released when a victim chooses the delayed reporting option. Specific statute sections include: 44-04-18, procedures regarding disclosure; 44-04-18.7, criminal intelligence and investigative information; 44-04-18.20, identifying information regarding victims of domestic violence. *See Appendix A.*

Dispatch / Call Taker Response

Police dispatch/911 operators may be the first point of contact for victims of sexual assault. They serve a vital function in ensuring victim safety and in facilitating an immediate, effective law enforcement response. The following procedures are designed to ensure the safety of the victim, provide immediate or other medical aid to the victim, preserve evidence, and facilitate the apprehension of suspects. Best practice is to limit the number of times the victim is asked to recount the incident and avoid unnecessary, intrusive questions.

Call Priority

Reports of sexual assault shall be treated as high priority calls regardless of the length of time between the call to 911/dispatch and the incident of sexual assault.

Initial Information

- **Location**
 - Where is the emergency? Address? Apartment number? Call back number? Other phone number where caller might be located?
- **Nature of emergency**
 - What is the emergency?
- **Identify caller**
 - Who am I speaking to? Are you the victim? If not, where is the victim? Are you a witness?
- **Establish caller safety**
- **Victim's medical condition**
 - Is anyone injured? If yes, is an ambulance needed?
 - Secure medical assistance for the victim (if needed or requested)
 - Keep the caller informed of emergency response.
- **Suspect information**
 - Inquire about suspect's status, current location, and obtain information to identify the suspect (If they refuse to provide any suspect information, do not insist).

- Weapon
 - Identify whether any weapon was involved and any history of violence that has occurred.

Evidence Preservation Considerations

Direct the victim to preserve evidence by refraining from engaging in any of the activities listed below: Reassure the victim that law enforcement may be able to identify and recover evidence even if she has engaged in any of these activities:

1. Changing clothes
2. Washing, brushing teeth, rinsing mouth
3. Consuming any food, beverage or smoking
4. Combing hair
5. Touching, destroying, or, moving any items at the crime scene
6. Urinating or defecating: advise the use of a clean plastic container to collect urine should the victim have to urinate

Additional Procedures

Dispatch/911 operators can assist victims, promote victim and community safety, and facilitate victim cooperation with the ensuing law enforcement investigation by consistently employing the following practices:

1. Demonstrate patience and respect at all times with the victim reporting a crime of sexual assault. The victim may be in crisis and may exhibit behaviors ranging from rage, outbursts, and crying to calmness, unresponsiveness, or laughter.
2. Determine victim's relationship to the suspect and whether a restraining order is in place.
3. Whenever possible, stay on the line with the victim to provide additional information and assistance until an officer arrives at the scene.
4. For 911 or other emergency hang-up calls where the call location is known: Call back and dispatch an officer.
5. Do not cancel an officer dispatch regardless of whether the request is made during the initial or follow-up call. Advise the responding officer of the request so that the officer can determine whether the request was made voluntarily by the victim.
6. Record and preserve a tape of the conversation and print out a transcript, if possible, for the investigation.
7. Utilize a current list of domestic violence/sexual assault programs, shelters, and victim/witness programs to assist in making referrals. *See Appendix C or visit www.ndcaws.org for complete list.*

Law Enforcement Response

Immediate Response

Law enforcement's initial contact with victims of sexual assault can greatly influence the entire investigative process. Therefore, contact with victims should be guided by professional, respectful, and courteous behavior at all times.

Law enforcement initially responding to a report of sexual assault shall:

1. Respond immediately to the crime scene or location of the victim.
 - a. If responding to the scene, the officer shall:
 - Assess the crime scene
 - Arrange transportation to the hospital if needed
 - Inform victim of rights and reporting options

NOTE: See page nine and/or Appendix D.

 - Advise victim on preserving evidence
 - b. If responding to a hospital, the officer shall:
 - Initiate contact with medical staff for information
 - Determine if an advocate has been called or a Sexual Assault Response Team (SART) has been initiated.
 - If advocate is not available, review victim rights and reporting options

NOTE: See page nine and/or Appendix D.
2. Secure the scene to ensure the offender is not present or if present poses no additional risk to the victim.
3. Keep the victim safe and address any safety issues.
4. Administer first aid, if necessary.
5. Request medical support, if necessary.
6. Establish trust and rapport by demonstrating understanding, patience, and respect for the victim's dignity, including:
 - a. Limiting preliminary questions
 - b. Explaining each person's role
 - c. Contacting other officers or agencies for assistance

7. Remain aware that the sexual assault may have been committed by a family member, caretaker, neighbor or friend who may be present at the scene.
8. Conduct initial investigation of the crime that has been committed:
 - a. Obtain names of witnesses and contact information.
 - b. When possible, obtain statements from witnesses that were present.
 - c. Identify where the incident occurred, specifically to establish jurisdiction.
 - d. Determine whether drugs or alcohol were utilized to facilitate the sexual assault without the victim's knowledge in order to identify the need for additional evidence collection.
 - e. Determine the relationship between the victim and suspect, and whether a valid protection order is in force.
9. Be aware that a victim may make excited utterances which may have evidentiary value.
 - a. Record these utterances when practical and note them in your report.

NOTE: If available, utilize video microphones as the least intrusive recording method.

Delayed Investigation Response

It is not uncommon for delayed reports (any report after the 96 hour evidence collection limitation) to occur regarding sexual assaults. See Appendix E or visit www.ndcaws.org for current information.

In a delayed investigation, law enforcement shall:

1. Obtain a victim statement.
2. Identify witnesses present prior to and after the assault occurred and obtain contact information for them.
3. Contact witnesses and interview each of them regarding the reported assault.
4. Identify all possible evidence that may exist. This may include:
 - a. Any text messages discussing the incident
 - b. Electronic postings regarding the incident on sites such as Facebook or Twitter
 - c. Any physical evidence related to the assault: clothing, bedding, condoms, etc.
 - d. Any photographs that may have been taken prior to or after the assault occurred

Victim Interview

Prior to the interview, it is important to be aware of any unique cultural beliefs and practices the victim may have (for example, she may wish to engage in a culture-specific ritual or practice prior to proceeding). Also, it is important to be aware of behavioral or cognitive characteristics the victim may have, (such as limited eye contact, vocabulary), or developmental disabilities.

1. Prior to conducting an interview with the victim, law enforcement should contact the local sexual assault/domestic violence program. Advocacy programs will proceed in the following ways:
 - a. An advocate will respond to the identified location (hospital or law enforcement department).
 - b. If unable to respond in person, an advocate will be available by phone to the victim.
 - c. In both of these situations the advocate will review the reporting options with the victim. *See Appendix D.*

The officer should also:

2. Obtain an interpreter if needed.
3. Be mindful of the victim's needs during the interview process (i.e. if the victim needs to take a break or would like a support person present-when appropriate).
4. While documenting basic information, obtain the victim's name, date of birth and contact information. Ensure the victim wants to make a report, and understands what that involves.
5. Explain the process of the interview: who is involved and in the room and their roles. Ensure the victim is okay with everyone in the room, and understands why they are there.

NOTE: Officers should make every effort to tape record the victim's statement - with the victim's consent - for evidentiary purposes.

6. Ensure safety and privacy by interviewing the victim in a place separate from the suspect.
 - a. If responding to the scene, suggest finding somewhere private to speak; this may include going to the police department or hospital. Allow the victim to make that determination whenever possible.
 - b. If responding to a hospital, ensure privacy by requesting an examination room or conference room rather than remaining in a trauma area waiting room.
 - c. If the victim presents to the law enforcement department, use an interview or conference room to ensure comfort and privacy.

7. Maintain an appropriate demeanor by:
 - Listening, showing interest in the victim and the situation, maintaining objectivity, and remain aware of nonverbal communication signals.
 - Maintaining good eye contact through natural, spontaneous glances. (Fixed gazes or staring increase fear and hostility).
 - Demonstrating interest and encouraging the victim to continue speaking (appropriate facial and head movements with a relaxed stance).
8. Lead the interview; however, let the victim speak uninterrupted.

Conducting the Interview

1. Ascertain victim's relationship to the suspect.
 2. Determine what happened. It may be most effective to have the victim begin with the events prior to the sexual assault, noting the victim's condition and demeanor. Obtain the following information:
 - a. A description of injuries, if any, to the victim.
 - b. Identify any injuries, if any, to the suspect, specifically any injuries inflicted by the victim.
 - c. Inquire how the incident began.
 - d. Identify the location of where the assault occurred.
 - e. Determine if there was any weapon involved.
 - f. Obtain as much information related to the suspect as possible, if known; where he lives and/or works, vehicles used, areas frequented.
 - g. Inquire if anything was taken from the scene or left at the scene by the victim or suspect.
 3. Identify any witnesses, their contact information, and how they were involved.
 4. After the victim has provided his/her statements, the officer(s) should ask about details for clarification, and summarize the stated account; this allows the victim to point out anything that might be misrepresented and ensures accuracy.
 5. Photograph and document photographs in the report.
 - Photographs of extremely brutal injuries or bite marks can prove beneficial in court. Because some injuries become apparent only after several days, it is recommended that follow-up photographs be taken as there is always the possibility initial photographs will not show the extent or the severity of the injury.
- NOTE: Photographs can be taken by law enforcement and/or medical personnel.*
6. Answer any other questions the victim may have after the interview.

7. Address the victim's safety, such as whether the suspect knows where the victim lives, and any transportation issues.
8. Upon completion of the interview, ensure the victim has law enforcement's contact information.
9. Obtain the phone number of the victim's residence and include that number in the incident report so jail/court/victim-witness personnel may use this information to inform the victim of the suspect's release on bail. It is also important to obtain alternative contact information, (i.e. additional phone numbers, etc.) where messages can be left when necessary. If possible, record name, address, and phone number of two close friends or relatives of the victim who will know how to reach the victim 6-12 months from the time of the investigation.

NOTE: For safety purposes, avoid including the victim's contact information in reports.

10. Inform the victim of what will occur following the preliminary interview, including:
 - a. Provide the victim with contact for a follow-up interview with law enforcement.
 - b. Describe how law enforcement may proceed following the interview.
 - c. If advocate was not present during the interview, provide the victim with contact information for the local domestic violence/sexual assault advocacy program. *See Appendix C or visit www.ndcaws.org for complete list.*
11. Also, pretext phone calls often produce valuable information (one-party consent in ND: N.D.C.C. § 12.1-15-02 *See Appendix A.*) The victim's emotional and physical state should be considered before initiating such a call. A victim advocate is a source of valuable support. Pretext phone calls can be utilized with other witnesses as well.

Suspect Interview

1. If possible, the officer should tape record the suspect's statement for evidentiary purposes.

NOTE: Decisions about audio taping or videotaping the interview should be based on the policies of the prosecuting agency and investigating department; also see North Dakota Rules of Evidence 801(d) (2). See Appendix A.

2. Determine the suspect's relationship to the victim (stranger vs. non-stranger) and what happened. Determining the relationship is significant especially when discussing the victim's safety as well as during the interview and evidence collection.
3. Prior to the interview ascertain suspect's criminal history and any previous contact with law enforcement.
4. Determine what happened. It may be most effective to have the suspect begin with the events prior to the sexual assault, noting the suspect's condition and demeanor in the report.
5. Document any injuries to the suspect, who or what caused them, and if weapons or objects were used to commit the reported assault.
6. Photograph and document in report:
 - a. Any damaged or torn clothing on the suspect (keeping in mind the suspect may have changed clothing).
 - b. Any smeared or transferred makeup on either clothing or the suspect.
 - c. All evidence of injury, including any physical complaints the suspect may have.
 - d. The presence of any use of alcohol and/or drugs by the suspect.

NOTE: Photograph suspect regardless of whether there is visible injury. Use Appendix H to document injuries.
7. Make every attempt to obtain a suspect statement.

Evidence Collection

Law enforcement within the jurisdiction in which the offense was believed to have occurred is responsible for coordinating the collection of the Sexual Assault Evidence Collection Kit from the healthcare facility at which the examination was conducted. In order to ensure effective evidence collection, the officer should:

1. Once the victim has consented to the examination, ensure the following information is communicated:
 - She/he has the right to decline any or all parts of the examination.
 - The victim's name and date of birth will be on the evidence collection kit for storage purposes.
 - The sexual assault kit will be stored for seven years or until the victim turns 22, whichever comes later.
 - The examination will occur within the 96 hours following the assault (unless reason to extend the time period is given). N.D.C.C. § 12.1-34-07 *See Appendix A.*
 - If the victim does not consent to the examination, encourage the victim to obtain medical attention to address sexually transmitted infections and pregnancy testing.
2. Work with other professionals (SANE, advocate, physician) to explain the forensic examination process; this includes explaining what is done and what may be collected, such as clothing.

NOTE: Prior to beginning the evidence collection process ensure the victim consents to the examination and is aware of the reimbursement process for the sexual assault examination. See Appendix F.

3. Obtain a signed release for access to the victim's medical records as appropriate.

NOTE: To ensure the victim's privacy, obtain a release only for medical records related to the assault. See Appendix I.

4. Recognize drug-facilitated sexual assault considerations.

NOTE: Review information provided on drug-facilitated sexual assault in Appendix G.

NOTE: Inform the victim she/he will not be criminally charged if drugs or alcohol are identified in the urine and/or blood sample; however the results may be presented in court proceedings, N.D.C.C. § 12.1-34-07(4).

On-Scene Evidence Collection

1. Secure the crime scene (if not already done).
2. Maintain chain of custody and properly collect evidence.
 - a. All evidence should be collected wearing clean single use gloves (change gloves when needed).
 - b. All evidence collected should be dried, clearly marked, properly packaged and labeled.
 - c. Refrigerate the evidence as soon as possible.
 - d. When collecting evidence, use sterile swabs, papers, solutions and tools.
 - e. When packaging, use individual envelopes for each item collected.
 - f. Use new paper bags or envelopes rather than plastic bags to collect evidence.
3. Take photographs of and/or videotape the crime scene prior to collecting any evidence and prepare a photograph log.

NOTE: When documenting the scene photographically, officers are reminded to take both close-up and full scene pictures.

4. Create a diagram of the crime scene, specifically, the location of the incident.
5. Collect physical evidence such as:
 - a. Any clothing worn by the victim and suspect at the time of the assault-specifically undergarments, pants, and shorts (unless collected by medical personnel).
 - b. Other physical evidence that may corroborate the victim's account of the incident (i.e. condom wrappers, sheets, blankets, bottles, etc.).
 - c. Any damaged or torn clothing worn by the victim or the suspect.
 - d. Any smeared or transferred makeup on either the victim or the suspect or their clothing.
 - e. Document all evidence of injury including any physical complaints the suspect may have. *See Appendix H.*

Victim Forensic Evidence Collection

1. Prior to the examination if a SANE is unavailable, document and photograph the victim's external visible injuries (if any).
 - a. Expose as little as possible using sheets or other covers.
 - b. Ensure all of the needed photographs are obtained.
 - c. Arrange to take additional photographs approximately two days after the assault as more bruises may appear or become more visible.
 - d. Medical personnel and law enforcement should use an anatomical diagram to document the injuries on the victim as the primary crime scene.

2. The law enforcement agency in custody of the collected evidence is responsible for maintaining the chain of custody of that evidence.
 - a. Before taking custody of the sexual assault kit, identify that it is correctly sealed and labeled.
 - b. When taking custody of the sexual assault kit, ensure the officer signs for the kit correctly.
3. Follow proper kit storage requirements.
 - a. Refrigerate the sexual assault kit as soon as possible.
 - b. If urine sample is included with the sexual assault kit, freeze sample immediately; it is not necessary to freeze the entire kit, only the urine sample.
 - c. Transport sexual assault kit to the North Dakota Crime Laboratory Division if DNA evidence is necessary and the victim has consented to the investigation.
4. If not providing the sexual assault kit to ND Crime Laboratory Division for analysis (when a victim chooses not to report) proceed as follows:
 - The law enforcement agency in custody of the collected evidence is responsible for maintaining the chain of custody of that evidence.
 - Law enforcement agencies will determine the method for assigning a report number and maintaining custody of the evidence.
 - The victim's name and date of birth are required for collection and storage of the kit.
 - Sexual Assault Evidence Collection Kits and other evidence collected for victims who do not currently elect to proceed with an investigation should be maintained in the same manner as other evidence collection kits and evidence.
 - Sexual assault evidence collected from non-investigated cases should be kept by law enforcement for a minimum of seven years or until the victim turns twenty-two, whichever occurs later.

Suspect Forensic Evidence Collection

A sexual assault evidence collection kit can be utilized to collect the evidence on the suspect. Law enforcement should remain present during the evidence collection procedures.

- Law enforcement shall work with other agencies and community organizations to establish protocols regarding where the forensic examination of the suspect will take

place and what steps will be involved.

- It is essential everything possible is done to prevent any contact between the victim and suspect. Although not always possible, this may include examinations taking place at different times and/or locations, ensuring the victim has left the site of the examination prior to the suspect's arrival.
1. If in custody, the suspect shall be given a Miranda warning before being asked medical history questions by the forensic examiner or investigator.
 2. The forensic examiner or medical personnel shall document the suspect's medical history, document all injuries that are observed, and collect biological and trace evidence from the suspect's body.
 3. If the suspect invokes his right to remain silent, the examiner shall bypass the medical history portion of the examination and continue documenting any visible injury and collecting the appropriate specimens.
 4. Both the examiner and attending officer shall be prepared to document any spontaneous statements made by the suspect regardless of whether or not the suspect is in custody and whether or not the suspect was provided with a Miranda warning.

Procedures for Suspect Examination

1. Immediately after the suspect interview, the investigating officer shall determine whether a forensic sexual assault examination should be obtained for the suspect. Consider the following when making this determination:
 - a. What is the length of time since the assault occurred?
 - b. What was the nature of the assault?
 - c. Does the victim believe she/he may have injured the suspect?
 - d. Has the suspect showered?
 - e. Is the suspect wearing the same clothing she/he was wearing during or immediately after the assault?
2. A search warrant may be needed to collect any evidence from the body of the suspect or even to collect clothing. If the suspect consents to such evidence collection procedures, complete and obtain the suspect's signature on a consent form.
3. If the examination is being conducted pursuant to consent rather than a search warrant, the investigator shall clearly document the suspect's freedom to decline any part of the examination and to leave at any time.
4. Responding officers, investigators and supervisors shall be trained to collect buccal swab samples. DNA buccal swab collection kits are readily available to investigators in the

field. Law enforcement can also use a sexual assault evidence collection kit to collect this evidence.

NOTE: In all sexual assault cases, the investigating officer must evaluate the need for a search warrant to identify and collect evidence from the suspect, including any known photographs or video recordings as well as any of the victim's possessions in the suspect's home or vehicle (which are often overlooked). Law enforcement agencies are advised to work with the state's attorney's office in advance to have templates available for such warrants.

Follow-up Victim Interview

The purpose of the follow-up interview is to address any inconsistencies and clarify any confusion and to gather any further information. Law enforcement officers shall:

1. Conduct the interview in a location that is convenient, accessible and comfortable for the victim. This may include arranging for transportation and contacting the local advocacy agency to be present for the interview.
 - a. Discuss the purpose of the interview with the victim.
 - b. Review the victim's contact information.
 - c. Address arrest decisions made and explain the status of the case with the victim.
 - d. Identify any new information or developments and ask questions specifically related to how the sexual assault has impacted the victim.
 - e. Identify any need for follow-up photographs of injuries.

NOTE: Depending upon the location of the injuries, it may be necessary to enlist in medical personnel to assist in obtaining follow-up photographs.

2. Compile and review information already collected including:
 - a. Talk to the responding officer(s) regarding the preliminary investigation.
 - b. Review the first responder documentation: How was the call received? Where did the officer respond?
 - c. Review the first interview with the victim and identify any holes, gaps or questions.
 - d. Review the history of questions asked related to the incident:
 - Where did the incident occur?
 - What led up to the incident?
 - What happened following the incident?
 - e. Identify whether there were any additional witnesses and their contact information.
 - f. Clarify any inconsistencies with earlier accounts in a nonthreatening manner.
3. Ensure the following issues were addressed in the initial interview including:
 - a. Obtain specific circumstances of the assault, such as how it happened.
 - b. Review and clarify the details of the assault:
 - Were weapons involved?
 - Was there any struggling or fighting?
 - Did the suspect say anything?
 - How long was the suspect with the victim?
 - What happened after the assault?

- Were there any drugs or alcohol involved?
- c. Review the details provided by the suspect prior to meeting with the victim to identify discrepancies that may need to be addressed.
4. Discuss any safety concerns the victim may have. Work with local domestic violence/sexual assault advocacy programs to assist in addressing the victim's concerns and any questions they may have about obtaining a court order due to safety concerns. *See Appendices C and J.*
 5. Utilize pretext phone calls (one-party consent in ND: N.D.C.C. § 12.1-15-02 *See Appendix A*). These are valuable in non-stranger sexual assault cases. Involve the victim as an investigative tool as appropriate.

NOTE: Involvement of a victim in a pretext phone call to the suspect should take into consideration the victim's emotional and physical state. A victim advocate should be present whenever possible to offer support.

Follow-up Suspect Interview

Based on the nature of the assault, develop an investigative and interview strategy. This may require considering the potential defenses available to the suspect (for example: denial, mistaken identity or consent). This strategy will guide the questions and any additional evidence collection that may be needed. This interview may:

1. Re-photograph injuries on the suspect to document changes in visible injuries from the previous interview.
2. Compile and review information already collected including:
 - a. Talk to the responding officer(s) regarding the preliminary investigation.
 - b. Review the first interview with the suspect and identify any holes, gaps or questions.
 - c. Review history of questions asked related to the incident:
 - Where did the incident occur?
 - What led up to the incident?
 - What happened following the incident?
3. Obtain any clarifying information from the suspect, including addressing inconsistencies that may have come up during other interviews and throughout the investigation.
4. Gather any additional information and/or details from the suspect regarding the assault.
 - a. Obtain specific circumstances of the assault, such as how it happened.
 - b. Review and clarify the details of the assault:
 - Were weapons present?
 - Was there any struggling or fighting?
 - Was anything said during the incident by either the victim or suspect?
 - How long were the suspect and victim together?
 - What happened after the assault?
 - Were there any drugs or alcohol involved?
5. Identify whether there were any additional witnesses and their contact information.

Arrest and Prosecution Considerations

1. Law enforcement and prosecution are encouraged to communicate throughout the investigation and prosecution of a case. Decisions regarding prosecution should be communicated to law enforcement.
2. Some considerations in arrest and prosecution decisions might include:
 - a. The victim's safety and rights.
 - b. Requests made by the victim regarding the incident.
 - c. Any existing evidence related to the incident.
3. During this time prosecution may enlist in assistance from the victim witness program and/or local domestic violence/sexual assault advocacy program. These programs may aid with informing the victim of decisions made regarding arrest and/or prosecution. *See Appendices C and K.*

Report Writing

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

- Each officer who interviews a witness, the victim or suspect, identifies evidence, or processes a crime scene shall write his or her own report detailing the actions he or she took, including any referrals provided to the victim. These supplemental reports shall be compiled by the first responding officer (if there are multiple officers) regardless of whether an arrest is made.
- The investigating officer (this may be the same as the responding officer in smaller jurisdictions) shall prepare an investigation report regarding the incident in accordance with existing departmental policy/protocol. Any sexual assault call handled by this department shall have the initial report completed prior to the officer going off duty.
- The complete report, which shall include the initial report and all supplemental reports, shall be written, compiled, and forwarded to the prosecutor in a reasonable and timely manner, regardless of whether an arrest was made or not.

Although this information may be included in other sections of the policy, the following should be documented within the report:

1. Use quotations for the victim's and suspect's exact words during the interview.
2. Include any excited utterances made by the victim, suspect and/or any witnesses.
3. Document the victim and suspect's condition and demeanor as observed.
4. Identify evidence of all of the crimes investigated.
5. Document any visible injuries and/or complaints of pain made by the victim or suspect—documentation when reasonably available should include a description in the police report, as well as photographs and medical reports (include a medical release), if medical treatment was obtained.
6. Document whether either party was photographed and by whom.
7. Document whether alcohol and/or drugs were present or used in the incident.
8. Document whether weapons were involved and/or are possessed by the suspect.

9. List the phone number of the victim's residence along with alternative contact information, (i.e. additional phone numbers, etc.) where messages can be safely left if the victim decides to leave her or his residence for safety reasons. Also, if possible, record the name, address, and phone number of two close friends or relatives of the victim who will know of her or his whereabouts 6-12 months from the time of the investigation.

NOTE: If victim safety is a concern, KEEP A SEPARATE RECORD of the address and phone number where the victim will be located.

10. Include any referrals provided to the victim for the local domestic violence/sexual assault program and other victim services. *See Appendix C.*
11. If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them.
Use objective interpreters (someone who is not a family member or a witness) to obtain statements and/or tape-record statements.

NOTE: Officers may utilize Appendix H as a sample for documentation purposes.

Documentation in non-arrest cases

1. In addition to the above considerations, in cases in which an arrest is not made for sexual assault or related crime, the incident still must be documented. In such cases, law enforcement should note in the incident report:
 - a. What referral information was provided; and
 - b. Why no arrest was made, nor any warrant sought.

Documentation and guidelines in non-reported cases

In the event a victim seeks an examination but does not wish to make a report at that time documentation should occur as follows:

- The local law enforcement agency within the jurisdiction in which the offense was believed to have occurred is responsible for coordinating the collection of the Sexual Assault Evidence Collection Kit from the healthcare facility. The victim's name and date of birth shall be required for collection of the kit.
- Sexual Assault Evidence Collection Kits and other evidence collected for victims who do not currently elect to proceed with an investigation should be maintained in the same manner as other Evidence Collection Kits and evidence.
- Sexual assault evidence collected from non-investigated cases should be kept by law enforcement for a minimum of seven years or until the victim turns twenty-two, whichever occurs later.

Access to sexual assault reports

Victims and advocacy programs shall have access to any sexual assault related reports in accordance with the North Dakota open records law, N.D.C.C. § 44-04 *See Appendix A.*

Supervisor Responsibilities

1. Supervisors shall ensure victims are re-contacted in an appropriate time period after the initial report.
2. Each sexual assault incident report shall be reviewed by a supervisor, regardless of whether an arrest was made or not.
3. The supervisor shall ensure that all investigative steps as outlined in this policy/procedure manual have been completed.
4. If the investigation has determined probable cause, the supervisor shall ensure the case is referred to a prosecutor and shall meet with the prosecutor as required.
5. The supervisor shall ensure any follow-up requests from prosecutors are completed.
6. If the case is not charged by the prosecutor, the supervisor shall review the reason(s) for the lack of prosecution and utilize this information for development of in-service training as appropriate.

Sexual Assault Related Training

Legislation, technology, procedures and other issues related to sexual assault are always emerging and evolving. Because of this it is strongly encouraged that law enforcement makes every attempt to stay current with issues related to sexual assault.

Supervisors shall ensure officers are provided training as necessary. Additional in-service training shall be provided as appropriate and as resources allow.

Training topics may include the following:

- Drug facilitated sexual assault
- Sexual assault evidence collection protocol
- Suspect and victim interviewing techniques
- Sexual assault dynamics
- On-scene investigation
- Reporting requirements
- Available community resources
- Victim services
- Report writing
- Law changes
- Policy changes

Interagency Collaboration

Law enforcement must exercise leadership in the community in responding to sexual assault cases. This includes optimizing and coordinating all available resources for assisting victims in addition to collaborating and developing protocols with other agencies (not just law enforcement) to enhance victim safety and ensure accountability for the suspect.

Community Based Sexual Assault Advocates

Community based advocates are employees of local non-profit organizations whose primary purpose is to provide services to victims of sexual assault regardless of whether or not the victim is involved with the criminal justice process. Community based advocates provide 24-hour crisis hotlines, crisis intervention, information and referral to local professionals and agencies, support groups, and court and hospital accompaniment. They serve anyone who has been directly affected by sexual violence, including family members and loved ones. The services provided by community based advocacy services are free and confidential.

Victim/Witness Coordinators

Victim/Witness Coordinators act as general liaison between prosecutors and victims/witnesses of crimes. They communicate and coordinate with victims/witnesses of crimes regarding rights, court process and scheduling, available services, advocacy, travel arrangements, meetings with prosecutors, restitution information, and courtroom orientation. They monitor the subpoena process and jury trial schedules. They also gather and distribute feedback from jurors to improve prosecution methods. *See Appendix K for complete list.*

Sexual Assault Nurse Examiners (SANEs)

SANEs are specially trained and certified professionals skilled in performing quality forensic medical-legal exams. Should a case go to trial, the SANEs are then available to testify. SANEs will document the account of the assault, perform necessary medical exams, testing and treatment, then collect crucial, time sensitive evidence.

- SANEs provide medical care to survivors without interruption, therefore maintaining the chain of evidence from the exam
- SANEs provide preventive treatment for HIV, STDs, and pregnancy

Sexual Assault Response Teams (SART)

A SART is a multidisciplinary interagency team of individuals working collaboratively to provide services for the community by offering specialized sexual assault intervention services. Teams are specialized to fit the needs of each community and generally have goals of increasing reporting and conviction of sexual assaults and countering the experience of sexual trauma with a sensitive and competent response. Typically, teams consist of key responders such as advocates, law enforcement officers, forensic examiners (e.g.; SANE/SAFE/FNE), crime lab personnel, and prosecutors.

Information from Wisconsin Adult Sexual Assault Response Team Protocol
http://www.wcasa.org/pages/Programs_SANE.php

Collaboration with the Military

All sexual assault incidents involving military suspects shall be handled according to this policy in the event that:

- The incident occurred outside the boundaries of a military facility; and
- Local law enforcement agencies are called to assist in handling such an incident.

The intent of this policy is to eliminate all informal referrals, diversions, or report taking omissions in the handling of sexual assault incidents involving military personnel. No informal agreements with military police or a suspect's commanding officers shall take precedence over a suspect's arrest and prosecution by the non-military authorities.

Collaboration in Indian Country

Law enforcement in Indian country can be a complicated undertaking. The jurisdictional framework that exists in North Dakota for both tribal and non-tribal lands creates many law enforcement concerns. Like nearly every other state, North Dakota has encountered uncertainties about whether or not a particular law enforcement agency is authorized to act. It is imperative that each individual law enforcement agency work with individual tribal governments to strengthen cooperative relationships in order to provide safety for domestic violence victims and maximize law enforcement resources.

Agreements with Advocacy Programs

Enhancing victim safety is something law enforcement cannot do alone. In order to increase victim safety and offender accountability, law enforcement agencies should establish collaborative working agreements with advocacy programs. *See Appendix O.*

Multiple Jurisdictions

Working across jurisdictional lines can oftentimes be challenging. Criminal matters such as sexual assault are complex irrespective of jurisdictional issues. The fact remains, however that, by virtue of the fact that five federally recognized tribes have lands in the state of North Dakota, jurisdictional complexities are often encountered, therefore it is important that cross-jurisdictional collaboration occur and that specific roles and responsibilities be defined to ensure that criminal cases are not “falling through the cracks”.

Collaboration as a means to prevent jurisdictional complications is an essential component of emergency planning. For first responders, it is imperative that jurisdictions engage in a dialogue to ensure a timely and effective response to matters which may have jurisdictional implications. Such dialogue can help to establish a framework for response. As a best practice, memorandums of agreement or understanding provide a useful tool for solidifying such collaborative efforts.

In North Dakota, the most common jurisdictional issues arise between state agencies and tribal agencies. With five (5) federally recognized tribes and one federally recognized service area located in whole or in part within the state of North Dakota, these jurisdictional issues impact the vast majority of counties across the state. (Tribes in North Dakota include: Three Affiliated Tribes of the Mandan, Hidatsa and Arikara; Standing Rock Sioux Tribe; Spirit Lake Tribe; Turtle Mountain Band of Chippewa and the Sisseton Wahpeton Oyate. The service area in North Dakota is the Trenton Indian Service Area). In order to engage in meaningful dialogue and collaboration, it is important to understand basic criminal jurisdictional issues and to further understand how such issues impact first responders as well as the coordination of justice system services.

Tribal, Federal and State Criminal Jurisdiction (Non-PL-280)

Identity of Offender	Identity of Victim	Applicable Law	Jurisdiction
Indian	Indian Victim	Major Crimes Act Tribal Code	Federal Jurisdiction Tribal Jurisdiction
Indian	Non-Indian Victim	Major Crimes Act	Federal Jurisdiction Tribal Jurisdiction
Non- Indian	Indian Victim	Major Crimes Act	Federal Jurisdiction
Non-Indian	Non-Indian Victim	State law	State Jurisdiction

Practices to Improve Collaboration Across Jurisdictional Boundaries

Despite the many complex jurisdictional issues that might arise in sexual assault cases, there are ways in which law enforcement and other first responders can alleviate some of these issues. Some of the steps that law enforcement officers should take to develop a process for addressing jurisdiction in sexual assault cases would include:

- Establish a relationship with neighboring state and federal authorities
- Establish a relationship with tribal advocates and advocacy organizations
- Educate officers on issues such as: cultural competency, tribal jurisdiction, and multi-jurisdiction collaboration
- Work out a protocol or procedure for addressing such issues and defining roles and responsibilities of participating agencies
- Wherever possible, solidify such agreements with a Memorandum of Understanding to ensure consistency, promote longevity and provide accountability
- Be sure to include SART (sexual assault response teams) or other multi-disciplinary teams in such discussions.

NOTE: For complete information on Multiple Jurisdictions and additional local and national resources see Appendix P.

North Dakota Model Law Enforcement Sexual Assault Policy

Appendices

Please see folder titled “Appendices” for the following documents:

Appendix A: List of Common Charges Related to Sexual Assault*

Appendix B1: Forensic Medical Examination Advocacy Guidelines

Appendix B2: Reporting Options for Sexual Assault Victims

Appendix B3: VAWA Provisions

Appendix C: North Dakota Domestic Violence/Sexual Assault Advocacy Programs

Appendix D: Sexual Assault Reporting and Medical Examination Options Brochure

Appendix E: General Sexual Assault Information

Appendix F: FME Reimbursement Form “**DO NOT DUPLICATE**”

Appendix G: Drug Facilitated Sexual Assault Information

Appendix H: Sexual Assault Report Sample (IACP)

Appendix I: Authorization for Release of Medical Records and Information

Appendix J: ND Court Orders (protection, restraining and no contact)

Appendix K: Victim/Witness Programs

Appendix L: Victim Notification Information sheet

Appendix M: Statewide Automated Victim Information Network (SAVIN)

Appendix N: False Reports vs. Unfounded Reports

Appendix O: Working Agreement with Domestic Violence/Sexual Assault Advocacy Program

Appendix P1: Multiple Jurisdictions

Appendix P2: Summary of Jurisdictions

Appendix Q: Working with Adolescent Sexual Assault Victims

Please see folder “ND Century Code” or visit the ND Legislative Branch:

<http://www.legis.nd.gov/information/statutes/cent-code.html>

Sexual Assault Model Policy

North Dakota Century Code Statutes and North Dakota Supreme Court Rules

North Dakota Century Code:

12.1-15	Defamation – Interception of Communications
12.1-17	Assaults - Threats - Coercion - Harassment
12.1-20	Sex Offenses
12.1-27.2	Sexual Performances by Children
12.1-31	Miscellaneous Offenses
12.1-32	Penalties and Sentencing
12.1-34	Fair Treatment of Victims and Witnesses
12.1-38	Assumption of Risk in Crime
12.1-40	Human Trafficking
14-07.1-01	Domestic Violence
14-10	Minors
23-07.7	Court-Ordered Testing for Sexually Transmitted Diseases
43-17-41	Duty of physicians and others to report injury
44-04	Duties, Records, and Meetings
50-25.1	Child Abuse and Neglect
50-25.2	Vulnerable Adult Protection Services
54-23.4	Crime Victims Compensation

North Dakota Supreme Court Rules of Evidence:

Relevancy and Its Limits

RULE 412. Admissibility of Alleged Victim's Sexual Behavior or Alleged Sexual Predisposition in Criminal Proceeding

Hearsay

Rule 801. Definitions

- Rule 801(d) (2)

North Dakota Forensic Medical Examination

Recommended Sexual Assault Advocacy Practices

The primary objectives of sexual assault advocates are to:

1. Provide information and support to victims, including reporting options.
2. Provide crisis intervention when victims need assistance.
3. Assist with negotiating the social service, criminal justice, and other helping systems to support the victim throughout recovery.
4. Facilitate team members' communication and collaboration.
5. Normalize the victim's feelings, reactions, and response to sexual assault.
6. Provide education and information to the victim and the family/friends about what may be experienced emotionally and/or physically and what the victim may still have to go through in the recovery process.
7. Provide a continuity of care.
8. Assist with development of a safety plan if necessary.

A victim-centered approach is incorporated into victim care by:

1. Advocating on behalf of the victim's rights.
2. Abstaining from any part of the process that the victim does not want the advocate to attend.
3. Giving full consideration to the victim's wants and needs and when presented with conflicting choices, defers to the choice of the victim.
4. Ensuring the victim has the information and knowledge to enable them to make informed decisions.
5. Respecting the human dignity and the uniqueness of the victim, unrestricted by considerations of ethnic, age, social or economic status, personal attributes, sexual orientation, disability or the nature of the health problems.
6. Maintaining respect for the victim in interdisciplinary communications.
7. Facilitating communications between all team members and the victim.
8. Working collaboratively with team members to ensure the provision of quality services to the victim.
9. Reinforcing explanations by Sexual Assault Nurse Examiner/Healthcare providers, law enforcement, prosecution and professional counselor when appropriate.
10. Acting as a liaison between team members and the victim.

Recommended Protocol for Advocacy Programs:

1. Arrive at the hospital within a timely fashion after the call from the hospital or law enforcement and identify yourself to hospital personnel.
2. Inform the victim that anything he or she says to the advocate is confidential and will not be repeated to anyone without his/her permission within legal guidelines or upon a signed release of information.
3. Review information sheet on both immediate and delayed reporting with the victim.
4. If a victim refuses the forensic medical examination the advocate should inform them it is recommended they receive prophylactic treatment for sexually transmitted infections

- within 96 hours of the assault and emergency contraception within 96 hours of the assault. The victim will need to self-pay for the treatment if the examination is not done.
5. Offer to accompany the victim during the forensic medical examination.
 6. Explain to the victim that he or she has the right to ask any questions he or she may have at any time before, during or after the forensic medical examination.
 7. Be prepared to answer questions regarding the forensic medical examination.
 8. Ensure that the victim has clothes when departing the hospital.
 9. Assess sense of safety at time of discharge and help to arrange for safe housing and transportation if needed.
 10. Provide a written copy of the *Guide to the Legal Process for Adult Sexual Assault Victims in North Dakota*.

Advocate's Follow Up Care

Within 96 hours, the advocate will:

1. Contact the victim.
2. Explain that the rape crisis center is available for supportive services including law enforcement accompaniment, court accompaniment, counseling services, assistance with completing the Crime Victim's Compensation Form and Victim Impact Statement, or other similar forms and referrals for other services.
3. If the crime occurred outside of the rape crisis center's service area a referral will be made to the appropriate center closest to the victim. The victim shall be allowed to choose which center to receive follow-up services from.
4. Remind the victim to follow-up with a medical provider.

Advocate's Responsibility Regarding Law Enforcement

1. At the request of the victim the advocate shall inquire as to which officer or detective is handling the case.
2. Respond to officers' requests as confidentiality allows.
3. At the request of the victim obtain updates on the progress of the case.

Advocate's Responsibility Regarding Courts

1. Respond to requests from the state's attorney's office.
2. Request updates on the progress of the case.
3. At the victim's request and the state's attorney's office protocol, be present during meetings.
4. Per the victim's request attend or accompany them to hearings.

Reporting Options for Victims of Sexual Assault

Who presents the reporting options to a sexual assault victim?

A sexual assault victim advocate should be contacted to meet with the victim to discuss the forensic medical examination and both immediate and delayed reporting options. If an advocate is not available then a law enforcement officer should provide the information to the victim.

Law enforcement officers, physicians, and advocates should encourage victims to receive the examination. No one can force the victim to receive a forensic medical examination or decide for them; it is ultimately their choice.

What information should be given to the sexual assault victim?

1. The considerations of immediate and delayed reporting options
2. Information regarding the collection of evidence and the storage of the evidence, including the length of time the evidence will be stored and information on the destruction of the evidence
3. The name and contact information for the individual the victim is to contact in the event she/he desires to proceed with reporting the assault to law enforcement, as well as any identifying information.
4. Information regarding the local nonprofit domestic violence/rape crisis center within the community and the services available to the victim (counseling, hotline, crime victims' compensation, etc.)
5. Victim identification information entered into the law enforcement agency's data system is subject to the ND's open records law NDCC 44-04.

North Dakota Sexual Assault Evidence Collection Reporting Options

Who Pays for the Forensic Medical Examination?

Under NDCC 12.1-34-07 a victim of sexual assault is not required to pay for the prescreening (EMTALA exam) and examination for the purpose of gathering evidence for a possible prosecution, including the cost of antibiotics and other medications administered as part of the examination. The hospital or clinic where the victim was examined will be reimbursed directly by the North Dakota Office of Attorney General and cannot bill the victim or insurance company for these costs.

The victim will be responsible for the costs of additional care she/he may receive that is not for the collection of evidence, such as x-rays, stitches, hospitalization, pain medication and counseling. They may be asked to provide insurance information and/or eligibility for Medicaid or Indian Health Services. If they do not have coverage, or there are costs not covered by insurance, they may be eligible to have these costs paid by the North Dakota Crime Victims Compensation Fund. A victim can receive victim compensation funds if reported to law enforcement within 72 hours of the occurrence and cooperate with law enforcement and prosecution. NDCC 54-23.4-06

Victim's Reporting Options

I. Immediate Investigation

- **The victim reports the details of the sexual assault to law enforcement at the time of the forensic medical exam.**

Considerations

1. The victim receives the forensic medical exam and may access treatment and counseling for physical and mental effects of the sexual assault, including access to crime victims compensation funds. NDCC 54-23.4-06
2. Crime scenes may be investigated before evidence is lost.
3. Witnesses may be located and interviewed while memories are fresh.
4. Evidence collected in the forensic medical examination may be immediately processed.
5. An immediate investigation may be conducted and evidence may lead to identification, apprehension and prosecution of the assailant.
6. Some victims find a sense of closure and/or empowerment by choosing to engage the criminal justice system.
7. Court intervention to provide protective services may occur, such as arrest of the defendant and issuance of orders prohibiting contact.
8. A victim cannot be prosecuted for illegal drug use and underage drinking which is discovered as part of an investigation. NDCC 12.1-34-07

II. Delayed Investigation

- **The victim does not immediately participate with law enforcement at the time of the forensic medical exam.**

Considerations

1. The victim receives the forensic medical exam preserving forensic evidence.
2. A thorough and successful investigation of the assault could be more difficult. Evidence and witnesses disappear, and memories fade.
3. Delayed reporting may affect the perceptions and response of prosecutors and jurors and may influence the prosecutors' ability to obtain a conviction.
4. The victim would be responsible for other medical costs that are not part of the forensic medical examination.
5. A victim cannot be prosecuted for illegal drug use and underage drinking which is discovered as part of an investigation. NDCC 12.1-34-07

Notice of Mandatory Reporting

In accordance with NDCC 43-17-41 health care professionals are required to report sexual assaults to law enforcement. The forensic kit with victim's name and address may be kept by the law enforcement agency in the jurisdiction where the sexual assault occurred for a minimum of seven years or until the victim turns twenty-two, whichever occurs later.

National Sexual Assault Hotline 1-800-HOPE (4673)

If I decide I want to report to law enforcement I can contact _____

VAWA Provisions

In 2005 through the Reauthorization of the Violence Against Women Act (VAWA) several changes occurred federally related to sexual assault victims. These changes include a sexual assault victim's right to receive a sexual assault forensic medical examination and have evidence collected without having to pay for it or be required to make a report to law enforcement regarding the incident.

As a result of these changes it is important to ensure the following information is discussed within your agency and with the local sexual assault advocacy program in order to develop your agency's response to incidents of sexual assault.

The following is information from the United State's Department of Justice from the Office on Violence Against Women regarding the changes in VAWA:

Q: What is the new federal law regarding forensic examination?

A: The Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), 42 U.S.C. § 3796gg-4(d), provides that states may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred on account of such an exam, or both []" (the "VAWA 2005 forensic examination requirement"). Under this provision a state must ensure that victims have access to an exam free of charge or with full reimbursement, even if the victim chooses not to report the crime to the police or otherwise cooperate with the criminal justice system or law enforcement authorities. Prior to VAWA 2005, states were required to ensure access to such exams free of charge or with full reimbursement but could condition the exams on cooperation with law enforcement.

Q: What is the effect of the VAWA 2005 forensic examination requirement?

A: The effect of the VAWA 2005 forensic examination requirement is to allow victims time to decide whether to pursue their case. A sexual assault is a traumatic event. Some victims are unable to decide whether they want to cooperate with law enforcement in the immediate aftermath of a sexual assault. Because forensic evidence can be lost as time progresses, such victims should be encouraged to have the evidence collected as soon as possible without deciding to initiate a report. This provision ensures victims receive timely medical treatment.

Q: Some states have mandatory medical reporting laws. How does the VAWA 2005 forensic examination requirement affect these states' laws? Would states following these reporting laws be in compliance with the VAWA 2005 forensic examination requirement?

A: These states would be in compliance with the VAWA 2005 forensic examination requirement as long as the victim retains the ability to choose not to cooperate with law enforcement or the

criminal justice system and receives a forensic examination free of charge or with full reimbursement.

Q: What will be the effect of the VAWA 2005 forensic examination requirement on law enforcement?

A: Many victims refuse to undergo examinations because they are not ready to report the sexual assault to the police. Advocates for sexual assault victims maintain that the VAWA 2005 forensic examination requirement will encourage more victims to undergo examinations directly following the crime, thereby preserving forensic evidence for future prosecutions when victims are ready to cooperate with law enforcement. Jurisdictions that have implemented anonymous reporting, including the U.S. Military, have found this to be true.

Q: What is a “Jane Doe Rape Kit?”

A: A “Jane Doe Rape Kit” is the common name for the forensic evidence collected during a sexual assault examination of a victim who chooses to remain anonymous. A “Jane Doe Rape Kit” enables a victim to have forensic evidence collected without revealing identifying information. Victims are given a code number they can use to identify themselves if they choose to report later, and they are not required to cooperate with law enforcement or criminal justice authorities. Some states and localities are providing this voluntarily for victims who are not ready to report to law enforcement at the time of the examination.

Q: Are states, under VAWA 2005, required to institute “Jane Doe Rape Kits” or “anonymous reporting”?

A: No, states are not required to institute anonymous reporting. Some states are instituting it voluntarily. Under VAWA 2005, states are only required to ensure that a victim receives access to a forensic examination free of charge regardless of whether the victim chooses to report a sexual assault (for any reason) to law enforcement or cooperate with the criminal justice system.

Information courtesy of:

Office on Violence Against Women 800 K Street, NW. • Washington, DC 20530 • Phone: (202) 307-6026 • Fax (202) 305-2589 www.ovw.usdoj.gov, **May 2008**

VAWA 2005 Restricts the Use of Polygraphs with Victims of Sexual Assault

One of the provisions of the recently enacted VAWA 2005 is that jurisdictions will no longer be eligible for STOP funding if their policy or practice is to ask or require adult, youth or child victims of sexual assault to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the crime. In addition, the refusal of a victim to submit to such an examination must not prevent the investigation of the crime.

It is therefore recommended that the polygraph should never be used with victims of sexual assault during the course of the investigation – even if the victim requests it. A competent, evidence-based investigation will most likely reveal the truth much more effectively than these interrogation tactics.

Information Courtesy of:

Joanne Archambault, SATI Training Director and Founder of EAW International and Dr. Kim Lonsway, EAW International Director of Research, January 2006.

**ND Council on Abused Women's Services/Coalition Against Sexual Assault in ND
Domestic Violence/Sexual Assault Service Providers**

Janelle Moos, Executive Director **NDCAWS/CASAND** 525 North 4th Street, Bismarck, ND 58501
Toll Free: 888-255-6240 Ph: (701) 255-6240 * FAX (701) 255-1904 * E-Mail: ndcaws@ndcaws.org * Website: www.ndcaws.org

BISMARCK *Crisis Line 1-866-341-7009*

Abused Adult Resource Center

PO Box 5003, Bismarck, ND 58502

Diane Zainhofsky, Director

Toll Free: 866-341-7009

Ph: 701-222-8370 Fax 701-323-9399

E-mail: aarc@btinet.net

BOTTINEAU *Crisis Line 1-800-398-1098*

Family Crisis Center

PO Box 371, Bottineau, ND 58318-0371

Dena Filler, Contract Mgr.

Ph: 701-228-2028 Fax 701-228-2472

Toll Free 888-755-7595

E-mail: famcc@srt.com

DEVILS LAKE *Crisis Line 662-7378*

Safe Alternatives for Abused Families

PO Box 646

Devils Lake, ND 58301-0646

Janel Taylor Director

Ph: 701-662-7378 Fax 701-662-2380

Toll Free 888-662-7378

E-mail: saaf@gondtc.com

DICKINSON *Crisis Line 225-4506*

Domestic Violence & Rape Crisis Center

PO Box 1081

Dickinson, ND 58602-1081

Darriane Johnson, Director

Toll Free 888-225-4506

Ph: 701-225-4506 Fax 701-225-4506

E-mail: dvrcc@ndsupernet.com

ELLENDALE *Crisis Line 349-5118*

Kedish House, PO Box 322

Ellendale, ND 58436-0322

Sharron Brady, Director

Toll Free: 877-349-4729

Ph: 701-349-4729 Fax 701-349-3562

E-mail: skbrady@drtel.net

FARGO *Crisis Line 293-7273*

Rape & Abuse Crisis Center

PO Box 2984

Fargo, ND 58108-2984

Greg Diehl, Director

Toll Free 800-344-7273

Ph: 701-293-7273 Fax 701-293-9424

E-mail: crisis@raccfm.com

FORT BERTHOLD *Crisis Line 627-3617*

Coalition Against Domestic Violence

PO Box 970

New Town, 58763-0970

Sadie Young Bird, Director

Ph: 701-627-4171 Fax 701-627-4106

E-mail: sgyoungbird@mhanation.com

GRAFTON *Crisis Line 352-3059*

Domestic Violence & Abuse Center Inc.

PO Box 308, Grafton, ND 58237-0308

Jolene Halldorson, Director

Toll Free: 866-435-7490

Ph: 701-352-4242 Fax 701-352-4222

E-mail: jolene@dvacnd.org

GRAND FORKS *Crisis Line 746-8900*

Community Violence Intervention Ctr.

211 South 4th St. Grand Forks, ND

58201-4766

Kristi Hall-Jiran, Director

Toll Free: 866-746-8900

Ph: 701-746-0405 Fax 701-746-5918

E-mail: embracepeace@cviconline.org

JAMESTOWN *Crisis Line 251-2300*

Safe Shelter

PO Box 1934

Jamestown, ND 58402-1934

Lynne Tally, Director

Toll-Free 888-353-7233

Ph: 701-251-2300 Fax 701-251-9095

E-mail: SafeShelter@qwestoffice.net

MCLEAN CO. *Crisis Line 462-8643*

McLean Family Resource Center

PO Box 506

Washburn, ND 58577-0506

Jenell Olson, Director

Toll Free: 800-651-8643

Ph: 701-462-8643 Fax 701-462-8680

E-mail: mfrc@westriv.com

MERCER CO. *Crisis Line 873-2274*

Women's Action & Resource Center

Box 940, Beulah, ND 58523

Lisa Weisz, Director

Ph: 701-873-2274 Fax 701-873-2436

E-mail: warc@westriv.com

MINOT *Crisis Line: 857-2200*

Domestic Violence Crisis Center

PO Box 881

Minot, ND 58702-0881

Dena Filler, Director

Toll Free 800-398-1098

Ph: 701-852-2258 Fax 701-838-7053

E-mail: dvcc@minot.com

RANSOM CO. *Crisis Line 683-5061*

Abuse Resource Network

PO Box 919, Lisbon, ND 58054-0919

Missy Schmidt, Director

Ph: 701-683-5061 Fax 701-683-0082

E-mail: ransomarn@nd.gov

SPIRIT LAKE *Crisis Line 766-1816*

Spirit Lake Victim Assistance

Box 297, Ft. Totten, ND 58335-0297

Melissa Merrick, Director

Ph: 701-766-1816 FAX: 701-766-4550

Toll Free 866-723-3032

E-mail: mmerrick.slva@gmail.com

STANLEY *Crisis Line 628-3233*

Domestic Violence Pro., NW ND

PO Box 538, Stanley, ND 58784-0538

Colleen Reese, Director

Ph: 701-628-3233 Fax 701-628-3234

Toll free 800-273-8232

E-mail: creese@nd.gov

TRENTON INDIAN SERVICE AREA

Crisis Line 774-1026

Domestic Violence Program

PO Box 210 Trenton, ND 58853

Nancy Mattingly, Interim Director

Ph: 701-774-1029 Fax 701-774-1022

E-mail: nmattingley@ccray.net

TURTLE MOUNTAIN RESERVATION

Crisis Line 477-0002

Hearts of Hope Box 900

Belcourt, ND 58316

Rochanda Gourneau Director

Ph: 701-477-0002 Fax 701-477-5246

E-mail: gourneau@utma.com

VALLEY CITY *Crisis Line 845-0072*

Abused Persons Outreach Center

PO Box 508, Valley City, ND 58072

Virginia Svenningsen, Director

Ph: 701-845-0078 Fax 701-845-1897

Toll-Free 866-845-0072

e-mail: apoc@daktel.com

WAHPETON *Crisis Line 642-2115*

Three Rivers Crisis Center

509 Dakota Ave Suite B

Wahpeton, ND 58075

Susan Rittenour, Director

Ph: 701-642-2115 Fax 701-642-3253

Toll-Free 800-627-3659

E-mail: trcc@702com.net

WILLISTON *Crisis Line 572-9111*

Family Crisis Shelter

Box 1893, Williston, ND 58802-1893

Lana Bonnet, Director

Ph: 701-572-0757 Fax 701-572-7239

E-mail: lane.fcs@midconetwork.com

**ND Council on Abused Women's Services/
Coalition Against Sexual Assault in ND**

525 North 4th Street
Bismarck, ND 58501

Toll Free: 1-888-255-6240 Phone: 701-255-6240
Fax: 701-255-1904 TTY: 711 or 1-800-366-6888

Website: www.ndcaws.org

SERVICE PROVIDERS

BISMARCK - Abused Adult Resource Center
(701) 222-8370; Crisis Line: 866-341-7009

BOTTINEAU - Family Crisis Center
(701) 228-2028; Crisis Line: 1-800-398-1098; Toll Free 1-888-755-7595

DEVILS LAKE - SAFE Alternatives for Abused Families
(701) 662-7378; Crisis Line: (701) 622-7378; Toll-Free 1-888-662-7378

DICKINSON - Domestic Violence & Rape Crisis Center
(701) 225-4506; Crisis Line: (701) 225-4506; Toll Free 1-888-225-4506

ELLENDALE - Kedish House
(701) 349-4729; Crisis Line: (701) 349-5118; Toll Free 1-877-349-4729

FARGO - Rape & Abuse Crisis Center
(701) 293-7273; Crisis Line: (701) 293-7273

FORT BERTHOLD - Coalition against Domestic Violence
(701) 627-4171; Crisis Line: (701) 627-3617

GRAFTON - Domestic Violence & Abuse Center Inc.
(701) 352-4242; Crisis Line: (701) 352-3059

GRAND FORKS - Community Violence Intervention Center
(701) 746-0405; Crisis Line: (701) 746-8900; Toll Free: 1-866-746-8900

JAMESTOWN - Safe Shelter
(701) 251-2300; Crisis Line: (701) 251-2300; Toll Free: 888-353-7233

MCLEAN CO. - McLean Family Resource Center
(701) 462-8643; Crisis Line: (701) 462-8643; Toll Free: 800-651-8643

MERCER CO. - Women's Action & Resource Center
(701) 873-2274; Crisis Line: (701) 873-2274

MINOT - Domestic Violence Crisis Center
(701) 852-2258; Crisis Line: (701) 857-2200; Toll Free: 1-800-398-1098

RANSOM CO. - Abuse Resource Network
(701) 683-5061; Crisis Line: (701) 683-5061

SPIRIT LAKE - Spirit Lake Victim Assistance
(701) 766-1816; Crisis Line: (701) 766-1816; Toll Free: 1-866-723-3032

STANLEY - Domestic Violence Program NW ND
(701) 628-3233; Crisis Line: (701) 628-3233; Toll Free 1-800-273-8232

TURTLE MT. - Hearts of Hope
(701) 477-0002; Crisis Line: (701) 477-0002

TRENTON - Domestic Violence Program
(701) 774-1026; Crisis Line: (701) 774-1026

VALLEY CITY - Abused Persons Outreach Center
(701) 845-0078; Crisis Line: (701) 845-0072; Toll Free: 1-866-845-0072

WHPETON - Three Rivers Crisis Center
(701) 642-2115; Crisis Line: (701) 642-2115; Toll-Free 1-800-627-3659

WILLISTON - Family Crisis Shelter
(701) 572-0757; Crisis Line: (701) 572-9111

Sexual Assault Reporting and Medical Examination Options



**ND Council on Abused Women's Services/
Coalition Against Sexual Assault in ND**

The sexual assault was NOT your fault...

What is an Acute Forensic Medical Examination?

It is an examination performed on a victim of criminal sexual conduct (regardless of age). The purpose is to gather evidence of the crime. The examination is performed within 96 hours after the crime occurs, unless good cause is shown for a delay.

Things to know:

- The examination is conducted as privately as possible.
- Law enforcement is not required to be present.
- Medical personnel collect the evidence and explain all of the related procedures.
- The examination may take between 2-4 hours:
 - All of the different steps in the examination process are the victim's choice.

Why is there a 96 hour time limit for the exam?

This time limit relates to the time within which it is most likely that DNA testing and other evidence collected will be effective. Other circumstances, such as whether or not a victim has showered prior to reporting the assault, will need to be evaluated by attending medical personnel, law enforcement, and the advocate to determine if collection of evidence is appropriate after 96 hours.

Do I need to report to law enforcement?

Victims of sexual assault are not required to report a sexual assault to law enforcement. Generally, a sexual assault victim advocate is contacted to meet with you to discuss the forensic medical examination and both immediate and delayed reporting options. If an advocate is not available, then a law enforcement officer will provide the information.

Do I have to have a Forensic Medical Examination?

No, you do not have to have a forensic medical examination. Law enforcement officers, physicians, and advocates may encourage you to receive the examination. But no one can force you to receive a forensic medical examination or decide for you; it is ultimately your choice, even if you are a minor.

Who Pays for the Forensic Medical Examination?

A victim of sexual assault is not required to pay for any prescreening or examination for the purpose of gathering evidence for a possible prosecution, including the cost of antibiotics and other medications administered as part of the examination. The hospital or clinic where you are examined will be reimbursed directly by the North Dakota Office of Attorney General. The medical facility cannot bill you or your insurance company for these costs.

You will however, be responsible for the costs of additional care you may receive not related to the collection of evidence, such as x-rays, stitches, hospitalization, pain medication and counseling. You may be asked to provide insurance information and/or eligibility for Medicaid or Indian Health Services. If you do not have coverage, or there are costs not covered by insurance, you may be eligible to have these costs paid by the North Dakota Crime Victims Compensation Fund. You can receive victim compensation funds if you report the crime to law enforcement within 72 hours of the occurrence and cooperate with law enforcement and prosecution. For additional information on exceptions and eligibility contact ND Crime Victim's Compensation: 701-328-6195.

You are not alone...it's never too late to get help.

Immediate Investigation

You may choose to report the details of the sexual assault at the time of the forensic medical examination. If you do, consider that:

1. You will receive the examination and may access free treatment and counseling for any effects from the sexual assault.
2. Law enforcement can investigate the crime scene before evidence is lost.
3. Law enforcement will also attempt to locate and interview witnesses while memories are fresh.
4. An immediate investigation may lead to identification, apprehension and prosecution of the assailant.
5. Evidence collected in the examination will be processed as soon as possible.
6. You may find a sense of closure and/or empowerment by choosing to engage with the criminal justice system.
7. Court intervention to provide protective services, such as arrest of the defendant and issuance of orders prohibiting contact, could happen fairly quickly.
8. If illegal drug use or underage drinking on your part is discovered as part of a medical examination, you cannot be prosecuted. **This does not include information discovered through a criminal investigation.**

Delayed Investigation

You may choose NOT to immediately participate; if so, consider that:

1. You can still receive the same forensic medical examination to preserve forensic evidence.
2. A thorough and successful investigation of the assault could be more difficult. Evidence and witnesses disappear, and memories fade.
3. Delayed reporting may affect the perceptions and response of prosecutors and jurors and may influence the prosecutor's ability to obtain a conviction.
4. You will still be responsible for medical costs that are not part of the forensic medical examination, including counseling.
5. You still cannot be prosecuted for illegal drug use and underage drinking that is discovered as part of a medical examination. **This does not include any information discovered by law enforcement through a criminal investigation.**
6. Victim identification information entered into the law enforcement agency's data system may be subject to ND's open records law.

Notice of Mandatory Reporting

In accordance with ND law, health care professionals are required to report sexual assaults to law enforcement. The forensic kit with your name and address may be kept by the law enforcement agency in the jurisdiction where the sexual assault occurred for a minimum of seven years or until you turn twenty-two, whichever occurs later.

Other Things to Consider...

- ◆ You can receive emergency contraceptive and treatment for sexually transmitted infections (STIs) regardless of what you decide.
- ◆ Your actions did not cause this assault.
- ◆ You will eventually regain a sense of strength and control often lost in the assault.
- ◆ You may feel a sense of justice by participating in holding the offender accountable.
- ◆ Talking about the assault may help you in dealing with what happened to you.
- ◆ You have the right not to answer questions related to being involved in criminal activity, including the use of drugs and alcohol.
- ◆ You have the right to refuse to answer questions from law enforcement related to the assault, even if you are under the age of 18.
- ◆ On the other hand, sometimes due to feelings of shame and embarrassment, victims do not disclose certain things. This could complicate the investigation and prosecution of this crime. It is important to be specific, detailed and not to leave anything out. But if you are hesitant to disclose something, talk to your advocate first.
- ◆ Once a report is made, you have no control over whether the case is prosecuted. There may be a plea agreement, or the case may be dismissed.
- ◆ There may be long delays in the process.
- ◆ A description of what happened may become public even if your name is not mentioned.
- ◆ You may have to testify in court.
- ◆ You cannot be asked or required to submit to a polygraph.

When Drugs are Used in a Sexual Assault:

If you think you were given a drug without your knowledge prior to the assault, it is important that you let law enforcement and/or medical personnel know. You have the option of having urine collected to test for the presence of common drugs used during the perpetration of a drug-facilitated sexual assault.

Before consenting to urine collection, you may want to discuss the possible results of such a test with a sexual assault advocate.

Alcohol is the most commonly used drug in a sexual assault. Other common drugs used may include: Benadryl, Eye drops, Morphine, Codeine, Methadone, Rohypnol, GHB, Ketamine and Ecstasy.

State and National Resources:

National Sexual Assault Hotline: 1-800-HOPE (4673)

ND Crime Victim's Compensation: 701-328-6195

If you decide you want to report to law enforcement you can contact: _____

Information in this brochure adapted from materials from:

North Dakota Attorney General's Office
National Sexual Violence Resource Center
Maryland Coalition Toolkit Project
Virginia Sexual and Domestic Violence Action Alliance
Abused Adult Resource Center, Bismarck, ND
With assistance from the:
ND Forensic Medical Examination Working Group
North Dakota Department of Health

This project was supported by Grant No. 2004-WE-AX-0051 awarded by the Office on Violence Against Women, U.S. Department of Justice to the North Dakota Department of Health. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

General Sexual Assault Information

Sexual violence violates a person's trust and feeling of safety. It occurs anytime a person is forced, coerced, and/or manipulated into unwanted sexual activity. The continuum of sexual violence includes rape, incest, child sexual assault, ritual abuse, stranger and non-stranger rape, statutory rape, marital or partner rape, sexual exploitation, sexual contact, sexual harassment, exposure and voyeurism.

Sexual assault includes one of the following sexual acts:

- Penile-vaginal intercourse
- Contact between the genitals and mouth
- Contact between an anus and a penis
- Penetration of the vagina or anus with a foreign object

Sexual assault generally constitutes a felony when one of the following conditions exists:

- Force was used or threatened, even if there is no bruise or injury to the victim
- The victim was afraid, even if this did not lead the victim to physically resist
- The victim was disabled and could not legally give consent (that is, the victim could not understand the nature or condition of the act due to illness or disability)
- The victim was severely intoxicated or unconscious as a result of drugs or alcohol and was therefore unable to give informed consent at the time of the sexual act
- The victim was under the age of legal consent at the time of the sexual act

Common Reactions Many Victims Experience Following a Sexual Assault

- | | |
|----------------------------------|-------------------|
| ▪ Shame | ▪ Denial |
| ▪ Embarrassment | ▪ Fear |
| ▪ Guilt | ▪ Powerlessness |
| ▪ Disorientation Emotional shock | ▪ Anger |
| ▪ Anxiety | ▪ Helplessness |
| ▪ Disbelief | ▪ Self-Blame |
| ▪ Retriggering | ▪ Rationalization |
| ▪ Depression | ▪ Disassociation |

Information Courtesy of:

A Guide for Friends and Family of Sexual Assault Survivors. Pennsylvania Coalition Against Rape, January 2007.
Sexual Assault Model Policy. International Association of Chiefs of Police, May 2005.

For additional information regarding sexual assault please contact your local domestic violence/sexual assault program or NDCAWS/CASAND. See Appendix C

Facts About Sexual Assault In North Dakota

January – December 2010

- ❖ **952 primary victims** and 258 **secondary victims** were served by 20 sexual assault crisis centers throughout North Dakota.
- ❖ At least **338 (36%)** of primary victims were under the age of 18 years old at the time of the assault/s.
- ❖ At least **875 (92%)** of the **victims** were **female**.
- ❖ At least **932 (98%)** of the **assailants** were **male**.
- ❖ At least **14 (1%)** of the **assailants** were **female**.
- ❖ **70% of the crimes were reported to law enforcement.**
- ❖ At least **43% of adult victims contacted** a sexual assault center about the crime **within 2 days** of the assault. **21% of adult victims contacted** a sexual assault center within **3-30 days** after the assault.
- ❖ At least **90% (859)** of the cases were **male assailant/female victim**.
- ❖ At least **8% (73)** of the cases were **male assailant/male victim**.
- ❖ At least **70%** of the adult assaults were **rape, 6% attempted rape, and 24%** were **sexual contact** other than rape or attempted rape.
- ❖ In adult cases **11%** of the **assailants were strangers**. In child cases **2%** of the **assailants were strangers**.
- ❖ In at least **42%** of all cases the **assailant was a friend/acquaintance/date** of the victim.
- ❖ At least **25%** of all cases were **incest or indicated a history of incest**. In at least **12%** of adult sexual assault cases reported, the victim also experienced **sexual abuse/incest as a child**.
- ❖ At least **10,077** services to **primary victims** were provided by crisis center advocates from January to December 2010.
- ❖ At least **38%** of the **assaults occurred in the victim's or assailant's home**.
- ❖ At least **36%** of the victims were **referred** to sexual assault service providers by **themselves, friends, or family members**.

ND Council on Abused Women's Services/Coalition Against Sexual Assault in ND
418 E. Rosser #320, Bismarck, ND 58501 701-255-6240

SAMPLE

FORENSIC MEDICAL EXAMINATION REIMBURSEMENT

FME 000699

This form is used by a healthcare provider to request reimbursement of costs associated with providing a forensic medical examination, including the EMTALA screening. This form should be completed during the examination. Please write legibly. Mailing information and instructions for completion are on the reverse.

DO NOT write any patient identifying information, such as name, account number, mailing address, DOB or SSN, on this form.

PART 1: PATIENT AND EXAMINATION INFORMATION TO BE COMPLETED BY FORENSIC MEDICAL EXAMINER

Location of alleged crime (city/county)	DATE AND TIME of alleged crime	DATE AND TIME of Forensic Medical Examination
PATIENT: (CHECK ALL THAT APPLY) <input type="checkbox"/> Adult (age 18 or older) <input type="checkbox"/> Minor (under age 18) <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Referral from Child Advocacy Center <input type="checkbox"/> Referral to Child Advocacy Center <input type="checkbox"/> Insured* <input type="checkbox"/> Not insured*		PRESENTATION (CHECK ALL THAT APPLY) <input type="checkbox"/> Emergency Room <input type="checkbox"/> Outpatient Clinic <input type="checkbox"/> Child Advocacy Center <input type="checkbox"/> Tribal jurisdiction <input type="checkbox"/> Jane/John Doe Report

* This information is collected for statistical purposes only. Patient/patient's insurance cannot be billed for this exam.

VICTIM WAIVER AND ACKNOWLEDGEMENT (MUST BE READ TO PATIENT/GUARDIAN BEFORE DISCHARGE)

1. You ARE NOT responsible for the cost of a sexual assault examination for the purpose of gathering evidence for a possible prosecution, including any health screening under EMTALA, the cost of antibiotics and any other medications administered as part of the examination.
2. You ARE responsible for the costs of additional care you may receive that is not for the collection of evidence, such as x-rays, stitches, hospitalization, pain medication and counseling. You may be asked to provide insurance information and/or eligibility for Medicaid or Indian Health Services. If you do not have coverage, or there are costs not covered by insurance, you may be eligible to have these costs paid by the North Dakota Crime Victims Compensation Fund. For more information, contact the Crime Victims Compensation Fund at 1-800-445-2322.

I acknowledge that I have read and explained the "victim waiver and acknowledgment" to the patient or the patient's guardian.

FORENSIC MEDICAL EXAMINER NAME & TITLE (PRINT)	SIGNATURE	DATE
--	-----------	------

PART 2: REIMBURSEMENT REQUEST TO BE COMPLETED BY MEDICAL PROVIDER BILLING DEPARTMENT

Reimbursement request for: (check ONE) <input type="checkbox"/> EMTALA screening only (\$100) <input type="checkbox"/> Forensic Medical Exam only (\$400) <input type="checkbox"/> Forensic Medical Exam with Colposcope only (\$700) <input type="checkbox"/> EMTALA screening AND Forensic Medical Exam (\$500) <input type="checkbox"/> EMTALA screening AND Forensic Medical Exam with Colposcope (\$800)	SEND REIMBURSEMENT TO: PLEASE PRINT Billing Provider Name _____ Mailing Address _____ City/State/Zip _____ Contact Person Name _____ Contact Phone _____ Federal ID Number _____
---	--

Office of Attorney General Use Only:
 NDCL _____ FIN _____

NOTE: A Form W-9 must be on file with the Office of Attorney General before reimbursement can be made.

The medical provider is prohibited by law from billing the patient, directly or through a third-party payer, for the costs of the forensic medical examination including any related health screening. Reimbursement made by the Attorney General's office is deemed full payment. **The patient may not be billed for these costs.**

FORENSIC MEDICAL EXAMINATION

An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime and is performed within ninety-six hours after the alleged crime unless good cause is shown and relates to all cases in which a sexual assault kit has been used, regardless of the age of the victim. Attach a signed copy of form "APPENDIX C [STEP ONE] AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION" contained in the North Dakota Sexual Assault Evidence Collection Kit. If a sexual assault evidence collection kit from a state other than North Dakota is used, attach a copy of the form signed by the victim which consents to the examination. The consent form is retained by the ND Crime Laboratory for record keeping purposes only. A completed consent form must be attached to the Forensic Medical Examination Reimbursement Claim Form.

CHILD FORENSIC MEDICAL EXAMINATION

Cases involving a minor where a sexual assault kit has not been used and therefore there is no Appendix C form available. Attach a copy of the signed and dated HIPAA release form. Check the "Ongoing Sexual Abuse" box in Section 1: Presentation.

Do not include or write patient name, account number, date of birth, social security number, or mailing address on this form.

PART 1: PATIENT AND EXAMINATION INFORMATION

- Provide city or county location of alleged crime. Fill in the date and time of the crime, including the day, month and year and whether the time is AM or PM. Do not leave any information blank. For child forensic medical examinations, if the exact date and time of the alleged crime is not known, please provide an approximate the date of the alleged crime or the most recent alleged act.
- Print the date the forensic medical examination was performed, including the day, month and year of the examination. Complete the time of the forensic medical examination and indicate AM or PM. Do not leave any information blank.
- The patient, insurance and presentation information is collected for statistical and audit purposes. It does **not** affect reimbursement. Check all applicable boxes in both the Patient Information and Presentation sections.
- The licensed healthcare provider who performed the sexual assault forensic medical examination shall read the **VICTIM WAIVER** information to the patient or the patient's parent/guardian) and make sure the patient/patient's guardian understands it. Once the waiver information has been read, the licensed healthcare provider shall print his or her name and **also sign and date the form**. Unsigned reimbursement claim forms will be rejected.

PART 2: REIMBURSEMENT REQUEST

- Check the appropriate box indicating for which type of exam reimbursement is requested. The flat fee reimbursement will be paid to the provider and shall be payment in full for the cost of a sexual assault examination for the purpose of gathering evidence for possible prosecution, including the cost of antibiotics and other medications administered as part of the examination. Reimbursement will be made even if no prosecution results. "Third party payer" means a public or private entity that pays at least part of the cost of medical treatment for the patient, including Medicaid, Indian Health Services, and Crime Victims Compensation Fund. **BY LAW, YOU MAY NOT BILL THE PATIENT OR THE PATIENT'S INSURANCE PROVIDER FOR THESE COSTS.**
- Provide the name and telephone number of the billing department's representative. Print the full mailing address of the billing provider, including city, state and zip code. **This is the address to which the payment will be mailed.** The Crime Laboratory is a division of the Office of Attorney General. Payment will be made by Office of Attorney General. Provide the federal tax identification number. **A Form W-9 must be on file with the Office of Attorney General before payment can be made.** The form is available at www.irs.gov.
- Review the checklist before mailing. Mail the **white and yellow** copies to the North Dakota Crime Laboratory at the address shown below. **Retain the pink copy for your billing records.** Each form has a unique number printed on the top right-hand side. This number is used for tracking the reimbursement request and to make payment. For your convenience, we suggest you **use this tracking number** in place of a patient account number. **Do not use a patient account number for billing or payment purposes.**
- If you have questions, contact ND Council on Abused Women's Services at (701) 255-6240, or see www.ag.nd.gov.

Checklist (Please review BEFORE MAILING):

- All sections are completed. Examiner signed and dated form.
- Completed Appendix C - Authorization form OR signed HIPAA Release form attached.
- Form W-9 attached (or already on file).
- NO patient identifying information appears on this form. (Please redact anything that was added.)

Submit white and yellow copies of signed form and attachment(s) by mail to:

**North Dakota Crime Laboratory
Attention: FME Reimbursement
PO Box 937
Bismarck ND 58502-0937**

Drug-Facilitated Sexual Assault

If it is believed that an individual has been drugged to facilitate sexual assault, a urine collection sample should be obtained immediately – with informed consent. It is recommended that the procedure be performed using a State Toxicology Collection kit from the Crime Laboratory Division of the North Dakota Attorney General’s Office. In a drug-facilitated sexual assault case, the likelihood of detecting the drug used to commit the crime diminishes each time the victim urinates. Therefore, it is imperative that immediate action be taken to preserve the evidence.

There are several indications that should cause the attending medical personnel to suspect a drug-facilitated sexual assault. For instance, the victim may:

- give a history of having only one or two drinks and suddenly feeling “very drunk”
- report becoming highly intoxicated within a matter of five to fifteen minutes, especially after receiving a drink from someone or leaving a drink unattended
- describe “cameo appearances” – awakening, seeing the perpetrator, being unable to move, and then losing consciousness again
- exhibit signs of memory loss, dizziness, confusion, drowsiness, impaired motor skills, impaired judgment, reduced inhibition, or a variety of other symptoms
- appear intoxicated or “hung over.”

Depending on the timeframe and circumstances, some of the abovementioned symptoms may still be present when the victim speaks with attending medical personnel.

Unfortunately, perpetrators often use drugs to facilitate a sexual assault by incapacitating the victim. Examples of commonly-used drugs include:

- Alcohol
- Benzodiazepines (Rohypnol)
- Gamma Hydroxybutyrate/GHB
- Ketamine
- Sedatives
- Codeine
- Tetrahydrozoline (Visine eye drops)
- Diphenhydramine (Benadryl)

Alcohol

Alcohol is the drug most frequently used to facilitate sexual assault. Victims often believe that because they voluntarily consumed alcohol, ecstasy or some other drug, they are to blame for the assault. It is important for service providers to help victims understand that intoxication and the resulting diminished abilities are not causes of sexual assault; they are tools used to aid in commission of this crime.¹

Alcohol is easily obtainable, socially accepted as a drug, and used frequently because the victim may voluntarily ingest it. Because alcohol consumption slows motor function and decreases

inhibition, a perpetrator has a greater likelihood of subduing a victim who has ingested alcohol. Increased alcohol use leads to “blackout” stages in which an individual has no recollection of previous interactions with others. This “blackout” stage is often followed by a period of unconsciousness in which the victim loses control of her or his motor skills and experiences amnesia.

Benzodiazepines

Benzodiazepines are another class of drugs used in drug-facilitated sexual assault. Rohypnol, generically Flunitrazepam, is a benzodiazepine prescribed as a sleeping pill. This drug is similar to Valium but is approximately ten times stronger. In the United States, its illegal use appears most frequently in conjunction with alcohol. Benzodiazepines cause muscle relaxation, slow psychomotor responses, and lower inhibitions. When taken in high doses or in combination with alcohol, they can cause blackouts, combined with amnesia, that last eight to twelve hours. During these blackout episodes, it is not uncommon for a victim to have a “cameo appearance” in which he or she sees the surroundings and the perpetrator but is unable to move or speak.

Perpetrators have been successful in administering Rohypnol to avoid drug charges. Routine benzodiazepine screens do not detect Rohypnol’s presence, and traces in the blood and urine may only be detected for up to 8 to 12 hours after ingestion.

Street names for benzodiazepines include rophies, roofies, ruffies, R2, roofenol, Roche, roachies, la rocha, rope, and rib. Other benzodiazepines that may be used include Alprazolam (Xanax), Clonazepam (Klonopin), Diazepam (Valium), Flurazepam (Dalmane), or Lorazepam (Ativan).

Gamma Hydroxybutyrate (GHB)

Another drug commonly used in sexual assault, Gamma Hydroxybutyrate (GHB), is a fast-acting central nervous system depressant. It is produced in powder form, capsule, or as a colorless and odorless liquid with a salty taste. It has been used in Europe to induce short-term comas, for surgical anesthesia, as a treatment for narcolepsy, and in the withdrawal of alcohol and opiate addictions. GHB may produce a feeling more extreme than alcohol intoxication, resulting in decreased inhibition. Its effects are exacerbated, of course, when it is combined with alcohol. The effects can occur within 15 minutes to an hour of ingestion, possibly causing nausea, drowsiness, respiratory distress, dizziness, seizures, and amnesia with cameo experiences.

GHB has been marketed as a health food product for its hypnotic effects and to promote muscle development and weight loss. It has also been sold over the counter as a dietary supplement. Street names of GHB include liquid ecstasy, grievous bodily harm, Georgia home boy, liquid X, liquid E, soap, scoop, easy lay, salty water, cherry meth, zonked, and somotomax.

Clearly, when any drugs, including alcohol, are used in combination, the effects can be fatal for the victim. Immediate response is always required when medical personnel suspect that a victim of sexual assault may have ingested drugs of any kind.

Tetrahydrozoline (Visine Eye Drops)

Visine contains 0.05% tetrahydrozoline. Clinical effects from ingestion of tetrahydrozoline include drowsiness, coma, respiratory depression, bradycardia, hypotonia, muscle flaccidity and hypothermia. Ingestion of tetrahydrozoline would produce an obtunded, flaccid victim unable to resist or recall events that occurred during the periods of coma.ⁱⁱ

The onset of action after ingestion of tetrahydrozoline is rapid, from 15 to 30 minutes. This rapid onset is a similar profile to other drugs used in drug facilitated sexual assault. The duration of action is reported as from 12 to 24 hours after ingestion.ⁱⁱⁱ

Dihydrochloride (Benadryl)

Even less obvious drugs like Benadryl are playing a role in rapes and sexual assaults. Assaultants overdose their victims with Benadryl. Benadryl, an antihistamine with drying and sedative effects is used to help with allergies. Since the side effects ultimately result in a lifeless body, some rapists and sexual assaulters prefer the drug to eliminate victims' resistance.

ⁱ Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination; Florida Office of Attorney General Bill McCollum, 2007, pg 8.

ⁱⁱ Spiller HA et al., Drug facilitated sexual assault using an over-the-counter ocular ..., Leg Med (2007), doi:10.1016/j.legalmed.2007.01.005

ⁱⁱⁱ Spiller HA et al., Drug facilitated sexual assault using an over-the-counter ocular ..., Leg Med (2007), doi:10.1016/j.legalmed.2007.01.005

Sexual Assault Supplemental Report Form

- It is recommended that the Sexual Assault Supplemental Report be used in the reporting, recording and investigation of *all* alleged sexual assault incidents, **for each and every incident reported**
- Supervisory review of all sexual assault cases is encouraged
- This form is not intended for use when the victim is a minor

Agency	ORI	Incident #	Case #
Name of Person Who Contacted Police <i>(optional on information reports)</i>		Method Report Received <input type="checkbox"/> 911 Call <input type="checkbox"/> Non-emergency number <input type="checkbox"/> Online <input type="checkbox"/> Other <i>(describe)</i> _____	
Address of Person Who Contacted Police		City	State Zip Code
Telephone: Home	Work	Cell	Email
Relationship to Victim		Others Present with Victim During Interview	
Location of Interview <input type="checkbox"/> Hospital <input type="checkbox"/> On Scene <input type="checkbox"/> At Department <input type="checkbox"/> Other <i>(describe)</i> _____			

Dates

Date of Report <i>(mm/dd/yyyy)</i>	Time of Report	Date(s) of Incident <i>(mm/dd/yyyy)</i>	Time of Incident From To
------------------------------------	----------------	---	----------------------------------

Victim Victim's identifying or contact information may be exempt from disclosure under the Freedom of Information Act and Crime Victim's Rights Act or if this is a blind report.

Last Name		First Name		Middle Name
Any Aliases		Primary Language	Special Needs, Disability, Requests, etc.	
Race/Ethnicity	Sex <input type="checkbox"/> M <input type="checkbox"/> F	Date of Birth <i>(mm/dd/yyyy)</i>	Height	Weight
Address		City	State	Zip Code
Telephone: Home	Work	Cell	Email	
Emergency Contact		Emergency Contact Telephone	Best Way to Safely Contact Victim	

Victim Demeanor Observed at Time of Interview *(select all that apply) Include detailed description in narrative*

<input type="checkbox"/> Afraid/Fearful	<input type="checkbox"/> Confused	<input type="checkbox"/> Shaking/Trembling	<input type="checkbox"/> Other <i>(describe)</i> _____
<input type="checkbox"/> Angry	<input type="checkbox"/> Flat Affect	<input type="checkbox"/> Tearful/Crying	
<input type="checkbox"/> Calm/Controlled	<input type="checkbox"/> Nervous/Agitated	<input type="checkbox"/> Withdrawn/Quiet/Flat Affect	

Are there any injuries? <i>If yes, detail in narrative</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed	Does the victim report pain? <i>If yes, describe</i>	<input type="checkbox"/> Y <input type="checkbox"/> N
Were weapons used to hurt/injure/threaten? <i>If yes, detail in narrative</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed	Does the victim believe she/he may have been drugged? <i>If yes or unsure, detail in narrative</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Unsure
Did the victim voluntarily consume alcohol within 24 hours of incident? <i>If yes, detail in narrative</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed	Did the victim voluntarily take other controlled substance within 96 hours of incident? <i>If yes, detail in narrative</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed
Has sexual abuse by suspect been ongoing? <i>If yes, how long?</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed	Any other known or possible victims? <i>If yes, list names and contact information</i>	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Follow up needed

Victim Assistance Checklist

<input type="checkbox"/> Victim's Personal Safety Concerns Addressed	<input type="checkbox"/> Sexual Assault Victim Rights and Services Information Provided
<input type="checkbox"/> Victim Given Department Contact Information	<input type="checkbox"/> Crime Victim's Rights and Compensation Information Provided

Incident Information

Location of Interaction Before Assault(s) *(detail in narrative)*

Location(s) of Assault(s) *(detail in narrative)*

Locations Suspect Took Victim After the Assault(s) *(detail in narrative)*

Type of Coercion/Force/Fear Involved *(select all that apply)*

- | | | |
|---|---|--|
| <input type="checkbox"/> Disregarding the victims' stated or otherwise communicated lack of consent | <input type="checkbox"/> Victim was incapacitated (see below) | <input type="checkbox"/> Threat of death |
| <input type="checkbox"/> Verbal pressure/coercion | <input type="checkbox"/> Presence of weapon | <input type="checkbox"/> Abduction |
| <input type="checkbox"/> Position of authority (teacher, supervisor, boss, parent) | <input type="checkbox"/> Stalking | <input type="checkbox"/> Other <i>(describe)</i> _____ |
| <input type="checkbox"/> Threat of physical force or violence | <input type="checkbox"/> Physical restraint | |
| | <input type="checkbox"/> Physical force | |

Describe all types of coercion/force/fear involved. *(Include detailed description in narrative)*

Type of Assault *(select all that apply)*

- | Attempted | Completed | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Rape (penile/vaginal penetration against the will, by force, threat, or intimidation) |
| <input type="checkbox"/> | <input type="checkbox"/> | Forced sodomy (penile/anal penetration against the will, by force, threat, or intimidation) |
| <input type="checkbox"/> | <input type="checkbox"/> | Forced oral-genital contact (oral copulation) |
| <input type="checkbox"/> | <input type="checkbox"/> | Forced sexual penetration with an object or finger |
| <input type="checkbox"/> | <input type="checkbox"/> | Sexual battery (forced touching of intimate parts, fondling, kissing, oral contact but not penetration) |
| <input type="checkbox"/> | <input type="checkbox"/> | Physical assault/battery |
| <input type="checkbox"/> | <input type="checkbox"/> | Strangulation |
| <input type="checkbox"/> | <input type="checkbox"/> | Other <i>(describe)</i> _____ |

Additional Crimes to be Investigated:

Victim Incapacitated or Incapable of Consenting or Communicating Unwillingness to Engage in Sexual Contact Due to: *(select all that apply)*

- | | | |
|----------------------------------|---|--|
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental incapacity | <input type="checkbox"/> Unconsciousness or sleep |
| <input type="checkbox"/> Alcohol | <input type="checkbox"/> Physical incapacity | <input type="checkbox"/> Other <i>(describe)</i> _____ |
| <input type="checkbox"/> Drugs | <input type="checkbox"/> Subordinate position | |

Initial Investigation

Victim Medical Treatment *(select all that apply)*

	Where	By Whom	Date
<input type="checkbox"/> First aid rendered	_____	_____	_____
<input type="checkbox"/> Medical exam	_____	_____	_____
<input type="checkbox"/> Forensic exam/rape kit	_____	_____	_____
<input type="checkbox"/> Admitted to hospital	_____	_____	_____
<input type="checkbox"/> Will seek own	_____	_____	_____
<input type="checkbox"/> Declined	_____	_____	_____

Suspect Forensic Exam Conducted? Y N Follow up needed If yes, by whom? _____

Date _____

Photos

	Taken By	Date Taken	Digital	Polaroid	35 mm	Video
<input type="checkbox"/> Victim injuries	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Suspect injuries	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Crime scene(s)	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Property damage	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Evidence Collected *(select all that apply)*

	By Whom	Location Stored	Analyzed
<input type="checkbox"/> Physical evidence <i>(i.e. clothing, sheets, tissue)</i> (list) _____	_____	_____	Y <input type="checkbox"/> N <input type="checkbox"/>
<input type="checkbox"/> Property damage (list) _____	_____	_____	Y <input type="checkbox"/> N <input type="checkbox"/>
<input type="checkbox"/> Weapons (list) _____	_____	_____	Y <input type="checkbox"/> N <input type="checkbox"/>

	Victim	Attached	Suspect	Attached		Victim	Attached	Suspect	Attached
911 print out	<input type="checkbox"/>	<input type="checkbox"/>							
Forensic exam report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Suspect polygraph	<input type="checkbox"/>	<input type="checkbox"/>		
Toxicology report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pretext phone call	<input type="checkbox"/>	<input type="checkbox"/>		

Follow up needed, specify _____

Suspect Photocopy and complete the following information for each suspect on a separate page and attach to the report.

No. of Suspects	Last Name (Suspect # _____)		First Name		Middle Name	
Aliases			Height	Weight	Hair Color	Eye Color
Race/Ethnicity	Sex M <input type="checkbox"/> F <input type="checkbox"/>	Date of Birth (mm/dd/yyyy)	Social Security No.		Driver's License No./State	
Address			City		State	Zip Code
Telephone: Home		Work	Cell		Email	
Primary Language (if not English)		Suspect's Defining Characteristics (i.e. tattoos, scars, physical disabilities, etc.)				
Suspect on Scene Y <input type="checkbox"/> N <input type="checkbox"/>		Suspect Arrested Y <input type="checkbox"/> N <input type="checkbox"/>		If Yes, Arrest Number		
Suspect Conduct Prior to Incident (select all that apply) Include detailed description as gathered from interviews of suspect, victim, and associated persons in narrative						
<input type="checkbox"/> Grooming (i.e. targeting vulnerability, testing boundaries, building trust)		<input type="checkbox"/> Monitoring victim (tracking patterns of conduct)				
<input type="checkbox"/> Electronic contact (i.e. internet, text messaging)		<input type="checkbox"/> Providing alcohol/controlled substances				
<input type="checkbox"/> Isolating victim		<input type="checkbox"/> Other (describe) _____				
Relationship to Victim (select all that apply)			Suspect Demeanor as Observed at Time of Interview (select all that apply) Include detailed description in narrative			
<input type="checkbox"/> Recent acquaintance		<input type="checkbox"/> Domestic partner	<input type="checkbox"/> Parent of victim		<input type="checkbox"/> Angry	
<input type="checkbox"/> Casual acquaintance of victim		<input type="checkbox"/> Married	<input type="checkbox"/> Relative of victim		<input type="checkbox"/> Nervous/Agitated	
<input type="checkbox"/> Friend (non-romantic)		<input type="checkbox"/> Legally separated	<input type="checkbox"/> Position of authority		<input type="checkbox"/> Threatening	
<input type="checkbox"/> Internet relationship		<input type="checkbox"/> Divorced	<input type="checkbox"/> Co-worker		<input type="checkbox"/> Tearful/Crying	
<input type="checkbox"/> Planned first meeting/date		<input type="checkbox"/> Father of children	<input type="checkbox"/> Stranger		<input type="checkbox"/> Withdrawn/Quiet/Flat Affect	
<input type="checkbox"/> Intimate partner/dating		<input type="checkbox"/> Cohabiting	<input type="checkbox"/> Other (describe) _____		<input type="checkbox"/> Other (describe) _____	
<input type="checkbox"/> Former intimate partner/dating		<input type="checkbox"/> Neighbor				
Did the Suspect Consume Alcohol Within 24 Hours Prior to Incident? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative Follow up needed <input type="checkbox"/>		Did the Suspect Take Controlled Substances Within 96 Hours Prior to Incident? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative Follow up needed <input type="checkbox"/>		Visible Suspect Injuries? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		

Suspect History

	Y <input type="checkbox"/>	N <input type="checkbox"/>	Date(s)	Type(s)
Arrest record	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Prior sexual assault offenses	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Prior use of weapons in a sex related offense	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Currently on probation	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Currently on parole	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Subject of protection order(s)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

Associated Persons Photocopy and complete the following information for each witness on a separate page and attach to the report.

Last Name (Witness # _____)		First Name		Middle Name		
Aliases			Height	Weight	Hair Color	Eye Color
Race/Ethnicity	Sex M <input type="checkbox"/> F <input type="checkbox"/>	Date of Birth (mm/dd/yyyy)	Social Security No.		Driver's License No./State	
Address			City		State	Zip Code
Telephone: Home		Work	Cell		Email	
Relationship to Victim (see above categories)			Relationship to Suspect (see above categories)			
Aware of Incident Y <input type="checkbox"/> N <input type="checkbox"/>		Contact with Victim Prior to Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		Contact with Suspect Prior to Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		
Present During Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative			Contact with Victim After the Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative			
Did Victim Disclose Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		Contact with Suspect After the Incident Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		Did Suspect Disclose Y <input type="checkbox"/> N <input type="checkbox"/> If yes, detail in narrative		

Interview History

	Date(s)	Time	Location	Officer Initials
Victim				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Suspect(s)				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Associated Person(s)				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Case Review Checklist *Select all that apply*

<input type="checkbox"/> Follow-up photos taken of the victim's injuries <i>(mm/dd/yyyy)</i> _____ <input type="checkbox"/> Available witness(es) interviewed <input type="checkbox"/> Witness(es) provided a written statement <input type="checkbox"/> Unable to contact or interview the following person(s) _____ _____ <input type="checkbox"/> Case referred to the prosecutor's office <i>(mm/dd/yyyy)</i> _____	Contacts Initiated by Police <i>(select all that apply)</i> <input type="checkbox"/> Community-based advocate <input type="checkbox"/> Dept./Victim/Witness advocate <input type="checkbox"/> Language translation <input type="checkbox"/> Medical <input type="checkbox"/> Mental health <input type="checkbox"/> Probation/Parole <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other agency _____	Contacts Initiated by Victim <i>(select all that apply)</i> <input type="checkbox"/> Community-based advocate <input type="checkbox"/> Medical <input type="checkbox"/> Mental health <input type="checkbox"/> Other _____																														
Evidence Follow-Up <i>(select all that apply)</i>																																
<table border="0"> <tr> <td></td> <td style="text-align: center;">Victim</td> <td style="text-align: center;">Attached</td> <td style="text-align: center;">Suspect</td> <td style="text-align: center;">Attached</td> </tr> <tr> <td>Forensic exam results</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>DNA results</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Victim	Attached	Suspect	Attached	Forensic exam results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNA results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Toxicology results Other _____	<table border="0"> <tr> <td></td> <td style="text-align: center;">Victim</td> <td style="text-align: center;">Attached</td> <td style="text-align: center;">Suspect</td> <td style="text-align: center;">Attached</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Victim	Attached	Suspect	Attached		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																												
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																												

Officer Printed Name _____ Rank _____ Badge Number _____

Officer Signature _____ Date (mm/dd/yyyy) _____

Investigator Printed Name _____ Rank _____ Badge Number _____

Investigator Signature _____ Date (mm/dd/yyyy) _____

Supervisor Printed Name _____ Rank _____ Badge Number _____

Supervisor Signature _____ Date (mm/dd/yyyy) _____

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Officer Narrative (See next page)**Narrative Report Checklist**

Describe and Document:

- How case was received
- Observations on approach—document what you saw, heard, etc.
- Spontaneous statements and demeanor at time of statement
 - Victim
 - Victim during transport
 - Suspect
 - Suspect during transport and booking
- Injuries of all parties
 - Type and extent
 - How the injuries occurred
- Interview and provide detailed account of incident
 - Victim
 - Suspect
 - Witness(es), esp. first disclosure
 - Medical personnel
- Drugs/alcohol used/involved
- Weapons used/involved
- Coercion, force, fear
- Crime scene and physical evidence
- Actions taken (i.e. evidence collected, arrest decision, exams, follow up photographs and interviews)
- Documents included with report (search/arrest warrants, affidavits, subpoenas, 911 print-out, pretext phone call synopsis, transcripts, crime lab reports, victim/suspect forensic exam reports, photos, etc.)

*Officer Printed Name*_____
*Rank*_____
*Badge Number*_____
*Officer Signature*_____
Date (mm/dd/yyyy)

Victim / Suspect / Witness Interview *Photocopy and complete one for each interview and attach to report.*

Note: *Due to the nature of trauma and sexual assault, victims may find it difficult to recall the incident chronologically or remember details fully, following the incident. This is a preliminary statement. As additional details are recalled and as the investigation evolves, additional interviews are warranted.*

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS AND INFORMATION

I hereby authorize and request the release of any and all medical information and copies of any and all medical records to the _____ Police Department or the _____ Sheriff's Department related to any physical harm or trauma I have had over the last two years. I also authorize the medical provider's employees to discuss the medical records or treatment with law enforcement until such time as this release has been terminated in writing.

Patient Name: _____

Date of Birth: _____

Said records and information may be released to any representative of the **[Insert your agency's name]** Department.

Signature of Patient or Legal Guardian

Date

Witness

Date

(A copy of this release is the same as the original)

Court Orders

A. **Order for Protection:** “A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violating a protection order under N.D.C.C. § 14-07.1-06, whether or not the violation was committed in the presence of the officer.” N.D.C.C. § 14-07.1-11(1). **NOTE: The law requires an arrest whether or not the excluded party was invited back to the residence.**

1. If a law enforcement officer determines that an otherwise valid protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
2. Law enforcement should pay special attention to and assess the lethality of each respondent when serving protection orders.

B. **Surrender of Weapons:** A respondent may be required in a protection order to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in N.D.C.C. § 12.1-01-04(6), in the respondent’s immediate possession or control or subject to the respondent’s immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm, or other dangerous weapon in any further act of violence. If so ordered, the respondent shall surrender the firearm to the Sheriff, or the sheriff’s designee, of the county in which the respondent resides, or the chief of police, or the chief’s designee, of the city in which the respondent resides. **NOTE: For the safety of both parties, if it is not required in a protection order, an officer still may suggest the respondent surrender weapons to law enforcement for a temporary period of time.**

1. **Individuals – including law enforcement officers and military personnel – are prohibited from possessing or transferring (or returning) a firearm while subject to a protection order. 18 U.S.C. § 922 (g) (8) and 18 U.S.C. § 922 (d) (8).** Individuals cannot possess ammunition either. **EXCEPTION: Law Enforcement officers and military personnel are exempt from these prohibitions for official duty” firearms only. 18 U.S.C. § 925 (a) (1). [Federal Law]**
2. **Individuals – including law enforcement officers and military personnel – are prohibited from possessing or transferring (or returning) a firearm if that person has been convicted of a misdemeanor crime of domestic violence.** No exception is made for law enforcement officers and military personnel. **18 U.S.C. § 922 (g) (9) and U.S.C. § 922 (d)(9). [Federal Law]**
3. **Forfeiture of Weapons: “Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized.” N.D.C.C. § 62.1-01-02.**

- C. **Order Prohibiting contact:** “A law enforcement officer **shall** arrest a person without a warrant if the officer determines there is probable cause that the person has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer.” N.D.C.C. § 12.1-31.2-02.
NOTE: The law requires an arrest whether or not the excluded party was invited back to the residence.
- D. **Disorderly Conduct Restraining Order:** “A law enforcement officer **may** arrest the respondent without a warrant and take the respondent into custody if the law enforcement officer has probable cause to believe the respondent has violated an order issued under N.D.C.C. § 12.1-31.2-01.” N.D.C.C. § 12.1-31.2-01(7) (c) NOTE: The law allows an arrest whether or not the excluded party was invited back to the residence.
1. If a law enforcement officer determines that an otherwise valid disorderly conduct order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
- E. **Foreign Orders (Full Faith and Credit):**
1. “A law enforcement officer, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of the protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. The protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for law enforcement.” N.D.C.C. § 14-07.4-03 (1).
 2. “If the protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.” N.D.C.C. § 14-07.4-03 (2).
 3. “If a law enforcement officer determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.” N.D.C.C. § 14-07.4-03 (3).

4. **“Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order.” N.D.C.C. § 14-07.4-03 (4).**

F. **Law Enforcement Immunity: “A law enforcement officer is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission is done with good faith.” N.D.C.C. §14-07.4-05”.**

North Dakota Victim/Witness Programs

Adams Co.

Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

Barnes Co.

Abused Persons Outreach Center
Victim/Witness Program
Valley City, ND
845-0078

Bottineau Co.

Family Crisis Center
Victim/Witness Program
Bottineau, ND
228-2028

Bowman Co.

Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

Burleigh Co. States Attorney's Office

Victim/Witness Program
Bismarck, ND
250-7783

Cass Co. States Attorney's Office

Victim/Witness Program
Fargo, ND
241-5869

Cavalier Co. States Attorney's Office

Victim/Witness Program
Cavalier, ND
265-8070

Dept of Juvenile Services

Victim/Witness Program
Fargo, ND
239-7269

FBI Victim Specialist

Bismarck, ND
223-4875

FBI Victim Specialist

Minot, ND
852-5071

FBI Victim Specialist

Grand Forks, ND
772-0812

Grand Forks Co.

Community Violence Intervention Center
Victim/Witness Program
Grand Forks, ND
746-0405

Griggs Co. States Attorney's Office

Victim/Witness Program
Hillsboro, ND
636-2432

Hettinger Co.

Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

McHenry Co.

Family Crisis Center
Victim/Witness Program
Bottineau, ND
228-2028

McLean Co.

McLean Family Resource Center
Victim/Witness Services
Washburn, ND
462-8643

Mercer Co States Attorney's Office

Victim/Witness Program
Stanton, ND
745-3518

Minot Air Force Base

Victim/Witness Services
Minot, ND
723-4158

Morton Co.
Abused Adult Resource Center
Victim/Witness Program
Bismarck, ND
222-8370

Mountrail Co.
Domestic Violence Program
Victim/Witness Services
Stanley, ND
628-3233

ND State Penitentiary
Dept. of Corrections
Victim Services
Bismarck, ND
328-6183

Pembina Co. States Attorney's Office
Victim/Witness Program
Cavalier, ND
265-8070

Pierce Co.
Family Crisis Center Victim/Witness Program
Bottineau, ND
228-2028

Ramsey Co.
SAFE Alternatives for Abused Families
Victim/Witness Services
Devils Lake, ND
662-7378

Slope Co.
Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

Stark Co. States Attorney's Office
Victim/Witness Program
Dickinson, ND
456-7875

Steele Co. States Attorney's Office
Victim/Witness Program
Hillsboro, ND 636-2432

Stutsman Co. States Attorney's Office
Victim/Witness Program
Jamestown, ND
251-6367

Traill Co. States Attorney's Office
Victim/Witness Program
Hillsboro, ND
636-2432

Turtle Mt. Reservation
Hearts of Hope
Victim/Witness Program
Belcourt, ND
477-000

Walsh Co. States Attorney's Office
Victim/Witness Program
Grafton, ND
352-2391

Ward Co. States Attorney's Office
Victim/Witness Program
Minot, ND
857-6480

Williams Co. States Attorney's Office
Victim/Witness Program
Williston, ND
577-4574

US Attorney's Office
Victim/Witness Coordinator
Bismarck, ND
530-2420

US Attorney's Office
Victim/Witness Coordinator
Fargo, ND
297-7430

Victim Notification Information

Name of Inmate: _____

Pending Charge(s): _____

Names of parties that should be notified of inmate's release:

Victim(s) name/phone number (home, work, and cell #s):

Alternative Point of Contact: name/phone number:

Is the victim able to access the SAVIN system for automated notification? ___ yes ___ no

If unable to contact / reach the victim please notify:

Victim/Witness Coordinator _____ at _____ or
Victim Advocate _____ at _____.

THANK YOU!

Comments: _____

ND SAVIN

(Statewide Automated Victim Information and Notification)

The North Dakota Statewide Automated Victim Information Notification (ND SAVIN) system is an innovative service providing crime victims and other concerned citizens free, prompt and confidential notification and information regarding important offender status information, such as release of an inmate, scheduled court event, issuance of protection order or Sex Offender status. The system can be accessed 24 hours a day via www.vinelink.com or by using the toll free number 1-866-ND1-VINE. Individuals can also choose to register with the system to receive important notifications on offender status changes. Those interested in registering with the system can choose to register their phone or email address. Notification can be provided in English or Spanish.

SAVIN is an initiative of the Criminal Justice Information Sharing (CJIS) program. In order to provide victims this wonderful service SAVIN has interfaced and gathered information from the courts, county jails, the Department of Corrections and Rehabilitation, law enforcement, the Office of the Attorney General and the CJIS Portal. User agencies are provided with VINEWatch, which is a web-based tool used to register victims, obtain statistics and audit reports.

THE ND SAVIN SYSTEM ENCOMPASSES SIX VINE MODULES:

- **VINE Probation & Parole**
- **VINE Data Feed**
- **VINE Sex Offender**
- **VINE Protection Order**
- **VINE Court**
- **VINE Custody (DOCR and County Jail Facilities)**

Jails currently on-line include: Grand Forks, Mercer, Barnes, Richland, Heart of America Correctional & Treatment Center, Mountrail, Southwest Multi-County Correctional Center, Adams, Walsh, Pembina, Cavalier, Rolette, Traill, McLean, Burleigh, Emmons, McIntosh, Bottineau, Lake Region Correctional Center, Stutsman, Logan, Ward, Williams and Cass.



False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non- Stranger Sexual Assault

BY DR. KIMBERLY A. LONSWAY, SGT. JOANNE
ARCHAMBAULT (RET.), DR. DAVID LISAK¹

The issue of false reporting may be one of the most important barriers to successfully investigating and prosecuting sexual assault, especially with cases involving non-strangers. In this article, we will begin by reviewing the research on the percentage of false reports and then go on to discuss some of the complex issues underlying societal beliefs and attitudes in this area.

How Many Sexual Assault Reports are False?

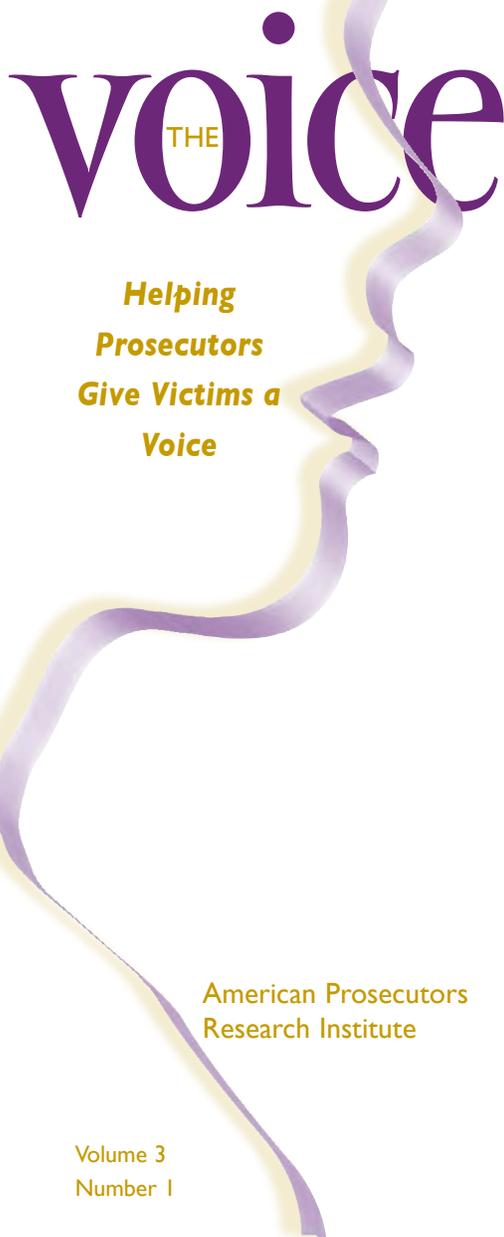
One of the most common questions we address in training presentations with professionals—as well as personal conversations with lay people—is how many sexual assault reports are false. In the research literature, estimates for the percentage of sexual assault reports that are false have varied widely, virtually across the entire possible spectrum. For example, a very comprehensive review article documented estimates in the literature ranging from 1.5% to 90% (Rumney, 2006). However, very few of these estimates are based on research that could be considered credible. Most are reported without the kind of information that would be needed to evaluate their reliability and validity. A few are little more than published

opinions, based either on personal experience or a non-systematic review (e.g., of police files, interviews with police investigators, or other information with unknown reliability and validity).

Prior “research:” The Kanin study

In the most frequently cited study on this topic, Professor Eugene Kanin (1994) reported that 41% of the 109 sexual assault reports made to one midwestern police agency were deemed to be false over a nine-year time period. However, the determination that the charges were false was made solely by the detectives; this evaluation was not reviewed substantively by the researcher or anyone else. As Lisak (2007) describes in an article published in the *Sexual Assault Report*:

Kanin describes no effort to systemize his own ‘evaluation’ of the police reports—for example, by listing details or facts that he used to evaluate the criteria used by the police to draw their conclusions. Nor does Kanin describe any effort to compare his evaluation of those reports to that of a second, independent research—providing a ‘reliability’ analysis. This violates a cardinal rule of



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science, a rule designed to ensure that observations are not simply the reflection of the bias of the observer (p. 2).²

In other words, there is no way to explore whether the classification of these cases as false was simply made as a result of the detectives' own perceptions and biases, without any real investigation being conducted. This concern is compounded by the fact that the practice of this particular police department was to make a "serious offer to polygraph" all rape complainants and suspects (Kanin, 1994, p. 82). In fact, this practice "has been rejected and, in many cases, outlawed because of its intimidating impact on victims" (Lisak, 2007, p. 6). The reason is because many victims will recant when faced with apparent skepticism on the part of the investigator and the intimidating prospect of having to take a polygraph examination. Yet such a recantation does not necessarily mean that the original report was false.

In reality, there is no way that an investigator can make an appropriate determination about the legitimacy of a sexual assault report when no real investigation has been conducted—and the victim is intimidated by the department's policy of making a "serious offer to polygraph" all rape complainants. As we will discuss at length below, the determination that a report is false can only be made on the basis of findings from a thorough, evidence-based investigation.

As a result of these and other serious problems with the "research," Kanin's (1994) article can be considered "a provocative opinion piece, but it is not a scientific study of the issue of false reporting of rape. It certainly should never be used to assert a scientific foundation for the frequency of false allegations" (Lisak, 2007, p. 1).

Methodologically rigorous research finds 2-8%

In contrast, when more methodologically rigorous research has been conducted, **estimates for the percentage of false reports begin to converge around 2-8%.**

For example, in a multi-site study of eight U.S. communities involved in the "Making a Difference" (or "MAD") Project, data were collected by law enforcement agencies for all sexual assault reports received in an 18-24 month period. Of the 2,059 cases that were included in the study, 140 (7%) were classified as false. This is particularly noteworthy because a number of measures were taken to protect the reliability and validity of the research. First, all participating law enforcement agencies were provided training and technical assistance in an ongoing way to ensure that they were applying consistent definitions for a false report. In addition, a random sample of cases was checked for data entry errors. More information on the MAD Project is available at <http://www.evawintl.org>.

To date, the MAD study is the only research conducted in the U.S. to evaluate the percentage of false reports made to law enforcement. The remaining evidence is therefore based on research conducted outside the U.S., but it all converges within the same range of 2-8%.

For example, Clark and Lewis (1977) examined case files for all 116 rapes investigated by the Toronto Metropolitan Police Department in 1970. As a result, they concluded that seven cases (6%) involved false reports made by victims. There were also five other reports made by someone other than the victim that were deemed by these

researchers to be false (e.g., a relative or boyfriend).

Grace, Lloyd, and Smith (1992) conducted a similar analysis of the evidence in all 348 rape cases reported to police in England and Wales during the first three months of 1985. After reviewing the case files, reports from forensic examiners, and the statements of victims and suspects, 8.3% were determined to constitute false allegations. This study was sponsored by the British Home Office.

A similar study was then again sponsored by the Home Office in 1996 (Harris & Grace, 1999). This time, the case files of 483 rape cases were examined, and supplemented with information from a limited number of interviews with sexual assault victims and criminal justice personnel. However, the determination that a report was false was made solely by the police. It is therefore not surprising that the estimate for false allegations (10.9%) was higher than those in other studies with a methodology designed to systematically evaluate these classifications.

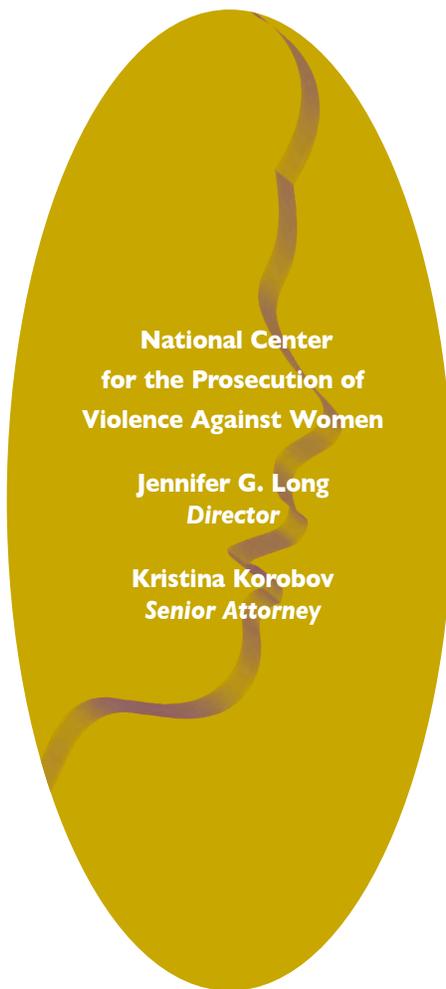
The largest and most rigorous study that is currently available in this area is the third one commissioned by the British Home Office (Kelly, Lovett, & Regan, 2005). The analysis was based on the 2,643 sexual assault cases (where the outcome was known) that were reported to British police over a 15-year period of time. Of these, 8% were classified by the police department as false reports. Yet the researchers noted that some of these classifications were based simply on the personal judgments of the police investigators, based on the victim's mental illness, inconsistent statements, drinking or drug use. These classifications were thus made in violation of the explicit

policies of their own police agencies. The researchers therefore supplemented the information contained in the police files by collecting many different types of additional data, including: reports from forensic examiners, questionnaires completed by police investigators, interviews with victims and victim service providers, and content analyses of the statements made by victims and witnesses. They then proceeded to evaluate each case using the official criteria for establishing a false allegation, which was that there must be either “a clear and credible admission by the complainant” or “strong evidential grounds” (Kelly, Lovett, & Regan, 2005). On the basis of this analysis, the percentage of false reports dropped to 2.5%.

Finally, another large-scale study was conducted in Australia, with the 850 rapes reported to the Victoria police between 2000 and 2003 (Heenan & Murray, 2006). Using both quantitative and qualitative methods, the researchers examined 812 cases with sufficient information to make an appropriate determination, and found that only 2.1% of these were classified as false reports. All of these complainants were then charged or threatened with charges for filing a false police report.

Of course, in reality, no one knows—and in fact no one can possibly know—exactly how many sexual assault reports are false. However, estimates narrow to the range of 2-8% when they are based on more rigorous research of case classifications using specific criteria and incorporating various protections of the reliability and validity of the research—so the “study” does not simply codify the opinion of one detective who may believe a variety of myths regarding false reporting.

This realistic and evidence-based estimate of 2-8% thus suggests that the American public



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dramatically overestimates the percentage of sexual assault reports that are false. It's probably not hard to imagine why. For example, we have all seen how victims are portrayed in the media accounts of rape accusations made against popular sports and cultural figures. These media accounts show us just how easy it is for us as a society to believe the suspect's statements (a respected cultural icon) and both discount the victim's statements and disparage her character.

This tendency to overestimate the percentage of false reports can then introduce bias into an investigation and prosecution because it causes us to give less credibility to victims and more credibility to suspects. This is especially true if the victim's behavior

is seen as risky or problematic and if the suspect seems like a “nice guy” who doesn't look like a stereotypic rapist. We describe these characteristics as “red flags,” in the characteristics of sexual assault cases.

What Are These Red Flags?

Concerns regarding the legitimacy of a sexual assault report are often triggered by the presence of “red flags,” based on specific characteristics of the victim, suspect, or assault. Yet many of these “red flags” are actually based on our cultural stereotypes of what constitutes “real rape.”

As professionals, we are often reluctant to believe that we share these stereotypes, but the reality is that everyone in our society is exposed to the same cultural messages about sexual assault, and they inevitably influence how we think about it. Because these are societal stereotypes, they impact not only jurors but also the other professionals involved in sexual assault response (e.g., law enforcement professionals, forensic examiners, victim advocates, prosecutors, and other professionals). They even influence friends and family, all too often preventing them from providing the emotional support that victims of sexual assault so desperately need.

It is typically not difficult for a professional working in this field to describe what our society considers to be a “real rape.” For example, if you were to ask a roomful of people to describe what sexual assault is like, they might give some of the following common characteristics:

- The victim and suspect do not know each other—they are strangers.
- A weapon was used and/or physical violence was reported.
- There are signs of physical injury.

- The victim is hysterical and reports to law enforcement immediately.
- The victim did not exercise bad judgment at the time of the sexual assault.
- The victim has never reported a sexual assault in the past.
- The suspect is seen as sick, crazy, or deranged—not respectable, credible, or likeable.

Then when it comes to the victim’s involvement in the criminal justice system, there are again a number of characteristics that most people would assume are typical of sexual assault cases:

- There is a great deal of physical evidence to corroborate the allegation.
- The victim actively participates with the investigation and prosecution.
- The victim does not change his or her account of what happened.
- The victim is absolutely certain about the details of the sexual assault.
- The victim does not recant.
- Not a single detail in the victim’s account is provably false.

However, if you asked a room full of prosecutors how many of their cases resemble this stereotype, most would say that only a small percentage of their cases do. In fact, the research³ is clear that these stereotypic characteristics of “real rape” are actually quite rare:

- In reality, most sexual assaults are perpetrated by someone known to the victim, without a weapon, physical violence, or signs of physical injury.
- Very few victims report immediately to law enforcement, but if they do report to law enforcement, it is often after a delay of days, weeks, months, or even years.
- Many victims have a number of factors that limit their perceived credibility: they are often young, homeless, have a mental or physical impairment, are belligerent, and/or

abusing alcohol or controlled substances.

- Victims often omit, exaggerate or fabricate parts of their account, and they may even recant altogether. They are not typically hysterical when interviewed by medical professionals, law enforcement professionals, prosecutors, or others.
- Suspects often do not fit our stereotype of a “rapist.”

In short, most sexual assault reports involve at least some of the “red flags” listed above. Yet sexual assault reports that are different from this stereotype of “real rape” are all too often viewed with suspicion, not only by jurors, support people, and other community members, but also by the professionals who are tasked with responding within the criminal justice system.

Of course, prosecutors may share some of these same “red flags” for suspecting that a sexual assault report is false. Yet this doesn’t necessarily indicate a personal belief in the stereotype. Often, prosecutors understand the realistic dynamics of sexual assault, but know that this stereotype will be prominent in the minds of judges and jurors as they make decisions regarding a sexual assault case. Prosecutors may therefore believe that they cannot ethically charge a defendant in cases that depart too much from the stereotype of “real rape,” because a jury would not be likely to convict. All of this makes cases with “red flags” more difficult to investigate and prosecute—despite the fact that many of the characteristics are actually typical of sexual assault.

What is the Actual Definition of a False Report?

Although many people have different ideas about what exactly constitutes a false report, the most reasonable definition is

that: A false report is a report of a sexual assault that did not happen (i.e., it was not completed or attempted). While we might all agree with this simplistic definition of a false report, people have different ideas about exactly when they can decide that the sexual assault did not actually happen. For example, investigators, prosecutors, and others often decide that a sexual assault did not happen based simply on their own views of the victim, the suspect, and their credibility. This is an unacceptable practice.

In reality, investigators and prosecutors cannot determine that the sexual assault did not happen, simply because they suspect that the report is false, view it with suspicion, or because the victim changes his or her account of what happened.

Investigators and prosecutors certainly cannot determine that the sexual assault did not happen because the victim lacks credibility—perhaps because the victim is young, drunk, taking drugs, belligerent, or suspected of “being a prostitute.”

It is similarly impossible to determine that a sexual assault did not happen based on sympathy for the suspect, because he seems sincerely outraged and upset by the charges, he has a credible story, or he appears to be a responsible citizen who does not meet our personal assumptions about who is likely to be a “rapist.”

In other words, professionals cannot determine that the sexual assault did not happen just because any of the “red flags” are present in a sexual assault case.

Rather, investigators and prosecutors must base all final judgments of a sexual assault report on the findings from a thorough, evidence-based investigation. The determination that a report is false can then only be

made when there is sufficient evidence to establish that the sexual assault did not happen (was not completed or attempted.) This does not mean that the investigation failed to prove that the sexual assault happened—in that case the investigation would simply be inconclusive or unsubstantiated. It also does not mean that the suspect was unable to successfully complete the sexual assault—this would be an attempted sexual assault and/or some other sexual offense.

This definition 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” (p. 77). This seems clear, because a case cannot be “determined through investigation to be false or baseless” if no investigation was conducted or if it yielded insufficient evidence.⁴

While this is the actual definition of a false report for law enforcement purposes, it does not typically reflect the way investigators, prosecutors (and their supervisors) tend to think of sexual assault investigations.⁵ In fact, at virtually every training we offer on this topic, we hear from law enforcement professionals who unfound cases—and prosecutors who reject them—either because they do not believe the victim’s account or they failed to prove it conclusively. This practice fails to meet the needs of both victims and the larger society.

So, although the actual definition of a false report should be the same for all criminal justice professionals, it is clear that the practices that are really used vary dramatically. This is why the percentage of sexual assault reports that are unfounded by various law

enforcement agencies are so different; many are labeling sexual assault reports false without any evidence to establish that they did not occur.

But What if Part of the Report is False?

We have therefore sought to offer a clear definition of what constitutes a false report. Next we want to address the very common problem that investigators and prosecutors face—that parts of the victim’s account may be false, omitted, exaggerated, or inconsistent with other information that is given. In other words, how false does a false report need to be? Does the whole report have to be false to constitute a false report of sexual assault?

For most criminal justice professionals, it is not difficult to come up with reasons why sexual assault victims might omit, exaggerate, or even fabricate aspects of their report.

For example, victims might give inconsistent or untrue information out of trauma or disorganization. When we are traumatized, we do not always think clearly and cannot necessarily provide information that is 100% complete and accurate. This is especially true for victims who have been sexually assaulted more than once, because aspects of the prior sexual assault may be confused with the current one. Victims may also have memory impairment due to alcohol or drug use.

Victims might also give incomplete, inconsistent, or untrue information because they are uncomfortable relaying details of the sexual assault. This may be particularly likely for details regarding the sexual acts

involved. For example, it is quite common for sexual assault victims to describe the incident as involving only penile-vaginal penetration because they are uncomfortable reporting other crimes such as oral copulation or anal penetration.

Many victims give information that is incomplete, inconsistent, or untrue because they are afraid that they won’t be believed or that they will be blamed for the sexual assault. To illustrate, victims may omit details that will undermine their credibility, such as drug or alcohol use, prostitution, or other unflattering or even illegal behavior. Of course, victims may also omit details about their own unlawful activity out of the fear of being arrested.⁵

Victims also sometimes minimize what happened or change the details in order to protect the perpetrator. This can occur when the two people have a relationship, when the victim depends on the perpetrator for financial or emotional support, or is afraid of getting the perpetrator “into trouble.” As a result, victims may give incorrect or confusing information about what actually occurred.

Victims also may give information that is incomplete, inconsistent or inaccurate because of their immigration status (or assumed status). Many victims have learned from experiences in their country of origin that authority figures are not to be trusted, particularly law enforcement officers. In addition, suspects often use immigration status against victims, threatening to report them to immigration authorities or to have them deported if they tell anyone about the sexual assault.

There can also be cultural reasons for exaggerating or minimizing the facts of a sexual

assault report. For victims from another culture, beliefs about what is acceptable to tell a stranger and taboos about sexuality and sexual activity may influence their description of what happened. This problem can be especially pronounced when the (female) victim is from a minority culture and the (male) law enforcement professional is from the dominant culture of the United States.

Victims from a minority cultural group may be particularly reluctant to report a sexual assault against another member of their cultural group, because it is sometimes seen as a betrayal of the victim's cultural group. This reluctance may be heightened when there is a perception that the cultural group is treated unfairly by law enforcement.

However, one of the most common reasons why victims alter or exaggerate the details of what happened is to create a case that seems more believable. This can be due to guilt, shame, or a fear of not being believed. Just like everyone else in society, sexual assault victims know the stereotype of a “real rape”—that it is perpetrated by a stranger with a weapon or physical violence, that it is reported to law enforcement immediately, and that the victim is emotionally hysterical. In an effort to be believed, therefore, victims may change aspects of the reported incident to make it sound more like this stereotype.⁶

For example, victims may report that they were assaulted by a stranger when they really knew the suspect, and perhaps even had a prior sexual relationship together.

Victims may also report that the suspect used a weapon when this is not really true, or describe threats of physical violence that were not really made. Remember that victims also struggle with the same societal stereotypes as well.

When we think about these dynamics, it makes sense why victims might provide inconsistent, incomplete, or even untrue statements. Yet many investigators and prosecutors have seen this as evidence of a “false report.” In fact, none of these situations meets the actual criteria for a false report—because even if aspects of the victim's account of the incident are missing, exaggerated, or false, this does not necessarily mean that the sexual assault did not happen.

Overcoming This Challenge

For all of the reasons provided above, it is understandable that victims often give information in their statement that is incomplete, inconsistent or even untrue. Nonetheless, these issues can destroy the victim's credibility if they are not handled by criminal justice professionals. As a first step in overcoming this challenge, investigators and prosecutors must recognize that these omissions, inconsistencies, and even untrue statements are understandable and should never be confused with a “false report.” Then, they can address these issues by exploring them gently and nonjudgmentally with the victim. The most important objective is to create a safe and nonjudgmental environment that encourages honesty even for unflattering or illegal behavior.

Then when an omission, inconsistency, or untrue statement is suspected, the investigator or prosecutor can respond by pointing out the issue and asking for clarification. It is entirely possible that the victim simply made a mistake or the professional misheard or misunderstood what the victim was saying. Yet the appropriate time for this type of clarification is after the victim has completed his or her description of what happened—not immediately when the issue arises, because this will interrupt the victim's narrative account.

It is also important to fully—but gently—explain to victims the negative impact of such omissions, inconsistencies, or untrue statements on their credibility during the law enforcement investigation. By doing so, investigators and prosecutors can emphasize the importance of complete truthfulness.

If the issue remains, the professional can explain that conflicting information has arisen and ask for the victim's help to make sense of it. For example, an investigator could say: “I need to ask these questions because I have to write a report on this, and I want to get every detail correct.”

Reduce the number of unnecessary professional contacts

Problems such as inconsistent statements from the victim can also be decreased by reducing the number of unnecessary professional contacts. This is often a goal for communities that implement a coordinated Sexual Assault Response and Resource Team (SARRT).

This does not mean that investigators and prosecutors should be reluctant to conduct follow-up interviews during the course of the investigation, as additional evidence and information is uncovered. In fact, such follow-up interviews are necessary to conduct a comprehensive investigation.

Rather, the goal is to reduce the number of unnecessary professional contacts that take place, either because the case is being screened or the victim is being “handed off” to another professional for some administrative reason. The purpose of any follow-up interviews should therefore be to gather additional information and clarify any questions, not to go over the same information again.

Because it takes time to develop rapport and trust with sexual assault victims, agencies should not allow investigators or prosecutors to “hand off” a sexual assault investigation in mid-stream, if there is any way to avoid it.

This is a frequent cause of inconsistencies in the victim’s statement, and it creates serious difficulties in establishing rapport and trust with criminal justice professionals. Rather, criminal justice agencies should have policies in place that provide their personnel with the resources needed to complete thorough sexual assault investigations.

Given the advantages of reducing the number of unnecessary professional contacts, some communities have also implemented a policy of “vertical prosecution” in sexual assault cases. This strategy allows victims to work with the same prosecutor throughout their case processing, which can be especially valuable in larger jurisdictions where cases are typically initiated by one prosecutor and “handed off” to another. It clearly represents a “Best Practices” for the investigation and prosecution of sexual assault.

Seek corroboration for details in the victim’s statement

There are clearly a number of strategies that investigators can use to clarify inconsistencies, omissions, or untruths in the victim’s description of what happened. However, as important as it is to seek clarification of such inconsistencies or omissions, it is equally important to highlight the accuracy of other details in the victim’s statement. Thus, a primary goal of any sexual assault investigation will be seeking corroboration for details in the victim’s account of events, regardless of whether or not they are relevant for establishing an element of the offense.

How to Handle the Frustrating Reality of “Real” False Reports

Having demonstrated that the percentage of false sexual assault reports is not as high as many people think, this does not deny their terrible reality. We all know that false reports do really exist, and they are incredibly damaging both to criminal justice personnel and to the countless victims of sexual assault whose credibility they undermine.

Potential indicators of a false report

Investigators and prosecutors may already be familiar with some of the training materials that are widely available to describe “indicators” of a false report of sexual assault. Unfortunately, some of these indicators are based on research that is extremely limited and/or inappropriate for this purpose. For example, many were developed on the basis of FBI experience with false reports of stranger sexual assaults. These may not be appropriate, because these sexual assault reports are more likely to involve a perpetrator who is known to the victim. Regardless, these training materials typically suggest that the potential indicators of a false report are actually the same stereotypic characteristics of “real rape” described previously. This is not a coincidence.

Consider this: If you were going to file a false report of sexual assault, would you describe the realistic dynamics of sexual assault? Would you really say that you were assaulted by someone you knew, perhaps someone with whom you have had a relationship or even had sex? Would you really say that you were drinking at the time, or perhaps even taking drugs, or engaging in other risky behavior? Probably not.

By describing this type of realistic sexual assault, you might not get the kind of reaction you were looking for, because people might respond to you in the same way they respond to victims of sexual assaults in the real world. That is, you might not be believed, or you might be blamed for the sexual assault yourself.

Therefore, if you were going to file a false report of sexual assault, you would probably describe a sexual assault that looks like the stereotype of “real rape” that we have discussed at such length throughout this article.

For this reason, it is not surprising that the potential indicators of a false report are actually the same as the stereotypic characteristics of “real rape.” To summarize material developed by McDowell and Hibler (1987),⁸ realistic indicators of a false report could potentially include:

- A perpetrator who is either a stranger or a vaguely described acquaintance who is not identified by name. As previously discussed, most sexual assault perpetrators are actually known to their victims. Identifying the suspect is therefore not typically a problem. However, victims who fabricate a sexual assault report may not want anyone to actually be arrested for the fictional crime. Therefore, they may say that they were sexually assaulted by a stranger or an acquaintance who is only vaguely described and not identified by name.
- Victim claims of having physically resisted to the utmost. In fact, many victims do not physically resist during a sexual assault. There are a number of reasons for this. Many victims are simply too surprised or confused to resist, because they are assaulted by someone they know and trust. Often, they do not resist during the sexual assault because they are simply trying to make sense of what is happening. Other victims do not physically

resist because they don't trust their own perceptions of what is happening, or blame themselves for the situation. Of course, physical resistance is not likely among victims who experience dissociation or frozen fright, and those who have been drinking and/or taking drugs. Still other victims do not physically resist because they are too frightened, and may even fear that resistance will anger their assailant and increase their risk of injury or death. Therefore, although many sexual assault victims do not physically resist, a false report may include a description by the victim as having resisted vigorously—in an effort to appear blameless.

- Use of a weapon, serious physical violence, and/or signs of injury. Most sexual assaults do not actually involve a weapon, physical violence, or evidence of physical injury. Yet fabricated claims may be more likely to resemble the stereotype of “real rape” in this regard. In some cases, individuals who falsely report a sexual assault may even inflict physical injuries upon themselves to bolster the credibility of their report. These can sometimes be identified by their nature and placement, which suggest that they were self-inflicted and are generally superficial.

- An assault involving only penile-vaginal penetration. While other sexual acts are commonly experienced by sexual assault victims, fabricated claims typically include only this “classic” form of rape (i.e., penile-vaginal penetration).

Still other indicators may be based on the lifestyle or history of the reporting party, such as:

- Escalating problems in life or personal relationships.
- A documented history of mental or emotional problems.

- Characteristics of the allegation that “copy-cat” a highly publicized crime.

While these indicators may therefore raise suspicion that a report of sexual assault may be false, none of them should be considered significant when observed in isolation. In fact, some of these factors are particularly challenging because they are associated both with an increased risk of actually being sexually assaulted and with an increased likelihood of filing a false report. Examples include “escalating problems in life or personal relationships” and “a documented history of mental or emotional problems.”

On the one hand, these factors make an individual more vulnerable to actually being sexually assaulted. Yet these same factors may also indicate emotional instability that could potentially lead an individual to file a false report of sexual assault. Therefore, a report should only be considered suspect when a number of these indicators are present. Then the report can only be determined to be false when the investigative facts directly contradict the victim's account of events. In fact, the best way to identify a false report is to uncover evidence that actually contradicts the victim's account of events or makes it impossible for the sexual assault to have taken place as described.

For example, there might be no sign of a physical struggle or injury when there logically should be. Or perhaps the victim states that she was “hit over the head with a bat and knocked unconscious” or “cut with a knife” yet there is no evidence of such an injury. There might even be evidence that the victim purchased materials used in the sexual assault or wrote a note or letter that is attributed to the suspect (McDowell & Hibler, 1987). Therefore, the determination

that a report is false is the result of “putting all the pieces together.”

Responding to a suspected false report

Investigators and prosecutors should only act upon their suspicion that a sexual assault report is false if these concerns are very serious and they are based on the evidence uncovered during the investigation. As McDowell and Hibler (1987) describe, any effort to challenge the validity of a sexual assault report could be devastating if the suspicion is misplaced and the victim really was assaulted. Such a challenge would certainly destroy the trusting relationship that must develop between criminal justice professionals and victims for successful investigation and prosecution.

It is therefore recommended that the tone of any challenge be supportive and based on the information provided by the victim.

This decreases the likelihood of defensiveness and allows for the continued investigation of the report, in case the sexual assault was legitimate but the information provided by the victim was incomplete, inconsistent, or inaccurate.

When the validity of a sexual assault claim is challenged, the person reporting the crime may react with anything ranging from relief to outrage.

To prosecute or not to prosecute?

If a report of sexual assault is determined on the basis of the investigative findings to be false, investigators must then make the decision regarding whether or not to charge the individual with filing a false report. However,

this decision must be made carefully, with consideration of a number of factors. Investigators and prosecutors are thus advised to discuss the advantages and disadvantages of prosecution with other professionals involved in the multi-disciplinary response to sexual assault victims (e.g., victim advocates, forensic examiners). For example, some of the advantages of pursuing such a charge would include the importance of conducting a thorough investigation and exonerating anyone who is innocent.

Prosecuting someone for filing a false report may therefore be most appropriate in cases where an innocent person was arrested, booked, and perhaps even subjected to a forensic examination. The failure to pursue charges for filing a false report could create the appearance of bias, by turning a blind eye toward this criminal act.

Prosecution may also be appropriate in those rare cases that are very high profile and/or involve hundreds of hours of investigative effort. In such cases, some law enforcement agencies have even sought restitution from the person filing the false report for personnel hours consumed during an investigation and even expenses associated with forensic examinations, DNA analysis, and searches of crime scenes and suspects.

Finally, prosecution may help investigators to deal with the negative impact on their own personal and professional well-being. In the view of the person who investigated the case, this is often the most compelling reason to prosecute the individual who filed the false report.

On the other hand, there are also a number of important disadvantages to charging someone with filing a false report, even if it is justified.

For one thing, such a charge is likely to be publicized by the media and this can create problems with future jurors who use it as evidence to confirm their suspicion that many or most sexual assault reports are false.

Even more important, such media coverage can serve as a serious deterrent for victims of sexual assault who might consider reporting the crime to law enforcement but fear that they will not be believed.

Given the size of the caseload that most investigators and prosecutors handle, it seems difficult to justify the inordinate time that would be involved in investigating and prosecuting someone for filing a false report—given that it is typically only a misdemeanor offense.

While it is understandable that investigators might want to prove that the report is false out of a sense of frustration and a determination to get to the truth, this is probably not the best use of limited resources. Rather, the decision regarding whether to charge someone with filing a false report should simply be based on the investigative findings already documented in the case file.

It is also important to keep in mind that most false reports of sexual assault are typically the result of personal and emotional problems, rather than vengeful motives.

Despite the stereotype, false reports of sexual assault are not typically filed by women trying to “get back at a boyfriend” or cover up a pregnancy, affair, or other misbehavior. While there are examples of this kind of false report, the vast majority are actually filed by people with serious psychological and emotional problems. In these situations, the person files a false report for the attention and sympathy that they receive. This explains why

many “real” false reports do not involve a named suspect, because the intention is not to get someone in trouble with the police. Rather, many “real” false reports involve only a vaguely described stranger, so the victim can receive the caring attention of law enforcement officials and social service providers without the fear that someone will be arrested. Clearly, these cases can be extremely frustrating for criminal justice professionals, but they are probably best handled with appropriate referrals for social services rather than prosecution for filing a false report. Two other examples of best practices for handling these issues are to establish a multi-disciplinary review panel and develop a position paper to provide guidance.

Establish a multi-disciplinary review panel

To address these difficult issues, criminal justice professionals should also consider setting up a multi-disciplinary review panel, to discuss cases and investigations with input from other members in the coordinated community response to sexual assault. For example, a review panel might consist of victim advocates, forensic examiners, prosecutors, and others (including representatives from the crime laboratory, sex offender treatment program, and probation/parole). The purpose is not only to review the sexual assault reports that were unfounded by law enforcement—or rejected by prosecutors—within a specified time frame. The objective is to discuss and review these cases to determine the most appropriate response for victims whose sexual assaults are not likely to result in successful prosecution.

Adopt a position paper to provide guidance

Another best practice is to develop or adopt a position paper to provide guidance for

criminal justice professionals and others on the topic of false allegations, unfounded cases, and victim recantation. The state of Oregon has led the way in this regard, by publishing a concise discussion of the issues in a four-page document that is available from the Oregon Attorney General's Sexual Assault Task Force. This document could serve as a starting point for others seeking to disseminate similar guidance for professionals within a community, region, or state. Such guidance is often desperately needed, because the terms are so often misunderstood and practices across agencies vary so widely.

Conclusion

Again, one of the most important challenges for successfully investigating and prosecuting cases of non-stranger sexual assault is the idea that many—or even most—reports are false. As long as this belief is accepted by law enforcement professionals, prosecutors, jurors, and others, our efforts to improve the criminal justice response to sexual assault will have only limited impact. Only those cases that look like our societal stereotype of “real rape” will be successfully investigated and prosecuted.

To move beyond this issue of false reporting, one of the most important steps we can take is therefore to recognize that the “red flags” that raise suspicion in the minds of most people actually represent the typical dynamics of sexual assault in the real world.

Once we accept this reality, we can begin to move beyond this issue to more successfully investigate and prosecute sexual assault cases, especially those involving non-strangers.

In fact, these issues have historically created a bigger hurdle for sexual assault victims than any lack of training or experience on the part of law enforcement professionals. It is therefore critically important for investigators, prosecutors, and others involved in the community response system to recognize these factors and seek to address them. To provide assistance, a number of useful resources are available.

For More Information

The EAWW International On-Line Training Institute offers a comprehensive training module on this subject, entitled: “False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault.” This article constitutes an adapted excerpt from that module. Other modules are also relevant for addressing these issues and improving the investigation and prosecution of non-stranger sexual assault. These include modules entitled: “Interviewing the Victim: Techniques Based on the Real Dynamics of Sexual Assault” and “Effective Report Writing: Using The Language of Non-Consensual Sex.” For more information on the On-Line Training Institute, please see: http://www.evawintl.org/evaw_courseware.

International Association of Chiefs of Police (July, 2005). *Investigating Sexual Assaults: Model Policy and Concepts and Issues Paper*. Published by the IACP National Law Enforcement Policy Center, Alexandria, VA. Available at: *Investigating Sexual Assaults Concepts and Issues Paper* (July 2005), *Investigating Sexual Assault Model Policy* (May 2005). Three corresponding resources are also available: Part I: *Investigating Sexual Assaults*; Part II: *Elements of Sexual Assault &*

Initial Response; and Part III: *Investigative Procedures*, and Part III: *Investigative Strategy & Prosecution*. These training keys are also published by the International Association of Chiefs of Police (<http://www.theiacp.org/>) and available at: training keys.

The Oregon Attorney General's Sexual Assault Task Force has published a four-page position paper on “False Allegations, Recantations, and Unfounding in the Context of Sexual Assault.” It is available at: http://www.oregonsatf.org/documents/False_Allegations.pdf.

References

- Bachman, R. & Saltzman, L.E. (1995). *Violence against women: Estimates from the redesigned survey*. Washington, DC: Bureau of Justice Statistics.
- Bohmer, C. & Parrot, A. (1993). *Sexual Assault on Campus: The Problem and the Solution*. New York: Lexington Books.
- Brener, M.D., McMahon, P.M., Warren, C.W., & Douglas, K.A. (1999). Sexual assault and mental disorders in a community population. *Journal of Consulting and Clinical Psychology*, 56, 252-259.
- Clark, L. & Lewis, D. (1977). *Rape: The price of coercive sexuality*. Toronto, Canada: The Women's Press.
- Fisher, B., Cullen, F., & Turner, M. (2000). *The Sexual Victimization of College Women*. Washington, DC: US Department of Justice: National Institute of Justice and Bureau of Justice Statistics.
- Grace, S., Lloyd, C., & Smith, L.J.F. (1992). *Rape: From recording to conviction*. Research and Planning Unit Paper 71. London, England: Home Office.
- Harris, J. & Grace, S. (1999). *A question of evidence? Investigating and prosecuting rape in the 1990s*. Home Office Research

Study 196. London, England: Home Office.

Heenan, M. & Murray, S. (2006). Study of reported rapes in Victoria, 2000-2003. Melbourne, Australia: Office of Women's Policy, Department for Victorian Communities.

Humphrey, S. & Kahn, A. (2000). Fraternities, athletic teams and rape: Importance of identification with a risky group. *Journal of Interpersonal Violence*, 15 (12), 1313-1322.

Kanin, E.J. (1994). False rape allegations. *Archives of Sexual Behavior*, 23, 81-91.

Kelly, L., Lovett, J., & Regan, L. (2005). A gap or a chasm? Attrition in reported rape cases. Home Office Research Study 293. London, England: Home Office Research, Development and Statistics Directorate. Available at <http://www.homeoffice.gov.uk/rds/hor-spubs1.html>.

Koss, M.P. (1988). Hidden rape: Sexual aggression and victimization in a national sample of students in higher education. In A.W. Burgess (Ed.), *Rape and Sexual Assault* (Vol. 2, pp. 3-25). New York: Garland.

Koss, M.P. & Cook, S. (1993). Facing the facts: Date and acquaintance rape. In R. Gelles & D. Loeske (Eds.), *Controversies in Sociology*. Newbury Park, CA: Sage Publications.

Koss, M.P., Gidycz, C.A., & Wisniewski, N. (1987). The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology*, 55, 162-170.

Lisak, David (2007). False allegations of rape: A critique of Kanin. *Sexual Assault Report*, 11 (1), pp. 1-2, 6, 9.

McDowell, C.P. & Hibler, N.S. (1987). False allegations (Chapter 11, p.275-299). In R.R. Hazelwood & A.W. Burgess (Eds.), *Practical Aspects of Rape Investigation: A*

Multidisciplinary Approach. New York: Elsevier.

Merrill, L.L., Newell, C.E., Milner, J.S., Koss, M.P., Hervig, L.K., Gold, S.R., Rosswork, S.G., & Thornton, S.R. (1998). Prevalence of pre-military adult sexual victimization and aggression in a Navy recruit sample. *Military Medicine*, 163, 209-212.

National Victim Center (1992). *Rape in America: A report to the nation*. Arlington, VA: National Victim Center.

Norton, R. & Grant, T. (2008). Rape myth in true and false rape allegations. *Psychology, Crime, & Law*, 14 (4), 275-285.

Rumney, P.N.S. (2006). False allegations of rape. *Cambridge Law Journal*, 65 (1), p. 128-158.

Tjaden, P. & Thoennes, N. (1998). *Prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey*. National Institute of Justice: Washington, DC.

ENDNOTES

¹ Dr. Lonsway is the Research Director of EVAW International; Sgt. Archambault is the Executive Director of EVAW International; and Dr. David Lisak is an Associate Professor of Psychology at the University of Massachusetts. This article is an adapted excerpt from the training module of the same name in the On-Line Training institute hosted by End Violence Against Women (EVAW) International, at http://www.evawintl.org/evaw_courseware.

² In an "addenda" to his article, Kanin (1994) describes how he also "gained access to the police records of two large Midwestern state universities" (p. 90) and examined all forcible rape complaints from a three-year period of time. Of these, 50% were classified as false reports, yet again this determination was made solely by police personnel and not reviewed in any systematic way by the researcher. Kanin does note, however, that these agencies did not use the polygraph and "neither declared the complaint false without a recantation of the charge" (p. 90).

³ Extensive research documents the characteristics of sexual assault victims, perpetrators, and incident. For example, see: Bachman & Saltzman, 1995; Bohmer & Parrot, 1993; Brenner, McMahon, Warren & Douglas, 1999; Fisher, Cullen & Turner, 2000; Humphrey & Kahn, 2000; Koss, 1988; Koss & Cook, 1993; Koss, Gidycz & Wisniewski, 1987; Merrill et al., 1998; National Victim Center, 1992; Tjaden & Thoennes, 1998.

⁴ Uniform Crime Reporting Handbook (2004). Published by the Federal Bureau of Investigations (FBI) and available online at <http://www.fbi.gov/ucr/handbook/ucrhandbook04.pdf>. More information on the Uniform Crime Reporting Program is also available at the FBI website at: <http://www.fbi.gov/ucr/ucr.htm>.

⁵ This calls to mind the terminology of "factually innocent" which the courts use to dismiss cases where it can be established that the suspect did not in fact commit the crime. To illustrate, the California appellate court has defined someone as "factually innocent" when:

"The person did not commit a crime. It does not mean a lack of proof of guilt beyond a reasonable doubt or even a preponderance of the evidence, nor does the term encompass those situations where an accusatory pleading is not issued for technical reasons such as search and seizure issues."

⁶ We believe that it is important for investigators and prosecutors to reassure victims that they will not be arrested for such behavior; but equally critical that departments have a policy of not arresting in such instances, unless it is absolutely necessary given the seriousness of the offense. Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on investigating the crime and treating the victim with compassion. Arresting the victim will likely damage any trust that has been established with law enforcement, eliminate any chance that the victim will cooperate with the investigation, interfere with the victim's emotional recovery, and perhaps even deter future additional victims from reporting. Only when absolutely necessary should law enforcement personnel consider arresting the victim of a sexual assault. When crafting a policy for law enforcement agencies, it is therefore important to make a distinction in the policy for responding to felonies versus misdemeanors that may have been committed by the victim.

⁷ This hypothesis is supported by research studies that document more stereotypic characteristics (e.g., offender violence) in accounts of rape that are generated as false, than in reports to law enforcement that are corroborated with an investigation and maintained as true (e.g., Norton & Grant, 2008).

⁸ Some readers may have heard of the "McDowell checklist" which is a series of questions purportedly used to score the account given by a sexual assault victim and determine whether or not it is a false report. Yet there is absolutely no scientific basis to support such a procedure—using this or any other similar "checklist." Equally important, this type of procedure interferes with the rapport and trust that is needed for a law enforcement investigator to conduct an effective interview with a sexual assault victim. Of course, this in turn eliminates any chance for successful investigation and prosecution.



NCPVAW DISCUSSION GROUP

Are you a prosecutor or allied professional involved in the prosecution of violence against women? Join the NCPVAW Yahoo! discussion group at <http://groups.yahoo.com/group/apri-vawp>

Discover EAW International's Web Training:

On-Line Training Institute for Sexual Assault Investigations

Are your officers and other community responders equipped to successfully investigate sex crimes?



"I highly recommend these training modules for any agency involved in responding to sexual assault. They reflect the most up-to-date material on the topic and exemplify best practices for the field. The depth of knowledge and expertise that went into the development of the On-Line Training Institute is clearly evident in the modules I have reviewed.

*Sergeant Elizabeth Donegan,
Sex Crimes Unit, Austin Police Department*

Free training module at www.evawintl.org

End Violence Against Women (EVAW) International is offering an introductory training module entitled: "Effective Report Writing: The Language of Non-Consensual Sex" **free of charge**. The cost for **any other individual training module is \$50**. A track of six training modules costs \$200; **you receive TWO additional training modules FREE**.

Agencies registering **30 or more people** will receive **an extra discount of \$25** off the price for each track of six modules. With this group discount, **the price for each track of six modules is \$175** – an average of only **\$29 per course**.

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Working Agreement with Advocacy Program

The following agencies wish to assist one another in their individual efforts to break the continuing cycle of domestic violence on their community. Liaison appointments, collaborative courses of action, and approved methods of information gathering and distribution are important routes to utilize in the ongoing effort to combat this crime. This agreement strives to meet the following objectives:

- Ensure victim safety and make sure any intervention occurs in a way that retains the dignity of the victim
- Focus efforts on stopping the batterer's use of violence – not striving to fix or end the relationship.
- Develop and implement policies, procedures, and protocols that act as a general deterrent to battering in the community.
- Establish cooperative relationships between agencies that jointly seek to end domestic violence in the community.

I. The Law Enforcement Agency Agrees to:

- A. Contact the advocacy program for all arrests related to sexual assault crimes, including incidents where officers determine there is probably cause to arrest but the alleged perpetrator cannot be immediately located. Law enforcement shall specify and communicate to the advocacy program who the responsible party is to make transfer this information i.e. dispatch, arresting officer, jailer, etc.)
- B. Share arrest and non-arrest report on all sexual assault related incidents. These calls include, but are not limited to, assault, disorderly conduct, and civil protection order violations. Law enforcement shall specify and communicate to the advocacy program the specific procedure that will be utilized to transfer this information i.e. reports e-mailed / faxed by shift supervisor, etc.)
- C. Keep statistics on all sexual assault related incidents, both arrests and non-arrests. Law enforcement is encouraged to maintain computerized data when possible.
- D. Review, revise, and update law enforcement policy on sexual assault annually with the assistance and input from the advocacy program.
- E. Provide and/or participate in annual training on sexual assault, as needed.
- F. Identify a liaison from the law enforcement department to work with the advocacy program for purposes of implementing this working agreement and to discuss any deviations from policy and changes in protocol.
- G. Participate in meetings with the advocacy program and other criminal justice agency representatives as part of a coordinated community response team.

II. The Advocacy Program agrees to:

- A. Maintain a 24 hour telephone service that will provide information to callers regarding services and options available to victims of sexual assault.
- B. Make contact with the victim in order to:
 1. Provide information concerning the court process and available services;
 2. Elicit the victim's input into the court process;
 3. Ascertain the victim's wishes regarding conditions of release; and
 4. Offer accompaniment throughout the court process.

- C. Provide support and assistance for victims throughout the civil and/or criminal court process by accompanying them to court, advocating on their behalf when appropriate, and assisting with transportation and child care when possible.
- D. Facilitate any exchange of information relevant to the case as desired and requested by the victim.
- E. Provide training to local law enforcement and other criminal justice agencies on the issue of sexual assault.
- F. Meet with individual agency liaisons to discuss deviations from policy or changes in protocol.
- G. Meet with representatives of all involved agencies to discuss the effectiveness of the police and practices of the coordinated community response.
- H. Securely maintain all law enforcement reports to insure confidentiality of involved parties. Advocacy program staff will access law enforcement reports for review purposes and to potentially assist a victim with the criminal and/or civil court process. Only clients of the advocacy program may receive copies of the reports. Any other party will be directed to request a copy from the law enforcement agency.
- I. Provide quarterly statistical reports to intervention agencies regarding the cases in which they are involved.
- J. Identify a liaison from the advocacy program to work with law enforcement for purposes of implementing this working agreement.

This agreement is entered into for the purpose of standardizing the collaborative sexual assault incident response between law enforcement and the advocacy program. It will be reviewed annually to assess its effectiveness and to make revisions where needed.

This agreement is entered into on _____ and expires a year from the date listed above.

Law Enforcement Date

Advocacy Program Date

This form was adapted from a template provided by the Moorhead Police Department, Moorhead, Minnesota.

This form was adapted from a template provided by the Moorhead Police Department, Moorhead, Minnesota.

Multiple Jurisdictions

Working across jurisdictional lines can oftentimes be challenging. Criminal matters such as sexual assault are complex irrespective of jurisdictional issues. The fact remains, however that, by virtue of the fact that five federally recognized tribes have lands in the state of North Dakota, jurisdictional complexities are often encountered, therefore it is important that cross-jurisdictional collaboration occur and that specific roles and responsibilities be defined to ensure that criminal cases are not “falling through the cracks”.

Collaboration as a means to prevent jurisdictional complications is an essential component of emergency planning. For first responders, it is imperative that jurisdictions engage in a dialogue to ensure a timely and effective response to matters which may have jurisdictional implications. Such dialogue can help to establish a framework for response. As a best practice, memorandums of agreement or understanding provide a useful tool for solidifying such collaborative efforts.

In North Dakota, the most common jurisdictional issues arise between state agencies and tribal agencies. With five (5) federally recognized tribes and one federally recognized service area located in whole or in part within the state of North Dakota, these jurisdictional issues impact the vast majority of counties across the state. (Tribes in North Dakota include: Three Affiliated Tribes of the Mandan, Hidatsa and Arikara; Standing Rock Sioux Tribe; Spirit Lake Tribe; Turtle Mountain Band of Chippewa and the Sisseton Wahpeton Oyate. The service area in North Dakota is the Trenton Indian Service Area). In order to engage in meaningful dialogue and collaboration, it is important to understand basic criminal jurisdictional issues and to further understand how such issues impact first responders as well as the coordination of justice system services.

I. Basics of Criminal Jurisdiction in Indian Country

Criminal jurisdiction is generally defined by the location of the action constituting a crime under applicable law. In Indian Country (including lands within established reservations, allotted lands held in trust, rights of way and dependent Indian communities) the determination of criminal jurisdiction is far more complex due in large

part to a series of United States Supreme Court Cases, which have defined tribes as quasi-sovereign political entities with limited authorities over the conduct of non-Indians. The matter of determining which jurisdiction, be it federal, tribal or state, has criminal jurisdiction in a particular matter is determined by looking not only to the location and nature of the criminal action but also the race or identity of the offender and the race or identity of the victim. Only after such an analysis is complete can we determine which jurisdiction will have authority to investigate and prosecute the matter.

Such matters can become far less complex when the various jurisdictions have established lines of communication and created protocols to determine how such criminal cases will be addressed. Formal protocols or clearly defined informal agreements can reduce the confusion and overlap that sometimes occur when multiple jurisdictions are investigating and prosecuting the same criminal acts.¹ These protocols or informal agreements can address such important issues as:

- Which jurisdiction will issue a search and/or arrest warrant? (Note that many federal districts will not accept evidence secured by a tribal search warrant.)
- Which agency will coordinate victim interviews to reduce the number of times and persons interviewing a victim?
- Which agency will maintain evidence and the chain of custody over evidence?

Although the federal or state definition of sexual assault may differ from the definition of sexual assault contained in a tribal code, federal, tribal and state prosecutors will often be utilizing the same evidence, witnesses, and arguments at trial. It is important to coordinate access to evidence and witnesses so that they will be available for trial in each and every jurisdiction where the perpetrator can be prosecuted.

Multi-disciplinary teams have been formed in many tribal communities to respond to sexual assault and abuse and are federally mandated in child sexual assault cases. These federally mandated multi-disciplinary teams can provide an ideal opportunity for tribal

¹ *Tribal Law Enforcement Protocol Resource: Sexual Assault*, Tribal Law and Policy Institute and Southwest Center for Law and Policy, July 2008.

and state prosecutors or law enforcement officials to network with their state and federal counterparts who may also investigate and prosecute sexual assaults against adult Native women.²

II. Jurisdiction In Sexual Assault Cases

A. Tribal Criminal Jurisdiction Over Sexual Assault Crimes Committed in Indian Country

The Tribe will have jurisdiction to prosecute sexual assault crimes arising in Indian Country so long as the offender is a tribal member or a non-member Indian. The source of the Tribe's authority to prosecute is based upon their inherent rights of self-governance and has long been recognized by federal courts. When it comes to non-Indian offenders, however, the United States Congress and the United States Supreme Court have determined that the inherent criminal jurisdiction of the Tribes does not extend to non-Indian offenders. As such, crimes committed by non-Indian offenders within Indian country will be the responsibility of the federal or state authorities.

Although a Tribe may not have criminal jurisdiction to prosecute a non-Indian offender, tribal law enforcement officers have the authority to arrest and detain both Indians and non-Indians for sexual assault crimes committed in Indian Country under the following circumstances and conditions³:

- When there is probable cause to believe that an Indian has committed the crime of sexual assault against another Indian.
- When there is probable cause to believe that an Indian has committed the crime of sexual assault against a non-Indian.
- Cross-deputized tribal law enforcement officers may arrest and detain both Indians and non-Indians on behalf of the certifying agency.
- Tribal law enforcement officers can detain non-Indians for a reasonable amount of time until the appropriate state or federal law enforcement officers arrive.

² Id.

³ Id.

Tribal law enforcement officers may arrest and detain Indian suspects outside of Indian Country when they are in hot pursuit of the suspect. Similarly, tribal law enforcement officers may detain non-Indian suspects outside of Indian Country when they are in hot pursuit of the suspect.

B. State Criminal Jurisdiction Over Sexual Assault Crimes Committed In Indian Country

All state courts have criminal jurisdiction over sexual assault crimes committed by non-Indians against non-Indian victims in Indian Country. Existing federal law, specifically Public Law 83-280 (also known as “PL280”), confers additional state court criminal jurisdiction in select jurisdictions namely: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. Although North Dakota **IS NOT** one of the select PL-280 jurisdictions, it is important to be aware of the impact of PL-280 as victims or offenders may travel in and out of North Dakota who have qualifying orders of protection or misdemeanor convictions for domestic violence. Such qualifying orders may require enforcement by non-PL-280 jurisdictions (such as North Dakota) and as such, a general understanding of PL-280 jurisdictions is an important part of the review and enforcement process.⁴

Tribal , Federal and State Criminal Jurisdiction (PL-280)⁵

Identity of Offender	Identity of Victim	Applicable Law	Jurisdiction
Indian	Indian Victim	Tribal Code	Tribal Jurisdiction
		State Law	State Jurisdiction
Indian	Non-Indian Victim	Tribal Code	Tribal Jurisdiction
		State Law	State Jurisdiction
Non- Indian	Indian Victim	State Law	State Jurisdiction

⁴ Id. Note: the Tribal Law and Order Act (2010) provided a means for assumption of felony jurisdiction by the United States, however this option does require application to the United States by the Tribe.

⁵ This chart does not reference or include the application of the General Crimes Act nor the Assimilative Crimes Act.

Non-Indian	Non-Indian Victim	State law	State Jurisdiction
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C. Federal Investigation and Prosecution of Sexual Assault Crimes Committed in Indian Country

Crimes of sexual assault may potentially be prosecuted in both tribal and federal courts without implicating double jeopardy. It is possible to prosecute and convict a perpetrator of sexual assault in two separate jurisdictions and to impose two separate criminal penalties for the crime. Coordination of the tribal sexual assault investigation with federal authorities is important to ensure successful dual prosecution of a perpetrator in both tribal and federal courts.⁶

D. Common Jurisdictional Issues Arising in Sexual Assault Cases

There are several ways in which jurisdictional issues might arise in sexual assault cases. Below is a list of some examples and discussion will follow on how law enforcement might develop a plan to address such issues beforehand: *(note: this is not an exhaustive list)*

- Offender is non-Indian and the Federal Government declines prosecution
- Offender is non-Indian and the victim is non-Indian but the sexual assault occurs on the reservation
- Victim is assaulted on the reservation but seeks medical attention in an off-reservation medical facility prior to filing a report with law enforcement.
- Sexual Assault occurs on the reservation but offender resides off the reservation (investigation/ arrest may be problematic)
- Sexual Assault occurs off the reservation but offender resides on the reservation (investigation/ arrest may be problematic)

III. Practices to Improve Collaboration Across Jurisdictional Boundaries

⁶ Id.

Despite the many complex jurisdictional issues that might arise in sexual assault cases, there are ways in which law enforcement and other first responders can alleviate some of these issues. Some of the steps that law enforcement officers should take to develop a process for addressing jurisdiction in sexual assault cases would include:

- Establish a relationship with neighboring state and federal authorities
- Establish a relationship with tribal advocates and advocacy organizations
- Educate officers on issues such as: cultural competency, tribal jurisdiction, and multi-jurisdiction collaboration
- Work out a protocol or procedure for addressing such issues and defining roles and responsibilities of participating agencies
- Wherever possible, solidify such agreements with a Memorandum of Understanding to ensure consistency, promote longevity and provide accountability
- Be sure to include SART (sexual assault response teams) or other multi-disciplinary teams in such discussions.

IV. Additional Online Resources

For additional resources on sexual assault responses in tribal jurisdictions or to learn more about cross-jurisdictional issues relating to the sexual assault of native women please visit any of the following links:

<http://www.swclap.org/>

<http://www.tribal-institute.org/lists/assault.htm>

<http://www.sane-sart.com/>

V. North Dakota Tribal Agency Contacts

For information on or assistance from specific tribal agency please contact any of the following:

Tribe	Law Enforcement	Victim Advocacy Program	Tribal Court
Spirit Lake Tribe	(701) 766-4231	(701) 766-1816	(701) 766-4245
Sisseton-Wahpeton Oyate	(605) 698-7661	(605) 698-3151	(605) 698-7629
Standing Rock Sioux Tribe	(701) 854-7241	(605) 823-7233	(701) 854-3807
Mandan, Hidatsa, Arikara Nation	(701) 627-3617	(701) 627-4171	(701) 627-4803
Turtle Mountain Band of Chippewa	(701) 477-6134	(701) 477-5614	(701) 477-6121

Summary of Federal, State, and Tribal Jurisdictions

The following chart sets forth a summary of the relevant jurisdictional parameters for most crimes occurring in Indian Country when the jurisdictional basis is simply that the crime occurred in Indian Country. It is apparent from the jurisdictional maze that, for these types of crimes, it will not always be clear at the outset of an investigation where jurisdiction ultimately lies for prosecution. Until the status of the defendant, victim, and land is definite, it cannot be determined whether the offense will be prosecuted in tribal, state, or federal court.

Offender	Victim	Jurisdiction
Indian	Indian	Federal Jurisdiction for felonies listed in Major Crimes Act (18 U.S.C. § 1153) Tribal Jurisdiction for misdemeanors No jurisdiction for felonies not listed in 18 U.S.C. § 1153
Indian	Non-Indian	Federal Jurisdiction for felonies listed in Major Crimes Act (18 U.S.C. § 1153) Federal Jurisdiction for other felonies and misdemeanors not listed in § 1153 (including assimilative crimes) unless tribe has already punished defendant. Tribal Jurisdiction for misdemeanors
Non-Indian	Indian	Federal Jurisdiction for both felonies and misdemeanors, including assimilative crimes.
Non-Indian	Non-Indian	State Jurisdiction for both felonies and misdemeanors.
Indian	Victimless Crime	Primarily Tribal Jurisdiction. Federal Jurisdiction in some cases.
Non-Indian	Victimless Crime	Primarily State Jurisdiction Federal Jurisdiction in some cases.

This summary was developed by Christopher B. Chaney, AUSA from the District of Utah, and provided by Rick Volk, AUSA from the District of North Dakota.

Responding to Adolescent Sexual Assault Victims

A teen reporting sexual assault (including statutory rape), whether delayed or not, requires crisis intervention services due to the delicate nature of emotional issues surrounding disclosure. A vulnerable teen is subject to grooming by a perpetrator which often leads to coerced sexual activity.

Without proper services the incident can:

- Affect a teen's future intimate relationships
- Keep the victim from disclosing to their family due to feelings of fear and/or guilt
- Cause withdrawal, depression, self mutilation, and/or suicidal tendencies to arise

A family's response to the disclosure of sexual assault will have a long lasting impact on their relationship with their child. By providing immediate rape crisis intervention, families are assisted in getting the emotional support they need as well as education about this type of crime and how they can support their child.

It is important for law enforcement to remain conscious of the difference in a teen victim's priorities when reporting. Teens often want to protect their friends, or even the perpetrator, for various reasons. A few of the most significant are the fear of ostracism by their peers (especially in a school setting), fear of incrimination due to illegal use of alcohol and/or drugs, and fear of their family's reaction to events leading up to the assault and the assault itself.