
 Cambridge Police Department	POLICY & PROCEDURES		No. 510.2
	Subject/Title: Adult Sexual Assault Guidelines		
	Issuing Authority:  Robert C. Haas Police Commissioner	Review Date: Apr. 4, 2013	Issue Date: October 31, 2013
		Effective Date: November 14, 2013	Rescinds: Policy #510.1, dated 05/15/13
References/ Attachments: Modeled after the "Adult Sexual Assault Law Enforcement Guidelines – 2009," issued by the Executive Office of Public Safety & Security	Accreditation Standards:		

I. PURPOSE:

Although each case will undoubtedly present different circumstances and challenges, these guidelines are intended to assist and provide responding officers and investigators with suggested practices when investigating adult sexual assault cases, corresponding violations of law and the apprehension of sex offenders. These guidelines also strive to provide insight to the investigator regarding victim and witness dynamics which will ultimately enhance the investigations and result in more successful outcomes.

A timely, pragmatic, and sensitive law enforcement response increases reporting sexual assaults, enhances a community's confidence in the police, and strengthens investigations thereby facilitating successful prosecutions. Responding to the victim with dignity, respect, and sensitivity will facilitate a victim's participation in the criminal justice system, increase offender accountability, and reduce secondary victimization.

There are three core practices that should be embraced when investigating sexual assault cases:

1. Thorough and sound investigations;
2. Trauma informed responses; and
3. Interagency cooperation.

II. POLICY:¹

In keeping with the aforementioned principals as the foundation for any response and investigation of a reported sexual assault involving an adult, it will be the policy of this police department to achieve the following:

- Attempt to actively minimize the traumatic experience suffered by the victim;

¹ In accordance with M.G.L. c. 41, § 97B.

- Provide for the varying needs of the victim, including advocating on behalf of a victim to ensure that appropriate psychological, social, housing, and other support services are made available;
- Ensure the prompt investigation of sexual assault allegations, and the speedy apprehension and prosecution of the accused;
- Reduce the opportunity for the occurrence of sexual assault crimes by educating the public about preventative safety measures; and
- Cooperate with local social service agencies, hospital personnel, and community groups in rape prevention programs.

III. DEFINITION OF SEXUAL ASSAULT:

In Massachusetts, there are two major categories of sexual assault: rape and indecent assault and battery.

Rape is the penetration of any bodily orifice by any part of the body, or by an object, performed against the victim's will, without consent, and with the threat of or actual use of force. Under Massachusetts law, both men and women may be the victims of rape, and both may be the perpetrators of a rape. It is possible for rape to occur when the victim is unable to give consent (as is the case when he or she is drunk or unconscious), may occur between people who know each other, and/or between people who have previously had consensual sexual relations.

Indecent assault and battery is a crime that occurs when the offender, without the victim's consent, intentionally has physical contact of a sexual nature with the victim.

IV. SEXUAL ASSAULT CRIMES:

- A. Rape, M.G.L. c. 265, § 22(b).** Rape is defined as sexual intercourse with another compelled by force and against the victim's will or compelled by threat of bodily injury. The crime of rape includes both natural sexual intercourse and unnatural sexual intercourse. Natural sexual intercourse is defined as "the penetration of the female sex organ by the male sex organ, with or without emission." *Commonwealth v. Gallant*, 373 Mass. 577, 584 (1977). Unnatural sexual intercourse includes digital, oral, and anal intercourse, as well as other intrusions of a part of a person's body or other object into the genital or anal opening of another person's body. For the crime of rape to be completed (as opposed to an attempted rape or other offensive touchings), there must be penetration, however slight, of a bodily orifice. The crime of rape may be perpetrated by a male upon a female, by a male upon a male, by a female upon a male, or by a female upon a female. A spouse can be found guilty of raping the other spouse. Consent is a defense to the crime of rape of an adult. If the victim is wholly insensible by reason of sleep, drunkenness, stupefaction, unconsciousness or helplessness, the victim is incapable of consent. At trial, the

Commonwealth must prove the absence of consent beyond a reasonable doubt. The victim need not use physical force to resist an attack for lack of consent to be proved.

- B. Aggravated Rape, M.G.L. c. 265, §22(a):** The law defines the crime of aggravated rape as a rape that results in serious bodily injury, or is committed by a joint enterprise, or in the commission or attempted commission of a felony, as enumerated by M.G.L. c. 265, §22(a).
- C. Rape of a Child Under Age Sixteen, M.G.L. c. 265, § 23:** This statute covers unlawful sexual intercourse with a child that is not accomplished by the use of physical force; it is typically called “statutory rape.” The law conclusively presumes that no person under the age of sixteen is capable of consenting to sexual intercourse. Therefore, consent cannot be a defense to the crime of rape of a child under age sixteen, even if the victim was a willing participant. Likewise, it is no defense that the perpetrator was unaware that that the victim was under age sixteen, even if the victim misrepresented his or her age.
- D. Rape of a Child with Force, M.G.L. c. 265, § 22A:** Rape of a child with force is distinguished from statutory rape in the use of force. Force may include physical force, violence, or threats of harm. The law also recognizes “constructive force,” or, threatening words or gestures calculated to instill fear in the victim, and which overcomes his or her will.
- E. Assault with Intent to Rape, M.G.L. c. 265, § 24:** Assault with intent to rape requires proof of (1) an assault upon the victim; and (2) the specific intent to rape the victim at the time of the assault. Assault with intent to commit statutory rape is a lesser-included offense of both rape of a child and rape of a child with force.
- F. Indecent Assault and Battery (14 years or older), M.G.L. c. 265, § 13H:** Indecent assault and battery has been defined by case law as the intentional, unjustified touching of private areas such as the breasts, abdomen, buttocks, thighs, and pubic area. The touching must be “fundamentally offensive to contemporary moral values.”
- G. Indecent Assault and Battery on a Child Under Age 14, M.G.L. 265, § 13B:** The law presumes that a child under the age of 14 cannot consent to touching of private areas as defined above.
- H. Indecent Assault and Battery on a Person with an Intellectual Disability, M.G.L. c. § 13F:** A person who knowingly commits an indecent assault and battery on a person who has an intellectual disability, with the exception of an individual with an intellectual disability commits such act on another individual with an intellectual disability.

V. GENERAL CONSIDERATIONS & GUIDELINES:

Crimes of sexual assault, like other crimes against the person, are often private in nature. The details of the assault are usually a recounting of events from differing perspectives of the perpetrator and the victim, absent any witnesses. Therefore, a global approach to the investigation must be adopted and statements, although labor intensive, should be obtained from all persons present or who may have secondary knowledge about the assault. Sexual Assaults should be investigated in a similar manner as other crimes against the person using common sense, sensitivity, and practicality.

Reports of sexual assaults can come from numerous sources and through multiple channels. Regardless of who is filing the report or how it comes to the attention of law enforcement, the officer, dispatcher, or person receiving the initial report should respond with compassion and in a professional manner. Each and every report should be taken seriously and must be thoroughly investigated until it reaches its natural conclusion.

VI. INITIAL RESPONSE & INVESTIGATIVE PROTOCOLS:

A. Initial Police Contact Overview: In situations where the assault is reported in a timely manner, or if it has just occurred, the individual taking the report should react calmly and with purpose. Remember that the actions and demeanor of the officer represents the police department and the law enforcement profession. The first interaction with the reporting party will set the tone and potentially on how the “system” will react to the report and impact the victim’s willingness to participate in the remainder of the investigation.

If the reported case is determined to be an “active” scene or the assault just occurred and requires an immediate response, the initial considerations should include first and foremost:

1. The safety of the victim and the public;
2. The safety of the responding police and emergency personnel; and
3. The preservation of the scene(s) and any physical evidence that may exist.

B. Role of ECC Personnel: Communications personnel play a critical role in obtaining important information from the reporting party. The information obtained is pivotal in determining the initial police response and ensuring the appropriate personnel are dispatched. The call-taker should respond in a calm and supportive manner while simultaneously obtaining the following information:

1. Name, address, and telephone number of the reporting party;
2. If reporting party is not the victim, obtain the name, address and phone number of the victim, his/her current location, and status (safe, injured, alone, etc);

- a. Identify caller's relationship to victim and the caller's basis of knowledge;
3. Dispatch immediate medical assistance if needed;
4. If it's determined to be an "active" scene, promptly dispatch patrol officers to the victim's location and to the crime scene (if different);
5. If, in the call-taker's assessment, the victim is in imminent danger, advise the victim to move to a safe location (e.g., to the home of a neighbor or family friend, a police station, a church) as long as re-locating can be accomplished with minimal risk;
6. Determine if a weapon was used during assault. If yes, what type?;
7. Determine the suspect's current location and status (safety issues, aware of police involvement, etc);
8. Obtain detailed information regarding the identity and/or description of the suspect (e.g., name, gender, physical description, clothing, vehicle description);
9. If the assailant has fled the scene, arrange for the dispatcher to immediately broadcast as much identifying information as quickly as possible;
10. Determine the relationship between suspect and victim (if any);
11. Furnish the responding officers with any available information with special consideration given to:
 - a. Dangerousness of the offender;
 - b. Specifics about the incident;
 - c. Past domestic violence events and/or assaultive behaviors (prior criminal history, other relevant sources); and
 - d. Possession of a firearms license.
12. If possible, remain on the line with the victim until patrol officers arrive on scene;
13. If for some reason communications cannot be maintained, the victim should also be tactfully advised against bathing, douching, eating, drinking, changing clothes, or touching anything at the scene. The victim of the assault is now analogous with a crime scene;
14. If the victim has changed clothes, advise him/her not to wash the clothes and to leave them as they are;
15. Do **NOT** cancel a law enforcement response to a complaint of sexual assault, regardless of a request to cancel;
16. If a request to cancel is made during the initial response, advise the responding officers of this request; and

17. Record and preserve the victim's "excited utterances" and 9-1-1 (telephonic recordings if received over the business line) tapes for evidentiary purposes.

C. Initial Police Response: What occurs during the initial stages of an investigation is critical to the success of the investigation and cannot be overstated. These considerations include victim and witness interviews, the manner in which the victim is treated, the identification and preservation of the crime scene(s), and the collection of evidence. All of which can directly impact the likelihood of an arrest and conviction. The initial responder's primary areas of responsibilities are:

- Victim/witness safety;
- Crime scene preservation;
- Initial interview;
- Identifying and locating witnesses and suspects;
- Documentation of initial response and observations; and
- Support service notifications.

The medical treatment and wellbeing of the victim should be the first priority. The lapse of time between the sexual assault and the report of the sexual assault will potentially impact the likelihood, type and quality of evidence recovery from the body of the victim and/or perpetrator. If the assault occurred within five days (120 hours) of the report, then an evidence collection kit should be conducted.² However, depending on the facts of the assault, there may be additional evidence which can be obtained.

When interacting with the victim, be professional and empathetic. Remember that sexual assaults, whether by a stranger or a known assailant, are the most personal type of violation a victim can suffer. Be patient with the victim and aware that all victims exhibit or react differently, so do not judge or dismiss the victim's credibility based on the external behaviors and emotions exhibited by the victim.³

If the victim is alone at the police station, inquire if there is family, friends, or a rape crisis counselor/advocate they want contacted.⁴ If the victim's clothing needs to be seized as evidence, attempt to arrange for a fresh set of the victim's own clothes to be made available.

1. *Victim/Witness Safety:* As part of the emergency response, officers shall:
 - a. If there is observable injury to the victim or if the victim is complaining of injury, request an ambulance for transport to a hospital. Strongly encourage a sexual assault exam and advise the victim of his/her rights

² Refer to Section VII. (E). Crime Scene Management & Evidence Collection.

³ Refer to Section VI. (E). Dynamics of Sexual Assault.

⁴ Refer to Section XII. (A). Victim Support Services.

under M.G.L. c. 209A if appropriate (refer to *Policy #500 – Police Response to Domestic Violence*);

- b. Show understanding, patience and respect for the victim’s dignity and attempt to establish trust and rapport;
 - c. Evaluate the scene for suspects, vehicles, or objects involved, as well as for possible threats;
 - d. Initiate a search for the suspect when appropriate;
 - e. Be cognizant of the victim’s concerns for safety/threats and be reassuring and comforting; and
 - f. Communicate all vital information to the Sector Supervisor assigned and other responding officers, including any possible communication barriers or special circumstances.
2. *Crime Scene Preservation:* First responding officers should assume the existence of multiple crime scenes. It is the responsibility of the responding officer to elicit information from the victim as to the location of the primary, secondary, and possible tertiary crime scenes. Once identified, this information should be communicated to the assigned Sector Supervisor to ensure that the other scenes are secured and steps are taken to prevent evidence from being lost, altered, destroyed, or contaminated.

Also of significant importance is identifying the first person (“first complaint witness”) the victim told about the sexual assault. This person will eventually need to be contacted and interviewed by the detective to take the lead on the follow up investigation.⁵

3. *Initial Interview:* Sexual Assault investigations involving adult victims will typically include, at the minimum a preliminary interview and a subsequent, in-depth, follow-up interview.

The primary purpose of the preliminary interview is to establish whether a crime has occurred. The interviewing officer should obtain basic information similar to investigating any other offense (e.g., who, what, where, when, how).

During the initial interview with adult victims, the first responding officers should:

- a. Ensure victim’s safety and provide appropriate referrals (e.g., rape crisis/medical services);
- b. Establish the elements of the crime(s);
- c. Identify any and all witnesses and suspect(s);
- d. Identify possible locations of evidence and crime scene(s);

⁵ Refer to Section VII. (D) (3). First Complaint Witnesses.

- e. Identify additional interviews to be conducted; and
- d. Advise a supervisor of additional resources and/or personnel needed (e.g., crime scene services, crime lab, etc.).

A victim of a sexual assault may bond with the responding officer. If the responding officer intends to request assistance from a sexual assault investigator (as directed by departmental protocol) the officer should explain his/her role to the victim. It is important for the initial officer to explain what the victim may expect from the responding investigative team and to help with that transition.

4. *Identifying and Locating Witnesses & Suspects:* Questioning the victim about the assault, the description of the suspect(s), and the details regarding the assault should be limited. First responding officers should only question the victim enough to obtain a complete description of the suspect, whether or not a weapon was used, vehicles used, direction of flight, and names, addresses and telephone numbers of other potential victims/witnesses.
5. *Language/Communication Barriers:* If the family does not speak English, when possible DO NOT use children as interpreters. This could prove dangerous to the child and adult victim. Officers should attempt to identify other officers in the department who are fluent in the language of the victim, or may resort to using the language line services available through the department.
6. *Documentation of Initial Response:* Proper documentation of the initial police response, the information communicated by witnesses, who processed the scene(s) and who seized evidence are all critical to a successful prosecution.

During the initial documentation of witness statements, specifically the victim's statements, if the details of the assault are communicated, it is strongly recommended that the investigating officer capture the exact words used by the victim to describe the assault. Also, specify the sexual acts which occurred and with which body parts or objects. This is extremely important because it provides a roadmap for potential evidence and/or crime scenes, and is critical in establishing what crimes were committed. It may also help provide insight into the dynamics of the assault itself. When there is no opportunity to interview witnesses, contact information should be obtained so the witness can be contacted and interviewed at a later date.

Be sure to consider and preserve all forms of evidence that you may not directly elicit from a statement such as 9-1-1 calls, public video surveillance systems, spontaneous utterances, etc.

In addition to completing the initial investigation report, if the officer encounters any evidential material, it should be protected and preserved for proper processing. The investigator should be communicating with his/her

supervisor assigned to oversee the case, in making a determination whether crime scene services should be dispatched to the scene.⁶ If it becomes necessary for an officer to take possession of physical evidence at this stage of the investigation, it will be done at the direction of the attending supervisor and in accordance with ***Policy #800 – Collection and Preservation of Evidence.***

All investigation reports and associated information relative to a sexual assault (refer to ***Section IV.***) will be classified as a “Confidential Report,” and as such are not considered as a public record.⁷

7. ***Support Services Notification:*** Once the investigating officer has assessed the victim’s safety, preserved the scene(s), transmitted any relevant information for immediate broadcast, conducted a preliminary interview, established that a crime has been committed, identified other victim/witness or possible suspects, and identified the potential crime scenes, the responding officer must then ensure that the proper personnel are requested to process any potential crime scenes.

The investigating officer should be confirming with his/her supervisor as to the need and appropriateness of calling out crime scene personnel. It is the responsibility of the on-scene supervisory officer to keep the Shift Commander informed, if crime scene services are deemed to be appropriate, communicating with the duty supervisor in the Investigations Section.⁸

8. ***Additional Responsibilities & Considerations:*** The initial investigating officer must consider and weigh the exigency of the situation based on the specific circumstance of the case such as safety issues or flight of the perpetrator. Solidifying the investigation prior to making the arrest often increases the likelihood of obtaining a statement from the suspect and a successful prosecution.

In making the decision to arrest, the level of exigency and the probable cause to arrest should be assessed by the responding officer and supervising officer on scene. Whenever possible, all officers are encouraged to consult with a representative of the District Attorney’s Office prior to making felony arrests. Additionally, the officer should:

- a. Advise mandated reporters of their obligation to adhere to required protocol and file reports of suspected abuse when applicable;⁹
- b. The investigating officer should remember his/her obligations surrounding domestic violence and be sure to advise a victim of his/her rights under M.G.L. c. 209A. If necessary activate the Emergency Judicial Response System (EJRS); and

⁶ Refer to Section IX. Investigation Documentation.

⁷ M.G.L. c. 41, § 97D.

⁸ Refer to Section VII. (E). Crime Scene Management & Evidence Collection.

⁹ Refer to Section X. (I). Mandated Reporting.

- c. If called to an emergency room, first consult with hospital staff to determine the victim's status, how the report came in, and other relevant information. If the victim traveled to the hospital by ambulance, obtain the names of the ambulance and staff in case future interviews are needed.

D. General Reporting Challenges: As with many crimes, the detection, investigation, and successful prosecution of the reported crime is often predicated on the victim's willingness to report the crime and secondly, to provide enough detailed information for the case to be fully investigated. This detailed information about the offense establishes the foundation and framework for the investigation.

One important obstacle to overcome is the ability to get detailed information while minimizing trauma to the victim. Often times, subjecting victims to duplicative detailed interviews may be necessary for an investigation. However, this must be balanced with the knowledge that multiple interviews may exacerbate a victim's insecurities about being believed, potentially re-traumatize her/him, and may result in conflicting or inconsistent multiple statements, which could potentially undermine the victim's credibility in the ensuing prosecution. Even with a relatively straightforward allegation of sexual assault, investigators face many complexities including:

- Anonymous reporting;
- False reports;
- Recanting; and
- Jurisdictional issues.

1. *Anonymous Reporting:* The decision by a victim **not** to report a sexual assault or to file an anonymous report with law enforcement may occur for a variety of reasons. Pursuant to M.G.L. c. 112, § 12A½, regardless of the victim's decision to report the assault to law enforcement, when a victim seeks medical treatment the hospital is required to report the assault to the law enforcement entity of jurisdiction.
2. *False Reporting:* One of the most harmful misconceptions that can taint an investigator's interactions with a victim is the belief that victims frequently make false allegations. The majority of reported sexual assaults are based in truth.

Recantation by the victim or the lack of corroborating evidence **does not** equate to a false report. For law enforcement to conclude that a reported case is a false allegation rather than a recantation, **evidence other than only the victim's recantation should exist.** Reported sexual assaults are true with very few exceptions. This statistic is comparable to other major crime reports.

In most instances, false allegations will become readily apparent to the investigator. This is often evidenced by the victim's inability to provide specificity regarding the sexual assault itself. Investigators must differentiate between victims whose inability to recall detail is due to cognitive challenges as opposed to victims who are knowingly making false statements. Additional clues to false reporting can be found in inconsistent with the physical evidence which fails to match the described assault.

The final determination that a complaint is false should only be made when all the facts are known and the highest degree of corroboration has failed to establish the events as described by the victim. Corroborating the facts and victim's statement serves two primary purposes. First, the weight of the case does not fall solely on the victim's testimony. Second, an increased level of corroboration decreases the probability that the report is fabricated. If a situation does arise where all parties involved-- police, prosecutor, victim witness advocate-- agree that the allegations are likely to be false, the reporting party should be informed of the outcome of the investigation in a manner consistent with department protocol (this is generally done through the District Attorney's Office).

3. *Recantation:* As stated above, if the only indication that the victim may not have been truthful is that her/his story has been recanted, the investigator should not automatically conclude that the initial report was false. Recantation does not mean that the allegations made in the initial disclosure never took place. There may be numerous reasons a victim recants their original statement.

Even in situations where the decision is made not to pursue a criminal complaint, victim referrals for medical and emotional services should be made and/or recommended and may be necessary. In most instances, an officer with insight, awareness and sensitivity can uncover the catalyst for the victim's recantation and assist the victim in deciding whether or not to go forward with the case.

4. *Jurisdictional Issues/Courtesy Reports:* As with any reported crime or sexual assault, one of the first facts an investigator must determine is if the reporting party is in the correct jurisdiction. If it becomes apparent to the investigator that the sexual assault occurred outside the city's jurisdiction, the receiving department should take the initial report and, at minimum, assess the victim's safety. The officer should also offer the victim all support services and referrals afforded to any victim that would be reporting an assault in their own respective jurisdiction.

After taking the initial report, the investigating officer should be conferring with his/her supervisor, who will make the determination as to notifying the department of jurisdiction and help coordinate the investigation and services as requested by the responsible police department.

- E. Dynamics of Sexual Assault:** When investigating sexual assaults, investigators can encounter complicated victim dynamics. Investigators must be cognizant of the dynamics that surround sexual assaults and how they may affect the victim’s decision to report the offense, delay their report, retract their report, or not report the offense at all.

Regardless of the nature of report or how the potential crime comes to the attention of the police, investigators must take all reports seriously and investigate them thoroughly by working to corroborate the victim’s statements, collecting any forensic evidence, and preparing the best case possible for prosecution.

The role of the first responder is critical and can dramatically impact the psychological wellbeing of the victim. Knowledge of crisis and trauma reactions will help ensure that a victim’s credibility is not erroneously undermined. By understanding possible emotions and responses experienced by victims of sexual assault, law enforcement professionals will be better prepared to respond to victims.

1. *Dispelling Common Myths:* Common societal misconceptions that include “real” sexual assaults:
 - a. Are most often perpetrated by a stranger;
 - b. Involve a weapon; and
 - c. Produce visible physical injury to the victim.

Although a vast majority of adult sexual assaults are committed by someone known to the victim, officers should not presume that the victim knows his/her attacker. Over 75% of completed rapes of adult women occur between a victim and an assailant known to each other. Therefore, the existence of a sexual relationship between the assailant and the victim should be viewed as the norm, rather than grounds for suspicion.

2. *Mental health effects of sexual assault:* There is no “typical” reaction to being sexually assaulted. First responders should expect virtually any type of emotional reaction by the victim. The demonstrated behaviors by the victim may even appear counter-intuitive but should not influence law enforcement’s treatment of the victim. Responding professionals should not make assumptions about a victim’s credibility simply because his/her reaction differs from another victim’s reaction or from what one perceives as an “appropriate” response.

All victims experience an emotional reaction to being assaulted. These reactions are normal responses to abnormal events. Individual emotional responses will vary from person to person depending upon such factors as:

- a. Age;
- b. Coping skills;

- c. Previous exposure to crime or violence;
- d. Severity of the crime;
- e. The crime's significance to the victim;
- f. The extent of the availability and effectiveness of the victim's support system;
- g. Previous experience with traumatic events and loss; and
- h. Previous experience/exposure (good or bad) to the criminal justice system.

A victim's past experience and current circumstances will also contribute to potential barriers in reporting the offense. First responders can help ease a victim's concern about disclosure by expressing sympathy and genuine interest in the victim's wellbeing. Acknowledge the difficulty of reporting such a personally invasive crime and reassure the victim that the complaint will be taken seriously.

3. *Victimology – Common Reactions to Trauma:* The following list, while not exhaustive, includes some of the more common responses to victimization and trauma.
 - a. *Denial:* "I'm OK." "It wasn't anything, really." "I overreacted." This is also sometimes expressed as a desire to "put this behind me," "move on" or "get over this." Questioning of the assault, "I don't know if I was really sexually assaulted."
 - b. *Shock:* Immobilized, stunned, disbelief, unable to remember what happened during the crime, unaware of events that occurred during the crime, or of others involved.
 - c. *Overwhelmed/disorganized:* Unable to remember information or understand explanations, a need to have things repeated, being forgetful of appointments, losing papers, etc. This disruption in memory function can be indicative of trauma and may explain why a victim's story appears inconsistent at times.
 - d. *Frightened:* This may be expressed verbally or through actions such as not reporting the crime, delayed reporting, refusing to testify, or not responding to calls and letters.
 - e. *Fearful of seeing defendant and of retaliation:* Afraid the perpetrator will cause further harm to self or others, afraid to report or give name and address, being startled when seeing someone who resembles the perpetrator.
 - f. *Feeling vulnerable:* Having trouble concentrating on their job or going about daily routines because of constant fear for safety. A sense of constantly needing to look over one's shoulder or hide, changing their phone number or moving.

- g. *Guilt/Shame: "I shouldn't have..., " "If only..., " "I should have known better," and "It must be my fault."*
- h. *Why me?:* Although we all know crime exists, we are likely to believe it will be someone else who is victimized and that we can take care of and protect ourselves.
- i. *Embarrassment: "I was stupid to have..., " or "I should have fought harder"* (especially for male victims). Withholding of some information that is perceived to be embarrassing or humiliating or pertaining to something personal/private is common.
- j. *Sense of loss and subsequent grieving:* Loss of belongings, money, or property. Loss of physical mobility and dexterity due to injury, loss of sense of security and trust, loss of person to death, loss of relationships because of an inability to relate to others in the same way as before the crime. If the criminal justice system does not meet expectations, there is a loss of a sense of justice, loss of a belief in the fairness and "justness" of the world.
- k. *Altered perception of safety and control:* Difficulty trusting others, anxiety about safety of self and others -- "*if it happened once, it will happen again*" or "*it happened to me, it could happen to others I love.*" A need for additional security in home, car, etc. Hyper-vigilance and extreme or minor modifications in daily routine intended to assure safety.
- l. *Anger:* Anger directed towards the perpetrator, anger or frustration towards the "system" -- want immediate action, want wrong to be righted. Anger about the adaptations in lifestyle made because of the crime. Self-directed anger -- "*Why did I do this?*" "*Why didn't I do that?*" "*Why am I reacting this way?*" "*I don't want to feel like this.*" Anger is sometimes closely related to feelings of fear and vulnerability.
- m. *Conflict over dependence /independence:* Should I "*give in*" and alter my lifestyle and give up some of my independence and (thereby suffer another loss) so that I feel safer? Or should I refuse to let the crime and criminal "*get to me*" and continue to feel anxious and unsafe?
- n. *Protective of family and friends:* "*I can't tell them everything that happened if they know everything, they will get too upset or they will never let me go anywhere alone*" or "*I can't tell them about my nightmares, they are already so worried about me*".
- o. *Fear of victim blaming:* "*Why did you walk home that way?*" "*Why were you carrying so much money?*" "*Why did you go out with him?*" Sometimes victims blame themselves or perceive that others blame them and become defensive or more sensitive to this.
- p. *Fear of Criminal Justice system:* Fear and/or perceptions about the police and courts based on media portrayals and stereotypes. Fear of harassment

by defense attorney. Belief that *"nothing will be done anyway" or "the defendant will just get a slap on the hand."*

In addition to the above, victims may experience sleeping and/or eating disturbances and somatic complaints such as headaches, stomach problems, nausea, insomnia, self-injury, and/or suicidal tendencies. Behavioral changes may include withdrawal, isolation or, paradoxically, engaging in risk-taking behavior. There may be a change in a victim's use of alcohol or drugs as they seek some relief from the disruption and the pain they are experiencing. Relationships may change resulting in increased difficulty in maintaining social or intimate relationships. They may feel as though they are going "crazy" which is frightening on its own.

4. *Secondary Victims:* "Secondary victims" may have similar reactions to the events as the primary victim. Secondary victims can include witnesses to the crime, friends and family of the victim, those who respond to the crime scene or assist the victim (including law enforcement), and others who feel connected in some way to the crime. This is particularly true if the crime occurs within their neighborhood, community, workplace, or school, or if the victim is someone well-known or prominent, or someone they identify with, for any reason.

Although concerned for the victim, the secondary victim's own emotional reaction may make it difficult for them to respond to the victim in ways they would expect of themselves. Specific challenges may include:

- a. Separating fear or anger towards the victim;
- b. Assume that the victim will react in certain ways and then be judgmental if they do not;
- c. Become overly protective or accusatory towards the victim in an attempt to gain control over the situation;
- d. Preventing future victimization or explain away a past one; and
- e. Feeling helpless and unsure of what to do.

Friends and family of a victim may need support and an opportunity to talk about their experience, just as victims and witnesses do. Friends and family of the victim can access free confidential services through rape crisis centers.

VII. INVESTIGATIONS OVERVIEW:

As previously stated, each case is markedly different and presents its own circumstances and challenges. Remember, as an investigator, it is that investigator's resourcefulness and ability to identify, locate, and retrieve witness statements and evidence is only as limited as his/her imagination, so it is imperative that the investigator follow up every

possible lead and suspicion. It is difficult to predetermine what may be considered evidence until the case is fully investigated.

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

1. *Consent Cases:* In the majority of sexual assault cases, the victim knows the identity of the assailant. That prior existing relationship often becomes a major factor in the case. In such cases, investigating officers should take particular note of:
 - a. Any physical or verbal resistance on the part of the victim;
 - b. Any victim injury, no matter the location on the body (remember to keep in mind obligations under M.G.L. c. 209A);
 - c. The victim's thoughts just prior to and during the assault with an emphasis regarding any fear that the victim may have had surrounding the assailant, environment, or situation;
 - d. Alcohol or drug use by the victim; and
 - e. If the victim was unconscious or incapacitated at the time of the assault.
2. *Substance Facilitated Sexual Assault (Consent):* Research indicates that non-stranger rapists specifically target intoxicated victims and that a high percentage of victims are intoxicated when they are assaulted. The use of drugs/alcohol does not mitigate criminal culpability, nor should it be used as a reason to disbelieve the victim's report of the sexual assault. Additionally, a victim's alcohol/drug use should not be used to discredit and discourage the victim from reporting the assault. The priority is to conduct a thorough investigation of the sexual assault rather than focusing on any misdemeanor, substance abuse violations by the victim.

Many of the drugs used to lower victim's inhibitions are mixed with alcohol or other beverages without the intended victim's knowledge, ultimately resulting in their incapacitation. Often, the substances used to subdue the victim are odorless, colorless, and tasteless making it difficult for the victim to detect the presence of the drug when covertly slipped into a drink. Although the drugs may be fairly short acting, they can provide a skilled perpetrator with more than sufficient time to persuade an intoxicated victim to leave a public area for a more private location. Once at a private location, the unsuspecting and incapacitated target can easily fall victim to a sexual assault.

In addition to the alcohol and/or narcotics impacting the victim's ability to consent to the sexual act, often the effects of the drugs can induce what is known as retrograde amnesia. This condition often makes it difficult for a

victim to recall the assault specifics, how or when she/he was drugged, or even that an assault occurred at all.

These cases tend to be difficult to investigate and prosecute because of:

- a. The victim's apparent lack of physical resistance to the assault;
 - b. There may be times when inconsistent statements are made by the victim;
 - c. Memory blackouts; and
 - d. Possible delays in reporting.
3. *Identity cases:* The primary issue in identity cases is to correctly and positively identify the assailant. The assailant may have been previously arrested or may have committed similar crimes in the same fashion (Modus Operandi or M.O.) in the past. Investigators should focus on obtaining as much information about the assailant as possible. The investigator should:
- a. Obtain a detailed physical description of the offender including identifying marks such as tattoos, clothing, and any other distinctive characteristics (e.g. odors, tattoos, accents, teeth);
 - b. Document the exact words used by assailant and assess the crime scene to determine if this particular assault is consistent with the M.O. of a suspect previously arrested for a similar crime or an on-going series of assaults;
 - c. Identify and collect any forensic evidence; and
 - d. Utilize available DNA samples to identify suspects.

B. The Role of the Sexual Assault Investigator: Whether the investigator is responding to the scene after an initial report of a sexual assault or assigned to investigate a sexual assault after a delayed disclosure, the following section is designed to provide direction and guidance during the course of the investigation.

The lead investigator¹⁰ will have primary control over the case and will be responsible for ensuring that a complete and comprehensive investigation is conducted. Upon being assigned a sexual assault investigation, the lead investigator has initial considerations and responsibilities that include, but are not limited to:

1. Speaking with the first responding officer(s) to obtain a baseline story and to determine what has been completed;
2. If the victim has not yet received medical treatment, make appropriate arrangements as needed and assure appropriate support referrals have been made;

¹⁰ As a matter of policy, and in accordance with M.G.L. c. 41, § 97B, the lead investigator on a sexual assault case will be a trained rape investigator.

3. Ensure steps have been taken to preserve any crime scenes and/or evidence;
4. If there are potential crime scenes, determine if a search warrant is needed prior to processing any crime scene;
5. Coordinate the dispatch of support services such as crime scene services; and
6. Obtain the names and contact information of any possible witnesses.

C. Victim Interview: Police officers are often confronted with less than ideal circumstances and often have to make due with the conditions presented. However, it is recommended that the following practices be adopted. Deliberate consideration and decisions about the practical aspects of the interview can not be overstated. It is strongly discouraged that friends, family, or rape crisis advocates be present during the victim interview.

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

2. *Conducting the Interview:* Ideally, the number of police officers to conduct the interview should be limited to two. One is less than preferable for a variety of reasons, the least of which is officer protection. More than two is strongly discouraged. Asking the victim to recount details of an assault is difficult enough but to ask him/her to do so in front of numerous people will only act as an inhibitor and detract from the interview.

The tone of the interview should be reassuring and poised. Be aware of your body language and how it can impact the comfort level of a victim (e.g., an exposed weapon may create discomfort for the victim).

Officers conducting the interview should take an inventory of any personal bias, nervousness, or barriers they may have, which might inhibit their ability to conduct the interview. If a bias is recognized, discuss the issue or concerns with a supervisor for resolution.

When conducting an interview of a victim, you should be sure to include, as a baseline, questions regarding the following:

- a. Name, date, and time of interview;
- b. Description of offense (details);
 - 1) When the offense occurred (establish time line-- details of dates, months or significant events);
 - 2) Details of the sexual assault and acts (use quotations, if applicable);
 - 3) Physical description of offender including identifying body marks, freckles, tattoos, scars, and birthmarks;

- 4) Smells such as cigarettes, cologne, body odor, or something else;
 - 5) Did the victim describe the “feelings” they experienced during the sexual assault (pain, worry, sadness, scared, nothing or something else);
 - 6) Manner used to complete the crime (hand, fingers, penis, mouth, object, something else);
 - 7) Information about how the assault ended and what caused it to end;
 - 8) Any conversation or communication that occurred between the victim and the perpetrator either before, after or during the assault;
 - 9) The degree of force, threat, or coercion, if any, used to affect the assault;
 - 10) Weapons used (describe weapon, brought to scene or picked up there);
 - 11) Manner in which weapon was used during the sexual assault; and
 - 12) What the victim and offender did afterwards and why.
- c. Relationship between the victim and suspect if any (nature in detail; may explain a delay in disclosure);
 - d. Identify any and all witnesses and suspect(s);
 - e. Identify additional interviews to be conducted as the investigation develops; and
 - f. Other relevant information that might assist in bolstering the victim’s veracity.
3. *Gender of Interviewer:* Take your cues from the victim. If the victim expresses reluctance to speak with an interviewer of the opposite gender, make every effort to accommodate the victim and provide a same gender interviewer. Do not assume a police officer that is of the same gender as the victim is automatically the best person to conduct the interview.¹¹
4. *Documenting the Victim Interview:* There is no “best” method of documenting the victim interview, however, there are certain considerations that should guide your decision. Factors influencing your decision include:¹²
- a. The setting of the interview- what is logistically possible given the location/situation;

¹¹ See also G.L. c. 41, § 97B (“A victim of rape who is male shall, whenever possible, be interviewed initially by a male police officer, and a victim of rape who is female shall, whenever possible, be interviewed initially by a woman police officer.”).

¹² Also refer *Policy #421 – Interviewing Victims and Witnesses*.

- b. The victim's preference (i.e.: the victim may be uncomfortable with the statement being recorded); and
- c. Physical/linguistic/cultural limitations of victim.

Either the officer conducting the interview or a second officer who is present should be documenting the statements being made. The investigators are strongly encouraged **not** to have the victim manually write out his/her own statement, as it leads to statements that are generally insufficiently detailed and/or incomplete. If the victim does choose to write out his/her own statement, the interviewing officer should review the statement with the victim to assure accuracy of detail and resolve any inconsistencies or unanswered questions.

5. *Safety, Legal and Other Considerations:* During the interview process, be aware of safety considerations for the victim, any children, or potential secondary victims/witnesses.

In addition to safety considerations, there are circumstances that may legally require law enforcement officers to act. These may include:

- a. Advising the victim of his/her rights pursuant to (M.G.L. c. 209A); and
- b. Mandatory reporting.¹³

It is important to make the victim aware of the community-based services, rape crisis centers, and court services that may be available to the victim. See appendix for listing of area Rape Crisis Centers.

6. *Concluding the Interview:* Once the victim's safety is assured, the interview is concluded, and support services have been recommended and/or obtained, the investigator's final interaction with the victim is extremely important. Explain to the victim what he/she can expect next from the criminal justice system. Be honest about the court process, potential police action, and what the victim's needed participation may be in the future.

Explain to the victim that if, after the interview, he/she remembers something it is perfectly normal and okay. Provide the victim with a mechanism to contact the investigator with future information or questions. The investigator should also ensure that the victim has immediate support or someone available for support. If the investigator is comfortable with the information, explain to the victim about the role of the victim/witness advocates and how they can assist the victim, as well as potential victim compensation resources available through the Attorney General's Office.¹⁴

7. *Special Victims:* Sexual assault is prevalent in all communities but is a crime that often goes unreported. In addition to the shame and stigma that can

¹³ Refer to Section X. (I). Mandated Reporting.

¹⁴ Refer to Section XII. Victim Support Services.

prevent many victims from reporting, some victims face extraordinary barriers that officers should be aware of. Individual factors and circumstances such as age, gender, culture/ethnicity, disability, sexual orientation, immigration status and prior criminal involvement are only some potential unique obstacles. Special sensitivity to victims who need to overcome additional barriers when reporting sexual assaults will set a positive foundation for all subsequent law enforcement interactions. See appendix for a list of resources for victims with unique needs.

D. Identifying & Interviewing Witnesses: The role that a witness plays during the course of a sexual assault investigation varies dependent upon the relationship to the investigation and their proximity to the incident. Some of those considerations involve some of the following:

1. *Witness Interview Overview:* Upon arriving on scene, it is important to obtain the names and contact information of potential witnesses. Although this is a sexual assault case, you can rely on your training and experience from other types of investigations, which may also apply in sexual assault cases. Take detailed, concise statements which capture basic information. If at all possible, the statement should be in either a written report or audio/video recorded. This decision should be guided the complexity of the case, and in accordance with *Policy #421 – Interviewing Victims and Witnesses*.

As with victim statements, it is recommended that the witness NOT be left to write out his/her own statement. If the witness does write out his/her own statement, the officer conducting the interview should review the statement with the witness to assure accuracy of detail, resolve any inconsistencies, or unanswered questions. Any witness statements should be signed and dated by the witness providing the statement.

In concluding the interview with the witness, the investigator should explain that, if after the interview the witness remembers something, it is perfectly normal and okay. Provide the witness with a mechanism to contact the investigator with future information or questions.

2. *Child Witness:* Sexual assaults are very personal and can often involve other family members as direct or indirect witnesses. Do not dismiss or overlook the child witness when investigating sexual assaults. Not only can the child witness be an important source of information there may be other safety and wellbeing needs that should be considered:
 - a. Document names and ages of children in your report;
 - b. Document any interviews that occur;
 - c. Prior to interviewing the child witness it is strongly recommended you consult with your District Attorney's Office of jurisdiction;

- d. When possible, avoid using a child as an interpreter;¹⁵
 - e. Provide referrals for appropriate services. See appendix; and
 - f. Make all necessary referrals pursuant to M.G.L. c.119, § 51A, to the Department of Children and Families (DCF), formerly know as the Department of Social Services (DSS).
3. *First Complaint Witness*: One unique element in dealing with witnesses in sexual assault cases is the ability to use the testimony of “first complaint” witnesses. In *Commonwealth v. King*, 445 Mass 217 (2005), the Massachusetts Supreme Judicial Court revamped and renamed “fresh complaint” to the doctrine of “first complaint.” This decision has resulted in a profound change in the way sexual assaults are investigated. Under the new “first complaint” doctrine, a witness to a sexual assault victim’s “first complaint” of the crime may testify about:
- a. The facts of the first complaint;
 - b. The details of the crime; and
 - c. The circumstances surrounding the disclosure of the first complaint.

First complaint testimony may only be used for a limited purpose to assist the jury in assessing and determining the victim’s credibility about the alleged sexual assault. The testimony may not be used to prove the truth of the allegations.

Law enforcement officials, investigators, medical personnel, social workers, dispatchers and civilians may all qualify as “first complaint” witnesses if they are the first person the victim told about the assault.

An officer should not discount other witness statements that fail to meet the legal definition of a “first complaint” witness. Their information may be equally relevant and useful during the investigation and/or at trial in another capacity. There are a number of exceptions which may permit someone other than the “first complaint” witness to testify including:

- Original first complaint witness is unavailable;
- First person told is incompetent;
- First person told is too young to testify meaningfully;
- First encounter that the victim has with the first person does not amount to a complaint; and
- There is a complaint, but the listener has an obvious bias or motive to minimize or distort the victim’s remarks.

When conducting an interview of a first complaint witness, the investigator should be sure to include questions regarding the following:

¹⁵ Refer to Section VI. (C) (5). Language/Communication Barriers.

- Name, date, and time of interview;
- Circumstances under which the complainant first reported the sexual offense;
- Events/conversations that culminated into disclosure;
- Other potential witnesses or persons present during the offense (details);
- Description of where offense occurred (details);
- When the offense occurred (establish time line-- details of dates, months or significant events);
- Details of the sexual assault and acts (use quotations, if applicable);
- Describe the demeanor of the victim during their disclosure/recounting of the event (tone, emotions etc);
- Did the victim describe the “feelings” they experienced during the sexual assault (pain, worry, sadness, scared, nothing or something else);
- Manner used to complete the crime (hand, fingers, penis, mouth, object, something else);
- Information about how the assault ended and what caused it to end;
- What the victim and offender did afterwards and why;
- Any conversation or communication which occurred between the victim and the perpetrator either before, after or during the assault;
- Weapons used (describe weapon, brought to scene or picked up there);
- Manner in which weapon was used during the sexual assault;
- The degree of force, threat, or coercion, if any, used to effect the assault;
- Relationship between the victim and suspect if any (nature in detail; may explain a delay in disclosure);
- Circumstances in which the first complaint was made;
- Other relevant information that might assist in bolstering the victim’s veracity; and
- Information on why the victim decided to tell the person, at that time and place.

Documenting the exact words spoken by the victim to the first complaint witness to communicate the assault is critical. Remember, what may seem to be inconsequential information at the time of the interview may prove to be crucial information at a later time and help portray a full and complete picture.

E. Crime Scene Management & Evidence Collection: In many violent crimes, obtaining statements from the victim and witnesses is a critical first step in learning what occurred. An equally critical link that can provide irrefutable and corroborative evidence as to what occurred is the physical evidence obtained from the crime scene(s).

When the identity of the assailant is unknown to the victim, the physical evidence becomes even more critical because it may provide investigators with both the identity of the offender and support the allegation that a sexual assault occurred.

Additionally, whether or not the victim knew the assailant, prosecutors often look to the forensic evidence to bolster their case by using it to not only help convince the jury that the victim did not give consent, but also to refute the defendant's version of events. Small corroborations often equal victim credibility.

Given the critical role physical evidence can play in any criminal investigation, especially sexual assault investigations, proper documentation, collection and preservation of physical evidence are essential. When considering the processing of a crime scene, the investigator should consider using the crime scene services section of the State Police (depending on the complexity of the crime scene) to be sure it has been thoroughly and properly processed.

Two of the most critical steps in any criminal investigation are the management of the crime scene and the collection and preservation of physical evidence. To identify a starting point, investigators must rely on their own observations in conjunction with victim and witness statements. These sources serve as a road map to navigating the crime scene(s).

1. *Crime Scene Management:* In reported sexual assaults, investigators must immediately consider the existence of, at a minimum, three crime scenes:

- The victim;
- The locations where the assault occurred; and
- The offender.

In addition, investigators must consider other possible locations where other types of evidence or “transfer evidence,” may be found. This often results in additional locations being processed as crime scenes.

Although many of the reported sexual assaults are delayed disclosures, investigators should never discount the possibility of recovering physical evidence. Sexual assault evidence, by its nature, has a higher likelihood of remaining in tact for extended periods of time (e.g., fluids, DNA, etc.).

In addition to locating evidence, the crime scene, as found at the time of the disclosure, should be photographed. Pictures bring an image and corroborative elements to the case, which can never be as effectively communicated by words alone.

Once the crime scene(s) have been identified, each of them must be secured. This is an obvious but critical step. Not only does it preserve the integrity of the evidence, it also allows time for appropriate personnel to arrive on scene for processing.

2. *Considerations before Processing the Scene:* There are a number of considerations that must be taken into account when it comes time to process the crime scene(s). Some of these considerations are:
 - a. Is a search warrant/consent needed?
 - b. Is there an external exigency such as weather or rapid deterioration that requires immediate documentation/collection?
 - c. Should crime scene and crime lab services be accessed?

Additionally, while processing the scene, protective gear should be worn to preserve the integrity of the evidence (e.g., booties, gloves). A single officer should be assigned by the supervisor overseeing the establishment of the crime scene to identify and record in a crime scene log anyone who enters an active scene.

3. *Fundamentals of Crime Scene Processing:* The manner in which evidence is collected, transferred and stored is critical to how well the forensic scientist can utilize the evidence to help reconstruct the crime.
 - a. *Documentation of the Crime Scene:* When possible, always document the evidence where it lies by photographing it and, if appropriate, diagramming it. When photographing evidence, be sure to include established points of reference, and some mechanism of measure, to give context to the observer of the photograph at a future date.

In addition to visual documentation of the evidence, it is critical to document the chain of custody. This can be easily accomplished by noting in a report "who" collects the evidence, "who" removes it from the scene, and "where" it is housed. For multiple scenes and/or several items of evidence, using an evidence recovery log can be very beneficial (refer to Form #510B – Cambridge Police Crime Scene Log).

- b. *Types of Evidence – Considerations:* As stated earlier, the decision to seize items as evidence should be guided by the investigation, investigator's observations, legal authority and the victim/witness statements.

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

- Bedding/bath;
- Clothing/Material;
- Swabbing/fluids (vaginal, rectal, fingers, etc.);
- Hairs/fibers;
- Fingerprints;
- Impressions (tire/footwear);
- Computers/Electronic communications;
- Writings/recordings;
- Cell phones/communication devices;
- DNA reciprocals (drinking glasses, toilet, sinks and bathtubs (including catch basins), tissues, toothbrushes etc);
- Restraints/Inserted objects; and
- Condoms/Tampons.

c. *Clothing/Material as Evidence:* The victim's and assailant's clothing and any bedding or items where the assault occurred can frequently contain important physical evidence since garments/materials are absorbent surfaces, or surfaces which traces of foreign matter may be deposited or cling. Items such as blood, semen, saliva, hairs, or textile fibers may be transferred to the victim during physical contact. While foreign matter can be washed or worn off the body of the victim, the same substances may be found intact on clothing or material for a considerable length of time following the assault.

Damage in the form of rips, tears, or other destructive characteristics to clothing/material may also be significant. Those items may be evidence of the use of force or resistance.

Finally, collected materials can also serve as a standard for comparing trace evidence retrieved from other evidentiary items, thereby connecting the suspect, victim and crime scenes.

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

Although the use of condoms may significantly reduce the chance of retrieving seminal fluid, there are other types of equally important trace evidence that may be recovered. Condoms are made from a variety of synthetic and natural materials. Latex rubber is the most popular.

Condom manufacturers add particulates (powders), lubricants, and spermicides to their products. Residues of those substances are referred to as condom trace evidence. Condom trace evidence can be recovered from sexual assault victims during the medical examination process.

The identification of condom trace evidence may assist investigators and prosecutors in proving penetration, even in the absence of seminal fluids. To assist the forensic laboratory in the analysis of condom trace evidence, investigators should make every effort to collect all condom-related evidence including, but not limited to:

- Used condoms;
- Unused condoms;
- Condom wrappers;
- Partial or empty boxes of condoms;
- Tissues from the trash;
- Lubricants; and
- Evidence inside/outside of condom.

5. *Packaging*: The manner in which evidence is packaged is critical because it can directly effect the degradation or preservation of the evidence. If the evidence is not properly packaged and protected from contamination, it can be rendered virtually useless even if the best identification and collection practices have been adopted.

The following are some simple concepts to keep in mind when collecting evidence:

- Each item should be packaged separately;
- Hairs, fibers, or other trace evidence, should be placed in a paper envelope and sealed (without licking the seal); and
- Clothing and other evidence specimens must be sealed in paper or cardboard containers as the use of plastic could result in the destruction of evidence.

If the clothing/material/tampons/condoms are wet, the items should be air dried before being packaged. When transporting such evidence to a secure, drying location, placing it temporarily in plastic bags is acceptable practice. The container or bag used to transport the wet evidence to the drying location, as well as the drop cloth placed under the wet evidence, should also be submitted for processing.

Careless packaging can result in one garment/item accidentally contaminating another, potentially making it impossible for the examiner to accurately interpret the findings. For example, if semen in the female victim's underpants is inadvertently transferred to her shirt after collection,

the detection of semen on the shirt may mistakenly appear to contradict the victim's account of what occurred. To prevent cross-contamination, each garment must be placed in a separate paper bag.

6. *Massachusetts Sexual Assaults Evidence Collection Kits and the Sexual Assault Nurse Examiner (SANE)*: It is important to consider that the victim's body may have both seen and unseen evidence. This critical evidence is best collected in a hospital emergency department utilizing the Massachusetts Sexual Assault Evidence Collection Kit (MSAECK).¹⁶

MSAECK's are available in hospital emergency departments across the Commonwealth. Although the training background of medical providers differs across the state, the evidence collection steps outlined in the MSAECK can systematically guide any practitioner in the gathering of vital forensic evidence, corroborating the victim's account of the assault, and resulting in the identification of the perpetrator.

Time is of the essence in sexual assault evidence collection. Evidence on a patient age 12 years and older can be collected up to 5 days (120 hours) after the assault. Evidence can be collected even if the victim has bathed and or showered since the assault.

In addition to the Sexual Evidence Collection kit, toxicology samples are packaged in the Massachusetts Comprehensive Toxicology Kit and turned over to law enforcement with the MSAECK for transport to the Massachusetts State Police Crime Lab. It is imperative that kit pickup and transport occur as soon as possible to maintain evidence integrity.

If there is suspicion that a drug was used to facilitate the commission of a sexual assault, specific toxicology testing is available to victims, with their consent, within 72 hours of the assault. The collection of urine and/or blood through the use of a Comprehensive Toxicology Kit, as a part of the Massachusetts Sexual Assault Evidence Collection Kit (MSAECK), is available at most hospital emergency departments.

Victims can have toxicology testing even if they do not report the assault to the police. In these circumstances, toxicology results will be made available through a phone system which the victim is given access to at discharge. The victim can call to obtain the results approximately six weeks after collection. After receiving the results, the victim may then decide to initiate a police report.

Massachusetts has certified nurses specifically trained to provide care to sexual assault victims and conduct evidence collection. Massachusetts Sexual Assault Nurse Examiners (SANE) undergo specialized training, providing them with advanced skills in sexual assault patient care, forensic exam assessment, and evidence collection. While these specialized nurse examiners

¹⁶ Refer to Section XII. (C). Victims of Violent Crime Compensation for information on how victim's can get reimbursement for the medical costs associated with his/her assault.

are not in every Massachusetts hospital emergency department, SANE certified nurses are positioned widely throughout the Commonwealth and usually work in high volume hospitals/medical centers. All hospitals across the Commonwealth are given SANE Protocols to follow when collecting evidence in the event a SANE is not available.

SANE certified nurses are available 24 hours a day, seven days a week to designated SANE sites and will respond when a sexual assault patient presents at an emergency department within five days (120 hours) of the assault. Police officers should refer sexual assault victims to SANE sites to access specialized services whenever possible. If the victim seeks care at a SANE site before contacting the police, the SANE will ask the patient if they wish to make a police report. In these instances, the SANE may initiate police contact to facilitate the patient's report of the crime. SANE certified nurses specialized and unique training make them a valuable resource to the investigator and can often facilitate the victim's reporting of the assault within the emergency department.

The average SANE exam will take approximately three to four hours and cannot be interrupted once the evidence collection is started. SANE certified nurses obtain written consent from victims for every step of the evidence collection process using six detailed MSAECK forms. As of April 2008, there are 18 MSAECK steps to the evidence collection process. (See appendix for a complete list of MSAECK steps and documentation forms). Comprehensive toxicology testing may take place, if appropriate, based on the case facts and circumstances. Also completed is a physical assessment (including a pelvic exam), evidence collection, forensic photography, medication education and administration, and the coordination of discharge and follow-up care.

In addition to the collection of valuable forensic evidence, victims may also be concerned about potential medical risks. Prompt attention provided in the emergency department is critical to the victim's health and well being. Medications can be prescribed to prevent pregnancy, HIV, and other sexually transmitted illnesses from occurring. It is in the victim's best interest to obtain prompt medical assessment and care.

- a. *Interviewing Medical Personnel:* Investigators should interview medical personnel who conducted the sexual assault exam to obtain information about the assault and the medical assessment of the victim. Because of the legal restrictions placed on medical personnel by Health Insurance Portability and Accountability Act (HIPPA) regulations, attending medical personnel are restricted from disclosing any specific information relating to the medical findings absent express consent by the victim. However, HIPPA does not preclude medical staff from disclosing non-medical information about the assault learned from the victim.

Most forensic evidence often cannot be seen with the naked eye. Medical providers collecting evidence do not conduct forensic testing or analysis,

therefore it is unlikely that, at the conclusion of the exam, the SANE or medical personnel will be able to provide the investigating officer with any conclusive medical evidence even with a valid waiver.

In assaults where physical trauma occurred, the physical trauma may not be immediately visible to the medical practitioner or police officer. The absence of observable trauma is often not indicative that the assault did not occur.

- b. *Evidence Identification:* All collected evidence from the MSAECK and Massachusetts Comprehensive Toxicology Kit is identified with one specific kit number whether the case is reported by the victim to the police or not. This kit number identifies the victim's evidence collection encounter and is how the evidence kit(s) are tracked. If the victim chooses to directly report the incident to the police, his/her name is noted on the kit. In cases when evidence is collected, but **not reported to the police**, a kit number will be the only identifier. In this circumstance, there should be no victim name on the kit. The victim is provided the kit number upon discharge and is instructed that the kit number identifies the kit and the evidence collected.
- c. *Disposition of the Massachusetts Sexual Assault Evidence Collection Kit:* Following the collection of medical evidence, the sealed MSAECK(s) are refrigerated and any clothing or other evidence is bagged and stored separately at the medical facility. The hospital will contact the police department of jurisdiction to facilitate the transfer of the kit and other evidence from the medical facility to the crime lab.¹⁷

It is the responsibility of the supervisor overseeing the investigation to make arrangements to deliver the kit and other evidence to the appropriate crime laboratory as soon as possible to avoid the destruction of vital evidence. In the case of an examination done when the alleged assault has occurred in Boston, the MSAECK will be transferred to the Boston Police Crime Laboratory. All other MSAECKs are taken to the nearest Massachusetts State Police Crime Laboratory. It is important to note that this differs from the protocol for toxicology kits, all of which are transferred to the Massachusetts State Police Crime Laboratory, regardless of the location of the alleged assault. The investigator must ensure that the kit is refrigerated and that the chain of custody is maintained up to the point when it is submitted into the department's Property & Evidence System.

Both in Massachusetts and by Federal requirement nationally, evidence is collected even if the patient decides not to report the sexual assault to the police. In Massachusetts **it is the responsibility of the police department of jurisdiction where the assault occurred, to pick up and transport the evidence to the crime lab, in a timely fashion,**

¹⁷ Also refer to *Policy #805 – Submission of Property and Evidence*.

whether or not the case is reported at the time of the exam. In addition, if there are extenuating circumstances associated with the investigation or legitimate reasons the local police of jurisdiction cannot transport the sexual assault kit and/or evidence, the Massachusetts State Police should be contacted for the transport of evidence. Remember, even unreported cases may be reported at a later date. Victims, who have not made a direct report to police at the time of exam, are given up to six months to decide whether they want to report the assault to the police and have the evidence analyzed.

In some circumstances, victims have submitted requests to the crime lab to hold the evidence for longer periods of time while they consider reporting to the police.

In the event the alleged sexual assault occurs out of state but the forensic exam is performed in Massachusetts, the closest Massachusetts State Police barracks should be contacted for the transportation of the kit and any associated evidence to the crime lab.

7. *Suspect Evidence Collection:* Through arrest, consent, or search warrant, investigators may have an opportunity to collect evidence and/or biological specimens from the suspect's body or clothing. If performed before the degradation of biological material, the examination may link the suspect to the crime. Through accurate documentation and collection of blood, hair, nails, wounds, body fluids or other evidence, examination of the suspect may corroborate the victim's account of the assault.

If the suspect voluntarily consents to a forensic examination, the appropriate consent forms should be signed. If the suspect does not voluntarily consent to such an examination, a search warrant/court order may be necessary and should specify all the evidence to be collected. A copy of the search warrant/court order needs to be present and submitted to the technician prior to the collection of evidence. A copy of the order/search warrant must be shown to the suspect at the time the search is conducted and the suspect should be given an opportunity to read it. It is recommended you consult with a supervisor and/or the District Attorney's Office of jurisdiction to ensure proper legal requirements have been met.

Genetic material from the victim detected on the suspect's body or clothing may also corroborate allegations that a sexual assault occurred. Additionally, a swabbing of the suspect's penis may retrieve secretions from the mouth, vagina or rectum of the victim. In cases involving digital penetration, swabbing of the suspect's fingers or scrapings/clippings of the suspect's fingernails may retrieve secretions originating from the various body cavities of the victim.

Photograph the suspect, naked if necessary. If seizing the suspect's clothing, be sure to first photograph him/her fully clothed then photograph each item of evidence separately once removed. Be respectful and provide the suspect

with appropriate clothing or cover once done. The facts and circumstance of the case will impact which evidentiary items are relevant for seizure. Be sure to consider any legal restrictions and/or requirements prior to seizure of evidence to minimize the chance of suppression at trial. Ensure proper packaging and chain-of-custody procedures are being followed.

Regardless of what facility is used for evidence collection, the suspect and victim should never encounter one another. The security and safety of the victim and potential medical technician/examiner should also be taken seriously. Law enforcement should be present during the suspect's entire examination and processing for evidence collection.

The officer should expect that only the evidence listed on the search warrant will be collected. In the event that additional evidence is identified during the course of the forensic evaluation, an additional search warrant may be required and then served prior to the collection of that evidence (e.g., not in plain view). In the event this occurs, you should contact the District Attorney's Office of jurisdiction for consultation; however, it may be permissible to detain the suspect while the second search warrant is obtained.

A Sexual Assault Evidence Collection Kit should never be used when collecting evidence from sexual assault suspects. The kits are for the collection of evidence from victims **ONLY** and do not provide for the collection of all the necessary specimens from sexual assault suspects.

It is the responsibility of the investigating law enforcement agency to ensure that the evidence is collected in a proper manner and that it is delivered to the crime laboratory in a timely fashion.

8. *Chain of Custody*: To prevent the loss, or misplacement of evidence at the time of kit pick-up, you should expect hospital emergency staff to ask for identification for documentation purposes. Police officers picking up evidence should be prepared to provide hospital staff with their name and identification/badge number. This practice is to protect the integrity of the chain of custody and is to comply with evidence transport guidelines.
9. *Combined DNA Index System (CODIS)*: The nationwide standardization of forensic DNA analysis provides the ideal platform for crime labs to share DNA information derived from evidence and sexual offenders. Using the Federal Bureau of Investigation's Combined DNA Index System (CODIS), DNA profiles are obtained from body fluids, stains or other evidentiary sources of DNA. This has allowed crime labs to scientifically document known sex offenders. That practice has increased the likelihood of matching unknown offenders with known offenders.

Crime labs now routinely derive DNA profiles of sexual offenders. DNA analysis of physical evidence has provided forensic scientists with the ability to derive DNA profiles for analysis from samples that were previously too small or degraded.

A DNA profile derived from evidence may lead investigators to the identity of a single assailant, multiple offenders, or link multiple cases. The information obtained from a CODIS report serves as an invaluable investigative tool/lead helping direct investigators to potential offenders.

VIII. SUSPECT INTERACTION:

- A. Preliminary Decision Whether or Not to Arrest:** The safety of the victim or other potential victims should be paramount in any decision to arrest. Additionally, officers should take into consideration the risk of flight by the suspect and the safety of the officer(s), as well as any mandatory obligations required under the domestic violence guidelines and M.G.L. c.209A.

As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that a crime occurred. The decision to arrest must be based on whether probable cause exists that the crime occurred, not on whether the victim wishes to seek complaints or wishes to testify at a future date.

If the above issues are not present or manageable, do not feel obligated to rush or make an immediate arrest just because you have probable cause to do so. Look at the specific circumstances of the case and consider conducting a non-custodial interview of the suspect prior to any warrant or arrest.

Whenever possible, all officers are encouraged to consult with a representative of the District Attorney's Office prior to making felony arrests.

- B. Interviewing the Suspect:** Always attempt to interview a suspect even if you believe the suspect will not speak with you or will deny the allegations. Small corroborations of surrounding events can make a big difference.

When conducting any suspect interview, it is strongly recommended that two officers are present and that the interview is conducted in a setting where they will not be disturbed. The best practice and preferred method is to audio and video-record the interview.¹⁸ The goal of the interview should be to get at least a base line statement from the suspect. Officers should let the suspect relate his/her entire statement before shifting to an interrogation style, if the shift occurs at all.

Prior to starting an interview, the first question the investigators should ask themselves is which, if any, legal requirements are mandated. This will help to ensure that statements made by the defendant are admissible in future legal proceedings. The most common legal requirements at this stage are correlated to whether there is a "custodial interrogation." There are many circumstances which may not initially appear to be custodial but, in fact, meet the legal definition and requirements of a "custodial interrogation." In general, the following are examples of places which could qualify as custodial:

- Police station;

¹⁸ Refer to Section IX. (A) (2). Audio Recordings.

- Jail/Prison; and
- Suspects home if the suspect is under arrest, or if police are there to execute a search warrant.

It is important that the suspect's statement about the sexual assault and the circumstances surrounding the entire occurrence and relationship be obtained and documented carefully. Very often the criminal prosecution of a sexual assault hinges on the victim's word against the suspect's word. The tipping point in successful prosecutions can often be the corroboration of the more benign details of the victim's statement, which brings credibility and credence to his/her entire statement. Small corroborations often end in big results.

Each of the following legal requirements requires their own separate and distinct waivers:

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

If the suspect invokes his right to remain silent and/or requests the presence of counsel at any time, the request must be honored and all questioning must immediately cease.¹⁹

2. *Six Hour Rule*: Under *Commonwealth v. Rosario*, 422 Mass 48 (1969), an otherwise admissible statement is not to be excluded as evidence on the ground of unreasonable delay in the defendant's arraignment, if the statement is made within six hours of the arrest (day or night), or if, at any time, the defendant makes an informed and voluntary written or recorded waiver of his right to be arraigned without unreasonable delay.²⁰
3. *Electronic Recordings of Interviews/Interrogations*: In *Commonwealth v. DiGiambattista*, 422 Mass 423 (2004), the Supreme Judicial Court held that a statement or confession obtained by police during a custodial interrogation at a place of detention, whenever practical, should be electronically recorded. Failure to do so will not result in the suppression of the statement; however,

¹⁹ Also refer to *Policy #425 – Interrogating Suspects and Arrestees*.

²⁰ Also refer to *Policy #425 – Interrogating Suspects and Arrestees*.

will most likely result in a strong jury instruction advising jurors to view the statement with “great care.”²¹

Regardless of the suspect’s decision to be recorded or not, a waiver to record or not record should be provided to the suspect and his/her decision documented. This advisement and waiver is separate and distinct from the Miranda and Six-hour rule waivers.

In general, it is good practice to:

- Tape as early as possible, including any Miranda consent/refusal;
- Try to record unobtrusively;
- Record the complete interrogation; and
- Preserve the tape.

It is advisable to avoid starting and stopping the interview tape. If it is not feasible to leave the recording running, officers should make a record on the recording that explains interruptions, and, if possible, have the suspect confirm the nature of the interruption on the recording.

4. *Other Procedural Requirements:* As with any arrest, all individuals taken into custody should be afforded all rights according to standard booking procedures.

IX. INVESTIGATION DOCUMENTATION:

No one portion of any investigation can stand on its own. Investigations are dynamic, interactive, compilations of actions and hard work. However, without proper documentation your hard work will never take shape to achieve a desired outcome. Your ability to communicate the facts, circumstances, and events of the investigation can be the difference between a successful or failed prosecution.

The importance of documenting your investigation cannot be overstated. The documentation produced will serve several purposes including:

- Create a record of the facts and circumstances while they are fresh in victim/witnesses’ mind;
- Serve as a mechanism in the future to refresh the police officer’s and witnesses’ recollection of events;
- Potentially serve as the foundation for criminal complaints and legal action (e.g., search warrants); and
- Become adopted as testimonial evidence at trial should a witness become incapacitated or legally unavailable to testify at a future date.

²¹ Refer to Section IX. (A) (2). Audio Recordings. Also, refer to *Policy #426 – Electronic Recordings of Interrogations*.

- A. Methods of Documentation:** Although the written report is often the primary format used in most investigations, officers need to consider other forms of documenting the investigation, especially in cases where you may need to document crime scenes, evidence, and victim injuries.
1. *Written Reports:* Reports should be written to communicate the facts to the reader in a clear and concise manner. A detailed, chronological accounting of events is, very often, the most effective way to write a report and lends itself to enhance the reader’s ability to follow what occurred and what investigative steps were taken.

When documenting any and all statements, the details of the assault, surrounding events, and statements made by the offender should be as close to verbatim as possible. This practice accomplishes two objectives. First, by documenting the actual words used, a pattern of behavior by the offender may be revealed or it may link an offender to multiple cases. Second, using the exact words rather than paraphrasing better communicates what the victim and/or offender was thinking or feeling at the time of the assault.

Of significant importance is documenting a detailed and precise description of the victim’s condition and state of mind. For example, if the victim is “visibly shaking and crying hysterically” then document it as such versus stating the victim was “upset.” It may be months or years from the date of report to trial, and details are important. Do not rely on memory alone.

Another important and effective tool of documentation is reporting the atmosphere of the suspect interview. For example, document the environment, the number of officers present, the tone of the interview, how officers were dressed, who was positioned where, any breaks/refreshments afforded the suspect (e.g., drink, bathroom).

By creating a separate and distinct supplemental report which communicates the tone and environment in which the suspect is interviewed, several potential foundations for motions to suppress the defendant’s statement can be avoided and again demonstrate a complete and comprehensive investigation.

The investigator should always follow the departmental protocol; however, it is recommended that police jargon and slang be kept to a minimum. This will assist readers who are non-law enforcement professionals to better understand the contents of the report.

Written reports should not contain any speculation, medial diagnosis, opinion, or officer thought processes. Reports should be free from spelling, punctuation and grammatical errors. All reports should be proof read prior to submission. Presentation is very important in how the case appears to the court and defense counsel and can directly impact the perception of the officer’s thoroughness and competency.

2. *Audio Recordings*: The investigator should be thoroughly familiar with the expected practices and legal requirements as it relates to conducting audio recordings of interviews/interrogations,²² and should be consulting with his/her supervisor and when deemed appropriate with the District Attorney's Office. As stated above, a statement or confession obtained by police during a custodial interrogation at a place of detention, whenever practical, should be electronically recorded.²³

The use of audio recordings allows the interviewer to keep an even and consistent flow to the interview without asking the witness to repeat him/herself or slow down. In addition, by recording the interview, you ensure that all the information provided by the suspect/witness is captured. This protects officers against allegations of omitting details and conversely documents details that, at the time of the interview, may not have seemed important.

If a suspect refuses to make a recorded statement, the officer should record the refusal (if it is practical) and document it on a refusal form. If the suspect refuses to be recorded before the recording device is turned on, the officer should, if it is practical, turn on the recording device and attempt to record the refusal.²⁴

Once being recorded, the officer should:

- Identify him/herself and the suspect, state the date, time and location, inform the suspect of any applicable rights (such as *Miranda*), and inform the suspect that there are potential benefits to recording the interrogation, including the fact that a recording will create a clear and complete record of what was said to the suspect, and what the suspect said during the interrogation;
- Ask the suspect on the record if he is willing to make an electronically recorded statement;
- Advise the suspect that if at any time he/she changes his/her mind and decides that he/she does want the interview to be recorded, he/she should let the officer know and the officer will turn on the recording device; and
- If the suspect still refuses, the officer should execute a signed refusal form, turn off the device, and proceed with the interview.

When audio recording statements, there are a few important points to remember. If the subject physically demonstrates information, the interviewer needs to verbally explain what is being demonstrated. For example, if a witness was to demonstrate the length of the knife using his/her hands, be sure to put on record that "the witness showed a distance of approximately six inches".

²² Also refer to *Policy #425 – Interrogating Suspects and Arrestees*.

²³ Refer to Section VIII. (B) (3). Electronic Recordings of Interview/Interrogations.

²⁴ Also refer to *Policy #426 – Electronic of Interrogations*.

Additional considerations include making sure that you have good, working equipment, having enough privacy so that the recording will not be constantly interrupted, and then notify the IT staff that a recorded/taped interview has been entered into the department's server for the purpose of preserving and safeguarding the integrity of the evidence, and secure a copy of the recorded/taped interview to be entered into the Property & Evidence System.

3. *Photographic Documentation:* Photographically documenting a crime scene, evidence, or injury is critical in criminal investigations, especially sexual assault cases. Photos bring the scene to life for jurors. The corroborative element which photographs bring to sexual assault cases is very important since sexual assault cases are often one person's word against another. In addition, photographing the scene and evidence prior to recovery demonstrates thoroughness by the police and helps eliminate challenges to the integrity of the investigation.

It is recommended that the investigator utilize the department's crime scene unit, whenever deemed to be appropriate. This will ensure items are photographed according to scale and captured in a manner which provides context to the entire scene. In addition, if photographing injuries, there may be certain lighting and technology that capture different conditions better.

Time aged photos may also be relevant. When documenting evidence through photographs, be sure to take an overall photo, a mid-range photo, and a close up photo. This provides a contextual basis for the evidence being displayed. In addition, include a ruler or some mechanism of measurement to provide a basis of size of the item being displayed.

If the victim needs to be photographed, be sure to explain to the victim why photographing him/her is important. The investigator is to conduct him/herself in a professional manner at all times affording the victim the utmost privacy and dignity.

4. *Video Recordings:* Video recordings are much like photographic documentation but can be more effective at capturing the big picture. This is especially true when trying to capture special relationships and paths of entry or egress.
5. *Sketches/Diagrams:* Sketching a scene is helpful when there is no access to photographic equipment or when documenting outside scenes. Using sketches and triangulation will assist in pinpointing the exact location of a recovery site at a later date.

X. OTHER INVESTIGATIVE CONSIDERATIONS AND RESOURCES:

Listed below are some additional recommended resources and considerations that may assist in corroborating the statements and facts you gather throughout the course of your investigation.

A. Digital Evidence: The usages of the Internet, PDAs, ATMs and a multitude of other electronic devices in everyday life have swelled to unprecedented levels. The increase in the usage of such technological devices in pursuing and completing criminal acts has also surged. This includes the ability to communicate, store, and transmit data, text and images, all of which if obtained and recovered properly, can become powerful evidence.

In any investigation, investigators must consider all electronic media and storage devices as potential sources of evidence and insight into the circumstance of the case. In doing so, the investigator should consider the following:

1. Is digital evidence potentially involved in the crime?
 - a. Survey the scene for digital evidence, including removable media and portable devices.
 - b. Interview victim/witnesses as to the use of these devices.
2. Identify all locations of potential digital evidence:
 - a. On-scene (e.g., surveillance video equipment).
 - b. On-line (e.g., Internet Service Providers).
 - c. Other locations (e.g., victim, suspect, devices).
3. Determine search authority:
 - a. Consent, plain view, search warrant, exigency, etc.
 - b. Electronic Communication Privacy Act (E.C.P.A).
4. The digital crime scene may include information stored by service provider and may require a Preservation Order.

There can often be technological nuances and search warrant requirements associated with electronic storage devices and evidence recovery. Therefore, it is strongly recommended that prior to handling or seizing such evidence, you consult with a computer forensic unit and/or the District Attorney's Office.

B. Court Orders/ Grand Jury Subpoenas: Under certain circumstances such as obtaining financials, phone records, medical records, or other documentation, court orders and/or grand jury subpoenas may be necessary. These requests must be coordinated with the District Attorney's Office.

- C. Photo Arrays:** If you have an identification case, be sure to conduct identifications either through photo arrays, line-ups, or show-ups. All three methods have strict legal requirements which should be adhered to in order to ensure admissibility in court. If the investigator is unsure of the proper identification protocols, consult with a supervisor, who may elect to confer with the District Attorney's Office.
- D. Polygraph Examinations:** The use of polygraph examinations can be an effective and reliable tool to include or exclude an individual as a suspect in criminal investigations. The use of polygraph examinations for victims is strongly discouraged except in cases where there is a reasonable basis to believe the victim is making a false claim or report. In addition, the use of or the suggested use of a polygraph examination should not be used as a condition of proceeding with an investigation, charge, or prosecution of an offense.
- In Massachusetts, the results of polygraph exams are inadmissible in criminal trials and may not be used for any purpose or in any capacity for criminal prosecution.²⁵ In addition, the submission to, or failure to submit to, a polygraph examination is inadmissible in court.
- E. Sex Offender Registry Board (SORB):** The Sex Offender Registry Board is the state agency responsible for compiling and maintaining a database of convicted sex offenders and classifying each offender. The SORB is an excellent resource for law enforcement offering investigative support. They have access to records and information regarding offender histories that may not be available through traditional data base searches (e.g., Triple III, BOP, etc.). The SORB is also an important partner with local law enforcement to ensure sex offender registration and compliance enforcement.
- F. Outside Documentation:** The use of outside agency documents and reports can be powerful circumstantial evidence to corroborate your investigation. Consider checking the following sources for information regarding your suspect or possible suspects:
- Board of Probation record (BOP);
 - Interstate Identification Index (III) (federal Criminal History Record Information);
 - Incident reports from other arrests and/or law enforcement involvements;
 - Field Interview/Observation reports (FIO reports);
 - Employment records;
 - Military records;
 - Educational documents;

²⁵ *Commonwealth v. Mendes*, 406 Mass. 201 (1989).

- Passports and travel documents;
- Probation/Parole records;
- Financial records;
- 9-1-1 recordings;
- Outside video;
- Professional boards (e.g., medicine, education);
- Department of Transitional Assistance;
- Department of Children and Families;
- Rental information; and
- GPS, and Electronic Monitoring transponders.

The above is not an exhaustive list. The limits and constraints of investigative tool and resources are only as limited as your imagination, so utilize all available resources. Assemble as comprehensive and professional investigative package as possible. If the investigator is unsure of the proper protocols to obtain any of the above information, he/she should consult with a supervisor, who may wish to have further consultation with the District Attorney's Office.

- G. High Profile Investigations:** Sexual assault investigations cross all social, economic, and professional boundaries. Because of these intersections, the investigator may encounter or be placed in delicate or difficult situations. Examples include investigating police officers, public officials, or individuals who hold positions of power.

The investigator's job is to investigate and report the facts as he/she finds them. The investigator's ability to be impartial and ensure the victim is treated fairly and with dignity is paramount. If an investigation creates a real or perceived conflict, the best practice may be to have the case handled by an independent and detached party.

- H. Media Relations and Interaction:** As part of the department's processing protocol involving the Daily Journal it will be reviewed by the department's Director of Communications & Media Relations (or designee) to ensure any information transferred to the Daily Public Log has been appropriately sanitized for the purposes of protecting the victim's identity and the integrity of the investigation.²⁶

Aside from the legal restrictions that prohibit the release of information regarding victims of sexual assault,²⁷ there are often a myriad of other issues and concerns that may be present for the victim. These include the ongoing threat of and/or risk of continued domestic and sexual violence or retaliation. Safety risks

²⁶ Refer to *Policy #300 – Media Guidelines & Public Information*.

²⁷ Refer to M.G.L. c. 41, § 97D.

may require additional layers of protection and precaution by law enforcement to protect the identity and location of the victim.

There are several Massachusetts General Laws which impact public dissemination and media disclosure. The primary statute which affects law enforcement is M.G.L. c. 265, § 24C. This statute states that the portion of records of any court or **any police department** in the Commonwealth or any or their political subdivisions which contain the name of a victim in an arrest, investigation, or complaint for rape or assault with intent to rape, shall be withheld from public inspection, except with consent of a justice of such court where the complaint or indictment would be prosecuted. **Said portion of the court record or police record shall not be deemed to be a public record.**

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

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

There are four agencies charged with the protection of certain vulnerable groups of individuals under Massachusetts' laws. These agencies are:

- Department of Children and Families (DCF), which acts to protect children under the age of 18;
- Disabled Persons Protection Commission (DPPC) which acts to protect persons with disabilities between the ages of 18 to 59 years old who as a result of the disability is wholly or partially dependent on others to meet his/her daily living needs;
- Executive Office of Elder Affairs (EOEA) which acts to protect elders age 60 and older; and
- Department of Public Health (DPH) that acts to protect individuals of all ages residing in hospitals and long term care facilities.

Mandated reporters play an important role in preventing continued abuse of existing victims and in preventing abuse of potential victims. The law provides mandated reporters with immunity from civil or criminal liability as long as the report was made in good faith. See appendix for a detailed list of mandatory reporting requirements.

- J. Sexual Assaults at Colleges and Universities:** Under M.G.L. c. 22C, § 63, the Colonel of the State Police is the authority that recognizes trainings for college and university police departments and appoints campus police as “special” officers. M.G.L. c. 41, § 97B compels all police officers that investigate sexual

assault cases to be certified in sexual assault investigations by attending a training course.

In general, the size and resources of the college or university will determine its ability to train and equip their own police department with certified sexual assault investigators. It is recommended that in communities with colleges or universities, the local police and college/university police departments work collaboratively to facilitate a professional and complete investigation.

- K. Military Personnel:** If during the course of the investigation it becomes apparent that either the victim or suspect is enlisted in any branch of the military, it is recommended that the involved person's specific branch commanding officer and/or investigative section be contacted. There may be historical or additional information regarding the involved parties and/or other mechanisms to hold offenders accountable.

XI. COURTROOM PREPARATION AND TESTIMONY:

As a lead investigator, it is incumbent upon the investigator to facilitate and ensure that the District Attorney's Office has a complete investigative packet of all reports and relevant documentation to the investigation. Those documents are the tools the prosecutor needs to do their job. Be cognizant that the conclusion of the investigation is the beginning of the prosecution and the District Attorney's Office and courts will continue to need your cooperation.

Part of all of the officers' responsibilities involved in the investigation involves them to be adequately prepared for court preparation and testimony.²⁸ The following are several important considerations in court preparation and testimony:

1. Be prepared:
 - a. Review the reports prior to testifying;
 - b. By recounting and reciting the facts of the case (while minimizing the need for memory to be refreshed) will demonstrate competency and professionalism; and
 - c. Being prepared will help reduce any natural anxiety and tension associated with testifying.
2. Courtroom testimony/demeanor:
 - a. Knowing the case will bring natural confidence to your courtroom presence and testimony;
 - b. Do not be flip or coy;
 - c. Refrain from attempting to outsmart or out think the questioning attorney(s);
 - d. Answer the questions directly, honestly, and to the best of your abilities;

²⁸ Refer to *Policy #250 – Testifying in Court*.

- e. If you do not know or can not remember the answer to a question, communicate that in a direct, non-defensive manner; and
- f. When testifying, relax and be yourself.

XII. VICTIM SUPPORT SERVICES:

- A. Role of the Massachusetts Rape Crisis Counselor:** Rape crisis centers offer assistance to victims of sexual assault, their significant others, professionals, and community members. Although rape crisis centers in Massachusetts may vary in the services available, all rape crisis centers offer crisis intervention services. Services may include a 24 hour hotline, medical services, legal advocacy, clinical services, and community outreach and education. All services are free and confidential.

Hospital personnel may directly contact community-based rape crisis counselors in addition to contacting a Sexual Assault Nurse Examiner (SANE). A rape crisis counselor may also be specifically requested by the victim. Although law enforcement can also directly contact a rape crisis counselor to respond to an emergency department, this is not a recommended procedure because of victim privacy concerns.

In the immediate aftermath of an assault, victims face a host of emotional, medical, and legal decisions. An advocate can provide information to assist the victim (and her/his family) in making the best possible choices.

Counselors sometime referred to as “counselor” or “advocate,” provide compassionate and knowledgeable support to victims and their families in hospital emergency departments. Counselors can accompany the victim throughout the entire forensic exam if the victim chooses. Counselors can also be helpful with safety planning, arranging transportation, and with service referrals.

Rape crisis counselors are part of the system of support that helps victims get through the medical/evidence collection process and understand future options. They are not there to hinder law enforcement’s efforts and ability to obtain information and/or evidence.

Under M.G.L. c. 233, § 20J, **information transmitted in confidence by and between a victim of sexual assault and a certified rape counselor (no third parties present) is considered a confidential communication and is legally protected.** Even though a victim may have shared relevant information with the rape crisis counselor about the assault, unless the victim gives the counselor express permission to share that communication with law enforcement, the advocate is under a legal obligation not to disclose any privileged information.

- B. The Victim Witness Advocate (Office of the District Attorney):** Pursuant to M.G.L. c.258B, all District Attorney’s Offices must have a victim witness

assistance program. Victim witness advocates (VWA) provide immediate crisis assessment and intervention with victims, witnesses, and their families. Advocates make initial contact with victims on behalf of the District Attorney's Office and help them to assess their most immediate needs—for safety, counseling, medical care, and emergency financial assistance.

Additionally, VWAs make appropriate referrals to services in the community that can help meet these needs and to help victims cope with the experience of victimization. The primary goals are to assist victims in their healing and recovery and to enable them to participate in the prosecution of their case by providing them with the support and information they need, and to ensure that they have a voice in the process.

The advocates educate victims about the court process and their expected role and help them anticipate both the difficult and rewarding aspects of the process. Advocates keep victims and witnesses apprised of the status of their case, provide information and notification regarding bail status, provide notice about upcoming court dates and postponements, assist in obtaining victim impact statements for sentencing, and elicit victims' input about various decisions in the case, including pleas and sentence recommendations.

The VWAs work together with prosecutors as a team to prepare victims for testifying, to answer their questions, and to provide in-court support and are responsible for assisting victims with filing Victim of Violent Crime Compensation claims.

- C. Victims of Violent Crime Compensation:** Since law enforcement is often a victim's entry point into the criminal justice system, the investigator should be familiar with Victims of Violent Crime Compensation, a state program created by statute and administered through the Attorney General's Office, Victim Compensation and Assistance Division. As part of the investigator's discussion with the victim of a sexual assault, he/she should routinely be advising victims of violence about this potential and critical financial remedy and of other important available resources.

Victim's eligible for Victim Compensation includes:

- Victims of violent crime in Massachusetts;
- Dependents and family members of homicide victims; and
- Any person responsible for the funeral expenses of a homicide victim.

To the extent insurance or other funds do not cover your expenses, you may be reimbursed for:

- Medical and dental expenses (including equipment, supplies and medications);
- Counseling expenses (for victims, for family members of homicide victims, and for children who witness violence against a family member);

- Funeral/burial costs up to \$4,000;
- Lost wages (for victims only);
- Loss of financial support (for dependents of homicide victims);and
- Homemaker expenses.

Generally, in order to qualify for victim compensation, victims must have reported the crime to police within five days unless there is good cause for delay. They must cooperate with law enforcement officials in the investigation and prosecution of the crime unless there is a reasonable excuse not to cooperate and they must apply for compensation within three years of the crime. Victims under the age of 18 at the time of the crime may apply until age 21, or later in certain limited circumstances.

However, in the case of sexual assault, the fund is available to help assist victims in paying for medical expenses incurred as a result of a Forensic Sexual Assault Exam performed by a SANE nurse or other medical provider regardless of whether the exam is not covered by insurance, or if it is a case in which the victim does not wish to process the claim through their personal health insurance. Additionally, the mandatory requirement that the victim cooperate with the prosecution is waived.

- D. Massachusetts Office for Victim Assistance (MOVA)/Victim Witness Assistance Board:** The Massachusetts Office for Victim Assistance (MOVA) is an independent state agency devoted to upholding and advancing the rights of crime victims. MOVA not only serves as a resource and a point of entry for many victims and their families and an agency of last resort when victims are having trouble navigating systems or accessing services, but also administers the (SANE) Program services in collaboration with the Massachusetts Department of Public Health. MOVA's website www.mass.gov/mova outlines all of the various services, trainings, projects, and agencies it funds, and its policy and legislative initiatives to advance victim rights.