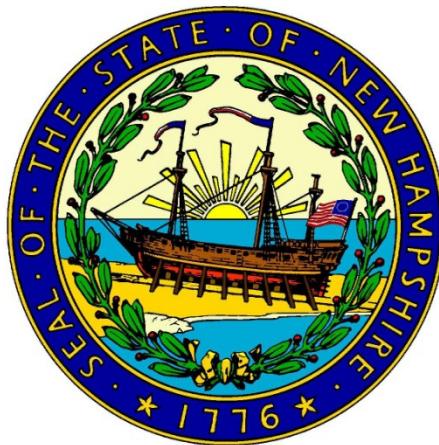


# **STATE OF NEW HAMPSHIRE**

## **GOVERNOR'S COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE**



## **OFFICE OF THE ATTORNEY GENERAL**

### **A MODEL PROTOCOL FOR RESPONSE TO ADULT SEXUAL ASSAULT CASES**

**<http://doj.nh.gov/criminal/victim-assistance/documents/sexual-assault-protocol.pdf>**

**2018 Edition**

*It is New Hampshire's expectation that all disciplines involved in the response to adult sexual assaults will work collaboratively using a victim-centered approach.*

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## **Adult Sexual Assault Investigation Checklists**

These checklists are meant to bring attention to several priority responsibilities for various individuals involved in the response to an adult sexual assault report. They are not intended to exclude any responsibilities that may be identified due to unique circumstances presented during a specific report. These checklists are to be utilized as best practice guidelines.

### **Emergency Communications/Dispatcher**

- Determine nature and location of the incident; identify caller, victim and suspect; any potential risk of injury to responding officers
- Confirm victim's safety and medical needs; activate Emergency Medical Services as needed
- Check safety concerns (weapons shown, threatened or used, injuries to victim or suspect)
- Determine if any special language/access needs exist
- Seek suspect information; relationship with victim, description, still present? direction of travel, vehicle, etc.
- Limit traffic over police radio that could identify the victim
- Provide SANE related evidentiary advisories – not to bathe, change clothes, comb hair, brush teeth, touch any articles or furniture the suspect may have touched, etc. while waiting for an officer to arrive
- If a SART trained officer is on duty, the SART trained officer will be dispatched to the scene. If a SART trained officer is not on duty, a uniform officer will be dispatched to the scene.
- Remain on the line with the victim, if practical, until officers arrive, especially if the victim is alone and/or the scene is not safe.
- Due to the trauma a victim may be experiencing, their behaviors may be symptomatic of being in crisis. They may range from crying, hysteria, rage, laughter, calmness and/or unresponsiveness. **Do not judge or disregard any victim.**
- Inform the caller before placing him/her on hold
- Preserve the communications tape and printout for the investigation

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### **EMS Responders**

- Introduce yourself and explain you are there to help
- Explain any procedure before touching the patient
- Empower patients to make decisions regarding their care
- Treat and document assessment findings using appropriate medical treatment protocols without causing undue trauma
- Be alert for patients with impaired capacity due to alcohol, drugs, disability or age

- Limit questions to the identification of injuries and pertinent medical information
- Ask when assault occurred and if patient has bathed, showered or changed clothes since then
- Ask patient if strangulation occurred and note if patient reports being “choked”; document signs/symptoms and statements
- Preserve and document the collection of all evidence

## Law Enforcement First Responder

- Introduce yourself and explain you are there to help
- Speak slowly and calmly; avoid being judgmental or blaming
- If wearing a body worn camera (BWC), advise victim, obtain express consent (verbally and/or in writing) to continue recording per RSA 105-D
- Re-evaluate safety for the victim and any other person at potential risk
- Ask if the victim has been strangled or “choked” and document signs/symptoms
- Activate Emergency Medical Services as needed or encourage the victim to seek medical care
- Call a crisis center advocate for the victim
- Identify the crime and the scene(s)
- Establish jurisdiction
- Secure the scene(s)/Preserve evidence
- Determine if the suspect is known and their possible location(s)
- If the Responding Officer is not SART trained, contact a SART trained officer or detective if available
- If a SART trained officer or detective has a delayed response, work with the crisis center advocate to facilitate transportation to the hospital
- Remain with the victim until a SART trained officer or detective arrives and the information is transferred to the investigating officer
- Consider the trauma that may be experienced and how it may be effecting the victim’s emotions, behavior and memory; distraught victims should not be left alone
- If the victim is a vulnerable adult, it is **mandatory** to report to the NH Bureau of Elderly and Adult Services at **1 (800) 949-0470**
- Do not** conduct a comprehensive interview of the victim; seek confirmation of the crime, scene(s) and suspect information; refer to Conducting a Minimal Fact Interview, Page 19
- Transport and secure hospital evidence which may include:
  - Sexual Assault Evidence Collection Kit
  - Small bag containing underwear

- Bag(s) containing external clothing
  - Urine sample, if appropriate (must be on ice or frozen)
- If suspect needs medical treatment or evidence collected from their body, advise the hospital to keep suspect separate from the victim
- Promptly complete the initial incident report which includes observations of
- victim, scene, suspect and/or witnesses and indicate if BWC was turned off
- Securely store BWC recordings no later than end of shift or as soon as practicable (per RSA 105-D)
- Make proper agency notifications as applicable by department policy

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## Law Enforcement Supervisor

- Coordinate securing crime scene(s)
- Coordinate evidence collection; ensure kit is properly stored prior to transport to the Forensic Laboratory for analysis
- Assess situation, determine needs and ensure competent response as appropriate for agency
- Notify detective/SART trained officer
- Be familiar with NH's best practice protocol
- Follow best practice guidelines for protection of victim privacy and identification
- Exhibit sensitivity to victims and ensure they are dealt with in a trauma informed manner (with or without BWC in use)
- When reviewing reports, ensure that cases are properly classified and files are complete
- Ensure handling of kit is compliance with RSA 21-M:18 upon return from the Forensic Lab. See *Guidance in the law enforcement section of protocol*

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## Law Enforcement Investigator Checklist

- Re-evaluate safety, activate Emergency Medical Services as needed
- Verify collaborative response has been initiated (crisis center advocate, SANE)
- Ascertain what disclosure has already been made and to whom (initial officer, friend, family member)
- If responding to the scene, conduct a Minimal Facts Interview (see page 19) if it has not yet been done. A crisis center advocate can be present during initial and comprehensive statements.
- Follow up with comprehensive/complete victim interview 24 to 48 hours after assault; this generally takes place after the medical/forensic exam; **Consult with County Attorney's Office to determine if they want to observe interview.**
- Request medical records release from victim
- Determine need for consent or search warrant(s); secure location/person and execute (suspect DNA/evidence, computers, phones, storage devices, cars, structures, trash). See Appendix G & Appendix J
- Photograph and collect evidence from the scene(s)

- Ensure timely transport of evidence to Forensic Lab for analysis (especially if the Sexual Assault Evidence Collection Kit has been refrigerated)
- Conduct witness interview(s) – including potential disclosure witnesses
- Conduct and record suspect interview(s)
- Take follow up photos of any victim bruising or injuries 24-48 hours after the assault, then as needed depending on the injury pattern and progression
- Consider if a one-party call would be appropriate for the case. See Appendix H
- Send preservation letters in order to collect available technology evidence
- (phones, e-mail, social media, etc.). See Appendix K & Appendix L
- Run suspect criminal and motor vehicle record checks
- Obtain/review all relevant BWC recordings for the case
- Promptly and completely document case
- Conduct thorough review of case prior to sending case to the County Attorney – including all reports, evidence, photos and recordings; obtain and review medical/forensic documentation, witness statements, etc.
- Be available to provide case follow-up in consultation with the prosecutor

## Evidence Checklist

- All Sexual Assault Evidence Collection Kits, including Anonymous Kits, MUST be transported to the State Forensic Laboratory as soon as possible.**
- Freeze urine (if suspected drug/alcohol facilitated case) if possible prior to transport to the Forensic Lab**
- Refrigerate blood prior to transport to Forensic Lab. Do NOT freeze blood samples.
- Collect suspect evidence with consent or search warrant (i.e., DNA, wounds-scratches and/or bruises- and body fluid evidence, fingernail scrapings, clothing or other items that can be corroborated by the victim's statement) See Appendix G
- Ensure photographs and/or digital images, videos and/or diagrams obtained by law enforcement are included in the case file
- Bruising may not appear immediately so encourage future contact with victim to obtain photos (genital/breast areas should be photographed by medical provider/SANE)
- Collect victim clothing worn at the time of the assault if not done by medical provider/SANE
- Air dry wet items prior to packaging
- Use separate paper bags for items, NOT plastic, and seal with tape not staples as per NH Forensic Lab best practices
- Photograph and collect item used as ligature in strangulation cases and package properly. When possible, do not disturb knots in ligature, if there are any.
- Collect all relevant BWC recordings
- Seize and preserve all appropriate electronic devices based on either consent, search warrant or exigency
- Store all evidence in secure area
- Transport all evidence to be analyzed to NH Forensic Laboratory as soon as possible
- Ensure compliance with ***all aspects*** of RSA 21-M:18. See Appendix S-2

## Prosecution Checklist

### Pre-Charging/grand jury Issues:

- Screen cases: Process all cases as quickly as possible; obtain & review all case-related information presently available from law enforcement
- Meet with the victim (with law enforcement present), identify victim's support network and advocates; comply with all aspects of RSA 21-M:18. See Appendix S-2
- If decision is made not to charge, inform victim immediately & explain reasons;** have victim/witness advocate present
- Ensure victim safety planning is developed
- Identify victim privacy issues
- Identify partners, collaborate with LE, advocates, medical professionals and crime lab
- Keep in mind how trauma may be impacting victim's response/demeanor
- Ensure law enforcement does NOT polygraph the victim**
- Anticipate common defenses to sexual assault, as well as victim and offender myths that can impact a successful prosecution, strategize these issues
- Evaluate whether expert testimony would assist, and if so, identify potential experts

### Pre-Trial Issues:

- Develop appropriate bail conditions; consider bond and protection issues; **make sure victim is notified if defendant is released**
- Ensure discovery is complete and provided to defense
- Develop a plea with victim input pursuant to the Victims Bill of Rights

- Develop motion practice; consider the admissibility of other bad act evidence
- Address privacy issues discussed with victim
- Consider effective use of the rape shield law
- Meet with witnesses, expert or otherwise, to prepare for trial and scope of testimony

### Trial Issues:

- Jury selection/voir dire
- Opening statements
- Use of exhibits
- Victim testimony
- Cross examination
- Evidentiary issues
- Closing arguments
- Jury Instructions

### Post-Trial Considerations:

- Develop sentencing strategies: consult with the victim; review the Victim Bill of Rights
- Consider filing a sentencing memorandum to provide Court with rationale & basis for recommendation
- Consider restitution for victim's out of pocket expenses and reimbursement of Victims' Compensation
- Request no contact provision in sentencing form; Refer to RSA 651:2 or *State v. Towle (2015)*
- Discuss with the victim if outcome does not meet their expectations; encourage the victim to seek civil protection order after an acquittal

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# **NEW HAMPSHIRE ADULT SEXUAL ASSAULT PROTOCOL COMMITTEE**

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## PREFACE

Sexual violence in our society has no boundaries. It crosses all socio-economic, age, gender and racial lines. It occurs in both New Hampshire's urban and rural communities (Appendix R). Sexual violence has a tremendous impact on a victim's life, affecting them physically and emotionally. Coping with the assault and requesting assistance can be extremely traumatic and challenging for a victim. The system's response to reports of sexual assault is critical to minimize further trauma to the victim, to assist in their healing and ensure successful prosecution of sexual offenders.

Research data released in the report, "*The Reality of Sexual Assault in New Hampshire*"<sup>1</sup> found that there is a lack of consistent collaboration among the various disciplines responding to adult female sexual assaults. It also found that variability in training and expertise in handling sexual assault cases contributes to how the system responds to victims. In an effort to address these findings, New Hampshire encourages the use of Sexual Assault Resource Teams (SARTs) comprised of professionals from different disciplines working collaboratively to improve system responses to victims, holding offenders accountable for their behavior and increasing successful prosecution rates for adult cases of sexual assault.

Adult sexual assault is the most under-reported crime in our country. Approximately 60% of adult sexual assaults are not reported to law enforcement. In the United States, 1 in 6 women and 1 in 33 men reported experiencing an attempted or completed rape at some time in their lives<sup>2</sup>. In New Hampshire, approximately 23% of women have been the victim of a sexual assault.<sup>3</sup> Some victims choose not to report due to embarrassment, fear of the offender, concern they will not be believed or that they will be blamed for the assault. Others may distrust the investigative, prosecutorial, and judicial systems.<sup>4</sup>

The primary objectives of this document are:

- To minimize the physical and psychological trauma to the victim of sexual violence by responding in a compassionate, sensitive and non-judgmental manner
- To establish best practice guidelines for the multi-disciplinary response to adult sexual assault cases and the thorough investigation of the crime
- To ensure the opportunity for immediate and comprehensive medical care to the sexual assault patient/victim
- To hold offenders accountable by keeping the investigation focused on the offender's behavior and actions

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<sup>1</sup> Murphy, S., Farr, H., *The Reality of Sexual Assault in New Hampshire*. 2009.

<sup>2</sup> National Institute of Justice & Centers for Disease Control & Prevention, Prevalence, Incidence and Consequences of Violence Against Women Survey (1998).

<sup>3</sup> Mattern, G., Banyard, V., Bujuno, L., Laflamme, D., Moynihan, M. & Potter, S. *Violence Against Women in New Hampshire Survey* (2007).

<sup>4</sup> Tjaden P, Thoennes N. *Extent, nature, and consequences of intimate partner violence: findings from the National Violence Against Women Survey*. Washington (D.C.); Department of Justice (US); 2000. Publication No.: NCJ 181867. Available from [URL:www.ojp.usdoj.gov/nij/pubs-sum/181867.htm](http://www.ojp.usdoj.gov/nij/pubs-sum/181867.htm)

## HISTORY OF THE NEW HAMPSHIRE SEXUAL ASSAULT PROTOCOL PROJECT

In 1988, the New Hampshire Legislature passed a law (RSA 21-M:8-c) which made the State responsible for the payment of forensic medical examinations of sexual assault victims who do not have insurance coverage or who do not want the examination reflected on their insurance. It also authorized the New Hampshire Attorney General's Office to establish a standardized sexual assault protocol and evidence collection kit to be used by all examiners and hospitals in the State.

The New Hampshire Attorney General's Office formed the Sexual Assault Protocol Committee representing the medical, legal, law enforcement, victim advocacy and forensic science communities, to establish a New Hampshire protocol and kit. The first protocol, *Sexual Assault: A Protocol for Forensic and Medical Examination*, was completed in 1989. Since then, the protocol has been continually revised and updated to include significant changes in forensic evidence collection. The latest version is An Acute Care Protocol for Medical/Forensic Examination, Eighth Edition, 2015. Advocates are also trained on sexual assault medical examinations and the criminal justice system, allowing advocates to educate sexual assault victims so that they are aware of their options and can make informed decisions.

In 2002, *Sexual Assault: A Protocol for the Response and Investigation of Adult Sexual Assault Cases* was introduced. In 2012, the protocol was written to reflect the Sexual Assault Resource Team (SART) model of best practice response to adult victims. This document is an updated version of that protocol.

The Committee encourages duplication and distribution of this protocol to further enhance and standardize investigations of adult sexual assault cases and to reduce the trauma experienced by victims.

All of the protocols that have been developed by the NH Attorney General's Office can be found online at: <http://www.doj.nh.gov/criminal/victim-assistance/protocols.htm>

## PURPOSE STATEMENT

It is the expectation of the New Hampshire Attorney General's Office that all disciplines involved in the response to adult sexual assaults will work collaboratively using a victim-centered approach. This means prioritizing victims' needs, honoring their rights, considering their perspectives, and supporting their decisions. A victim-centered response customizes the response to meet the victims' specific needs and promotes the compassionate and sensitive delivery of services in a nonjudgmental manner.

## POLICY

This protocol represents a model - an ideal - for New Hampshire's handling of adult sexual assault cases. It was developed with the recognition that an individual agency's ability to follow the recommended guidelines, will depend, to some degree, on available resources. This protocol defines a standard to which all agencies involved in the handling of these cases should strive. It is not intended to create substantive rights for individuals. **Consistent compliance with the procedures set forth in this protocol will greatly increase the effectiveness of the State's response to adult sexual assault cases.**

## SEXUAL ASSAULT RESOURCE TEAM (SART) MODEL

In an attempt to address the various challenges surrounding crimes of adult sexual violence, the New Hampshire Attorney General's Office began a statewide initiative in 2010 to develop and implement Sexual Assault Resource Teams (SARTs) in all ten counties. A SART is a multi-disciplinary team of professionals with core members representing the various disciplines - medical, victim advocacy, law enforcement, and prosecution – that may respond to or provide resources to an agency when investigating a report of sexual assault involving a victim who is 18 years of age or older. Additional members may include, but are not limited to, representatives from elderly and adult services, mental health agencies, college and university campuses, faith-based communities, sex offender treatment programs, probation and parole and the forensic laboratory.

SARTs improve the quality of investigations through increased training opportunities on sexual assault related topics, development of investigative skills, improved evidence collection and increased understanding of victim trauma which may lead to improved victim interviews, resulting in more effective investigations and prosecutions.

By meeting regularly, SART members learn about the different roles and responsibilities of the participating disciplines and determine what the values, commitments and goals will be in their specific community. Documents generated to reflect these ideals can be amended over time, as necessary. Team members following the Resource model of a SART continue to function under their own agency policies, procedures and

*The goal of a SART is to work collaboratively to improve the response to victims, focus on the offender's, rather than the victim's, behavior and enhance the rate of successful prosecution.*

protocols, but develop a Memorandum of Understanding (MOU), which describes how the various disciplines operate within the SART.

SARTs assess how the various disciplines respond to victims through team discussions and conducting case reviews. An assessment may serve to reinforce effective collaborative responses to sexual assault or may identify areas in need of improvement. When SARTs take steps to improve the victim-centered approach, it leads to more victims coming forward and enhances offender accountability.

SARTs play a significant role in promoting public safety in their communities by working in a coordinated team approach. In addition to meeting victims' needs and enhancing the quality of investigations, SART members can also become involved in educating their communities about the services that are available for the intervention and prevention of sexual violence.

## THE LAW

A victim of sexual assault can be of any age. This protocol addresses adult victims, individuals 18 years of age and older. For victims 17 and younger, refer to the Attorney General's [Child Abuse and Neglect Protocol, 2008.](#)

### SEXUAL ASSAULT AND RELATED OFFENSES - DEFINITIONS

“Rape” is not a legal term in New Hampshire. The crime is classified as “Sexual Assault”. Under RSA 632-A, there are three levels of sexual assault:

**Aggravated Felonious Sexual Assault** (“AFSA”) ([RSA 632-A:2](#)) is defined as sexual penetration, however slight, into any opening (vagina, mouth or anus) under certain circumstances including but not limited to:

- When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.
- When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.
- When the victim is physically helpless to resist.
- When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.
- When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.
- When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.
- When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.
- When the actor has direct supervisory, disciplinary, or other authority authorized by law over, or direct responsibility for maintaining detention of, the victim by virtue of the victim being detained or incarcerated in a correctional institution, the secure psychiatric unit, a juvenile detention facility, or any other setting in which the victim is not free to leave.
- Or under other aggravating circumstances defined in [RSA 632-A:2](#).

**MYTH:** Sexual assault is motivated by sexual desire.

**FACT:** Sexual assault is a crime of violence, motivated by anger and the desire for power and control.

AFSA is a felony punishable by an enhanced penalty of up to 10 to 20 years in the state prison.

After the Crime of Domestic Violence was passed via Joshua's Law, a section was added to the AFSA statute which allows for some Domestic Violence related assaults to be charged in accordance with this chapter:

RSA 632-A:2:V. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Aggravated Felonious Sexual Assault--Domestic Violence."

**Felonious Sexual Assault** ("FSA") (RSA 632-A:3) includes the offense often referred to as "statutory rape", which involves sexual penetration of a person 13 years of age or older and under 16 years of age when the difference between the actor and the other person is 4 years or more. The legal age of consent in New Hampshire is 16.

Felonious Sexual Assault includes, but is not limited to:

- When the defendant subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2 (the aggravated felonious sexual assault statute mentioned above).
- Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:
  - When the actor has direct supervisory, disciplinary, or other authority authorized by law over, or direct responsibility for maintaining detention of, the victim by virtue of the victim being detained or incarcerated in a correctional institution, the secure psychiatric unit, a juvenile detention facility, or any other setting in which the victim is not free to leave.
  - When the actor coerces that other person to engage in sexual contact with the actor or with him/herself in the actor's presence, or
  - When the actor is a probation or parole officer or a juvenile probation or parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Felonious Sexual Assault is a class B felony punishable by 3.5 to 7 years in the state prison.

After the Crime of Domestic Violence was passed via Joshua's Law, a section was added to the FSA statute which allows for some Domestic Violence related assaults to be charged in accordance with this chapter:

RSA 632-A:3: V. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Felonious Sexual Assault--Domestic Violence."

**Sexual Assault** (RSA 632-A:4) covers a variety of conduct, including, but not limited to, sexual contact with a person 13 years or older under any of the aggravating circumstances defined in

RSA 632-A:2. A person may also be charged with Sexual Assault if they cause another person to engage in sexual contact with the actor or with him/herself, when the actor is in a position of authority over the other person, as defined in the statute.

Sexual Assault is a class A misdemeanor punishable by incarceration for up to one year in the House of Corrections.

After the Crime of Domestic Violence was passed via Joshua's Law, a section was added to the Sexual Assault statute which allows for some Domestic Violence related assaults to be charged in accordance with this chapter:

RSA 632-A:4: IV. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Sexual Assault--Domestic Violence."

There may be other potential charges in a case of sexual assault including, but not limited to:

- ***Strangulation*** (RSA 631:2-c)
- ***Kidnapping*** (RSA 633:1)
- ***Criminal Restraint*** (RSA 633:2)
- ***False Imprisonment*** (RSA 633:3)
- ***Stalking*** (RSA 633:3-a)
- ***Trafficking in Persons*** (RSA 633:7)
- ***Endangering the Welfare of a Child or Incompetent Adult*** (RSA 639:3)
- ***Domestic Violence*** (RSA 631:2-b, I(f); RSA 631:2-b, I(g); RSA 631:2-b, I(h))
- ***Nonconsensual Dissemination of Private Sexual Images*** (RSA 644:9a)

Investigations of sexual assault against a college or university students may also be impacted by federal law. Specifically, federal laws affecting response to assaults on students include the Clery Act and Title IX. Additional information can be found in this document in the Sexual Assault on Campus section.

*Sexual assault is common in relationships where there is other verbal, emotional or physical violence. Professionals should be aware of this and include questions about domestic violence in sexual assault investigations. The statutes that apply to domestic violence crimes apply in cases of sexual assault by a family or household member of the family. For more specific information refer to:*

[Law Enforcement Model Protocol for Police Response to Domestic Violence Cases \(2008\)](#)

[Stalking Protocol: A Model for Law Enforcement \(2009\)](#)

## MANDATORY REPORTING

Most adult sexual assault injuries are not required to be reported to the police, and it is the adult victim's decision whether or not to report the crime to law enforcement.

One exception is described under RSA 631:6 which reads as follows:

- If the **victim is 18 years of age or older**, and has **received a gunshot wound or other serious bodily injury** that the examiner/hospital personnel believes to have been caused by a criminal act, the injuries **must be reported** to law enforcement.
  - As defined in RSA 161-F:43 "serious bodily injury" means any harm to the body which causes or could cause severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.
  - **Exception:** Under Federal law, records of the identity, diagnosis, prognosis or treatment of a patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment or rehabilitation which is conducted or directly or indirectly assisted by any federal agency are confidential and may be disclosed only pursuant to a court order.

*If the victim is 18 years of age or older  
and has **not** sustained a gunshot  
wound or serious bodily injury, it is the  
victim's decision whether or not to  
report the crime to law enforcement.*

## BUREAU OF ELDERLY AND ADULT SERVICES (BEAS)

BEAS carries out the legal requirements of the Protective Services to Adults Law (RSA 161-F) under the Adult Protection Program (RSA 161-F: 42-57). The purpose of the law, which is civil and not criminal, is to provide protection for vulnerable adults who are age 18 and older, who are abused, neglected, exploited, or self-neglecting.

Adult Protection Program activities include:

- The receipt and investigation of reports of emotional abuse, physical abuse, sexual abuse, neglect, exploitation, and/or self-neglect, and referral to law enforcement agencies as necessary;
- The determination of the validity of the report and the need for protective services; and
- The provision of and/or arrangement for the provision of protective services when necessary, and when accepted by the adult who has been determined to be in need.

**The Adult Protection Law requires any person who has a reason to believe that a vulnerable adult has been subjected to abuse, neglect, exploitation or self-neglect to make a report to the appropriate state agency or office (RSA 161-F: 51 II).**

**Pursuant to RSA 161-F:46**, “any person, including, but not limited to, physicians, other health care professionals, social workers, clergy, and law enforcement officials, suspecting or believing in good faith that any adult who is or who is suspected to be vulnerable has been subject to abuse, neglect, self-neglect, or financial exploitation or is living in hazardous conditions shall report or cause a report to be made to the Department of Health and Human services” by calling the Bureau of Elderly and Adult Services Central Intake at **1-800-949-0470**.

When law enforcement officials receive reports under this paragraph from sources other than BEAS, they shall notify BEAS within **72 hours** of receipt of such reports.

If the vulnerable adult is a resident of a nursing facility or assisted living facility, the report should be made to the Office of the Long-Term Care Ombudsman. Use the Facility Initial Report Transmittal Form when submitting a facility report.

*For assistance in determining whether an adult should be considered vulnerable, or for more information (during business hours), contact BEAS at 1-800-949-0470 or 603-271- 7014. For a listing of District Offices, see Appendix C.*

Please refer to the sections on Elderly Victims and Victims With Disabilities in this protocol for additional information.

## EMERGENCY MEDICAL SERVICES (EMS) RESPONSE

When responding to the scene of a reported sexual assault, maintain a heightened awareness of scene safety and be aware that family members or caregivers may exhibit anger and that a family member or caregiver may be the perpetrator. Victims of sexual assault come in all ages, genders and levels of mental capacity. Patient medical care is the primary concern, however, providers' reactions can impact patient recovery and strengthen or hinder potential prosecution of the perpetrator. Non-judgmental and compassionate care, thorough documentation and preservation of evidence are essential. Do not question the patient about the incident itself as victim recollections immediately following an assault are often distorted due to their trauma experience and could be used against them in the future.

### Routine Patient Care Considerations:

1. If pre-hospital personnel are called to the scene of a reported sexual assault and are entering prior to law enforcement arrival and there is no life-threatening situation, be careful to avoid or limit disruption of possible evidence except to the extent absolutely necessary to provide effective patient care.
2. The patient may prefer an EMS provider of the same gender as the patient to provide care, if available.
3. Provide emotional support and comfort. Explain any procedure before touching the patient. Empower patients to make decisions regarding their care.
4. Be alert for patients with impaired capacity due to alcohol, drugs, age or disability (Refer to EMT/Advanced EMT/Paramedic Standing Orders 4.4).
5. Provider's questions should be limited to the identification of injuries and pertinent medical information. However, if there is a delay from the time of the assault to the EMS response, ask how long ago the assault occurred, and whether the patient bathed, showered, changed clothes, etc. since the assault. **Do not question patient as to the details of the assault.**
6. Suspect strangulation as a mechanism of injury if any of the following signs or symptoms are present, or if the patient reports being 'choked' or strangled:  
coughing, difficulty breathing or swallowing, swelling of the tongue, voice changes; neck pain, swelling, abrasions or discoloration; subconjunctival hemorrhage/petechiae or petechiae of the eyes, nose or ears (*See Appendix D*).

Document specific statements used by the victim in quotations; additional documentation by provider regarding strangulation should be done thoroughly, as "strangulation" (not as 'choking', which refers to foreign body obstruction):

7. Treat and document assessment findings using appropriate medical treatment protocols without causing undue emotional trauma.
8. Discourage the patient from eating, drinking, smoking or bathing until after evaluation in hospital. If the patient needs to use the restroom prior to transport advise the patient to not "wipe".

9. Limit physical contact with patient to that which is required to perform assessment and treatment. An abbreviated assessment may be indicated based on the patient's emotional status due to the traumatic nature of the event.
10. Do not inspect genitals unless evidence of uncontrolled hemorrhage, trauma or severe pain is present.
11. If it is necessary to remove patient's clothing, take care not to damage evidence (e.g., rips, stains) if possible. Cut along seam lines.
12. Preserve any evidence, including patient's clothing, in paper bags. Label with patient name, date of birth and transfer to law enforcement or Emergency Department (ED) staff. Document transfer, including name of the ED staff or officer to whom it was given. Failure to document the transfer of evidence properly can render it useless.
13. Even if emergency medical care is not necessary, it is recommended that the patient be transported to the hospital for prophylactic treatment for sexually transmitted disease or pregnancy and drug/alcohol screening which is crucial for possible prosecution.
14. If the patient ultimately decides not to seek emergency care at a hospital, contact Dispatch and request assistance from the local crisis center.
15. Utilize telephone for communication with hospital; use of a recorded line is preferred.

Communicate with receiving hospital early so that a Sexual Assault Nurse Examiner (SANE) and the local crisis center advocate may be available upon patient arrival or shortly thereafter. A SANE is a Registered Nurse or advanced practitioner who has been specially trained to provide comprehensive medical care to sexual assault victims. They demonstrate competency in conducting a medical/forensic examination and have the ability to be an expert witness in cases that go to trial.

**Note:** An adult victim of sexual assault may refuse care, transport, hospital examination and/or evidence collection. Document any care provided thoroughly and handle any evidence as you would if transporting. Make any mandated reports as required by law. See previous section of this protocol.

## LAW ENFORCEMENT RESPONSE

In December 2015, the US Department of Justice issued new guidance designed to help state and local law enforcement authorities more fairly and effectively address allegations of sexual assault. The guidance will assist law enforcement to protect their communities, advance bias-free policing and uphold the civil rights of the people they serve. Gender bias in policing practices is a form of discrimination that may result in providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender or offering reduced or less robust services due to a reliance on gender stereotypes. Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; or interrogating rather than interviewing victims and witnesses. In sexual assault cases, if gender bias influences the initial response to, or investigation of, the reported crime, it may compromise law enforcement's ability to gather facts, determine if the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable.<sup>5</sup>

A thorough investigation of an adult sexual assault case is essential to hold offenders accountable. Crimes of sexual violence should be recognized as “critical incidents” and victims should be treated in a respectful and non-judgmental way. Without the full cooperation of the victim, it is usually impossible to successfully investigate and prosecute the crime.

**Sexual assault investigations require sensitive, objective, trained and experienced investigators, who will obtain and document all the details of the crime and properly collect all possible evidence.**<sup>6</sup> Officers with limited experience should contact the County Attorney's Office as soon as possible after learning of the sexual assault to obtain guidance and resources regarding how to proceed with the investigation. Depending on each county's practice, the County Attorney's office may have an on call prosecutor available after hours.

In many, if not most, sexual assaults there are no eye witnesses and no physical evidence. This does not mean the case cannot be proven beyond a reasonable doubt. In fact, New Hampshire law (RSA 632-A:6) states a victim's testimony need not be corroborated. Notwithstanding this statute, it is important for investigators to look for evidence to support the victim's report in the form of:

- Medical evidence
- Physical evidence

<sup>5</sup> Department of Justice, Civil Rights Division, Community Oriented Policing Services (COPS), Office of the Attorney General; Office on Violence Against Women, 15-1526, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, December 2015.

<sup>6</sup> IACP Concepts and Issues Paper, *Investigating Sexual Assaults*, July 2005.

**MYTH:** *Real sexual assault only happens when a stranger attacks a woman.*

**FACT:** *Most sexual assaults are committed by someone known to the victim.*

- Witnesses who may have seen or heard something around the time of the incident
- Witnesses the victim and/or suspect may have talked to after the assault
- Photographic and/or video documentation of the scene(s)
- Information about the suspect's behavior, including efforts to groom or isolate the victim prior to the assault.
- Evidence of the existence of power dynamics in the relationship.

## THE ROLE OF LAW ENFORCEMENT

The role of law enforcement, in cases of sexual assault, is to ensure the immediate safety and security of the victim, to arrange for medical treatment, and to obtain information and to preserve evidence. Law enforcement's primary responsibility is to investigate and determine if a sexual assault meets the criteria for a crime as defined by New Hampshire law.

*Determining whether an assault satisfies the criteria for a crime involves putting together a factual history by collecting statements from the victim, any witnesses, and suspect(s), as well as collecting any physical and supporting evidence.*

*In their 2005 Concepts and Issues Paper, "Investigating Sexual Assaults", the International Association of Chiefs of Police (IACP) advise, "**The determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted.**"*

## A VICTIM-CENTERED, TRAUMA INFORMED AND OFFENDER FOCUSED RESPONSE

It is crucial for every discipline to have a victim-centered response when dealing with sexual assault. This means prioritizing victims' needs, honoring their rights, considering their perspectives, and supporting their decisions. A victim-centered response customizes the response to meet the victims' specific needs and promotes the compassionate and sensitive delivery of services in a nonjudgmental manner.

It is equally important for every discipline to be informed about the effects of trauma on an individual and to know that every individual can respond to trauma differently. For law enforcement, this means being educated about the effect of trauma on an individual and treating each victim with consideration, professionalism, and compassion. For additional information on trauma, please see Appendix Q, Appendix P, and Appendix Q.

*Trauma can alter an individual's affect, memory, and ability to give detailed information.*

To better understand what this means, consider the impact on a law enforcement officer who has been involved in a "critical incident". A critical incident is defined as "any event that has a stressful impact sufficient enough to overwhelm the usually effective coping skills of an

individual.”<sup>7</sup> Sexual assault cases should be treated as “critical incidents”.

Common reported reactions following a “critical incident” may include, but are not limited to:

- Anxiety
- Fear for the safety of the victim or their loved ones
- Preoccupation with the stressful event
- Flashbacks in which the individual mentally re-experiences the event
- Short and long term physical symptoms including muscle aches, headaches and fatigue
- Disbelief at what has happened, feeling numb
- Problems with concentration or memory (especially surrounding recall of the traumatic event)
- A misperception of time
- Increased startle response
- Feelings of guilt and/or self-doubt related to the traumatic event, even if misplaced when evaluated by an impartial person

A victim-centered law enforcement response acknowledges that victims of sexual assault are **very often** those individuals perceived as lacking in credibility. Law enforcement must understand that offenders often choose victims based on the victim’s accessibility, vulnerability and perceived lack of credibility. Law enforcement should recognize “victim blaming”, the effects of trauma and offenders’ use of manipulation. All of these can combine to allow the offender to continue to re-offend.

## ***STRANGULATION AND SEXUAL ASSAULT***

Strangulation is an extremely common and very serious problem in sexual violence cases. Strangulation, commonly referred to as “choking,” is a life threatening traumatic event that can result in death hours, or even days, after the initial assault<sup>8</sup>. The injuries caused by strangulation are often not visible externally, even in fatal cases. Only minimal pressure applied to the neck can cause potentially serious injury<sup>9</sup>. Strangulation is a tactic used to control a victim in order to facilitate sexual assault<sup>10</sup>. Because the more common term for strangulation is choking, first responders, including law enforcement, EMS personnel and Emergency Department staff should ask the sexual assault survivor if s/he was "choked" as opposed to "strangled." This question should be a standard part of the minimal facts interview as well as a formal comprehensive

<sup>7</sup> Kulbarsh, P. Critical Incident Stress: What is expected and when to get help. Posted online on [www.Officer.com](http://www.Officer.com)

<sup>8</sup> Anscombe, A. M., Knight, B. H. (1996). Delayed death after pressure on the neck: Possible causal mechanisms and implications for mode of death in manual strangulation discussed. *Forensic Science International*, 78(3), 193-197.

<sup>9</sup> McClane, G. E., Strack, G. B., & Hawley, D. (2001). A review of 300 attempted strangulation cases part II: Clinical evaluation of the surviving victim. *The Journal of Emergency Medicine*, 21(3), 311-315.  
doi:10.1016/s0736-4679(01)00400-0.

<sup>10</sup> Shields, L. B., Corey, T. S., Weakley-Jones, B., & Stewart, D. (2010). Living victims of strangulation: A 10-year review of cases in a metropolitan community. *The American Journal of Forensic Medicine and Pathology*, 31(4), 320-325. doi:10.1097/paf.0b013e3181d3dc02.

interview. See Appendix D and Appendix E for First Responder tips and suggested comprehensive interview questions.

***The lack of external signs of injury*** often causes victims, law enforcement and members of the medical community to overlook the potential lethality of an incident of strangulation.<sup>11</sup> **It is highly recommended that law enforcement request EMS response to all strangulation assaults** It is also recommended that law enforcement agencies adopt a policy of automatic EMS dispatch in strangulation cases.

Victims of strangulation often experience new or changing symptoms in the hours and days following the assault. For this reason, law enforcement should obtain a medical records release from the victim even if the victim declines EMS transport to the hospital or indicates that s/he will not be seeking medical attention. As a result of evolving symptoms victims will often seek medical care at a later time, and these medical records will be an important component of the case. The medical release should specifically request records of treatment and follow up care directly related to the incident under investigation.

Victims of strangulation should be contacted, in person, 24-48 hours after the assault to check their welfare, ascertain if signs and/or symptoms are changing, worsening or improving and to obtain follow-up photos of evolving or resolving injuries. This follow-up may be conducted by a patrol officer or detective, preferably one who has had specialized strangulation training.

Due to the dangerous and complex nature of strangulation, **it is recommended that law enforcement and all first responders receive specialized training on strangulation** and familiarize themselves with **RSA 631:2** which specifically addresses assault by strangulation. This statute defines strangulation as pressure being applied to the throat or neck or the blocking of the person's nose or mouth that results in **one** of the following three conditions:

- **Impeded breathing/swallowing** – e.g., the victim feels as though s/he cannot breathe or take in air effectively, or the lips or fingers turn blue in color; the victim cannot effectively swallow or is drooling or spitting regularly as a result.
- **Impeded blood circulation** – e.g., the victim feels dizzy, light-headed, passes out (syncope), has visual disturbances, ringing in the ears or feels increasing pressure or pain in his/her head during the application of pressure to their neck.
- **Change in voice** – This may not be noticeable to the victim. Even if the victim says no, ask a family member or friend if the victim's voice sounds different. Obtain audio of the victim's voice (e.g., 911 call or audio/video statement).

***NOTE: Only one of the three conditions listed above needs to be alleged in the complaint, not all three. The examples with each condition are examples only and are by no means the only evidence of those conditions.***

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<sup>11</sup> "How to Improve Your Investigation and Prosecution of Strangulation Cases", Strack, Gael B., McClane, Dr. George B., Updated May 1999.

EMS run sheets can be very useful medical documentation. A medical records release from the victim is required to obtain this documentation for inclusion in the investigative file. The run sheets are generated if the EMS crew has patient contact regardless if the patient is transported or not.

## ***USE OF BODY-WORN CAMERAS (BWCS) IN NEW HAMPSHIRE***

RSA 105-D, which regulates the use of body worn cameras by law enforcement, became effective in January 2017. This statute does not mandate the acquisition of body worn cameras. Rather it requires any New Hampshire law enforcement agency that opts to implement BWCS as a tool for policing to adopt policies and procedures relating to their use and the retention and destruction of data (RSA 105-D:2). There are currently several national resources available to assist law enforcement with the development of policies and protocols and curriculum for officer training. (See Appendix M)

Agencies are strongly encouraged to develop policies that are victim-centered, trauma informed and compliant with both RSA 105-D and RSA 91-A (Right to Know) requirements. Around the country, policy decisions are currently being made without sufficient evidence-based research regarding BWC use and its effects on law enforcement interactions with crime victims, building trust, potential privacy issues and how BWC footage will be used.<sup>12</sup>

Policies and protocols should specifically address the use of BWC's when responding to a sexual assault victim and provide clear guidance to officers as to when it is permissible to capture audio and/video recordings.

## **FIRST RESPONDER CONTACT WITH A VICTIM**

Upon initial contact with a victim, an officer should ensure that the victim is safe, and treated with dignity and respect. Be aware of a BWC that is activated when interacting with the victim. Determine as early as possible if deactivation of the BWC should occur. This can be done by announcing while recording that deactivation will follow. The reason why the camera was deactivated SHALL be documented in the subsequent police report (RSA 105-D:2-V).

**Example:** When a victim is in a compromised state of dress (partially dressed, naked, has ripped or torn clothing), this should be considered an exigent circumstance and deactivation of the BWC is allowed pursuant to RSA 105-D:2-V.

**Example:** When an officer is responding to a healthcare facility, the BWC should be turned off due to patient privacy rights<sup>13</sup>, ***unless the officer is responding to a 911 call at that facility.***

**Example:** In a location where there is a reasonable expectation of privacy, officers shall inform the individual of their option to decline being recorded. If the individual declines, the officer shall deactivate the BWC. In such cases, any images shall, as soon as practicable, be

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<sup>12</sup> Maryland Network Against Domestic Violence (MNADV) *Guidance on the Use of Body-Worn Cameras (BWC) During the Administration of the Lethality Assessment Program (LAP)*, Issued June 2016, pg. 7.

<sup>13</sup> Pub.L., 104-191

permanently distorted or obscured. The officer shall document in their report the reason why the camera was deactivated (RSA 105-D:2-IX).

**RSA 105-D:2-VII(d) states a BWC SHALL NOT be used to record an interview with a crime victim unless his or her express consent has been obtained before the recording is made. The statute specifically directs agencies that choose to implement BWCs to the New Hampshire Attorney General's *Model Protocol for Response to Adult Sexual Assault Cases* for policy development guidance.**

An “interview” for the purposes of this section is defined as the minimal facts interview upon initial contact with the victim by first responders.

Express consent can be obtained verbally and should be recorded.

There are several hurdles to obtaining **express consent** from an adult sexual assault victim who is experiencing trauma. When an officer seeks express consent from a victim, they must take into consideration a victim-centered approach that incorporates the victim’s wishes, safety and well-being in all matters and procedures.

Express consent cannot be obtained if the victim:

- Is experiencing or has experienced trauma (e.g., appearing to be in shock, is anxious, appearing fearful, is disoriented, is unable to focus, is incapacitated by a disability, is incapacitated by an intoxicating substance).
- Is over the age of 18 and uncertain about whether or not to make a formal report about a sexual assault to law enforcement,
- Is at a healthcare facility where there is a federally protected privacy rights and law enforcement meeting with a victim poses a risk of protected medical information being captured by the body worn camera (HIPAA).

If an officer fails to activate the body worn camera, fails to record the entire contact, interrupts the recordings, or if the BWC malfunctions, the officer shall document why a recording was not made, was interrupted or was terminated as part of the associated police report (RSA 105-D:2-XI).

### **Asking For Express Consent**

Victims need to have a complete understanding of what it means to be audio and video recorded before giving their express consent.

### **Suggested language for approaching a victim to ask for express consent:**

“I am wearing a body worn camera and it is currently recording both audio and video. You should know that the recording will become a part of this investigation and is the property of the

\_\_\_\_\_ Police Department. It SHALL NOT be used for commercial or other non-law enforcement purposes. If someone is arrested and charged in this matter, the recording may be seen by other people. I want to let you know you have the option to decline being recorded. At any point in time, you can change your mind about the camera being on or off. No matter what you choose to do, your case will be fully investigated. Do you understand this and do you have any questions? Do I have your permission to continue recording or do you want me to turn the camera off?" (See Appendix F).

### **When the First Responder Has Obtained Express Consent from the Victim**

The First Responder should continue their contact with the victim by conducting a minimal facts interview (*Refer to page 19*), encouraging the victim to have a medical/forensic examination and contacting a local crisis center advocate to respond for the victim.

### **When Consent Is Not Obtained from the Victim**

The victim's decision must be honored and all recording devices must be deactivated. The reason for deactivation SHALL be documented in the associated police report (RSA 105-D:2-V). The First Responder should continue their contact with the victim by conducting a minimal facts interview, encouraging the victim to have a medical/forensic examination and contacting a local crisis center advocate to respond for the victim.

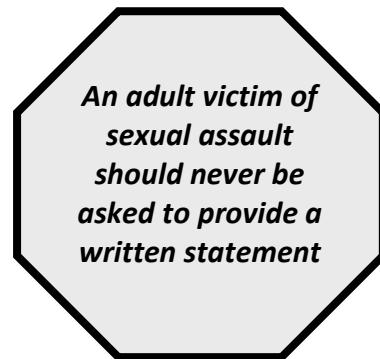
## **BEST PRACTICES FOR LAW ENFORCEMENT**

### ***INITIAL STATEMENTS***

The initial victim statement is typically taken upon first contact with the victim. Taking this initial ***verbal*** statement from the victim is an opportunity for law enforcement to obtain basic information and establish the location and elements of the crime. It is **not** an opportunity to conduct a comprehensive interview. The initial statement is used to assess safety and health needs, ascertain jurisdiction, identify and preserve sources of evidence and determine next steps. (*Refer to "Conducting a Minimal Facts Interview" below*)

***According to best practice, victims of sexual assault should never to be asked to provide a written statement about the assault, especially during the initial phase of their report to law enforcement.*** The impact of the trauma may affect the victim's memory and the ability to give details of their experience. Some victims may find it difficult, if not impossible, to write down what happened to them. Requiring sexual assault victims to write a statement may lead to timeline gaps, minimization of details, incomplete or disorganized information and the appearance of inconsistencies.

If the case proceeds to prosecution, an initial, incomplete written statement will likely be used against the victim and increase the long term trauma they may experience. If the initial statement is provided verbally and thoroughly documented by law enforcement, these challenges



may be avoided. In addition, some victims may choose not to follow through with their report to law enforcement if they are required to provide a written statement because it is so difficult for them. In these situations, there is no offender accountability and the initial criminal justice response is not victim-centered.

## **THE FIRST RESPONDER**

In New Hampshire, it is recognized that law enforcement agencies have different resources. Some agencies may have first responders who will turn the investigation over to a detective. Other agencies have a first responder who follows the case through the entire investigation. Regardless of the extent of an officer's role in the investigation, there are responsibilities that apply to all first responders (*See Appendix N*).

### **Initial Responsibilities:**

- Intervene in any in-progress assaults and separate all parties
- Detain or apprehend the suspect
- Call for emergency medical care for the victim, if necessary
- Request additional personnel to respond, as appropriate

### **Additional Priorities:**

- Attend to the victim. Use appropriate language and sensitivity for a sexual assault investigation.
- Remove the victim to a neutral, safe place away from the scene when appropriate.
- Be careful not to stigmatize the victim by speaking loudly or calling unnecessary attention to the victim in any way.
- Conduct a Minimal Facts Interview with the victim. *Refer to above box for helpful tips.*
- Recommend to the victim they seek medical treatment. Inform the victim that there could be immediate and long-term health concerns that result from the assault. They can seek medical care whether or not they want evidence collected. RSA 21-M:18 states that a sexual assault survivor has a right to: not be prevented from, or charged for, receiving a medical examination (*See Appendix S-2*). Assist with transportation.
- If the victim decides to have a medical/forensic exam, encourage the victim not to shower, wash up, eat or drink, change their clothes, etc. until evidence can be collected by a SANE or other trained professional at the hospital.
- Secure and protect the scene(s) until additional personnel arrive to assist.

#### ***Conducting a Minimal Facts Interview:***

- *What happened and when?*
- *Who did it?*
- *Where are they now?*
- *Where did it start and where did it end?*
- *Were any weapons shown or threatened?*
- *Were you "choked"? (If yes, get victim medical attention ASAP)*
- *Identify any potential witnesses, evidence and additional scenes.*

### **During the Initial Contact with the Victim First Responders Should:**

- Attempt to determine if a crime occurred.
- Contact the local crisis center for an advocate to respond for the victim.
- Explain to the victim what will happen as the process continues and who will be responsible from the department for case follow up, including who might be contacting the victim to schedule a more comprehensive interview.
- Provide the victim with telephone numbers for the police department investigator handling the case.
- Document officer involvement and observations clearly and in detail as soon as possible.

**The First Responder must understand and their report must clearly reflect that the Minimal Facts Interview is not intended to be a comprehensive or final interview with the victim.**

*Example: On (insert date), I conducted a Minimal Facts Interview by asking the following questions and receiving the attached responses. This contact with (victim) was not intended to be a comprehensive or in depth interview. Arrangements will be made for that interview in the near future.*

## **INITIATING THE COLLABORATIVE RESPONSE**

***The initial priority should be the safety of the victim.***

When law enforcement is the first contact for a victim of sexual assault a collaborative response should be initiated by calling the local crisis center for an advocate (*See Appendix A*). This could be at the scene, at the police department, at the hospital, or another location.

If the victim is at a hospital, confirm that the crisis center has been called. **The crisis center should be contacted whether or not a victim chooses to have a sexual assault exam. All sexual assault victims should be encouraged to seek medical attention as soon as possible and assistance with transportation to a medical facility should be provided as appropriate.**

## **LAW ENFORCEMENT'S ROLE DURING THE MEDICAL/FORENSIC EXAM**

The victim should always be allowed to determine who is present during the medical/forensic exam. Law enforcement should not be present when the SANE or other medical care provider is taking a medical history of the assault or conducting the exam. If a Sexual Assault Evidence Collection Kit is used during the exam, it will be signed over to law enforcement for transportation to the NH State Police Forensic Laboratory. Refer to Evidence Collection Kit guidance on pages 36-37 of this protocol.

***NOTE: For court purposes, the SANE or medical provider can adequately present all relevant facts regarding the exam.***

## ***INVESTIGATION AND FOLLOW-UP***

Officers assigned to conduct follow-up to reports of adult sexual assault should contact the victim as soon as practical following the initial report in order to check on the victim's welfare and safety, and to review the direction of the investigation. This contact may also serve as an opportunity to schedule a comprehensive interview with the victim.

## ***CONDUCTING A COMPREHENSIVE INTERVIEW/ASSAULT HISTORY***

Whenever possible, the comprehensive interview should be performed by law enforcement personnel with specialized training in sexual assault interviews. The interview should take place *after* the medical/forensic exam has been completed. In cases of timely reports, best practice recommends waiting 24 to 48 hours after the victim's disclosure, if possible, to conduct a comprehensive interview. In New Hampshire, best practice would also allow for a crisis center advocate to be present during the interview, if the victim so desires. The role of the crisis center advocate is to provide support to the victim, *not* to participate in the actual interview process.

Law enforcement should allow ample time to conduct a thorough victim interview. The comfort and needs of the victim should be taken into consideration throughout the course of the interview process. Law enforcement should consider that trauma, cultural differences, cognitive ability, fear, self-blame and other factors can influence the victim's ability to provide clear and concise details about the assault.

***WHENEVER POSSIBLE, A COMPREHENSIVE, AUDIOTAPED INTERVIEW OF THE VICTIM,  
WITH THEIR CONSENT, SHOULD BE CONDUCTED BY A WELL-TRAINED,  
EXPERIENCED INVESTIGATOR.***

This interview presents an opportunity for the victim to provide additional information they may not have remembered initially, may have been afraid or embarrassed to share, or may have suppressed immediately following the assault. It presents an opportunity for law enforcement to:

- Verify, clarify and expand on the initial minimal facts interview
- Confirm and establish the elements of the crime
- Establish the identity of the suspect, the elements of force, threat or coercion and the issue of consent
- Develop supporting details related to the assault and the circumstances surrounding it

Offenders often target victims whom they perceive as vulnerable and lacking credibility. Victims may have a previous criminal history, abuse alcohol and/or drugs or have physical, cognitive or mental disorders. Victims may also fear not being believed. A victim-centered approach to interviewing recognizes these factors and attempts to make the victim comfortable by:

- Acknowledging the impact of trauma on the victim during the interview.
- Establishing a rapport before beginning the interview.

- Explaining how the investigative process works and why certain questions are necessary.
- Avoiding victim blaming questions – such as “why did you” or “why didn’t you”- unless the context and purpose of such a question is explained to the victim before it is asked.
- Encouraging the victim to provide as complete and comprehensive a statement of the event as they are able to provide with only minimal interruption by the interviewer. This is done with the understanding that follow up questions will be necessary for clarification of various points throughout the statement.
- Identifying any reason(s) for a delay in reporting to law enforcement by the victim if the reason is not readily apparent during the interview. Delayed reporting is common in sexual assault cases and should be thoroughly investigated as it would in any other case.
- Ensuring that the victim, with assistance from a crisis center, has a safety plan in place regarding what to do if the suspect contacts, or attempts to contact, the victim especially if a threat was made during the assault incident.

## ***ANTICIPATING POTENTIAL DEFENSES DURING THE VICTIM INTERVIEW***

In some instances, investigators may be able to identify possible defenses during the early stages of the investigation that might be raised should the case be prosecuted. These might include consent, denial by the suspect or misidentification, depending on whether the victim and suspect are strangers or non-strangers to each other. Keep in mind that a victim may know a suspect only by a first name or nickname and be unable to provide complete information regarding full name or address. When learning the details of the assault, a potential defense may become apparent. This defense may be addressed through various lines of questioning. It is important for investigators to recognize that certain questions may result in victims feeling like they are being blamed. These questions should be respectful, sensitive, and non-judgmental.

### ***The Consent Defense - “It was consensual”***

The defense of consent is always a possibility if the victim and suspect know each other. Accordingly, a comprehensive history regarding the relationship between the parties and the specific facts of the incident should be obtained. Because the issue of prior sexual contact may be admissible, limited inquiry into this area may also be necessary. Due to the sensitive nature of this topic, discretion is advised. One helpful area of inquiry is the short and long term impacts of the assault on the victim’s life. Evidence of adverse consequences may be helpful in responding to a consent defense. This evidence could be persuasive to potential jurors should the case be prosecuted.

To establish the victim’s perspective when interviewing, consider the following areas of inquiry:

- What is the victim **able** to tell about their experience?
- Follow up with: Tell me more. Tell me more about that.

*It should be remembered  
that a victim's disclosure is not an event  
– it is a process.*

- If the encounter began as consensual, at what point did the suspect's behavior change?
- Obtain any information the victim can provide that is inconsistent with consensual behavior.
- Ask the victim to explain how he/she let the suspect know it was not consensual.  
*Remember, passivity can be a sign of non-consent.*
- If force (physical, threat or coercion) was involved, what was it and how was it applied on the victim? How did it make the victim feel? Does the victim have any bruises, scratches, marks or signs of genital injuries?
- Ask the victim to talk about specific threats, tone of voice used and any gestures and/or looks given to the victim. How did the victim react to this?
- What were the victim's thoughts and feelings during the assault?
- What was the victim seeing (hearing, feeling, tasting-the sensory details) during the assault?
- Ask the victim to describe (Tell me about) the suspect's physical size and strength in comparison to the victim and why the victim may not have been able to physically resist.
- Ask the victim to describe (Tell me about) the location of the assault, including but not limited to the surrounding area (isolated, near a noisy party, etc.)
- Ask the victim to describe (Tell me about) the suspect's actions, statements and demeanor following the assault.
- What, if anything, can the victim not forget about their experience?
- What was the victim experiencing (thinking, feeling) the day after the assault? A week after? Currently?

#### **The Denial Defense - "It didn't happen"**

When a sexual assault is charged, a critical element of the crime that must be proven is that a sexual act occurred (contact or penetration) between the victim and the suspect.

Investigators should be prepared to deal with suspects who can be both persuasive and adamant that sexual contact did not occur. In these cases, it is important for an investigator to obtain as many corroborating details of the victim's account as possible. Investigate thoroughly and document/collect all available evidence. An investigative tool in these cases could be a **suspect** polygraph conducted by an examiner with experience in criminal examinations. (*See more information on conducting polygraphs, page 28.*)

#### **The Identity Defense - "It wasn't me"**

This defense is usually used in cases where the victim and suspect **do not know** each other. The suspect can easily claim that "It wasn't me." The victim interview in this type of case should focus on:

- Establishing a detailed timeline in order to combat an alibi defense.

- Obtaining as much information as possible about the suspect's method of operation in order to compare it to other available information e.g., Violent Criminal Apprehension Program (ViCAP<sup>14</sup>), Fusion Centers, sex offender registries, etc.
  - Method of approach
  - Method of control
  - Amount/type of force or restraint used on the victim
  - Victim resistance
  - Sexual dysfunction
  - Type and sequence of acts performed
  - Suspect's verbal statements
  - Any changes in suspect's attitude or demeanor
  - Any items taken from the victim or scene after the assault<sup>15</sup>
- Obtaining a complete physical description of the suspect, including clothing, facial features, any scars, marks or tattoos, distinctive gait or other habits, sensory descriptions like smell, taste and feel, in order to make a suspect identification.
- Obtain a description of the suspect's vehicle or residence, if known.

This investigative strategy should focus on the collection of DNA or trace evidence that might connect the suspect to the victim or the crime scene.

## ***INVESTIGATIVE CONSIDERATIONS***

In addition to conducting a comprehensive interview, investigators should concentrate efforts to develop a thorough and complete investigation by focusing on:

- Thorough documentation of the scene(s) by sketch, photographs and/or video.
- Use of proper evidence collection and preservation techniques.
- Ensuring follow-up documentation/photography of any injuries to the victim from the assault after 24, 48 or 72 hours, including bruises, scratches, bite marks or signs of strangulation. Whenever possible, and if any of these injuries are located in intimate areas of the victim's body (as may be reported by the victim), a SANE or medical provider should take these follow-up photographs. The investigator and an advocate could accompany the victim to the medical facility if the victim wishes. Obtain a medical release of information from the victim to obtain a copy of the medical documentation in these circumstances to include in the investigative file. ***A search warrant should not be used to obtain evidence from a victim's body.***
- Identifying any and all potential witnesses in order to conduct interviews, including a neighborhood canvas when appropriate.

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<sup>14</sup> ViCAP Homicides and Sexual Assaults: <https://www.fbi.gov/wanted/vicap/homicides-and-sexual-assaults>

<sup>15</sup> *A Pocket Guide for Police Response to Sexual Assault*, New York State Coalition Against Sexual Assault (NYSCASA)

- Identifying any surveillance cameras in the vicinity of the crime scene and collecting video footage for the relevant time period.
- Determining when it is appropriate in the investigative process to conduct an interview with the suspect.
- Depending on case circumstances, considering consultation with a prosecutor on the course of action involving the suspect [e.g., evidence collection, use of a one-party intercept (*See Appendix H for guidance*), interview, arrest, detention, grand jury, etc.].
- Obtaining any corroborating information/evidence mentioned during interviews with the victim, witnesses and/or suspect.
- Obtaining written consent or search warrants when appropriate.
- Obtaining any appropriate electronic evidence. Remember to submit preservation orders to appropriate technology providers (*See Technology section page 31*).
- If the victim sought medical attention after the assault, obtain a signed written release from the victim for all medical records, including photographs. **Law enforcement MUST get a “Release of Information” form from the specific hospital or medical provider where the victim was seen. The additional records MUST be obtained through the hospital’s Medical Record Department during business hours. Medical providers are prohibited from releasing any medical records at the time of the examination and kit collection.**
- Create thorough written reports (*See Report Writing section page 27*).
- Ensure compliance with RSA 21-M: 18 (See *Appendix S-2*).

Refer to the checklists at the beginning of this document for additional investigative follow-up suggestions.

## **SUSPECT EVIDENCE COLLECTION**

When evaluating potential sources of evidence, there is a tendency to focus on anything that might have transferred from the suspect to the victim; thus, forensic examinations of the victim are seen as critically important. However, keep in mind that evidence may also be transferred from the victim to the suspect. Therefore, depending on the type of contact involved in a sexual assault offense, the suspect’s body may be another source of probative evidence. In many cases, the clothing worn by the suspect during the sexual assault is still available and, depending on the

*When requesting records of asexual assault medical forensic exam, we recommend that you use the following language:*

*A copy of all records associated with (patient's name) visit on (date), including but not limited to:*

- Electronic records
- Handwritten records
- Handwritten documentation from the evidence collection kit
- Laboratory results
- Radiology results
- Consultations
- Body surface photos
- Any subsequent associated visits

specific case history and the time since the assault, it may be another source of evidence in addition to the forensic examination of the victim.

The decision to conduct a suspect examination should not be based solely on an understanding of how long trace and biological evidence might be available on the suspect's body.

In the majority of sexual assault cases where consent is going to be the primary issue, any evidence that provides corroboration of the victim's account is absolutely critical.

As a result, the determination of whether or not to obtain a suspect examination can only come from careful consideration of the case history. Investigators must think through the facts of the case and determine what kinds of evidence might prove useful and for what purposes (*See Appendix G*). At a minimum, it is recommended that a forensic examination of the suspect by a SANE at a medical facility should be conducted any time if:

- The suspect is arrested shortly after the sexual assault (generally 3 days),
- The law enforcement investigator believes that the suspect has not bathed since the sexual assault (however, keep in mind that depending on the type of assault, an exam may still be warranted even if the suspect has bathed),
- There is reason to believe there might still be evidence of injury to the suspect, or
- The victim was able to describe physical characteristics of the perpetrator that could be confirmed by a physical examination<sup>16</sup>

Factors to consider in addition to those listed above include the nature of the assault and the likelihood that cells, fluid, or other types of biological or trace evidence were transferred from the victim to the suspect.

If the suspect consents to such evidence collection at a medical facility, documentation of voluntary consent should be captured in the police report and a departmental written consent form should be signed by the suspect prior to photographing and seizing evidence.

If the suspect is in custody and a search warrant has been obtained to collect evidence, it is recommended that law enforcement read the defendant their Miranda rights prior to any medical history questions being asked. The suspect does have a right to remain silent, including refusing to answer any questions regarding their medical history. The examination to collect evidence should continue. If the suspect is not in custody, technically Miranda rights do not apply. However, it is recommended that the investigator clearly document that the suspect was free to decline any part of the examination and to leave at any time.<sup>17</sup>

**Law enforcement personnel must remain present at all times during the forensic examination of a suspect conducted by a SANE at a medical facility.**

<sup>16</sup> EVAWI Training Bulletin: *Forensic Exams for the Sexual Assault Suspect*. October 2013. [www.evawintl.org](http://www.evawintl.org)

<sup>17</sup> IACP Concepts and Issues Paper, *Investigating Sexual Assaults*, page 12, July 2005.

All evidence collected from a suspect should be appropriately packaged, stored and/or transported to the forensic laboratory for analysis according to existing protocols. The collection of the evidence and its chain of custody must also be clearly documented.

Further guidance on the procedures and forms for medical providers when conducting suspect evidence collection can be found in the New Hampshire *Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation*.

Depending on case circumstances, it may also be possible to collect certain types of evidence from a suspect without going to a medical facility (e.g., known DNA sources such as hair, articles of clothing, documentation of visible marks or injuries). In such instances, it is important to obtain proper releases or follow a search warrant, use proper collection and preservation techniques, maintain chain of custody and complete thorough documentation.

## **REPORT WRITING**

Report writing is a critical part of every law enforcement officer's job. It is the way that an officer communicates information about his or her activities to others, and preserves information for future use. Many agencies have established policies and forms for written reports and these should be followed. Regardless of the form used, the content should include:

- Basic information identifying the writer
- The date the report is written
- The date of the investigative activities being reported
- The date, time and nature of the complaint, offense or situation under investigation, and
- The name of any other officer who was present, provided assistance, or participated in the activities being reported.

The body of the report should include a narrative description of the officer's actions and observations, the information obtained, and the source of that information. The narrative should be organized in chronological manner, listing and describing events and interviews in the order they occurred. It should also include **all** significant or relevant information, including information that might be viewed as favorable to a suspect. To avoid confusion, when writing about more than one person, it is helpful to refer to each person by name. The report should be a factual account of an event. ***It should not include the officer's opinions about, or theories of, the case.***<sup>18</sup>

When documenting adult sexual assault cases, clearly summarize all of the evidence uncovered during the investigation from the crime scene(s), forensic examinations of the victim and suspect, and statements provided by the victim, suspect, witnesses and others. Police reports can assist in "putting the puzzle pieces together" about what happened so it can be easily understood by prosecutors, judges and jurors.

An important technique for effective report writing in these cases is to avoid using the language of consensual sex to describe or imply positive, mutual interactions or affection between a victim

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<sup>18</sup> New Hampshire Attorney General's Law Enforcement Manual, pages 206-208, June 2008.

and a suspect. When possible, use the exact words used by a victim to describe the assault and put those words in quotation marks. If the victim uses slang or street language, those are the words and phrases that should be documented. Do not minimize or sanitize victim statements to “clean it up”. In other words, the report should clearly describe the parts of the body and what the victim was forced to do with those parts of the body.<sup>19</sup>

There are several national resources available on this subject and they can be found by referring to Appendix M.

## ***RECANTATION***

It is not uncommon for sexual assault victims to be reluctant about reporting to law enforcement and participating in the criminal justice system. Victims who are reluctant often feel they have no other choice but to recant in an effort to disengage from the criminal justice system. A victim-centered approach by law enforcement recognizes the tremendous cost to a victim who participates in the criminal justice system and understands that **recantation of one or more aspects of a prior statement does not necessarily mean false reporting**. Various influences affect a victim’s willingness to participate and/or recant.

Among those influences are:

- A victim’s feeling of embarrassment, fear, and shame
- A victim’s desire to put the assault behind them, avoid answering questions, avoid repeating the story or facing the suspect in court
- Pressure from the offender, friends, family or community
- Pressure from cultural and/or religious communities
- Concern or confusion about the likely outcome of a prosecution
- Concern that the victim will not be believed

### **Note: Law**

Enforcement should be aware of the possibility that recantation could be the result of criminal threatening, witness tampering, or other crimes.

## ***POLYGRAPHING A SEXUAL ASSAULT VICTIM IS PROHIBITED***

The New Hampshire Attorney General’s Office receives a significant amount of federal grant funding each year from the Violence Against Women Act (VAWA). This money is distributed statewide to direct service providers, law enforcement agencies, prosecuting agencies, and the courts to assist in the efforts to end violence against women. VAWA has a mandate that **strictly prohibits any adult, youth or child victim of a reported sexual offense from being asked to submit to a polygraph examination or other truth telling device as a condition of proceeding with the investigation**. Failure to abide by this policy may result in New Hampshire losing VAWA funding (*See Appendix I*).

### **Polygraphing Suspects**

In New Hampshire, polygraph test results are not admissible in court. **However, polygraph testing is considered to be a valuable investigative tool when dealing with suspects and should be considered whenever appropriate**. Investigators who consider using polygraph for suspects

<sup>19</sup> EVAWI On-Line Training Module *Effective Report Writing: Using the Language of Non-Consensual Sex*, Updated October 2012.

should ensure that a thorough investigation has been done in the case to that point. They should also meet with the polygraph examiner to review the information and discuss the questions to be asked prior to the test being given.

## DRUG AND ALCOHOL FACILITATED SEXUAL ASSAULT

A drug or alcohol facilitated sexual assault occurs when a person is unable to consent to sexual activity because they were incapacitated due to drugs or alcohol. Ingestion can be voluntary, involuntary, or without their knowledge. Alcohol is, by far, the most commonly used substance in these cases.

Victims of drug-facilitated sexual assault may experience confusion, drowsiness, reduced inhibitions, impaired judgment and impairment of their motor skills, among other symptoms. Following the assault, victims may:

- Think they have been assaulted, but are not sure
- Feel their level of intoxication does not match the amount of alcohol they consumed
- Have unexplained injuries
- Report “feeling like I’ve had sex but I don’t remember it”
- Have unexplained loss or re-arrangement of their clothing

This confusion or uncertainty leads to victims of drug/alcohol facilitated sexual assaults being less likely to report to law enforcement<sup>20</sup>. Another significant challenge is the short time it takes for the ingested substance to be eliminated from the body. **It is very important for medical providers to request that victims give their informed consent for toxicology samples to be collected as soon as possible in any case of a suspected drug/alcohol facilitated sexual assault.** Samples should be collected even if a victim is undecided at the time about reporting to law enforcement. If the potential evidence is not collected during the short window of time, it will not be available later when the victim decides to make the report. Urine samples allow for longer detection times than blood samples. **Urine samples should be placed on ice or in the freezer IMMEDIATELY until transportation to the forensic laboratory.**  
**Winter weather temperatures do not constitute adequate evidence storage conditions.**

The ability of a toxicology test to detect alcohol or drugs will depend on:

- The type and amount of drug ingested
- The victim’s body size and metabolism rate
- If the victim has food in their stomach

**MYTH:** Women “cry rape” after consenting to sex and later changing their minds.

**FACT:** False accusations of sexual assault have been estimated at a rate of 2% to 8%. It is far more common for victims of sexual assault not to report the crime to anyone.

\*EVAW International “MAD” Study, The Boston Study (David Lisak et al., British Study (Kelly, Lovett & Regan, 2005), Australian Study (Heenan & Murray, 2006)

<sup>20</sup> Kilpatrick, Dean, Dean, PhD, et al. Drug-facilitated, Incapacitated and Forcible Rape: A National Study (2007) and the National SART Toolkit, 2011, Office for Victims of Crime & Office for Justice Programs

- If the victim has urinated since the assault
- How much time passed between the ingestion and the taking of the sample

In a victim-centered approach to cases where drugs and/or alcohol are involved, it is important to remember that the sexual assault is about one person exercising control over another. Victims are chosen because they are “easy targets” who may be unable to resist the sexual advances and who are unable to clearly remember the incident afterwards. The victim should be told that they are not responsible for the sexual assault but rather the suspect is responsible for their own behavior.

**Recommendation:** *Collection times as close to event as possible:  
Blood up to 24 hours and urine up to 120 hours.*

Victims should also be encouraged to be truthful about their drug and/or alcohol use when making a report. **A victim’s voluntary use of any illegal substance should not be grounds for their arrest, nor should it be a factor when determining the validity of the sexual assault.** The victim’s truthfulness about drug use may add to their credibility.

## ***VICTIM INTERVIEWS IN DRUG/ALCOHOL FACILITATED SEXUAL ASSAULTS***

Victims of drug/alcohol facilitated sexual assaults may suffer from blackouts and/or memory gaps, making it extremely difficult to conduct a detailed interview. The investigator should be patient and avoid being judgmental. It is also important to focus on the suspect’s behavior and the evidence. Questions for victims should include:

- What is the victim **able** to tell about their experience?
- Follow up with: Tell me more. Tell me more about that.
- What prescription or over the counter medications is the victim taking?
- What recreational substances did the victim voluntarily consume?
- How experienced is the victim with alcohol and drugs?
- How much alcohol was consumed by the victim? By the suspect?
- Who was the victim with?
- How did the victim leave the bar, party or other location? Were they feeling “normal” at that time?
- Can the victim describe the associated effects of their prior consumption of the same substance and amount and how this time was different?
- What does the victim remember thinking, seeing, hearing, tasting or feeling (body sensations)?
- Can the victim assist with developing a timeline of the event? This might help in determining what type of drug may have been given to the victim.
- What was the victim thinking/feeling after their experience? The next day? A week after? Currently?

## TECHNOLOGICAL CONSIDERATIONS IN ADULT SEXUAL ASSAULT CASES

Technology plays a significant role in today's society. This is particularly relevant when investigating adult cases of sexual violence. Electronic communication devices, such as cell phones/smartphones, the Internet, email, are frequently used to annoy, alarm, or threaten a victim. Technology often captures evidence of criminal behavior that is helpful in the investigation. Electronic communication devices should be properly seized and searched in a timely manner.

The anonymity and reach of the Internet, and the difficulties in capturing, recording, and verifying digital evidence combine to create new challenges to law enforcement agencies trying to prevent and detect the crime and apprehend the criminals. In particular, the "expectation of privacy" and anonymity afforded to all participants of on-line communication often makes it difficult to connect the actual perpetrator with his/her cyber activity.

## INVESTIGATIVE METHODS

Perpetrators have employed various methods of Internet communication to harass their victims. The more common methods of electronic communications that law enforcement need to recognize and document in their investigations include:

- **“Apps” (Applications):** Typically small, specialized programs downloaded onto mobile devices, these can often be hidden from LE (e.g., Kik, TextNow, Whatsapp, ooVoo, Snapchat, Instagram, YouTube, Mapquest). These apps change constantly, it is important to be aware of the latest trend(s).
- **Chat rooms/Message boards:** A method of communication that enables real-time text, audio and video-based group interaction. Chat rooms, or chat channels, usually are organized around specific topics of conversation. These are not as common as in years past, but they still exist.
- **Classified Advertisement:** Website with sections devoted to jobs, housing, personals, for sale items, wanted, services, community, gigs, resumes, and discussion forums (e.g., Backpage and Craigslist).
- **Dating Sites:** Websites or apps where people go to find companionship (e.g., Tinder, Plentyoffish, Manhunt, OKCupid, Match, eHarmony, Jdate).
- **E-mail:** A method of communication that allows an individual to transfer text, picture, video, and audio files to another person’s electronic mailbox.
- **Hand held/ Communication devices:** Smartphones, tablets, iPods, iPads, and any other wireless device with Internet capabilities.
- **Instant messaging:** A method of communication that enables real-time text, audio, and video based interaction between two individuals over the Internet or a computer network. Users program their instant messenger software to notify them when designated individuals log on to the network.

- **Internet sites:** A method of communication that involves posting information to a unique uniform resource locator (URL). Internet users later can retrieve this information by directing their Web browser to the corresponding URL. An Internet site becomes the method of harassment when an abuser posts information or images on a Web page about an individual that causes them to become alarmed or frightened or talks about the crime under investigation.
- **Social Networking:** An online service platform, or site that focuses on building and reflecting of social networks or social relationships among people, who, for example, share interests and/or activities (e.g., Facebook, Instagram, Twitter, etc.)
- **Text message/SMS/iMessage:** A written communication between user's cell phones/smartphones, or other internet abled devices. Can also include picture messages (MMS).

## TECHNOLOGICAL EVIDENCE COLLECTION

Computers and cell phones are a significant source of evidence in many contemporary abuse cases. Law enforcement can seize computers, cell phones, or other electronic devices used in the crime for forensic inspection.

Law enforcement should seize any electronic device that contains evidence that includes text messages, emails and videos either by consent (which can be withdrawn at any time) or search warrant. Whenever possible, tools (such as Cellebrite® or Paraben®) may be used to extract this

Law enforcement may call their local crisis center (See [Appendix A](#)) to inquire about availability of phones to replace those confiscated from victims for evidence.

data from the device by seeking assistance from a trained forensic examiner. It should be noted however, that data is not always able to be extracted by using such tools and the investigator(s) should be prepared to retrieve the data manually, if necessary. Investigators should also communicate with their prosecutors regarding what evidence will be required regarding these types of technology related cases.

Preservation orders must be used to preserve relevant data and information (See [Appendix K](#)) and followed up with the appropriate legal process, such as a RSA 7:6-b subpoena, grand jury subpoena, or search warrant (See [Appendix J](#)) to capture data and content.

Important pieces of evidence may include subscriber information, IP addresses, call logs, text/e-mail content, user names and passwords, cell tower and location data. Law enforcement should refer to [Appendix L](#) for the particular carrier to see what they will provide. For instance, some of them require specific language in the letter. Also, the preservation letter should reference that the type of investigation is a sexual assault.

**Be aware that some Electronic Service Providers (ESPs) and Internet Service Providers (ISPs) notify the subscriber that legal process has been sent to them unless the subpoena or search warrant is accompanied by a non-disclosure order. Also, it is possible these same companies may notify their subscriber when they have received a preservation order, so double check with the company prior to serving legal process about their policies.** Consultation with the County Attorney's Office, the Attorney General's Office or the US Attorney's Office for guidance is appropriate.

**Search warrants on out of state corporations must be served on the New Hampshire registered agent for service of process.** Because of complicated legal issues associated with subpoenaing or obtaining information from out of state, it is recommended you contact your county attorney for guidance on obtaining this material.

**The successful collection and preservation of electronic evidence requires some expertise.** There are several resources that investigators can use for guidance such as the New Hampshire State Police Forensic Laboratory Handbook, which can be obtained from the laboratory. Investigators can also contact the New Hampshire State Police Forensic Laboratory (223-3854) for assistance in cyber evidence collection. Finally, investigators can contact app developers for law enforcement guides and law enforcement portals for legal process service.

## NEW HAMPSHIRE'S ANONYMOUS REPORTING OPTION

Some victims who present themselves to the emergency department for medical/forensic treatment may be undecided over whether to report the crime to law enforcement. The anonymous reporting procedure ensures that such victims have the opportunity to have evidence collected and preserved that would otherwise be destroyed through normal activity.

The evidence is collected in the normal process, in accordance with the *New Hampshire Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluations* except that the identity of the patient is not documented on any of the specimens or paperwork provided in the Sexual Assault Evidence Collection Kit. A unique serial number is provided on the end of each Evidence Collection Kit box and this serial number is used in place of the victim's name on all specimens and paperwork.

- Once the examination is complete, and the victim is discharged, the examiner will give the anonymous kit to the law enforcement agency in the jurisdiction where the crime occurred, if the crime occurred in New Hampshire.
- If the crime occurred outside of New Hampshire or the local law enforcement agency in the jurisdiction where the crime occurred cannot pick up the kit, the examiner will give the anonymous kit to the New Hampshire State Police.
- Best practice calls for law enforcement to respond to the hospital as quickly as possible following a call to retrieve a kit. Most hospitals do not have secure refrigerators to hold this evidence. Therefore, the examiner must maintain possession of the kit for chain of custody purposes until it can be given to law enforcement.**
- Urine samples should be placed on ice or in the freezer IMMEDIATELY until transportation to the forensic laboratory. Winter weather temperatures do not constitute adequate evidence storage conditions.**
- Law Enforcement will then transport the evidence to the New Hampshire State Police Forensic Laboratory, just as they would in a reported case where the identity of the victim is known.**

*The Anonymous Kit **CANNOT** be completed on anyone under the age of 18*

### **VERY IMPORTANT:**

**ALL KITS, INCLUDING ANONYMOUS KITS, SHOULD BE TRANSPORTED TO THE STATE POLICE FORENSIC LABORATORY AS SOON AS POSSIBLE AND SHOULD NOT BE KEPT AT THE POLICE DEPARTMENT OR IN A VEHICLE.**

A victim who chooses to remain anonymous will receive the kit serial number from the medical record upon hospital discharge. If they **choose to report** the crime to law enforcement, they will then provide that number to the police so that the collected evidence may be associated

with them and an investigation of the crime may begin. If the victim cannot recall the kit serial number, this can be obtained from the hospital by the victim.

**The anonymous kit is kept at the State Police Forensic Laboratory for 60 days from the date of the medical/forensic examination.**

If the laboratory is not notified that the victim has reported the crime to law enforcement during this time period, the evidence will be returned to the submitting law enforcement agency for final disposition. ***It is strongly recommended that the returned kits be stored in evidence at the law enforcement agency until the statute of limitations for the offense has run out.***

*Victims may maintain their anonymity with law enforcement until such time as they decide to report the crime.*

It is important to recognize that any crime victim has the right to report the crime at any time following the commission of that crime. Whether the crime can be prosecuted is a matter that will be determined within the criminal justice system, based on a multitude of factors (e.g., statute of limitations, existence of supporting evidence). Consult with your County Attorney for guidance.

## SEXUAL ASSAULT EVIDENCE COLLECTION KITS

### PRESERVATION AND STORAGE CONSIDERATIONS

#### Reported Cases

These are cases where the victim has gone to a hospital following a sexual assault, has had a medical forensic examination with evidence collected and chooses to report the incident to law enforcement. Best practice regarding this evidence would include:

- a. Transfer of the kit and any other evidence (e.g., a urine sample on ice separate from the kit box, clothing, etc.) by the SANE or medical provider to law enforcement;
- b. Law enforcement properly securing the evidence (e.g., refrigerate the kit if it contains a blood sample and keep urine on ice or frozen) until transport to the Forensic Laboratory;
- c. Law enforcement transfer of the kit and all other evidence for analysis to the Forensic Laboratory as soon as possible;
- d. Upon return of the kit and any other evidence in the case from the Forensic Lab, law enforcement will properly secure the items at their agency.
  - i. If the kit has been analyzed, it may be stored at room temperature.
  - ii. If there is a blood sample or urine sample returned with the kit (they will be separate items, not inside the kit), blood should be refrigerated and urine frozen if evidence storage allows.

#### Anonymous Cases

These are cases where the victim has gone to a hospital following a sexual assault, has had a medical forensic examination with evidence collected and chooses **not to report to law enforcement** at that time. Best practice regarding evidence would include:

- a. Transfer of the kit and any other evidence (e.g., a urine sample on ice not put into the kit box, clothing, etc.) by the SANE or medical provider to law enforcement;
- b. Law enforcement properly securing the evidence (e.g., refrigerate the kit if it contains a blood sample and keep urine on ice or frozen) until transport to the Forensic Laboratory;
- c. Law enforcement transfer of the kit and urine sample (if included as evidence from the hospital) to the Forensic Laboratory as soon as possible. All other physical evidence may be submitted as needed. Consult with appropriate laboratory staff for further information.
- d. If the laboratory has not been notified by law enforcement **within 60 days** from the date of the medical forensic examination that the victim has reported the crime, the evidence will be returned to the submitting agency.
- e. Upon return of the kit and any other evidence in the case from the Forensic Lab, law enforcement will properly secure the items at their agency to be held for the

duration of the maximum applicable statute of limitations or 20 years, whichever is shorter (RSA 21-M:18 I (b) (1)).

- f. Law enforcement will properly secure the items at their agency.

**Note:** If the kit contains a blood sample, it should be refrigerated if evidence storage allows.

## **DESTRUCTION OR DISPOSAL**

Under RSA 21-M:18 I(b)(3)(c), if the State intends to destroy or dispose of a sexual assault evidence collection kit or its probative contents before the expiration date of the maximum applicable statute of limitations, a sexual assault survivor has the right to, *upon written request*,

- a. Receive written notification from the prosecutor or appropriate state official with custody of that evidence not later than **60 days** before the date of intended destruction or disposal; and
- b. Be granted further preservation of the kit or its probative contents.

## VICTIM ADVOCACY RESPONSE

Sexual assault victims have a right under the New Hampshire Crime Victims Bill of Rights (**RSA 21-M:8-k and RSA 21-M:18**) to be treated with dignity and respect throughout the criminal justice process.

Victim advocates, both community based crisis center advocates and system based victim/witness assistance advocates, ensure that victims receive the services, support and information they need. Both types of advocates provide support for victims, but there are significant differences in services and confidentiality, as outlined below.

One important role of the advocate is to ensure that all victims are given information on the **New Hampshire Victims' Compensation Program**. While the costs of the sexual assault medical/forensic examination and the sexual assault evidence collection kit are paid for automatically, if a sexual assault victim requires additional medical treatment or other compensation services, the victim **must file** a Victims' Compensation Application.

A victim's eligibility for payment of other medical treatment by the Victims' Compensation Program is contingent on the victim first applying to the hospital's free-care program. Victims requiring medical treatment should be advised of this eligibility requirement immediately, as many hospitals have a 30 day window for free-care applications to be filed.

### THE ROLE OF THE COMMUNITY CRISIS CENTER ADVOCATE

*Sexual assault victims seeking support from a crisis center advocate have privileged communication under [RSA 173-C](#).*

*This statute prohibits advocates from disclosing any information shared by the victim without a waiver or release.*

There are 13 crisis center programs (*Appendix A*) throughout the state that provide services and support to victims of sexual assault, domestic violence, stalking and sexual harassment. Their services are free and are available to everyone regardless of age, race, religion, sexual orientation, physical ability or financial status. A victim's communication with a crisis center advocate is privileged and confidential.

The services provided include:

- 24-hour toll free crisis line
- Access to emergency shelter and transportation
- Legal advocacy in obtaining restraining orders against abusers
- Hospital and court accompaniment
- Information about and help in obtaining public assistance
- Safety planning with non-offending family members

Immediate involvement of crisis center advocates is recognized as a **crucial service** for both the victim and the community. The role of the crisis center advocate is to provide emotional

support and information, to listen, believe, and work to empower the victim while honoring the choices they make.

Crisis Center Advocates are trained on the process of sexual assault medical examinations and the criminal justice system, allowing them to educate sexual assault victims so that victims are aware of their options and can make informed decisions.

Victims are often more cooperative and better able to assist law enforcement and medical staff when they feel supported, believed, and safe; thus best practice calls for crisis center advocates to accompany victims through both the healthcare and criminal justice systems. Crisis center advocates are **not** a part of the criminal justice system. It is not the advocate's goal to find out the details of what happened to the victim, rather discussions between the victim and the advocate focus on the victim's feelings and emotional needs. The role of the crisis center advocate is to be present and provide support to the victim, not to participate in the actual investigation/interview process.

Involvement of crisis center advocates with victims as early as possible provides the victim with a link to an agency that can provide continuous support long after the medical exam and criminal justice system processes have concluded. Crisis centers support victims in the months and years to come after the assault, in hopes of connecting them with additional resources and aiding victims in their healing.

## **THE ROLE OF THE SYSTEM-BASED VICTIM/WITNESS ASSISTANCE PROGRAMS**

The role of victim/witness advocates (*Appendix B*) is to provide information, education, service-referrals and support to victims of crime. System based advocates are also referred to as Victim/Witness Coordinators depending on the county or agency they serve. Victim/Witness Coordinators have the additional duty of securing the appearance of witnesses for hearings and trials.

The goal of these programs is to reduce the impact of crime on the lives of victims and witnesses. These advocates are vital to prosecution and law enforcement agencies as they bridge the gap between the criminal justice process and the victim.

Victim/witness advocates are part of every County Attorney's Office, the Attorney General's Office as well as many local law enforcement agencies. Victim/witness advocates must have a detailed understanding of each stage of the criminal justice process from a victim's initial report to law enforcement through sentencing and post-conviction action. They must also have a working knowledge of court rules, victim rights, and the rights of the accused, in order to explain to a victim or family the status of a criminal case at any stage of the investigation or prosecution.

### ***Victim/Witness Advocates as Witnesses***

*It is imperative that victim/witness advocates be in the courtroom to support the victim through the criminal justice process. RSA*

*516:7-a mandates that "if a victim/witness advocate is called as a witness it is up to the defense "to show cause why such victim/witness advocate's testimony is necessary. In no case shall a victim/witness advocate be sequestered" unless the court finds and orders that based on the facts of the case, the failure to sequester would violate a defendant's rights.*

**Unlike crisis center advocates, communications between Victim/Witness advocates and victims are NOT confidential under the law.**

Victim/Witness advocates work to uphold the *New Hampshire Crime Victim's Bill of Rights* (Appendix S) by providing victims:

- A general overview as to how a case might move through the criminal justice system and potential outcomes.
- Information as to the status of their case.
- Notification and explanation of complaints and indictments, bail conditions, motions and rulings as appropriate, final case-disposition and appeals.
- Support in meetings with the prosecutor to discuss case status and preparation for a hearing or trial. The advocate also provides support for conversations in which a victim is informed of the reason(s) a case will not be prosecuted.
- Consultation for the purpose of obtaining input regarding the state's potential plea offer.
- Assistance with determining what information is needed to substantiate a request for restitution.
- Courtroom tours as well as arranging for a secure, but not necessarily separate, waiting area during court proceedings.
- Accompaniment and emotional support to victims attending court hearings and trials.
- Addressing the special needs of victims with disabilities (e.g., interpreters, wheel chair/handicapped accessible witness stand, and equipment for hearing impaired).
- Travel and hotel arrangements for victims and witnesses in compliance with the Uniform Act for securing witnesses from outside the state.
- Notice of their right to submit a Victim Impact Statement as well as to speak uninterrupted at a sentencing hearing. Advocates will often assist victims in the development of their statement.
- Notification of the results of a defendant's HIV antibodies test in cases of felony level sexual assault.
- Assistance with the return of personal property taken during the investigation.
- Information about possible financial assistance through the New Hampshire Victims' Compensation Program.
- Community referrals for crisis intervention, mental health services or other needs.
- Employer, school, landlord and creditor intercession services when participation in the criminal justice process has created an emotional and/or financial hardship.
- Assistance in signing up for the NH SAVIN statewide automated Victim Information and Notification system.
- If available, advocates may attend parole hearings when requested by the victim.

RSA 21-M:18 states that *Sexual Assault Survivors* (See Appendix S-2) have a right to:

- Not be prevented from, or charged for, receiving a medical examination.

- Have a sexual assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter;
- Be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation;
- Be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.
- The right, if the state intends to destroy or dispose of a sexual assault evidence collection kit or its probative contents before the expiration date of the maximum applicable statute of limitations to:
  - Upon written request, receive written notification from the prosecutor or appropriate state official with custody (LE), not later than 60 days before the date of the intended destruction or disposal; and
  - Upon written request, be granted further preservation of the kit or its probative contents.
- The right to be informed of the rights under this section.

## ***COLLABORATING WITH OTHER DISCIPLINES***

Victim/witness advocates serve as one of many victim-centered members of a Sexual Assault Resource Team (SART). They can help to ensure that victims are informed and educated on the criminal justice process and the roles of other agencies a victim might encounter. Victim/Witness advocates can work together with crisis center advocates to coordinate services.

Other members of the SART can call upon victim/witness advocates if they are working with an adult victim who is contemplating making a report but has questions about the process or the criminal justice system in general. A victim who better understands the process may cooperate with the investigation and prosecution more readily, provide greater detail and express less frustration with the system.

Victim/witness advocates can educate and update mental health providers, community advocates or other professionals working with the victim to ensure each discipline is providing a consistent message to the victim as to the status of the criminal case.

## MEDICAL RESPONSE

### SEXUAL ASSAULT EVIDENCE COLLECTION PROTOCOL AND KIT

***The sexual assault evidence collection kit provided by the Attorney General's Office to hospitals is to be used for victims ONLY.***

*Please refer to the Suspect Evidence Collection section of the medical protocol for guidance, if appropriate.*

It is the State of New Hampshire's goal to provide consistent statewide care that respects the emotional and physical needs of the sexual assault victim, while collecting the best possible forensic evidence to promote the effective prosecution of the offender. Recognizing the dual importance of sensitivity to the medical and emotional needs of the victim and the timely collection and preservation of irretrievable physical evidence, the New Hampshire Attorney General's Office created a comprehensive protocol **Sexual Assault: An Acute Care Protocol for Medical Forensic Evaluation (Eighth Edition, 2015)** and a standardized evidence collection kit which according to RSA 21-M:8-d , is to be used "by all physicians or hospitals in this state when providing physical examinations of victims of alleged sexual offenses".

The State is responsible for the payment of medical/forensic examinations and one follow-up visit when there is no insurance. No victim shall be billed for the cost of the medical/forensic examination (RSA 21-M:8-c). Under RSA 21-M:18, a sexual assault survivor has the right not to be prevented from, or charged for, receiving a medical examination. (See *Appendix S-2*).

### THE SEXUAL ASSAULT NURSE EXAMINER (SANE) PROGRAM

A SANE is a Registered Nurse or advanced practitioner who has been specially trained to provide comprehensive medical care to sexual assault victims. They demonstrate competency in conducting a medical/forensic examination and have the ability to be an expert witness in cases that go to trial.

The goal is to ensure that compassionate and sensitive medical services and care are provided in a non-judgmental, victim-centered manner. It is best practice to have all sexual assault medical/forensic examinations in New Hampshire be performed by a SANE or physicians and other advanced practice professionals who have gone through the SANE training.

### BEST PRACTICES FOR MEDICAL PROVIDERS

- Immediately call the local crisis center to have an advocate come to the hospital to provide support to the victim, if law enforcement has not done so already
- Prioritize patient well-being
- Escort the patient to a private examination room as soon as possible
- Provide an effective, victim-centered medical response
- Ensure the patient understands the medical-legal process before obtaining written consent

- Explain reporting options – including the option to complete an anonymous examination (*See Anonymous Reporting, page 34*).
- Conduct the medical forensic examination uninterrupted and in a private room
- Assess the patient's understanding and needs throughout the medical forensic examination
- Identify, collect and preserve evidence in a timely manner
- Provide a continuity of care from the beginning of the exam to the end
- Refer the patient for further medical care or follow up based on the patient's request or medical findings
- Provide prophylaxis treatment according to CDC guidelines. This includes providing treatment or information on obtaining emergency contraception
- Maintain confidentiality of records, photographs and communications

The treatment of sexual assault is considered to be a medical emergency. Victims are treated in a hospital emergency room. If the sexual assault occurred **within 5 days** of the examination, a **Sexual Assault Evidence Collection Kit is to be used**. There is no medical or legal reason for a law enforcement representative, male or female, to be present during the examination.

## ***COMMUNITY BASED ADVOCACY***

**Determine if an advocate from the local crisis center has been called. If not, the hospital or medical provider SHALL IMMEDIATELY call an advocate from the local crisis center to come to the hospital once a sexual assault disclosure has been made.** The hospital personnel should explain to the victim that the crisis center advocates provide free, confidential crisis intervention and on-going emotional support, both to the victim and the victim's family. Upon crisis center advocate arrival, the victim should be given the option of meeting privately with that advocate. If the victim declines, the hospital personnel should give the victim the contact information for the local crisis center. Having the advocate already present at the hospital will allow the victim to more readily access the support offered by the local crisis center, if they choose. Confidential patient record information should not be shared with the crisis center advocate unless it is done by the patient, thus avoiding any medical records confidentiality issues.

## ***PRIORITIZING PATIENT WELL-BEING***

The physical and psychological well-being of the sexual assault patient should always be given priority over forensic needs. In some cases, the investigation may have to be delayed for

**MYTH:** Some women and men have fantasies of being sexually assaulted and sometimes they come true.

**FACT:** Some people do have fantasies about being overcome or abandoning themselves with their partner. These fantasies differ from sexual assault in that the person has mental control over the beginning and the end of the scenario and can safely abandon inhibition, rather than having them overridden.

immediate medical treatment (e.g., if strangulation or a loss of consciousness occurred during the assault, or the victim complains of active bleeding, is pregnant or has abdominal pain). The medical/forensic examination of the victim may assist with the investigation and prosecution of the case, but it is foremost intended to assist the victim with their recovery. The victim may need prophylaxis to prevent pregnancy and sexually transmitted infections, including HIV. The victim should **ALWAYS** be referred for medical assessment and care.

## ***EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA)***

Unfortunately, there is sometimes the misperception that if a hospital emergency department does not have Sexual Assault Nurse Examiner services, they are unable to provide a sexual assault examination for a victim. All hospital emergency departments should be prepared to evaluate the sexually assaulted patient to ensure all emergency medical conditions that have occurred or may occur are addressed. This is an obligation under the Emergency Medical Treatment and Active Labor Act (EMTALA), passed by the US Congress in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA).

The law's initial intent was to ensure patient access to emergency medical care and to prevent the practice of patient dumping, in which uninsured patients were transferred, solely for financial reasons, from private to public hospitals without consideration of their medical condition or stability for the transfer.<sup>21</sup> EMTALA states: In the case of a hospital that has a hospital emergency department, if any individual . . . comes to the emergency department and a request is made . . . for examination or treatment for a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department to determine if an emergency medical condition exists.<sup>22</sup>

An emergency medical condition is defined as:

... (A) medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual...in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part....<sup>23</sup>

## ***STRANGULATION***

Strangulation, resulting from external pressure or blunt force trauma to the neck, is a type of asphyxia characterized by closure of the blood vessels or air passages.<sup>24</sup> Studies indicate that women who experience intimate partner sexual violence often experience strangulation as a co-occurring issue.<sup>25</sup> Under New Hampshire RSA 631:2 strangulation is a

<sup>21</sup> Zibulewsky, J. (2001) The Emergency Medical Treatment and Active Labor Act (EMTALA): what it is and what it means for physicians. *BUMC PROCEEDINGS* 2001;14:339–346.

<sup>22</sup> Examination and treatment for emergency medical conditions and women in labor. 42 USC 1395dd (1986). Available at <http://www.medlaw.com/> statute.htm (accessed July 2001).

<sup>23</sup> 42 U.S.C.A. §1395dd(e)(1).

<sup>24</sup> Iserson KV. Strangulation: Review of ligature, manual and postural neck compression injuries. *Ann Emerg Med.* 1984; 13(3): 179-185.

<sup>25</sup> Shields et al, 2010.

felony. It defines strangulation as “the application of pressure to another person's throat or neck, or the blocking of the person's nose or mouth, that causes the person to experience impeded breathing or blood circulation or a change in voice.”

Patients may present with potentially lethal conditions such as fractured trachea, carotid artery aneurysm or cerebral artery infarct<sup>26</sup>, similar to patients who have experienced blunt force trauma to the neck from accidental means.<sup>27</sup>

Because the clinical picture can vary dramatically, from a patient without visible injury to one with significant visible injury, and because the patient may not mention the strangulation component of their assault, **asking about strangulation directly is an important aspect of clinical care.**<sup>28</sup>

See the NH Attorney General’s *Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation Eighth Edition, 2015* for a strangulation assessment tool, as well as recommendations for discharge.

## **PATIENT CONSENT**

It is standard hospital practice to obtain a patient's written consent before conducting a medical examination or administering any treatment. However, informed consent is a continuing process that involves more than obtaining a signature on a form. Therefore, all procedures should be explained in detail so the patient can understand what the examiner is doing and why. Explanation of the examination and treatment process are solely the responsibility of the examiner.

If at any time, a patient expresses resistance or non-cooperation, the examiner should immediately discontinue that portion of the process, discuss any concerns or questions the patient may have regarding that procedure and make a determination about whether or not they can continue. The patient has the right to refuse one or more tests, any part of evidence collection or to answer any question, without the refusal negatively impacting the remainder of the exam.

See the NH Attorney General’s *Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation Eighth Edition, 2015* for suggested guidelines for collection of evidence from patients who are unable to consent.

## **TIMELINESS OF EVIDENCE COLLECTION**

A medical assessment should be performed in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination. Some patients may ignore symptoms that would ordinarily indicate serious trauma, both physical and

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<sup>26</sup>Knight, 1996.

<sup>27</sup>McKevin EC, Kirkpatrick AW, Vertesi L, Granger R, Simons RK. Blunt vascular neck injuries: diagnosis and outcomes of extracranial vessel injury. J Trauma Inj Infect Crit Care. 2002;53(3):472-476.

<sup>28</sup>Clements PT, Pierce-Weeks J, Holt KE, Giardino AP, Seedat S, Mortiere CM. Violence Against Women: Contemporary Examination of Intimate Partner Violence (2015) STM Learning St. Louis, MO

psychological. There may also be areas of tenderness which will later develop into bruises, but which are not apparent at the time of initial examination.

If the assault took place more than 5 days before the medical/forensic examination, it is generally not necessary to use a Sexual Assault Evidence Collection Kit but evidence may still be gathered by documenting findings made during the medical/forensic history and examination, as well as taking photographs.

All medical and forensic specimens collected during the sexual assault examination must be kept separate, both in terms of collection and processing. Those required only for medical purposes should be kept and processed at the examining hospital, and those required strictly for forensic analysis should be transferred to law enforcement for transport to the crime laboratory for analysis.

A reminder, **there is no time when it would be appropriate for the law enforcement officer to be present during the physical examination and evidence collection**, unless the victim is in custody.

## ***CONFIDENTIALITY OF MEDICAL INFORMATION***

Findings from the medical/forensic examination should be documented as completely as possible on the forms provided, which will become part of the patient's medical record. **In addition, photographs taken in the context of the medical/forensic examination become part of the medical record.** Photographs should not be taken in place of diagrams or written descriptions, **and should be taken by the examiner.** Examiners should adhere to their institution's photography policy for proper disposition of photographs. **Photographs should not be placed in the evidence kit.** The existence of photographs should be noted on the Medical/Forensic Examination Form. Evidence collection items should not be released from a hospital without the written authorization and consent of the informed adult patient, or an authorized third party acting on the patient's behalf, if the patient is unable to understand or execute the release. An "*Authorization for Release of Information and Disclosure Form*" contained in the kit should be completed, making certain that all items being transferred are checked off. In addition to obtaining the signature of the patient or authorized third party on this form, the top of the kit box has a designated area for signatures from the examiner turning over the evidence, as well as from the law enforcement representative who picks up the evidence and transports it to the New Hampshire State Police Forensic Laboratory.

### **Health Insurance Portability and Accountability Act (HIPAA)**

In the most general sense, HIPAA *prohibits* the use and disclosure of protected health information unless expressly permitted or required by the regulation. The regulation *requires* disclosure to:

- The individual who is the subject of the information; and
- Health and Human Services for enforcement purposes.

**HIPAA regulations do not preempt the health care providers' obligation to report that which must be reported under New Hampshire law (RSA 631:6 or RSA 161-F:51 II).**

## THE STATE POLICE FORENSIC LABORATORY

The New Hampshire State Police Forensic Laboratory is a nationally accredited multi-disciplinary crime laboratory that provides its scientific services to all New Hampshire law enforcement agencies free of charge. The laboratory is comprised of several scientific units each staffed by one or more forensic scientists having specialized education, training and experience in a particular type of evidence examination or analysis.

The Forensic Biology Unit is comprised of the Serology and DNA Sections. Forensic serologists test all specimens contained in the sexual assault evidence collection kit that have clear probative value to the investigation. These samples typically consist of body cavity swabbings and samples of suspected biological materials collected from external areas of the patient's body. The serologists primarily rely on information recorded on the *Sexual Assault Medical/Forensic Report* form (Step 3) to determine which samples to test and what type of testing is most appropriate. It is important for the medical provider to fill out this form as completely and accurately as possible.

*Evidence from the investigation of sexual assaults comprises the majority of the cases submitted to the Forensic Biology Unit. Sexual Assault Evidence Collection Kits are the most frequently submitted type of evidence in a sexual assault investigation.*

Other evidence submitted in connection with sexual assault investigations may also be examined by Serology Section personnel for the presence of biological materials (blood, semen, and saliva). Here, forensic serologists initially subject the evidence to a physical examination where items of trace evidence (hairs, fibers, etc.) may be recovered for possible future analysis. Garments are also examined for any noteworthy damage which could have been caused by violence or weapons. Stains suspected to be dried body fluids are then subjected to one or more identification tests. Samples of such stains, along with reference (known) DNA samples from the victims and any suspects, are routinely forwarded to the DNA Section for further testing.

If there is a suspicion that drugs were used to facilitate the sexual assault, arrangements may be made to have the patient's blood and/or urine tested by an independent toxicology laboratory. Current New Hampshire State Police Forensic Laboratory policy is to have the patient's blood tested if collected within 24 hours after ingestion of the drug and to have the patient's urine tested up to 120 hours after ingestion.

Hair specimens from the patient's pubic combings or collected from other evidence (clothing, bedding, etc.) may be forwarded to the Trace Evidence Unit for further analysis. These hairs are first examined to determine if they originated from a human source. Human hairs are further scrutinized to determine if they are suitable for nuclear DNA testing, and if so, are then forwarded to the DNA Section. Most hairs recovered as evidence are not suitable for nuclear DNA analysis. In that situation, the lab, in consultation with the submitting agency, may forward these hairs to another laboratory that specializes in mitochondrial DNA analysis. There will be a charge for the testing and any expert testimony that may be required. These charges are typically borne by the investigating agency or the prosecutor's office.

In addition to its responsibilities related to performing DNA testing on samples received from the Serology Section, DNA Section personnel enter DNA profiles from evidence into the national and state Combined DNA Index System (CODIS) databases. Select DNA Section personnel also perform DNA testing and CODIS entries on DNA samples collected from convicted offenders covered under New Hampshire's CODIS database law, RSA 651-C.

## PROSECUTION RESPONSE

*The need for prosecutors to support victims' rights cannot be overstated. This responsibility should not be overshadowed by competing demands and responsibilities.*

The primary role of prosecution is to see that justice is accomplished. In cases of sexual assault, this means protecting the safety and rights of the victim and community by holding the offender accountable. To accomplish this goal, prosecutors must work in a coordinated and collaborative fashion with the victim, law enforcement, advocates, medical professionals and crime labs. Prosecutors are responsible for assessing reports of sexual assault to determine if enough evidence exists or could be obtained to file criminal charges. Prosecutors must also consider the ethical issues of whether or not to file criminal charges.

The goal of a victim-centered and offender-focused response is to decrease re-victimization by ensuring the victim is treated with compassion and respect. The myths and misinformation surrounding the crime of sexual assault, along with the tendency of the defense and jurors to focus on victims' actions, present unique challenges in the successful prosecution of this crime. Prosecutors are uniquely positioned to educate the community, jury by jury, about sexual assault dynamics and the tactics offenders use (*See Appendix M*).

### BEST PRACTICES FOR PROSECUTION

#### **VERTICAL PROSECUTION**

Vertical prosecution is recommended in all sexual assault cases. Vertical prosecution means the same prosecutor, who has specialized training and/or experience in sexual assault cases, is assigned to the case from beginning to end. With vertical prosecution, victims are able to work with the same prosecutor and investigator from the time potential charges are first reviewed through the sentencing of the offender.

#### **MEETING WITH THE VICTIM**

It is recommended that prosecutors meet with the victim prior to making a determination about whether or not to charge the defendant. Meeting with the victim gives prosecutors increased insight not available through written reports. Meeting with the victim is also part of being victim-centered; it demonstrates to the victim that the prosecution is taking the case seriously and provides an opportunity to build trust between the victim and the prosecutor.

When meeting with a victim, if the prosecutor plans on discussing the facts of the case, it is recommended that the investigating officer or other law enforcement personnel be present. In the event the victim provides new or different information, law enforcement can document the information in a report and, if necessary, testify at trial. Failure to have a witness present could result in the prosecutor becoming a witness.

The County Attorney's Office victim/witness advocate should be present whenever possible. An advocate can provide support to the victim and their family.

Meeting with the victim also provides an opportunity to review the case from the victim's perspective, explain the process, uncover details that may have been overlooked in the initial investigation, and determine what outcome the victim is seeking. Creating a safe environment for the victim to discuss all relevant facts and offer them a perspective regarding the sexual assault is essential to obtaining a full picture of the case. In order to do this, a prosecutor, along with the victim/witness advocate, should attempt to establish rapport by:

- Conducting the meeting in a place where the victim feels safe and is able to speak freely
- Allowing adequate time for the meeting
- Answering the victim's questions as fully and accurately as possible
- Adopting a non-judgmental and "seeking to understand" perspective in speaking with the victim
- Explaining the legal process associated with the prosecution of a sexual assault, and the prosecutor's discovery obligations, including the accumulation of relevant materials and the disclosure and admissibility of sensitive and potentially privileged information concerning the victim (e.g., medical records)
- Reminding the victim that what they share with family and friends is not privileged information and is subject to subpoena; explaining the right of privilege held by crisis center advocates and encouraging the victim to use advocates for emotional support
- Reviewing the victim's rights and explaining the victim's role throughout the prosecution process
- Inquiring about any threats defendants have made toward victims, and respecting and supporting the victim's efforts to maintain their safety
- Ensure that all sexual assault survivors' rights are adhered to under RSA 21-M:18 (See Appendix S-2)

*A victim-centered, offender-focused response to the prosecution of sexual assault crimes is predicated on the need to protect the victim's safety, privacy and well-being while holding offenders accountable.*

## **VICTIMS WHO CHOOSE NOT TO PARTICIPATE IN PROSECUTION**

A victim-centered approach also means that prosecutors should support victims who choose not to cooperate in moving the case forward.

There are a variety of reasons why a victim may not wish to pursue a prosecution including:

- Lengthy timeframes associated with the investigation and prosecution of the case
- Feeling uninformed about, and uninvolved in, the decision making or prosecution process
- Not initially realizing the toll that a criminal investigation and trial can take on them mentally, emotionally and physically
- Pressure from family, friends and the community to not participate in prosecuting the defendant

- Ensure that all sexual assault survivors' rights are adhered to under RSA 21-M:18 (See Appendix S-2)

The prosecutor should attempt to understand the reasoning behind a victim's desire to not pursue a prosecution. In some instances, addressing the victim's concerns may allow a prosecution to proceed forward. However, when victims are unable to or choose not to participate in a prosecution, they should be treated with the same dignity and respect as victims who are able to fully participate in the prosecution of their case. In such circumstances, consider asking the victim to sign a release from prosecution so they understand that the prosecutor may be able to bring the charge back if the Statute of Limitations allows.

## ***COLLABORATION WITH LAW ENFORCEMENT***

Prosecutors should review the investigative file early in the process to identify incomplete information or gaps in the evidence. Working closely with law enforcement ensures the collection of important evidence. The sooner this process begins, the more likely that evidence will be preserved and/or obtained.

## ***CASES WITH BODY WORN CAMERAS***

Reviewing cases that include recordings from law enforcement body worn cameras requires a significant amount of additional work. Each recording must be carefully reviewed and potentially redacted to eliminate certain personal identifying information of victims and witnesses. If multiple first responders went to a scene, the recording of each first responder must be reviewed, redacted and provided in discovery. The original, un-redacted video must also be preserved. Prosecutors must be careful in this process, however, so that they will still comply with their obligations to disclose evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and Rule 12 of the N.H. Rules of Criminal Procedure. This can be a time-consuming and technical process requiring special equipment.

Best practice would also involve obtaining a protective order that prohibits further dissemination by the defense and prohibits defense counsel from providing the defendant with a copy. *Pro se* defendants may be permitted to privately view, but not keep, a copy of the recording. Video provided in discovery should be copied to a digital format, rather than emailed or shared via file sharing services, in order to maximize security and accountability should a video become public.

Prosecutors with cases involving BWCs should also anticipate defense strategies, particularly if there is a failure to record contact with a victim or witnesses during an initial response. There can be various explanations for these instances/errors and they should not be the basis for dismissing a case. Instead, arguments may be made that there was a failure to collect evidence or a loss of evidence that was not intentional on the part of the officer. Written policies *instituted by police departments* on equipment malfunctions, activation or deactivation of cameras, and preservation of recordings, along with data collection of malfunctions or errors, can help to alleviate suspicions of wrongdoing.<sup>29</sup>

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<sup>29</sup> Wilkinson, John, J.D., *To Record or Not to Record: Use of Body-Worn Cameras During Police Response to Crimes of Violence Against Women*, AEQUITAS Strategies in Brief, Issue #29, March 2017.

Prosecutor's offices may also have to respond to requests for public records. New Hampshire's new BWC statute states, "Recorded images and sound made from an agency-issued BWC shall be for law enforcement purposes only. All access to this data shall be audited to ensure that authorized users only are accessing the data for law enforcement purposes only." ([RSA 105-D:2, XIII](#)). New Hampshire's Right to Know statute was also amended to exempt from disclosure video and audio recordings made by law enforcement officers using a body worn camera, except in certain situations depending on what the recording depicts ([RSA 91-A:5, X](#)).

## ***DECISIONS NOT TO CHARGE***

A victim-centered response to sexual assault takes into account the potentially lifelong impact that charging decisions have on victims. Victims of sexual assaults whose cases are not charged may feel re-traumatized because the pathway to achieve closure through the justice system has been closed to them.

It is the responsibility of the prosecutor's office to notify a victim of sexual assault that a decision has been made not to charge the case. The notification should occur promptly and, if possible, before the defendant is notified. This will prevent the victim from hearing the disposition from the defendant or other people first. Best practice is to make notification in person or by phone whenever possible. In addition, as a courtesy to the investigating agency, the agency should be consulted and informed of the prosecutor's decision prior to disclosure to the victim. Notification of the victim should include an honest explanation of the reasons for the decision not to charge.

## ***PREPARING THE VICTIM AND FAMILY IN CHARGED CASES***

The victim-centered approach recognizes that the victim is the center of the investigation. The victim is the person most affected by the crime and in the majority of sexual assaults, the only witness to the assault. Providing information, education and respect to victims and their families promotes cooperation and helps to build the strongest case possible.

When a decision is made to charge the offender, prosecutors must prepare victims and family members for the next steps in the justice process. Prosecutors can do this by:

- Understanding the victim's trauma
- Educating victims about the steps in the process of the investigation and prosecution
- Educating victims about attendance at court proceedings
- Educating victims on the estimated timeline of the case
- Preparing victims for testimony and estimating the amount of time they will be spending on the stand
- Preparing victims and family members for disclosure of traumatic information in the trial (e.g., 911 tapes, photos, etc.)

*A prosecutor who understands trauma will learn that what is often termed "counterintuitive" victim behavior really represents a perfectly normal human response to a traumatic experience.*

- Informing victims about media coverage, including the presence of media in the courtroom
- Cautioning victims about potential consequences of discussing the case with others outside the criminal justice system
- Preparing victims, family members or other loved ones on how to respond to inquiries from defense attorneys, investigators and the media.

#### **PROSECUTOR CONDUCT**

*It is critical that members of the prosecution team behave appropriately at all times when interacting with victims and their supporters. Prosecutors should avoid:*

*Joking or displaying unnecessary familiarity with the defendant or defense counsel at any time. What may seem like friendly courthouse banter to a member of a prosecution team could be easily misunderstood and cause pain to a victim.*

*Unnecessary references by any member of the prosecution team to unrelated personal or professional obligations that are interfering with the handling of the victim's case. Delays can be objectively and honestly explained, but victims should not be subjected to complaints about prosecution workloads or resources.*

#### **PROTECTING VICTIM SAFETY**

Ensuring the physical and emotional safety of victims during the prosecution phase is critical. In some cases, victims may be subject to intense pressure and harassment from others. To promote victim safety, prosecutors should:

- Advocate for bail conditions that consider the safety of the victim and the community
- Ensure that “no contact orders” are written rather than oral
- Inform victims about the terms of bail conditions for the offender
- Assist victims to develop a safety plan in the event of retaliation or harassment
- Be mindful of the need to separate victims and defendants during any proceedings at the courthouse

#### **INITIAL COURT APPEARANCES OR PRE-TRIAL HEARINGS**

A victim’s attendance at court may be a difficult experience. In some cases, it may be the first time the victim and defendant meet face to face after the assault. Undoubtedly, it will be an affirmation that the defendant is being held accountable for their actions. Because of this, it is not uncommon for defendants to attempt to intimidate the victim. A victim-centered response recognizes that court appearances are a critical emotional juncture for the victim. When

working with victims, the prosecutor and/or advocate should:

- Discuss the advantages and disadvantages of victim attendance at court proceedings
- Consider whether efforts should be made to quash a subpoena should the defendant subpoena a victim to testify at an initial court appearance or pre-trial hearing
- Be fully informed about the facts of the case

- Plan where the victim will be waiting prior to and during all court proceedings to limit the victim's exposure to the defendant, their family or their supporters
- Attempt to ensure the victim and the defendant do not enter the courtroom at the same time

## ***PLEA NEGOTIATIONS***

A victim's input should always be sought before plea discussions. Explain the rationale for offering a negotiated plea and ask victims for their feedback. Minimally, the prosecutor should:

- Never present a plea without first attempting to contact the victim
- Educate the victim about the process of plea negotiations and sentencing options
- Make sure the victim is informed of the disposition being offered to the defendant

## ***TRIAL PREPARATION***

A victim-centered approach recognizes the need to fully prepare victims for the realities of the trial process. Involving victims in preparing the prosecution's case will empower them and improve their testimony. To prepare victims for trial, the prosecutor/advocate should:

- Provide a courtroom tour
- Prepare the victim for all testimony and anticipated cross examination
- Caution the victim about speaking about the case with others in a public place such as a courthouse restroom or any other place where potential jury members or others may be present before, during and after the trial
- Advise the victim who is allowed to be present in the courtroom
- Discuss with the victim the benefits and challenges of attending certain phases of the trial
- Prepare the victim for the various possible outcomes of the trial

In addition to victim preparation, additional witnesses in the case, including medical personnel, should be fully prepared prior to depositions and/or trial testimony.

## ***JURY SELECTION***

Jury selection, as in any other criminal case, is critical to the outcome of a sexual assault trial. Potential jurors bring with them their own personal experiences and beliefs. Jurors are also exposed to dramatized and/or wholly fictional accounts of sexual assaults in various media which often bear no relationship to reality. The questions asked of potential jurors during the selection process can expose myths and prejudices that they may hold about sexual assault. There are several helpful resources on *voir dire* that can be found in Appendix M.

## ***SENTENCING***

Sentencing hearings can be an empowering and/or traumatic experience for victims and their family members. To prepare victims for the sentencing hearing, the prosecutor's office should:

- Notify the victim that in the event the court orders a pre-sentence investigation, a probation officer may request to speak to the victim directly or through the advocate to form an opinion as to the impact of the crime and what the victim feels is an appropriate sentence.
- Review with the victim the possibility that the reading of the charges and sentencing arguments made by prosecution and defense may be potentially upsetting. Victims should be informed that the defendant may speak at the hearing and may address their statements directly at the victim. Victims should be aware it is entirely up to them if they want to acknowledge the defendant's comments.
- Inform the victim of their right to speak at sentencing. Victims who do not wish to speak at the hearing should be offered the option of providing a written Impact Statement directly to the court with copies provided to the defense and prosecution ahead of the hearing.
  - A sentencing hearing can be an emotionally charged event. Giving an oral Victim Impact Statement can be overwhelming. Assisting the victim in preparing the statement beforehand can be very helpful in assuring that a victim does not miss saying something they felt was important. It also prepares the advocate or support person for reading the statement in the event the victim is unable to do so.
  - If the court permits, victims should be offered the option of sitting or standing when giving their statement.
- Advise the victim that family members and friends may be present to support them.
- Request that a “no contact order” is included in sentencing, if desired by the victim. Victims should be reminded that restraining orders should not be dropped in reliance on the criminal case “no contact” order.
- Encourage the victim to be clear in their Victim Impact Statement whether they are in support of the sentencing proposal.

*Regardless of the outcome of a sexual assault case, prosecutors who want to sharpen their skills are wise to take cases to a SART meeting to review and discuss what went well and what could be improved in the future. Including the multidisciplinary professionals on the team in the discussion may broaden the level of feedback received and improve the prosecution’s presentation in future cases. Surveying jurors after trial proceedings have concluded will also provide additional insight about how to improve the prosecution’s presentation of future sexual assault cases.*

## SPECIAL CONSIDERATIONS

### ELDERLY VICTIMS

RSA 161-F:11 and RSA 631:8 both define an elder adult as any person who is 60 years of age or older.

Elder sexual abuse consists of any sexual activity for which the older person does not consent or is incapable of giving consent as a result of physical or cognitive impairment. Each year, many cases of elder sexual abuse go unreported because professionals fail to recognize or identify the physical, behavioral or environmental cues that often accompany the abuse. This lack of recognition and reporting may be attributed to the misperception that the elderly are not likely targets for sexual abuse. Consequently, abuse of this population is often overlooked.

Elder sexual abuse includes **hands-on offenses** (e.g., unwanted kissing, touching and/or penetration of intimate body parts), **hands-off offenses** (e.g., sexual harassment, exhibitionism, forcing an individual to view pornographic images, criticism of an older adult's body, genitalia, and sexuality) and **harmful genital practices** (e.g., unwarranted and intrusive procedures when caring for genital areas, application of creams or enemas when not medically necessary).

In most cases, the victim of elder sexual abuse either knows or has an on-going relationship with the perpetrator. The offender may be a family member, spouse, intimate partner, non-relative caregiver or employee of a nursing home or assisted living facility. The same motivations that apply to domestic violence and sexual abuse of younger victims (power and control) also apply to elder sexual abuse. Sexual predators use sexual acts to dominate, punish, humiliate and control their victims. Offenders often target elderly victims because they believe seniors are more vulnerable, less likely to resist, and less likely to report the assault.

Perpetrators will often target elders with dementia or limited cognitive abilities because their victims (if they do report the assault) will not likely be viewed as credible reporters. It is crucial, therefore, that all allegations of elder sexual abuse are taken seriously. It is recommended that investigators talk with the elderly person alone and in private since they may be ashamed or too fearful to disclose information in front of family or caregivers. Document findings of injuries and other evidence in written reports and take photographs where appropriate. If the elderly person is in danger where they are, take immediate action. In an emergency/crisis situation, attempt to convince the person of the need to be seen at a hospital. Alert other first responders and the hospital of the basis for concern. In circumstances where Involuntary Emergency

#### First Responder Tips:

- Speak with an elder at eye level
- Do not tower over them, if possible
- Law enforcement should be aware of having their weapon at eye level of an elder
- Try to determine if impaired memory, vision, hearing or speech may be an issue for the elder.

Admission (RSA 135-C:27) or Protective Custody (RSA 172-B:3)<sup>30</sup> is warranted, consult with the Department of Health and Human Services, Bureau of Elderly and Adult Services.

Sexual abuse of older adults can be life threatening and great care must be taken to ensure the physical and mental well-being of the victim. Medical and social follow-up services must be easily accessible to older victims or they may not be willing or able to seek or receive services. Support for the victim may be obtained through the local crisis center (Appendix A) and the Department of Health and Human Services, Bureau of Elderly and Adult Services (Appendix C). The victim may also receive important emotional support from the leaders and members of the local faith-based community.

***Indicators of Elder Sexual Abuse:***

- Pain, itching, bruising or bleeding in the genital area
- Unexplained sexually transmitted diseases
- Unexplained or sudden behavioral changes (e.g., hygiene, avoidance or fear of specific person, recent resistance to certain types of caregiving such as bathing)
- Coded disclosures such as “he’s my boyfriend”, “he loves me”, or “I’m his favorite girl”

**Mandatory Reporting Reminder**

Anyone who suspects that a vulnerable adult is being abused must report that abuse by calling the Bureau of Elderly and Adult Services at **1 (800) 949-0470**. Refer to page 8 for additional information.

**Reasons Why Elderly Victims May Not Want, or are Unable, to Report or Assist with the Investigation**

- Victims may be reluctant to talk about the attack, report it, or accept help because of the stigma attached to being a victim of sexual abuse or out of fear of retaliation by the perpetrator. Generational values may make it difficult for some victims to talk about sexual abuse and/or body parts.
- Where the abuser is a relative or home caregiver, the victim may be completely dependent upon the caregiver to meet those essential needs (food, medicine, shelter, hygiene) that allow them to remain in their home.
- Impaired memory, vision or hearing loss may limit a victim’s ability to report episodes or be an accurate witness.

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<sup>30</sup> *Law Enforcement Guide Elderly and Adult Services*, Sponsored by the Elder Abuse Advisory Council, NH Department of Health and Human Services, Division of Community Based Care Services, Concord, NH.

- Examination may be much more difficult or even impossible as a result of physical conditions such as the victim's limited ability to move or reposition themselves for an examination.
- As a result of dementia, victims may not be able to understand that they were assaulted and may be unable to cooperate with exams.

## VICTIMS WITH DISABILITIES

There is some research suggesting that victims with specific types of disabilities experience higher risk of sexual assault than victims with other disabilities or victims without disabilities.

**NOTE:** When working with an adult victim who is vulnerable, there is a mandate to report ([RSA 161-F](#)) the sexual assault to the local District Office of the Bureau of Elderly and Adult Services. See [Appendix C](#) for contact information. Also refer to the section on **Elderly Victims** in this protocol.

Intellectual disabilities, communication disorders, and behavioral disorders appear to be associated with very high levels of risk. For example, one study found that victims with developmental disabilities are four to ten times more likely to be sexually assaulted than those without a developmental disability. Moreover, victims with developmental disabilities are more likely to experience repeated victimization.

Perpetrators of sexual assault may target people with disabilities for many reasons. Some perpetrators may perceive that victims with disabilities tend to be socially or physically isolated and can be easily manipulated into trusting someone. Others might exploit the fact that often times these victims/survivors tend to not report such experiences to others. And, while many of these perceptions are based in stereotypes about people with disabilities in general, they can affect the safety of some victims.

It is also important to note that victims with disabilities are not often believed when they report a sexual assault. This can also be a reason for increased risk, as perpetrators believe they will not be caught or prosecuted.

In many cases, the individual's disability may not be apparent. Among the hundreds of types of disabilities that exist, many are termed *hidden disabilities*, as they do not affect physical appearance or verbal fluency, yet have a significant impact on the individual's ability to function either physically, emotionally, or cognitively. Hidden disabilities can include psychiatric disabilities, intellectual disabilities, speech and language disabilities, sensory disabilities, as well as other disabilities such as autism or Asperger's syndrome. All of these may affect the interaction between victim and responder. Responders may seek the assistance of a disability resource person during an investigation.

During a first responder's initial contact with a victim, there are two key moments that stand out as being crucial:

**First Impression** – How a first responder perceives the victim, how he or she responds to the victim and how the victim feels as a result will set the stage for the rest of the investigation.

**Last Impression** – How a first responder leaves the victim will set the tone for both the next intervention and the rest of the investigation.

As soon as a responder comes in contact with a victim with disabilities, the first impressions formed by the victim can make or break the case. These impressions are based on:

- How long the responder spends with other adults before addressing the victim directly
- The responder's facial expressions
- The responder's tone of voice, choice of words, and conversational style
- The responder's body language
- The responder's physical position in relation to the victim
- Eye contact

A responder's first task is to communicate the following information:

- That the victim is not in trouble
- That the responder is there to help
- That what happens from that moment forward will be the responsibility of the perpetrator, not the victim<sup>31</sup>

Many people who have cognitive disabilities have an excellent recall of traumatic or special events in their lives. Their impairment (or disability) is ***unrelated to the reliability of memory***. Some people with severe intellectual disabilities, for example, can describe in great detail the crimes that have been committed against them, including the name of the perpetrator (if known) and the details of the case. Like most of the population, however, they do not have excellent recall of unimportant details of daily life such as the breakfast meal they had a few days prior.

Speech production problems do not signal an intellectual impairment. Difficulties with speech or other cognitive disabilities should not prevent a crime victim or witness from being properly interviewed in an investigation. Failing to conduct a proper interview may lessen the strength of the case and may make it difficult to defend the interview process or content if the case is forwarded through the criminal justice system<sup>32</sup>. For additional resources, refer to Appendix M.

## INCARCERATED VICTIMS

The Prison Rape Elimination Act (PREA) is a federal law that protects people in prisons and jails from sexual victimization, rape and sexual assault. Under New Hampshire law, state and county Department of Corrections (DOC) policies, an inmate cannot legally consent to sexual contact with anyone while incarcerated. An inmate can have NO sexual contact with another inmate, DOC staff, volunteer, and/or contractor. It is never appropriate for a DOC staff, volunteer or contractor to make sexual advances, comments or to engage in sexual contact with an inmate.

Sexual misconduct includes such activities as:

- Sexual contact or penetration as defined by RSA 632-A
- Making obscene or sexual advances, gestures or comments

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<sup>31</sup> U.S Department of Justice, Office for Victims of Crime, *Victims with Disabilities: Collaborative, Multidisciplinary First Response*, 2009. [http://www.ovc.gov/publications/infores/pdftxt/VwD\\_FirstResponse.pdf](http://www.ovc.gov/publications/infores/pdftxt/VwD_FirstResponse.pdf)

<sup>32</sup> U.S. Department of Justice, Office for Victims of Crime, *Victims with Disabilities: The Forensic Interview*, 2007. <http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=502>

- Touching of self in a sexually provocative manner
- Initiating or making promises in exchange for sexual favors (e.g., promising safety, privacy, housing or privileges)
- Threats, intimidation or retaliation for any actions described above

The NH Department of Corrections has zero tolerance for prison rape. A complaint, report or information regarding an incident of sexual assault or misconduct should be forwarded to the officer in charge, shift commander, facility investigator, PREA coordinator or PREA Advocate if the facility has one. Incarcerated victims are also entitled to confidential advocacy services provided by the local crisis center as well as, access to a medical/forensic examination at a local hospital. *See Appendix M for resources.*

## **CAMPUS SEXUAL ASSAULT**

While the likelihood of crime victimization generally is lower on a college campus, college-aged students are sexually victimized at the same rate or higher than in the wider community. Victimization happens to students regardless of gender, gender identity, sexual orientation, ability, race, religion, country of origin, or age. Sexual assault is the most under-reported violent crime committed on college campuses today. New Hampshire's college campuses are no different. Many victims are targeted due to impairment by drugs or alcohol and thus incapable of legally consenting to sexual touching or penetration. A comprehensive 2015 survey of 27 institutions of higher learning across the United States reported the following key findings:

- Rates of sexual assault and misconduct are highest among undergraduate females and those who identify as transgender, genderqueer, non-conforming, questioning or something else not listed on the survey (TGQN.)
- Overall rates of reporting to campus officials and law enforcement or others were low, ranging from five percent to 28 percent, depending on the specific type of behavior.
- A significant percentage of students say they did not report because they were "...embarrassed, ashamed or that it would be too emotionally difficult" or "...did not think anything would be done about it."
- Freshmen are most at risk for being a victim of sexual assault.<sup>33</sup>

## **IMPORTANCE OF ON AND OFF CAMPUS PARTNERSHIPS**

Given the prevalence of sexual assault among college students and the complexity of sexual assault investigations, it is essential that campus professionals see themselves as part of the system response to sexual assault. Colleges and universities are strongly encouraged to participate on their county-based Sexual Assault Resource Team (SART). Existing SARTs are also encouraged to reach out to campuses in their county.

There are multiple and far reaching benefits of including colleges and universities on SARTs for both campus-based and community-based systems. By participating in SART meetings, campus representatives can: better understand trends in sexual violence and how those trends affect their students; gain understanding about the criminal justice process and use that

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<sup>33</sup> Cantor, D., Fisher, B., Chibnall, S., R Townsend, (2015), Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct. Available at [www.aau.edu/Climate-Survey](http://www.aau.edu/Climate-Survey)

knowledge to assist students who want to report to law enforcement, and; learn more about community resources that can offer support and advocacy. By having campus representation on the SART, community-based members can: gain an understanding of the campus's responsibilities under federal legislation; learn about services and interim measures available for students on campus; identify campus-based resources that will be able to best serve victims according to their different needs; and provide access to student input and research and resources focused on the higher education community.

The discussions at SART meetings may be especially valuable in cases where the offender is not a student, and therefore some of the campus-based mechanisms for responding to sexual assault would not be available to the victim. These discussions help campus personnel better serve their students who are victimized. They may also help lessen the perception that campuses pressure students to utilize campus-based procedures rather than report to law enforcement, by demonstrating a willingness to work collaboratively with other systems.

In New Hampshire, college students age 18 or older have the right to decide whether or not to report to law enforcement (barring incapacitation as defined by RSA 161-F:46 or serious bodily injury). For minors, mandatory reporting to the Division for Children, Youth and Families (DCYF) is required under RSA 169:C.

Students also have the right to decide whether or not to make a report to campus officials. However, if a student discloses to a campus employee, that employee most likely will need to make a report to the Title IX Coordinator or campus safety. Colleges have to balance the wishes of the student with the reporting obligations set forth under Title IX<sup>34</sup> and the Clery Act<sup>35</sup>. In the aftermath of an assault, some students might be eager to reach out for help, and may turn to college personnel for support. The reporting obligations of college personnel should be made clear to students, staff, and faculty members. The Clery Act requires that all individuals identified as campus security authorities (CSA's: someone whose function has a significant responsibility for student and campus activities, including students) receive annual training on their responsibilities. This should include which staff members, if any, offer confidentiality and the limitations of each person's confidentiality, both within the campus system and the criminal justice system. It is important to note that confidentiality is a legal protection generally limited to licensed medical and mental health professionals and pastoral counselors. Because crisis center advocates have legal privilege under New Hampshire RSA 173-C, they should also be offered as resources (*See Appendix A*). Outside of reporting obligations outlined in Title IX and the Clery Act, college victims should be afforded the same privacy rights and options as all other adults.

Given that the victim can choose to report to both campus officials and law enforcement, parallel investigations may result. This makes it essential for campuses to work collaboratively with community-based partners. In addition to coming together under the SART initiative, campuses are encouraged to develop Memorandums of Understanding (MOUs) with local law

<sup>34</sup> <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq>

<sup>35</sup> <https://www2.ed.gov/admins/lead/safety/campus.html#statute>

enforcement and crisis centers and to explore partnerships with other service providers.<sup>36</sup> By working to build relationships and implement cooperative protocols, professionals from all fields can work toward ensuring an approach that will reduce harm to the victim and increase perpetrator accountability.

**School administrators should ensure that their own policies and procedures are in compliance with those listed below and that all staff have clarity on their own role within the campus response.**

## **INITIAL CAMPUS DISCLOSURE RESPONSE**

***The following priorities speak to the obligations of how to best serve victims.*** Rather than try to complete all the steps below, campus personnel should be aware of their role and the responsibilities outlined in their campus policy and protocol. For example, students may often choose to initially disclose to someone they feel close to and supported by, including a resident assistant, academic advisor, or professor. In most cases, it would not be appropriate for that person to act as a fact-finder or assume an investigative role. The exact order of these steps will vary depending on the timing and manner of the disclosure and details of the case, however, ***the first priority is the health and safety of the victim and the campus community.***

- Assure the immediate safety of the victim.
- Make sure the victim understands the reporting obligation or limitations of confidentiality.
- Reassure the victim with a trauma-informed, non-judgmental approach to assist them.
- Allow the victim to take control over the situation as much as possible. Remind them that they have options and try not to make decisions for them.
- **Encourage the victim to go to the hospital for medical attention.** Emphasize that their health and safety is the first priority.
  - Ensure that the victim knows that going to the hospital *does not* mean they have to: have forensic evidence collected, report to law enforcement, or tell their parents. The hospital will not charge them or bill insurance. Offer to call a crisis center advocate.
  - If the victim wants to have a medical/forensic exam or is unsure, request that they not shower, wash up, etc. until evidence can be collected by a Sexual Assault Nurse Examiner (SANE) or other trained medical professional.

**All campus personnel should know whether they are designated as a responsible employee and/or a campus security authority, and if they have additional duties as an investigator or fact finder. The administration should ensure that all employees receive role-specific training on reporting obligations, sexual misconduct and other relevant policies, and on how/ to whom to report.**

<sup>36</sup> For resources on MOUs visit:

[https://www.whitehouse.gov/sites/default/files/docs/white\\_house\\_task\\_force\\_law\\_enforcement\\_mou.pdf](https://www.whitehouse.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf) and  
<https://www.justice.gov/ovw/page/file/910381/download>

- If needed, arrange transportation for the victim. Administrators should craft a policy that details how to access timely transportation in a way that respects the victim's privacy and confidentiality.
  - Notify the hospital that the victim is on their way and request a SANE respond if one is employed by the hospital. In some cases, a SANE may be on call and giving advanced notice may reduce the victim's wait time.
- **Encourage the victim to call the crisis center advocate.** Many victims are reluctant to call on their own, but your support can help them connect to this vital, confidential resource. *Offer to initiate the call yourself*, and then step away to give the victim an opportunity to have a confidential conversation with the advocate (*See Appendix A*).
- **Advise the victim that they have the right to report to law enforcement.** Let them know that is separate from reporting to campus safety/security and that law enforcement would follow a different process. Encourage them to talk to a crisis center advocate for more information.
- **Take the steps necessary to comply with applicable reporting responsibilities under campus policy and procedure.** Being knowledgeable about reporting obligations before receiving a disclosure will help make the process smoother if a victim reaches out.

## **CAMPUS INVESTIGATIVE RESPONSE**

Certain campus officials have additional responsibilities. This would generally include campus safety and security, Title IX coordinators and deputies, Clery Act officials and administrators. Once a report has been made to the campus personnel responsible for conducting an investigation, the following actions may take place:

- **Determine if a timely warning is needed under the Clery Act<sup>37</sup>.**
- **Inform the victim of their right to report to law enforcement**, both verbally and in writing. Work to assure collaboration between campus police/safety/security, other campus authorities and local law enforcement to streamline the investigation.
- **Obtain initial verbal statement and minimal facts interview.** (*See page 18 of this protocol for details*).
- **Provide information about moving forward.** Identify who will be conducting a comprehensive, trauma-informed interview with the victim and provide the victim with their contact information. Let the victim know that the investigator will contact the victim to schedule an interview and to follow up in the near future. Identify who will be responsible for implementing interim measures and provide their contact information.
- **Give the victim resources.** Give the victim contact information for resources on and off campus. For each resource, provide clarity regarding if it is confidential and whether it is on-or off-campus. In accordance with the Clery Act, providing written notification of services and options offers the victim an opportunity to reference information about the process and resources at a later time.
- **Identify potential crime scenes (residence, car, public place, etc.)** and ensure they are adequately secured until evidence is determined, properly documented and collected through consent or search warrant.
- **Identify potential witnesses.**

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<sup>37</sup> <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

- Refer to campus policy for guidance on next steps.

**IMPORTANT**

Schools are encouraged to craft policies and procedures that allow for victims to regain control over their situations, while balancing the needs of federal mandates and safety of their greater community. This should include, where possible, a mechanism for victims to choose not to move forward or participate in all steps of the process. In such cases, information already gathered and a victim's wishes should be documented.

## ***STUDENTS STUDYING AWAY FROM CAMPUS AND ON COLLEGE-SPONSORED TRIPS***

Studying away and on college-sponsored trips affords students the opportunity to experience new places, cultures, and different styles of education. A study in the journal *Psychological Trauma*<sup>38</sup> reports that female undergraduates are three to five times more likely to experience sexual assault while studying abroad than on a U.S. campus. The prevention of and response to sexual assault in the international setting should be part of an institution's overall plans.

Sexual misconduct response obligations required by Title IX and the VAWA amendments to Clery still apply in study away programs. NAFSA: Association of International Educators provides the following information to help institutions understand their reporting obligations:

- *The Clery Act and Education Abroad: Understanding Crime Reporting Requirements* presentation and supplemental handout (PDFs). The handout offers a variety of pertinent resources for crime reporting abroad, including available campus resources, publications, and an education abroad program checklist.
- *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act: Applicability to Education Abroad Programs* (PDF). This document details the Clery Act's requirements that are applicable to education abroad programs.<sup>39</sup>

(See Appendix M for these and additional resources)

## **CULTURAL CONSIDERATIONS**

Common fears among sexual assault victims include fear that the attacker will come back, fear of being alone or of crowds, and concern about family and friends finding out about the attack. Gay, lesbian, bi-sexual and transgender victims may also fear seeking help after an assault out of concern that the report will be taken less seriously or ignored because of their sexual orientation, or that their sexual orientation will be made public. Male victims of sexual assault may worry that they will be considered less "manly." Feelings of anger, frustration, powerlessness and

<sup>38</sup> Kimble, Matthew; Flack Jr., William F.; Burbridge, Emily. *Psychological Trauma: Theory, Research, Practice, and Policy*, Vol 5(5), Sep 2013, 426-430. <http://dx.doi.org/10.1037/a0029608>

<sup>39</sup> The National Center for Campus Public Safety, Weekly Snapshot: April 27, 2016, <http://www.nccpsafety.org/news/weekly-snapshot-archives/2016/04>

helplessness are common among survivors of any age, gender or sexual orientation. Reactions to the assault can also include embarrassment, guilt, emotional numbness, suspicion, denial, obsessions with the assault, aversion to touch, and the disruption of a normal sex life.

## MALE VICTIMS OF SEXUAL ASSAULT

When a sexual assault occurs, it is devastating to the victim regardless of gender. Male victims have the same rights under the law as women. Men are entitled to the same services and support following a sexual assault.

Male victims may face unique hurdles to reporting the crime and to getting the medical assistance and emotional support they need and deserve. Male sexual assault victims may believe that the law enforcement, medical professionals, and even sexual assault crisis center advocates will be insensitive to their experience because they are men. It is a myth that a sexual assault is less harmful to men than to women. In fact, many men suffer harm because of societal reluctance to accept their experience as unwanted, thus creating shame and a resultant belief that men must “tough it out” on their own. This all compounds to make seeking help harder and reduces the likelihood of disclosure.

Victims of sexual assault often blame themselves for the attack(s). Men, in particular, may feel that they should have been strong enough to defend themselves against the assault. They may feel that a “real man” could have avoided the sexual assault.

Male sexual assault victims suffer a similar fear that female victims face - that people will believe the myth that they may have enjoyed being sexually assaulted. Some men may believe that because they became sexually aroused, had an erection, or ejaculated during the sexual assault they were not raped or that they gave consent. These are normal, involuntary physiological reactions. It does not mean that the victim wanted to be sexually assaulted, or that the survivor enjoyed the traumatic experience. Sexual arousal does not mean there was consent. In fact, a perpetrator will often use this physical response to the assault to communicate to the victim that they were complicit in the assault or that it was consensual because of the body’s response. Perpetrators of sexual assault can be anyone and men assaulted by women may find it especially difficult to disclose when societal standards often tell men any sexual advances by women are supposed to be positive.

There are many reasons that male victims do not come forward and report being sexually assaulted, but perhaps the biggest reason is the fear of being perceived as homosexual or weak.

**MYTH:** *Men can't be sexually assaulted, especially by women. If the man does not have an erection it can't happen.*

**FACT:** *Men are sometimes sexually assaulted by women. Women who assault men frequently rely on intimidation, threat of violence, and/or coercion rather than physical force. Examples are male students and female teachers, male patients and female therapists, male employees and female supervisors. Penile erection can occur in response to extreme emotional states, such as anger and terror, as well as to sexual assault. Physical arousal does not mean that the experience was consensual.*

However, male sexual assault has nothing to do with the sexual orientation of the attacker or the victim, just as a sexual assault does not make the victim gay, bisexual or heterosexual. It is a violent crime that can happen to men regardless of their own sexual orientation. It is common, however, for men who have been assaulted to express confusion about their sexual identity and orientation, whether they identify as straight, gay or bi-sexual. This can be especially confusing if there was a physical body reaction to the assault.

**\*Information in the above section is adapted from the NH Coalition Against Domestic & Sexual Violence (NHCADSV) website: [http://www.nhcadsv.org/learn\\_more.cfm](http://www.nhcadsv.org/learn_more.cfm) and the SHARPP Male Victim Program Coordinator at the University of New Hampshire: <http://www.unh.edu/sharpp>**

## LESBIAN, GAY, BISEXUAL, AND TRANSGENDER VICTIMS

According to The Williams Institute on Sexual Orientation Law and Public Policy<sup>40</sup>, approximately 8.8 million people in the United States are gay, lesbian, or bisexual. This is a rough estimate because definitions of sexual orientation and behavior are not standardized. For example, some individuals who engage in same-sex behavior or intimacy do not identify as gay or lesbian and some individuals' gender identity or gender expression may be outside the gender binary of male and female and they could be gender non-conforming.

The lesbian, gay, bisexual, transgender, and questioning/queer (LGBTQ) community is diverse and includes individuals who may or may not be visibly identifiable as such to those around them. When LGBTQ individuals disclose their sexual orientation, gender identity, or sex, they may suffer severe forms of discrimination and violence. For example, there have been numerous situations in which transgender persons have disclosed their sex and gender identity and have been sexually assaulted, seriously injured, and even murdered. Research indicates that 50% or more of transgender and gender non-conforming people have experienced some form of sexual violence at some point in their lives<sup>41</sup>.

There are many special considerations when working with LGBTQ victims of sexual violence, including that many of these communities are small and interconnected and therefore, some support groups and areas are not options. Intimate partner violence (IPV) in LGBTQ communities has been documented to be at high rates and abuse tactics can be unique to the community. These could include, but are not limited to:

- "Outing" or threatening to out a partner's sexual orientation or gender identity to family, friends, employers, or in other situations where this disclosure may pose a threat.
- Telling the survivor that abusive behavior is a "normal" part of LGBTQ relationships, or that it cannot be relationship violence because it is occurring between LGBTQ individuals.
- Manipulating friends and family supports as well as generating sympathy and trust in order to cut off these resources to the survivor.
- Utilizing the support or advocacy centers first so the center might not be able to work with the victim.

<sup>40</sup> <https://williamsinstitute.law.ucla.edu/lgbtstats/>

<sup>41</sup> Forge, Sexual Violence Research, <https://forge-forward.org/anti-violence/sexual-violence-research/>

- Portraying the violence as mutual and even consensual, especially if the partner attempts to defend against it, or as an expression of masculinity or some other "desirable" trait.
- Interfering with or withholding hormones their partner is taking to transition, or forcing their partner to transition.

**\*Information in this section is adapted from the OVC Office of Justice Programs, National SART Toolkit: <http://ovc.ncjrs.gov/sartkit/focus/culture-lgb.html>**

**Note: Extensive information and resources for working with other culturally diverse populations are also available at this website.**

Information in the above section includes common terms and resources.

## SEXUAL ASSAULT IN COMMUNITIES OF COLOR

While the impact of sexual assault crosses all social, economic, and racial lines, there are barriers and concerns that are unique to communities of color. Victims of color often face a lack of culturally appropriate services as well as prevention and supportive resources in diverse languages. Adding to these challenges is a lack of collaboration with the community based social service programs that historically provide services to communities of color. These conditions have led to an often marginalized and underserved population of victims.

Each community of color has challenges and circumstances that are unique to its community. However, there are common factors that account for many of the barriers sexual assault victims of color face as they seek help:

- Cultural and/or religious beliefs that restrain the victim from leaving the abusive relationship or involving outsiders
- Strong loyalty bonds to race, culture and family
- Distrust of law enforcement, the criminal justice system, and social services
- Lack of service providers that look like the victim or share common experiences
- Lack of culturally and linguistically appropriate services
- Lack of trust based on history of racism and classism in the United States
- Fear that their experience will reflect on or confirm the stereotypes placed on their ethnicity
- Assumptions of providers based on ethnicity of the victim
- Attitudes and stereotypes about the prevalence of sexual assault in communities of color
- Legal status in the U.S. of the victim and/or the suspect

*It is important to help victims understand that they are not to blame. Sexual assault is a crime of power and control and perpetrators use many methods to control their victims, including fear, shame, threats, and debilitating substances like alcohol and drugs.*

***Sexual assault, regardless of gender, is a crime and is NEVER the victim's fault.***

[Click here](#) for more detailed facts and statistics from the [Women of Color Network](#)

\*Information in this section is adapted from the NH Coalition Against Domestic & Sexual Violence (NHCADSV) website: [http://www.nhcadsv.org/learn\\_more.cfm](http://www.nhcadsv.org/learn_more.cfm)

## ***IMMIGRANTS/REFUGEES***

Although immigrant, refugee and non-status community members experience the same forms of sexual violence as those experienced by American-born victims, they also face a set of unique obstacles that can create barriers in accessing assistance. Many of these challenges can also increase their vulnerability to sexual assault.

### **Cultural Adjustments**

Refugees and immigrants may come here from war-torn countries, many having endured various forms of trauma. The lack of language proficiency, unfamiliarity with local laws and minimal family support nearby can make it challenging to understand what has happened or what services are available to them.

### **Service Accessibility**

Victims experiencing sexual assault may come from countries where sexual assault resources are not available or where sexual assault may even be condoned. These victims may not know how to seek out services in the US. Oftentimes these services are not linguistically or culturally accessible to refugee and immigrant victims.

### **Fear of deportation**

Many immigrant and refugee victims remain silent about their abuse because they fear deportation. If a victim of sexual assault does not have legal residency, they may worry that the assault will affect their ability to stay in the country or that it may affect their attempt to become a legal resident.

*Refer to [Appendix M](#) for resources.*

## ***U.S. CITIZENS VICTIMIZED ABROAD***

When United States citizens travel outside of the country and return to New Hampshire to report that they were the victim of a crime outside of this country, all first responders should refer to the guidance and resources provided by the Office of Victims of Crime (OVC) at the U.S. Department of Justice. With this information and support, U.S.-based victim service providers can prepare to deliver comprehensive and effective services to victims of overseas crimes by facilitating access to resources both abroad and in the United States. These victims could include tourists, business travelers and students studying abroad ([reference pg. 62](#) for more info), involved in internships, overseas ministries and other relevant activities (See [Appendix M](#)).

## VICTIMS' COMPENSATION PROGRAM

Victims of sexual assault may be eligible to apply to the **New Hampshire Victims' Compensation Program** for compensation of medical/dental expenses, mental health therapy expenses, lost wages, reimbursement for clothing or bedding held as evidence by police, or other out-of-pocket expenses not covered by insurance or other resources available to the victim. The compensation must be directly related to the victims' condition as a result of the crime. Property losses and pain and suffering cannot be compensated using this program. In order to qualify, generally, the victim must report the crime to law enforcement. However, if a victim sought medical treatment within 5 days of the assault and agreed to the forensic evidence collection, but does not want to report to police, they are still eligible to apply for compensation.

Collaboration between law enforcement and the Victims' Compensation Program is essential to the success of this program. In order to assist victims with crime-related expenses, law enforcement reports pertaining to the crime must be provided to the New Hampshire Victims' Compensation Program. The reports are necessary, in order to determine that the victim is eligible for compensation pursuant to the laws that govern this program. Delays in receiving the reports may affect a victim's eligibility. Additionally, failure to submit the law enforcement reports when requested could result in the program's inability to process a victim's claim for crime-related assistance. **Please note that all law enforcement reports remain confidential; the reports are not shared with the victim or offender and are not subject to the Right-to-Know laws.**

**Law enforcement is encouraged to inform** victims about this program. Victim/witness programs and crisis centers can assist victims with the application process.

*Victims can now apply  
to the Victims'  
Compensation  
Program online at:  
<https://ccvcnh.org/>*

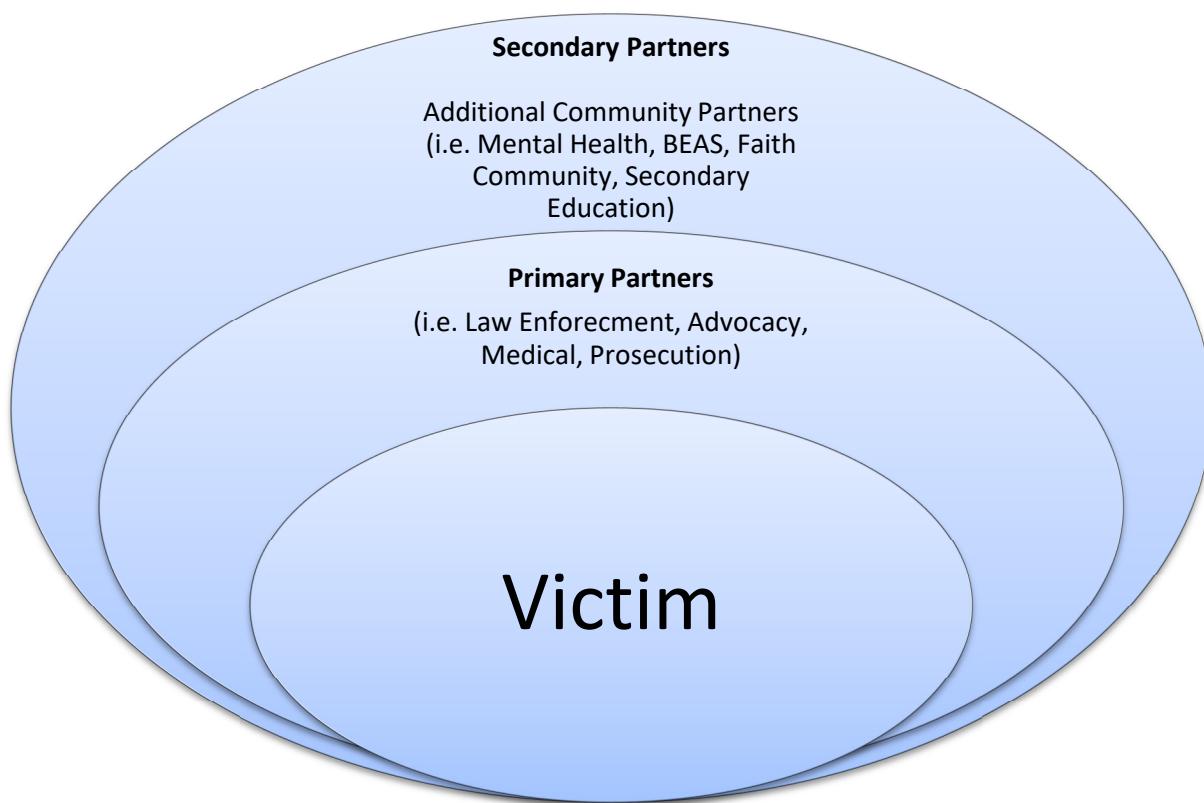
**NH Victims' Compensation Program**  
**Attorney General's Office**  
**33 Capitol Street**  
**Concord, NH 03301**  
**1-800-300-4500 (in NH only)**  
**Or (603) 271-1284**  
**E-mail: [victimcomp@doj.nh.gov](mailto:victimcomp@doj.nh.gov)**

For more information go to: <http://doj.nh.gov/grants-management/victims-compensation-program/index.htm>

## CONCLUSION

Sexual assaults are among society's most heinous and under reported crimes. Across the nation and here, in New Hampshire, great emphasis is being placed on the need for law enforcement, health care professionals, victim advocate groups, prosecutors and other allied professionals to take a collaborative, proactive approach when reports of sexual violence are made by adult victims. When the criminal justice system's response to victims is conducted by following best practice guidelines, the goal is to minimize further trauma to the victim and to assist in their healing. The SART Model is a successful way for all professionals to work in a victim-centered way that will hold offenders accountable for their behavior and lead to safer communities. The updating of this Protocol is part of a comprehensive plan to ensure consistent, sensitive, and compassionate treatment for victims and to increase successful prosecutions through thorough victim-centered investigations.

***It is the expectation of the New Hampshire Office of the Attorney General that all disciplines involved in the response to adult sexual assault will work collaboratively using a victim-centered approach.***



# APPENDICES



## APPENDIX A

### CRISIS CENTER LIST

**NH Statewide Sexual Assault Hotline: 1-800-277-5570**

**NH Statewide Domestic Violence Hotline: 1-866-644-3574**

**NH Coalition Against Domestic and Sexual Violence - PO Box 353, Concord, NH 03302-0353 - Office Phone: 603-224-8893  
General Web Site: [www.nhcadsv.org](http://www.nhcadsv.org)**

The NH Coalition is comprised of 13 member programs throughout the state that provide services to survivors of sexual assault, domestic violence, stalking and sexual harassment. You do not need to be in crisis to call. Services are free, confidential, and available to everyone regardless of gender, age, health status (including HIV-positive), physical, mental or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation. The services include:

- Support and information, available in person and through a 24-hour hotline
- Accompaniment, support, and advocacy at local hospitals, courts, and police departments
- Access to emergency shelter
- Peer Support Groups
- Assistance with protective/restraining orders and referrals to legal services
- Information and referrals to community programs
- Community and professional outreach and education

**RESPONSE to Sexual & Domestic Violence**

54 Willow Street  
**Berlin**, NH 03570  
1-866-662-4220 (crisis line)  
603-752-5679 (Berlin office)  
603-636-1747 (Groveton office)  
<http://www.coosfamilyhealth.org/response.php>

**Turning Points Network**

11 School Street  
**Claremont**, NH 03743  
1-800-639-3130 (toll free crisis line)  
603-543-0155 (Claremont office)  
603-863-4053 (Newport office)  
[www.turningpointsnetwork.org](http://www.turningpointsnetwork.org)

**Crisis Center of Central NH (CCCNH)**

PO Box 1344  
**Concord**, NH 03302-1344  
1-866-841-6229 (crisis line)  
603-225-7376 (main office)  
[www.cccnh.org](http://www.cccnh.org)

**Starting Point: Services for Victims of Domestic & Sexual Violence**

PO Box 1972  
**Conway**, NH 03818  
1-800-336-3795 (crisis line)  
603-447-2494 (Conway office)  
603-539-5506 (Ossipee office)  
[www.startingpointnh.org](http://www.startingpointnh.org)

**Sexual Harassment & Rape Prevention Program (SHARPP)**

2 Pettee Brook  
Wolff House  
**Durham**, NH 03824  
1-888-271-SAFE (7233) (crisis line)  
603-862-3494 (office)  
[www.unh.edu/sharpp](http://www.unh.edu/sharpp)

**Monadnock Center for Violence Prevention**

12 Court Street  
**Keene**, NH 03431-3402  
1-888-511-6287 (crisis line)  
603-352-3782 (crisis line)  
603-352-3782 (Keene office)  
603-209-4015 (Peterborough)  
[www.mcvprevention.org](http://www.mcvprevention.org)

**New Beginnings – Without Violence and Abuse**

PO Box 622  
**Laconia**, NH 03247  
1-866-841-6247 (crisis line)  
603-528-6511 (office)  
[www.newbeginningsnh.org](http://www.newbeginningsnh.org)

**WISE**

38 Bank Street  
**Lebanon**, NH 03766  
1-866-348-WISE (crisis line)  
603-448-5525 (local crisis line)  
603-448-5922 (office)  
[www.wiseuv.org](http://www.wiseuv.org)

**The Support Center at Burch House**

PO Box 965  
**Littleton**, NH 03561  
1-800-774-0544 (crisis line)  
603-444-0624 (Littleton office)  
[www.tccap.org/support\\_center.htm](http://www.tccap.org/support_center.htm)

**YWCA Crisis Service**

72 Concord Street  
**Manchester**, NH 03101  
603-668-2299 (crisis line)  
603-625-5785 (Manchester office)  
[www.ywcahn.org](http://www.ywcahn.org)

**Bridges: Domestic & Sexual Violence Support**

PO Box 217  
**Nashua**, NH 03061-0217  
603-883-3044 (crisis line)  
603-889-0858 (Nashua office)  
603-672-9833 (Milford office)  
[www.bridgesnh.org](http://www.bridgesnh.org)

**Voices Against Violence**

PO Box 53  
**Plymouth**, NH 03264  
1-877-221-6176 (crisis line)  
603-536-1659 (local crisis line)  
603-536-5999 (public office)  
603-536-3423 (shelter office)  
<http://www.voicesagainstviolence.net>

**HAVEN**

20 International Dr, Suite 300  
**Portsmouth**, NH 03801  
603-994-SAFE (7233) (crisis line)  
603-436-4107 (Portsmouth office)  
(Offices in Portsmouth, Rochester and Salem)  
[www.havennh.org](http://www.havennh.org)

## **APPENDIX B**

### **COUNTY ATTORNEY'S OFFICES/VICTIM WITNESS PROGRAMS**

**State Office of  
Victim/Witness Assistance**  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301  
603 271-3671

**Belknap County**  
Victim/Witness Program  
Belknap County Superior  
Courthouse  
64 Court Street  
Laconia, NH 03246  
603 527-5440

**Carroll County**  
Victim/Witness Program  
P.O. Box 218  
Ossipee, NH 03864  
603 539-7476

**Cheshire County**  
Victim/Witness Program  
12 Court Street  
Keene, NH 03431  
603 355-3037

**Coos County**  
Victim/Witness Program  
55 School St., Suite 102  
Lancaster, NH 03584  
603-788-3812

**Grafton County**  
Victim/Witness Program  
3785 Dartmouth College  
Highway, Box 7  
No. Haverhill, NH 03774  
603 787-2040 or  
603 787-6968

**Hillsborough County**  
Victim/Witness Program  
Northern District  
300 Chestnut Street  
Manchester, NH 03101  
603 627-5605

**Hillsborough County**  
Attorney's Office  
Southern District  
Victim Witness Program  
19 Temple Street  
Nashua, NH 03060  
603 594-3255

**Merrimack County**  
Victim/Witness Program  
4 Court Street  
Concord, NH 03301  
228-0529

**Rockingham County**  
Victim/Witness Program  
P.O. Box 1209  
Kingston, NH 03848  
603 642-4249

**Strafford County**  
Victim/Witness Program  
259 County Farm Road  
Dover, NH 03821-0799  
603 749-4215

**Sullivan County**  
Victim/Witness Program  
Sullivan County Attorney's  
Office  
14 Main Street  
Newport, NH 03773  
603 863-8345

**United States Attorney's  
Office**  
District of New Hampshire  
James C. Cleveland Federal  
Bldg.  
55 Pleasant St., Suite 312  
Concord, NH 03301  
603 225-1552

## **APPENDIX C**

### **NEW HAMPSHIRE BUREAU OF ELDERLY AND ADULT SERVICES**

**To make all mandatory reports, contact Central Intake at 1-800-949-0470 or 603-271-7014, or contact:**

**New Hampshire Division of Elderly and Adult Services**  
129 Pleasant Street, Concord, NH 03301-3857  
1-800-852-3345 or TDD Access: Relay NH 1-800-735-2964

**Berlin District Office**  
650 Main Street, Suite 200  
Berlin, NH 03570  
603-752-8340 or  
1-800-972-6111

**Littleton District Office**  
80 North Littleton Road  
Littleton, NH 03561  
603-752-8343 or  
1-800-552-8959

**Claremont District Office**  
17 Water Street  
Claremont, NH 03743  
603-542-9544 or  
1-800-982-1001

**Manchester District Office**  
1050 Perimeter Rd., Suite 501  
Manchester, NH -03103  
603-665-8348 or  
1-800-852-7493

**Concord District Office**  
40 Terrill Park Drive  
Concord, NH 03301  
603-271- 6200 or  
1-800-322-8191

**Southern District Office**  
3 Pine Street Ext., Suite Q  
Nashua, NH 03060  
603-579-0332 or  
1-800-852-0632

**Conway District Office**  
73 Hobbs Street  
Conway, NH 03818  
603-330-7441 or  
1-800-552-4628

**Seacoast District Office**  
50 International Drive  
Portsmouth, NH 03801  
603-334-4316 or  
1-800-821-0326

**Keene District Office**  
111 Key Road  
Keene, NH 03431  
603- 283-6502 or  
1-800-624-9700

**Rochester District Office**  
150 Wakefield Street, Suite 22  
Rochester, NH 03867  
603-330-7441 or  
1-800-862-5300

**Laconia District Office**  
65 Beacon Street West  
Laconia, NH 03246  
603-524-4485 or  
1-800-322- 2121

rev. 2016

## APPENDIX D

### STRANGULATION QUICK REFERENCE GUIDE

Document All Findings in an Appropriate Report or Chart

Date/Time of Assault: \_\_\_\_\_ Date/Time of Exam: \_\_\_\_\_

Face	Eyes & Eyelids	Nose	Ears	Mouth
<input type="checkbox"/> Red/Flushed <input type="checkbox"/> Petechiae <input type="checkbox"/> Scratches	<input type="checkbox"/> Petechiae R/L eye <input type="checkbox"/> Petechiae R/L lid <input type="checkbox"/> Bloody Conjunctiva	<input type="checkbox"/> Nosebleed <input type="checkbox"/> Deformity <input type="checkbox"/> Petechiae (in or on)	<input type="checkbox"/> Petechiae (in or on) <input type="checkbox"/> Bleeding from ear canal	<input type="checkbox"/> Bruising <input type="checkbox"/> Swollen tongue/lips <input type="checkbox"/> Cuts/abrasions
Under Chin	Neck	Shoulders	Chest	Head
<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions <input type="checkbox"/> Edema (swelling) <input type="checkbox"/> Fingernail impressions <input type="checkbox"/> Ligature marks	<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions	<input type="checkbox"/> Petechiae <input type="checkbox"/> Missing Hair <input type="checkbox"/> Edema <input type="checkbox"/> Fractures <input type="checkbox"/> Concussion
Breathing Changes	Voice Changes	Swallowing Changes	Behavioral Changes	Other
<input type="checkbox"/> Difficulty Breathing <input type="checkbox"/> Hyperventilation <input type="checkbox"/> Unable to breathe	<input type="checkbox"/> Raspy voice <input type="checkbox"/> Hoarse voice <input type="checkbox"/> Coughing <input type="checkbox"/> Unable to or difficulty speaking	<input type="checkbox"/> Trouble swallowing <input type="checkbox"/> Painful swallowing <input type="checkbox"/> Neck Pain <input type="checkbox"/> Nausea/ Vomiting <input type="checkbox"/> Drooling	<input type="checkbox"/> Agitation <input type="checkbox"/> Amnesia <input type="checkbox"/> PTSD <input type="checkbox"/> Hallucinations <input type="checkbox"/> Combativeness	<input type="checkbox"/> Dizzy <input type="checkbox"/> Headaches <input type="checkbox"/> Fainted <input type="checkbox"/> Urination <input type="checkbox"/> Defecation

#### Strangulation Quick Reference Guide

- How and where was the victim strangled?
- One Hand (R or L), Two Hands, Forearm (R or L), Knee/Foot, Ligature (describe)
- How long? \_\_\_\_\_ seconds \_\_\_\_\_ minutes
- Was the victim smothered?
- From 1 to 10, how hard was the suspect's grip? (low) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (high)
- From 1 to 10, how painful was it? (low) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (high)
- Multiple attempts: \_\_\_\_\_ Multiple methods: \_\_\_\_\_
- Was the victim shaken simultaneously while being strangled? Straddled?
- Was the victim held against a wall?
- Was the victim's head being pounded against wall, floor or ground?
- What did the victim think was going to happen?
- What caused the strangulation to stop?
- Any prior incidents of strangulation? Prior domestic violence? Prior threats?

*Prepared by Detective Bob Frechette – [www.refconsultant.com](http://www.refconsultant.com)*

## **APPENDIX E**

### **STRANGULATION INVESTIGATION QUESTIONS**

The following is a list of suggested questions to ask a victim in a strangulation case. Remember that victims and witnesses will often refer to this event as “choking” and law enforcement should consider using the terms with which that person is comfortable.

- **Could you breathe? Was your breathing affected during the assault or now? Tell me more about that.**
- Ask the victim to describe how they were strangled if they can. Was it one or two hands, forearm, knee, foot, with an object, etc.?
- What did the suspect say before, during and after they strangled the victim?
- Was the victim shaken, straddled, lifted off the ground or held against something while strangled? Ask the victim to describe this and the surface area.
- Was the victim’s head struck against a wall, floor, ground or other object?
- Was the suspect wearing any rings or other jewelry? Look for marks from those objects.
- Were there multiple attempts and/or multiple methods? Are they able to describe each incident and method?
- Was smothering involved?
- Is the perpetrator right or left handed?
- How much pressure was used? Describe it on a scale of 1 to 10 and was it continuous?
- Describe any voice changes. Any complaint of pain to the throat? Any coughing or trouble swallowing?
- How did the victim feel during the assault (dizzy, nauseous, loss of consciousness)?
- How does the victim feel now?
- Did the victim experience any visual changes during the strangling?
- Did the victim vomit, urinate or defecate as a result of being strangled?
- What did the victim think was going to happen while they were being strangled?
- What caused the suspect to stop strangling the victim?
- What was the perpetrator’s demeanor before, during and after the assault?
- Describe what the perpetrator looked like during the strangulation?
- Was the victim able to do anything to try and stop the assault (scratch, bite, hit, etc.)?
- Will the suspect have injuries?
- Have there been prior incidents of strangulation, domestic violence or threats?

Are there any visible injuries on the victim? Look for injuries behind the ears, all around the neck, under the chin and jaw, eyelids, shoulders and upper chest area (as appropriate). Photograph injuries and surrounding area. Photograph the lack of injury and any areas the victim feels pain. Photograph any object used and described by the victim and seize as evidence.

**APPENDIX F**  
**SUGGESTED LANGUAGE FOR APPROACHING A VICTIM TO ASK FOR**  
**EXPRESS CONSENT WHEN WEARING A BWC**

“I am wearing a body worn camera and it is currently recording both audio and video. You should know that the recording will become a part of this investigation and is the property of the \_\_\_\_\_ Police Department. It SHALL NOT be used for commercial or other non-law enforcement purposes. If someone is arrested and charged in this matter, the recording may be seen by other people. I want to let you know you have the option to decline being recorded. At any point in time, you can change your mind about the camera being on or off. No matter what you choose to do, your case will be fully investigated. Do you understand this and do you have any questions? Do I have your permission to continue recording or do you want me to turn the camera off?”

## **APPENDIX G**

### **SUSPECT EXAM EVIDENCE COLLECTION CONSIDERATIONS**

**Possible items of evidentiary value to request by consent or list in an affidavit:**

1. DNA/Buccal Swabs (collect on every suspect)
2. Oral swabs
3. Clothing (List ALL items to be collected):
  - a. (Example:) Underwear/boxer shorts
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
4. Fingernail scrapings (list one hand or both):
  - a. Right Hand
  - b. Left Hand
  - c. Both
5. Foreign Materials (List ALL items to be collected. *For example:* Swabs from right side of neck for possible saliva)
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
6. Penile Swabs
7. Observation & documentation of any discharge or injury in genital area
8. External Genitalia Swabs (female suspect)
9. Vaginal/Cervical Swabs (female suspect)
10. Listing of observable injuries with associated body map diagram  
For example: bruises, scratches, bite marks \_\_\_\_\_
11. Photographs (List ALL areas to be photographed in search warrant & affidavit or on consent form.  
For example: tattoos, piercings, all observable individual areas of injury, anomalies, head to toe, etc.) \_\_\_\_\_  
\_\_\_\_\_
12. Other item: Please list \_\_\_\_\_
13. Other item: Please list \_\_\_\_\_
14. Other item: Please list \_\_\_\_\_

## **APPENDIX H**

### **INVESTIGATIVE TOOL: ONE-PARTY INTERCEPTS**

RSA 570-A governs wiretapping and eavesdropping. RSA 570-A:2, I, and RSA 570-A:2, I-a define the felony and misdemeanor crimes of wiretapping, while RSA 570-A:2, II(d) outlines the circumstances under which law enforcement can intercept and/or record a conversation without the consent of all the parties involved in the conversation.

Authorization for a one-party interception cannot be granted in all criminal investigations. Rather, such authorization may only be granted to facilitate the investigation of a specific list of crimes. RSA 570-A:2, II(d) and RSA 570-A:7 specify those crimes, which are:

Solid waste violations, harassing or obscene phone calls, commission of organized crime, homicide, kidnapping, gambling, theft, corrupt practices, child pornography, computer pornography and child exploitation, criminal conduct in violation of the securities law, criminal conduct in violation of the security takeover disclosure laws, robbery, arson, hindering apprehension or prosecution, tampering with witnesses and informants, **aggravated felonious sexual assault**, **felonious sexual assault**, escape, bail jumping, insurance fraud, drugs offenses, hazardous waste violations, or any conspiracy to commit any of the foregoing offenses.

If you wish to have an individual wear a body wire to record and monitor a conversation, or if you wish to record a telephone conversation **between a person and the suspect** (without telling the suspect), the following steps **must** be taken:

- A. Evaluate whether a one-party intercept is appropriate for the specific case being investigated. Discussion with a prosecutor in the County Attorney's Office is recommended.
- B. Talk with someone who has done this before if you are unfamiliar with doing this. Check with other members of your department, other local departments, State Police or the Sheriff's Department.
- C. Obtain the cooperating witness's consent, preferably in writing. Explain the process of the one-party interception to the witness and ensure that witness knows that the interception can only proceed with his or her consent. If the witness is a juvenile, you will need the written consent of a parent/guardian.
- D. Be prepared to summarize the evidence that causes you to have reasonable suspicion that evidence of criminal conduct will be derived from such interception—that is, reasonable suspicion that the target has committed or will commit the crime you're investigating, and discuss this with the cooperating witness. Reasonable suspicion is suspicion based on specific, articulable facts, together with rational inferences drawn from those facts. Some questions you may want to have answers to include:
  - Why is the cooperating witness credible?
  - What has motivated the witness to make these allegations? Is there a reason to question the cooperating witness's incentive to accuse the suspect?

- What details has the witness been able to provide about the crime and about the target?
  - What evidence corroborates what the cooperating witness says?
  - Does the target have a criminal history which suggests he or she is someone likely to have committed the crime under investigation?
- E. Know when and how you plan to execute the intercept. Authorization for the intercept will be limited to a specific timeframe, so you must have a plan in place before requesting the authorization.
- F. Obtain authorization from the New Hampshire Attorney General's Office. Remember, the authorization is only valid for the specific date and time authorized.
1. Call the Criminal Bureau at **271-3671**
  2. Explain that you need to request permission to conduct a one-party intercept. You will be placed in contact with an on-call Assistant Attorney General.
  3. The on-call attorney will need certain information from you, such as: your name, rank, agency, and phone number; the name, date of birth, and address of the target; the evidence the officer has to reasonably suspect that evidence of criminal conduct will be derived from such interception; and the date and time period during which you plan to conduct the one-party intercept.
  4. The on-call attorney will need to document the information you provide in a memorandum. This includes the basis of your belief that the interception will produce evidence of a crime. That memo should reflect the reasonable suspicion articulated by the officer that the individual providing the information is reliable and that their information is reliable. In determining whether reasonable suspicion exists, the attorney will consider the same factors a judge would consider in evaluating whether an investigative stop was supported by reasonable suspicion. The memorandum must also reflect that the person who wears the body wire or places the call to the suspect consents to being recorded.

Note that County Attorneys are permitted to authorize one-party interceptions, but only in drug cases, and only in the county where the county attorney serves. See RSA 570-A:2,II(e).

#### D. Equipment

1. Your department may have the proper equipment. However, if not, check with larger surrounding agencies, State Police, or the Drug Task Force (DTF)
2. A "Y" jack is necessary for the conversation to pass directly to a recording device instead of to your phone, especially if the phone being used is not department-issued.
3. The call must be made from a secure location. Make sure the phone line is "clean".
4. Check and double check the equipment.

E. **Counter surveillance** - You may want to confirm that the suspect is alone when the call is placed. Suspects may be more willing to talk if no one else is around.

**F. Location** -Identify a quiet location so that the recording is clear. Cars and public places are not recommended because of too much background noise. If the call is made from the police department, be sure that all radios, portables and intercoms are turned off.

**G. Tips**

1. You can script the conversation to assist the caller and, you can suggest themes.
2. Never be afraid to request additional one-party intercepts if this tool is working for your investigation.
3. If you are considering utilizing a one-party intercept, it should be done before a suspect realizes there is an active investigation underway. However, this tool can be used successfully after law enforcement contact that did not result in arrest. If the suspect is aware of the investigation, the officer requesting the intercept should be prepared to advise the Assistant Attorney General of the status of the suspect and whether he or she has obtained counsel or otherwise invoked their rights.
4. If you are calling from the police department, make sure that the telephone number from the line being used does not show up on caller ID. Use the victim/witness's phone if possible.
5. Intercepts can also be used for face to face meetings if circumstances warrant it and the victim/witness is willing to do so.

**REMINDER:**

**It is inappropriate to use a one-party in order to obtain information from a victim.**

## **APPENDIX I**

### ***MEMORANDUM***

TO: All Law Enforcement Personnel  
FROM: Joseph A. Foster, Attorney General  
DATE: January 8, 2016  
RE: Polygraph Examinations of Sexual Assault/Sexual Abuse Victims

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I have recently been made aware that certain law enforcement agencies are considering conducting polygraph examinations of sexual assault victims. To the extent this is occurring, it should stop. The use of polygraph examinations in sexual assault investigations is contrary to best practices and it will jeopardize New Hampshire's ability to receive federal grant funds under the Violence Against Women Act [VAWA].

Beginning in 2006, VAWA has included a mandate that strictly prohibits the polygraph examination of any adult, youth or child victim of a reported sex offense, as follows:

- **Polygraph Testing Prohibition:**

States must certify that no later than three years of the date of enactment of this section (January 5, 2006) their laws, policies, or practices will ensure that no law enforcement officer, prosecutor, or other government official shall ask or require an adult, youth or child victim of a reported sex offense to submit to a polygraph examination as a condition for proceeding with investigation of the offense and that the refusal of a victim to submit to an exam shall not prevent the investigation, charging or prosecution of the offense.

In order for New Hampshire to continue receiving this nearly one million-dollar federal grant program the Department of Justice must certify that law enforcement is not engaging in the practice of polygraphing reported sexual assault victims. Loss of those funds would result in the reduction or elimination of critical services, including domestic violence/sexual assault prosecutors, dedicated domestic violence police officers, crisis centers services, sexual assault nurse examiner services, and the annual statewide domestic/sexual violence conference.

Please share this with your staff and if you have any questions or concerns, please contact Lynda Ruel at (603) 271-1237. Thank you for cooperation.

## **APPENDIX J**

### **SEARCH WARRANT TIP SHEET FOR COMMUNICATION DEVICES**

This is not a comprehensive list but is a list of suggested information that officers should consider including whenever applying for a search warrant for an electronic communication device.

#### **FOR THE SEARCH WARRANT FACE SHEET:**

- The person of (insert name here).
- We therefore command you to make a search of the above-mentioned location, vehicles, and person. The search is authorized to be conducted during the night time, or any time of the day, for the following property:
  - Any cell phones or hand held communication devices.
  - And to examine the cell phones for subscriber and electronic communication documentation specific to this case, in specifically requesting that the search warrant authorize any appropriate law enforcement agency access to the items referred to in the search warrant, the authority to open these items, view their contents, and copy and reproduce all data contained therein as necessary for the investigation and prosecution of this matter.

#### **FOR THE AFFIDAVIT:**

- I know through my training and experience<sup>42</sup> that cell phones store data to include text messages, call records, photos, received contacts and other data pertinent to an investigation.
- I know from my training and experience that even if the files were deleted by a user, they still may be recoverable by a trained computer forensic examiner.
- I know from training and experience that files related to the exploitation of children found on computers are usually obtained from the Internet using application software which often leaves files, logs or file remnants which would tend to show the exchange, transfer, distribution, possession or origin of the files.
- I know from training and experience that computers used to access the Internet usually contain files, logs or file remnants which would tend to show ownership and use of the computer as well as ownership and use of Internet service accounts used for the Internet access.

#### **FOR THE SEARCH WARRANT APPLICATION:**

- Based upon the foregoing information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described as any cell phones or hand held communication devices is evidence used in the commission of a felony crime (insert crime) as defined by (insert RSA here) and is the property of (insert name here), and may be found in the possession of (insert name here) at the residence of (insert address and town), New Hampshire.
- The property I intend to seize as a result of the issuance of a Search Warrant is the following:
  - Any cell phones or hand held communication devices.

---

<sup>42</sup> If you are not relying on your own training and experience, but instead are relying on another officer or expert's training and experience, please identify and articulate the source.

- And to examine the cell phones for subscriber and electronic communication documentation specific to this case, in specifically requesting that the search warrant authorize any appropriate law enforcement agency access to the items referred to in the search warrant, the authority to open these items, view their contents, and copy and reproduce all data contained therein as necessary for the investigation and prosecution of this matter.

## APPENDIX K PRESERVATION ORDERS



**NEW HAMPSHIRE**  
OFFICE OF THE ATTORNEY GENERAL

**Date:**

**To:** \_\_\_\_\_, Legal Analyst

**Company:**

**Address:**

**City/State/Zip:**

**Fax:**

**Master Case #**

### **ISP PRESERVATION ORDER**

You are hereby requested to preserve, under the provisions of Title 18, United States Code, Section 2703(f)(1), the following records in your custody or control, including records stored on backup media:

- A. All information (not to include email), and other files, associated with the account that was assigned **IP Address**      **on (day)**      **, (date)**      **at (time)**      **AM/PM Eastern Daylight Time (UTC offset of -4/-5)**.
- B. All connection logs and records of user activity for each such account, including:
  - (1) name;
  - (2) address;
  - (3) local and long distance telephone connection records, or records of session times and durations;
  - (4) length of service (including start date) and types of service utilized;
  - (5) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
  - (6) means and source of payment for such service (including any credit card or bank account number)
- C. relating to the account assigned **IP Address**      **on (day)**      **, (date)**      **at (time)**  
**AM/PM Eastern Daylight Time (UTC offset of -4/-5).**
- D. Any other records related to the above-referenced names and user names, including, without limitation, correspondence, billing records, records of contact by any person or entity about the above-referenced names and user names, and any other subscriber information.

You are requested to preserve for a period of 90 days the records described above currently in your possession. This request applies only retrospectively; it does not obligate you to capture and preserve new information that arises after the date of this request. **Failure to comply with this request could subject you to liability under 18 U.S.C. § 2707.**

You are also requested not to disclose the existence of this request to the subscriber or any other person, other than as necessary to comply with this request.

Please refer any questions to:

Detective : \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Thank you in advance for your cooperation

*Address, Town, NH Zip  
PHONE:/FAX:*

## **CELL PHONE RECORD PRESERVATION**

### **AGENCY LETTERHEAD**

Custodian of Records

[Check [www.Search.org](http://www.Search.org) for this information]

**Phone Number:**

Fax Number:

**Email:**

**Date:**

**Case #**

### **PRESERVATION ORDER**

**90 DAY**

The \_\_\_\_\_ police Department is investigating an allegation of \_\_\_\_\_. You are hereby requested to preserve, under the provisions of Title 18, United States Code, Section 2703(f)(1), the following records in your custody or control, including records stored on backup media:

Subscriber telephone number: \_\_\_\_\_ Time Period: From \_\_\_\_\_ To \_\_\_\_\_

1. Subscriber billing and account information-to include account notes;
2. Length of service;
3. Incoming and outgoing cell tower records;
4. Incoming and outgoing call detail records;
5. Cell tower location information;
6. The means and source of payment for such service (including any credit card or bank account number);
7. All stored photographic or video images;
8. All stored voice mail messages;
9. Incoming and outgoing test message **CONTENT**.

You are requested to preserve for a period of 90 days the records described above currently in your possession. This request applies only retrospectively; it does not obligate you to capture and preserve new information that arises after the date of this request.

You are also requested **not to disclose** the existence of this request to the subscriber or any other person, other than as necessary to comply with this request.

Please refer any questions to:

Detective \*\*\*\*

Your agency info here

# APPENDIX L

## RETENTION PERIODS OF MAJOR CELLULAR SERVICE PROVIDERS



### Retention Periods of Major Cellular Service Providers

Prepared by the Computer Crime and Intellectual Property Section, U.S. Department of Justice, (202) 514-1026, and  
FBI's Cellular Analysis Survey Team

	Verizon	AT&T	Sprint/Nextel**	T-Mobile
Subscriber Information	Post-paid: 3-5 years*	Depends on length of service	Unlimited	5 years
Call detail records	1 year	Pre-paid: varies Post-paid: 5-7 years	18 mo. (approx.)	Pre-paid: 2 years Post-paid: 5 years
Cell towers used by phone for calls	1 year	From July 2008	18 mo. (approx.) for Sprint CDMA devices; 18-24 months for Nextel iDEN devices	6 months
Text message (SMS) records	1 year	Post-paid: 5-7 years	18 mo. (approx.) for Sprint CDMA devices; not available for Nextel iDEN devices	Pre-paid: 2 years Post-paid: 5 years
Text message (SMS) content	3-5 days (never more than 10)	Not retained	Not retained	Not retained
Cell towers used for SMS transmission	Not retained	1 year	Varies	180 days
Pictures (MMS)	PixPlace only (customer can add or delete pictures any time)	Not retained	Contact provider	Can be stored online. Retained until deleted, or until service is canceled or suspended.
IP session information	1 year	72 hours maximum	18 mo. (approx.)	Not retained
IP source & destination information	90 days	72 hours maximum	6 mo. (approx.)	Not retained
Bill copies (post-paid only)	3-5 years, but only last 12 months readily available *	5-7 years	7 years	Pre-paid: 2 years Post-paid: 5 years
Payment history (post-paid only)	3-5 years, check copies for 6 months*	Depends on length of service	Unlimited	5 years

\* May vary by former company.

\*\* For records older than mid-November 2007, Sprint can only provide bill reprints with outgoing info.



## Retention Periods of Major Cellular Service Providers

Prepared by the Computer Crime and Intellectual Property Section, U.S. Department of Justice, (202) 514-1026, and  
FBI's Cellular Analysis Survey Team

	TracFone	Cricket	MetroPCS	US Cellular
Subscriber Information	2 years	18 months	6 months minimum	7 years
Call detail records	2 years	6 months	6 months	1 year
Cell towers used by phone for calls	Not available	6 months (?)	6 months	1 year
Text message (SMS) records	Not available	Phone-to-phone: Not retained Web-to-phone: 3 mos.	60 days	1 year
Text message (SMS) content	Not available	Phone-to-phone: Not retained Web-to-phone: 3 mos.	60 days	3-5 days
Cell towers used for SMS transmission	Unknown	Not retained	Not retained	Not retained
Pictures (MMS)	Not available	Not retained	Not retained	Unknown
IP session information	30 days	Not retained	Not retained	1 year
IP source & destination information	30 days	Not retained	Not retained	Unknown
Bill copies (post-paid only)	Not available	Unknown	Unknown	7 years
Payment history (post-paid only)	Life of the phone	Unknown	Unknown	1 year

## **APPENDIX M** **RESOURCE LIST**

### **Advocacy**

National Sexual Violence Resource Center: <http://www.nsvrc.org/>

National Online Resource Center on Violence Against Women (VAWnet.org): <http://www.vawnet.org/>

Joyful Heart Foundation, *Navigating Notification: A Guide to Re-Engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog*:

<http://endthebacklog.org/information-survivors/victim-notification>

Post Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence:

<http://library.niwap.org/wp-content/uploads/2015/pdf/PB-Man-Ch17.3-PostAssaultHealthCareCompensation.pdf>

### **Body Worn Cameras**

*Implementing a Body Worn Camera Program, Recommendations and Lessons Learned*, U.S. Department of Justice, Office of Community Oriented Policing Services (COPS)

<http://ric-zai-inc.com/ric.php?page=detail&id=COPS-P296>

*National Body Worn Camera Toolkit*, U.S. Department of Justice, Bureau of Justice Assistance (BJA)  
<https://www.bja.gov/bwc/>

*National Body Worn Camera Toolkit, Privacy FAQs: What concerns victims have regarding body-worn cameras?* <https://www.bja.gov/bwc/Topics-Privacy.html>

*National Body Worn Camera Toolkit, Law Enforcement Implementation Checklist*  
<https://www.bja.gov/bwc/pdfs/BWCImplementationChecklist.pdf>

*Model Policy: Body Worn Cameras*, International Chiefs of Police (IACP)  
<http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/BodyWornCamerasPolicy.pdf>

### **Campus Sexual Assault Resources**

Clery Center for Campus Security: <http://clerycenter.org/>

Not Alone Together Against Sexual Assault: <https://www.notalone.gov/>

Support for Male Victims: <https://lin6.org/>

The National Center for Campus Public Safety: <http://www.nccpsafety.org/>

The U.S. Department of State, Overseas Security Advisory Council's (OSAC) report, *Addressing Sexual Assault While Abroad* (PDF): [https://studyabroad.uni.edu/\\_customtags/ct](https://studyabroad.uni.edu/_customtags/ct)

The Clery Act and Education Abroad: Understanding Crime Reporting Requirements

Presentation: [http://www.nafsa.org/\\_file/\\_clery\\_act\\_2014\\_san\\_diego.pdf](http://www.nafsa.org/_file/_clery_act_2014_san_diego.pdf)

Supplemental handout:

[http://www.nccpsafety.org/assets/files/library/clery\\_act\\_and\\_education\\_abroad.pdf](http://www.nccpsafety.org/assets/files/library/clery_act_and_education_abroad.pdf)

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act: Applicability to Education Abroad Programs: [http://www.nccpsafety.org/assets/files/library/jeanne\\_clery\\_disclosure.pdf](http://www.nccpsafety.org/assets/files/library/jeanne_clery_disclosure.pdf)

*Also see resources listed under “U.S. Citizens Victimized Abroad” below in this document.*

## **General Resources**

Ending Violence Against Women International (EVAWI) has created a library of **free On-line Training** courses for various professionals involved in sexual assault response.

<http://olti.evawintl.org/Courses.aspx>

Ending Violence Against Women International (EVAWI) has created a library of **Training Bulletins and Webinars** addressing numerous topics relevant to sexual assault investigations including: *Suggested Guidelines for Language Use on Sexual Assault; When to Conduct an Exam or Interview, Recording Victim Interviews, Prosecution for Filing a False Report of Sexual Assault* and many more.

<http://www.evawintl.org/Resources.aspx>

Sexual Assault Training & Investigations: [http://www.mysati.com/resources\\_new.htm](http://www.mysati.com/resources_new.htm)

Office of Victims of Crime (OVC) National SART Toolkit: <http://ovc.ncjrs.gov/sartkit/>

Rape, Abuse & Incest National Network (RAINN): <https://rainn.org/>

National Sexual Violence Resource Center (NSVRC): <http://www.nsvrc.org/>

## **Immigrants/Refugees**

International Institute of New Hampshire: Provides Community Education, Visa Application Assistance (refugee, immigrants and undocumented community members may be eligible for Visa status as a result of the crime committed against them) and various ESL resources: <http://iine.org/home> or (603) 647-1500 (315 Pine Street, Manchester, NH 03103)

Ascentria Services for New Americans: Provides Community Education, Health and Mental Health support and cultural orientation classes: <http://www.ascentria.org/our-services/services-new-americans> or (603) 224-8111 (261 Sheep Davis Road, A-1 Concord, NH 03301)

New Hampshire local crisis centers: See Appendix A

## **Law Enforcement**

Ending Violence Against Women International (EVAWI) has created a library of **free On-line Training** courses for the sexual assault response on such topics as: *Effective Report Writing: Using the Language of Non-Consensual Sex; Preliminary Investigation: Guidelines for First Responders; and Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault*

<http://olti.evawintl.org/Courses.aspx>

Ending Violence Against Women International (EVAWI), Training Bulletin *Forensic Exams for the Sexual Assault Suspect*: <http://www.evawintl.org/Library/DocumentHandler.ashx?id=24>

*Investigating Sexual Assaults Part III: Investigative Strategy & Prosecution*, Training Key #573, International Association of Chiefs of Police  
<http://www.theiacp.org/portals/0/pdfs/573InvestigatingSexualAssaultsPart3.pdf>

### **Medical Providers**

NH Coalition Against Domestic and Sexual Violence – NH SANE Program  
<http://www.nhcadsv.org/sane.cfm>

International Association of Forensic Nurses (IAFN) <http://www.forensicnurses.org/>

SANE-SART resources including webinars and online trainings <http://www.sane-sart.com/>

Public Law 104-191 of HIPAA: <http://www.hipaa.com/tag/public-law-104-191/>

### **Prison Rape Elimination Act (PREA)**

NH Department of Corrections PREA resources: <https://www.nh.gov/nhdoc/divisions/victim/prea.html>

NH Department of Corrections Policy and Procedure Directive:  
<https://www.nh.gov/nhdoc/policies/documents/5-19.pdf>

### **Prosecution Resources**

AEquitas, The Prosecutor's Resource on Violence Against Women; Technical Assistance 24/7 case consultation; Library includes Monographs, Strategies Newsletters, Strategies in Brief, Statutory Compilations & Caselaw Summaries and other resources  
<http://www.aequitasresource.org/index.cfm>

Legal Momentum, The Women's Defense & Education Fund, Publications, Resources and Legal Cases:  
<http://www.legalmomentum.org/materials/publications-resources>

Ending Violence Against Women International: <http://www.evawintl.org/>

State of NH v. Armando LISASUAIN (2015)  
<http://www.courts.state.nh.us/supreme/opinions/2015/2015045lisasuain.pdf>

Voir Dire Resources: AEquitas, Wisconsin Prosecutors' Handbook

### **Strangulation Resources**

*How to Improve Your Investigation and Prosecution of Strangulation Cases*, Gael Strack and Dr. George B. McClane, update May 1999. [http://www.ncdsv.org/images/strangulation\\_article.pdf](http://www.ncdsv.org/images/strangulation_article.pdf)

Strangulation Training Institute: [www.StrangulationTrainingInstitute.com](http://www.StrangulationTrainingInstitute.com)

## **Technology Resources**

For ESP and ISP look ups: <http://www.search.org/>

Internet Crimes Against Children (ICAC): [www.nhicac.org](http://www.nhicac.org)

National White Collar Crime Center: [www.NW3C.org](http://www.NW3C.org)

NH Supreme Court case law regarding search warrants: The State of New Hampshire v. James W. MELLOW (2011) <http://caselaw.findlaw.com/nh-supreme-court/1569520.html>

## **U.S. Citizens Victimized Abroad**

Office of Victims of Crime (OVC) Resource Guide for Service U.S. Citizens Victimized Abroad: <http://www.ovc.gov/publications/infores/ServingVictimsAbroad/pfv.html>

OVC News & Program Updates, November 2013 article:  
[http://ovc.ncjrs.gov/news/pdf/OVC\\_NPU\\_November\\_2013.pdf](http://ovc.ncjrs.gov/news/pdf/OVC_NPU_November_2013.pdf)

*Also see resources listed above in the “Campus Sexual Assault” section of this document.*

## **Victims With Disabilities**

Office for Victims of Crime, *Victims With Disabilities: Collaborative, Multidisciplinary First Response* (Techniques for First Responders Called to Help Crime Victims Who Have Disabilities):  
[http://www.ovc.gov/publications/infores/pdftxt/VwD\\_FirstResponse.pdf](http://www.ovc.gov/publications/infores/pdftxt/VwD_FirstResponse.pdf)

Office for Victims of Crime provides techniques for interviewing victims with communication and/or cognitive disabilities

<http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=502>

New Hampshire Coalition Against Domestic & Sexual Violence provides information, resources and factsheets related to working with victims with disabilities:  
[http://www.nhcadsv.org/victims\\_disabilities.cfm](http://www.nhcadsv.org/victims_disabilities.cfm)

Ending Violence Against Women- Collection of articles and various resources for all disciplines  
<http://www.evawintl.org/Library/Documents.aspx?StaticCategory=true&CategoryID=194>

## **APPENDIX N**

### **ROLE OF THE FIRST RESPONDER IN SEXUAL ASSAULT INVESTIGATIONS**

1. The First Responder's contacts after the assault are critical to the victim's recovery and dramatically impact the victim's ability to accept and respond positively to continued investigative efforts. Sensitivity should be exercised in urging the victim to have a medical examination and evidence collected.
2. Be non-judgmental. Emphasize that you are there to help. Do not press the victim to reveal details of the assault that are not necessary in order to take an initial report or to treat immediate medical problems.
3. Because the victim is in crisis, it is necessary to speak clearly and concisely in simple sentences. Ask the victim if they understand what was said. Do not overwhelm the victim with information. Focus on one problem or concern at a time.
4. The victim may be angry with everyone, especially if intoxicated. Give the victim the opportunity to vent. Avoid a defensive posture. Remind the victim that you are there to help.
5. The victim may have a strong desire to clean up following the assault. Explain why it is imperative that they NOT wash their hands, brush teeth, shower, bathe, or douche even if they are adamant or uncertain about not wanting to report and press charges. Explain the importance of collecting fragile evidence while the victim decides about making a formal report to law enforcement or not.
6. *Confidentiality is imperative.* Do not divulge an individual's name as a sexual assault victim to anyone who does not have a direct need to know that information.
7. Assess the impact of partners, friends, family members (allies) on the victim. If they are causing further trauma for the victim, it may be necessary to separate them from the victim while you are meeting.
8. Encourage the victim to make small decisions as a way of helping them regain control in their life. Do not start making all the decisions for the victim and explain to the allies why they, too, need to allow the victim to make choices.
9. Assure the victim that s/he is not alone and that there are people who will understand and help her/him get through this. Stress the importance of the Advocate/Officer team.
10. Sexual assault is a crime and responding to the victim in a house or residence where the assault occurred requires special care that the crime scene is not disturbed. Ask the victim to move to a neutral, safe place away from the scene as soon as possible.

## APPENDIX O

### VICTIM RESPONSE TO SEXUAL ASSAULT - CRISIS STAGE

A victim recovering from rape goes through different stages of recovery with different coping strategies at each stage, which may affect her or his ability to cooperate with helping professionals. It is essential for those working with a victim of sexual violence to understand these stages and to direct their helping approach to the victim's stages of recovery.

Sexual assault is a total and terrifying invasion of the victim's physical, emotional, and spiritual integrity. Throughout the attack, the victim may be grappling with the belief that they will be killed. Sexual assault shatters the victim's vision of the world as a safe place. It destroys the victim's belief that they have control over their life; that they are a person whose needs and wishes are worth respecting. This is especially true if the victim knew the attacker.

The reaction of the sexual assault victim will depend partly on the person's usual coping strategies for handling trauma and partly on their personality. The most common victim reactions, which are understood as Rape Trauma Syndrome, include:

1. **Controlled Response** - This coping strategy is manifested by outward calm. The victim may show little emotion and appear withdrawn. The victim may avoid eye contact and have difficulty responding to questions. This may be a temporary phase or the usual way that stress is handled.
2. **Visibly Upset** - The victim may exhibit fearfulness, shaking, uncontrollable sobbing, or other manifestations of trauma.
3. **Sarcastic Response** - The victim may smile or laugh at what seems inappropriate at times. This type of behavior is not an uncommon reaction to extreme trauma and does not mean that the victim has not been deeply affected by the assault.

Anyone working with a victim of sexual violence must be non-judgmental in responding to the various strategies the victim may use in coping with the trauma immediately after that assault.

Additionally, the victim's crisis state may lead to an inability to make decisions. This may result in delayed reporting or in the victim not pursuing avenues of escape, which might be apparent to the outside observer. The victim may also be ambivalent about prosecution. Many victims are unable to recall details of the assault.

A victim may attempt to cope by engaging in routine behaviors immediately after the assault. The person is trying to believe that life has returned to "normal." For example, a woman who is raped may proceed to go to work or to school. This is an attempt to reassure ones-self that the world is still the same and that the assault did not destroy the victim's life. It may also be an attempt to regain a sense of control over one's own life.

A victim who is experiencing Rape Trauma Syndrome may become less cooperative when entering the "adjustment phase." In this phase, the victim tries to pretend everything is normal, will deny that the assault is having effects, and will exhibit a reluctance or refusal to talk about the assault. Because the "adjustment phase" occurs sometime after the assault (usually 2-6 weeks) you may find a formerly cooperative victim who now does not keep appointments or return phone calls.

No one victim will display all of the emotional or physical responses that are part of the Rape Trauma Syndrome. Individual victims tend to have several of the responses depending on their own psychological profile. How long a victim exhibits these responses also depends on the individual. The victim's psychological responses can either help or hinder the investigation.

Taken from: *The Illinois Sex Crimes Investigation Law Enforcement Manual*

**APPENDIX P**  
**POST RAPE TRAUMA SYNDROME: EMOTIONAL STAGES COMMON TO A  
SEXUAL ASSAULT VICTIM**

I. **FIRST STAGE** - Acute stage immediately following a sexual assault

- A. Generally characterized by disorganized thinking with a dominant feeling of fear. Other common emotions include shock, disbelief, dismay, humiliation, or embarrassment.
- B. **MAY** exhibit any of the following behaviors:
  - 1. Difficulty sleeping
  - 2. Loss of appetite
  - 3. Upset stomach or stomach pains
  - 4. Desire to always be alone or to always be with someone
  - 5. Sobbing
  - 6. Restlessness
  - 7. Tension headaches
  - 8. Anger
  - 9. Complete calm

II. **SECOND STAGE** - Pseudo Adjustment

- A. Victim is no longer in acute stage and must now attempt to adjust to the fact they have been sexually assaulted.
- B. Victim behaves outwardly as though everything is normal, but, in reality, they may exhibit any number of behaviors, such as:
  - 1. Nightmares in which the victim either relives the sexual assault or seeks revenge on the rapist
  - 2. Loss of appetite
  - 3. Becomes panicky by small events such as simply bumping into a male
  - 4. Constantly wants to change phone numbers

III. **THIRD STAGE** - Integration and Resolution Stage

- A. Stage begins when victim develops an inner depression and feels the need to talk
- B. Victim comes to realistically accept the event and to resolve their feelings about the assailant.
- C. Some people reach the third stage in a day or two and some never reach it. Those who never reach it may suffer severe psychological problems, which could result in institutionalization.

**Note:** There are no “typical” behaviors for rape victims. One victim may be crying uncontrollably, rocking back and forth, appear in shock, be unresponsive, etc., while another is calm and subdued.

**Note:** Research indicates that male victims also go through the same three emotional stages as female victims.

Taken from: *The Illinois Sex Crimes Investigations Law Enforcement Manual*.

## **APPENDIX Q**

### **SYMPTOMS REPORTED BY SEXUALLY ASSAULTED PATIENTS**

Survivors of trauma have experienced an event that is so overwhelming as to be life changing -- physically, cognitively, and emotionally. The event has such physiological and psychological intensity that it overrides or impairs the individual's neuro-physiological mechanisms of adaptation. The resulting damage is not merely emotional. The person's biological capacity to tolerate and regulate internal and external stimulation can be altered. These changes, compromise the person's ability to organize perceptual stimuli and cognitive information, making them susceptible to a range of somatic illnesses and a spectrum of anxiety and depressive disorders.

Most people equate trauma with physical wounds and injuries that require prompt and specific medical attention. Added to these physical injuries is psychic trauma, defined as an "upsetting experience precipitating or aggravating an emotional or mental disorder." Understanding physiological trauma as a medical disorder improves diagnosis and may diminish the medical, psychiatric, and social complications that result when psychological trauma is unrecognized and untreated.

The somatic symptoms physicians are most likely to note in Emergency Department or later in primary care settings may include:

- |                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Increased sensitivity to light.</li><li>• Sound</li><li>• Touch</li><li>• Temperature</li><li>• Taste and proprioception</li><li>• Skipping or racing heart</li><li>• Dizzy spells</li><li>• Headache</li><li>• Muscle tension in the neck and head</li><li>• Faintness and light headedness</li><li>• Chest pressure</li><li>• Hyperventilation</li></ul> | <ul style="list-style-type: none"><li>• Smothering or choking sensation</li><li>• Lump in the throat</li><li>• Tingling or numbness in the hands, arms, feet, and face</li><li>• Nausea or vomiting</li><li>• Diarrhea</li><li>• Sweating unrelated to temperature conditions</li><li>• Hot flashes or chills</li><li>• Shaking or trembling of the hands and legs</li><li>• Rashes resulting from excessive sweating</li><li>• Hyperventilation resulted from repeated yawning and sighing</li></ul> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Patients' descriptions of physiological and perceptions include:

- Speeded up or slowed thoughts and movements
- Intensified or reduced emotions
- Dulled or absent emotions and even calm
- Heightened or dulled perception and mental imagery
- Increased control of movements and thoughts or automatic robot-like movements and thoughts
- Feelings of strangeness/unreality or feelings of familiarity
- Panoramic memory or complete or partial amnesia
- Heightened body awareness or physical detachment and anesthetic response

Patients can also report perceptual and memory experiences that might fall into the category of hallucinations or delusions, possibly indicating a brief reactive psychosis. These include:

- Parts of the body changing in size or shape
- Objects seeming large and close or small and far away
- Experiencing events as being highly vivid accompanied by the ability to recall them in exact detail

- Disbelief regarding the incident accompanied by the claim that events had a dream-like and unreal quality

Like other chronic illnesses, PTSD may have delayed onset, variable, and disguised presentations, go into remission, have episodic exacerbations, or require ongoing management. Symptoms of PTSD may include:

- Intrusive recollections of the assault
- “Waking flashbacks,” experienced with an intense sense of reality
- Dreams of the assault
- Intense psychological and physiological distress, provoked by the internal and external cues that remind the patient of the attack
- Physiological over-reactivity, including exaggerated startle response
- Avoidance of discussing the attack
- Avoidance of places, people, or things that recall the attack
- Feeling of being apart from other people or that there is no future
- Insomnia, irritability and trouble concentrating

Sexual assault is one of the most significant traumatic incidents. The person endures an event that is outside their control, evoking feelings of such intensity that they literally fear imminent death and/or disfigurement. Adult survivors often recount a combination of blunted and heightened stimulus responses or symptom, including:

- Nightmares
- Difficult falling asleep or staying asleep
- Nausea
- Irritability or outbursts of anger
- Difficulty concentrating
- Hypervigilance and exaggerated startle responses

Taken from: *The American Medical Association, Strategies for the Treatment and Prevention of Sexual Assault*

## **APPENDIX R**

### **SEXUAL ASSAULT FACT SHEET**

In New Hampshire, sexual assault is generally defined by statute as non-consensual sexual contact or penetration by physical force, by threat of bodily harm, or when the victim is incapable of giving consent by virtue of a mental disability, intoxication or other aggravating circumstances. By our statutes, acquaintance rape carries the same penalties as sexual assault committed by a stranger.

#### **Sexual Assault in New Hampshire**

According to the NH Violence Against Women and Violence Against Men Surveys of 2006 & 2007:

- Nearly one in four women and one in twenty men have been sexually assaulted.
- The number of women and men combined who have been the victim of a sexual assault could fill Fenway Park almost 3.5 times.
- 22.7% of women have been the victim of sexual assault, with 19.5% having been the victim of sexual assault with penetration.
- In 2011, 834 adult victims of sexual assault in NH sought support services from the 14 crisis centers of the NH Coalition Against Domestic and Sexual Violence.

According to the “Crime in New Hampshire 2011” Report by the NH Center for Public Policy Studies:

- The study found that in 2010, NH had a rape every 21 hours.
- The study also found that 35% of violent crimes in 2010, including ***only 15% of rapes, resulted in arrests***.
- And the study found a significantly different pattern of case dispositions for aggravated felonious sexual assault compared with other crimes. This charge was much less likely to end in a plea of guilty and more likely to be dismissed than all other criminal charges.

#### **Sexual Assault in the United States**

According to the 2010 National Intimate Partner & Sexual Violence Survey:

- Nearly one in five women surveyed said they had been raped at some point in their lives, including completed forced penetration, attempted forced penetration, or alcohol/drug facilitated completed penetration.
- 51% of female victims of rape reported being raped by an intimate partner and 41% by an acquaintance and of male victims, 52% reported being raped by an acquaintance and 15% by a stranger.
- 81% of women and 35% of men who experienced rape, physical violence, or stalking by an intimate partner reported significant short and long term impacts related to the IPV such as fear, post-traumatic stress disorder (PTSD) symptoms and injury. Reported health consequences include asthma, diabetes, and irritable bowel syndrome.
- About 35% of women who were raped as minors were also raped as adults compared to 14% of women without an early rape history.

Resources:

The New Hampshire Violence Against Women and Men Surveys

<http://www.nhcadsv.org/uploads/VAW%20Report%20Final.pdf>

<http://www.nhcadsv.org/uploads/VAM%20Report%20Final.pdf>

“Crime in New Hampshire 2011” Report by the NH Center for Public Policy Study

[http://www.nhpolicy.org/reports/crimereport\\_for\\_web.pdf](http://www.nhpolicy.org/reports/crimereport_for_web.pdf)

2010 National Intimate Partner & Sexual Violence Survey,

<http://www.nsvrc.org/print/publications/NISVS-2010-summary-report>

## **APPENDIX S-1**

### **NEW HAMPSHIRE CRIME VICTIM BILL OF RIGHTS**

- Victims of felony crimes committed by an adult offender are entitled to the following rights under NH RSA 21-M:8-K:
  - The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
  - The right to be informed about the criminal justice process and how it progresses.
  - The right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.
  - The right to be notified of all court proceedings.
  - The right to attend trial and all other court proceedings the accused has the right to attend.
  - The right to confer with the prosecution and to be consulted about the disposition of the case, including plea bargaining.
  - The right to have inconveniences associated with participation in the criminal justice process minimized.
  - The right to be notified if presence in court is not required.
  - The right to be informed about available resources, financial assistance, and social services.
  - The right to restitution or victim's compensation for their losses if eligible.
  - The right to be provided a secure, but not necessarily separate, waiting area during court proceedings.
  - The right to be advised of case progress and final disposition.
  - The right of confidentiality of the victim's address, place of employment, and other personal information.
  - The right to the prompt return of property when no longer needed as evidence.
  - The right to have input in the probation pre-sentence report impact statement.
  - The right to appear and make a written or oral victim impact statement at the sentencing of the defendant. No victim shall be subject to questioning by counsel when giving an impact statement.
  - The right to be notified of an appeal, an explanation of the appeal process, the time, place and result of the appeal, and the right to attend the appeal hearing.
  - The right to be notified and to attend sentence review hearings and sentence reduction hearings.
  - The right to be notified of any change of status such as prison release, permanent interstate transfer, or escape, and the date of the parole board hearing, when requested by the victim through the victim advocate.
  - The right to address or submit a written statement for consideration by the parole board on the defendant's release and to be notified of the decision of the board, when requested by the victim through the victim advocate.
  - The right to all federal and state constitutional rights guaranteed to all victims of crime on an equal basis, and notwithstanding the provisions of any laws on capital punishment, the right not to be discriminated against or have their rights as a victim denied, diminished, expanded, or enhanced on the basis of the victim's support for, opposition to, or neutrality on the death penalty.
  - The right to access to restorative justice programs, including victim-initiated victim-offender dialogue programs offered through the department of corrections.

## **APPENDIX S-2**

### **NEW HAMPSHIRE SEXUAL ASSAULT SURVIVORS' RIGHTS**

- The right not to be prevented from, or charged for, receiving a medical
- The right to have a sexual assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter.
- The right to be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation; and
- The right to be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.
- The right, if the state intends to destroy or dispose of a sexual assault evidence collection kit or its probative contents before the expiration date of the maximum applicable statute of limitations to:
  - Upon written request, receive written notification from the prosecutor or appropriate state official with custody, not later than 60 days before the date of the intended destruction or disposal; and
  - Upon written request, be granted further preservation of the kit or its probative contents.
- The right to be informed of the rights under this section.