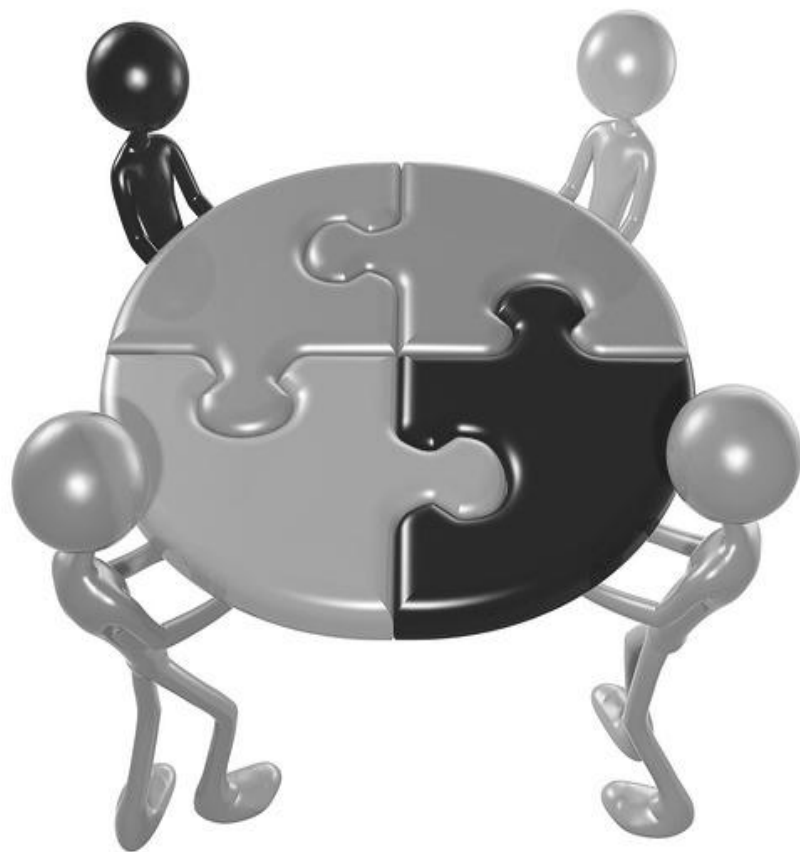


Sexual Assault Response Team

SART HANDBOOK



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The SART Handbook, Version III July 2009, is supported by Grant No. 2008-TA-AK-K029 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this handbook are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

HISTORY

The Sexual Assault Response Team (SART) handbook was developed by the Oregon Attorney General's Sexual Assault Task Force whose mission is to facilitate and support a collaborative, victim-centered approach to the prevention of and response to adolescent and adult sexual violence. Much of the information reflects "best practices," which may or may not be possible due to the available resources in the community. Special thanks were given to Susan Moen, Executive Director of the Jackson County Oregon SART, for providing her time and expertise to Version III, July 2009, of the SART Handbook.

Although there is still some reference to Oregon materials, this handbook has been edited by members of the Oklahoma Attorney General's SART development team for use in Oklahoma.

BACKGROUND

In recognizing a need to mobilize resources to address the critical issue of sexual violence and assist all law enforcement in learning an effective and appropriate response, the Oklahoma Office of Attorney General (OAG) obtained a technical assistance grant from the Oregon Attorney General's Sexual Assault Task Force. This was done as a step toward addressing the critical issue of sexual assault investigation by focusing attention on identifying and supporting the development of local experts to help sustain a high quality, discipline-specific training program based on the National Sexual Assault Training & Capacity Building Project model.

This past August, OAG partnered with the Oklahoma Council on Law Enforcement Education and Training (CLEET), the Oklahoma Community Regional Policing Institute (ORCPI), the Oklahoma Chiefs of Police Association, the Oklahoma Sheriffs Association, the Chickasaw Lighthorse Police Department and the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) to implement an educational training program responsive to the needs of the state and to facilitate the development and sustainability of this training program by increasing skills and knowledge of state and regional experts in the fields of advocacy, law enforcement, medical/SANE and prosecution and to promote a more effective collaboration of the multi-disciplinary, victim-centered, offender-focused response to the crime of sexual assault.

The Oregon Task Force provided a two-day statewide law enforcement training as well as a one-day follow-up training to Oklahoma's instructors-in-training (Sgt. Gary Stansill, Tulsa Police

Department, Jason O'Neal, Chief of the Chickasaw Lighthouse Police Department, Tracy Shivers with CLEET, Jennifer McLaughlin with OCADVSA, and Tamatha Mosier with OAG). This training offered direct skills-based training by peer experts as well as specific training to the discipline specific experts in the Training Institute's curriculum ("train-the-trainer").

The Oklahoma team has since "tweaked" the national curriculum to make it Oklahoma's own, thus implementing the Non-Stranger Evidenced-Based Sexual Assault Response & Investigation training to meet CLEET 2012 requirements. This curriculum provides basic and intermediate information on sexual assault dynamics, law enforcement response, preliminary investigation, victim interviewing and evidence collection and use. This training is ideal for law enforcement officers who need to develop or enhance core skills and knowledge related to sexual assault response and investigation. It is important to ensure that all Oklahoma law enforcement will be receiving comparable training on a national model. It also provides both advocates and law enforcement trainers with the tools they need to meet the mandates of the law.

In March 2010, the partners were able to obtain a second technical assistance grant to establish a Sexual Assault Response Team (SART) curriculum as an advanced training model.

Sexual Assault Response Teams are a critical next step in providing an appropriate response to sexual assault victims in Oklahoma. Additionally, the importance of continued training in this field is vital due to changing public perceptions and sexual mores, legislative reform, and increasing collaborative efforts related to the fight against sexual violence. Training offers an opportunity to gain new and improved insight and skills regarding services for sexual assault victims and survivors as well as increases the capacity for law enforcement and advocacy to work together to provide community safety and security. It also provides an opportunity for participants to gain a sense of statewide community support and a shared mission, and to exchange local expertise that lends itself to a more coordinated response to sexual assault case investigation.

Developing a national curriculum in Oklahoma on a train-the-trainer model is an opportunity to have consistency in having all officers trained utilizing quality curriculum which will lend itself to ensuring quality in law enforcement's response to sexual violence in both urban and rural Oklahoma.

The opportunity to develop a curriculum and a network of trainers provides a best practices standard that can be uniformly and consistently applied on a statewide basis. The project also provides an opportunity to include a tribal component in the sexual violence training which is a critical need within the state due to the tribal population and Indian Country jurisdiction issues. Moreover, it benefits the state by ensuring a victim-centered and offender focused response to sexual violence and a catalyst for collaboration among the disciplines and agencies that respond to sexual violence.

The Law Enforcement training received in August has provided the appropriate foundation for the development of Sexual Assault Response Teams throughout the state of Oklahoma.

INTRODUCTION

Nationally, one out of six U.S. women and one out of thirty-three U.S. men have experienced an attempted or completed rape as a child and/or adult. *i* At the same time, sexual assault remains one of the most underreported of all violent crimes in the United States. However, recent data indicates that more victims are beginning to come forward and report the crime of rape. *ii* The 2007 National Crime Victimization Survey (NCVS), released December 2008 by the Justice Department Bureau of Justice Statics, shows that while most rape victims still do not report their attack to police, over the last three years, an average of 40% of victims reported their rape to police. This is a significant improvement over the average 30% of victims who reported during the mid-90s. In Oklahoma twelve percent (1 in 9) of Oklahoma women and 2% (1 in 50) Oklahoma men have experienced a completed sexual assault in their lifetime. This equates to over 73,444 women in Oklahoma experiencing a sexual assault in their lifetime and more than 11,300 men have experienced a sexual assault in their lifetime. *iii*. All data sources reveal one clear message: sexual assault is both prevalent and extremely underreported. It is clear that this is a problem of significant magnitude worthy of county, state, and federal resources and consideration.

Sexual assault includes a wide range of forced or compelled sexual acts that impact victims, their loved ones, and the communities in which they live. The effects of sexual assault are far-reaching and may include financial consequences in the form of low work productivity or missed time, health consequences in the form of substance abuse or depression, and social consequences in the form of broken relationships, fear, trauma, and a changed world view. The discrepancy between incidence and reporting has significant consequences on community safety, particularly when combined with the small number of cases that result in criminal charges and the even smaller number of sex offenders who are ultimately convicted.

The primary strategy shown to be effective in addressing the crime of sexual assault is a coordinated, multidisciplinary response. This collaborative effort is most commonly referred to as a Sexual Assault Response Team (SART). The purpose of a SART is to improve the response to sexual assault and to guide and inform local sexual assault prevention efforts. A coordinated, multidisciplinary response mitigates the effects of sexual assault on individual victims and their loved ones, increases victim and community safety, and prevents future sexual victimization.

Experience has shown that counties with SARTs meet the challenges of effectively responding to sexual assault better than counties that do not have SARTs. In a system where response is comprised of an increasingly complex array of responders and service providers, a coordinated, multidisciplinary approach is the best response. The basic membership of a SART includes advocates, medical personnel/SANEs, law enforcement, and prosecutors. These disciplines provide the minimal framework for a coordinated, multidisciplinary response. Each is essential to the SART:

- Advocates provide support so that victims may come forward and disclose the crimes against them. Advocates provide referrals for services from other agencies, including mental health, addiction, victims' compensation, and medical services, and they facilitate the victim's journey through the emotional, medical, and legal aftermath of the assault.
- Medical personnel/SANEs conduct a complete and sensitive medical forensic exam that provides critical and medically-neutral documentation of the assault and can include evidence collection.
- Law enforcement agencies provide a professional and thorough investigation in order to piece together a factual history of the assault.
- Prosecutors provide for the safety of the community and victim by holding offenders accountable through the prosecution of criminal cases.

Ideally, a coordinated, multidisciplinary response will include other professionals, disciplines, and community members who play important roles in a community's effective response to sexual offenses, such as:

- Sex offender management and treatment professionals
- Campus faculty and staff
- Non-traditional and culturally-specific service providers
- Mental and public health providers
- Child advocacy center staff
- Juvenile justice staff

By studying communities with active, well-functioning SARTs, we see that the coordinated, multidisciplinary approach that a SART provides brings many improvements to the response to sexual assault cases. Some of the changes a community can expect to see after the implementation of SART protocols are:

- Better, more victim-centered care for victims in the acute stage.
- An increase in the number of victims coming forward for help.
- More requests for advocacy services by victims after the acute stage.
- More medical and mental health follow-up services accessed by victims after the acute response.
- Better quality of evidence collection and a more consistent use of evidence and expert witness testimony during prosecution.
- An increased percentage of victims reporting their assault to law enforcement.
- Victims expressing greater satisfaction with the acute care they received from medical personnel and law enforcement, as well as a greater confidence in the legal system's ability to achieve a form of justice for them.
- More law enforcement cases referred to the District Attorney for review.
- More cases ending in findings of guilty.

The journey undertaken by a community committed to creating a SART and a better, more victim-centered response to sexual assault cases is rarely speedy or without setbacks. However, the payoff for a community, its members, and the victims it serves is well worth the effort and is measurable on many levels. We hope that the information included in this Handbook will help you on this journey by providing you with guidelines, examples, and suggestions that represent best practices for SART development and sustainability.

NOTES

i Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey (Washington DC: National Institute of Justice, 2006)*.

ii Timothy C. Hart and Callie Rennison, Reporting Crime to the Police 1992-2000 (Washington, D.C: Bureau of Justice Statistics Special Report, 2003). Patricia Tjaden and Nancy Thoennes, *Rape in America: A Report to the Nation* (Arlington, VA: National Center for Victims of Crime and Crime Victims Research and Treatment Center, 1992).

iii Centers for Disease Control and Prevention (CDC). *Behavioral Risk Factor Surveillance System Survey Data*. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2009.

CHAPTER 1

The purpose of this Handbook is to help communities understand the guiding principles and benefits of the SART response and to provide the basic information needed to form and sustain a SART. Suggestions for ways to enhance and improve existing SARTs are also included. This Handbook is intended to be read in its entirety, with each section building on the information presented before it.

WHAT IS A SART?

A SART is a multi-disciplinary, inter-agency collaboration that unites its members in a coordinated, victim-centered approach to the intervention and care for sexual assault survivors. SARTs strive to balance two distinct sets of needs - those of the sexual assault survivor and those of the criminal justice system - by ensuring that all responders act according to established protocols and policies created by the entire Team. These protocols ensure that the criminal/legal system can pursue its goal of holding offenders accountable and ensuring community safety while maintaining the elements that ensure the response remains truly victim-centered.

A SART is most commonly made up of agencies that provide direct services to sexual assault victims along with agencies that provide related services to victims. For example, advocates, medical personnel/SANEs, law enforcement officers, and prosecutors are joined by counselors, addiction treatment providers, mental health specialists, parole and probation workers, and campus or community safety personnel. The SART is a vehicle for collaboration, relationship building, and education between professionals. Its goals are to provide the best possible victim-centered response for sexual assault survivors, to mitigate the effects of sexual assault on individual victims and their loved ones, to increase victim and community safety, and to prevent future victimization. A SART is an opportunity to:

- Become familiar with the roles and responsibilities of each first responder/discipline.
- Develop protocols for a seamless response that ensures that victims and responders are well-informed and that the needs of the victim, as well as of the criminal justice system, are considered throughout the legal process.

- Identify the available resources, avoid duplication, and collaborate on effective delivery of services.
- Develop relationships with individual responders and the agencies they represent so that optimum referrals and information can be provided to each other and the victim.
- Share information, knowledge, and expertise between members.
- Establish rapport with individual responders and the agencies they represent so that, in the event of a challenge or miscommunication, there is the best opportunity for resolution.
- Educate collaborative partners and the public in order to increase awareness of the scope of the problem, identify solutions, and provide leadership in prevention efforts.

VICTIM-CENTERED

SARTs work to promote the development and implementation of a victim-centered response to sexual assault. A victim-centered response acknowledges that justice represents more than a successful prosecution. It is important that victims have an experience of justice, regardless of the legal outcome of an individual case; justice exists when victims are listened to and taken seriously.

This point is particularly important given that victims often choose not to report out of fear that they won't be believed. *i* Furthermore, research has increasingly demonstrated that victims of sexual assault who experience a supportive and compassionate response, regardless of the criminal justice system outcome, have lower rates of post traumatic stress than victims who experience secondary trauma in the form of disbelief and blame. *ii* It is the role of a SART to create response protocols that mitigate the harm and trauma that victims experience and that allow individual survivors to experience justice regardless of the legal outcome of their case.

A victim-centered response recognizes that the one person to whom all responders are responsible in the event of a reported sexual assault is the victim. The victim is therefore central to the response of each responder and the response as a whole. It is critical to the success of the response that victims believe that reporting to and participating in the criminal justice system is a safe and viable option. If victims do not believe this is the case, they will not come forward,

they will not report, and they will not (willingly) participate in the criminal justice system response. Each victim who chooses to report provides the SART with an opportunity to increase victim and community safety.

In practice, a victim-centered collaborative response includes:

- Giving time and consideration to the victim's needs and wishes.
- Prioritizing the safety and well-being of the victim, including giving consideration to the impact that various systems' responses may have (e.g., media, no-file, plea negotiations, etc.).
- Acknowledging that effectively providing for victim safety requires victim input.
- Recognizing that the harm and trauma experienced by a victim does not relate to the level of violence used by the offender; rather, it relates to the victim's belief that she/he is supported and believed.
- Prioritizing the privacy of the victim and her/his right to (reasonable) confidentiality.
- Providing competent, professional, thorough, compassionate, and knowledgeable responders during every step of the response. This includes promoting regular training opportunities for SART members.
- Demonstrating professionalism and respect between responders.
- Recognizing the importance of supporting the work and role of each responder.
- Recognizing that victims of sexual assault are never responsible, in all or part, for their victimization, regardless of the circumstances leading up to or surrounding the assault (e.g., lifestyle, choices, behavior).
- Recognizing that the response of friends, family, and (system) responders, or the lack thereof, can either increase or mitigate the harm and trauma that victims suffer as a result of the assault.
- Recognizing that offenders are always responsible for the assault.

VICTIM BLAMING

Two of the more challenging responsibilities of SART members are interrupting victim blaming and educating the community as well as other SART members about the myths and misconceptions that are often associated with sexual assault. Victim blaming refers to holding victims responsible, even in part, for being sexually assaulted. Victim blaming typically utilizes the argument that if the victim had not made a particular choice, engaged in a particular activity, or acted in a particular way, she/he would not have been sexually assaulted. This argument is erroneous for several reasons: 1) there is no particular activity, choice, or behavior where sexual assault is a natural (and usual) consequence; 2) victims exist who do not necessarily engage in activities, choices, or behaviors that are widely viewed as risky; and 3) the only common denominator for incidents of sexual assault is the presence of someone who chooses to sexually offend. For example, drinking or using drugs at a party to the point of passing out might be considered a “high risk” behavior. However, sexual assault is not a natural or inevitable consequence of the behavior of drinking or using drugs to the point of passing out. Not all women and men who drink to the point of passing out are sexually assaulted, and a sexual assault will only occur if there is an individual present who is willing to engage in sexual contact with someone without consent (an offender). It is not the behavior of the victim that leads to or results in sexual assault; rather, it is the conscious choice of the offender.

OFFENDER-FOCUSED

In the same way that victim-centered refers to providing a thorough, professional, and compassionate response to victims, offender-focused refers to the investigative and prosecutorial efforts made to hold offenders accountable for their actions and behaviors.

An offender-focused response recognizes that offenders purposefully and intentionally select victims with whom they can successfully commit a sexual assault—victims who are perceived by offenders as vulnerable, accessible, and lacking in credibility. An offender-focused response will therefore focus on the actions, behaviors, history, character, lifestyle, and values of the offender. Offender-focused also recognizes what we know to be true about adult sex offenders:

- Adult sex offenders are often repeat or serial offenders. *iii*

- Adult sex offenders most often target individuals known to them, whether it is through a brief encounter or a close relationship. *iv*
- Adult sex offenders often commit other person crimes including stalking, domestic violence, child abuse, and child sexual abuse. *v*
- Adult sex offenders usually use instrumental violence *vi* or the “con” attack, rather than a weapon or more apparent forms of violence. *vii*
- Adult sex offenders are practiced liars and often have a history of evading detection through deception and manipulation. *viii*

Successful sexual assault investigations and prosecutions will therefore incorporate this information and seek to identify additional victims, corroborate details that illustrate the planning and premeditation involved, illustrate victim selection, and address grooming or the “con” attack. An offender-focused response ultimately recognizes that if it weren’t for sex offenders there would be no sexual assault.

While the creation of a SART focuses on the individual people and agencies that come together and the protocols and policies that guide its work, a SART is at its core much more than the sum of these parts. A SART is the embodiment of a commitment to creating a new system. This commitment requires the Team members to be dedicated to educating themselves, to changing the way they approach their jobs and how they interact with the victims they serve, and to making sure that those changes are always serving the overall goal of empowering sexual assault victims, the agencies and individuals that serve them, and the entire community. In putting aside old models and habits and collaborating together to advance a coordinated, multidisciplinary approach, SART members build a stronger response to sexual assault cases with more effective outcomes for victims, communities, and the criminal justice system.

NOTES

i Richard Felson and Paul-Philippe Pare, “The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police,” Journal of Marriage and Family 67 (August 2005): 597-610.

ii Rebecca Campbell, Tracy Sefl, Holly Barnes, Courtney Ahrens, Sharon Wasco and Yolanda Zaragoza-Diesfeld, “Com-munity Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma,” Journal of Consulting and Clinical Psychology Vol 67, No 6, (1999): 847-858.

iii David Lisak and Paul Miller, "Repeat Rape and Multiple offending Among Undetected Rapists," *Violence and Victims*, Vol. 17, No. 1 (2002): 73-84.

Robert Hazelwood and Janet Warren, *The Criminal Behavior of the Serial Rapist (Research for the National Center for the Analysis of Violent Crime, 1990)*.

iv *Ibid.*

v *Ibid.*

vi *Instrumental violence*—the amount of violence or threat of violence used by the offender is only as much as is needed to commit the sexual assault. For example, an offender will use little or no violence to perpetrate against someone who is incapacitated by alcohol or drugs, which is why alcohol and drugs are so often used by an offender to create vulnerability in a potential victim.

vii *Ibid.*

viii Anna C. Salter, *Predators: Pedophiles, Rapists and Other Sex Offenders*, New York: Basic Books, (2004).

CHAPTER 2

GETTING STARTED

Once a community recognizes an interest in developing a coordinated, multidisciplinary response to sexual assault, it is necessary to create a plan for the development, implementation, and sustainability of the SART. The following section describes the basic building blocks inherent in SART development, implementation, and sustainability, and provides a sample timeline for goals and accomplishments as well as suggestions for enhancing a SART once its basic structure is in place.

STATEMENT OF PURPOSE

The primary purpose of a SART is to ensure an effective, consistent, comprehensive, and collaborative, response to sexual assault that prioritizes the needs of sexual assault victims and brings responsible persons to justice. Some SARTs also include supporting or leading local sexual assault prevention strategies in their statement of purpose. Whatever the scope, it is necessary for a SART to have a purpose statement that reflects the vision of the group. Although it may be easiest to simply adopt a purpose statement from another SART, the act of crafting one unique to the local effort can bring the SART members together and assist in identifying their most pressing concerns and challenges.

A good purpose statement answers the following questions in one concise statement: *i*

What are the needs that exist for us to address?

How will we address those needs?

What principles, beliefs, or values guide our efforts?

SART OBJECTIVES

A useful tool for effective SART organizing is to adopt annual objectives in order to document the progress of the group. If members believe that their time on the SART is resulting in

identifiable accomplishments, it sustains membership and participation. Some objectives from SARTs have included:

- Develop a 24-hour response protocol for all agencies.
- All agencies sign working agreements in support of the protocol.
- Design model guidelines from time of report through sentencing.
- Design model guidelines for post-prison offender management and victim notification.
- Review every sexual assault case that receives a coordinated response (case review).
- Develop recommendations from case review to improve the system response.
- Maintain regular SART meetings to provide ongoing assessment of improvements and shortfalls.
- Create a 24-hour SANE response program.
- Become a registered non-profit to allow for employees and tax-exempt donations.

BENCHMARKS

Another way to identify effective strategies and to demonstrate progress toward local SART objectives is to establish benchmarks. Benchmarks are different from objectives, because they provide a standard by which something can be measured or judged. Benchmarks are particularly useful for communities that have an existing SART and communities that are looking for an opportunity to increase effectiveness, invigorate members, and enhance community accountability.

For example, responders in one Oregon county with a population of fewer than 5,000 became concerned when they realized that there had been no report of a sexual assault to law enforcement in five years. During that same time period, the local community-based advocacy organization had assisted more than 20 victims of sexual assault. This data informed the county

responders that there were crimes of sexual assaults occurring that were not being reported to the criminal justice system.

The benchmark established by the county SART was to increase reporting by 20% a year for five years. Another benchmark was to ensure that all responders had specialized training in sexual assault response within three years. Responders believed that if they improved the way victims were treated by the system, word of mouth in such a small population would increase reporting. The county SART met both benchmarks, enabling the SART—and the community—to measure the progress of the group.

Possible benchmarks may include:

- Increase reports of sexual assault to the criminal justice system by X% each year over X years.
- File charges on X% of reported sexual assault cases (adolescent and adult).
- Utilize the SAVE Fund for evidence collection and medical documentation in X% of cases that include a medical response.
- Dispatch an advocate to the hospital in X% of sexual assault cases where the victim seeks and/or consents to a medical forensic response.
- Utilize a SANE in X% of cases where there is a medical forensic response.
- The number of exams by SANEs will increase by X% each year over X years.
- X% of all SART responders will attend specialized training each year over X years.

MEMBERSHIP

The introductory section of this handbook indicated that the core members of a SART are advocates, medical personnel/SANEs, law enforcement, and prosecutors – those who provide a direct response to sexual assault victims. There are, however, multiple agencies and individuals within a community who should also be invited to participate on a SART. For example, any organization to whom a victim is referred for services or follow-up (counselors, culturally-specific providers, public health groups, support groups, addiction treatment and mental health providers), any agency that deals with offenders (parole and probation, offender treatment

providers) as well as agencies whose clients may be survivors (children's services, children's advocacy groups, colleges or schools, senior and disabilities services). When drawing up a list of potential SART members, "thinking outside of the box" and including anyone with a stake in the issue will provide a well-rounded, diverse group to help craft your goals and protocols and create the most effective SART possible. By bringing such partners into the SART process early on, you will be giving them a sense of ownership and voice that will increase their stake in the success of the SART and increase the chances of their ongoing participation.

When inviting agency members to join the SART effort, it is important to include not just the first responders from a particular agency (e.g., a detective from a police department) but also the person who has the decision-making authority for that agency (e.g., the police chief). While, realistically, those in management position will probably delegate the SART meetings back to the first responder over time, having a demonstrated commitment from department leaders for the SART effort is crucial in the initial development and implementation of the SART.

SART MEETINGS

In order to maintain consistent participation by members, SART meetings need to be "time well spent." The meetings need to show effective organization and convey a sense of forward movement and accomplishment even when impediments and disagreements arise. Beginning by creating a purpose statement and establishing goals, objectives, and benchmarks can assist in maintaining a clear focus for the SART. Effective SART meetings will also:

- Identify a skilled meeting facilitator.
- Identify a meeting note taker.
- Use a meeting agenda and provide members with meeting minutes.
- Provide opportunities for all members to speak.
- Arrange meeting dates and times well in advance.

SART MEETING PURPOSE AND FUNCTION

In the first phases of organization, SART meetings will most likely deal with the development and initial implementation of the SART by:

- Inviting an inclusive roster of members.
- Creating a purpose statement.
- Establishing goals, objectives, and benchmarks.
- Creating policies, procedures, and inter-agency agreements.
- Identifying community resources and resource materials.
- Improving the relationships between SART members.
- Identifying procedures for conflict resolution.
- Identifying a method for SART evaluation.

Once the SART is established, meetings may be used to address ongoing issues as well as to identify emerging developments and goals for future development. This can include:

- Legislative updates that affect sexual assault response.
- Training and information sharing.
- Protocol revisions and modifications.
- Identification of concerns and issues related to response.
- Conducting case reviews.
- Identification and incorporation of new “best practices” in the sexual assault field.

CASE REVIEW

Some SARTs include a discussion of the response to specific sexual assault cases in their general SART meetings. It is of critical importance that, prior to any discussions related to specific cases, a confidentiality policy be adopted. A victim-centered response recognizes the

importance of evaluating what and how information is shared so that the privacy and safety of the victim remain paramount. This includes obtaining the permission of a victim before sharing information for case review purposes (usually obtained by the first-response advocate and medical personnel/SANE).

Since SART meetings can include individuals who do not necessarily respond to sexual assault themselves and/or individuals who did not respond to a specific case, a question arises, “Is it appropriate for all SART members to be a part of these discussions?” It is the recommendation of this Handbook that a SART have a separate Case Review committee made up of first responders. This smaller group reviews cases, including a constructive critique of the responders’ actions, to determine how well the coordinated, multidisciplinary response functioned in each case. Any proposed policy or protocol changes that arise from these reviews can be disseminated to the entire SART and discussed in the general meetings without including specific victim information.

Case review of sexual assault cases can include having the victim come in to talk to the SART directly. If care is taken to diffuse defensiveness, this can be a useful way for SART members to gain a victim’s perspective on the response they provide.

DECISION-MAKING AND CONFLICT RESOLUTION

Given the tremendous diversity in the roles and responsibilities of SART members, it should be assumed that there will be differences of opinions and the possibility of disagreement or conflict, since each agency must satisfy its own needs as well as those of the SART during its response to a sexual assault. This is when embracing a victim-centered response is of critical importance to the success of the SART. A victim-centered response effectively establishes a place from which to begin and end all discussions, developments, and decision-making, starting with the question, “What is in the best interest of the victim?” In a SART where previous histories between individuals or agencies or other ongoing conflicts exist, it may be in the best interest of the SART, the victims, and the victim-centered response to seek out a mediation service or another outside party that will help facilitate conflict resolution within the SART.

TRUST BUILDING

SARTs that develop strong and trusting relationships among the individuals and agencies ensure an effective, collaborative body. There is no doubt that a SART operating within a context of mutual respect is the most effective. As in all other collaborative efforts, trust building takes time. Realistically, building trust between individuals and agencies can take years. Since there may be individuals and agencies seated at the table that have a history of conflict and/or misunderstanding, there may need to be outside meetings to address issues that have yet to be resolved. Given these challenges, how can a SART build trust between its members?

The Minnesota Model Sexual Assault Response Protocol found that “the roles and responsibilities of each discipline were not understood by all” during the course of conducting multidisciplinary hearings from around the state. Trust certainly requires an understanding and respect for the roles and responsibilities among SART members. It is to be expected that distrust, skepticism, and even hostility can exist when roles are not well understood or supported. If each responder is given the chance to explain how and why they respond as they do and other members can come to understand the needs and concerns that drive each agencies’ response policies, the process of creating common protocols can move forward in an environment of mutual respect and understanding.

Depending on the level of rapport that exists among SART members and the agencies they represent, it is recommended that the development phase include ample time for the clarification of roles. If the functions of a SART are to work collaboratively to mitigate trauma, increase community safety, and prevent future victimization, more than peripheral familiarity between the responders is needed. It is as important to understand the technical components of the duties of the SART members as it is to “know each other’s hearts and minds.”ⁱⁱ Ultimately, the desired outcome is for SART members to call on each other for assistance and direction, as well as hold each other accountable on behalf of victims and a victim-centered response.

During the course of a sexual assault case, each responder creates a specific type of relationship with the victim, and the victim may come to trust or bond with one responder more than the others. With this in mind, all SART members can become skilled at “advocating for each other” with the victim with the end result being a much better experience for the victim and the entire SART response team. For example, if it is the advocate who first responds, the advocate can help explain to the victim what is to be expected from the medical exam or detective’s questions, and why things are done the way they are. For example, “The nurse may ask

you about your sexual activity prior to or after the assault, and I want you to know that this is because it helps her understand the physical evidence she is collecting,” or “The detective is going to have to ask you questions that might sound like he is questioning you, but it’s only to make sure he is completely clear on the details so he can do the best possible investigation.” Being able to assure the victim that your other team members have the victim’s best interests at heart is invaluable, but it can only happen if time has been spent actively forging this kind of trust and confidence in one another during the initial stages of SART development.

COLLABORATION WITH OTHER ORGANIZED EFFORTS

Particularly in rural areas, many of the same people who join the SART effort may also be on the Child Abuse Multi-Disciplinary Team (MDT) and/or the Domestic Violence Coordinated Community Response Team (CCRT). In fact, in many counties the SART is organized in conjunction with one or both of these bodies. In more urban areas, it is less likely there will be overlap between these groups.

While the purposes of each of these groups certainly overlap, there is also a specific need that each addresses that is unique. It is recommended that these groups come together periodically to share information, clarify roles, and strategize on problems or issues of mutual concern.

Other groups with which the SART may want to consider establishing relationships include the advisory groups to the Department of Human Services that focus on efforts to better serve populations of vulnerable adults due to age or disability. In addition, campuses across the state are also active in developing effective intervention and prevention programs and have prioritized the development of relationships with local SARTs.

SCOPE OF SARTS – BEYOND THE ACUTE RESPONSE

Each SART is unique in both its form and function. Some SARTs limit their responsibility to ensuring that the acute response to sexual assault is effective, and the creation and maintenance of their first response protocols remains the Team’s sole concern. While acknowledging that this is an achievement by itself, the Task Force encourages each SART to explore how it can also play a part in – or even lead – other aspects of sexual assault response. This can include creating systems for follow-up care for victims beyond the acute stage,

engaging in active outreach to vulnerable populations, providing leadership to the county's sexual assault prevention efforts, spearheading community awareness efforts or helping to lobby for legislation at a state or national level. The following "Timeline" provides details for expanding and sustaining SART efforts beyond the acute response.

SAMPLE TIMELINE FOR SART DEVELOPMENT

Below is a basic outline of some of the steps to forming a SART:

- Identify the participants from the first responder agencies (advocacy, medical, law enforcement, and prosecution). Try to include an agency leader from each agency.
- Create meeting specifics: when will meetings occur, who will chair the meeting, who will take minutes, how will decisions made at meetings be conveyed to those not present?
- Stress that the guiding force of the SART's work is to create a response that is at its heart victim-centered. Do not skim over this idea; it is necessary for all members to understand completely what this means and to agree to it. A truly victim-centered approach may be embraced more easily by some agencies than others. For example, advocates' sole purpose is to support the victim's personal needs and decisions, while law enforcement and prosecution are naturally driven by what is best for the safety of the community and the need to hold offenders accountable. A thorough discussion of how "victim-centered" can be honored even when the victim's wishes do not match the needs of the legal system (see Chapter 1, "Victim-Centered") is imperative before the work of creating common protocols can begin.
- Create a preliminary list of goals. Some may be as simple as "we know our response is not working currently, and we want to create a coordinated, multidisciplinary, victim-centered response that serves victims better and increases the number of victims we serve." Each agency may have different goals in mind. Create future goals as well as those for the coming year so there can be future goals in mind while the Team addresses current goals.
- Based on this list of goals, create an all-encompassing statement of purpose for the group. The original list remains as a list of goals and objectives for the SART.

- Discuss what the current response looks like. Give plenty of time to each agency to discuss why they do things the way they do, what changes they wish for, and what barriers there are to that change. This discussion will be the basis for creating a common response protocol that includes all first response agencies. This step has the potential to create some defensiveness among group members if they feel the need to defend their protocols against those who want to see something different. This is the time to really focus on the “victim-centered” aspect of the group, making sure that this concept drives the discussion. It is also important to understand that some agencies will know that their current protocols may not be based in best practice, but that the time-consuming nature of changing policies (or financial concerns) may have prevented updates. Emphasize that the SART will be sharing the burden and that the end goal is for ALL member agencies to make changes to existing protocols together to create a commonly agreed-upon response.
- Because SART response programs tend to lead to an increase in numbers of victims who come forward for help and also in the number of victims who report their assaults to law enforcement, discuss early on how this increase might impact first response agencies: would an increase in the number of cases require an increase in program funding? If so, how will this be handled by the agencies?
- Start building the common first-response protocols. This takes a long time! Protocols need to take into account that the response will be initiated at different points: sometimes with a phone call to the rape crisis line, sometimes with a 911 call, sometimes with a victim’s presentation at the hospital. Assume that your first pass at this will not be your last – changes will need to be made on an ongoing basis once the protocol is put into practice. Utilize sample protocols available in the Appendices of this Handbook.
- Finding other SARTs to glean ideas from at this point in the process can be very helpful and can save you time by seeing what has worked in more established SARTs. While another Team’s protocols will never be a perfect fit, they can give you the benefit of another group’s trial and error process. The Task Force is a resource to provide technical assistance to SARTs, to help you find examples, and to get in contact with other SARTs across the state or nation.

- Once the basic protocol has been agreed upon, it's time to add other people to the group, such as the hospitals where sexual assault exams will take place, dispatch, non-traditional service providers, fire department/paramedics, clinics and Planned Parenthoods, school nurses, campus representatives, corrections — any group or agency that could be the first point of contact for a victim seeking help. Adopting new policies can be time-consuming for agencies, so make sure the SART does as much “leg work” as possible to lessen the burden on the other agencies, and make sure to allow for plenty of time for feedback before implementing the new protocols.
- Make sure the SART has adequate representation from agencies that provide services for vulnerable and under-served populations: people with developmental disabilities, seniors, individuals with mental health needs, etc. Make sure that the SART is fully briefed on how to access these services both in the acute stage (when the survivor reports – do you know how to contact translators, case managers, care-givers?) and how to refer to these service providers after the acute stage.
- Make sure your protocols are officially adopted by the first responding agencies, particularly your advocate agencies, police departments and hospitals. Each agency must commit to training new employees on the protocols to ensure a consistent response to sexual assault cases.
- Create a system for Case Review meetings so you can begin evaluating sexual assault cases. Prior to each meeting, email a list of cases initiated the previous month to the members (heads of the advocate agencies, responding detectives from the cases, representative from the DA's office, representative for the medical personnel/SANEs) and ask them to be prepared to provide feedback and updates about the response for each case. Make sure that if other agencies (such as mental health or senior services) were involved, they are also invited. Create a way to convey to non-present members any changes or suggestions that arise from the case review. As cases are reviewed, protocols will need to be adjusted. For example, one SART discovered that the protocol of the SANE collecting urine samples for law enforcement only when the victim expressed obvious signs of a drug-facilitated assault led to possibly missing drug-facilitated sexual assault cases, so they changed the protocol to mandate collecting urine in all cases, as long as the victim

consented. Several cases that did not initially appear to be drug-facilitated were detected after this policy change.

- Once your new response protocols are in place, determine how you will communicate this fact to the community. Being able to publicize a new victim-centered response can lead to a direct increase in the number of acute survivors who seek help. Since the fear of not being believed and of how they will be treated is often a barrier to victims coming forward, it is crucial to communicate to the public your new coordinated, multi-disciplinary, victim-centered approach to caring for victims. Some topics to communicate about the improved sexual assault response include: victims don't need to report to law enforcement to get medical care; most services are free; responders are specially trained in the needs of sexual assault victims; information and referrals are available; and responders are available day or night. Consider creating a sub-committee to do presentations for social service groups (Rotary, Lions Club, etc.) and social service agencies, as well as schools and campus groups, to help spread the word about what is available to victims.
- Create a web site that shows what services are available and emphasizes how barriers to reporting have been removed.
- Re-evaluate who your SART members are and see who else should be brought to the table. In particular, has there been adequate outreach to vulnerable and underserved populations and have the needs of non-traditional victims been reflected in your response protocols?
- Determine what statistics your SART will start tracking and who will be responsible for compiling these figures. Accurate statistics showing numbers of cases, demographics of victims, reporting rates and evidence collection rates, referrals given, and outcomes of cases will show how successful your SART is over the years in increasing the number of victims served and the number of victims who engage the criminal justice system. As well as helping the SART chart its progress, statistics will be invaluable information for state or government grantors who often place an emphasis on tracking "outcomes and performance measures."
- Create a system for ongoing trainings for all SART members. This may include regular inter-agency presentations to all members to keep everyone updated on any

individual agencies' changes, presentations from local, state or national experts on topics of interest for sexual assault responders, updates on state and federal legislation affecting the sexual assault response, and participation in state or national SART/sexual assault conferences.

FURTHER THOUGHTS

Once your SART has a smoothly functioning response program, there are a variety of enhancements that you may wish to consider to keep your SART moving forward. Below are some ideas that SARTs may wish to consider:

- Establish your SART as a non-profit organization. This will allow you to receive funding from grants and private donors to pay for outreach and training expenses.
- Hire a part- or full-time Coordinator to keep the SART running smoothly and moving forward and to stay informed about new “best practices.”
- Train more SANE nurses (turnover rates for SANEs are often very high). Consider creating a county-based SANE program, with SANEs on-call and available to respond to multiple sites (clinics, nursing homes, and campus health centers, as well as hospitals) 24 hours a day, seven days a week.
- To perform sexual assault exams in Oklahoma, a registered nurse must complete the education requirements of the International Association of Forensic Nurses. This includes both a didactic as well as clinical components. Establish a streamlined process to allow SANE applicants to fulfill those requirements.
- Bring on a Medical Director to oversee the SANE response portion of the SART and to ensure that it stays up-to-date on treatment and medication best practices. The Medical Director should also periodically review case charts and act as a point of contact for the hospitals and clinics where victim exams take place.
- Look at the possibility of increasing options for follow-up advocacy/case management and creating a sexual assault support group if your community does not already have these. Some SARTs have created an advocate or case

management position dedicated solely to follow-up support and care for survivors, separating this service from the acute advocacy efforts.

- Identify local professionals who can act as expert witnesses on such issues as “counter-intuitive victim behavior” and PTSD when sexual assault cases go to trial.
- Contract with an outside evaluation agency (universities often provide this service for minimal cost) to examine how the SART is functioning and make recommendations to increase its efficacy. Having an independent evaluator conduct anonymous focus group studies with each participating agency can provide valuable information on how members view their collaboration with other agencies and what changes they might be looking for.
- Create a “court watch” system to ensure that every sexual assault trial is observed by a SART representative. This is a valuable way to collect information on how the SART response protocols are affecting prosecution’s efforts and it can highlight what areas the SART may need to strengthen.
- Create a way of surveying victims served by the SART response – evaluation forms can provide valuable data to the SART about demographics of victims and how the response met (or did not meet) the victim’s needs, in the words of the victims themselves.

NOTES

i Janel M. Radke, “How to Write a Mission Statement,” The Grantsmanship Center, www.tgci.com.

*ii Peter Senge, et al., *The Fifth Discipline Fieldbook: Strategies and Tools for Building a Learning Organization* (New York, NY: Doubleday, 1994).*

CHAPTER 3

THE ROLE OF ADVOCATES

The role of advocates in the response to sexual assault is to provide crisis intervention services, support, information, referrals, and ancillary services, including assistance with transportation, housing, and/or childcare. Best practice utilizes trained advocates to accompany victims through the health care, social service, and criminal justice systems in a way that is culturally and linguistically appropriate to the best extent possible. Advocacy services should be initiated automatically rather than asking the victim if she or he would like an advocate to be called. Victims may then have the option to decline advocacy services when the advocate is already on site.

Advocates help victims navigate the criminal justice system, provide education on the dynamics of sexual assault, provide access to an array of local services, and develop safety plans. More difficult to define, but of great importance, is the role advocates play in bearing witness to the experience of the victim; they do this by listening, believing, empowering, serving as a buffer, interrupting victim blaming, and honoring the choices that a victim makes. Advocates are uniquely positioned to offer victims the array of options available and to support the choices victims make. For advocates, the outcome that the victim identifies that she or he wants—not the needs of the legal system or other responders—defines the advocacy strategy.

VICTIM-CENTERED — As the first point of contact for many victims, advocates share the responsibility of initiating, when the victim chooses, the coordinated, multidisciplinary response to sexual assault. The advocate's ability to focus exclusively on victim support and communication allows other responders to focus on their primary responsibilities of medical care, investigation, and prosecution. Because there is no other discipline whose sole function is to advocate for the interest of the victim, many victims may trust the advocate more than other responders. Therefore, it is crucial that an advocate have an understanding of other responders' methods and goals in order to be able to help the victim connect with and trust the medical personnel/SANE, law enforcement officers, prosecutors, and other advocates that may become part of the victim's journey. This is one of the most important aspects of the collaboration that arises from SARTs: the trust that each responder gains in the methods and goals of all

participants in the coordinated response and the knowledge that each participant is acting in support of a victim-centered approach.

OFFENDER-FOCUSED — Although advocates are not likely to have direct contact with offenders, they certainly play a role in helping to maintain the focus of the investigative and prosecutorial response on the offender. Due to the context in which sexual assault occurs, it is not uncommon to see family and friends, the community, and responders question the victim’s responsibility for the sexual assault. The advocate’s role is to intervene and redirect this line of questioning, keeping the focus on the actions of the offender and interrupting any victim blaming that may occur.

TYPES OF ADVOCACY AGENCIES AND PROGRAMS

COMMUNITY-BASED ADVOCATES — Community-based advocates are housed in local non-profit organizations certified by the Oklahoma Attorney General’s Office whose primary purpose is to provide services to victims regardless of whether the victim is involved with the criminal justice process. Since only a small percentage of sexual assault victims report the crimes against them, community-based advocates spend much of their time providing support and services for victims who have no contact with the criminal justice system.

Community-based advocacy has a rich history of grassroots organizing within a context of larger social change. The commitment to a broad understanding of the issues of violence against women allows community-based advocates to provide services to victims with an understanding of the dynamics of sexual assault. This assists them in addressing the victim-blaming that occurs not only by victims themselves, but also by family, friends and, at times, other responders.

These programs also dedicate advocates to follow-up care after the acute response. Because victims can exist in a state of trauma for days or weeks after their assault, they often benefit from having someone check-in with them and help facilitate follow-up services (medical appointments, counseling, etc.), interact with law enforcement, and complete basic tasks, such as replacing a cell phone or filing a restraining order.

VICTIM WITNESS COORDINATORS — The role of VWC advocates is to provide support and communication to victims who are involved with the criminal justice system. These advocates

operate with the belief that crime victims deserve support and assistance while navigating the criminal justice system. All of Oklahoma's 77 counties are required to provide victim assistance and each of the 27 district attorney districts have an assigned VWC. However, it is more typical for a staff of the certified domestic violence and sexual assault program to serve as the advocate during a sexual assault exam as well as for additional services, particularly when the victim chooses not to report the incident to law enforcement. Some VWC advocates may only have the resources to provide court notification services to victims, while others may provide court accompaniment as well as an array of additional services and assistance. VWC advocates provide services to victims of all crimes, including sexual assault and domestic violence.

CULTURALLY-SPECIFIC ADVOCATES/NON-TRADITIONAL SERVICE PROVIDERS —

Culturally-specific advocates/non-traditional service providers are advocates who provide services and assistance to a specific population, such as specific ethnic populations, communities of color, immigrants and refugees, sexual or gender minorities, people with developmental disabilities, or people engaged in commercial sex acts. The only certified program in Oklahoma is the Latino Community Development Association located in Oklahoma City and is not necessarily specific to sexual violence but may provide a broad variety of services, such as translation or interpretation, civil legal assistance, social services, transportation, housing, childcare, and education. Some community-based advocacy agencies and VWCs may have culturally-specific advocates on staff, or they may refer the victim to an agency that serves a specific population.

LAW ENFORCEMENT ADVOCATES — Law enforcement advocates are based in law enforcement agencies and support an array of victims, including victims of sexual assault. They are few and far between in Oklahoma

CAMPUS ADVOCATES — Campus advocates are usually campus staff of the Women's Center, the Dean's Office, or Health Services who, as a part of their responsibilities and duties, provide services and advocacy to student victims of sexual assault. They may also include student volunteers who provide peer support.

TRIBAL ADVOCATES — Tribal advocates are based within many of the Tribes located in Oklahoma Indian Country. Victim advocacy services may be located within the social or health service programs and provide sexual assault victim advocacy as one part of a larger scope of

services. Some Tribes contract and collaborate with local community-based agencies to provide sexual assault and/or domestic violence specific services.

HOSPITAL-BASED ADVOCATES — Hospital-based advocates work directly out of a hospital or medical center and are most often used to coordinate follow-up services rather than provide acute advocacy services. Some hospitals may offer some advocacy services through their mental health staff or social workers.

BEST PRACTICES FOR ADVOCATES

VICTIMS' CHOICES DEFINE THE STRATEGY (EMPOWERMENT PHILOSOPHY) — Advocates do not encourage or discourage victims to report or participate in the criminal justice system. Rather, advocates assist victims in making informed decisions. Whatever outcome the victim is looking for will define the strategies chosen by the advocate.

COORDINATED ADVOCACY EFFORTS — Creating a seamless system of advocacy for a sexual assault victim should be an early goal of a SART. What that system looks like will depend on the type of advocates available in the community. One model involves having community-based advocates respond to the hospital or law enforcement when a victim presents there in order to provide support during a medical exam, evidence collection, and law enforcement interview. A presentation of medical and legal options, referrals for follow-up care, safety planning, and discussion of sexual assault dynamics and effects are part of this acute response.

Where a victim receives advocacy after this acute stage depends on the community's resources and the victim's own wishes. The "vertical advocacy" model proposes that a victim have the same advocate from first contact until services are no longer wanted by the victim, with additional advocates from law enforcement, the DA's office, or community agencies joining this team, as needed. This model recognizes the importance of the rapport and bond of trust that can occur between a victim and the first responding advocate. There are reasons, however, to consider alternate models. In many communities, the first-response advocates are volunteers with limited time to give, and expecting them to be available whenever the victim needs (court appearances, follow-up medical appointments) is not realistic. In these cases, having the first response advocate routinely "transition" the victim to the VWC, law enforcement, or follow-up

advocate may be a better model, since these advocates are usually paid staff members with more availability.

24-HOUR RESPONSE — When determining what agency or entity should provide 24-hour advocacy response (community-based agency, VWC, or law enforcement), there are several considerations for determining who can provide the best practice response:

- Which entity has the staff to consistently respond, particularly after-hours and on weekends?
- Which entity can provide a response that does not automatically initiate the criminal justice system response?
- Which entity will provide the most complete array of services regardless of whether the victim chooses to report the assault?
- Which entity has responders with sexual assault specific training who are familiar with the medical forensic response, including the Sexual Assault Examination Fund, and also with local referrals for follow-up services?
- Which entity can provide the highest level of confidentiality to victims?

The goal is for victims of sexual assault to receive the very best response available in the aftermath of a sexual assault, regardless of whether they choose to report the assault. When victims believe that the response is about them—and not about the report of the crime—they are more likely to want to report the crime and work with law enforcement and medical responders.

CO-ADVOCACY/TEAM ADVOCACY — It is the best practice for victims of sexual assault to be assigned at least two advocates at the first contact. This allows one advocate to concentrate on the needs of the victim and the other to assist with family, friends and communication with other responders. The pair of advocates may come from the same agency, particularly when the first contact comes after-hours or on a weekend. If possible, it can be helpful to have one advocate be from a culturally-specific/non-traditional service program during the first contact stage if the need for one is apparent. The sooner such advocates can become involved, the more likely the victim will continue to want the advocates to be involved. Co-advocacy is an opportunity to work closely with advocates based out of different disciplines and with different expertise on behalf of victims. Furthermore, it is in the victim's best interest to have more than one advocate assigned

to her or his case, because it makes it more likely that, in a time of crisis or need for support, at least one advocate will be available.

SECONDARY VICTIM SERVICES — It is the best practice to offer services to the family and/or friends of a sexual assault victim, as well as to the victim. This practice recognizes the traumatic effect that sexual violence has on those close to victims. It also recognizes that those close to a victim often feel anger or guilt and need a way to vent these feelings—other than to the victim. Best practice also recognizes the importance of using different advocates for family members or friends who wish to access services. The need to ensure confidentiality and objectivity is vital; in cases where advocacy resources are limited, it is recommended that the advocate engage in a conversation with the victim and those close to her or him to discuss and determine issues related to confidentiality and the provision of services. This includes clarifying that the victim decides who is involved and who receives information.

COLLABORATION — As a part of a collaborative, multidisciplinary response, and at the request of the victim, advocates may initiate the involvement of a medical responder, law enforcement, or a culturally-specific provider. Advocates can also reach out to individuals and agencies that are members of the SART or in the community on behalf of victims to access medical, social, and legal services, as needed.

INFORMATION AND REFERRAL — Advocacy regularly includes the provision of accurate information to victims and referrals to other agencies for services. It is vital that advocates keep their information accurate and their referral database up-to-date. The best practice for making referrals is for advocates to facilitate the contact between the victim and the agency, service, or individual to which the referral has been made. Advocates should avoid making “cold referrals” or simply handing victims a name and phone number or a list of services/agencies with contact information, unless that is the preference of the victim.

It is important for victims to receive information in writing, preferably in their first language, which they can refer to again and again. Written information will cover an array of issues, including medical follow-up, victim impact, post-traumatic stress, coping mechanisms, and contact information for other services. Other vital information includes giving the victim a clear idea of what to expect from other responders, medical procedures, billing issues, the criminal justice process and timeline for how the case will proceed, and crime victims’ compensation.

CONFIDENTIALITY AND PRIVILEGE — Victims of sexual assault are often cautious about disclosing the circumstances leading up to the assault and details of the assault itself. In fact, some victims wait years to disclose or never disclose at all. It is best practice to offer a support person to victims of sexual assault who will provide them with a reasonable expectation of confidentiality and make their best effort at maintaining confidentiality on behalf of victims.

- Confidential communication is communication made with the expectation of privacy. Information that is confidential is private information and is not accessible or known to other people. Confidential information can be subpoenaed. Advocates should be aware that their conversations and interactions with a victim are subject to subpoena and should use this knowledge to inform the way they keep records of their contact with victims.
- Privileged communication is communication that is entitled to protection from disclosure in court or other legal proceedings. Information that is privileged has greater protection than information that is confidential. Privileged information may be subpoenaed but it is protected and only the holder of the privilege (the victim) may waive the privilege to release the information being subpoenaed. Advocates in Oklahoma DO NOT have privilege.

All advocacy agencies and programs must provide victims with a reasonable expectation of confidentiality with respect to their conversations and exchanges. Best practice for community-based advocates is to obtain written permission from victims prior to contacting or sharing information with any other service providers and responders. VWC advocates, law enforcement advocates, and other government-based advocates are considered “agents” of the government entity for which they work and are not in a position to guarantee confidentiality to the victim. It is therefore the best practice for advocates to inform victims, prior to the victim’s disclosure, about the level of confidentiality that can—and cannot—be afforded to them.

MANDATORY REPORTING RESPONSIBILITIES — In Oklahoma, advocates are bound by the statutory mandatory reporting of child, disabled adult or elder abuse. The law requires that reports of child abuse be made to the Department of Human Services child abuse hotline—not to parents. It is best practice for advocates to disclose to victims their reporting obligations, as well as the obligations of other responders, as a part of their initial contact. Advocates should know what their agency’s reporting requirements and policy is.

- Although adolescent victims aged 15-17 are considered children with respect to child abuse reporting. A report need only be made to the Department of Human Services—parents do not need to be notified. However, some law enforcement agencies and medical facilities have a policy to inform parents of the sexual assault, even against the expressed wishes of the adolescent. It is vital for advocates to know the practice of their local agencies and hospitals, and if it is local practice, inform adolescents that law enforcement or medical facilities may notify parents.

PERSONAL REPRESENTATIVE — Although not statutorily authorized in Oklahoma, advocates, and other individuals who act as personal representatives, are encouraged to keep records of the cases in which they are prohibited by law enforcement, a health care provider, prosecutor, court, or protective service worker from accompanying a victim. This documentation will assist the agency and the victim if there is a wish to follow-up on the incident. It is important for advocates to understand that, should they be present during a law enforcement or prosecutor interview, they become subject to the possibility of being called as a witness if the case goes to court.

OKLAHOMA'S SEXUAL ASSAULT EXAMINATION FUND — The Sexual Assault Examination Fund is administered through the Oklahoma Crime Victims Compensation Program. Funds are received through a legislative authorization to transfer from the Victims Compensation Fund. For sexual assaults occurring on or after November 1, 2007, the law allows payment of up to \$450 which may be paid directly to the service provider(s) for expenses incurred for the forensic examination (such as an examination fee or a facility fee). Up to \$50 may be paid on a one-time basis for medications which are related to the sexual assault and that are directed and deemed necessary by the examiner. After a victim has received an examination, the following steps must be taken to fill out the Application for Payment of Sexual Assault Examination:

The hospital emergency room should have the victim complete the **Victim Verification** section; The attending nurse or qualified registered nurse should complete the **Examining Physician or SANE Nurse Verification** section; The hospital should complete the **Medical Facility Information** section; For each provider seeking payment, attach an itemized statement to the back of the application; Forward the application and attached itemized statements to the Crime

Victims Compensation Board; Payment is usually made within 30 days of the receipt of the application by the Compensation Program.

Any charges not directly related to the forensic exam are not compensable. In cases where there is both an examiner fee and a facility fee exceeding \$450, the fee is prorated, allowing a percentage to each provider. If the victim/guardian paid the bill out of their own pocket, they will need to provide a Social Security number in order to reimburse them. Service provider's Federal Tax ID numbers are required on all bills. These numbers are necessary in order to issue a payment through the Office of State Finance.

Every community should have a procedure in place for non-reporting evidence collection, a system that allows medical personnel/SANEs to collect evidence from a victim who is not yet sure about reporting to law enforcement and store it “anonymously” until a decision about reporting is made. This prevents time-sensitive evidence from being lost while giving the victim time to consider reporting options.

- Parental consent is typically not required in order for medical staff to conduct the medical forensic exam on adolescents and they therefore have a right to refuse. However, hospital staff or law enforcement officers may, by policy or personal value, decide to notify parents of the sexual assault. Pursuant to 63 O.S. § 2602, it is important for an advocate to know whether any members of the response team require notification of a parent of an adolescent and, if so, take steps ahead of time to minimize the re-traumatizing effect this might have. For example, an advocate can facilitate the notification of a trusted adult of the survivor's choice prior to notification of the parents, can offer to be with the survivor when the parents arrive, or can offer to be the one to tell the parents. Any option that allows the adolescent victim to maintain some sort of control over the contacting of parents is preferable to ease the feeling of one more thing being done to, rather than with, the victim.
- Medical forensic exams should never be performed on individuals who refuse.

More information about the Sexual Assault Examination Fund may be accessed by calling the Crime Victims Compensation Board at (405) 264-5006 or 1-800-750-5886 or by visiting <http://www.dac.state.ok.us>.

CRIME VICTIMS' COMPENSATION (CVC) — Crime Victims' Compensation is available to eligible victims of crime who have reported the crime and are willing to participate in the criminal

justice system response. Although CVC is the payer of last resort, it may cover the cost of medical bills, counseling, and, in some cases, loss of earnings or support. All advocates should have a complete understanding of what expenses are covered by and the limitations of CVC. Copies of the CVC application should be made available to victims. More information about the CVC may be accessed by calling the Crime Victims Compensation Board at (405) 264-5006 or 1-800-750-5886 or by visiting <http://www.dac.state.ok.us>.

MENTAL HEALTH SERVICES — As part of standard advocacy services, advocates may offer information on the availability of local mental health services to victims. It is important to remember that specific sexual assault training is not a standard part of the education of mental health providers; however, most have had training in trauma response. It is best practice to develop and maintain a list of local counselors who have the best training and the most interest in providing support to victims who have experienced sexual assault in the recent and more distant past.

DOCUMENTATION — In order to ensure that the wide array of needs of victims are met, advocates are encouraged to track and document services, information, and referrals. In documentation, it is best practice for advocates to describe the services provided but exclude details of the victim's personal history. Advocates should never document their own personal observations of the victim's demeanor, disclosures, and responses to the provision, or lack thereof, of services. It is recommended that an advocate not take notes during the acute response so the victim does not feel as though what she or he is saying is part of an investigation or that it will be read back or double-checked later. What is said by a victim to an advocate should only be used to determine what support and services the victim needs. The advocate's focus should be on active listening, validation of the victim's choices, and education about sexual assault dynamics, options, and referrals.

VICTIM BLAMING

One of the more challenging jobs of an advocate is to interrupt victim blaming and educate community and SART members about the myths and misconceptions that are often associated with sexual assault. Victim blaming refers to attitudes or beliefs that hold victims responsible, even in part, for being sexually assaulted. Victim blaming typically utilizes the argument that if the victim had not made a particular choice, engaged in a particular activity, or acted in a

particular way, she or he would not have been assaulted. Victims usually engage in this type of second guessing, and hearing any variation of this theme from others adds to the trauma already being experienced.

An effective strategy for advocates to utilize in supporting victims and addressing victim blaming is to reframe the experience for the victim, family, and/or friends. An example of reframing is to identify the specific way the victim is being blamed, such as for drinking alcohol. The next step is to identify what the natural consequences are for drinking alcohol—or even for drinking too much alcohol. The natural consequences are being sick, embarrassing yourself, hangovers, and headaches. These are consequences that might be faced by every person that drinks too much alcohol. The next reframing technique is to ask if everyone that drinks too much is sexually assaulted. The answer, of course, is no. The next question is, why not? It is because there is not a sexual offender in place—with a plan—every time and place that a person drinks too much. There will only be a sexual assault, regardless of the alcohol level of any person in the room, if there is also a sexual offender present who will use the situation to commit a sexual assault. Reframing is a powerful tool for addressing victim blaming, but care should always be taken so that reframing is done in a culturally-sensitive manner.

FURTHER THOUGHTS ABOUT THE ADVOCACY RESPONSE

- When a victim presents to the hospital or to law enforcement, an advocate should be called out immediately, regardless of whether the victim requests one. Many times victims are reluctant to “bother” someone, and they may not completely understand what an advocate does. However, because of a lack of information about the advocate’s role or due to the victim’s state of trauma, victims who initially say “no” to calling an advocate will often use one if the advocate is there already, prepared to help. The fact of an advocate’s presence should simply be stated to the victim, rather than putting the burden of requesting an advocate on the victim.
- Medical personnel/SANEs and law enforcement can help ease the introduction of an advocate who is already there. When the victim starts asking questions about “What happens next?” or “How do I ...?,” that is the perfect time for a first responder to say “There’s an advocate in the waiting room who can help you answer these questions, may I invite her/him in to speak with you?” If some sort of face-to-face contact

between advocate and victim is achieved, the chances of the victim calling an advocate for support later in the process will be greater than if the advocate is no more than a phone number on a list.

- Useful information for an advocate's resource packet:
 - ✓ Consent form to allow the advocate to share victim information with other first responders
 - ✓ List of referrals for medical follow-up (this may also come from medical personnel/SANE if there is an exam)
 - ✓ Application for Crime Victims' Compensation if the victim is reporting the assault to law enforcement
 - ✓ A safety plan form
 - ✓ Information on protective orders
 - ✓ List of agencies providing services, including local shelters and agencies providing specialized services for non-traditional/ vulnerable populations
 - ✓ List of counselor contacts, including which languages their services are available in.
 - ✓ Information for a victim and family/friends about the emotional issues that arise after a sexual assault
 - ✓ Step-by-step description of the legal process
 - ✓ Clean clothes for victims who must give up theirs as evidence
 - ✓ Victim Information and Notification Everyday (VINE) information (see Chapter 7 for more information about VINE)
 - ✓ Address Confidentiality Program information (a statewide program through the Oklahoma Attorney General's Office (OAG).
 - ✓ List of legal services offices and phone numbers

- What if an advocate is not available? The protocol for supporting a victim during a medical exam or law enforcement interview when an advocate is not available should be arranged in advance by the SART. Response sites that may serve a victim during the acute stage (for example, hospitals, police departments, etc.) should be provided with copies of the advocate's packets, and all Team responders should be familiar with the contents of the packet in case it falls to them to provide one to the victim. The victim should be informed of the possibilities for advocacy at a later date, and if the victim permits, the victim's information should be passed on to the advocacy agency as soon as possible for follow-up.
- In addition to providing services to the victim, an advocate's part of the acute response should also be considered a chance for fostering a positive working relationship with the other first responders. Many SARTs have identified the pre-SART relationship between advocacy and law enforcement as particularly strained, with law enforcement feeling that advocates "get in the way" of their interviews with the victim and with advocates feeling that only they, and not law enforcement, have the victim's best interests at heart. Hopefully these issues will have been resolved during early SART meetings, but the acute response phase is the ideal place for advocates to support and facilitate law enforcement's efforts in the SART response. Answering questions the victim might have about the legal process in a way that validates a victim's decision if she or he decides to report, helping to introduce the officer to the victim in a positive manner and reassuring the victim that an advocate can be with her or him throughout the legal process are all important aspects of sustaining the working relationships the SART strives to improve.
- With regards to the relationship between the advocate and medical personnel/SANE, existing SARTs report that the most common point of tension is if a SANE asks an advocate to leave the room during a portion of the exam. It is important that this scenario be considered in advance and that the advocate has a complete understanding of and completely supports the reasons this can occur. A SANE might ask an advocate to leave if the SANE feels the advocate's presence is hindering the victim's full disclosure (possibly due to embarrassment over describing graphic sexual acts or due to illegal activity the victim may have been engaged in), if the SANE feels the victim was "talked into" having an advocate present (by a friend or family member), or if the advocate's presence is interfering with medical treatment. It

is important that, when asked to leave by medical personnel/SANE, the advocate do so without a confrontation in front of the victim – a victim needs to feel that all first responders are united in their approach. A discussion of the SANE's decision can occur once the victim is no longer being medically treated.

- How is the response different if the victim is a child or adolescent? Most communities have a separate response for child victims of sexual assault. Some counties in Oklahoma have child advocacy centers where the forensic exam takes place and many jurisdictions have established multi-disciplinary response teams. In cases where this response is not available after-hours or on weekends, advocates must know how to respond to acute child cases. For children 14 and under, contact by advocates not specifically trained in responding to children should be limited to supporting the family or friends of the victim, since law enforcement/prosecution needs require strict interview protocols to be maintained to prevent any appearance of the child having been “coached” in her or his disclosure. With adolescents who are able to make their own decisions pursuant to 63 O.S. §2602 about medical treatment and evidence collection, it is best for law enforcement and prosecution to have a protocol worked out with the advocacy agencies about how best to serve these victims.

The advocacy response is a crucial component to the overall response to victims of sexual assault. The leadership of advocates in ensuring that their community's response is effective is imperative to achieving a successful and collaborative response. Advocates hear directly from survivors – more than anyone else – what works, what does not, and what is particularly successful or harmful. The sexual assault survivors in your community rely on advocates and their commitment to a coordinated community response.

Advocates should recognize that not all languages spoken are written and that some victims or families may not read or write in any language. Therefore, advocates should be flexible in providing the information in a manner that best suits the situation and not assume that their prepared material will adequately serve all.

CHAPTER 4

THE ROLE OF LAW ENFORCEMENT

The role of law enforcement is to protect and to serve the public. In cases of sexual assault, this role translates into ensuring the safety of the victim and the community by investigating reports of the crime. The primary responsibility of law enforcement is to determine whether the report of sexual assault meets the elements of a crime as defined by Oklahoma Statutes; this involves piecing together a factual history of the assault by collecting statements by the victim, witnesses, and suspect(s) as well as physical and corroborative evidence. In cases where law enforcement determines that the report of sexual assault does not meet the elements of a crime, law enforcement has a continuing obligation to assist the victim with information and referrals.

VICTIM-CENTERED — Law enforcement’s role in maintaining a victim-centered response is to treat each victim with consideration, professionalism, and compassion and to keep personal values, opinions, and judgments out of the investigation. Because victims are often selected by offenders for their perceived accessibility, vulnerability, and/or lack of credibility, they may also be perceived by responders as individuals who are more likely to be deceptive and lie about the assault. A victim-centered law enforcement response recognizes that victims of sexual assault are actually most often those individuals who are perceived as lacking in credibility and are consciously selected by perpetrators for that reason.

OFFENDER-FOCUSED — Law enforcement plays a critical role in maintaining an offender-focused investigation. Law enforcement investigation should focus on the victim’s lack of consent and/or the offender’s use of force or threat of force. Because it is known that sex offenders are most often repeat offenders and frequently commit “crossover” offenses (domestic violence, child abuse, child sexual abuse, and stalking),ⁱ offender-focused investigations require a complete background investigation on individuals who are reported to have committed sexual offenses in order to identify additional victims and/or similar crimes. Additionally, offender-focused investigations collect corroborative details that can help to explain whether consent was granted and how the “broad continuum of force” or threat thereof, was involved in the assault. Most offenders use instrumental violence when committing a sexual assault, which means that they use only the degree of force necessary to commit the assault. Offender-focused

investigations address the instrumental ways in which manipulation, coercion, force, or threat of force is used in order to attempt or complete a sexual assault.

BEST PRACTICE—FIRST RESPONSE

INITIATING THE COLLABORATIVE RESPONSE — In cases where a victim’s first contact with the acute response is through the police, law enforcement may need to initiate the involvement of the other first responders: advocates, medical personnel/SANE, culturally-specific providers, DHS, translators/interpreters, or mental health providers. At a minimum, contacting and initiating advocacy and medical response is standard practice. It is best practice for law enforcement to initiate both the medical response and the advocacy response prior to reaching the medical facility. Ideally, dispatch has the capability to automatically initiate advocacy services when a sexual assault call is received, but if that is not done, the law enforcement officer will need to initiate advocacy services. If the victim does not wish to have a medical forensic exam, advocacy should still be initiated. Advocacy services should be initiated automatically, rather than asking the victim if she or he would like an advocate to be called; victims will then have the option to decline advocacy services when the advocate is already on site.

ROLE OF LAW ENFORCEMENT DURING THE MEDICAL FORENSIC EXAM —It is recommended that law enforcement not be present during the medical/forensic exam. Information taken by the medical personnel/SANE about the history of the assault may be admissible in court if it is for the purpose of health care. Also, the victim may be more likely to disclose details of the assault (particularly those aspects of the assault that the victim finds more embarrassing) to the medical personnel/SANE than she or he would to a law enforcement officer. For this reason, law enforcement should conduct an initial victim interview separately from the medical personnel/SANE’s interview. When the medical exam has been completed, however, it is important for the SANE to convey to law enforcement pertinent information that could inform the subsequent complete victim interview.

INITIAL VICTIM STATEMENT — The purpose of the initial victim statement is to obtain basic information: who, what, where, when, and how. Most important to law enforcement is the establishment of the elements and location(s) of the crime. Law enforcement can encourage the victim to provide a narrative of the incident, beginning and ending where the victim chooses, by asking “can you tell me what happened?”

Law enforcement should avoid interrupting the victim to clarify details, information, or language during the initial narrative. Once the narrative has been completed, the interviewer can clarify and obtain necessary details related to who, what, where, when, and how of the reported assault. The initial victim statement is not a comprehensive victim interview. It is intended to be used to determine the next steps, such as initiating SAFE Kit collection or other medical response, calling for resources, or securing evidence.

Language barriers often exist, making it necessary for law enforcement to utilize an interpreter/translator during a victim interview. Friends, relatives or acquaintances of the victim should not be used. Only competent, well-qualified interpreters/translators should be utilized, and they should expect to be called to court to testify to the accuracy of their translation. Hospitals routinely have interpreters/translators available for medical translation, but they often are not made available for law enforcement interviews.

PHOTOS OF THE VICTIM —The purpose of photographs of the victim is to document injury. It is best practice for photos to be taken by the medical personnel/SANE during the physical exam, although non-genital photos may also be taken by law enforcement at the end of the exam. As discussed in the Medical Response Chapter 5, great care must be taken to safeguard photographs taken by medical personnel/SANEs to document injury. Photos of the victim should be submitted as evidence and not attached to the police report. Police reports are eventually available to the press and the public; evidence is not released to the press or public.

BEST PRACTICES—INVESTIGATIVE RESPONSE

VICTIM INTERVIEW — After the initial victim statement, the next step in a criminal investigation that involves the victim and law enforcement is the in-depth victim interview. While this interview may be held immediately after the medical/forensic exam, some circumstances, such as the victim's emotional or physical state or the availability of a detective or investigative officer, may lead to it being scheduled for a later time and different location. The detective who conducts the in-depth interview may or may not be the same person who conducted the initial victim statement (when the assault is reported after-hours it may be a patrol officer rather than a detective who first responds). The purpose of the in-depth victim interview is to:

- Confirm, clarify, and expand on the initial victim interview.

- Confirm and establish the elements of the crime.
- Develop corroborative details related to the assault and the circumstances surrounding the assault.
- Identify the theme of the investigation and likely defense.

As mentioned previously, it is a beneficial protocol for law enforcement to confer with the medical personnel/SANE before beginning the in-depth victim interview. At this time, the SANE can highlight information discovered during the exam that may help law enforcement ask questions useful to the investigation, for example: "I'm told you have a large bruise on the back of your head, can you tell me how that happened?" The traumatic state a victim is experiencing may mean that details mentioned during the forensic exam might not come out in the law enforcement interview without specific prompting. A briefing from the SANE after she completes the exam can help law enforcement get answers to questions that the medical exam has raised.

In-depth victim interviews take time. Law enforcement will want to ensure that there is time enough to complete the interview and to avoid limiting the interview due to outside time constraints. The ability, comfort, and needs of the victim should be considered throughout the course of the interview. Cultural differences, cognitive abilities (temporary or permanent), fear, embarrassment, self-blame, and other factors specific to that victim may influence her or his ability to communicate in a concise and efficient manner. Law enforcement will want to make every effort to ensure that the victim is comfortable in order to facilitate disclosure of as many details of the assault as possible. Victims are entitled to have a personal representative with them during all interviews.

Offenders often target victims whom they perceive will not be believed if the crime is reported. This is especially true of victims who are minors, victims who are themselves involved in lesser crimes, those who abuse alcohol or other drugs, and those with physical and/or mental disabilities. Victims may also fear that they will not be believed. Consequently, law enforcement will want to:

- Establish rapport before beginning the interview.
- Reassure victims that the only reason for law enforcement's presence is to investigate the sexual assault.

- Avoid asking “why did you” or “why didn’t you” questions that can be interpreted as blaming, unless the context and purpose of the question is explained to the victim.
- Give the victim undivided attention for the duration of the interview.
- Keep in mind that people will engage in behaviors outside of the experience of many responders’ expectations and comfort (such as prostitution or drug use).
- Leave their own biases out of the interview; the victim will be more likely to be forthcoming and cooperative.

As law enforcement conducts interviews with the victim, they should keep in mind that trauma affects a victim’s memory and that it is best practice to follow-up with victims to ask if they have remembered anything more. Law enforcement should not assume that they will get all the information they need about the sexual assault at the time of the initial victim interview or the in-depth victim interview.

UTILIZING INVESTIGATIVE TOOLS — Law enforcement is encouraged to utilize all available tools at their disposal when investigating charges of sexual assault. This will ensure cases are resolved conclusively, consistently, and professionally. An incomplete or questionable victim interview should not be the sole factor used to determine whether a particular investigative tool is chosen by law enforcement. The best practice is to utilize a variety of investigative tools as a standard part of the law enforcement response to a report of sexual assault. These tools include:

- **Suspect Interview** — Unless the suspect is unknown, suspect interviews should be conducted as a standard part of the law enforcement investigative response to a report of sexual assault. Because the majority of sexual assault reports involve victims and suspects who are known to each other, the investigation is likely to be a lengthy process of collecting corroborative details of the assault that will have to be investigated before an arrest or charging decision can be made.

Remember that the most common response of suspects is to: (1) deny the allegation completely or (2) deny that the sexual act was nonconsensual. Best practice includes not dismissing the victim’s report based solely on the suspect’s description of the incident. Sex offenders will often come across as more credible than their victims.

Suspect interviews will generally be conducted in a non-custodial setting before a suspect is arrested. This includes interviews at the law enforcement agency, but an interview may also take place at any location where the investigator feels he or she has the best advantage in gaining the cooperation of the suspect. Suspect interviews should always be conducted in person in order to observe the suspect's body language and reactions. The purpose of a suspect interview is to elicit provable lies, implausible accounts, partial truths, lack of denial, and partial or complete admissions. When possible, best practice includes audio or videotaping suspect interviews.

- **Pretext Phone Call** — Pretext phone calls can be important tools in non-stranger sexual assault investigations and should always be considered by law enforcement when an initial report of sexual assault is taken (provided such calls are allowed in your state). In those cases, the victim makes a recorded call to a suspect in order to elicit information from the suspect about the alleged offense. Pretext calls sometimes elicit an apology or other damaging statements from a suspect. At other times, the call may not elicit a confession or apology, but the call may provide important corroborative detail or a lack of denial. The possibility of having a sexual assault victim make a pretext phone call to the suspect is one reason an investigator will not want the suspect contacted or interviewed prematurely, as that contact would alert the suspect to an investigation. Victims should never be pressured into participating in a pretext phone call.
- **Victim Outcry Witnesses** — Victims often disclose sexual assault to a friend or family member prior to making a report. Additionally, they may seek frequent or regular support from multiple individuals in the aftermath of a sexual assault. These outcry witnesses may not be initially identified to law enforcement because of the victim's reluctance to involve others in a police investigation. However, collecting victim outcry statements may provide corroborative details, additions to the timeline and/or increase the credibility of the victim's account.
- **Suspect Disclosure Witnesses** — Suspects may brag or disclose their sexual "conquests" to friends, co-workers, and/or acquaintances. Suspect disclosure witnesses can corroborate the sexual acts described by the victim and provide insight into the suspect's perception of the incident and behavior surrounding the incident.

- **Polygraph** — Although polygraph results cannot be used in court, polygraphs are an important investigative tool. Polygraph results that show the suspect is deceptive can be used to confront the suspect and his denials and possibly elicit a partial or complete admission or confession. To ensure an accurate and useful polygraph result, it is important that the questions that will be asked of the suspect be discussed first with the polygrapher.
- **Search Warrants** — Search warrants should be considered for the collection of physical evidence as well as corroborative evidence. In a case where a victim was assaulted at the suspect's residence, a place the victim has not been before, the victim may provide investigators with a description of the layout of the residence and specific unique items seen within the residence. Investigators executing a search warrant can confirm the physical description of the residence, photograph and collect items described by the victim, and can corroborate the victim's description of the assault and other important details of the victim's report.

Search warrants should always be considered to collect evidence from a location under the suspect's control. When practical, however, before a search warrant is executed, law enforcement officers should always ask the suspect for consent to search before serving the warrant—it is always a good practice to ensure the admissibility of evidence seized by a search warrant by attempting to obtain the suspect's consent. By following this practice, officers may rely on both consent and the search warrant in gathering evidence. This will help to ensure the admissibility of evidence in court.

- **Identification of Additional Victims (similar/prior bad acts)** — Law enforcement will want to actively seek identification of additional victims. Sex offenders are commonly serial offenders *ii* as well as crossover offenders—they may offend against children, adolescents, and adults. Identification of additional victims can be done by interviewing a suspect's friends, family, acquaintances, roommates, co-workers, fellow students, former partners, and anyone within his or her immediate or extended social circle. Additionally, when law enforcement is investigating potential serial crimes, they may want to consider contacting their community-based program, which may have information about other victims. While advocates cannot confirm or

deny information without receiving permission from the victim in question, this has been a successful strategy in several jurisdictions.

- **Evidence Collection** — Evidence in sexual assault cases is most often found in three areas—on the victim, on the suspect, and at the physical location of the incident. Physical evidence is gathered from the victim through the forensic examination performed by a sexual assault nurse examiner or physician at a hospital or other medical facility.

Evidence found on suspects may be collected either during the suspect interview or following an arrest. Law enforcement is encouraged to consider exigency (the likelihood that the evidence will degrade or be lost completely) if it is not collected immediately or protected from destruction. In some cases, perishable or easily destroyed evidence may be seized without a search warrant, but in other cases, a search warrant may be required. Law enforcement is encouraged to consult with the DA's office, if possible, when determining whether to proceed without a search warrant. Particularly with suspects, the existence of exigency is a critical issue to identify and address immediately.

In many jurisdictions, hospitals may refuse to collect physical evidence from suspects and law enforcement will be required to collect evidence themselves. Appropriate evidence collection materials should be available to investigators.

A search warrant may be necessary to search the location of the assault. Forensics personnel with specialized training and equipment may be called upon to assist with the search.

Sketches and photos should be a standard part of crime scene response. In sexual assault cases, when a search is initially conducted, it may be difficult to determine what at the scene may become relevant later during the investigation or prosecution. Photos and sketches will document the scene as well items found at the scene. Photos and sketches will help to prove the presence of that potential evidence if it is needed later.

- **Submitting Evidence to the Forensic Lab** — Law enforcement will determine, sometimes in consultation with the District Attorney's office, what, if any, evidence is

submitted to the OSP Forensic Lab for analysis. Consideration should be given to submitting evidence contemporaneously with the investigation of the case.

- **Unknown Suspects** — The best practice is to submit kits to the forensic lab when the suspect is unknown in order to include the DNA profile of the suspect in CODIS.
- **Use of Technology** — It will be important for law enforcement to determine the need to examine telephone and cell phone records of a suspect and/or victim. It may also be important to seize a cell phone since they contain address books. Most cell phones have digital cameras, which may capture images relevant to an investigation. A search warrant may be required for the seizure and examination of cell phones.

Where appropriate, law enforcement should seize computers, CDs, DVDs, external hard drives, web or video cameras, digital cameras, and other related material during the execution of search warrants. Consideration should be given by law enforcement to having a forensic examination done of those devices to document contact the suspect had with a victim.

When appropriate, internet service providers should be contacted by law enforcement and directed to preserve email and other electronic correspondence that may have been sent between the suspect and victim or between the suspect and people who the suspect may have bragged to or made other incriminating statements to. A court order will be required for law enforcement to receive this material from the internet service provider.

The use of social networks such as MySpace, Facebook etc., should be determined. Those sites should be searched, through court order or search warrant. Suspects often brag or make other damaging statements to friends or associates on such sites.

Law enforcement is encouraged to work closely with their District Attorney's office when determining the course of an investigation.

NEXT STEPS

COMPLETE POLICE REPORT — Complete, thorough, and accurate documentation of the initial police report and the statements of the victim, witnesses, and suspect(s) is the foundation

of a good investigative technique. It is important that law enforcement complete reports as soon as possible, ideally within one to two days following their contacts related to the investigation. Accuracy and detail are paramount to good sexual assault investigations. Completing an initial sexual assault report is a priority, as investigative follow-up cannot begin until the initial report has been completed.

Law enforcement reports should:

- Contain all the elements of the crime.
- Be objective (and not include opinions from the author).
- Be written in first-person.
- Include details of the circumstances leading up to the assault as relayed by the victim.
- Be written using the victim's language and terminology; avoid sanitizing the language. • Include direct quotes from the victim.
- Avoid law enforcement jargon (exited, alleges, suspect, etc.).

CASE FORWARDING — It is the best practice for law enforcement agencies to forward all completed sexual assault investigations to the District Attorney's office for review.

INFORMATION AND REFERRAL — The best practice for law enforcement response includes providing victims of sexual assault with immediate and ready access to an advocate. Advocates are in the best position to provide information and should be able to provide referrals specific to the needs of the victim and her/his family. However, in cases where contact is made with a victim and an advocate is not immediately available, law enforcement will want to provide information and referrals to the victim regarding local advocacy services as well as other services that may be necessary. Law enforcement should provide victims with written materials that include the name of an advocate or advocacy agency and their contact information.

COMMUNICATING NEXT STEPS — Victims of sexual assault, like most community members, may not be familiar with the criminal justice system response. In fact, their understanding and expectations may be largely based on what they see in the media and on television. Therefore, it is critical to complete each victim contact by providing information on what is to come next, including information on the timeline and contact information for the law enforcement official handling the case. Information will also include explaining to the victim that the initial charges

determined by the investigating agency may not be the charges that are ultimately filed by the District Attorney's office, if it chooses to file on the case at all. Law enforcement will also want to acknowledge that disclosure is a process that can occur over time and encourage the victim to contact them with additional information.

CASE CLEARANCE — Cases that are incomplete, inconclusive, or cases for which follow-up information is unavailable or insufficient to support the report should be cleared as inactivated or suspended. Cases should be cleared as unfounded ONLY when the investigation establishes a crime was not committed. Additional forms of case clearance, such as by exception (suspect dies or is in custody outside of extradition jurisdiction) or arrest, should be utilized as appropriate. While society as a whole seems to support the idea that false allegations of sexual assault are common, the FBI reports that only about 8% of rape reports are unfounded. *iii* While false allegations certainly comprise a small portion of cases that are classified as unfounded, unfounded cases also include claims of sexual assault where the elements of the crime, as defined by Oklahoma Statutes, are not met; “unfounded” cases, therefore, are not the same thing as false reports. Changing the classification of unfounded to include only proven false reports could, over time, help change the public perception that victims often falsely “cry rape.”

ADDITIONAL CONSIDERATIONS:

LAW ENFORCEMENT ACCESS TO MEDICAL INFORMATION (HIPPA) — A release of health information is necessary in order for law enforcement to obtain health information from a crime victim. If the victim is conscious and capable of providing information, she/he may agree verbally or in writing. It is best practice to obtain a written release of information at the time of the medical/ forensic exam. As discussed in the Chapter 5, it is important to standardize the consent process as part of the medical exam so that law enforcement does not need to re-contact the victim to gain a release for medical records.

If a victim is not capable of expressing an opinion regarding disclosure or an emergency circumstance exists that prevents the provider from obtaining the victim's agreement, information may be disclosed without the victim's agreement if a law enforcement official represents that:

- The information is needed to determine whether a violation of law by a person other than the victim has occurred; and
- The information will not be used against the victim; and
- Immediate law enforcement activity would be materially and adversely affected by waiting until the victim is able to agree to the disclosure; and
- The hospital determines, in exercising professional judgment that the disclosure is in the victim's best interest.

MEDICAL RECORDS ACCESSED BY A SUBPOENA require the victim's written authorization. It is critically important that the scope of the records subpoenaed is clearly described with dates specific to the relevant medical response. This will avoid the necessity for law enforcement and other members of the criminal justice system to be responsible for confidential medical records.

- All medical records that are obtained should be immediately logged as evidence. Medical records should never be included as a part of the police/investigative reports, which are public records.

TAPED, RECORDED AND WRITTEN STATEMENTS (VICTIMS AND SUSPECTS) —

Videotaping and tape-recording statements from victims and suspects has advantages and disadvantages. Law enforcement agencies are strongly encouraged to develop a policy related to recording victim and suspect statements in cases of sexual assault. The policy should consider the following advantages of taping or recording statements:

- Reliable method of documentation.
- Record details that may not be summarized or captured in a written report.
- Record demeanor and affect to better communicate the reality of the impact of the assault on the victim.

The policy should also consider the following disadvantages:

- Record demeanor and affect, which may appear to be unexpected and even suspicious to some.
- Record omissions, inconsistencies, and/or partial truths (victim).

Whatever policy is developed by a particular law enforcement agency as it relates to taping and/or recording victim and suspect statements should also include a way to address the above disadvantages. Additionally, victims and suspects do not need to be treated the same and, in fact, there is good reason to develop taping/recording policies that are distinct.

- Taped/Recorded Statements — All suspects need to first be advised of the recording of the statement on tape. However, *Miranda* is only required if they are in custody or are not free to leave. Additionally, taped and recorded statements should be logged as evidence and not included as a part of the police/investigative report.
- Written Statements — Written statements can be used for suspect interviews if taping or recording is not the practice. Written statements can be generated by the suspect and signed, although the disadvantage of allowing suspects to use their own language is that they will undoubtedly minimize and justify their actions. The other option is for law enforcement to generate a statement and have the suspect review and sign it. Suspects who take issue with particular language or components of the statement can cross out and “addend” to that portion of the statement before they sign it. This provides a clear indication that the suspect read the statement, made corrections, and then signed it, making the argument of coercion difficult.

COLLABORATION WITH DEPARTMENT OF CORRECTIONS (PAROLE/PROBATION) —

Law enforcement officers are encouraged to utilize probation and parole staff as a resource in the investigation of sexual assault cases. Department of Corrections and probation/parole staff may be able to provide:

- Detailed descriptions of the suspect (tattoos, scars, etc.).
- Detailed history of the suspect (*Modus Operandi*, typology/arousal information).
- Suspect contacts (friends, family, co-workers).

Additionally, the Sex Offender Registry, managed by the Oklahoma Department of Corrections, can also be a good resource and investigative tool for law enforcement in investigating sexual assaults.

RELUCTANT AND/OR RECANTING VICTIMS — It is not uncommon for victims of sexual assault to be reluctant about reporting or participating in the criminal justice system. Victims who are reluctant may also ultimately recant in an effort to disengage the system. Law enforcement

will therefore want to avoid jumping to the conclusion that a recanting victim means the report was false. More likely the victim, as a result of internal, family, or socio-cultural pressures, is making her or his best effort to avoid further participation in the investigation and/or prosecution. Consider the influences that relate to a victim's willingness to participate:

- Internal Influences — Victims are likely to feel embarrassed, ashamed, and even unsure of what happened to them. Victims may fear that law enforcement and other responders will not believe them if they do report. Victims may also want to put the assault behind them and avoid repeating the story, answering questions, or being confronted by the perpetrator in court.
- External Influences — Victims may feel pressure from their friends, family, or community (cultural, religious, etc.) to report or not report. Victims may also encounter responders (within the criminal justice system) who have victim-blaming attitudes and believe misconceptions related to sexual violence. Victims also may fear being threatened or harmed by their perpetrator (or his/her family and friends) if they report their assault.
- Socio-Cultural Influences — Victims may feel particularly uncomfortable with specific or humiliating facts about the assault, such as sodomy. Victims may also feel protective about private information related to their situation or behavior, such as pregnancy or drug use. Finally, victims who have some familiarity with the criminal justice system may have a past that they fear will inhibit them from receiving justice.

Ultimately, victims are as likely as the general public to believe misconceptions about sexual assault and blame themselves entirely or in part for the assault, which makes them unsure about prosecution.

FURTHER THOUGHTS ABOUT THE LAW ENFORCEMENT RESPONSE:

It is crucial for law enforcement first responders to gain a detailed understanding of the difficulties that sexual assault victims face when making the decision to report to law enforcement and the potential barriers to continuing in the legal response. Only by understanding these concerns, as well as the broader issues of sexual assault dynamics and social myths and misconceptions, will law enforcement officers be able to provide a truly victim-

centered response. It is a responsibility of the SART to facilitate sexual assault-specific training for law enforcement to ensure that their efforts on behalf of the victim and the larger community are grounded in the victim-centered approach. Discipline-specific training for law enforcement and other first responders is addressed in Chapter 10.

Some ways law enforcement can promote a victim-centered response:

- Ensure the victim's access to an advocate at first response.
- Encourage the victim's continuing relationship with an advocate after the initial interview by informing the advocate of all interviews and meetings (only with the victim's prior consent).
- Keep the victim informed as the case progresses; return phone calls from the victim seeking information promptly.
- Understand that while a detective may be working numerous cases at once, each victim is only concerned with her or his own case and focused on its outcome, often to the point of disrupting her or his "normal" or "before assault" life.
- Discuss the final decision of whether or not to refer the case to the DA in a way that validates the victim's decision to report: "It was lack of evidence, not lack of belief in your story, that forced law enforcement to suspend the investigation," "It was really important to report to make law enforcement aware of the prevalence of the crime," "Coming forward may help other victims in the future even if there is no official legal resolution."

It is often the case that the victim's experience of seeking justice may start and end with the law enforcement response and investigation. It is crucial that the victim have validating, supportive, and compassionate interactions with law enforcement, both to facilitate her or his own healing and to prove to the community around her or him that "victim-centered" is the guiding philosophy of the SART's first responders and not just an empty catch-phrase.

NOTES

i David Lisak and Paul Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," Violence and Victims, Vol 17. No. 1 (2002).

ii David Lisak and Paul Miller, in their research journal article, "Repeat Rape and Multiple Offending Among Undetected Rapists", found that the majority of the rapists in their research sample were repeat offenders and also committed other acts of interpersonal violence including battery, child physical abuse, and child sexual abuse.

iii In 1997, the last year available, the FBI's Uniform Crime Reports stated that 8% of all reports of forcible rape were un-founded. The same statistic was reported since 1995 (Uniform Crime Reports for the United States, Federal Bureau of Investigation, 1995-1997).

CHAPTER 5

A NOTE ABOUT TERMINOLOGY – Please note that this chapter uses the term “patient” rather than “victim” or “survivor” to mirror the relationship between medical personnel/SANEs and the person to whom they are providing care. It is not the job of a SANE to determine whether a crime occurred, but rather to document findings and medically treat the patient according to the history given. It is also good to note that not all SANE exams are conducted in a hospital.

THE ROLE OF MEDICAL PERSONNEL/SANES

The role of medical personnel in the response to sexual assault is to provide for the immediate medical care of patients, collect and document forensic evidence, provide appropriate referrals, and provide testimony in the small percentage of cases that go to trial. It is the best practice that all sexual assault examinations be performed by a medical professional who has received sexual assault forensic training. Sexual Assault Nurse Examiners (SANEs) are the preferred choice when a community has the resources to provide them.

Medical personnel/SANEs are charged with assessing and addressing all medical needs. This includes a thorough examination, appropriate treatment, and complete documentation based on standard medical practice and on the medical and assault history given by their patient. As a possible first point of contact for victims of sexual assault, medical personnel/SANEs share the responsibility of initiating the multidisciplinary response, including contacting an advocate and, if the patient decides to report, law enforcement.

In conjunction with the medical examination, medical personnel/SANEs are also responsible for conducting the forensic evidence exam when a patient consents to the exam. Consent can be given or withdrawn for any portion of the exam at any time. In cases where the patient chooses not to report their assault to law enforcement, the option of a “non-reporting examination” should be explained and offered (see “Non-reporting Examination,” below). Medical personnel/SANEs have an obligation to care for the self-identified victim and to provide her or him with information and referrals, regardless of the patient’s decision concerning evidence collection and reporting.

VICTIM-CENTERED—The role of medical personnel/SANEs in a victim-centered response hinges on maintaining medical neutrality and providing quality patient care. The risk in sexual

assault medical response is to attempt to determine whether the patient is or is not a victim of sexual assault and to adapt treatment to this determination. All medical exams and subsequent treatment, however, are based on the patient's complaints and disclosures, and the sexual assault exam is no exception.

A victim-centered medical response recognizes that it is best for the patient (and for the criminal justice system) that medical personnel/SANEs avoid formulating opinions about whether the sexual assault occurred. Rather, medical personnel/SANEs have an opportunity to conduct an exam that documents the patient's assault history as reported by the patient and notes when the physical and forensic components could be consistent with the patient's history. Medical personnel/SANEs may be asked by law enforcement whether a victim is credible or, more directly, whether the assault occurred. Medical personnel/SANEs can use this as an opportunity to share what is known about the sexual assault medical examination, that the absence of injury or forensic findings is not indicative of whether the patient was assaulted and neither is a patient's demeanor during the assault history or exam. Medical personnel/ SANEs must avoid making judgments regarding the legitimacy of a sexual assault complaint or the credibility of their patient.

OFFENDER-FOCUSED—Medical personnel/SANEs are not routinely in contact with offenders, although at times they may be asked to conduct a suspect exam as a part of the criminal investigation. A victim-centered and offender-focused medical response will make every effort to avoid using the same medical personnel/SANE for victim and suspect exams and avoid using the same entryways and the same exam rooms. However, with the appropriate procedures in place the same personnel can be used. Additionally, it is critical that medical personnel/SANEs maintain their medical neutrality and patient confidentiality when performing suspect exams.

INITIATING THE COLLABORATIVE RESPONSE—As part of a multidisciplinary response, when the initial contact made by the patient is the hospital, staff at a hospital or clinic will be responsible for initiating the involvement of SANEs or other expert medical examiners, advocates, law enforcement, or the appropriate culturally-specific providers when a victim of sexual assault presents for care. Immediately initiating the advocate response is important, since it is often the advocate who can help the patient decide whom else to contact (law enforcement, culturally-specific advocate, friend, or relative).

BEST PRACTICE—All hospitals and clinics where victims of sexual assault are likely to present for care should have a well-established and detailed protocol to address their immediate

medical and forensic needs; creation of this protocol should be one of the earliest tasks for the SART. It is best practice to have a trained Sexual Assault Nurse Examiner (SANE) or other specially trained medical forensic examiner available to conduct the medical forensic exam. In cases where no such expert is available, the most experienced medical personnel should conduct the exam and needs to follow detailed instructions for collecting and maintaining the custody of evidence, documenting medical and incident history, and documenting findings.

MEDICAL SCREENING EXAM—It is imperative that patients be medically cleared by the ER physician/ Physicians assistant, etc. before being seen by the SANE. All emergency needs **MUST** be met prior to the SANE exam. In cases where the exam is not conducted by a hospital, a policy should be in place to enable a trained SANE to conduct the medical screening exam (MSE). The purpose of the MSE is to determine the presence or absence of an emergency medical condition, not to treat or diagnose. In the instance where an MSE determines there to be no emergency medical condition, it is possible (and usually best practice) for the entire medical exam and evidence collection to be performed solely by the trained forensic examiner/SANE, saving the patient the possible trauma of being seen by multiple medical personnel. It is important for the SART to determine the MSE policies of its hospitals early on in the process of developing medical response protocols to allow for time to make changes at management level, if necessary.

MEDICAL FORENSIC EXAM—The medical practitioner and a support person (advocate, friend, or family member, if requested by the patient) are the only appropriate individuals to be present during the medical forensic exam (the portion of the exam where the patient is asked to disrobe for the purposes of physical examination, documentation, and evidence collection). Law Enforcement should not be present during the medical forensic exam.

REPORTING AND NON-REPORTING VICTIM— It is common for victims of sexual assault to be reluctant to report or participate in the criminal justice system response. It is not the role of medical professionals to encourage patients to report or not to report. A victim of sexual assault should be medically cared for with the same thoroughness as any other patient, regardless of whether she or he wishes to report the incident. The medical history dictated by the patient will indicate the necessity of a complete physical exam and injury evaluation (including a speculum exam, screening for strangulation, etc.). All patients need to receive appropriate treatment and discharge information regardless of whether forensic evidence is collected. All patient records should reflect thorough and complete documentation and should include an incident history;

some patients decide days or weeks after their exam that they want to report and this documentation will then become part of an investigation. Patients also have the option of accessing the non-reporting evidence collection protocol (described later in this chapter).

COMPLETE MEDICAL HISTORY AND DOCUMENTATION—Taking a complete medical and incident history determines the health care needs of the sexually assaulted patient and guides forensic evidence collection, including the completion of a Sexual Assault Forensic Evidence (SAFE) Kit. *i* A health care provider who does not document properly may be subject to liability and can have her or his credibility challenged in court. Additionally, providers called into court who have not accurately documented the details of a particular incident or history may not remember the details of their exams. The forms used by providers to document sexual assault should include space for a narrative description of the incident. *ii* This narrative is an important complement to the other evidence collected during a forensic exam or by law enforcement. In fact, it provides an explanation for the evidence itself and can keep a health care provider out of court. Good medical documentation should:

- Be objective (and not include opinions from the author).
- Include general information of the circumstances leading up to the assault as relayed by the patient.
- Include objective observations of demeanor, altered mental status, and physical appearance.
- Use the patient's language and terminology (avoid sanitizing the language).
- Include direct quotes from the patient.
- Use simple descriptive vs. medical terminology (bruise vs. ecchymosis, etc.).
- Avoid non-neutral terminology (refuses, non-compliant, alleges, etc.) that can be misunderstood in a legal setting.

RIGHT OF MINOR TO CONSENT TO MEDICAL SERVICE— As previously stated, pursuant to 63 O.S. § 2602, some minors may be able to consent to his or her own medical services. This includes the medical forensic and medical screening exam. Care should be taken to respect the wishes of the adolescent patient whenever possible.

STRANGULATION *iii*— It is critical to assess every victim of sexual assault for strangulation. Often incorrectly referred to as “choking,” strangulation is the closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. Strangulation is extremely dangerous and can cause death hours or even days after the event. Though there may be visible injuries to the neck, including scratches or abrasions, many patients who have been strangled do not show injury immediately, or ever. However, many patients report voice changes that may range from hoarseness to the complete loss of voice. It may also be difficult or painful to swallow or to breathe. Involuntary urination and defecation may occur and can be embarrassing for a patient to disclose but should always be asked about. If strangulation is suspected, the patient must be immediately assessed and should be observed and monitored for complications at an appropriate facility. All injuries, including strangulation, take precedence over the forensic exam.

ASSAULT HISTORY— At the beginning of a sexual assault exam, it is standard practice for the medical personnel/SANE to first obtain a history of the assault. This history tells the SANE where to look for and gather physical and corroborative evidence on the patient’s body. Best practice dictates that the medical personnel/SANE should direct this history and that the advocate or personal representative may be present for support; law enforcement should not be present. *iv*

EVIDENCE COLLECTION—In order for forensic evidence to be collected, the patient must either report to law enforcement or access the non-reporting evidence collection protocol (see below). SANEs or other medical personnel gather forensic evidence based on the assault history using a SAFE Kit. Medical personnel/SANEs are encouraged to consider exigency (the likelihood that the evidence will degrade or be lost completely) when prioritizing the collection of evidence. This is especially important in cases of suspected drug-facilitated sexual assault and the need to collect and store urine and/or blood samples.

Documentation of injury (including photographs and body map sketches), details on where and how evidence is collected, and appropriate handling and labeling of evidence is critical.

- **Photos of the Patient**—The purpose of photographs of the patient is to document injury and evidence. Non-genital photos are evidence and should be logged as evidence (and not be attached to the police report, which becomes part of the public record). Genital injury photos should be maintained by the hospital as a part of the medical forensic exam chart, which then becomes part of the medical record. This

provides for an additional layer of privacy protection for victims, as a photo specific subpoena should be required in order to access photos in the medical record.

Non-genital photos of other body parts can be taken by the medical personnel/SANE or law enforcement while genital photos should only be taken by a medical personnel/SANE (not in the presence of law enforcement) and maintained as a part of the medical record. Preference is for photos to be kept digitally on a CD without being developed unless necessary. It is recommended that non-genital photos that require medical interpretation also be maintained by the hospital/program as a part of the medical record.

- Release of Information and Evidence to Law Enforcement—Medical information, including evidence collected during a medical forensic examination, is protected under the Health Insurance Portability & Accountability Act of 1996 (HIPAA). It can only be released to law enforcement or accessed for legal proceedings with the patient's (or parent/guardian of a minor patient's) prior written consent or when ordered by a court with jurisdiction in the matter. It is important to develop and maintain proper consent and release forms as part of the sexual assault protocol and to obtain all necessary signatures during the exam process. Please see the Appendices for sample "Release" forms for medical providers and law enforcement.

NON-REPORTING EVIDENCE COLLECTION—Allows an adult patient with the capacity to consent (Mandatory Reporting section below) to have forensic evidence collected and stored anonymously without making the decision to report the assault to law enforcement. The evidence is stored through proper chain of custody, using only a kit number as identification. Although the amount of time evidence is stored is not currently set forth in Oklahoma statutes, the evidence is typically stored until the patient makes the decision about reporting; storing the evidence anonymously in no way commits a patient to reporting at a later date. Since some patients refuse an exam because they are not ready to report their assault and because some patients decide to report days or weeks after having an exam that did not include forensic evidence collection, anonymous evidence collection is a way to encourage more patients to come forward for care and also to preserve patients' options for reporting at some point after the acute stage. It should be the responsibility of the SART to establish a non-reporting evidence collection policy. Recommended policies for law enforcement agencies and medical facilities are available on the Oregon Sexual Assault Task Force website at <http://www.oregonsatf.org>.

LABORATORY TESTING—Testing of a sexual assault victim for drugs and alcohol can achieve two purposes: (1) to determine a possible overdose/alcohol poisoning case and be able to treat it effectively or (2) to provide evidence of incapacitation or drug-facilitated assault. The reason for testing should determine where to have urine or blood samples tested. When treatment is needed for a drug or alcohol overdose, testing at the hospital lab for immediate results is crucial, and the normal course of action for an emergency department case. If urine and blood are to be sent to the hospital lab for results in these cases, it is recommended that a sample of each also be drawn to be turned over to law enforcement specifically as evidence to be tested at the forensic lab.

In cases where the patient has presented solely as a sexual assault victim with no need for medical treatment, and the patient is either reporting to law enforcement or accessing the non-reporting evidence collection protocol, it is recommended that urine and/or blood samples be turned directly over to law enforcement for testing by the forensic lab without being tested by the hospital.

Lab testing at the time of the sexual assault exam should be guided by exam findings and the patient's symptoms. Toxicology tests for drugs and/or alcohol are normally obtained immediately if indicated by patient presentation or history. For toxicology purposes, blood is collected for alcohol and urine for drug testing if the patient presents within 24 hours of ingestion. If the exam is conducted after 24 hours, only collection of urine is necessary. It is important to maintain appropriate chain of evidence/custody. Work with law enforcement to ensure proper refrigeration and storage.

HIV/STI PROPHYLAXIS—Routine STI screening at the time of exam should be deferred in place of providing prophylaxis antibiotics for common STIs. Pregnancy testing is indicated in all patients at risk for pregnancy to make sure that antibiotics are not given when a pregnancy already exists. The need for follow up STI testing should be outlined to the patient prior to discharge and be included in the written information packet, particularly since some protocols do not include prophylaxis for HIV, hepatitis, herpes, and other infections. Protocols should be in place for referral when there is a high risk exposure to HIV. The Centers for Disease Control and Prevention (CDC) Sexually Transmitted Disease Treatment Guidelines *vi* are an excellent resource for appropriate treatment protocols. *v*

EMERGENCY CONTRACEPTION—Pregnancy prevention with emergency contraception (EC) must be offered to all non-pregnant, post-menarchal patients presenting within 120 hours (5

days) of unprotected intercourse. Plan B (two tablets) given immediately is the current recommended option for emergency contraception. If a hospital or program formulary does not include Plan B, there are other EC options available.

Please note that there are still hospitals, clinics, and practitioners that do not routinely offer emergency contraception for patients who have experienced sexual assault. Additionally, some pharmacies and pharmacists refuse to fill prescriptions for emergency contraception. It is best practice to provide emergency contraception at the time of the medical forensic examination. If EC is not offered but prescribed, it is important to refer patients to pharmacies with a known willingness to fill the prescription or who sell EC over-the-counter. *vi*

INFORMATION AND REFERRAL—Best practice medical response includes providing victims of sexual assault (and their families) with immediate and ready access to an advocate. An advocate is in the best position to provide information and referrals specific to the needs of victims and their families and friends. In cases where contact is made with a patient and an advocate is not immediately available, medical personnel/SANE will want to provide information and referral to the patient regarding local advocacy services as well as other immediate services that may be necessary; it is recommended that the medical personnel/SANE have copies of the advocates' packets on hand in case an advocate is not available.

MEDICAL FOLLOW-UP—Depending on the assault and medical history, patients of sexual assault may need follow-up medical care for injury, assessment for or treatment of STIs, and/or mental health care, or for other complications. It is critical to give specific follow-up information and referrals to address these needs. An example of discharge paperwork is included in the Appendices.

MANDATORY REPORTING—Reporting the abuse (pursuant to 10A O.S. § 1-1-105 ,“abuse” means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child’s health, safety, or welfare, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. Provided, however, that nothing contained in this act shall prohibit any parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling) of a minor victim (under the age of 18) is mandatory for victims of sexual assault pursuant to 10A O.S. §1-2-101. Reporting of an adult sexual assault victim (18 and older) is not mandatory unless the patient is a vulnerable adult, under the care of a guardian, is a person with a developmental disability or mental illness, or is over 65 years old. A vulnerable

adult is “an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.” See 43A O.S. § 10-104

The other exception to this guideline is in the case of injuries caused by a weapon or incidents involving life-threatening assault. These must be reported to law enforcement agencies; however, this does not require that the sexual assault be a part of the report.

FURTHER THOUGHTS ABOUT THE MEDICAL RESPONSE

When conducting a sexual assault exam, the questions a SANE asks should focus first on obtaining information that will best inform how to care for that patient. As part of a multidisciplinary response, however, the SANE is also collecting information that will help the other first responder SART members do their jobs on behalf of the patient.

- If the patient has questions about what happens next in the legal process, the SANE can facilitate the presence of an advocate in the room.
- If family members or friends accompanying the patient are showing signs of victim blaming or are drawing the focus from the patient’s needs, the SANE can ask them to wait outside the room with support from the advocate.
- If the patient seems nervous about behavior or choices made prior to the assault (drug use, under-age drinking) the SANE can share knowledge of law enforcement’s priorities with the patient and also inform the officer of the patient’s fears, with the consent of the patient, so they can be addressed immediately and openly in the law enforcement interview.
- The SANE can help ease the transition to the law enforcement officer by showing confidence in the officer’s approach. For instance, “When we’re done with the exam, the detective is going to want to do a longer interview with you to get the information needed to start your case. The officer might ask you some of the same questions again and might ask you some things that feel embarrassing, but it’s just so the

officer can have enough information to do the best job on your behalf. The advocate can be with you the whole time if you want; advocates know a lot about this part of the process and what happens next.”

- Often times, a patient will be less reluctant to share intimate or graphic details of the assault with a medical professional than with a law enforcement officer; sharing such details with the investigating officer before the in-depth interview can increase law enforcement’s ability to elicit important information by knowing what questions to ask, information that the patient might not otherwise volunteer to law enforcement due to shame or embarrassment.
- Due to their position as medical personnel rather than members of the legal response, SANEs (like advocates) are seen as innately more “victim friendly” than some other team members, since their job is to take the best care possible of their patient. This puts them in the position of being able to facilitate the patient’s relationship with other Team members such as law enforcement or advocacy simply by describing and expressing confidence in the victim-centered approach of other first responders.
- A SANE should always be open to the possibility of changing the nature of the exam at any point; for example, a patient can come in refusing to report and wanting only STI prophylaxis and Plan B or other emergency contraception. As the patient feels more at ease with the level of compassionate care she is receiving and as she hears the SANE talk about how other first responders can become involved, the patient may feel more comfortable with the option of including other Team members. The SANE must be flexible enough in approach to be able to “reset” the intent of the exam mid-way if the patient decides she or he wants an advocate, wants evidence collected, or wants to involve law enforcement. By being able to accommodate the changing wishes of the patient, the SANE is able to both provide the best care for her patient and also serve the guiding principles of the SART: to provide the best possible victim-centered care, to mitigate the effects of sexual assault on victims and those around them, and to increase community safety by aiding the prosecution of perpetrators whenever a victim-centered response allows.

CONSIDERATIONS WHEN SETTING UP THE MEDICAL RESPONSE

Victims are entitled to a forensic examination, free of charge (or with full reimbursement), regardless of whether the assault is reported to law enforcement. This may necessitate a change to existing hospital policies of patient billing, so it is important for a SART to work with their community medical sites to ensure this is in effect. In Oklahoma the Sexual Assault Examination Fund will reimburse medical facilities for sexual assault exams (see Chapter 3). Keep in mind that while the Fund will cover expenses associated with the forensic examination, the patient may accrue bills for other aspects of her or his medical treatment. Since one of the barriers to victims coming forward for care is the possible financial cost, it is an important part of the SART's community awareness efforts to publicize the fact that victims can receive free, confidential evidence collection without having to report to law enforcement.

It is important that during the process of creating first response protocols, the SART identifies and confers with all medical sites that could be a point of first contact with a sexual assault victim to determine whether an exam would happen at that site or if the victim would be referred to another site for an exam. Some SARTs designate one hospital to be the only site for exams and evidence collection, so that the responsibility of having trained SANEs and the necessary equipment and supplies is concentrated in one facility. In this case, all community medical facilities must understand how to appropriately transfer a victim from their site to the response facility. While there is an advantage to having one facility as the sole provider, it is important that the unintended disadvantages to this setup are identified and solved. For example:

- If a victim is going to be referred to a different facility, will she or he be allowed to leave the first facility without a medical screening or incurring a bill for triage services?
- Is the suspect receiving a forensic exam in the same facility? What will be done by the first responders to ensure that the victim and suspect do not come into contact and that there is no possibility of cross-contamination of evidence?
- How will the facility make sure that the victim does indeed go to the designated hospital, and not simply decide it is too much trouble or too re-traumatizing to go elsewhere? (Having an advocate meet at the first facility to accompany the victim can be a solution to this. Another possibility is that law enforcement can transport after they take a report.)

- If the victim does not have private transportation, is transportation to another site readily available after-hours? If the victim is reporting, law enforcement should be able to transport; if not, does the acute advocacy program allow advocates to transport or provide reimbursement for travel?

As part of the SART process, every community must inventory its own resources and gauge the interest of all of its hospitals and clinics in providing sexual assault services before deciding where sexual assault exams and evidence collection will take place. If it will be at multiple sites, it is important that the protocols for treatment at each site are identical and conform to the SART's victim-centered acute response model.

Many SARTs in their early stages concentrate on getting a few nurses at each response site SANE trained so there is a trained medical responder on staff all or most of the time. Having medical personnel who have SANE training is the first step in improving the quality of the medical response to sexual assault cases. If the trained medical personnel are only available while they are working their regular shifts, the benefit to the victim can be somewhat diluted. To create a more victim-centered response, some SARTs may choose to move to a SANE on-call system that provides on-call trained nurses who can respond to one or more medical facilities as soon as they are called. The benefits of an on-call SANE program help create a truly victim-centered acute response:

- The victim does not need to wait until a nurse is finished with more medically urgent cases before being seen. The on-call SANE is there to respond only to the sexual assault case. The time spent waiting in a busy public waiting area is greatly reduced for the patient.
- The victim is treated by only one medical personnel/SANE from start to finish (unless requiring emergency medical treatment), avoiding the potentially re-traumatizing effect of having to explain her or his assault to the triage nurse, the ED doctor, and multiple staff nurses.
- The medical personnel/SANE cannot be called away to a more urgent case in the middle of a sexual assault exam (jeopardizing evidence chain of custody and victim sensitivity).

- The on-call SANEs become experts at caring for sexual assault victims and are able to build a rapport and good working relationships with other first responders through regular interaction.
- The SART first response protocols are more likely to be adhered to when it is the duty of the on-call SANE to initiate the multi-disciplinary response, such as calling an advocate or law enforcement.
- Multiple emergency room personnel are not tied up by a sexual assault case, which can often take a minimum of 3 – 5 hours, allowing the emergency room to function more efficiently.

While the benefits of developing an on-call SANE program have been well demonstrated in SARTs that have them, funding for such a system may make it beyond the reach of a new SART, at least initially. Having an on-call system in mind as a goal throughout the early stages of SART development may help shorten the timeline for its development, whether the cost ends up being covered by the community's hospital, group of medical facilities, or by the SART itself.

As with the other first responders, SANE nurses must have training in and a complete understanding of the SART protocol for acute response to sexual assault cases and also in the methods and needs of their fellow first responders. Since it is not likely that all SANEs will have been part of the development of the SART protocols during early SART implementation, having one person in charge of communication with and ongoing training for the SANEs is important. SARTs may have a SANE Program Coordinator, either volunteer or paid, to fulfill this role. Providing a regular forum for SANEs to discuss cases, review charting methods, improve evidence collection techniques and practice expert witness testimony skills is an important aspect of a SANE Program, which a Coordinator can facilitate.

Some useful resources exist for SARTs interested in creating a SANE program, including:

- "National Protocol for Sexual Assault Medical Forensic Examinations of Adults/Adolescents" by the International Association of Forensic Nurses (IAFN) is available at: <http://www.safeta.org/displaycommon.cfm?an=4>
- "Implementing SANE Programs in Rural Communities: the West Virginia Regional Mobile SANE Project" is a thorough look at starting a SANE program, including a

detailed “replication checklist” that takes the reader through the process from start to finish. (www.fris.org, see Programs & Projects, SANE Mobile Project)

- The OVC Bulletin “SANE Programs: Improving the Community Response to Sexual Assault Victims” (2001) gives an overview of many of the benefits of SANE programs. (http://www.ojp.usdoj.gov/ovc/publications/bulletins/sane_4_2001/welcome.html)

NOTES

i SAFE Kits are provided are used to complete an adult sexual assault forensic exam whether the victim consents to law enforcement involvement or is non-reporting.

ii For sample forms, see the Sexual Assault Task Force website at www.oregonsatf.org.

iii Taken from “A Model Protocol for Maryland Medical Practitioners: Treatment of Strangulation Cases,” adapted from the work of Dr. George E. McClane, M.D., and Gail B. Strack, J.D. and The Model Policy of the Maryland Health Care Coalition Against Domestic Violence.

iv For more information, see the Task Force position paper, “A Best Practice: Why Law Enforcement is Excluded from the Forensic Medical Exam,” available at www.oregonsatf.org.

v CDC Sexually Transmitted Diseases Treatment Guidelines 2006 can be found at www.cdc.gov/std/treatment/.

vi You may also reference the position paper, “HIV Postexposure Prophylaxis after Sexual Assault,” on the Task Force website, www.oregonsatf.org.

CHAPTER 6

THE ROLE OF THE PROSECUTOR

“The primary responsibility of prosecution is to see that justice is accomplished.”ⁱ The role of the prosecutor in a collaborative sexual assault response is to provide for the safety of the community and victim by holding offenders accountable through the prosecution of criminal cases. Prosecutors are responsible for evaluating reports of sexual assault to determine if sufficient evidence exists, or could be obtained, to file criminal charges. In cases where victims choose to participate in the criminal justice system, prosecutors have the added responsibility and challenge of identifying a response that meets the needs of the victim, as well as the needs of the community, in order to achieve a truly victim-centered response.

The myths and misunderstandings that surround crimes of sexual assault, along with the propensity of defense attorneys and jurors alike to focus on the actions of the victim rather than the perpetrator, present prosecutors with a particularly difficult challenge in prosecuting sexual assault cases. In the course of taking perpetrators to trial, prosecutors have the opportunity to inform the community, jury by jury, that victims are not responsible for the crimes against them and that sex offenders who are not held accountable are a threat to community safety. Although prosecutors are generally not responsible for initiating the SART response, the prosecutor, by virtue of her or his role, assumes a position of leadership and is therefore responsible for promoting an engaged SART during the criminal justice system process.

VICTIM-CENTERED — The prosecutor’s role in maintaining a victim-centered response involves giving serious consideration to the prosecution of each sexual assault case, upholding the Oklahoma Crime Victims’ Bill of Rights, and providing leadership and direction to the SART so that an increasing number of cases might ultimately be suitable for filing. With respect to reported sexual assault, prosecutors are the final decision-makers for a criminal justice intervention—prosecutors determine whether a case will be prosecuted, pleaded to a lesser charge, or declined, which will ultimately impact the victim and the community.

OFFENDER-FOCUSED — Prosecutors are uniquely positioned to ensure that the criminal justice system response to a reported sexual assault case is adequately offender-focused. Through case evaluation, prosecutors can determine if sufficient evidence against the offender

exists or if there is the need for additional investigation. Offender-focused prosecution facilitates the use of prosecutorial tools such as prior bad acts and *modus operandi*.

PROSECUTION—INITIAL CASE EVALUATION

VICTIM INTERVIEW—After receiving a sexual assault case from law enforcement, it is best practice for the prosecutor to meet with the victim in person, both to assess the victim’s ability to participate in the legal process and to learn how the victim hopes the case will be resolved. While the prosecutor must consider the safety and well-being of the community in deciding how to resolve a sexual assault case, the needs and wishes of the victim should always remain forefront in a prosecutor’s consideration.

Prosecutors, by statute, are responsible for informing victims of their rights as crime victims and for ensuring that those rights are respected by the criminal justice system. Prosecutors, in conjunction with Victim –Witness Coordinators or other domestic violence and sexual assault program advocates, will want to take the time to explain to victims the details of the case and the likely outcome of the criminal justice process.

To provide the necessary support to victims, it is a best practice for prosecutors to arrange for an advocate to be present during all interviews and meetings with the victim. Victims always have the option of declining the presence of advocates.

Prosecutors should be mindful that victims, like most of the public, might believe that the prosecutor is “their” attorney and represents “their” individual interests. Because prosecutors actually represent the state and community, this misperception may result in misunderstandings and disappointment on the part of the victim if not addressed and clarified from the first contact.

RESPECTING THE VICTIM’S STRENGTH — During the course of a prosecutor’s work on a sexual assault case there will be times of setbacks and potential barriers: motions for suppression of evidence by the defense, rulings to bar certain testimony, and even motions for case dismissal. When these setbacks arise, it is sometimes a prosecutor’s instinct to not disclose them for fear that they may unduly “upset” the victim, particularly if it is a motion or ruling the prosecutor intends to fight. This impulse to shield a victim from bad news may be well intentioned. It is important to remember, however, that the act of concealing information is an act that takes control away from the victim based on what someone else thinks is best for her or

him. It does not allow the victim a chance to make decisions about how to react and assumes that the victim does not have the emotional strength to “handle” the news. This is a compassionate but disempowering approach to the victim, one that has no place in a victim-centered response. Instead of shielding the victim from “upsetting” news, a prosecutor should make sure that the victim has an advocate available to offer support. A prosecutor might want to inform the victim’s advocate when bad news has been delivered to ensure the advocate is available to the victim, if needed. Spending time to fully prepare a victim for all possibilities and outcomes of a case in the very first prosecutor/victim meeting will also help ensure that setbacks, when they arise, can be handled in a way that minimizes the trauma to the victim.

COLLABORATING WITH LAW ENFORCEMENT — It is best practice for prosecutors to directly communicate with law enforcement during review of the case for consideration of criminal charges. Law enforcement officers have direct contact with victims and suspects and the most complete understanding of the circumstances surrounding the assaults. Law enforcement is in the best position to consult with prosecutors on charging decisions.

FILING CHARGES OR DECLINING TO FILE — Determining whether to file charges is a broader decision than merely evaluating the evidence; the nature of sexual assault crimes often results in little or no physical evidence. However, corroborative evidence, witness statements, participation of the victim/witness in the case, and similar bad acts committed by the offender are likely to play a significant role in the prosecution. A complete investigation of the suspect is necessary to understand the case before charges are filed.

Prosecutors are encouraged to avoid basing a decision to charge solely on the perceived credibility of the victim and the offender. Offenders are likely to present as highly credible while victims are not. Prosecutors must understand that offenders purposefully select victims who will be seen as lacking credibility as a result of their lifestyle choices, conduct, presentation, age, cognitive ability, and background. Prosecutors are encouraged to consider the following framework for coming to understand sexual assault victim selection.

Victims can be anyone, but are most often chosen by offenders because they are:

***Vulnerable**, or can be made so. **Accessible**, or can be made so. **Lacking in credibility**, or can be made to seem so.*

Prosecutors are encouraged to utilize the investigating law enforcement agency or the District Attorney’s office investigator to conduct follow-up investigations when necessary. It is the best

practice for prosecutors to take a proactive role in identifying and acquiring information and corroborative details necessary to prosecute the case. In cases where a thorough investigation has not been conducted by the investigating law enforcement agency, prosecutors are encouraged to return the investigation for the necessary follow-up. Choosing to file or not to file charges should be avoided until all of the information related to the circumstances leading up to and surrounding the sexual assault has been fully pieced together.

If the investigation is complete, a thorough review of the evidence has been considered, and the decision is to not file the case, it is the best practice for the prosecutor to discuss the “no prosecution” decision personally with the victim. The prosecutor, in making the decision to decline charges, is in the figurative position of a judge. A victim is more likely to respect the criminal justice system and the prosecutor if she or he feels respected and understands the reasons why charges are not being filed. The confidence of the victim and the public in the system is earned by giving the victim closure with a personal explanation.

It is best practice for the prosecutor to also follow-up with law enforcement to discuss the issues surrounding the “no file” decision. As a part of the multidisciplinary collaborative response, prosecutors should find a way to take this discussion further, to other members of the first response Team and to all of whom played some role in how the case developed. A good forum for this discussion would be monthly “Case Review” meetings, where the prosecutor could, with benefit of hindsight, discuss practices that could increase and improve the investigation and prosecution of individual sexual assault cases.

PROSECUTION—BEST PRACTICES

VERTICAL PROSECUTION — It is the best practice to utilize vertical prosecution in sexual assault cases—having the same prosecutor take the case from the filing of the Information through final disposition. Vertical prosecution enables prosecutors and victims to establish rapport and build trust; the stronger the bond and connection between the victim and the prosecutor, the stronger the case.

VICTIM PRIVACY — Prosecutors should file the appropriate Motions in Limine to ensure the Rape Shield laws are upheld in order to keep out the prejudicial information about the victim.

CONSIDERING THE EXPECTATIONS/NEEDS OF THE VICTIM/WITNESS — As part of Oklahoma’s Crime Victims’ Bill of Rights, prosecutors are obligated to consult with the victim on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution. By statute, it is also the role of the prosecutor to honor the victim’s choice to be present at the trial. Although prosecutors may not be in a position to oblige all the requests of victims, research has demonstrated that showing an interest in a victim’s perspective and giving consideration to her/his requests may have a more significant impact on the victim than the resolution of the case in the criminal justice system. *ii*

COLLABORATION—Due to the complicated nature of prosecuting sexual assault cases, prosecutors are encouraged to collaborate with a wide variety of individuals and agencies who can lend the necessary expertise and information to successfully prepare for and prosecute cases.

Prosecutors are encouraged to access the following agencies and/or individual experts:

- Investigating law enforcement agency
- Sex offender treatment providers
- Department of Human Services, Seniors and People with Disabilities or other agencies working with vulnerable populations
- Department of Corrections, Parole/Probation
- Counselors/therapists
- Advocacy agencies
- SANEs/forensic nurses
- Forensic scientists/biological evidence experts

PROSECUTION—CRIMINAL JUSTICE RESPONSE

PRELIMINARY HEARINGS— A preliminary magistrate shall have the authority to limit the evidence presented at the preliminary hearing to that which is relevant to the issues of: (1) whether the crime was committed, and (2) whether there is probable cause to believe the

defendant committed the crime. Once a showing of probable cause is made, the magistrate shall terminate the preliminary hearing and enter a bindover order; provided, however, that the preliminary hearing shall be terminated only if the state made available for inspection law enforcement reports within the prosecuting attorney's knowledge or possession at the time to the defendant five (5) working days prior to the date of the preliminary hearing. The district attorney shall determine whether or not to make law enforcement reports available prior to the preliminary hearing. If reports are made available, the district attorney shall be required to provide those law enforcement reports that the district attorney knows to exist at the time of providing the reports, but this does not include any physical evidence which may exist in the case. This provision does not require the district attorney to provide copies for the defendant, but only to make them available for inspection by defense counsel. In the alternative, upon agreement of the state and the defendant, the court may terminate the preliminary hearing once a showing of probable cause is made.

TRIAL PREPARATION — Defendants in most sexual assault cases are going to select one of three defenses: 1) denial that they had anything to do with the crime, 2) mistaken identity, or 3) that the sexual act(s) was consensual. Trial preparation requires preparing arguments to counter the above denials, as well as addressing common myths and misconceptions that surround sexual assault, credibility issues related to the victim (and friends/family), credibility of the defendant, and developing an argument to demonstrate the criminal intent of the defendant.

THEME DEVELOPMENT — In sexual assault cases, theme development can be extremely helpful when presenting a picture of the victim as a target and the defendant as a premeditated perpetrator. The defense will often raise a host of issues intended to question the credibility of the victim and the legitimacy of her or his allegations. Prosecutors may be able to use the defense's credibility concerns to their advantage by arguing that, due to the victim's state of intoxication, history of criminal involvement, and/or homelessness or isolation, she or he was, in fact, at greater risk and more vulnerable to the predatory nature of a sexual offender. Who better to target than someone who is vulnerable, accessible and who will not be believed?

USE OF EXPERTS — Experts in sexual assault cases can:

- Assist with trial preparation and case consultation.
- Educate the jury on general information that has relevance to the case.
- Offer findings or results specific to the case.

Prosecutors are encouraged to work with their local community-based advocacy agency to develop suitable experts who can provide testimony on common victim reactions and behaviors during and following a sexual assault. The Oklahoma Coalition Against Domestic Violence and Sexual Assault, District Attorneys Council or Attorney General's office can be a resource for identifying expert witnesses; over time, it should become the responsibility of the SART to identify and cultivate a group of possible expert witnesses.

Defense attorneys may argue that delayed reporting, a lack of resistance, lack of injury, and the victim's behavior after the sexual assault are inconsistent with a "real" or "true" victim. Sexual assault victim advocates from your county may be well-positioned to offer expert testimony based on their direct service experience working with a continuum of victims from different age groups, backgrounds, and religious, ethnic, or racial groups. Their ability to explain "counter-intuitive" victim behavior as evidence of trauma (not lack of it) based on their knowledge of and experience with PTSD and typical coping mechanisms can be a useful tool to help a jury understand the different ways that trauma can present after a sexual assault.

VICTIM/WITNESS COORDINATION — Building stronger victims builds stronger cases. It is the responsibility of the prosecutor to identify resources and collaborate with necessary partners to ensure that victims are supported and in a position to participate in a criminal justice system response that can last anywhere from six months to two years. Maintaining a close working relationship with the District Attorney's Victim–Witness Coordinator and the community domestic violence and sexual assault program is a necessary and fundamental component of providing support and resources to victims of sexual assault.

Facilitating SART member participation, communication among responders, and problem solving will ensure that victims have access to the full range of information and services available to them. This collaborative approach assists victims to feel supported by the criminal justice system.

VOIR DIRE — Voir Dire sets the stage for the presentation of the state's evidence and is the only opportunity prosecutors have to interactively converse with potential jurors. Voir Dire provides a unique opportunity for prosecutors to address the myths and misconceptions surrounding sexual assault that have the potential to undermine the victim's credibility. Although discussing rape myths can be daunting, a frank and non-judgmental dialogue during Voir Dire can have a tremendous impact on the likelihood of conviction. See the article on "Voir Dire" in the Appendices.

TRIAL: DIRECT AND CROSS EXAMINATION — Direct examination of the victim in sexual assault cases is the heart of the prosecutor’s case. The prosecutor must use this opportunity to effectively introduce the victim to the jury by explaining the victim’s background and the context for the assault. Cross-examination points must be incorporated and explained during direct examination. Similarly, cross-examination of the defendant should support the victim’s testimony by demonstrating that the victim was selected purposefully and intentionally by the defendant— for her/his vulnerability, accessibility, and perceived lack of credibility. Patti Powers, Senior Deputy Prosecuting Attorney in Yakima County, Washington writes, “We must come to know the victim’s reality, whether it sounds good or not, before, during, and subsequent to the sexual assault. We must also come to know the offender as he was initially known by the victim as well as the stranger she came to recognize during the sexual assault.”*iii*

PLEA NEGOTIATIONS — Prosecutors are required to consult with victims prior to finalizing a plea negotiation. Although victims may not ultimately have their wishes met with respect to a plea agreement, a tremendous amount of respect and consideration can be demonstrated to victims by merely taking the time to discuss with them the considerations surrounding the plea negotiations. Furthermore, both research and anecdotes indicate that success, as defined by the victim, is determined by whether she or he felt believed, supported, and shown consideration during the criminal justice process rather than by the final outcome of a case.

SENTENCING — Pursuant to Oklahoma Law, prosecutors are required to consult with the victim as part of the process to determine sentencing recommendations. In counties that conduct pre-sentencing investigations, the victim is to be consulted by the investigator as part of that process. The victim’s need for closure and case resolution must be considered in conjunction with the prosecutor’s goals of ensuring that the corrections and/or treatment providers are appropriately identified to make suitable recommendations for sentencing. Recommendations or agreements regarding the length of probation/parole (when flexible) and the specific conditions of probation are particular obligations of the prosecutor in the sentencing process.

RESTITUTION AND COMPENSATORY FINES — Victims are entitled to adequate compensatory fines and “prompt” restitution upon a plea agreement or conviction. Prosecutors are encouraged to consult with victims to determine the request for fines and restitution.

OTHER CONSIDERATIONS

JUVENILE OFFENDERS/VICTIMS — The prosecution of juvenile offenders or adult offenders of juvenile victims are specialized prosecutions. Prosecutors responsible for these cases should have specialized training. As these cases intersect with the juvenile court, the procedure of charging and holding a juvenile offender will require cooperation with the county juvenile department. Similarly, the investigation of criminal cases with juvenile victims will commonly be done consistent with established child abuse protocols. However, the child abuse protocols may not appropriately serve adolescent victims. Prosecutors are encouraged to work collaboratively with their criminal justice partners to effectively serve juveniles. Prosecutors are also encouraged to take very seriously the crimes committed by juveniles, even those that don't appear serious. The evidence is clear that early and strong intervention is the best chance of interrupting behaviors that may turn juveniles into career sex offenders.

NOTES

i National Prosecution Standards, 2nd Ed., §1.1, National District Attorney Association, (1991).

ii R. Campbell, T. Sefl, H. Barnes, C. Ahrens, S. Wasco, and Y. Zaragoza-Diesfeld, "Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma?" Journal of Consulting and Clinical Psychology, Vol. 67, No. 6, 847-858 (1999).

iii Please see the Appendix for Patti Power's article, Overcoming the Consent Defense: Direct and Cross Examination for more information on developing effective strategies.

CHAPTER 7

SEX OFFENDER MANAGEMENT

Including offender management and treatment professionals as regular members, or even as consultants on specific cases can be extremely useful for SARTs in identifying opportunities for victim voice, improving system responses, and preventing future offenses.

Sex offenders are a diverse group of individuals who come from all walks of life. There is no identifiable “profile” to use in detecting who is and who is not a sex offender. Nor is there one clear-cut method by which to prosecute, treat, or manage those who are identified as sex offenders. Therefore, community members, advocates, law enforcement, prosecutors, probation and parole officers, treatment providers, judges, and policy makers must become increasingly knowledgeable about “best practices” for the assessment, treatment, and management of sex offenders.

CHARACTERISTICS OF SEX OFFENDERS

As of September 1, 2010 Oklahoma’s population of registered sex offenders included nearly 6,630 men and women. Given the fact that males account for 96% of Oklahoma’s active sex offender registry, estimates suggest that one out of every 210 men in Oklahoma is a registered sex offender. Apprehension rates are far lower than the true crime rate for sexual offenses. *i* Experts suspect that fewer than 10% of sexual crimes are reported and successfully prosecuted. *ii* In addition, many offenders commit numerous offenses prior to apprehension. *iii* The lack of detection is further complicated by the fact that some offenders engage in “cross-over” behavior. “Cross-over” refers to the tendency of offenders to have more complicated offense histories than initially indicated. For example, the crime of conviction may categorize someone as a rapist, but the offender may also have engaged in other types of sexual crimes. A significant portion of rapists acknowledge prior offenses against children, and some exhibitionists report an undetected history of exposing themselves to adults and children. *iv*

DEVELOPMENT OF SEXUAL OFFENDING BEHAVIOR - The development of sexually offending behavior is influenced by many factors, including past learning, early childhood sexual

experiences, exposure to pornography or adult sexuality, the development of “pro-offending” attitudes or belief systems, failures in attachment and empathy, and a multitude of deficiencies in skills and abilities regarding coping and relating to others. Biological, psychological, and social factors all play a role in the emergence and continuance of sexually offending behaviors. A comprehensive approach that addresses all of these dimensions is needed to support the effective rehabilitation of sexual offenders.

ASSESSMENT AND RISK — Notable differences between sex offenders include the degree to which they are aroused to children or sex with non-consenting partners, the use of force or aggression versus the use of manipulation (i.e., grooming), as well as the number and types of victims they have offended against. These offense dynamics, in addition to other relevant information, suggest differences in the risk for future sexual offending. Generally speaking, the assessment of a particular offender’s risk to re-offend is a complex task, which must be performed by a qualified professional with specialized knowledge. Assessment of risk considers both static factors (unchangeable) and dynamic factors (changeable). It is the consideration of both static and dynamic factors that result in the most accurate assessment of an offender’s future risk to offend.

POINT FOR SART CONSULTATION: If an offender has previously been supervised, on probation or parole, or undergone sex offender treatment, the Parole and Probation Officer or Treatment Provider can provide information that may be useful in determining criminal history and risk. That information can inform decisions regarding what criminal charges to bring against the offender and what plea bargain or sentencing conditions to request.

MANAGEMENT OF ADULT SEX OFFENDERS

Convicted adult sex offenders can be released on probation, sentenced to serve jail or prison time, or civilly committed. In some cases, where an offender’s mental state is in question, he/she may be evaluated to determine whether he/she is competent to stand trial. In cases where legal opinion deems an offender incompetent to stand trial, the offender is committed to the Department of Mental Health and Substance Abuse Services until such time as he/she is restored to competence. Once restored, the case proceeds to trial or plea agreement.

Adult sex offenders are placed on supervision in two ways: 1) either by a Judge, which is called probation, or 2) by the Parole Board, which is called post prison supervision. For those offenders on probation, each Judge decides which conditions are appropriate for each sex offender. The general conditions of supervision are the same for all offenders on supervision.

Sometimes the conditions are determined through a plea agreement. For those offenders on post prison supervision, there are two packages of conditions for sex offenders, which are determined by statute. Package A sex offender conditions are for those who have a current conviction for a sex offense. Package B sex offender conditions are for those who have had a sex offense condition in the past. A regular condition of supervision is for the sex offender to have no contact with the victim of the crime. This condition can be expanded to include no contact with members of the victim's family and/or going to where the victim lives or works.

POINT FOR VICTIM NOTIFICATION: Victims can be notified when Parole Board hearings pertaining to the offender are scheduled and are invited to attend if they so choose. Similarly, victims can request to be notified whenever the offender is placed in the community in a less restrictive setting, this can be done by registering with the VINE system (see the end of this chapter).

PAROLE AND PROBATION

Probation and Parole Officers (PPOs) have two roles in the supervision of a sex offender: 1) the preservation of community safety, and 2) the facilitation of the sex offender's rehabilitation. The main objective that is reached through both of these roles is to reduce the future number of sexual offenses.

PPOs have the power to arrest and detain offenders when they violate their conditions or pose a risk to the community or themselves. Need to find out if they have this power in Oklahoma

In lieu of arresting an offender, the PPO may have the option of placing the offender on house arrest, electronic monitoring or GPS surveillance. PPOs can use polygraph testing to monitor whether a sex offender is in compliance with his/her conditions or use plethysmograph testing to monitor the level of the offender's deviant sexual arousal. PPOs usually refer offenders to sex offender treatment, and PPOs may also require that they participate in treatment for alcohol or

drug addiction, domestic violence, anger management, cognitive restructuring, mental health counseling, and/or medication.

While under supervision, it is the responsibility of the PPO to conduct various forms of notification on predatory sex offenders. Some counties maintain predatory sex offender websites. Notification can be done via flyers in neighborhoods or announcements in newspapers. The PPO, based on the type of victims the offender has previously targeted, and his/her other risk factors, determines the level of notification for the predatory sex offender.

POINT FOR VICTIM NOTIFICATION: Victims are encouraged to contact the PPO assigned to supervise the offender. PPOs can provide general information about the status of the offender's supervision and answer questions about conditions and the supervision process. The victim can request to be notified of upcoming violation hearings. Additionally, if the offender has been ordered to pay restitution, it is the PPO's job to develop a payment plan and hold the offender accountable for keeping up with the payment plan.

SEX OFFENDER TREATMENT

Participation in sex offender treatment is almost always a condition of probation or parole for adults convicted of sex crimes. However, the requirement for participation in sex offender treatment is terminated when an offender reaches the time limit of his/her sentence, regardless of whether he/she has completed treatment.

JUVENILE SEX OFFENDERS

The process and system for handling juvenile sex offenders differs greatly from that of handling adult sex offenders. Oklahoma, Tulsa and Comanche counties each have a juvenile bureau that is responsible for filing delinquency petitions to bring juvenile offenders before the court. In other counties the local District Attorney retains this function. In some counties all juvenile sex offenders are initially lodged in detention, while in other counties a risk assessment process is used to determine if detention will be utilized. In counties where the juvenile department has a prosecutorial role, the juvenile intake counselor reviews the police reports and consults with the assigned District Attorney to determine what charges are appropriate.

Most serious sex offenses (i.e., Rape I, II and rape by instrumentation), committed by a youth who is 16 or 17 at the time of the offense, are not prosecuted as adult offenses, as they are youthful offender-qualifying offenses in the first instance. See 10A O.S. § 2-5-206. To prosecute these offenders as adults, the state would have to file motions to impose adult sentences pursuant to 10A O.S. § 2-5-208.

POINT FOR VICTIM VOICE: Victims have the right to be heard regarding any considerations for release from detention or disposition of the case.

MANAGEMENT OF JUVENILE OFFENDERS — If the court feels it is appropriate to keep the juvenile offender in the community with his/her parents, the youth will be made a ward of the court and placed on probation. A field probation officer/counselor will be assigned. The youth on probation will be expected to enroll in a local sex offender treatment program approved by the juvenile department and will be expected to follow all the conditions of probation and treatment. The youth's compliance and progress in treatment is monitored by the probation officer. Generally, there is frequent contact with the youth at school, in the home, and in the probation office. The probation officer also coordinates and communicates with the treatment providers.

If an adjudicated youth is determined to not be appropriate for community-based treatment and supervision or if the youth fails at the community level jurisdiction, then he/she is generally transferred to the custody of the Office of Juvenile Affairs (OJA) for placement in a youth correctional facility, residential treatment program, or foster care and can remain there until the age of 18 years and 5 months, depending on treatment needs.

POINT FOR VICTIM VOICE: A youth's placement to OJA is a dispositional order, so a victim can come to court and provide a victim impact statement.

Upon leaving a correctional facility, some youth may be paroled to a community-based residential treatment facility. Delinquents may be retained to age 19 and youthful offenders may be retained to age 18 years, five months, depending on treatment needs.

Offenders of certain ages who commit qualifying sex offenses may be required to register on the Juvenile Sex Offender Registry. The district attorney must make an application to include a juvenile in the Registry, which may be granted by the court under certain circumstances. If ordered included in the Juvenile Sex Offender Registry, the juvenile's registration may be transferred to the adult sex offender registry under certain circumstances.

SEX OFFENDER REGISTRATION

The sex offender registry is the central storehouse of information on persons who live, work, or attend school in Oklahoma who are required to register for sex crime convictions and adjudications under Oklahoma law. The registry contains juveniles and adults who have been found guilty of sex crimes in Oklahoma courts as well as persons who have moved into Oklahoma from other jurisdictions. While adults are not required to register while housed in an Oklahoma correctional facility (which includes a closed medical facility), they must contact law enforcement and register within 10 days of release or partial release from a correctional facility. Juveniles in closed custody currently register with juvenile authorities during their period of detention and after their release. Information regarding persons on the registry is provided to agencies in Oklahoma through the Law Enforcement Data System (LEDS) and nationally to criminal justice agencies through National Crime Information Center (NCIC) records.

The Oklahoma Sex and Violent Crime Offender public website is located on the internet at http://docapp8.doc.state.ok.us/servlet/page?_pageid=422&_dad=portal30&_schema=PORTAL30&id=1 and provides information in conjunction with the requirements of the Adam Walsh Child Protection and Safety Act on sex offenders who have been.

POINT FOR VICTIM NOTIFICATION: Information is available to the public, upon request to the Department of Corrections registry, on all registered sex offenders individually, by telephone, through email, or in list form by city or zip code. Victims of sex offenders can obtain information on sex offenders in Oklahoma, including prison status, release information, and parole status by registering for OK VINE, Oklahoma's criminal tracking and victim notification system.

VINE: VICTIM INFORMATION & NOTIFICATION EVERYDAY

VINE is a computer data system operated by the Oklahoma Office of Attorney General. VINE informs victims if an offender is in the custody of the Department of Corrections or a county jail. VINE also updates victims on other important custody and/or probation information.

VINE allows victims to identify a phone number that is used to generate an automatic message when an offender is released, transferred, escapes, dies or has a change in parole or probation status. To access the VINE system, victims can call 1-877-OK4-VINE (1-877-654-8463).

NOTES

i C. Charish, Statistical Analyst, Oklahoma Department of Corrections, personal communication, September 1, 2010..

ii G. Able and J.L. Rouleau, "The nature and extent of sexual assault," in *Handbook of Sexual Assault. Issues, Theories and Treatment of the Offender*, eds. W.L. Marshall, D.R. Laws, and H.E. Barbaree (New York: Plenum Press, 1990), 9-21.

iii M.R. Weinrott and M. Saylor, "Self-report of crimes committed by sex offenders," *Journal of Interpersonal Violence* 6, no. 3 (1991): 286-300.

iv K. English and G. Wensuc, "Combo of polygraph and treatment reveals many sex offenders offend across multiple relationships, age, gender and crime type categories," *Office of Research and Statistics, Division of Criminal Justice, Colorado Department of Public Safety, Elements of Change Journal* 5, no. 1 (2000): 1-7. D. Lisak and P. Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Violence and Victims* 17:1 (2002): 73-84.

CHAPTER 8

THE ROLE OF THE FORENSIC LAB (FORENSIC SCIENTISTS)

The role of the forensic scientist in sexual assault response is to analyze and evaluate biological evidence, toxicology samples, latent prints, trace evidence, and DNA samples, and to draw conclusions related to the circumstances leading up to, during, and in the direct aftermath of the sexual assault. The forensic lab is responsible for objectively evaluating evidence and comparing the results of the evidence with components of the sexual assault history to determine whether that specific evidence is consistent with the history.

After the analysis, the forensic lab is responsible for communicating its conclusions to the requesting law enforcement agency and/or District Attorney's Office in the form of reports and through court testimony. The forensic lab, because it does not have any direct contact with the victim, has a more detached role in the response to sexual assault. Nonetheless, forensic lab representatives are equally responsible for engaging specific components of the SART, particularly law enforcement agencies and prosecutors, in order to ensure that a thorough and objective analysis is conducted and that there is consistent and mutual communication.

Another role played by forensic scientists is one of expert consultant during evidence collection, particularly in unusual circumstances. It is not the role of the forensic lab to determine whether a sexual assault took place, but rather to offer evidentiary analysis that can be used to piece together a factual history of the assault.

SEXUAL ASSAULT FORENSIC EVIDENCE (SAFE) KITS

Evidence in sexual assault cases should be collected as quickly as possible. Biological evidence is particularly fragile and can degrade or be easily worn or washed away. In general, it is recommended that evidence be routinely collected up to 120 hours post assault. However, there are a variety of circumstances that warrant the collection of a SAFE Kit outside of this window and law enforcement and/or SANEs are in the best position to determine when this is the case. Elapsed time and activity by the victim should be considered when evaluating the utility of SAFE Kit collection. Bathing, showering, or douching by the victim does not necessarily

eliminate the possibility of finding semen evidence in body cavities. Factors that reasonably lead to considering the collection of a SAFE Kit beyond 120-hours are:

- Multiple assailants
- Kidnapping
- Injury
- No bathing
- Limited mobility post-assault
- Vaginal penetration

Additionally, in cases where the victim is deceased and there is concern of sexual assault, it is the best practice to conduct a SAFE Kit. Law enforcement can authorize a SAFE Kit exam in cases where gaining consent from the victim is not possible.

GUIDELINES ON SUBMITTING SAFE KITS TO THE FORENSIC LAB — It is not within the purview of the forensic lab to deny sexual assault evidence for analysis nor does the forensic lab have a policy on when SAFE Kits can and cannot be submitted for analysis. The forensic lab recognizes that law enforcement and prosecutors are in the best position to identify when evidence should be evaluated as a part of determining whether charges are filed. The forensic scientist is a good resource for assistance with evidence evaluation prior to analysis.

INITIATING SAFE KIT ANALYSIS/EVALUATION — Depending on the county, it is either law enforcement or the prosecutor's office who request evidentiary analysis by the forensic lab. It is best practice for law enforcement and prosecutors to work together with the forensic scientist related to the investigation and prosecution of a sexual assault. SARTs should keep in mind that the forensic lab does not automatically evaluate SAFE Kits or other evidence associated with a sexual assault. Additionally, it is best practice for law enforcement and prosecutors to consider submitting evidence for analysis contemporaneously with the investigation of the case in order to avoid delayed charging decisions or not having specific information available for Grand Jury.

NECESSARY INFORMATION FOR EVIDENTIARY ANALYSIS—In order to successfully and objectively evaluate SAFE Kits, the forensic lab will need the following specific information related to the victim's assault history:

- Recent consensual sexual activity by the victim is important in order to ensure that any semen or sperm identified in the SAFE Kit can be accurately attributed.
- Recent voluntary drug and alcohol use is important in order to determine if any substances were given to the victim involuntarily.
- The victim's hygiene practices following the sexual assault are important details in order to draw appropriate conclusions from identified evidence or a lack thereof.

The documentation form used by medical personnel/SANEs during assault exams should have sections for clear documentation of this information.

UNKNOWN SUSPECTS — The best practice is to submit kits with unknown suspects in order to include the DNA profile of the suspect in Combined DNA Index System (CODIS).

OTHER FORENSIC RESOURCES — The Oklahoma State Bureau of Investigation (OSBI) Forensic Laboratory Division may not be able to analyze or evaluate certain types of evidence. They currently do evaluate blood for drug facilitated sexual assault. There are, however, national and local resources that may be available for evidentiary evaluation and/or consultation that fall outside of the scope of the OSBI forensic lab. Local hospitals are often a resource for blood testing.

FBI Forensic Services — The FBI has one of the largest and most comprehensive forensic laboratories in the world. The forensic services of the FBI Laboratory Division and the Investigative Technology Division are available to the following:

- FBI field offices and Legal Attachés.
- U.S. attorneys, military tribunals, and other federal agencies for civil and criminal matters.
- State, county and municipal law enforcement agencies in the United States and territorial possessions for criminal matters.

All forensic services, including expert witness testimonies, are rendered free of cost; however, the following limitations apply:

- No examination will be conducted on evidence that has been previously subjected to the same type of examination. Exceptions may be granted when there are reasons

for a re-examination. These reasons should be explained in separate letters from the director of the laboratory that conducted the original examination, the prosecuting attorney, and the investigating agency.

- No request for an examination will be accepted from laboratories having the capability of conducting the examination. Exceptions may be granted upon approval of the FBI Laboratory Assistant Director or a designee.
- No testimony will be furnished if testimony on the same subject and in the same case is provided for the prosecution by another expert.
- No request for an examination will be accepted from a non-federal law enforcement agency in civil matters.

LAW ENFORCEMENT AGENCY FORENSIC SCIENTISTS — Some of the larger law enforcement agencies have forensic scientists and/or forensic labs as a component of their agencies. Surrounding agencies may be in a position to request assistance for special circumstances.

PRIVATE FORENSIC LABORATORIES — A variety of private forensic laboratories in Oklahoma and across the country are available for specialized evidence analysis or evidence that requires a faster turn-around than can be provided by the OSBI forensic lab.

OTHER CONSIDERATIONS

As the first responder who most routinely collects forensic evidence for forensic lab analysis, the medical personnel/SANE needs to have a thorough understanding of how best to collect and package evidence. Such elements as thickness of samples, placement of samples on slides, drying techniques, and level of documentation detail can all have an impact on the ability of the lab to accurately analyze evidence. While collection techniques are part of SANE training, a visit to the forensic lab to speak with the scientists who do the testing is recommended for all medical personnel/SANEs who conduct forensic exams.

Fostering an on-going relationship between the medical personnel/SANEs and the forensic lab that processes their evidence should be a goal of the SART. During a forensic exam, medical personnel/SANEs are essentially “collecting blind” with no way to know if their swabs will yield

DNA or other useful information. A system for feedback on specific evidence from the forensic lab can both improve a medical personnel/SANE's ability to collect the right evidence the best way and allow the medical personnel/SANEs to have some closure for each exam, knowing whether they were able to provide concrete evidence to support a victim's case. While it is probably not feasible to have forensic lab staff attend Case Review meetings, establishing an ongoing chain of communication between the lab and the SART will allow adjustments in evidence collection protocols to be made promptly when needed.

Another responsibility the SART can adopt is to keep statistics on cases in which forensic evidence plays a part in gaining a plea bargain or conviction. These statistics can help make a strong case for financially supporting forensic experts such as SANEs as well as the SART as a whole.

CHAPTER 9

OUTREACH AND PREVENTION

SARTs have the dual purpose of responding to sexual violence and providing accurate information about sexual violence to the community. The goal of community education and outreach is to increase awareness about sexual violence — its prevalence and the misconceptions that surround it — and to provide information about the available services and options for victims and others impacted by sexual assault. When the community has an understanding of sexual violence issues and services, it is more likely that a victim will know where to go for assistance and feel more comfortable doing so. Community education is also important because of its role in dispelling rape myths and informing community members about how to effectively help a victim. Education can increase every community member's ability to support victims.

Education and outreach also increases a community's readiness and capacity for preventing sexual violence. The primary prevention of sexual violence focuses on stopping sexual violence *before* it occurs. A comprehensive approach to preventing sexual violence not only includes education and outreach, but also incorporates efforts that target the underlying conditions (such as community and societal values, norms, and practices) that condone or even perpetuate attitudes and behaviors that support sexual violence. Communities that are interested in developing or enhancing efforts to prevent sexual violence can access information about sexual violence prevention, as well as Oklahoma's comprehensive plan for primary prevention of sexual violence through the Oklahoma Coalition Against Domestic Violence and Sexual Assault or the Department of Health, Injury Prevention Services.

WHAT IS COMMUNITY EDUCATION?

The purpose of community education and outreach efforts is to provide information, such as legal definitions and statistics of rape and sexual violence, descriptions of victims and offenders, strategies for helping victims, the emotional and financial costs of sexual violence, and information about local resources and services.

COMMUNITY EDUCATION — is often provided in the form of presentations to schools, community groups, and other service providers; it can also take the form of public service announcements via the radio, TV, print media, or billboards and other forms of advertising (e.g., buses, kiosks, movie theaters).

- Outreach efforts often involve community education activities that are targeted at populations or communities that are not typically served by sexual assault responders (“under-served populations,” e.g., cultural groups, people with disabilities, boys and men, etc.).
- Other common outreach activities include hosting an informational booth or table at community events, distributing informational flyers or brochures about sexual violence issues and response services, and hosting community forums or events to raise awareness about sexual violence issues.

BEST PRACTICES IN COMMUNITY EDUCATION AND OUTREACH FOR SARTS

The provision of community education and outreach regarding sexual violence often falls to the community-based advocacy agency; SARTs can be a way to organize the involvement of additional agencies such as the Victim Assistance Program, law enforcement, the prosecutor’s office, medical personnel/SANEs, and Tribal and other culturally-specific service providers. Involving members from all responding agencies in community education and outreach is vital to improving response, especially given that the four most common reasons identified for not reporting sexual assault are:

- Thinking the police could not do anything.
- Thinking the victim would not be believed.
- Fear of reprisal.
- Embarrassment. *i*

By presenting a human face to all of those who respond to sexual violence and by explaining the response process, potential and actual victims may have some of their fears alleviated and their misunderstandings corrected.

Additionally, because staff and volunteers from community-based advocacy agencies are most often women, other response agencies can provide a male presence and a male voice to sexual violence issues. Too often sexual violence is seen as a “women’s issue,” when in reality it is an issue that affects everyone. Another reason for involving multiple members of the response team in community education and outreach is to show support from the broader community for responding to and preventing sexual violence. Law enforcement and prosecutors can be particularly valuable in changing community perceptions relating to offender accountability and victim blaming. Until communities hold offenders accountable and take responsibility for changing the conditions and norms that allow sexual violence to occur, the problem will not end.

ADDITIONAL CONSIDERATIONS

In addition to the venues previously mentioned, there are other key opportunities for collaborative community education and outreach activities:

SEXUAL ASSAULT AWARENESS MONTH — Sexual Assault Awareness Month (April) is a natural time for relaying information to the community and press about sexual violence, as there is national, state, and local attention already being directed toward the issue. By presenting a united message, the SART can increase the community’s readiness to recognize and address sexual violence as a problem that affects an entire community.

AFTER AN INCIDENT OF SEXUAL VIOLENCE — Another key time to engage in community awareness efforts is immediately after a sexual violence incident receives media attention. At such a time the community and press are often seeking information about services and may be ready to engage in dialogue about why the incident occurred and how the community does or should respond. The SART might want to identify a designated spokesperson to represent the organization on these occasions, someone who is able to fluently comment on sexual violence dynamics, the goals and achievements of the SART, the services offered by the SART and how to access them, and the barriers that often prevent victims from coming forward. Alternatively, the local community-based advocacy agency might serve as the point of contact for media requests.

THE SART AND THE MEDIA — As well as choosing a spokesperson, the SART needs to create rules governing what kind of information is to be provided and other considerations for responding to the media. For example:

- Victim confidentiality rules must be strictly enforced; this means publicizing SART services without saying that a specific victim used them (unless the victim wishes it to be known).
- If a standard press release is to be used, who writes it and who will review it?
- Members need to make clear distinctions to the media as to whether they are commenting as a member of the SART or as a member of their specific agency.
- Who comments to a reporter if the spokesperson is unavailable?

Being prepared to respond to a publicized incident of sexual violence is one way to bring awareness into the community; SARTs can find proactive ways of utilizing the free media for other outreach/awareness as well. For example:

- Cultivate a relationship with several reporters (print and television) who show sympathy for “the cause” and provide them with printed information regarding sexual violence. This will ensure that they have a basic understanding of the issues when they do a sexual violence piece.
- Create a “media calendar” for your outreach efforts, and try to get pieces reported at regular intervals throughout the year, with each one focusing on a different aspect of the issue. Use these stories to educate the public about the prevalence of sexual violence in the community, the issue of rape on campus, the financial cost of sexual violence on the community, the issue of sexual violence among children and adolescents, the scrutiny and “victim blaming” a victim is subjected to and how the community can counter that, and the myth of the stranger rape vs. the much more common assault by someone known to the victim. An article debunking the information in those “how to avoid being raped” emails that make the rounds periodically can be an interesting way to spread valuable information about sexual violence.

- Have SART members take turns writing Letters to the Editor about the SART or in response to specific news stories to bolster awareness of SART's presence in the community.
- If the media requests an interview with a victim, the SART may want to refer to the forthcoming Task Force position paper about using survivor stories in the media, which can be found at www.oregonsatf.org.

Finding ways to regularly provide the community with information about sexual violence - its toll on individuals and the community, and the services available - is an aspect of SART development that is often left for the end of the SART implementation process, after the protocols and procedures for first response have been standardized and put into place. Outreach and awareness are not just about community education on an "academic" level, however; they serve as a potent form of advertising for the new system that the SART is bringing to the movement to end sexual violence. Through outreach and awareness efforts, a SART is able to publicize its commitment to providing victims with compassionate, coordinated care and the community with a new emphasis on holding sexual offenders accountable and promoting community safety. The more the word is spread about the changes being made, the more victims the SART will see coming forward and seeking services.

NOTES

i Richard B. Felson and Paul-Phillippe Paré, "The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police," Journal of Marriage and Family, 67: 597-610 (2005).

CHAPTER 10

SART COMPETENCY

To create an effective, professional Team of responders, a SART must commit to ensuring the cultural competency of its members - to ensuring their ability to effectively interact with and provide services to victims of different cultures and cultural experiences. Training in cultural competency should be one element of a SART's broader training efforts, which should also include general sexual assault information as well as discipline-specific training for those who respond to sexual assault victims.

CULTURAL COMPETENCE—A DEFINITION

Briefly summarized, cultural competence requires an awareness of one's own worldview, knowledge of different cultural practices and worldviews, and the skills to understand, communicate with, and effectively interact with people across cultures. *i* For the purpose of a SART, the Task Force defines cultural competence as the skill to provide a response that is consistent, specific, appropriate, and useful to all victims and their families. Rather than developing a response that disregards race, ethnicity, religion, gender identity, sexual orientation, cognitive functioning, age, class, and sex, a SART should acknowledge and plan for a response that considers these factors. To do this, the SART needs to be able to identify the social, cultural, and community values and norms that are part of each victim's identity and experience and the remedies/responses available to her or him.

Offering the same quality of response - versus the same exact response - to someone with a cognitive disability, a person who is deaf, or a person who does not speak English, takes training, experience, and understanding; it requires a commitment to competency on the part of every Team member as well as the agencies represented on the Team. This is not as easy as it sounds, for no one wants to admit that she or he has biases or prejudices that may be interfering with the way she or he responds to victims. "When cultural competency is mentioned to some professionals, they become resistant. They say they have heard it all before, they have to uphold the law no matter what, they are not racist, and they don't know how or why they are perceived as insensitive." *ii*

Few people are naturally culturally competent; most of us subconsciously allow our own life experiences to lead us to make assumptions about other people, in the form of prejudice and assumed similarity. In their work with victims, first and secondary responders must actively recognize the stereotypes they hold and the potentially traumatizing and silencing effect these can have on a victim, their choice to report as well as their experience with responders. Developing cultural competence is an ongoing process that all responders must constantly be attuned to and that the SART can facilitate through training of members and careful planning of response protocols.

BECOMING CULTURALLY COMPETENT

How can a SART begin working toward a culturally competent response to sexual assault?

1. Identify the represented diversity of the community/county.
 - Use census data and other resources to identify the specific make-up of the jurisdiction and service area covered by the SART.
 - Identify all non-traditional service providers, such as Senior and Disabilities agencies, Association of Retired Citizens (ARC), immigrant and refugee services, culturally-specific providers, deaf and hard of hearing service providers, and service providers with competency in serving the lesbian/gay/bisexual/transgendered/queer population. Make sure that these providers are included in the formation of the SART and its protocols from the very beginning; actively seek out their input when planning how to offer culturally competent service.
 - Identify populations who may not be represented by any provider.
 - Compare reported sexual assaults with the diversity of the community—are all individuals and groups represented in reports?
 - Evaluate the comfort of Team members with respect to specific cultures. Do members need additional training in how to respond to specific populations and access non-traditional service providers?
2. Have a plan for cultural competency that is specific to the diversity of your community. It is important for individuals and SART members to recognize that sexual assault is a

difficult and usually embarrassing topic for many and can be even more so for individuals who are of a particular age or part of a specific culture. People's individual beliefs around sexuality plays a role in how comfortable they are in answering questions, participating in a medical exam, or talking with someone of a different gender than their own.

SAMPLE BEST PRACTICES FOR CULTURAL COMPETENCE

INTERPRETATION SERVICES — It is best practice to provide a certified interpreter, including American Sign Language interpreters, who have been trained in the terminology and issues surrounding sexual assault. It is recommended that advocates, family, or friends never be used to interpret. Some members of the SART may already have interpreters on staff; for example, most hospitals are required to have certified medical interpreters available, and police departments often have interpreters, as well. Part of the SART protocol development can include organizing a way to make these already existing interpreters available to all Team members during any stage of the response to a sexual assault.

Other best practices:

- American Disability Act (ADA): Accessible location, services, bathrooms, and materials (statutory obligation for some agencies/services).
- Language line/TTY for individuals who are deaf or hard of hearing.
- Public materials at an appropriate reading level (6th grade).
- Using cultural experts/partners to update services, service delivery, accessibility, and public awareness.
- Visible multicultural materials to make welcome individuals who are not a part of dominant culture.

Ultimately, moving toward a culturally competent response recognizes that cultural and experiential difference—and the response to those differences—has an impact on the victim's trauma and recovery. In order to meet the fundamental goals of a SART response — to mitigate trauma to the victim and the victim's loved ones, increase community and victim safety, and

prevent future victimization — the Team must commit to addressing cultural competency on every level of the sexual assault response.

Helping Team members improve their cultural competence is one kind of training that a SART can commit to during its implementation. The Handbook will use this final chapter to emphasize again the importance of providing trainings, both basic and advanced, as a way of ensuring a collaborative, coordinated, and informed response to the victims it serves.

THE NEED FOR TRAINING

Sexual assault is the most under reported crime in America, with only 10 to 15% of victims of sexual assault reporting the crimes to law enforcement. *iii* Although many changes have occurred in the last three decades to improve the response to sexual assault victims, much work still needs to be done. Sexual assault victims continue to be questioned on their dress, behavior, and choices by society, the media, responders, friends, and family. As a society, we continue to focus on the credibility of victims instead of the accountability of those accused of the crimes. It seems clear why rape is the most under-reported crime in America—as a field, there is still much to be done in order to provide a consistently skilled, appropriate, compassionate, and professional response to victims. The creation of SARTs in each community can be the first step to achieving a better approach to the problem of sexual assault, and one of the SART's priorities should be to make sure all its first and secondary responders receive specialized, discipline-specific, and multidisciplinary sexual assault training.

SART members, at a minimum, need to be familiar with the misconceptions that surround the issue of sexual assault, in addition to the discipline-specific knowledge that enables them to effectively perform their role on the SART. The SART shares the responsibility of mitigating the effects of sexual assault on individual victims and their loved ones, increasing victim and community safety, and preventing future victimization; it is necessary to ensure that each SART member has the tools and skills to be effective in that effort.

SEXUAL ASSAULT TRAINING

It is clear that all sexual assault responders need to be aware of the historical, social, and cultural framework in which sexual assault occurs. They must fully understand the prevailing

myths and misconceptions about the crime that provide barriers to victims coming forward for help and hinder attempts to prosecute sexual offenders. Best practice in sexual assault response demands that we shift the focus of doubts, concerns, and judgments to the offender and away from the victim; technical skills and expertise in sexual assault response will prove to be ineffective if they are not utilized in conjunction with a conscious effort to avoid bias and judgment of the victim and to focus attention on the actions and motivations of the accused.

DISCIPLINE-SPECIFIC TRAINING

In addition to having a common definition of sexual assault and an understanding of the context in which it occurs, it is necessary for SART members to have discipline-specific skills and knowledge to perform their particular role in the response to sexual assault.

ADVOCATES — require knowledge and familiarity with victim impact, criminal justice proceedings, civil legal options, health care response, crisis intervention, peer support, and local information and referral options. Most advocates receive training from their own agencies, although the amount of sexual assault specific training varies widely from county to county and from agency to agency.

LAW ENFORCEMENT — responders require familiarity with information about victims and offenders. Currently, the Oklahoma Council on Law Enforcement Education and Training (CLEET) offers eight hours of sexual assault specific training at their police academy, which includes information focused on non-stranger sexual assault response and investigation. It is best practice for law enforcement to attend sexual assault specific training in addition to what is offered at the CLEET academy. Discipline-specific sexual assault training for law enforcement is offered through ORCPI, OAG, DAC and OCADVSA focusing on the areas of victim interviewing, suspect interviewing and interrogations, crime scene response, and investigative techniques.

PROSECUTION — of sexual assault cases requires advanced trial skills and knowledge specific to the complexity of prosecuting sexual offenses. Due to the tremendous amount of bias and misconception that surround sexual assault crimes, it is critical for prosecutors to have a framework from which they can successfully present and argue their cases to grand juries, juries, and/or judges.

SEXUAL ASSAULT NURSE EXAMINERS (SANE) — are the best practice for the medical forensic response to sexual assault patients. Doctors and nurses do not routinely receive training on sexual assault medical or forensic response as a part of their training and education. The information and skills necessary for sexual assault medical forensic response are technical and specific. SANE courses are offered online and in a classroom setting to meet the various scheduling needs of nurses.

It is the responsibility of the SART, on behalf of its members, to identify and gain access to trainings that demonstrate how to utilize best practices in sexual assault response, how to integrate each agency's response with the responses of the other agencies, and how to incorporate knowledge of sexual assault dynamics in responders' work so as to provide a truly victim-centered experience for all who seek care for a sexual assault.

NOTES

i Mercedes Martin & Billy Vaughn, "Strategic Diversity & Inclusion Management" (San Francisco, CA: DTUI Publications Division, 2007), 31-36.

ii Etrulia Calvert and Laura Williams, Minnesota Model Sexual Assault Protocol (June 2002), 157.

iii Dean Kilpatrick, Rape and Sexual Assault, National Violence Against Women Research and Prevention Center, www.musc.edu/vawprevention/research/sa.shtml (May 5, 2006).

GLOSSARY

ACQUITTAL

A finding of not guilty by a jury or judge because they believed the accused to be innocent of any wrong doing OR they were not convinced “beyond a reasonable doubt” that the accused committed the act(s) for which he/she was charged.

ACUTE

A sexual assault that has occurred within 120-hours of reporting/notification. The term “acute” is generally used to differentiate the time period in which sexual assault forensic exam (SAFE) Kits are collected.

ADOLESCENT

A child aged 15, 16 or 17 years. Adolescents may consent to medical care, advocacy contact and police interviews without parental consent.

ADVOCATE

A person whose role it is to support victims and the decisions they make.

CODIS

The FBI Laboratory’s Combined DNA Index System (CODIS) blends forensic science and computer technology to solve violent crimes including rape and sexual assault. CODIS enables federal, state, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders.

CUSTODY

Physical control of a person. In criminal law, detention of an individual by virtue of legal process or authority. In civil law, custody of a child means the control, care and maintenance of a child.

EXIGENCY

Evidence that requires immediate attention and collection due to its delicate nature and likelihood to degrade or become unavailable for collection.

FELONY

Crime of a more serious nature than that designated as a misdemeanor and with graver penalties. The difference between misdemeanor and felony cases of sexual assault has to do with the degree (seriousness) of injury inflicted and whether or not a weapon is involved in the assault.

GRAND JURY

Group of citizens whose duty it is to determine whether probable cause exists that a crime has been committed and whether a particular person should be indicted for it. It is an accusatory body; its function does not include a determination of guilt.

INDICTMENT

A written accusation that one or more persons have committed a crime, presented upon oath, by a grand jury. Circuit court felony cases.

JURISDICTION

Authority of court to exercise power. If a court has not been granted jurisdiction by statute or constitution, it is without authority to act and any action taken by the court is void.

JURY (PETIT JURY)

Group of people temporarily selected from the citizens of a particular district and invested with power to decide factual issues in a civil or criminal case.

PAROLE

When a person is released from prison conditionally he or she is on parole and must adhere to certain conditions and report to an assigned parole officer. If a person violates any of the stated conditions, he or she can be returned to prison without a new trial.

PROBATION

A kind of sentence where a judge decides to supervise a person either directly (bench probation) or through a probation officer (formal probation). Conditions of probation can include serving jail time, paying a fine, doing community service, attending alcohol, drug or other counseling programs, staying away from certain people and places, etc. Violation of the terms of probation can result in imprisonment.

PROPHYLAXIS

A protective or preventative treatment (for pregnancy, sexually transmitted infection or other health care issues).

PROSECUTOR

In criminal cases, the District Attorney who brings action against individuals for violation of the law. The District Attorney represents the State, not individual victims.

SAFE KIT

The sexual assault forensic evidence kit collected by medical personnel (usually up to 120-hours post-assault).

SANE

Sexual Assault Nurse Examiner. A registered professional nurse who has completed specialized training and clinical work to perform the medical and forensic response to sexual assault.

SART

Sexual Assault Response Team. The primary and secondary responders to sexual assault who meet to improve the consistency, effectiveness and collaboration of the response. The core members of a SART are generally considered to be advocates, law enforcement, medical personnel/SANEs and prosecutors.

SATF

Sexual Assault Task Force. The agencies, departments and individuals concerned with developing (or recommending) policy, procedures, evaluation and systems response to sexual assault.

TRIAL

An examination and determination in court of issues between parties. May be civil or criminal. Judge or jury may decide the facts. Judge always decides the issues of law.

VERDICT

Formal decision made by a jury on issues submitted to it.