

*Joanne Archambault, Sergeant
San Diego Police Department
Sex Crimes Unit*

The Preliminary Sexual Assault Investigation

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

Communications personnel should be trained to ask whether a sexual assault victim has bathed, douched, urinated or otherwise altered her physical self, or engaged in any activity that may have contaminated or destroyed valuable evidence such as semen, saliva, hairs, etc. If the victim states that she has not, it is important for the call taker to request that the sexual assault victim not do so and clearly explain the reason for the request.

Officers and Communications personnel should refrain from judging the information obtained from the victim or reporting party. Each victim responds differently depending on their own background, personality and the circumstances of the assault. People from every profession have biases and stereotypes that they often times unintentionally begin to process when information is received. Be aware of this and make every effort to keep an open mind when responding to evaluate a sexual assault.

While it is generally true that rape victims are female, we need to avoid making this assumption when responding to a sexual assault call. Regardless of your “gut” feelings, proper investigative procedures should be followed for every sexual assault reported.

If the radio call is of a crime in progress or hot call, when approaching the scene, be alert to people, vehicles, objects, etc., that may be connected to the crime. Evaluate the scene for possible threats, i.e., suspect still in area, weapons, hostile witnesses.

Ensure that the victim is safe. Evaluate the need for emergency medical care. If emergency medical care is needed, paramedics will transport the victim to the nearest trauma facility.

Establish that a crime has occurred. At this time, only minimal information is needed to confirm that the victim was sexually assaulted. However, you need to learn enough information to establish the elements of the crime(s), identify witnesses, suspect(s), potential evidence, and the crime scene. Make the victim as comfortable as possible. If possible, don't stand over the victim. Use simple terminology and avoid cop/legal jargon. Be sensitive of your body language and watch the victim's body language for signs of distress. Avoid over reaction or negative reactions to the victim's statements. Use the victim's own terminology and clarify the meaning of slang terms for your report.

If the suspect is present and has been identified, detain him and remove him from the scene. Determine if

the offender denies having sex with the victim or whether he admits to having consensual sex. It is important to discover this information as soon as possible since it will determine the investigative strategies you need to use to properly investigate the sexual assault. Essentially, sexual assault investigations generally consist of one or more of the following elements:

- The victim was unable to give consent because she was or is unconscious (drugs or alcohol), asleep or comatose. In these cases, your investigation will focus on information that corroborates the victim's level of intoxication, i.e., was she throwing up or did witnesses last see the suspect carrying her out of the bar? (See Drug Facilitated Sexual Assault for further information.)
- The victim is incapable of giving consent because of a mental disorder or developmental or physical disability and this is known or reasonably should have been known to the suspect. This section requires that the investigating officer establish whether the victim has the intelligence capable of understanding the act, its nature, and its possible consequence. As an example, does the victim have a conservator, has she been tested, and or does she live independently? The investigation must also support the fact that the offender knew the victim was incapable of giving effective consent at the time of the assault. (See Investigations involving Disabled Victims of sexual Assault.)
- The most common form of reported sexual assault is "Forcible," meaning the victim did not consent even if she submitted out of fear.

Investigating officers must clearly understand that each of these investigations require corroboration of an entirely different nature. In other words, the information needed to prove the elements required for these investigations are unique to that specific crime. As an example, it would be a contradiction to charge a suspect with Forcible Rape when your investigation has established that the victim was unconscious at the time of the assault due to alcohol or drugs.

Obviously, a mentally retarded person can be forcibly sexually assaulted, however, the investigating officer should not be deterred when the elements of force are not present. In this case, the investigating officer must establish whether the victim has the mental ability to understand the sexual act and the consequences. In addition, investigations resulting in a consent defense versus a question of identity are two entirely different investigations, requiring a totally different response from law enforcement.

Even if the suspect invokes his constitutional right to remain silent, officers must evaluate the circumstances of the assault to anticipate the suspect's defense strategy, i.e., the relationship between the victim and the suspect, whether evidence links the offender to the victim, whether a witness can link the offender to the victim or scene, and or whether evidence or witnesses corroborate a lack of consent.

Do not hesitate to request additional resources. Officers must be able to assess personnel and equipment needs to ensure thorough and efficient crime scene processing and evidence collection. You cannot manage the scene, witnesses, the victim and suspect(s) without assistance. Consider requesting assistance from supervisors, detectives, K-9 Units, air support, outlying law enforcement agencies and crime lab personnel. Depending on the size of your agency and resources, consider using fire and paramedics to record license plates of vehicles, stand by with the victim, or secure a scene until the appropriate personnel arrives to assist. Advise responding officers how to approach the scene to prevent contamination of evidence.

Depending on the type of assault and the length of time the victim will have to remain at the scene to assist with identifying suspect(s), and evidence, consider utilizing a victim advocate or crisis interventionist at the scene. If unavailable, consider using police chaplains, emergency medical technicians or other trained professionals/resources within your community. Since evidence deteriorates as time passes, victims should be transported for a forensic examination as soon as practically possible.

Identify and secure the crime scene(s) to ensure evidence is not contaminated or destroyed. Determine whether there is a secondary crime scene. As an example, the victim most likely left the actual location of the assault. She might have gone home and immediately changed clothes. Clothing the victim put on following an assault, especially clothing worn closest to the genital structures, i.e., panties, nylons, pants, and shorts, can be more important than the clothing worn at the time of the assault. The victim is one crime scene, however, the clothing left at her house and the actual scene of the assault, must be identified and processed for evidence.

Vehicles are often overlooked. If the assault occurred inside a vehicle depending on your Department policy, the vehicle should be impounded for later processing by your crime laboratory.

Evaluate the need for a search warrant. Search warrants should be obtained if:

- The assault took place in the suspect's home and written consent cannot be obtained.
- Probable cause has been developed in the case of a stranger assault and you believe you can locate clothing the suspect might have worn at the time of the assault, masks, paraphernalia such as foreign objects, lubricating substances and items used for bondage, videos, pictures, weapons, property or souvenirs the suspect might have taken from the victim.
- You believe evidence of the type of drug used to facilitate a sexual assault might be found in the suspect's home, car, place of employment or school locker. This might include ingredients used to make the drug such as GHB or literature about the effects of a drug and its use as a "Date Rape Drug".

- Depending on your jurisdiction, you may need a search warrant to seize the suspect's body to obtain a sexual assault examination and necessary biological reference samples such as blood and saliva.

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

Potential evidence includes:

- Crime scene photographs
- Suspect and victim clothing
- Biological evidence, (i.e., blood, semen, saliva from the victim and suspect)
- Materials from which biological evidence might be collected (i.e., bedding, towels, carpet, sofa cushion)
- Other evidence, (i.e., discarded items, articles left at the scene such as condoms, foreign object, etc.)
- Trace evidence, (i.e., hairs, fibers, debris)
- Fingerprints, footprints, tire tracks, tool marks.

Although most of the evidence listed above is traditionally used to identify an assailant, note that both the victim and suspect's clothing should be examined for tears or signs of force and although blood can be analyzed to identify the donor, it can also be used to corroborate the use of force. Photographs and or video is critical to depict the scene as you saw it, the condition and location of recovered evidence, and they are especially helpful to the prosecutor in court.

If the victim was forcibly assaulted and you anticipate a consent defense, your investigation should focus on identifying evidence to corroborate the use of force or fear to perpetrate the assault. As an example, is there evidence of a of forced entry or a disturbance, such as an overturned table or broken glass; if the victim called for help, why did no one hear her pleas for help? Was there loud music playing? If so, how loud was it? Was there an obstacle preventing witnesses from seeing the assault if it appears that witnesses should have been able to see something? Was the victim injured in any way? Was the

suspect injured?

Make sure the crime scene is photographed prior to processing. Prepare a detailed diagram. Many detectives like to have Polaroid's for investigative purposes and to immediately have available for the prosecuting agency. However, 35mm photographs should always be taken in addition to any Polaroid photographs. A video camera is also helpful, especially in the case of a complicated or extensive crime scene.

Identify and isolate any witnesses. If there are numerous potential witnesses, i.e., a fraternity party, RAVE party or night club, assign an officer to monitor the witnesses to prevent them from talking to each other and collect some form of identification from each person present. Record names, addresses, telephone numbers and other contact information. Keep in mind that although there will rarely be eyewitnesses to the sexual assault, there may be any number of corroborating witnesses, such as a neighbor who heard a scream, or the gas station attendant who noticed the victim crying in her car.

Identify and document the names of any witnesses that might have left the scene prior to your arrival. The victim should be questioned about who she first told about the assault. This person(s) must be identified and interviewed. These outcry witnesses can be used to boost the credibility of the victim, especially in the case of a delayed report or in a consent defense.

Once the scene is manageable and the victim is as comfortable as possible, conduct a preliminary interview with the victim. This interview should take place in privacy and without distractions. If the victim would like to have a rape crisis advocate or support person with her, every effort should be made to provide such support. In most circumstances, boyfriends, husbands and parents should not be the victim's support person since the victim will hesitate to reveal all of the details needed to effectively investigate the assault if they are present. However, the victim might be uncomfortable asking their loved one to leave the interview. The officer or detective should take responsibility for the decision by explaining that they are effectively a witness and will need to be interviewed separately.

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

- Did the suspect ejaculate? If so, where? (Explain that this is not an element of the offense but indicative of where evidence might be located.)
- Did the victim or suspect wipe their genitals with a tissue, sheet or item of clothing?
- Did the suspect wear a condom?

- Was a lubricant used? If so, did the suspect bring his own or was something of the victim's used?
- Did the victim scratch or bite the suspect? (Reassure the victim that you are not blaming her if she did not actively resist but you need to know what to look for during the suspect examination if the suspect is apprehended.)
- Were drugs or alcohol used to facilitate the sexual assault? If so, a blood and urine sample should be obtained as soon as possible.
- Does the victim know the suspect?
- If the suspect was a stranger, note the length of time the victim was exposed to him and the conditions of the contact with the suspect, i.e., lighting, was the suspect wearing a mask or a disguise, was the victim's head or eyes covered at any time during the assault, did the suspect attack her from behind, etc?
- If the suspect fled the scene, how did he leave and what was his last direction of travel?
- Did the suspect take anything belonging to the victim?
- Will the victim be returning to her home or where can detectives contact her?

When documenting the victim's statements, do not sanitize them. Preserve them. They are important. Document all facts and observations, including the physical and emotional condition of the victim. Be specific, e.g., indicate that the victim was tearful and trembling, rather than just "upset", or that the victim's shirt was torn and shoe was missing, rather than "disheveled."

If the suspect is outstanding, broadcast the crime committed, the identity or description of the suspect, including any vehicle involved, which direction the offender was last seen headed, and whether the suspect is known to be armed.

If the suspect has not been identified but is believed to be in the area, determine whether you will conduct a curbside line-up (show up). If a curbside line-up is conducted, make sure the victim is offered some distance from the suspect. The suspect knows who is making the identification but the victim will be frightened and most likely feel threatened. As an example, have the suspect stand in front of the wall to a building. Place the victim in the front seat of a patrol car. An officer must be present to record the exact statements of the victim at the time of the line-up, i.e., "That's him. I'm absolutely positive." Or, "I think that's him but I'm not totally sure." Note the date and time of the identification,

the distance between the victim and the suspect, the lighting, and any obstructions. Also note the length of time it took for the victim to make a positive identification. Officers need to be cognizant of possible attacks to the show up identification, i.e., comments made to the victim about the person in custody by responding officers, was the suspect in handcuffs or in the back seat of a patrol car? Depending on the circumstances of the assault, handcuffs might be appropriate, however, officers need to be aware of the suggestibility of such acts and document the reasons for them in their report.

Determine whether a forensic sexual assault examination should be obtained for the victim. The following are guidelines, however, refer to your own Department procedures and community protocol:

- If an advocate is not at the scene, have Communications contact a victim advocate to meet the victim at the hospital or police station. Ask the victim if there is anyone else she would like you to call.
- Assess any special needs of the victim, such as restoring communication or mobility, or the need for an interpreter. Be sure to notify the advocate of any special needs the victim might have, such as language differences or difficulties, mental or physical impairment, the need for a male advocate, etc.
- A sexual assault examination should be obtained if the sexual assault, penile/vaginal penetration, penetration with a foreign object, or sodomy, occurred within 72 hours of the report.
- A sexual assault examination should be obtained if the assault was reported within 12 hours, for fellatio, and longer for cunnilingus, depending on the amount of force and whether the victim has bathed or other acts occurred.
- Do not hesitate to authorize an examination beyond 72 hours if the victim is complaining of pain or bleeding. Also consider the type of sexual assault, the age of the victim, i.e., prepubescent or postmenopausal, the victim's sexual experience, and the amount of force used by the suspect.

The examining nurse or physician should be briefed about the details of the assault as you have come to know them. The same nurse or physician should brief you after the examination. Make sure you compare notes as to the type of assault reported. Many victims will disclose acts to medical personnel, i.e., sodomy or oral copulation they might not immediately share with law enforcement because of embarrassment. If additional information is revealed, make sure you discuss this new information with the victim. The examiner should alert you of any obvious forensic findings, i.e., carpet fibers, or other debris that might be connected to your crime scene. Finally, document the findings of the examination.

Even if a forensic examination is not authorized by law enforcement, encourage all sexual assault victims
Rev: 05/03/01

to get medical attention, including testing for pregnancy and sexually transmitted diseases.

Offer transportation for the victim to and from the hospital. Do not leave the victim stranded. Always let the victim know you are there to help her. Although you are charged with being an unbiased fact finder and historian, it is helpful and appropriate for you to tell the victim that you are sorry this happened to her. When attempting to establish the elements of the crime, i.e., force or fear, ask open-ended questions such as, "What were you thinking or feeling?" Rather than, "Why didn't you scream, fight or call the police?" Be patient and clear when asking questions.

Although you will be extremely busy coordinating the crime scene and the investigation, take a few moments to explain the procedures to the victim. (The use of a multi-disciplinary team is extremely helpful here since an advocate, familiar with the process, can provide emotional support to the victim and take the time to explain what you are doing and why.)

Depending on your prosecuting agency and your Department's policies, the following should be considered when determining whether an immediate arrest should be made:

- The type of assault, protection of the victim, potential flight risk, protection of the public, and destruction of evidence.
- If the suspect has been arrested, read him his Miranda rights and obtain a statement about what happened. In the initial stages of the investigation, this should be a non-threatening interview. Your purpose should be to obtain as detailed a statement as possible. This means you should not be doing all the talking or attempting to convince the suspect how much you know about what really happened. Listen and document. Depending on your prosecuting agency and your Department policies and procedures, consider audio taping the interview in the field.
- Immediately following the preliminary suspect interview, determine whether a forensic sexual assault examination should be obtained for the suspect. Consider the length of time since the assault occurred and the arrest, the nature of the assault, whether the victim believes she injured the suspect and the likelihood that evidence, cells, fluid or trace evidence, was transferred from the victim to the suspect. Regardless of the length of time, DNA reference samples, blood and or saliva, should be obtained from the suspect. Depending on your state's laws and your Department policy, a search warrant may be needed prior to the suspect's forensic examination.

Most victims of sexual assault delay reporting to the police. The reasons are many but a few of them include: shame, embarrassment, shock, denial, feelings of self-blame, they didn't think it was rape because it didn't fit the stereotype, they don't think anyone would believe them if they did come forward, they don't want their families and friends to find out what happened, they're intimidated by the

police and they're afraid of the consequences and how it will affect their life as they knew it prior to the assault. Be patient regarding any hesitancy by the victim. Be sensitive to the fact that while it is important to document the reason for the delay, questions about the delay may cause the victim to feel you are blaming her or that you don't believe her. A delayed report should be considered normal and not evidence that the victim is lying about the assault.

Many state laws allow victims to report to police up to several years after the sexual assault, usually determined by the statute of limitations for the specific crime classification and depending on the age of the victim at the time of the assault.

A delayed report should not deter a thorough investigation. Determine who the victim first told about the sexual assault. Outcry witnesses, spontaneous statements, or excited utterances are critical to corroborating the victim's allegations. Make sure you ask the witness exactly what was relayed by the victim, the victim's appearance and demeanor at the time of the disclosure.

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

Evaluate the need for a search warrant of the suspect's home if that is the location of the assault. Question the victim to determine if she has knowledge of any photographs or videotape that might have been taken during the assault. The suspect might have taken something belonging to the victim, or the victim might have left something in the suspect's home e.g., an earring or panties.

Question the victim about anything that might corroborate the victim's report.

Determine whether an arrest should be made. Considerations for delaying the arrest may be:

- A late report may cause a lack of physical evidence and witnesses will most likely be unavailable at the time of the report. Time will be needed to locate and interview them.
- Consider the benefits of a non-custodial interview versus custodial.
- Determine whether a search warrant, or other tactics such as a pretext phone call, could be used to develop incriminating evidence.