

## **SEXUAL ASSAULT INVESTIGATIONS**

### **I. PURPOSE**

The purpose of this policy is to provide law enforcement officers and investigators with guidelines for responding to reports of sexual assault.

### **II. SCOPE**

The safety and well-being of the victim should be the focus, and at the forefront of all responses. This policy addresses response in the following areas: interaction and assistance to victims of sexual assault; identification and collection of evidence; collaboration with community partners, outside agencies and service providers; and the conducting of interviews with victims, witnesses, and suspects. Because of the unique dynamics involved in sexual assault investigations this policy covers the victim's first report, initial law enforcement response, investigative follow-up, and prosecution.

### **III. POLICY STATEMENT**

The Department shall thoroughly investigate all reports of sexual assault in a trauma-informed and victim-centered approach. Law enforcement response plays a significant role in not only the victim's willingness to participate in the investigation, but also their ability to cope with the emotional and psychological after-effects of the crime. These cases shall be handled in a professional, compassionate, objective, and unbiased manner so as not to communicate in any way to a victim that they are to blame for the crime. This allows the focus of the investigation to be on the offender's behavior and actions, not those of the victim.

### **IV. DEFINITIONS**

*Sexual Assault:* means all crimes of sexual contact or behavior that occur without consent, see Utah Code § 76-5-406, and includes both attempted and aggravated circumstances.

*Trauma-Informed, Victim-Centered response:* see Utah Code § 76-5-602(5), means policies, procedures, programs, and practices that:

- (a) have demonstrated an ability to minimize re-traumatization associated with the criminal justice process by recognizing the presence of trauma symptoms and acknowledging the role that trauma has played in the life of a victim of sexual assault or sexual abuse; and
- (b) encourage law enforcement officers to interact with victims of sexual assault or sexual abuse with compassion and sensitivity in a nonjudgmental manner.

*Sexual Assault Kit (SAK):* means a package of items that is used by medical personnel to gather and preserve biological and physical evidence following an allegation of sexual assault, see Utah Code § 76-5-602(4). SAK's may contain blood and/or urine specimens which are considered part of the kit and must be properly stored.

*Restricted Kit:* means a SAK which is collected, from a victim that is age 18 or older, but 1) chooses at the time of collection not to have their kit processed and 2) chooses not to share the SAK report with a law enforcement agency. See Utah Code § 76-5-602(3). If either condition is not met the kit will be sent for processing.

*Victim Advocate (VA):* means the representatives of the victim services division of the Utah Department of Public Safety or other agencies.

#### **IV. PROCEDURES**

##### **A. Dispatcher/Call-Taker Response**

Dispatchers or call-takers shall receive training on the impact of trauma, the dynamics of victimization and appropriate questioning of victims who report sexual assault. The call taker's primary focus is the safety and well-being of the caller and/or victim, while the dispatcher must focus on officer safety and coordinating an appropriate and timely response.

Communications personnel shall follow their current emergency response policy evaluating and properly prioritizing the call, securing medical assistance, and obtaining detailed information to identify and locate the suspect. Information about the victim/suspect relationship, drug or alcohol use, weapon involvement, and history of violence is critical in the early stages of response. Employing a trauma-informed approach in this initial contact is absolutely essential.

To minimize the potential loss of any physical or forensic evidence, communications personnel should advise the victim to:

- 1) not shower or bathe, and to preserve any clothing or items associated with the assault;  
and
- 2) that even if the victim has bathed or changed clothes, evidence may still be recovered.

##### **B. First Responder**

All law enforcement personnel involved in sexual assault response shall receive training in trauma-informed response to sexual assault, and the neurobiology of trauma. Investigators should receive specialized training on interviewing techniques for sexual assault victims. Responders should be familiar with the Utah Crime Victim's Bill of Rights, UCA § 77-37-3.

Based on the victim's emotional and physical state, questions to the victim concerning the assault description and location of the suspect may be limited. Responding officers must identify and interview any potential witnesses, bearing in mind that there may be multiple crime scenes. It is especially important that the first person the victim told about the sexual assault be identified and if available at this time, interviewed.

### *Documentation*

All reports of sexual assault shall be documented in an official police report. This report should include interviews of the victim/s, witnesses, or suspects; identification of crime scene and any evidence; actions completed at the scene; and any assistance provided to other officers. The official report should detail their observations and any actions taken. These reports shall be completed for documentation and any follow-up investigation regardless of whether an arrest is made.

### *Initial Response Checklist*

Officers involved in the initial emergency/first response, should attempt to complete the following actions:

- a. Secure the scene for people, vehicles, or objects involved as well as possible threats;
- b. Contact the victim and summon emergency medical assistance if needed;
- c. Relay pertinent information to responding officers;
- d. Identify and protect potential evidence so it is not lost or contaminated;
- e. Preserve volatile electronic evidence, i.e. cell phones, computers, social media;
- f. Conduct preliminary victim interview;
- g. Explain that a medical examination (SAK) can be done up to 120 hours after the incident even if the victim is unwilling to speak with law enforcement;
- h. Explain the role of the different members of the sexual assault response team.
- i. Notify supervisor and on-call detective;
- j. Photograph and collect evidence as needed;
- k. Respond to the hospital if victim is transported;
- l. Contact a forensic nurse to examine the victim; (there is no fee to the victim)
- m. Contact Victim Services;
- n. Conduct an area/video canvass of the location the crime occurred; and
- o. Begin a search for the suspect when appropriate.

### *Recording of statements*

As a best practice, officers should record the statements/interviews of individuals involved in the sexual assault. Agencies whose officers are equipped with body worn cameras should audio/video record all contacts and investigative efforts, and document existence of these recordings in the police report.

### **C. Preliminary Victim Interview**

Sexual assault investigations typically include a preliminary, and subsequent follow-up interviews with the victim. The preliminary interview occurs during the initial response where the officer attempts to establish the elements of a crime(s), identifies any and all victim(s), witnesses, suspect(s), evidence, and crime scene(s). This interview is not intended to be a comprehensive interview. Additional interviews may be needed. This preliminary interview should be audio recorded, and video recorded when possible, and the victim advised of such.

#### *1) Involve a Victim Advocate*

Every effort shall be made by the responding officer to contact a Victim Advocate as soon as possible. On scene response is often valuable; however, if the victim declines assistance from an advocate, the responder is obligated to provide the victim with written referrals for community resources designed to help victims of sexual assault. Utah Code § 77-37-3, the Victims' Bill of Rights, affords a vast amount of services required by law that must be provided by the law enforcement officer or advocate.

#### *2) Protect Victim Rights*

Throughout the investigation of the case, officers shall protect the confidentiality of the victim's information to the maximum extent possible. Special care should be taken to maintain a victim's privacy by not contacting friends or family members who may not be aware of the situation, or are acting as the victim's designee. If the victim is a minor, a guardian or DCFS must be notified as a mandatory report. Illegal substance abuse by the victim(s), including underage drinking, must never be used to discredit or discourage the victim from reporting the assault. The Department priority is to conduct a thorough sexual assault investigation rather than investigate a victim for a misdemeanor violation.

#### *3) Victim Interview*

Based on the length of time between the assault and report of the crime, the victim may be in a state of shock, having just been exposed to a traumatic event and exhibiting a range of behaviors. Attempting to gather information at this juncture may be difficult as their memory may be incomplete. Officers should avoid measuring a victim's "credibility" based on their physical and emotional response at this time. The victim's response to the trauma of a sexual assault must not be used in any way to measure credibility. Additionally, when drugs or alcohol are involved, the victim may have limited recollection or be unable to give a complete account of the crime.

When conducting the initial investigation, officers must:

- Remain patient and maintain an open mind while listening to the victim's account;

- Remember that victims may struggle with gaps in memory;
- Avoid leading questions while conducting the interview;
- Use simple terminology appropriate to the victim's age, sophistication, and intelligence;
- Avoid using jargon or police, medical, or legal terms;
- Interview anyone who may have witnessed the assault or events surrounding it; and
- Express sympathy to the victim and an interest in the victim's wellbeing.

During the preliminary interview, officers shall:

- Obtain contact information for the victim, including temporary accommodations;
- Ascertain details of the complaint, the elements of a crime, and identify those involved;
- Explain the nature of the preliminary interview and the need for follow-up contacts;
- Document reasons offered for a delayed report, while avoiding questions that could be perceived as judgmental or accusatory;
- Explain that other professionals such as forensic examiners, investigators, evidence technicians, and prosecutors may have additional questions;
- Explain the importance of a SAK examination;
- Identify and locate witnesses and suspects; and
- If scene is undetermined, attempt to locate it by transporting the victim to the location.

At the conclusion of the initial interview, the investigating officer(s) shall:

- Provide the victim the investigator's contact information;
- Encourage the victim to contact Victim Services with any questions;
- Encourage the victim to contact the investigator(s) personally with any additional information or evidence;
- Remind the victim that visible evidence of injury may appear later, and to contact the investigators for additional photographs or other documentation;
- Ensure that requests for victim protection orders are made where indicated;
- Provide written referrals for victim service organizations;
- Provide transportation when reasonably possible;
- Inform the victim about the next steps in the investigation/screening;
- Provide information on how to contact police if harassed by the suspect(s); and
- Work with victim services on a safety plan or other resources to ensure victim safety.

#### 4) *Evidence Collection*

Officers shall protect the integrity of the evidence and guard the chain of custody by properly identifying, marking, photographing, collecting, packaging, labeling and storing any evidence. Typically this excludes evidence collected by medical personnel from the victim, which may include a sexual assault examination kit. An evidence response team

or crime scene technicians should be requested if needed. The DPS, Bureau of Forensic Services (state crime laboratory), has crime scene response team of specialists available if the scope exceeds agency capacity.

Officers shall collect the following evidence:

- a. The clothing worn at the time of the assault and immediately afterward, especially the clothing worn closest to the genitals such as undergarments, pants, and shorts, some of which is typically done by the forensic nurse;
- b. Any DNA related evidence to include condoms, sheets, blankets, pillows, tissues, cigarettes, and food and drink containers as they may contain biological evidence such as blood, sweat, tissue, saliva, hair, and urine. To properly collect evidence suitable for DNA testing officers shall:
  - (1) Use sterile gloves, (changed as needed);
  - (2) Use sterile swabs, papers, solutions, and tools;
  - (3) Package evidence in individual envelopes;
  - (4) Avoid touching the area where potential DNA evidence may exist;
  - (5) Avoid talking, sneezing, and coughing over evidence;
  - (6) Air dry evidence before packaging; and
  - (7) Put evidence into new paper bags or envelopes, not plastic; and
  - (8) Not handle their cell phones or personal property during collection.
- c. The SAK must be received from the medical provider within 24 hours of collection. Blood and/or urine samples are considered part of the kit, even though packaged separately, and must be refrigerated. After-hours access to the evidence refrigerator may be done through a supervisor. The SAK must be accepted into the new statewide electronic tracking system within five (5) working days of receipt.
- d. Evidence collection can be performed on a suspect. This is commonly referred to as a suspect kit, and should be completed by a forensic nurse or appropriately trained medical or forensic personnel. This can be done only after signed written consent from the suspect, or issuance of a search warrant for his or her person.

#### 5) *Photography/Videography Evidence*

- a. Whenever possible, victim injury photographs shall be taken as part of a medical examination conducted by the forensic nurse or other qualified medical provider

and maintained by that collector. Any additional photos of the scene or involved persons are appropriate and shall be booked as evidence.

- b. If an officer needs to photograph a victim, the officer must be sensitive to the location of the injuries on the victim's body. Only medical personnel shall take photographs of genitalia or other private areas.
- c. Videography, crime scene scanning, and field diagrams should be completed by trained personnel when possible. Personally owned electronic devices shall not be used, because all recordings are considered evidence. Those devices and original recordings may be subject to subpoena.

#### **D. Forensic Examinations (SAK) for Victims of Sexual Assault**

A victim-centered approach is paramount to the success of the forensic examination and should be provided to anyone seeking care as soon as possible. The primary goal of a forensic exam is to provide medical assessment, and recommend treatment or interventions. Additionally, a timely, professional forensic exam increases the likelihood evidence can be collected to aid in the investigation and prosecution of sex offenders.

An exam should be offered up to five (5) days or longer after the assault regardless of the victim's activities (e.g., showering, urinating, douching, swimming, sexual activity, eating or drinking). Due to advancements in technology, emerging research indicates there may be a potential to extend the time frame to nine (9) days post-assault. Other evidence can be gathered and injuries documented beyond that time. Proceeding with, or conducting a thorough investigation, shall not be contingent upon medical examination findings, crime laboratory reports, or the lack thereof.

A victim advocate, support person of the victim's choosing, or a representative of the Rape Recovery Center (RRC) shall be allowed to be present in the room during the exam unless it would be harmful to the well-being of the victim as indicated by the victim or medical staff. These advocacy roles have different levels of confidentiality, and informed consent of the victim is advised. The nurse or physician may brief the investigating officer at the conclusion of the examination, but that is not required.

The collection of blood and urine samples in a SAK may be completed by medical personnel. In most instances these are collected when a patient reports a loss of memory or consciousness due to the voluntary or involuntary consumption of alcohol and/or substances. Blood and urine samples are considered part of the SAK, but are packaged separately because they must be refrigerated. All blood and urine samples must be submitted to the Unified Toxicology Laboratory at 4431 S. 2700 W., Taylorsville, Utah, within 30 days of receipt. The toxicology laboratory is separate from the crime laboratory, and requires a separate request for analysis.

Utah Code § 76-5-603 requires the following:

- a. SAK's must be received from the collecting facility within 24 hours of collection. Each SAK shall be updated in the statewide tracking system as "Law Enforcement – Received" within 5 days. Except for restricted kits, all SAK's must be submitted to the crime lab for processing no later than 30 days after receipt.
- b. Restricted kits shall be maintained by the law enforcement agency with jurisdiction, but are not sent to the crime lab for processing. At any time a victim can request that a kit no longer be restricted, and it shall immediately be unrestricted by the agency and sent to the laboratory for testing.

*\*A SAK can only be restricted at the time of collection, by medical personnel, upon request of the victim. No other persons have authority to restrict a kit.*

### **E. Investigator Responsibilities**

Those responsible for sex crime investigations must receive annual training on Utah Constitution, Article 2 § 2.1 Victim's Bill of Rights, Title 13, Chapter 44, to include specialized instruction on best practices in the investigation of sexual assaults, and trauma-informed interviewing. All reports of sexual assault should be assigned to an investigator as soon as practicable. The investigator should attempt to complete the following recommended tasks:

- Respond to the scene if needed/requested to ensure the crime scene(s) remain secure;
- Obtain a briefing from the initial responding officers;
- Accommodate the victim's right to an advocate or support person whenever possible;
- Interview any witness who might have seen or spoken with the victim before, during, or after the assault;
- Obtain a DNA Comparison Sample (buccal swab) from the victim's consensual partner if sexual activity occurred within the past 7 days, and submit to crime laboratory.
- Consider a recorded pretext/control communication with the suspect if appropriate, this can include a telephone call, text messaging, or social media contact. Include victim advocate for support of the victim, and safety planning;
- Audio or video record all interviews, and advise the victim of such;
- Document all casework in case management, or records management system (RMS);
- When appropriate, work with the public information officer on which, if any, details should be disclosed to the public if there appears to be a threat to public safety;
- Support the victim's continued engagement/participation in the investigation, apprising the victim of future investigative and prosecutorial activities that will or may require involvement;
- Include a copy of the forensic exam, if available, with the police report, and a summary of the findings that note significant information or injury;
- After the examination, transfer all evidence to the Department for storage;
- Identify the need for additional victim interview(s) and schedule as appropriate;



- Prior to a follow-up interview with the victim, review all pertinent information related to the case and ensure that the victim is informed;
- Obtain signed consent forms or prepare search warrants to review any and all digital evidence recovered from electronic devices;
- Evaluate impounded evidence and determine which items might have probative value based on the statements and other information;
- Coordinate submission of any forensic evidence to the crime laboratory for testing; and
- Obtain pertinent victim medical records prior to screening with the prosecutor.

## **F. Contacting and Interviewing the Suspect**

All suspects shall be contacted and interviewed in person if possible. Phone interviews can be valuable, but in-person interview and interrogation is recommended. If extenuating circumstances exist making audio or video recording impossible, document it in the report. The investigating officer may determine a forensic exam should be conducted on the suspect (see Section G). \*Supervisor approval must be obtained because a suspect exam will be billed to the department. Victim and suspect examinations must take place in different locations.

Prior to conducting the interview a comprehensive records check should be completed if possible, including the following recommendations:

1. Obtain past reports and court records on sex-related offenses;
2. Review any burglary, kidnapping or trespass cases, for possible sexual motivation;
3. Identify contact information of relatives, friends and associates;
4. Review social media and electronic communications;
5. Employ Palantir or similar intelligence database showing any law enforcement involvements in the area, specifically those which do not appear on a criminal history.

\*The Statewide Information and Analysis Center (SIAC) is available through the Utah Department of Public Safety (DPS) and can provide the above resources, and has advanced intelligence gathering capability, which may not be available to some agencies.

## **G. Forensic Examination of the Suspect**

As with victims of sexual assault, the bodies of suspects can yield evidence that may assist in the investigation. Suspects may be male or female, thereby requiring very different sample collection and evaluation processes. Keeping all legal considerations in mind, as a part of the investigative process, suspect examinations should be performed, when appropriate, given the details and timeframe of the incident.

Specific evidence may be collected from a suspect by law enforcement personnel in accordance with a search warrant, lawful court order, or consent of the suspect. A search warrant is preferred. Except for the routine reference sample collection (usually in the form of a buccal swab), evidence collection from the suspect should ideally be completed by a forensic nurse examiner, or forensically trained individual. Conducting suspect examinations is not in conflict

with providing medical-forensic care to victims, so this protocol will outline the parameters of the examiner's involvement.

#### *Protocol for Suspect Examination*

- a. If the suspect consents (in writing) to such evidence collection, documentation of the voluntary consent shall be included in the police report. The investigator shall assert the suspect's right to decline any part of the examination and to leave at any time.
- b. Absent a signed consent, a search warrant must be obtained to collect forensic evidence from the body of the suspect by way of a forensic examination.

#### *Evidence Collection*

- a. The person performing the exam shall document and photograph all injuries that are observed, collect biological and trace evidence samples from the suspect's body as authorized by consent or warrant, and prepare a report of their actions.
- b. If in custody, the suspect shall be given a Miranda warning by law enforcement personnel before being asked medical history questions by the forensic examiner or investigator.
- c. If the suspect invokes his right to remain silent, the examiner shall bypass the medical history portion of the examination and continue documenting any visible injury and collecting the appropriate specimens that the officer is legally entitled to collect.

Both the examiner and attending officer shall be prepared to document any spontaneous statements made by the suspect regardless of whether or not they were provided with a Miranda warning. This entire exam should be audio recorded at a minimum, with video recording recommended.

#### **H. Victim Follow-up**

Traumatic experiences impact a victim's memory, reactions and behavior. That distress may create an appearance of unwillingness or psychological inability to assist in the investigation. Victim disclosure often occurs in pieces over time and those conducting interviews must consider the physical, psychological and sensory evidence to effectively build a strong case. Investigative techniques should focus on offender behavior and postpone judgment regarding the validity of a case until a thorough investigation is completed.

An in-depth trauma-informed interview, or series of interviews, shall be conducted after the victim has been medically examined and treated, and personal needs have been met. In the event that the victim is still under the influence of drugs or alcohol, has been injured, or as a result of the assault has not slept, and barring exigent circumstances requiring an arrest or identification, the interview should be delayed. At least a two sleep-cycle delay is recommended. Also address any special needs of the victim, such as medical, communication, language, or mobility.

In the follow-up interview, investigators shall:

- a) Conduct a detailed interview with the victim at a time and place free from distractions;
- b) Provide or arrange for transportation for the victim by an advocate to the interview location if needed;
- c) Conduct the interview in a location that is convenient, accessible, and comfortable for the victim;
- d) A victim advocate, or support person of the victim's choosing, shall be allowed to be present during the interview;
- e) Ask the victim(s) what he/she remembers, i.e. sights, sounds, smells, and how he/she felt;
- f) Re-photograph injuries to document changes in visible injuries; and
- g) Obtain a signed release from the victim for access to medical records.

## **I. Prosecution Involvement**

Communication with prosecutors is critical in the early stages of an investigation. The prosecutor may want to visit the scene or observe parts of the investigation, including key interviews. In general, the on-call prosecutor of the respective jurisdiction should be contacted under the following circumstances:

1. Review and approve any application for search warrant;
2. To answer legal inquiries;
3. If the case involves multiple victims, serious injury, or a complex investigation;
4. When an arrest is imminent, and charges will be submitted, on a high-profile case;
5. If needed to attend case briefings/multidisciplinary team meetings;
6. A serious public safety concern exists; or
7. In any other circumstance where the investigator deems it appropriate.

### *Case Screening/Closure*

All cases of sexual assault shall be reviewed by a prosecutor. Investigators need to be aware of legal requirements and timelines (i.e. discovery of evidence to the defense/court) with which prosecutors must comply to help ensure that discovery is completed in a timely fashion.

Investigators should be mindful of the following:

- Present the complete case file including forensic results as soon as possible to the prosecuting attorney and work with the prosecutor's office to develop the case;
- Cases declined by the prosecutor for further investigation are not closed, they remain active until the follow-up has been completed and a final charging decision made.
- Declination or filing documents (information, summons, warrant,) must be obtained subsequent to the screening process, and submitted into the case file to close the case.

- Any case closure or inactivation, other than a documented filing or declination, must be reviewed and approved by a supervisor.
- When closing a case or investigative file, the FBI UCR standards shall be applied. Administratively, cases may only be closed one of five ways:
  - Filed (criminal charges of any degree were filed)
  - Declined (criminal charges were screened but not filed)
  - Exceptional (death of offender, or the incident occurred in another jurisdiction)
  - Leads End (all leads have been exhausted, or victim declines involvement)
  - Unfounded (no crime occurred, or it was civil in nature)

### **J. Supervisor's Responsibilities**

First-line supervisors shall possess an understanding of victim issues and proper response to sexual assault. Their role is to also ensure that their personnel are educated and informed in the proper response to sexual assault. Supervisors:

- a. Respond to all calls under their supervision relating to felony sexual assaults;
- b. Ensure appropriate resources to investigate sexual assaults are facilitated; and
- c. Include Victim Services information at roll call and other training venues.

### **K. Victim-Centered Response**

In the aftermath of a sexual assault, a victim may not have the emotional or physical capacity to commit to a full investigation and court trial. A perceived lack of participation from a victim, or their failure to maintain open lines of communication, should never result in a lesser investigation or analysis. The Department shall allow victims to take the investigative process one step at a time and provide information as they are willing to disclose. The Department shall respect a victim's inability, or decision not to be involved in criminal justice proceedings, and always be willing to offer continued assistance and referrals.