



Investigating Sexual Assault

A Guide for Law Enforcement Officers

Montana Department of Justice



Preface

The Montana Department of Justice was awarded the Office of Justice Programs: Bureau of Justice Assistance Sexual Assault Kit Initiative Grant funded through the Montana Department of Corrections Crime Control Bureau. The Montana Sexual Assault Kit Initiative is comprised of a SAKI Task Force assembled by Attorney General Tim Fox. Our goals are to end the backlog of untested sexual assault kits, strengthen victim services, prevent revictimization, and provide training on best practices for investigating sexual assault crimes. As a statewide resource, this guide will provide sexual assault investigation techniques and strategies that can be adopted by officers across Montana. Investigating Sexual Assault: A Guide for Law Enforcement Officers consists of best practices for a victim centered, trauma informed response. Recommendations in this guide reflect protocols that enable officers to effectively respond to, investigate, and apply best practices for a sexual assault response. As we evolve our practices and responses to sexual assault, this guide serves as a foundation for sustainable change.

Acknowledgments

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Tim Fox

Attorney General
Montana Attorney General's Office
Montana Department of Justice

Glen Stinar

Administrator
Montana Law Enforcement
Academy
Montana Department of Justice

Troy McGee

Chief of Police (Ret.)
Helena Police Department

Robin Turner

Ries Law Group
Missoula, Montana

Debbie Mulcahy

Certified SANE
SANE Program Coordinator

Scott Larson

Administrator
Forensic Science Division
Montana Department of Justice

Tina Chamberlain

LINC Coordinator
Division of Criminal Investigation
Montana Department of Justice

Meaghan Kolar

Victim Grants Coordinator
Crime Control Bureau
Montana Department of
Corrections

Erin Davis

SAKI Victim Advocate
Division of Criminal Investigation
Montana Department of Justice

Sarah Cook

Research Public Health Analyst
RTI International

Kent Anderson

Detective
Helena Police Department

Kathy Springmeyer

Director of Publications
FarCountry Press

Jon Bennion

Chief Deputy Attorney General
Montana Attorney General's Office
Montana Department of Justice

Dana Toole

Special Services Bureau Chief
Division of Criminal Investigation
Montana Department of Justice

Steven Hagen

Chief of Police
Helena Police Department

Alanna Sherstad

VOICE Center Advocate
University of Montana

Kim Dudik

Legislative Representative

Megan Ashton

CODIS Administrator
Forensic Science Division
Montana Department of Justice

Kayla Bragg

SAKI Site Coordinator
Division of Criminal Investigation
Montana Department of Justice

Kerri Burton

AmeriCorps VISTA
Division of Criminal Investigation
Montana Department of Justice

Justin Stolp

Project Manager
Montana Department of Justice

Chris Shermer

Chief of Police
Conrad Police Department

David Ortle

Assistant Attorney General
Montana Law Enforcement
Academy
Montana Department of Justice

Jenny Daniel

Just Response Coordinator
Missoula City-County Services

Bryan Lockerby

Administrator
Division of Criminal Investigation
Montana Department of Justice

John Strandell

Investigations Bureau Chief
Division of Criminal Investigation
Montana Department of Justice

Dave Bowen

Chief of Police
Great Falls Police Department

Mary Barry

Attorney
City of Whitefish

Christy Clark

Legislative Representative

Melissa Schlichting

Administrator
Legal Services Division
Montana Attorney General's Office
Montana Department of Justice

Joan Eliel

Director
Office of Victim Services
Montana Department of Justice

Johnathan Green

SAKI Investigator
Division of Criminal Investigation
Montana Department of Justice

Nikki Simon

Graphic Designer Pre-Press
Specialist
State Print & Mail

Adam Shanks

Detective Sergeant
Helena Police Department

Will Harmon

Editor
FarCountry Press

Pam Ponich-Hunthausen

ACTOUT Psychotherapy and
Counseling

Acknowledgments

Anastasia Burton

Deputy Communications Director
Montana Attorney General's Office
Montana Department of Justice

Eric Gilbertson

Detective Sergeant
Lewis and Clark Sheriff's Office

Erin Shreder

Crime Victim Advocate
Missoula City County Victim
Services

Holley Johnson

Office of Victim Services
Montana Department of Justice

Amanda Fischer

"To my wife, thank you for
your support"

**Patrick, Anna, and
Preston Fischer**

"Thank you for your
love and patience"

Ron Alles

City Manager (Ret.)
Helena, Montana

Mike Linder

Sheriff
Yellowstone County Sheriff's Office

Mike Colyer

Detective Captain
Missoula Police Department

Office of Justice Programs

Bureau of Justice Assistance

**Montana Attorney General's
Office**

Forensic Science Division
State Crime Lab

**Montana Sheriffs and Peace
Officers Association**

Helena Police Department

RTI International

**Montana Division of
Criminal Investigation**

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Enforcement Academy**

**Montana Law and Justice
Interim Committee**

**Sexual Assault Initiative
Task Force**

Montana Department of Justice

**Montana Department of
Corrections**

**Montana Coalition Against
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Written by Bryan Fischer | Montana Department of Justice

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INTRODUCTION: A Survivor-Centered Guide to Investigating Sexual Assaults

At the center of every sexual assault case is a person—a survivor—who has experienced trauma of the most personal and intimate kind. The survivor's life will never be the same. Often, they suffer physical injuries, and most experience Post-Traumatic Stress Disorder (PTSD). A survivor may struggle with long-term anxiety and feelings of fear, helplessness, and shame.

Between 400,000 to 500,000 sexual assaults occur each year in the United States. That's a rate of nearly one sexual assault every minute. One in three women and one in six men suffer some form of sexual assault in their lifetimes. For American Indian and multiracial women, the statistics are even more dire: nearly half are sexually assaulted in their lifetimes. Research also indicates that 63 percent of sexual assaults are never reported to law enforcement. (A common myth is that survivors of sexual assault make false reports, yet false reports are rare and rates are similar to those of other crimes; only 2 to 7 percent of all reported sexual assaults turn out to be false.)

When sexual assaults are reported, law enforcement officers are often the first responders. Unfortunately, our badges are a bit tarnished when it comes to how sexual assault cases have been handled in the past. A lack of education and understanding on how the brain responds to a traumatic event, combined with social and cultural biases led to law enforcement misreading survivor behavior as untruthful and even suspicious. And this confusion led to systemically poor performance—sexual assault reports were often ignored or neglected; investigations were sloppy or incomplete; and suspect apprehension and conviction rates were low. All too often, survivors were traumatized first by the assault and then again by law enforcement's response to their pleas for help.

To reverse these trends, researchers, victims' advocates, crisis counselors, forensic scientists, medical professionals, and law enforcement professionals have collaborated to develop "best practices"—the most effective strategies, tools, and techniques for responding to and investigating sexual assaults. Together, these best practices form the basis for a survivor-centered/trauma-informed approach to sexual assault investigations.

This guide provides a detailed framework for understanding and methodically applying a step-by-step investigative process within the mindset of a survivor-centered/trauma-informed approach. The goal is to treat every survivor with respect and compassion, ensuring their safety and well-being, and completing an accurate and thorough, non biased investigation.

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Chapter 1 – Legal Considerations

FRAMEWORK: Introduction into MCA and Sexual Crimes Investigations

By their very title, law enforcement officers are just that—we are entrusted to enforce the laws that society enacts to prevent people from preying upon those who are vulnerable. Through legislative processes, we enact laws to regulate society, protect people and property, enforce rights, and resolve conflicts. As a society, we have entrusted the duties of enforcing laws to a group of individuals who have passed the stringent qualifications necessary to be called law enforcement officers.

As a sworn law enforcement officer, your primary function is to gather facts and evidence and make determinations to establish whether or not a crime has been committed, to protect life and property, to enforce the law when it has been violated, and, importantly, to resolve conflicts of those in crisis.

The very foundation of your role as an effective and respected law enforcement officer is being knowledgeable in the laws you are entrusted to enforce, without prejudice or bias. In addition, you should also understand the laws that apply directly to your job—laws that guide your behavior on the job, as well as laws meant to protect you as you perform your law enforcement duties.

To help build this knowledge and understanding, this chapter explains laws pertaining to sex-based offenses as those laws are codified in the Montana Code Annotated. The following pages are intended to help you understand and navigate Montana’s definitions of consent, medical laws, liability issues, Sexual Assault Response Team/Multi-Disciplinary Team protocols, diversity issues, and survivor’s rights issues.

Protocol:

A: When investigating a sexual assault, you must first start by understanding the elements of the crime. Title 45, Chapter 5, Part 5 of the Montana Code Annotated (MCA) specifically defines the elements of sexual crimes, guiding law enforcement officers about what determines consent, for example, and other aspects of such crimes.

This guidebook and the sexual assault investigation checklist can provide you with the understanding needed to conduct a thorough and appropriate investigation into a sexual assault crime. The following pages provide descriptions and examples of the elements and nuances of sexual crimes as outlined in the MCA. The sexual assault checklist is a condensed version of this guidebook.

As you read the following definitions and elements relevant to sexual assault, bear in mind that your understanding of these terms and concepts is essential to conducting an accurate and thorough investigation. In the course of your work, you will uncover details and nuances that will be pertinent to terms like “consensual,” “sexual contact,” and “knowingly.” To recognize facts and evidence as relevant, you must understand these terms and concepts.

It’s also important that you keep an open mind throughout the investigation. Never blame nor doubt the credibility of the survivor. Understand that sexual activity occurs between two people and includes not just what happened at one moment, but before, during, and after a sexual encounter. At any time during the encounter, one or both parties may withdraw consent to a sexual act. The statute definitions and examples below will help you understand the differences between consensual and non-consensual sexual activity or contact. Often, your own common sense and personal experience will help you deduce whether an encounter was consensual, but your thought process should always be guided by statute.

What Is Consent?

In this guide, consent is defined by the Montana Code Annotated (MCA). As an investigator, you should also understand a commonsense approach to consent. “Consent is when someone agrees, gives permission, or says ‘yes’ to sexual activity with another person. For consent is to be genuine, it must be freely given—‘consent’ that is coerced or forced is not consent at all. Also, all people in a sexual situation must feel that they are able to say ‘yes’ or ‘no’ or to stop the sexual activity at any point. Anything less is not consensual.” (University of Michigan Sexual Assault Prevention and Awareness Center)

B. Montana Code Annotated (MCA) 45-2-101 provides definitions for elements of various forms of sexual assault and defines consent. You must know and understand these definitions because they inform the investigative work you will do, interviewing the people involved, collecting facts and evidence, and documenting your findings.

This section cites the definitions as they appear in MCA 45-2-101 and also gives examples of some activities that could be construed as criminal. The examples are not exhaustive—other activities not listed here may also be criminal.

Definitions: (45-2-101 General Principles of Liability)

- **Consent – MCA 45-5-501**

As defined in MCA 45-5-501, (1)(a), as used in 45-5-502, 45-5-503, and 45-5-508, the term “consent” means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined, but not limited by the following:

- **“An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.”**
- **“A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.”**
- **“Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.”**

- **Sexual Contact (*Criminal Elements*)**

Touching of the sexual or other intimate parts of the person of another

- **Directly or through the clothing in order to...**
 - **Purposely or knowingly cause bodily injury** (*pain, bruising*)
 - **Purposely or knowingly humiliate** (*survivor’s perception*), **harass** (*repetitive, annoying*), **degrade** (*power, control, demean, with or without an “audience”*)
 - **Arouse or gratify the sexual response or desire of either party** (*arousal, stimulation, comments, bodily reaction*)

Sexual or intimate parts of the body can include but is not just limited to the breasts, buttocks, thighs, groin, vagina and penis. Other parts of the body can be classified as intimate or sexual if the contact stimulates either person (*i.e., fetishes such as feet, toes, neck, etc.*)

- **Sexual Intercourse (*Criminal Elements*)**

Penetration (*any penetration, however slight, is sufficient for this element to apply*) **of the vulva, anus, or mouth of one person by the penis of another, a body member of another, or by a foreign instrument or object manipulated by another.**

- **Vulva** (*vaginal components*)
- **Anus** (*either the suspect’s or the survivor’s during intercourse*)
- **Mouth** (*either the suspect’s or the survivor’s during intercourse*)
- **Causes bodily injury**
- **Humiliates, harasses, or degrades** (*survivor’s perception, suspect’s actions*)
- **Arouse, gratify the sexual response or desire of either party** (*arousal, stimulation, comments, bodily reaction of either party*)

C. The following are the definitions outlined in the Montana Code Annotated 45-5-501 describing the element of “without consent.” Some examples are given to help you better understand the different non-consensual elements; other situations could also rise to be construed as “without consent.” You must look objectively at all the circumstances before determining whether the act was “without consent.” You may also want to consult with a prosecutor for assistance.

Voluntary, Informed, And Knowledgeable Considerations: (VIK)

As the investigator, you can use the VIK test to refine your determination of whether or not consent was given. Was consent Voluntary, Informed, and Knowledgeable?

- **Voluntary: one’s own choice and the choice being freely given** (*not forced or coerced*)
- **Informed: aware and understanding of what was being consented to**
- **Knowledgeable: aware and understanding of the circumstances**

Definitions: (MCA 45-5-501 Sexual Crimes)

- **Without Consent – MCA 45-5-501 (Criminal Elements)**
 - **The victim is incapable of giving consent due to being mentally disordered or incapacitated.**
 - **Developmentally disabled** (*professional diagnosis*)
 - **Injury impairing normal thinking** (*concussion, can they make an informed decision?*)
 - **Drug facilitation** (*can the person act knowledgeably?*)
 - **Intoxication** (*impaired vs. intoxicated*)
 - **Medically incapable** (*in treatment*)
 - **Neurological impairments** (*Alzheimer’s or dementia*)
 - **The victim is incapable of giving consent due to being or feeling physically helpless.** (*The survivor’s perception may include the suspect’s size, physical location of the sexual act, constant pressuring by the suspect, body language of the suspect, or intimidating actions of the suspect. To understand the “physically helpless” elements of “without consent,” draw upon your training in use-of-force situations when you as the officer have exhausted all avenues to subdue a suspect, the suspect has gained the upper hand, and your last resort is the use of deadly force because you are physically helpless.*)
 - **The victim is incapable of giving consent due to being overcome by deception, coercion, or surprise.** (*The sexual act itself occurs before the victim can make an informed decision consenting to the sexual activity.*)
 - **The victim is incapable of giving consent due to being less than 16 years of age.** (*Important! This applies for both sexual intercourse and sexual assault.*)
 - **The victim is incapable of giving consent because the victim is a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting.**
 - **The victim is incapable of giving consent because the victim is a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated.**

- **The victim is confined or incarcerated in a correctional facility, detention facility, or treatment facility or is on probation/parole.** *(It's important to understand that a person does not need be specifically imprisoned, only that their liberties have been restricted. In this sense, restricted liberty means the person is required to obey the rules of a facility or terms of probation. Failing to do so will result in punishment. As mentioned above, a person under the supervision of authority is deemed unable to voluntarily consent because they could reasonably fear punishment if they refuse sexual activity. In short, a potentially coercive situation exists.)*
- **The victim is receiving services from a youth care facility.** *(Examples could be a children's hospital, group homes, foster homes, or foster care. This element includes anyone in a position of redirecting, correcting, or reporting on the victim's behavior or activity.)*
- **The victim is admitted to a mental health facility, community-based facility, or residential facility or is receiving community-based services.** *(This section can include protected populations in those facilities such as the elderly and those with mental health concerns.)*
- **As used in MCA 45-5-508, Aggravated Sexual Intercourse Without Consent, the term **FORCE** is defined in MCA 45-5-501, (2)(a)(b) as "the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."** *(Such force alters the victim's decision-making process through fear of harm to themselves or others.)*

- **Knowingly – 45-5-201** *(Determining state of mind)*

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. *(In the case of sexual assault, an offender will take voluntary actions (such as placing their hands on the victim, physically pressing against the victim, or displacing clothing) to engage in sexual contact. Such actions demonstrate the offender has thought about what to do to engage in sexual conduct and has thus acted "knowingly," in both awareness of their own conduct and the likely result of that conduct. Knowingly making sexual contact without consent is a crime.)*

Montana Code Annotated:

Sexual Assault (MCA 45-5-502)

Definitions: (MCA Title 45, Part 5, Sexual Crimes)

- **Sexual Assault – 45-5-502** *(Important information is outlined here to help you determine whether elements of the crime of Sexual Assault have been met. Use of this reference guide should be used in conjunction with the checklist.)*

A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault: (Fill in the following form to help determine and document whether the elements of the offense of sexual assault have been met. Refer to the checklist and document your findings. Remember: under Montana law, a person under the age of 16 years of age is unable to consent to sexual contact or sexual intercourse.)

Age of Survivor: _____ **Gender: Male** **Female**

(If the assault occurred to a child under 12 years of age, you must follow Multi-Disciplinary Team protocol (see MCA 52-2-211). For any sexually related crime involving any child under 18 years of age, you are required to report the matter to Centralized Intake at 1-866-820-5437.)

- **Prior convictions of the suspect?** _____
- **Misdemeanor**
(For a 1st or a 2nd offense, or if the survivor is Over 16 YOA)
- **Felony**
(If the survivor is Under 16 YOA or for a 3rd offense or subsequent offense)

Consent:

Following MCA 45-5-501's definition of consent, was the encounter consensual?
Facts documented: _____

Sexual Contact:

- **MCA 45-5-101 (Sexual Contact definitions)**
 - **Directly or through the clothing, causing:**
 - **Bodily Injury (pain, injury, or illness)**
 - **Humiliation, harassment, or degradation**
 - **Arousal or gratification of either the suspect or survivor**

Following MCA 45-5-101's definition of sexual contact, are the elements of sexual contact met? YES NO

- **Describe the contact:** _____
- **On what intimate part of the body did the contact occur?** *(Be aware of the offender's focus on the part of the body affected—it may not normally be thought of as "intimate." Yet it may apply if the contact produced sexual stimulation, harassment, pain, injury, or degradation. Offenders may derive sexual stimulation from contact with a foot, neck, or other body part. If the contact with the body part meets the above listed elements, it is considered an intimate body part under this section.)* _____
- **Direct or other contact?** _____

Bodily Injury:

(Injury includes the feeling of pain, not just physical evidence of contact such as bruising, swelling, or redness. Bodily injury can also include illness such as sexually transmitted disease.)

- **What Injury:** _____
- **What part of the body:** _____
- **How was it documented? (Photo? Statement?)** _____

Humiliation, Harassment, or Degradation?

(How does the survivor feel about the contact. Ask the survivor to describe his or her feelings about the contact.)

- **Document observations:** _____

Arousal or Gratification?

(Research shows sexual offenders seek to satisfy psychological and physical desires. Ask the survivor to describe how the suspect reacted to the sexual assault. Document if the survivor reports signs of arousal or gratification from the suspect such as heavy breathing, fondling of genitals, facial expressions, erection, ejaculation, comments or vocalizations made during the conduct, or other sexual responses?)

- **Document observations:** _____

Sexual Intercourse Without Consent (MCA 45-5-503)

- **Sexual Intercourse Without Consent – 45-5-503** (*Important information is outlined here to help you determine whether elements of the crime of Sexual Intercourse Without Consent have been met. Use this reference guide along with the checklist.*)

A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent

(THIS CRIME IS ALWAYS A FELONY OFFENSE.) (*Fill in the following form to help determine and document whether the elements of the offense of Sexual Intercourse Without Consent have been met. Refer to the checklist and document your findings. Under Montana law, a person under the age of 16 years of age is unable to consent to sexual contact or sexual intercourse.*)

Age of Survivor: _____ **Gender:** Male Female

(If the assault occurred to a child under 12 years of age, you must follow Multi-Disciplinary Team protocol. For any sexually related crime involving any child under 18 years of age, you are required to report the matter to Centralized Intake at 1-866-820-5437.)

- **Felony Offense**

(Be aware of survivor and public safety considerations that require immediate apprehension of the suspect.)

Consent: MCA 45-5-501

(Montana Code Annotated 45-5-501 is the foundation of the meaning of consent. You must follow the definitions provided in statute and begin the investigation with an objective and non-biased approach to the crime.)

As defined in MCA 45-5-501, (1)(a) and as used in 45-5-503, “the term ‘consent’ means words or overt actions indicating a freely given agreement to have sexual intercourse and is further defined but not limited by the following:

- **“AN EXPRESSION OF LACK OF CONSENT THROUGH WORDS OR CONDUCT MEANS THERE IS NO CONSENT OR THAT CONSENT HAS BEEN WITHDRAWN”**
(By statute, a person does not have to say “no” or provide some type of resistance to show there is no consent. You must consider the survivor’s comments, mannerisms, actions or lack thereof, and the survivor’s perception when deciding whether the act was consensual. You must also consider the suspect’s actions, lack of complying to the survivor saying no, the suspect’s comments, and physical presence and consider how quickly the situation can unfold causing a survivor to be unable to react or to be fearful of harm. You should think about characteristics that might be seen between two people in a consensual encounter, which would include but not be limited to verbal communication, acceptance of non-sexual contact, foreplay to include sexual contact, and ultimately the sexual act itself. In contrast, non-consensual contact is evidenced by the victim’s lack of interest or outright resistance. Responses such as crying or whimpering, lack of an emotional response, dismissing or not accepting non-sexual contact, brushing away non-sexual contact, or outright denial of sexual advances are just some examples of non-consensual actions. There are numerous other verbal and non-verbal expressions that may indicate consent was not given. You must consider all these factors before making a consent determination. ALSO KNOW THAT A PERSON MAY WITHDRAW CONSENT AT ANY TIME, EVEN IF SOME OF THE CONTACT WAS CONSENSUAL.)

- **“A CURRENT OR PREVIOUS DATING OR SOCIAL OR SEXUAL RELATIONSHIP BY ITSELF OR THE MANNER OF DRESS OF THE PERSON INVOLVED WITH THE ACCUSED IN THE CONDUCT AT ISSUE DOES NOT CONSTITUTE CONSENT.”** *(You must look at the totality of the circumstances of the events being reported. You cannot draw conclusions based on prior relationships, current relationships, or manner of dress. Your only option is a non-biased investigation, which will help you understand issues of sexual violence that occur in marital or common-law relationships.)*
- **“LACK OF CONSENT MAY BE INFERRED BASED ON ALL OF THE SURROUNDING CIRCUMSTANCES AND MUST BE CONSIDERED IN DETERMINING WHETHER A PERSON GAVE CONSENT.”** *(Statutes dictate that you must look at all the surrounding circumstances to determine if consent was given. Documenting the facts of the case will make it clear whether or not consent was given, thus reducing the risk that your bias or opinion will influence the investigation. Use the shorter version of the investigation checklist to help establish and document facts and findings as you investigate.)*

Use the Sexual Assault Investigation Checklist to help you determine whether consent was given.

When you begin a survivor-centered/trauma-informed interview with the survivor, “start by believing.” This is the current best practice to investigating sexual assault. The beginning of the investigation is self-explanatory: “start by believing!” Research over the past several decades shows that law enforcement’s response has been less than ideal for survivors of sexual assault, and for how those crimes are investigated. In the past, the way a survivor acted, memory difficulties, being withdrawn, or a perceived unwillingness to be cooperative were all seen as signs of being unreliable and unbelievable. Research now shows these behaviors to be classic signs of survivor trauma. As such, they should be incorporated into your thinking before you even begin to ask questions of a survivor. Understand that a survivor’s memory will be fragmented and their sequential thinking will be distorted. Be patient and understanding.

It is not up to you to determine the survivor’s credibility or truthfulness, or to develop other opinions about the survivor. Your job is to gather facts and evidence and compare that evidence to the elements outlined in the statutes to determine whether the sexual activity could be construed as criminal.

It is important that you develop a rapport with the survivor. This can take time. Refer to your own experience with a traumatic situation—those you’ve seen yourself or have seen others involved in. Draw upon that experience to demonstrate empathy toward the survivor. They are feeling traumatized; realize that the survivor has witnessed a crime against themselves. Take a moment and imagine if the survivor was your mom, wife, partner, sister, brother, child, or significant other. Would you approve of how the conversation or investigation is conducted?

Consider this final thought as you begin your investigation. This may be the first time the survivor has ever been in contact with law enforcement. They are wracked overcome with emotions, scared, perhaps blaming themselves, ashamed or humiliated, and likely physically injured. They may feel law enforcement won’t believe them or won’t take the situation seriously. In short, your response and demeanor could be a matter of life-and-death for the survivor. One inappropriate word or look can cause irreparable harm to the survivor and to the investigation, resulting in a no-prosecution or failed prosecution.

Determining Consent/No Consent:

Verbal Expressions: *(Did the survivor provide words or phrases to indicate their unwillingness to engage in the sexual act? Remember a person only has to say “no” in some form once and can include comments such as “no”, “stop”, “don’t”, “don’t do it”, “I don’t want to”, etc.)*

Document survivor’s verbal expressions: _____

Non-Verbal Conduct: *(Even if the survivor did not provide verbal expressions to indicate the unwillingness to consent, what non-verbal conduct did the survivor display suggesting the sexual act was unwanted? Remember things such as not feeling they had time to say “no” or resist, “frozen with fear”, “unable to do anything”, retreating to a defensive body posture, lack of non-sexual contact during the act, “fearful of being harmed,” “had to give in,” can be included in the non-verbal conduct. As the investigating officer there are other examples of non-verbal conduct that could arise during the investigation.)*

Document survivor’s non-verbal conduct: _____

- **The fact that there is a current or a prior dating, social or sexual relationship, between the parties by itself does not mean consent was given and is not to be considered.**
- **The manner of attire or dress by the survivor does not constitute consent. The investigating officer will not draw conclusions about the survivor’s dress and physical appearance in determining if the sexual act was consensual.**
- **The investigating officer can infer there was a lack of consent based on all the surrounding circumstances and those circumstances MUST be considered in determining if consent was given.**
- **The investigating officer can use the notes section to document other observations and findings during the course of the investigation.**

NOTES: _____

The following list of consent issues needing to be considered during the investigation, will assist the investigating officer to determine if other non-consensual elements of the crime exist.

FORCE: The investigating officer must remember if FORCE is deemed to have been used and meets the statutory element, then consent is deemed to have not been given.

The investigating officer must remember if FORCE is deemed to have been used then the correct statute is Aggravated Sexual Intercourse Without Consent, in violation of MCA 45-5-508.

As used in MCA 45-5-508, Aggravated Sexual Intercourse without Consent, the term FORCE is defined as “the infliction, attempted infliction, or threatened infliction of bodily injury, or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.” *(The victim’s decision-making process is compromised for fear of harm to themselves or others.)*

IF FORCE HAS BEEN DOCUMENTED...

- **Then continue with the investigation for sexual intercourse without consent,**
- **But go to the section on aggravated sexual intercourse without consent and refer to the checklist there for further examples and documentation.**

Consider other elements outlining a non-consensual encounter as described by statute:

INCAPABLE OF PROVIDING CONSENT: The statute addresses when consent is not effectively given due to contributing factors. Consider those contributing factors when evaluating consent.

- 1.) **Developmental disability:** Determining a developmental disability can include a medical diagnosis, a caretaker makes necessary day-to-day living decisions, or the survivor displays outwardly delayed responses to what would be considered normal cognitive situations. Examples can include issues such as Down’s Syndrome and non-verbal autistic conditions. Other conditions may be present.
- 2.) **Injury:** Is there an injury rendering normal thought process to be diminished, e.g., concussion?
- 3.) **Drug facilitation:** Is the presence of a controlled substance rendering the survivor unable to make an informed decision? Remember that drug facilitation can be self-induced or administered by another.
- 4.) **Alcohol consumption:** Alcohol consumption can be a precipitating factor to a sexual assault. Do not assume that alcohol consumption led the survivor to effectively give consent. You must determine whether the amount of alcohol consumed would diminish the survivor’s ability to make an informed decision.
- 5.) **Medically incapable:** This situation usually arises when a person is under the care of an attending physician and being treated or on prescribed medications. Consider which drugs have been administered, the types of examinations, and the relationship of physician and patient. Consult with a prosecuting attorney for direction on how the investigation should proceed, but consider the surrounding circumstances.
- 6.) **Neurological impairments:** Be aware of health conditions in which the survivor does not have the mental capacity to comprehend their surroundings. Such impairments could include dementia, Alzheimer’s disease, and other degenerative neurological conditions.

Use this notes section to document other observations and findings.

NOTES: _____

PHYSICALLY HELPLESS: Consider the survivor’s perception of the suspect’s size relative to the survivor, the physical location of the sexual act (such as isolation), constant pressuring by the suspect, body language of the suspect, intimidating actions of the suspect, more than one suspect, and other circumstances. Ask the survivor to explain why they felt physically helpless. (To understand what it means to be physically helpless, draw upon your training in use-of-force situations when you have exhausted all options to subdue a suspect and the suspect has gained the upper hand.)

DECEPTION, COERCION, SURPRISE: You may learn that the survivor engaged in sexual intercourse under a false pretense. Often, the suspect is a person of some authority over the survivor—a therapist, pastor, group leader, supervisor, or employer. For example, a cult may coerce sexual intercourse to be in good standing or to gain stature, or a counselor may claim that intercourse will be “therapeutic.” In the workplace, a supervisor may coerce sexual contact by threatening to fire the survivor if they don’t comply.

UNDER 16 YEARS OF AGE: If the survivor is under 16 years of age, consent can't legally be given to sexual intercourse or sexual contact.

CONFINED, INCARCERATED, OR IS ON PROBATION/PAROLE: If the survivor was incarcerated in a correctional, detention, or treatment facility at the time of the alleged assault, then by law consent cannot be given. If the survivor is on probation or parole, by law they are unable to provide consent to anyone in authority over them, such as a probation officer, parole officer, or law enforcement officer.

It is appropriate to confer with the prosecutor reviewing your investigation to see if the criminal elements of sexual assault have been met. Also, seek advice from your supervisors or others with a strong background in sexual assault investigations to ensure that you haven't missed anything and that your work is thorough.

NOTES: _____

To determine whether sexual intercourse occurred during the incident, consider the following.

PENETRATION: Any penetration of any orifice, however slight, is sufficient for this element to apply. During the course of the investigation, you will need to determine whether penetration occurred to the vulva (main components of the female sex organ), anus, or mouth of one person by the penis, body member (fingers, toes, tongue, etc.) of another person or by a foreign instrument or object manipulated by another.

To be considered sexual intercourse without consent, an incident does not have to meet all of the elements in the statute. Your focus should be on documenting what elements did occur and determining whether the intercourse caused bodily injury; humiliated, degraded, harassed, either person; or aroused or gratified the sexual response or desire of either person.

Psychological research has determined that certain sexual intercourse acts are deviant just by the nature of the act itself. So, it's important to take into account the survivor's perception of the sexual intercourse or penetration when you consider the element of humiliation, harassment, or degradation. Some types of penetration, intercourse, and gratification by themselves will meet the statutory elements of sexual intercourse without consent. You need to ask the survivor whether they would normally have consented to the type of sexual intercourse; also determine and document the survivor's perception of how the sexual intercourse made them feel, before, during and after the sexual intercourse.

TYPE OF PENETRATION:

- Penis to Vagina** **Penis to Anus**
- Mouth to Vagina** **Mouth to Penis**
- Vagina with Other Body Member** **Describe:** _____
- Anus with Other Body Member** **Describe:** _____
- Vagina with Other Foreign Object** **Describe:** _____
- Anus with Other Foreign Object** **Describe:** _____

BODILY INJURY: If injury is inflicted during the act itself, and the act is deemed to be non-consensual, then Aggravated Sexual Intercourse Without Consent (MCA 45-5-508) has been committed.

“Injury” includes the feeling of pain, not only physical evidence of contact such as bruising, swelling, or redness. Injury also includes illness, such as sexually transmitted diseases.

What Injury: _____

What part of the body: _____

How was it documented? (Photo? Statement? By L.E.?) _____

HUMILIATION, HARASSMENT, OR DEGRADATION: Consider the survivor’s perceived feelings about the sexual intercourse, including any acts performed during the sexual intercourse that made the survivor feel humiliated, harassed, or degraded. In a non-consensual encounter, things to consider include sexual positions, comments made during the sexual act, or how the suspect gratified themselves. It’s important to ask about those actions during the investigation. These are difficult conversations to have with a survivor, but you must have that conversation. Ask the survivor about their feelings regarding the sexual contact.

Document observations: _____

AROUSAL OR GRATIFICATION? Research shows that sexual offenders seek to satisfy psychological and physical desires. Carefully ask the survivor to describe their perceptions of the suspect’s emotions. The suspect may have displayed outward signs of arousal or gratification, which could include heavy breathing, fondling of genitals, facial expressions, erection, ejaculation, or other sexual responses.

Document observations: _____

Aggravated Sexual Intercourse Without Consent (MCA 45-5-508)

When a crime rises to the level of an aggravated offense, the circumstances are more serious, and the punishment is more severe. Follow the checklist to help you determine whether the incident meets the elements of Aggravated Sexual Intercourse Without Consent. As you use this guide, your initial investigation into Sexual Intercourse Without Consent will touch on the elements of whether it was “aggravated.” The following section will help you to further document and outline the elements of Aggravated Sexual Intercourse Without Consent.

- **Aggravated Sexual Intercourse Without Consent – 45-5-508** (Refer to the definitions to help determine if the incident meets elements of the crime.)

“A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent.” (The same elements of Sexual Intercourse Without Consent, MCA 45-5-503, apply, but to become an aggravated offense, the force elements must be met. The force elements are outlined below. This offense is always a felony.)

FORCE: If force is found to have been used, and it meets the statutory element, then consent is deemed to have not been given. The offense now becomes an aggravated offense and the relevant statute is Aggravated Sexual Intercourse Without Consent, in violation of MCA 45-5-508.

The definition of force (see 45-5-501(2)(a)(b)) is:

“As used in MCA 45-5-508, Aggravated Sexual Intercourse without Consent, the term FORCE is defined as; the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.” *(In short, the survivor’s decision-making process is compromised for fear of harm to themselves or others.)*

Following the definition above, you should consider the following:

Infliction of injury: Did the incident result in injury to the survivor? *Injury can include scratches, redness, swelling, bruising, or the presence of pain.)*

Describe the injury: _____

Document the injury: *(Make sure the injury is documented. Intimate injuries must be documented by medical professionals.)* **How was the injury documented?** _____

Attempted infliction of injury: Were there circumstances that indicate there was an attempt to inflict injury? This could be the attempted use of a weapon *(such as a firearm that did not discharge or a knife that was dropped, etc.).*

Describe the attempted infliction: _____

Threatened infliction of injury: Did the survivor perceive they would be injured during the incident? The threatened infliction of injury not only includes verbal threats but also other circumstances in which other actions make the survivor feel they would be injured. Examples could be the clenching of a fist suggesting a punch, hands clenched moving toward the neck to suggest strangulation, and other actions indicating a threat of injury. Describe the actions that suggest there was a threatened infliction of injury: _____

Commission of a forceable felony: As defined in MCA 45-2-101(24), a forceable felony is one that involves the use or threat of physical force or violence against any individual. Consider whether a forceable felony was committed, e.g., aggravated burglary, felony partner/family member assault, or robbery, etc., in conjunction with the sexual intercourse. Describe the forceable felony: _____

The threat of substantial retaliatory action causing the survivor to reasonably believe the offender can execute the threat: Examples of threatening retaliatory action could be the threat of violence against the survivor’s children, significant other, or family members; isolation; adverse effects on social status; humiliation; embarrassment; or other situations to bring fear to the survivor affecting their decision-making process. Describe the retaliatory actions by the offender: _____

Chapter 2 – Law Enforcement Response

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Chapter 2 – Law Enforcement Response

FRAMEWORK: Law Enforcement Preparation and Response

The role of the patrol officer is vital to any law enforcement organization. In many communities, the first responder is usually a patrol officer.

Patrol officers must have a broad range of skills and the ability to handle any situation they encounter. The patrol officer must also understand they are the “face” of their agency. In many instances, the patrol officer will encounter a person who has not previously interacted with law enforcement. A negative contact not only effects how the patrol officer’s community perceives its law enforcement agency, but how it perceives law enforcement in general.

This chapter focuses on the importance of preparation for responding to a sexual assault investigation, understanding how a sexual assault investigation should progress, mental preparation, prompt response, and information collection.

Protocol:

Understanding Survivor Trauma:

This guidebook refers to any person who has experienced sexual assault as a survivor. The survivor has been subjected to some type of unwanted, abnormal, uncommon, coerced, or forced sexual contact or encounter and as a result has experienced trauma. Not every report of a sexual contact or encounter rises to the level of a criminal offense, but the circumstances perceived by the survivor may trigger a traumatic response. Merriam-Webster defines trauma as “*a disordered psychic or behavioral state resulting from severe mental or emotional stress, an emotional upset.*” It is important for you to understand the terms “trauma” and “survivor” because they convey the intimate and psychological components of sexual assault. In simple terms, the situation causes harm to the mind and body. This is how a survivor may perceive the situation, and the trauma itself shapes that perception. The success of your investigation depends on your understanding of these concepts.

Because trauma is a factor, careful word choices are called for. No one feels good about being labeled as a victim. Instead, *survivor* is mindful of the trauma but positive, forward-looking, and oriented toward a hopeful long-term outcome. You will be better poised to help the person at the center of your investigation when you think of them as a survivor.

Research shows that sexual assaults are often not reported immediately. There are numerous myths and misperceptions regarding why a sexual assault report should be “immediate,” but research shows most reports are made when the survivor is in a safe place or has confided in a trusted third party, who in turn reports the matter. The report is made some time after the incident took place, which may give the appearance of “delayed reporting.” Unfortunately, this may lead an investigating officer to think that the incident didn’t take place or that the survivor isn’t credible. You should not be influenced by the amount of time that has elapsed from when the sexual assault allegedly occurred and the time a survivor reports the matter to law enforcement, medical providers, or a third party. Research shows there are many factors as to why a survivor does not report “immediately,” but the biggest contributing factor is survivor trauma.

To better understand survivor trauma, think of a time in your training or career when you witnessed a traumatic event such as a fatal traffic crash, loss of life, vehicle pursuit, use-of-force encounter, or deadly force encounter. How did you react? How did you feel after the situation? Did you notice any physiological or psychological changes? Many agencies employ critical incident stress debriefing sessions after an agency experiences a critical incident. This process helps officers deal with the fallout of the incident. Many agencies have policies in place for when an officer is involved in a deadly force encounter. One of the main reasons is to “protect” the officer, acknowledging that the officer has been in a high-stress situation and needs time to “collect” themselves. Typically, the officer is placed on administrative leave, not as a disciplinary measure but to allow that officer “*to take time and collect their thoughts*” prior to making a formal statement. The Human Factor Research Group *Threat Pattern Recognition Use of Force Manual* says an officer suffers “critical stress amnesia” and recommends that an officer have at least two sleep cycles for memory recovery to be complete before making an official statement. In fact, after making an initial statement, the officer may realize that he or she left out important details or recalled events out of sequence. At a later date, the officer can provide an additional statement of details that may have been independently recalled. Why? That officer is suffering from a form of trauma. It’s important to recognize that a survivor of a sexual assault will exhibit the same symptoms. You should not pass it off as though the survivor is unreliable or uncooperative but recognize that the survivor may be reporting only hours after the sexual assault.

The brain reacts in different ways to a traumatic event and thoughts can often be “scattered.” During a stressful event, the brain reverts to primal thinking, so-called fight or flight instincts. You’ve likely experienced this yourself in a life-threatening situation. A survivor may have difficulty retrieving a

chronological timeline or certain details or may provide the information as random jigsaw puzzle pieces you will have to piece together. The survivor may also remember other important pieces of information as time goes on.

A Survivor-Centered Law Enforcement Response

Prepare yourself first by placing any biases aside. Adopt a “survivor-centered” mindset when preparing to investigate a sexual assault. Current best practices say you should “start by believing” that the survivor has experienced some type of a traumatic incident. Whatever that traumatic incident is, your job is to gather objective facts and evidence and use them to establish whether the elements of a crime have been met. If you project an attitude of not believing the facts or evidence, or of questioning the survivor about why they don’t remember certain details or events in sequence, it will have a long-lasting negative impact on the survivor, ruin any chance of rapport with the survivor, and seriously impair the investigation itself. Think about a time you, as an officer, testified in court and were cross-examined by a defense attorney who questioned the facts you gathered or highlighted a mistake you made in a report, making it look like you weren’t being truthful. How did that make you feel? Did you ever come out of court feeling upset or uneasy because defense counsel implied you were forgetful or dishonest? You’re first thought probably was, “I’m an officer, I’m telling the truth, I’m credible.” The survivor feels the same way. But they’re also experiencing trauma—their memory will be clouded and confused, and they may find it hard to speak at all let alone offer clear explanations of what happened.

Each sexual investigation is a new beginning. Your job is that of a fact finder. You will not judge or place blame. Often there are common aspects from one investigation to the next, such as drug and alcohol use, initial consensual activity, a sense of “Why would you put yourself in that situation?” These and other aspects may lead you to think the encounter was consensual. Data and research show, however, that the suspect in such situations manipulated the survivor. The suspect will select an intended target and use substances, coercion, and shame to commit the sexual assault.

- **Preparation:**

“Always be prepared” is excellent advice for any law enforcement officer, and it applies particularly to sexual assault investigations. Mental preparation is particularly important so you can interact positively with the survivor. Your response to a sexual assault report is just as important as when you respond to a call “in progress.” This guidebook is designed to help you properly prepare for that response and the investigation.

Training – Refresher training is always important in any phase of a law enforcement officer’s career.

MCA Refresher – Review the MCA about definitions, consent explanations, and statutes.

Basic Sexual Assault Investigation Training – Before conducting a sexual assault investigation, request briefing training, review this reference guide, or review with a detective or supervisor about how the investigation should be conducted.

Mental Preparation – Start with proper mental preparation and address stress management: Experience and research shows that stress affects how a law enforcement officer performs in situations. Stress affects investigators much more noticeably in sexual assault crimes than other situations. You should:

- **Prepare for a difficult conversation.**
- **Plan on how to start the interview.**
- **Practice using difficult or intimate words.**
- **Use relaxation techniques.**

Preconceived Notions and Biases – Set aside any personal, religious, or learned opinions you may have about human behavior. The survivor may be heterosexual, homosexual, transgender, elderly, or of a different ethnic heritage. Regardless, you must respond professionally in every situation. You cannot harbor thoughts such as, “This survivor has previously made unfounded calls of being sexually assaulted,” or “The suspect isn’t the type of person who would do this.” There may have been other times in your career when you have thought this way, but in sexual assault investigation, you must start by giving the survivor a clean slate. You must be objective and thorough.

Investigation Materials – Before you speak with the survivor, make sure you have all the necessary investigation materials you will need, including:

- **This Law Enforcement Reference Guide**
- **Sexual Assault Checklist**
- **Conversation Template**
- **Victim’s Rights Packet**
- **Body Camera**
- **Recording Equipment**
- **Evidence Collection Equipment**

Documentation – At the start of our law enforcement careers, most of us hear the advice, “If it isn’t written down, it didn’t happen.” We’re regularly reminded of that advice every time we take field notes, write reports, conduct investigations, attend court or suppression hearings, and so on.

- **Documentation is a critical asset. It will help you develop your investigation, get the case successfully prosecuted, and avoid liability. Remember—the survivor is counting on you to document the facts and evidence.**

In preparation for a sexual assault investigation, review Chapter 4 of this guide, Documentation, to ensure that you follow proper documentation methods.

The process of collecting information, facts, and evidence can be overwhelming during the investigation. Using proven methods to document your actions and how the investigation unfolds will help you, your agency, and prosecutors demonstrate that the investigation was thoroughly and properly conducted. These proven methods also help you to keep a chronological timeline of events, track evidence, and preserve key information. This is crucial during the investigation and when it’s time to submit the completed investigation to a prosecutor for criminal consideration.

Understanding the Phases of the Investigation – Sexual assault investigations tend to be complex and lengthy. Be prepared to spend time focused on the investigation. Knowing this beforehand can help you remain patient and avoid becoming frustrated.

It may help to see the process as several mini-investigations. There will be a minimum of three crime scenes, but that number could increase. The priority of the investigation is the survivor unless the suspect poses a safety risk. Also, the progression of the investigation may change as it unfolds.

The phases of the investigation are as follows:

- **Survivor (First Priority)** – Always start the investigation with the survivor. (Facts learned during the investigation may put a priority on locating the suspect if safety is a concern.)
- **Location (Jurisdiction)** – You need to establish jurisdiction; did any part of the incident occur outside your jurisdiction?

- **Crime Scene(s) (Jurisdiction)** – Establish crime scene jurisdiction to determine other investigative needs that may be needed.
- **Witnesses** – Establish the location of witnesses and how to interview them.
- **Social Media** – Establish whether social media will contain evidence, how to preserve that evidence, how quickly that evidence might vanish, and how to extract that evidence.
- **Technology** – Establish whether technology was used in the commission of the offense or if it contains evidence. You will need to know how the technology works; how to seize that technology; how to properly store and search it; and how to use the extracted information to build your case.
- **Suspect (Unless Safety Risk to Survivor)** – You will need to positively identify the suspect, locate the suspect, determine if undercover measures may be beneficial, interview the suspect, execute search warrants, and ultimately make determinations about the suspect’s actions through the facts and evidence obtained during the investigation.
- **Drug Facilitated Sexual Assault** – You will need to recognize whether the survivor’s actions or behavior indicate that they were under the influence of drugs before or during the alleged assault. You must understand the effects of the substance, length of time the substance remains in the human body, how to properly test for those substances, and how to collect bodily fluids for testing.
- **Lab/DNA** – You will need to know how to properly store the Sexual Assault Kit and evidence taken during the investigation, how to properly package evidence, and how to properly submit it to the crime lab for testing.
- **Follow-Up/Case Submission** – You will need to know when and how to follow up in a case as well as how to properly submit the case for prosecutor review.
- **Open, Alert Mind** – Keep an open and alert mind. Other circumstances may arise in a phase of the investigation that are not listed here.

Understanding the Time Frame of the Investigation - Be patient. Your initial response may take several hours, perhaps longer than your normal shift. If a detective division is assisting, then the length of your initial involvement may be shorter, but if you are the only investigator, the investigation could take days even weeks to complete. Don’t get impatient and frustrated.

- **Survivor Interaction and Interviewing** – Consider the following when contacting the survivor:
- **Survivor Trauma** – The survivor has experienced a traumatic event. Understand that the survivor may not react as you might expect.
- **Rapport Building** – Establish rapport by taking your time and showing empathy while conversing.
- **Communication Skills** – Refrain from using police terms, do not phrase questions in a way that places blame, and do use proper terminology when talking about anatomy, sexual acts, and arousal.
- **Victim’s Advocate** – You can offer and use a victim’s advocate if one is available.
- **Officer Presence** – Be aware of the survivor’s body postures, facial expressions, and demeanor.
- **Distractions** – Limit distractions when interviewing a survivor. Phones, body cameras, and electronic equipment may cause problems.

- **Safety Concerns –Be aware of certain safety concerns:**

OFFICER

- Typically, sexual assault is reported after the fact, not “in progress.” Unless the suspect is present, officer safety is usually not a concern when contacting a survivor.
- Sexual assault is usually reported when a survivor feels safe or has reported the assault to a family member, friend, or other person.
- The notion of a “delayed report” reveals a biased thought process among law enforcement regarding sexual assault. There is no such thing as a delayed report. Many factors can affect why a survivor is unable to report right after the assault. You will begin an investigation from the time of the report, and the facts will make it clear why the report was made at the time it was.
- Be aware that family, friends, or others close to the survivor may express “directional anger” toward you to vent their feelings. Know that you are not the cause of their anger.

SURVIVOR

- Keep the survivor’s safety in mind and determine if the suspect poses an immediate or ongoing threat to the survivor’s safety. If so, then the investigative steps may change.
- Research shows injuries and evidence can be detected up to 120 hours after the assault took place.
- Be aware that medical exams focus on treatment and diagnosis, both of which will benefit the survivor as well as the investigator.

SUSPECT

- Consider the suspect and that there could be safety concerns from retaliation to the survivor, unexpected violence toward the officer when contacted, or suspect self-harm.

- **Location Concerns**

To coordinate resources, including manpower, during the investigation, you will need to consider and prepare for where key people (e.g., the survivor, suspect, witnesses) are located, where evidence will be found, and where crime scenes are located.

SURVIVOR

- The location of the survivor and the survivor’s need for medical attention. Often, it helps both the survivor and investigator to call emergency medical services to the scene.
- In an acute case—up to 120 hours after the assault—evidence can possibly still be obtained.
- In a cold case—more than 120 hours after the incident—the investigator may consider a different investigative approach such as bringing in other agencies or an advocate to obtain information.
- If the survivor needs support, locate family, a significant other, or trusted friend.

SUSPECT

- Determine if the suspect is a threat to the survivor, public, or law enforcement.
- Is the suspect transient? If so, where might they go?
- Always consider legal liability. Failure to act quickly and appropriately can result in you being liable if the suspect offends again.

CRIME SCENE(S)

- Consider how to secure any of the multiple crime scenes, for example, a car and a house.
- Consider various elements of crime scenes such as sunshine, heat, rain, snow, highly public areas.
- Consider the mobility of scenes.
- Consider exigent circumstances with evidence and crime scenes.
- In most cases, to enter and search a crime scene, you must establish a legal basis of consent, a search warrant, or exigent circumstances.

WITNESSES

- Be prepared for witnesses who are uncooperative or unavailable. You may want to prepare for how best to approach witnesses.

COMMUNICATION SKILLS

- Law enforcement officers have conversations all the time but talking about sexual assault is often a difficult conversation to have.
- Be prepared if you have difficulty in discussing intimate body parts and slang terms for sexual acts or are worried about further traumatizing the survivor.
- Prepare by looking over the conversation template provided in this guide

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Chapter 3 – Conducting Investigations

FRAMEWORK: Conducting Sexual Assault Investigations

As law enforcement officers, we are summoned to a wide array of situations, from traffic stops and shoplifting to homicide. Each incident requires thorough investigation. Although some crimes are considered more serious than others, the investigation process includes the same components no matter what the crime.

When we investigate a traffic incident involving an apparently impaired driver, we are tasked to do it in a standardized way. We must consider the elements of the alleged crime, make observations, gather facts, obtain evidence, identify a possible suspect, and ultimately determine if probable cause exists for an arrest. We follow the same investigative process for all types of crimes, though it may be more detailed for more serious offenses, such as assault or homicide. All investigations have a beginning, middle and an end.

With experience, most officers find a niche for the type of crimes they prefer to investigate. We may also have reservations about investigating certain types of crimes, usually those that involve children or have sexual elements. Investigations of sexual assault are typically more complex—the circumstances are often more dynamic, there may be multiple crime scenes, it is challenging to have difficult conversations with a survivor, and the nature of the crime may trigger our own emotions and personal biases. Research shows that sexual assault investigations are less likely to be properly conducted due to a lack of understanding of the crime, stigmas associated with such investigations, and misunderstandings about why survivors exhibit the behaviors they do.

Experience shows that when an intimate element is added to an investigation, as in sexual crimes, law enforcement officers feel it raises the degree of difficulty, often to the limits of their abilities. In the end, if the investigation is not properly conducted, the survivor may suffer irreparable harm and the offender may escape justice. As an officer, your attitude must be to work with the survivor as you would for a victim of any other crime. Conduct a thorough investigation following the best practices in this guide, be knowledgeable about the relevant laws, put aside any biases, keep an open mind, be confident in investigating the assault, and understand that a sexual assault investigation follows the same basic process we use for any other crime.

A sexual assault investigation must be prioritized to focus on the survivor and the survivor's safety, with an understanding that survivor trauma is real. The protocol in this guide will help you to conduct a thorough, accurate investigation so that prosecutors have all the information they need to do their job.

Protocol:

Conducting Sexual Assault Investigations:

When you receive the call to respond to and investigate a sexual assault, start from the beginning. Refresh yourself with the information in this guide, beginning with the preparation portion. Refresh yourself with the information you receive from dispatch and start at “the beginning.”

This process will be time consuming and you may run into obstacles, but this guide will help you conduct a proper and thorough investigation.

Start by understanding that sexual assault investigations can be complex but prioritizing how the investigation will be conducted will guide you in how to proceed at each step.

IN SEXUAL ASSAULT CASES, THE SURVIVOR IS THE FOCAL POINT AND WILL BE AT THE TOP OF THE PRIORITY LIST!

- **Flow Of A Sexual Assault Investigation:**

There is no doubt a sexual assault investigation poses challenges to us as officers, but if we break the investigation into phases and proceed methodically, we will not miss critical steps in the process.

The first step is to prioritize the investigation and decide how it should proceed. Create a priority list by relying on your own observations and information gathered during your initial response to the scene. Remember that the investigation should be survivor centered. Always prioritize safety for the survivor and anyone else involved in an unfolding crime or situation.

Why is it important to prioritize how a sexual assault investigation should be conducted? Research shows that, overall, law enforcement has done a poor job of investigating sexual assaults. We’re now taking steps to correct and improve law enforcement’s response. Prioritizing the protocol for investigation enables us to focus on the best practices for helping the survivor and conducting a thorough investigation.

- **Priority Phases Of The Investigation:**

This chapter prioritizes and explains the nine phases of an investigation and describes in detail the key aspects to consider in each phase.

- A. SURVIVOR**

- 1. If there is a threat to the survivor or the public, first address the threat.**

- B. LOCATION OF ASSAULT/CRIME SCENE**

- C. WITNESSES**

- D. SOCIAL MEDIA**

- E. TECHNOLOGY**

- F. SUSPECT**

- G. LAB/DNA SUBMISSION**

- H. FOLLOW-UP**

- I. CASE SUBMISSION**

Proceed with the investigation in the following manner:

- **Survivor Investigation**

- I. Bias**

- A. When you respond to a call, you shall not make assumptions about which individual(s) may be survivors based on their race, ethnicity, national origin, religion, gender identity, sexual orientation, disability, or immigration status.
 - B. You will be objective and fact-driven when conducting any investigation.

- II. Cultural and Diversity Issues**

- A. As law enforcement officers, we encounter citizens daily. Today's society is a blend of races, ethnicities, national origins, religions, gender identities, sexual orientations, disabilities, and immigration statuses. All the mentioned classes are federally protected.
 - B. In a sexual assault investigation, regardless of the race, ethnicity, national origin, religion, gender identity, sexual orientation, disability, or immigration status of the people involved, you must conduct the investigation by being survivor centered. Set aside any biases. If you fail to properly investigate sexual assault with the mentioned classes, you can be criminally prosecuted and placed in civil liability.
 - C. As a survivor-centered investigator, you must be aware of and consider issues regarding race, ethnicity, national origin, religion, gender identity, sexual orientation, disability, or immigration status. First, understand the terminology for sexual orientations, gender identities, and protected classes:

- 1. LGBTQ+**

- a. Lesbian – A female-identifying person who is attracted to other female-identifying individuals.
 - b. Gay – A male-identifying person who is attracted to other male-identifying individuals.
 - c. Bisexual – A person who is attracted to both male-identifying and female-identifying individuals.
 - d. Transgender – A person who identifies with a gender other than the one they were assigned at birth.
 - e. Queer – Encompasses individuals of varying gender and sexual identities.
 - f. Questioning – A person in the process of figuring out an identity and understanding where they fit on the gender spectrum or with their sexual preferences.

- 2. Protected Classes:**

- a. Racial and Ethnic Issues. The National Institutes of Health defines each racial and ethnic category as follows:
 - (1) American Indian or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
 - (2) Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example,

Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) Black or African American: A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” can be used in addition to “Black” or “African American.”

(4) Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin,” can be used in addition to “Hispanic” or “Latino.”

(5) Native Hawaiian or Other Pacific Islander: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(6) White: A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

b. Elderly – The population considered by the Social Security Administration as 65 years of age or older.

c. Developmentally Disabled – Having a physical or mental impairment that becomes apparent shortly after birth or during childhood and delays, limits, or prevents the progression of normal development.

D. Recognize that certain customs and beliefs of races and ethnicities can cause a survivor to not be forthcoming with information.

1. **Hate Crime** – Having identified a survivor as a member of a protected class, you may learn through investigation that the sexual assault may have been committed based on the survivor’s protected class status. This elevates the offense to that of a hate crime, given the person’s protected class status.

III. Survivor-Centered/Trauma-Informed Investigation

A. Remember that the survivor has been a witness to their own assault and is suffering from trauma. In a traumatic event, the body goes into survival mode and the prefrontal cortex—the part of the brain responsible for many complex functions including decision making—will shut down. The more primitive limbic part of the brain takes over. Primitive brain function focuses on keeping the necessary body functions operating. Speech may sound like a child learning how to talk. In this mode, the survivor’s thinking is nonlinear and they will not be able to remember events in the sequence they occurred.

B. All too often, an officer gets into a “rigid” interviewing routine. For example, in a traffic stop, the investigator contacts the violator and immediately asks “license, registration, and insurance” in a manner suggesting command presence, literally the first step on the use-of-force continuum. Unfortunately, out of habit, many officers use this type of interview style in all circumstances, including sexual assault investigations. Why? Because it’s repetitive and becomes routine. You must remember that sexual assault investigations have a completely different communication style. To be effective, you must use a completely different interview technique than you were taught in interview and interrogation classes.

C. As investigators, we have been taught that “silence is golden.” Most interview and interrogation instructors often say an investigator should “just listen” and in some instances remain silent to allow a person to fill the uncomfortable silence on their own. Investigators embrace this when speaking with victims of other types of crimes, witnesses and suspects because people don’t like silence and will usually fill that silence, often providing valuable information.

- D. When investigating a sexual assault, especially when talking with survivors, you must recognize that silence is deadly. Survivors who go silent during an interview are, in that moment, experiencing trauma. You must recognize it as a cue that the survivor is struggling to answer the question. You should shift gears and reassure the survivor that they are safe, reaffirm that the survivor is doing the right thing, and empathetically prompt the survivor to continue if they feel they can.
- E. To conduct a survivor-centered/trauma-informed investigation:
 - 1. **Start by believing the survivor.**
 - 2. **Remember that you are working for the survivor.**
 - 3. **Be empathetic.**
 - 4. **Realize that the survivor has witnessed their own assault.**
 - 5. **Remember: there is no right or a wrong way for a survivor of sexual assault offense to react. Accept that people react to stress and trauma in different ways.**
 - 6. **Be aware that a survivor may be just that—in “survival mode.”**
 - 7. **Use common sense.**
 - 8. **Remember not to take things personally.**
 - 9. **Remember whose interview this is—the survivor’s.**
 - 10. **Be aware of the survivor’s body language; it tells a story.**
 - 11. **Remember that your responsibility is to encourage them to tell what happened and to document it.**
 - 12. **Remember to relax and speak calmly. A survivor will have a heightened sense of awareness and will pick up on your emotions.**

IV. Documentation

- A. You will quickly accumulate information and evidence as the first steps of the investigation unfold.
- B. You can and should use all the tools provided in this reference guide to help document the phases of the investigation.
- C. Be prepared: have these tools readily available when conducting the sexual assault investigation.
- D. Before each investigation, review Chapter 4, Documentation, prior to making contact with the survivor and again during the course of the investigation to ensure that you use proper documentation methods.

V. Initial Contact

- A. When you first meet the survivor, be observant and recognize that their physical appearance is a key component of the investigation. As the investigator, you will:
 - 1. **Contact the survivor as promptly as possible in person.**
 - 2. **Be aware that your own personality and emotional state could impact the survivor’s behavior.**
 - 3. **Find a safe and private location to talk with the survivor.**
 - 4. **Get on the same “plane” as the survivor; don’t tower over a survivor.**
 - 5. **Use a positive attitude with the survivor.**

6. Understand that your own body language can frighten or further traumatize the survivor.
7. Understand that a survivor may feel they are on trial in the interview.
8. Ask the survivor if they would like an advocate, friend, or relative with them during the interview.
9. Be aware that your own communication style might not be best for the survivor.
10. Use conversational “soft” language at first to see if the survivor is hearing you; tell them a bit who you are.
11. Be aware that survivors don’t think they have anything in common with the investigator; find something in common.
12. Avoid using law enforcement jargon; use simple words.
13. Realize that the survivor may display disinterest, withdrawal, unresponsiveness, or other behaviors, when in fact they are trying to process what has happened to them.
14. Remember that, as you talk, the survivor may be hearing but not mentally processing what you say.
15. Be aware of anxiety—the survivor may have been threatened not to say anything.
16. Understand that survivors will put up a “trauma bubble” to help them cope and may not want to say anything.
17. Be patient—don’t push for information.
18. Explain the need to have a difficult conversation. None of us wants to have such a conversation, but the survivor is dependent upon you to listen and document what happened.

VI. Conversation Template/Interviewing Skills

- A. One of the biggest obstacles to effective investigations of sexual assault is the fact that officers often lack the skills and experience to engage in the difficult conversation with the survivor. The following template will guide you through such a conversation.
- B. Take a deep breath, calm yourself, and do the following:
 1. **Build rapport with the survivor**
 - a. Introduce yourself by first name.
 - b. Ask them their name.
 - c. Ask if they’re okay.
 - d. Ask if they need anything.
 - e. Ask if they feel safe.
 - (1) If not, find out why.
 - (2) Suspect concern
 2. **Conduct a “Reverse Selfie” in their shoes or to focus on someone else**
 - a. Focus on the survivor.
 - b. Work
 - c. Activities

3. **Find a similarity with survivor**
 - a. Finding something in common provides a connection with a survivor to help them talk and feel at ease.
4. **Consider immediate needs**
 - a. Children.
 - b. Pets.
 - c. Work.
 - d. Family.
5. **Understand that interviewing the survivor is a process and not just a one-time interaction with that survivor.**
6. **If you don't win the survivor's trust, they may not talk or tell you what you need to know.**
7. **Give the survivor permission not to remember certain details initially.**
8. **If there is a direct threat, locate the suspect; ask for help in doing so.**
9. **Explain the need for medical attention to ensure the survivor's overall medical well-being.**
10. **Record the survivor interview.**
11. **Explain to survivor why you're doing certain things:**
 - a. Taking notes to help you remember.
 - b. Recording the interview.
 - c. Repeat what they say to ensure you have the facts right (this also helps them feel heard).
 - d. Tell a survivor it's okay to correct you.
12. **Explain that every piece of information helps even if the survivor feels it won't help.**

VII. Survivor Interview

- A. Having developed rapport, use the following:
 1. **Open ended questions designed to let the survivor talk**
 - a. Rather than talking, your job is to actively listen to the survivor.
 2. **Sensory Based Questions to elicit responses**
 - a. "What did you feel with your own body?"
 - b. "What did you hear?"
 - c. "What did you smell?"
 - d. "What did you taste?"
 3. **Emotional Response Questions**
 - a. "What was the strongest emotion you felt?"
 - b. "How did it make you feel?"

4. Psychological Response Questions

- a. "How has this changed your day-to-day life?"
- b. "Is there something that you can't forget?"

5. Questions to find out how clothing items were removed or put back on

- a. "How were your clothes removed?"
- b. "How did the suspect's clothes get removed?"
- c. "How did your clothes get back on?"

6. Explain that you may ask difficult questions that are not meant to embarrass or make the survivor feel bad, but you need the information to establish facts of the crime, such as:

- a. "Did the person ejaculate?"
- b. "Where did the person ejaculate?"
- c. "What type of touching happened?"
- d. "What type of intercourse happened?"
- e. "What was used to penetrate you?"
- f. "Were you penetrated anywhere else?"
- g. "What happened after the person ejaculated?"
- h. "How did the intercourse end?"
- i. "What happened after the intercourse?"

B. Be aware that even if the sexual assault is non-acute and being reported well after the assault took place, asking the survivor to recall details may still trigger trauma.

C. Be aware that even up to 120 hours after an assault occurs, there may still be injuries or other physical evidence that suggests medical attention is needed. You should:

1. Ask questions about injury

- a. "Were you injured?"
- b. "Do you have any bruising?"
- c. "Did or do you feel pain?"

2. Ask questions about post-intercourse bodily functions

- a. "Was there any bleeding?"
- b. "Any abnormal discharge?"

D. If you have determined that there is injury, remember to emphasize to the survivor the importance of a Sexual Assault Kit and request permission for its use.

E. Be aware a survivor may have feelings of being "dirty", "disgusting", or "gross." It's not uncommon for a survivor to want to clean up after being sexually assaulted. You should:

1. Ask questions about personal hygiene

- a. "Did you shower?"
- b. In cases of oral intercourse "Did you brush your teeth or rinse your mouth?"
- c. "Did you go to the bathroom?"
- d. "Did you use anything to clean up?"

- F. Be aware that the survivor may also want to get rid of the clothing worn at the time of the assault. It's not uncommon for a survivor to dispose of clothing to put the assault behind them. You should:
- 1. Ask questions about the clothing worn at the time of the assault**
 - a. "Where are the clothes you were wearing at the time?"
 - b. "Have you washed the clothing you were wearing at the time?"
- G. **IMPORTANT** – Do not forget to follow up on details discovered during the survivor interview. Document or make a list of things that need to be done. This section can serve as a good outline.

VIII. Identification

- A. During the survivor interview, you need to gather information to positively identify a suspect. Bear in mind:
- 1. A survivor may know only limited details about the suspect, but even these can help you identify a suspect.**
 - 2. In some cases, the suspect is someone the survivor knows, either by name or by appearance.**
 - 3. Ask such questions as:**
 - a. "What was the name they used?"
 - b. "Did the suspect communicate with you by:"
 - (1) Phone? Do you have the phone number?
 - (2) E-mail? Do you have the emails or an address?
 - (3) Web forum? Do you know the screen name?
 - (4) Have you seen a profile photo?
 - c. "Can you describe them?"
 - d. "Estimate their age?"
 - e. "Where do they live?"
 - f. "Where do they work?"
 - g. "Was the suspect driving a vehicle?"
 - h. "How did you meet the suspect?"
 - i. "Has the person gotten in touch with you since the sexual assault?"
 - j. "Was anything said during the sexual assault?"
 - k. "Did the person tell you not to say anything to anybody?"
 - l. "Did the person say they were going to do anything to you if you did talk to anybody?"
 - m. "Does the person know you are talking to me?"
 - n. "Did the person make any type of threat toward you?"
 - 4. Avoid asking detail-oriented questions such as:**
 - a. "Do you know the suspect's date of birth?"
 - b. "Do you know the suspect's license plate?"

- 5. Determine the location of the assault by asking questions such as:**
- a. "Where did this happen?"
 - b. "Do you know where you were?"
 - c. "What do you remember about where this happened?"
 - d. "Do you remember hearing anything unique?"
 - e. "What did the place smell like?"
 - f. "What did the place look like?"
- B. *You must be very careful about your choice of words when speaking with a survivor.* Even though you may think a question or choice of words is harmless, a survivor with a heightened sense of emotion will pick up on words or questions that suggest blame, and this will destroy the rapport you've built with them.
- 1. Don't ask questions such as:**
 - a. "Let me get your story straight."
 - b. "Is that all?"
 - c. "Are you sure?"
 - d. "Did you fight at all?"
- C. Remember that a survivor will report a sexual assault only when the survivor feels safe, sometimes through a third party or when seeking medical attention. Because of this, you should consider possible issues with the location of the crime:
- 1. The crime may have occurred outside your jurisdiction.**
 - 2. The survivor may not have gotten an appropriate law enforcement response from another agency and is seeking help.**
 - 3. The survivor may have been denied appropriate medical attention in another jurisdiction.**
- D. Using a survivor-centered approach, you should take the necessary steps of:
- 1. Notifying the appropriate agency.**
 - 2. Assisting the appropriate agency if requested.**
 - 3. Assuring the survivor about the appropriate law enforcement response.**
 - 4. Ensuring that the survivor receives necessary medical attention.**
- E. How you interact with a survivor can significantly impact the survivor, for good or bad. You must:
- 1. Never appear to not take the matter seriously (even if the crime occurred outside your jurisdiction).**
 - 2. Never disregard the call. Never walk away from a survivor who needs help.**
 - 3. Do take any necessary steps to help the survivor receive medical attention.**
 - 4. Do begin an initial investigation even if another appropriate agency will take over the investigation.**

IX. Drug Facilitated Sexual Assault (DFSA)

- A. Drug facilitated sexual assault is when an offender uses alcohol or drugs to compromise the survivor's ability to consent to sexual contact. Offenders use such substances to lessen inhibitions, lower or impair resistance to sexual advances, and cloud the survivor's memory.
- B. The investigation may reveal evidence suggesting a substance was used to facilitate sexual assault. This section will help you to recognize the commonly used drugs, their effects, and the signs of drug facilitated sexual assault.
- C. Be aware that offenders often mask taste of a drug by putting it in an alcoholic beverage given to the victim.
- D. If evidence suggests the survivor was the victim of drug facilitated sexual assault, you need to consider the following:
- E. DFSA Drugs and Symptoms
 1. **Rohypnol** – Trade name for the drug flunitrazepam, a Schedule IV central nervous system depressant. Symptoms include sedative-hypnotic, anti-anxiety, and muscle-relaxant effects.
 2. **Gamma-Butyrolactone (GBL)** – Gamma-Hydroxybutyric Acid (GHB). GBL is a chemical used to manufacture GHB. Commonly a clear liquid. GBL and GHB have central nervous system depressant effects that include euphoria and intoxication. Other effects can include respiratory depression, coma, and death.
 3. **Ketamine** – A schedule III short-acting anesthetic, primarily used by veterinarians. Effects can include individuals feeling detached from their body and surroundings. May be reported as being aware of things happening but not being able to do anything about it because a person can't move. Can cause amnesia.
- F. Know how to identify the effects of drugs commonly used to facilitate sexual assault.
 1. **All three drugs are typically odorless, colorless, and tasteless**
 2. **The exception, GBL can have a bitter taste and usually is masked by a stronger alcoholic beverage.**
 3. **Onset of effects is usually about 30 minutes.**
 4. **The survivor may struggle to talk or move or may pass out.**
 5. **Be aware of who took care of the survivor after appearing extremely intoxicated.**
 6. **Often a survivor will blame themselves for drinking too much or taking drugs. EMPHASIZE it is not the survivor's fault.**
 7. **Signs to look for if a survivor has been drugged:**
 - a. Nausea.
 - b. Loss of bowel or bladder control.
 - c. Difficulty breathing.
 - d. Feeling drunk when alcohol consumption has been none to very limited.
 - e. Dizziness, disorientation. or blurred vision.
 - f. Waking with no memory or missing large portions of memories.

- G. If you believe drugs were used to facilitate sexual assault, be aware that many of the drugs leave the body within 12 to 72 hours:
1. **Rohypnol leaves the body within 36 to 72 hours.**
 2. **GHB leaves the body within 10 to 12 hours.**
 3. **GBL leaves the urinary system within 6 hours and bloodstream within 24 hours.**
- H. If you believe drugs were used to facilitate sexual assault, consider asking such questions as:
1. **“Did the suspect give you a drink?”**
 2. **“Was there any opportunity for somebody to put something in your drink?”**
 3. **“How did the drink make you feel?”**
 4. **“Did the drink taste funny?”**
- I. Be careful how you pose the question to the survivor. Poorly worded questions about alcohol consumption can make the survivor believe they are being blamed for consuming alcohol or taking drugs.
- J. If you believe drugs were used to facilitate sexual assault, consider the following:
1. **Request a medical provider to obtain a urine sample for drug testing.**
 2. **Inform the medical provider conducting the sexual assault examination about your suspicions that the assault was drug facilitated.**

X. Medical Attention

- A. It is critically important to help a sexual assault survivor receive medical attention for the following reasons:
1. **It ensures the overall medical well-being of the survivor.**
 2. **If the assault happened within the last 120 hours, a medical examination is necessary to collect and preserve evidence and to protect the survivor’s health.**
 3. **If more than 120 hours have passed since the assault, there may still be evidence of injury that can be collected and preserved, and the survivor may still benefit from health care.**
 4. **Even with no evidence of injury, a medical exam should be done for the well-being of the survivor.**
- B. Be aware of what procedures will be conducted during the medical exam in case the survivor asks you about it:
1. **Sexual Assault Kit (SAK).**
 2. **Overall physical examination.**
 3. **Sexually transmitted disease testing.**
 4. **Blood test.**
 - a. **May include recreational drug/tox screen.**
 5. **Pregnancy test.**
 6. **Provide anti-pregnancy medication.**
 7. **Mental health intervention.**

C. Other Important Details

1. **If you request a Sexual Assault Kit, the costs are paid for by your agency.**
 2. **Any evidentiary tests you request are paid for by your agency.**
 3. **Other lab work, testing, or medicines given by medical providers are expenses not covered by your agency.**
 4. **Hospitals have social workers who work with survivors to see if they're eligible for help in covering related medical expenses.**
- D. Medical expenses not covered through other programs may be reimbursed by the Montana Crime Victim's Compensation Program.
- E. Encourage the survivor to receive medical attention even if they say they can't afford it or have no health insurance.

XI. Sexual Assault Kit (SAK)

- A. The Sexual Assault Kit is an important part of any sexual assault investigation. You should:
1. **Understand the different parts and procedures of the SAK (see below).**
 2. **Encourage the survivor to agree to have a sexual assault exam.**
 3. **Know that a SAK cannot be used without the survivor's consent.**
 4. **Do not use the term "rape kit."**
 5. **Request a medical professional, preferably a Sexual Assault Nurse Examiner (SANE).**
- B. The medical provider conducting the Sexual Assault Kit exam should be someone trained in trauma-informed care.
1. **Trauma-informed care acknowledges the need to understand a patient's life experiences in order to deliver effective care. It can improve patient engagement, treatment adherence, health outcomes, and provider and staff wellness.**
- C. Sexual Assault Nurse Examiners (SANE) are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of a patient who has experienced sexual assault or abuse.
- D. A SANE:
1. **Will conduct the Sexual Assault Forensic Exam only with the survivor and necessary medical personnel. The investigator will not be present for the exam.**
 2. **Can have an open conversation with the investigator (you) without violating the Health Insurance Portability and Accountability Act (HIPPA).**
 3. **Will take photos of intimate injuries of the survivor.**
 4. **Can provide immediate information about results found during the sexual assault exam.**
 5. **Can provide testimony in court in exclusion of the hearsay rule about treatment of reported symptoms of injury, illness, or disease during a sexual assault exam.**
 6. **CANNOT GIVE AN OPINION TO THE INVESTIGATOR ON WHETHER THE SURVIVOR IS BELIEVEABLE.**
 7. **CANNOT GIVE AN OPINION TO THE INVESTIGATOR ON WHETHER THEY BELIEVE THE SEXUAL ASSAULT HAPPENED.**
- E. Sexual Assault Kit Components
1. **Request for Treatment and Release of Medical Records form.**

2. Sexual Assault Examination Forensic Report Form.

- a. Survivor demographics
- b. Examination date and time
- c. Assault history taken by medical provider
- d. Important information about post-assault actions
- e. Assault details to locate potential evidence during exam
- f. Latest consensual sexual encounter
- g. Medical history
- h. Body surface diagrams (injury)
- i. Genital examination
- j. Impressions from examination by examiner
- k. Evidence items included in Sexual Assault Kit
- l. Evidence items not included in Sexual Assault Kit

3. Oral swabs.

4. Clothing collection.

- a. Important: If clothing is taken during the medical exam, you need to help the survivor arrange for another set of clothing to be delivered to the medical facility.

5. Head hair combings.

6. Pulled head hair standards.

7. Debris collection by use of alternate light source.

- a. Semen
- b. Blood
- c. Saliva
- d. Hair
- e. Other debris

8. Anal swabs.

9. Vaginal swabs.

10. Penile swabs (male sexual assault).

11. Pubic hair combings.

12. Pulled pubic hair standards.

13. Fingernail scrapings/swab.

14. Known blood sample.

15. Known saliva sample.

16. Request urine test (drug facilitated sexual assault concerns).

17. Receipt of Information (Chain of Custody).

18. Authorization to assign payment.

- F. The SANE or medical examiner will:
- 1. Secure and package all evidentiary items.**
 - 2. Give larger evidentiary items to you.**
 - 3. Take photos of intimate injuries.**
 - 4. Ensure all paperwork will be included in the kit.**
 - 5. Seal the Sexual Assault Kit for chain of custody.**
 - 6. Provide you with copy of Sexual Assault Examination Report Form.**
- G. If the survivor chooses not to obtain a sexual assault forensic examination, you should explain the Forensic Rape Examination Payment Program (FREPP) to the survivor.
- H. The Forensic Rape Examination Payment Program:
- 1. Covers an examination provided to a sexual assault survivor by a physician or sexual assault nurse examiner trained to gather evidence of a sexual crime in a manner suitable for use in a court of law.**
 - 2. Offered when the survivor is unsure or unwilling to report the matter to law enforcement.**
 - 3. Provides direct payment to qualified healthcare providers for a sexual assault examination.**
 - 4. Must be conducted within 5 days of the sexual assault.**
 - 5. Provides the survivor with medical attention due to the assault.**
 - 6. Is intended for survivors who choose NOT to immediately report to law enforcement.**
 - 7. Ensures that evidence is not lost.**
 - 8. Allows a survivor to report the crime at a later time.**
 - 9. Does not require the survivor to report to law enforcement.**
 - 10. Does not require the survivor to pursue prosecution.**
 - 11. Provides the survivor with the ability to decide about the crime reporting process after seeking help from other professionals.**

XII. Drug Testing

- A. Be aware that drug use may be present in a sexual assault investigation.
- B. In sexual assault examinations, toxicology screens are commonly done and can raise unique challenges for the following reasons:
- 1. A survivor may fear being arrested for drug use.**
 - 2. A suspect may have exploited a survivor by introducing them to drug use to keep the survivor from reporting the assault.**
 - 3. A survivor may not be truthful about their own drug use.**

- C. If you think drug use is making the survivor reluctant to report the assault, you should:
1. **Reassure the survivor that they won't be charged with a crime.**
 2. **Reassure the survivor about the importance of the medical exam.**
 3. **Reassure the survivor about the importance of the sexual assault investigation.**
 4. **Use common sense and discretion about proper non-enforcement actions when it appears a survivor may have committed a drug offense. You do have discretion when enforcing certain drug offenses. Refrain from immediate criminal enforcement at the time the survivor is receiving sexual assault treatment and consider other alternatives such as consulting a prosecutor or supervisor or issuing a warning.**

XIII. Evidence and Evidence Collection

- A. In any investigation, evidence identification and collection are keys to successful prosecution.
- B. Information gathered during your interview with the survivor will shape how you identify and collect evidence.
- C. Remember that evidence and evidence collection may be intimate and sensitive. You must know and follow proper protocol for obtaining and collecting evidence.
- D. Consider the following examples of evidence. Always use proper collection techniques:

1. Clothing

- a. Worn at the time of the assault.
- b. Document where it is located.
- c. Has it been laundered?
- d. Post-assault clothing and transfer evidence.
- e. Transfer evidence to other clothing or fabric areas.
- f. Always use paper containers for clothing.
- g. Ask for consent to take the clothing.

2. Sexual Assault Kit

- a. Ensure the examination is concluded.
- b. Ensure the kit is sealed.
- c. Obtain the name of the SANE or medical provider for chain of custody; document date and time.
- d. Contains biological specimens.
 - (1) Blood
 - (2) Urine
 - (3) Swabs
 - (4) Saliva
- e. DOES NOT require refrigeration.
- f. Contains sensitive photographs.

- g. Contains medical reports and findings.
 - (1) The SAK Kit will contain a two-or-three-part form filled out by the SANE Nurse or medical provider.
 - (2) Be sure to include one copy of the form with your offense report.
 - h. Submission to the crime lab is a must.
 - (1) SAK sealed.
 - (2) SAK chain of custody documented.
 - (3) SAK placed into the Montana Sexual Assault Kit Tracking System.
 - (4) SAK shipped via proper shipping company.
- E. During the survivor phase of the investigation, the investigator needs to understand and identify other important evidentiary considerations outside of the sexual assault examination and clothing collection which may include:
- 1. Types of evidence from survivor or suspect.**
 - a. Bodily fluid and hair transfer
 - (1) Semen
 - (2) Blood
 - (3) Saliva
 - (4) Hair
 - b. Fiber transfer
 - (1) Clothing
 - (2) Vehicle interior
 - (3) Bedding
 - (4) Furniture
 - c. Potential DNA areas other than on survivor's person
 - 1. Longevity.**
 - a. Even after items have been laundered or cleaned, DNA can still be present.
- F. Be aware that the physical characteristics of biological evidence can change and be lost:
- 1. Seminal fluid will become flaky as it dries.**
 - 2. Hair and fiber can be lost.**
 - 3. Blood on clothing will decay.**

XIV. Survivor Concerns

- A. Be aware that a survivor may not reveal certain facts during the interview for fear of having been involved in criminal activity such as:
 - 1. Drug possession or drug use.**
 - 2. Underage alcohol possession.**
 - 3. Arrest warrants.**
 - 4. Prostitution.**
- B. If the survivor is fearful of criminal prosecution, you need to be aware that, by law, a survivor reporting that they've been sexually assaulted cannot be prosecuted for certain offenses.

- C. Use your common sense and discretion about proper non-enforcement actions with certain drug offenses, under-age alcohol possession, misdemeanor warrants, and other misdemeanor crimes. If the crime must be charged, do not do so at the time of the sexual assault investigation.
- D. If you observe signs of mental health concerns with the survivor, you should:
 - 1. Ensure the survivor is not a threat to themselves or others.**
 - 2. Offer available mental health services.**
 - 3. Offer the help of a victim advocate.**
- E. If you identify any concerns with the survivor's well-being, find a responsible adult of the survivor's choosing to ensure their safety after your initial contact ends.

XV. Victim's Rights Information

- A. You are required by law to provide the survivor with Victim's Rights Information, which may include:
 - 1. Obtaining an order of protection.**
 - 2. Victim's compensation information.**
 - 3. Prosecutor information.**
 - 4. Victim's advocate information.**
 - 5. Sexual assault counseling services.**
 - 6. Other information required by department policy.**

XVI. Survivor's Suspect Concerns

- A. Once the suspect has been identified, most survivors experience severe stress over the investigator's contact of the suspect.
- B. Be aware that the survivor may express concerns about:
 - 1. When the suspect will be contacted.**
 - 2. How the suspect will be contacted.**
 - 3. When the suspect will be arrested.**
 - 4. Fear that the suspect will find out they have been implicated in the crime.**
 - 5. Not wanting the suspect to know the sexual assault has been reported to law enforcement, and law enforcement will be talking to the suspect.**

XVII. Follow-Up

- A. Be prepared to explain the follow-up investigation process to the survivor, which may include:
 - 1. The investigation may be forwarded to a detective or specialized investigator:**
 - a. Provide the name of the detective/investigator.
 - b. Provide a proper contact number.
 - c. Provide the case number and a time frame of when they may hear from the detective/investigator.
 - d. Explain that the survivor can follow up with you if they don't hear from the detective/investigator.
 - 2. The investigation may continue to be handled by you; explain to the survivor:**
 - a. How the follow-up investigation will proceed.
 - b. A potential time frame of how long the investigation will take.

- c. The potential that they may remember new information about the assault; encourage the survivor to document that information immediately and give it to you.
 - d. Undercover operation to catch the suspect, such as a pretext phone call or social media communication.
 - e. Submission of the case to the prosecutor for consideration.
 - f. Possible prosecution outcomes.
 - g. Encourage the survivor to reach out to you to ask about the status of the case.
 - h. Reassurance that you will reach out and keep the survivor informed.
- B. Knowing the effects of survivor trauma, it's important to tell the survivor that a second interview may be necessary for the following reasons:
- 1. The survivor will often later recall more detailed information about the sexual assault.**
 - 2. The survivor may learn that other people have information about the assault.**
 - 3. The suspect may attempt to contact the survivor.**
 - 4. Further injuries may be detected.**
 - 5. Reassure the survivor that the need for a follow-up interview is not to question their credibility or discrepancies.**
- C. Conclude with the survivor:
- 1. By asking if they need anything.**
 - 2. Ask, "Is there anything you would like me to know that we didn't talk about?"**
 - 3. Advise them you are leaving to follow-up on the case.**

XVIII. Officer Liability

- A. Sex crimes pose a high risk of officer liability for several reasons and can result in the officer being held criminal and civilly responsible.
- B. A trend in civil suits against investigators is failure to act. As an investigator, you must:
- 1. Promptly follow up on the case.**
 - 2. Keep the survivor informed.**
 - 3. Discuss the case with a supervisor.**
 - 4. Ask for help.**
- C. Public safety is always a priority, but in sexual assault cases it also carries a high risk of civil liability. As the investigator, you must:
- 1. Discuss with a supervisor if public safety is at risk.**
 - 2. Immediate apprehension may be necessary.**
 - 3. Discuss with prosecution.**
 - 4. Document attempts to maintain public safety.**
 - 5. Understand that if the suspect commits another crime, you may face discipline or criminal, and/or civil liability.**

- **Location Of Crime / Crime Scene**

- I. Location of Crime/Crime Scene**

- A. A crime scene contains evidence and information critical to your investigation.
 - B. Be aware of the following concerns regarding the location of the crime and crime scene:

- 1. Jurisdiction**

- a. Did the crime occur within your jurisdiction?
 - b. Is the crime scene located within your jurisdiction?
 - c. Could there be related crimes in other jurisdictions?
 - d. Do you need to coordinate with agencies in other jurisdictions?

- II. Establishing the Number of Scenes**

- A. In a sexual assault, there will be a minimum of three crime scenes—the survivor, the suspect, and the location where the assault took place. Also consider other potential locations and bear in mind the following:

- 1. Survivor**

- a. Priority during first phase of the investigation

- 2. Suspect**

- a. Separate phase of the investigation
 - b. May require other investigative techniques

- 3. Actual Location**

- a. Important to determine

- 4. Transfer Locations**

- a. Post-assault clothing change
 - a. Post-assault hygiene
 - (1) Towels
 - (2) Toilet paper
 - (3) Rags

- 5. Clothing**

- a. Laundry
 - b. Garbage Can
 - c. Survivor's home
 - d. Suspect's home
 - e. Other locations

- 6. Technology**

- a. Smart Phones
 - b. Fitbits
 - c. Cameras
 - e. Computers

- 7. Social Media**

- a. Facebook
 - b. YouTube
 - c. Dating sites
 - d. Instagram

- III. Security**

- A. Crime scene security is critical during an investigation.
 - B. To secure the crime scene security of a survivor or suspect:
 - 1. Let the survivor know that showering or cleaning up will compromise potential areas of evidence.**
 - 2. Encourage the survivor to seek medical attention.**
 - 3. Do not allow the suspect to shower or clean up.**
 - 4. You can detain a suspect pursuant to stop and frisk to prevent an alleged suspect from cleaning up or destroying potential evidence.**

- C. Crime scene security encompasses items or locations identified during the investigation. You are required to protect or preserve those locations.
- D. To limit challenges in court, you must document how a crime scene was secured.

IV. Contamination

- A. Contamination of a crime scene is a concern. You should:

- 1. Wear latex gloves when handling evidence.**

- a. Be aware of other contamination concerns:
 - b. Medical responders
 - c. Other law enforcement personnel
 - d. Other non-law enforcement personnel

- 2. Other sources of contamination:**

- a. Weather
 - b. Common property
 - (1) Vehicles
 - (2) Roommates
 - (3) Public places

- 3. Prior intimate encounters.**

V. Legal Basis

- A. The legal basis for any investigation stems from following the laws, policies, and procedures within your jurisdiction and department.
- B. Research and case law show that failing to establish a legal basis during an investigation is the leading cause of evidence suppression during a criminal investigation.
- C. Always establish a legal basis by:
 - 1. Following department policy and procedure.**
 - 2. Following state law directives.**
 - 3. Following case law directives.**
 - 4. Obtaining consent:**
 - a. Asking a survivor to obtain a Sexual Assault Kit examination and having the survivor say yes
 - b. Obtaining written consent from a suspect for evidence if a rapport has been built with a suspect and there is no jeopardy of evidence being lost
 - c. Obtaining written consent from others who have control over property where a sexual assault crime occurred
 - d. Electronic Consent Form for technology

5. Obtaining a search warrant.

- a. A search warrant is always preferred unless you have obtained written consent.
- b. To access their information, social media or electronic service providers will always require a search warrant from a court of record.
- c. Technology to search for information will require a search warrant unless appropriate written consent was obtained from the person who has controlled interest of the technology.
- d. A search warrant is required when searching a suspect's body for DNA and other evidence.
- e. A search warrant is required when searching a suspect's personal property for evidence.

VI. Exigent Circumstances

- A. In certain instances, you may be able to search for and seize evidence based on exigent circumstances, but you must:

1. Document facts to show that searching or seizing was exigent, such as:

- a. The suspect was attempting to shower or clean up after being informed of an investigation.
- b. The suspect was trying to discard or destroy physical evidence.
- c. Technology was being deleted, destroyed, or reset to factory conditions.
- d. Social media information was being deleted.
- e. Other situations in which you have reasonable belief that other identified evidence may be discarded or destroyed.

- B. The validity of your claim of exigent circumstances could be determined later by a judge or appropriate court.

VII. Searching

- A. Searching a crime scene is a critical process. Take into consideration:

1. The manpower needed.

2. Adverse conditions.

3. Scene safety.

4. Special equipment:

- a. Alternative light sources (e.g., ultraviolet) for:
 - (1) Bodily fluids
 - (2) Trace evidence
- b. Protective clothing
- c. Swabs
- d. Biological evidence containers
- e. Unusual evidence collection tools

5. How much time you will need to conduct a thorough search.

6. The type and scope of items of evidence sought.

VIII. Evidence Identification

- A. During an investigation, you will identify particular facts that constitute evidence. When searching the crime scene, you will need to identify and collect certain items.
- B. A “take everything” approach is not practical. Be focused in identifying and collecting evidence.
- C. During a crime scene search for evidence, keep in mind the following:

1. What it is?

- a. Clothing
- b. DNA
- c. Biological
- d. Injury
- e. Other items identified during interviews

2. Where is it?

- a. On a person
- b. At a place
- c. On the Internet

3. Why is it important?

- a. Establishes an element of the crime
- b. Links suspect to survivor
- c. Shows injury
- d. Corroborates survivor
- e. Disproves suspect’s alibi
- f. Provides a better understanding of what happened

4. What constitutes evidence may not always be obvious. Think about what may be considered evidence.

IX. Documentation

- A. Documenting evidence and its collection is one of many critical phases of a sexual assault investigation.
- B. Once evidence is identified, you should document the evidence by:

1. Photography

- a. Photograph the evidence in its original state and location.
 - (1) Important – Once moved, an item of evidence will never be considered in its original state.
- b. Identify each item of evidence in a sequential order, such as 1, 2, 3.

- c. Take more than one photo of each piece of evidence.
- d. Maintain a photo log by including:
 - (1) Date and time
 - (2) A description of what the item of evidence is
 - (3) Where the item of evidence was located
 - (a) “In north bedroom facing north in the residence.”
 - (b) “On the front passenger floorboard of the suspect’s vehicle.”

X. Evidence Collection

- A. After evidence is properly photographed, you must follow proper collection techniques. You should:
 - 1. Use proper tactics.**
 - a. Use sterile protection
 - b. Never lick envelopes to seal DNA evidence
 - 2. Use proper sterile containers.**
 - a. Paper sacks:
 - (1) Clothing
 - (2) Undergarments
 - (3) Cloth items
 - (4) Bedding
 - b. Paper business envelopes
 - (1) DNA swabs
 - (2) Control swabs
 - (3) Trace evidence
 - c. Biological sample containers
 - (1) Blood
 - (2) Urine
- B. In a sexual assault investigation, evidentiary items commonly include biological fluids, biologically stained items, DNA biological samples, and DNA evidence.
- C. When dealing with biological evidence, a common mistake is failing to allow biologically stained items to properly air dry before storing them.
- D. You should:
 - 1. Properly store biological fluids deemed to be evidence:**
 - a. Ensure the biological container is properly sealed to ensure it will not leak.
 - b. Ensure the biological container is marked with “biohazard” identification.
 - c. Ensure the biological container has the name of the person who the fluids were taken from, date, time, case number, and your identification.

- d. Understand that biological fluids such as blood and urine will not need to be refrigerated.
- e. Place the sealed biological container into a separate Ziploc bag to keep from leaking.
- f. Maintain a proper chain of custody by securing evidence into a proper evidence receptacle or:
- g. Immediately submit evidence to a crime lab following crime lab submission protocol.

2. Properly store biologically stained evidentiary items:

- a. Use one proper sterile container for each evidentiary item.
- b. Use a secure location with limited access to allow biologically stained items to dry and not become contaminated.
- c. To dry biologically stained items, place them on clean butcher paper to catch any evidence that may slough off.
- d. Never touch biologically stained items with bare hands to see if the item is dry.
- e. After the item is determined to be dry, fold the butcher paper and item together onto itself and place into a proper sterile paper container.
- f. Seal and secure the paper container using evidence packaging tape.
- g. Properly mark the evidence container with the case number, date, and your identifying information (initials, badge number, employee number).
- h. Maintain a proper chain of custody by securing evidence into proper evidence receptacles.

3. Properly store DNA biological samples and evidence collected by swabbing:

- a. Ensure swabs are dried via a mechanical air dryer or in a secure location where swabs can properly air dry.
- b. Ensure swabs containing biological material are not placed close together to cross contaminate.
- c. Ensure the swabs are dry.
- d. Ensure each evidentiary swab has its own package, preferably a white business envelope or cardboard swab container.
- e. Seal the business envelope or cardboard swab container using evidence packaging tape; do not lick the envelope to seal.
- f. Properly mark the evidence container with the case number, date, and your identifying information (initials, badge number, employee number).
- g. Maintain a proper chain of custody by securing evidence into proper evidence receptacle or:
- h. Immediately submit evidence to a crime lab following crime lab submission protocol.

- **Witnesses**

- I. Witnesses**

- A. In many investigations, locating and interviewing witnesses yields important information.
 - B. A proper sexual assault investigation relies on finding out what happened before, during, and after the assault occurred.
 - C. The sexual assault may not have been witnessed, but people associated with the survivor and suspect may have pertinent information that can help you determine what happened.
 - D. You should:

- 1. Identify:**

- a. Any witnesses identified by the survivor.
 - b. Witnesses at locations the survivor and suspect may have been.
 - c. Prior significant others of the suspect.
 - d. Friends and family of the survivor.

- 2. Obtain proper identifying information, including:**

- a. First and last name
 - b. Address
 - c. Cell phone information
 - d. Social media contact
 - e. E-mail
 - f. Work location

- E. A proper interview of a witness will elicit independent memory recall about the specific incident.
 - F. A proper interview allows a witness to talk until they appear to be finished with a thought.
 - G. Do not make the common mistake of interrupting a witness.
 - H. LISTEN UNTIL THEY ARE DONE TALKING.
 - I. When interviewing the witness, you will:

- 1. Ask what they may have observed before or after the sexual assault.**

- 2. Ask if they saw the sexual assault occur.**

- 3. Ask about the survivor's**

- a. Pre-assault day-to-day behavior
 - b. Post-assault day-to-day behavior and any changes

- 4. Ask about any knowledge of the suspect**

- 5. Ask if they observed the survivor and suspect interact**

- 6. Ask if they saw anything concerning about the survivor interacting with the suspect**

- 7. Not ask a witness if they believe the survivor**

- 8. Not ask if they believe the sexual assault occurred**
- 9. Ask about how the survivor and suspect connected**
- 10. Ask about the survivor’s social media interaction with suspect.**
- J. Once the interview is complete, have the witness document their own observations in a written statement for further use.
- K. Inform the witness that you may contact them again to ask follow-up questions or for further information.

- **Technology**

- I. Types of Devices**

- A. Many types of technological devices can be a source of evidence.
- B. Bear in mind the various ways that people use technological devices and the various types of information they may contain.
- C. Consider the following as potential sources of evidence:
 - 1. Smart phones**
 - 2. Ipods**
 - 3. Ipads**
 - 4. iPhones**
 - 5. Computers**
 - 6. FitBits**
 - 7. Apple Watches**
 - 8. Cameras**
 - 9. Anything with an on or off switch**
 - 10. Storage devices**
 - a. Thumb drive/Jump drive/Flash drive
 - b. Secure Digital (SD) Card
 - c. External hard drives
 - d. Compact Discs (CDS)/Digital Versatile Disc (DVD)

- II. Identifying Evidence from the Device**

- A. If you identify a technological device as evidence, you should also identify the type of evidence it may contain, such as:
 - 1. Images of the act itself**
 - 2. Dates and times embedded in the images**
 - 3. Data to corroborate a survivor’s statement**
 - 4. Location services**
 - 5. Search history**
 - 6. Conversation between survivor and suspect**
 - 7. Admissions of a crime by suspect**
 - 8. Timeline of survivor**
 - 9. Timeline of suspect**
 - 10. Heart rates**
 - 11. Placing a suspect or survivor at the crime scene**
 - 12. Apps and programs**
 - 13. Other information**

- B. Also understand that technology may have played a role in facilitating the crime through:
 1. **The suspect threatening to destroy the survivor's technology**
 2. **Communication with the survivor**
 3. **Exploiting the survivor**

III. Legal Issues

- A. Consider possible legal issues regarding technological devices, including:
 1. **Seizing Technological Devices**
 - a. A device can be seized if you determine it contains evidence.
 - b. Seizure does not require a search warrant.
 2. **Searching Technological Devices**
 - a. If seized, a device can't be searched until a legal basis is established.
 - b. To search a device, you must first obtain written consent by the person who has a right to privacy in the device or a search warrant.
 3. **Exigent circumstances**
 - a. If lost or stolen, most devices are designed with reset commands that can be sent through various means to delete the contents of the device once it connects to data or wireless internet.
 - b. Devices can be destroyed very quickly in a variety of ways, rendering the evidentiary value useless.
 - c. You can seize and search a device **ONLY** if you can demonstrate that exigent circumstances exist with that device and are concerned that evidence will be damaged or destroyed by waiting for a search warrant.
- B. **WARNING:** Understand and consider the impacts on a survivor if you take a technological device for evidence:
 1. **The device may be the survivor's only means of communication with friends, family, children, work, or the outside world.**
 2. **The device may be a survivor's way of feeling safe after the assault.**
 3. **The survivor may go through withdrawals due to a dependency to technology.**
 4. **The survivor may not be able to afford to replace the device.**

IV. Undercover Operations

- A. Consider using undercover techniques to obtain inculpatory evidence (*evidence that shows, or tends to show, a person's involvement in an act,)* during an investigation.
- B. Consider what type of undercover technique might be most useful such as:
 1. **Sending text messages via the survivor's device**
- C. To use technology in an undercover operation, first obtain written consent to do so unless a search warrant is required.
 1. **Search warrants are required when voice-to-voice conversation is going to be recorded. This topic is covered under pretext phone calls in the section on suspect investigation.**

D. When working undercover, be sure to document:

1. **Signed, written consent specific to the device used**
2. **How you supervise the interaction**
3. **The scripting of the interaction**
4. **The interaction itself**
5. **Properly securing interaction as evidence**

V. Proper Technology Device Evidence Collection

A. You must properly collect the device using several steps, including:

1. Check to see if the device is on and in a transmitting mode.

a. Android Smartphones and devices can be checked by:

- (1) Depressing the power button
- (2) Swiping the screen
- (3) Depressing the volume button
- (4) Asking the owner of the device if it's on

b. Apple iPhones, Ipods, Iwatches, and Ipads can be checked by:

- (1) Depressing the power button
- (2) Swiping the screen
- (3) Touching the screen
- (4) Depressing the volume button
- (5) Rotating the device
- (6) Asking the owner of the device if it's on

3. Computers can be checked a variety of ways:

- a. Depressing the shift key
- b. Swiping the mouse
- c. Swiping the touchpad
- d. Swiping the screen on touchpad computers
- e. Looking at the power button and seeing if it's on
- f. Asking the owner of the device
- g. Never depress a key other than the shift key
- h. Never "click" the mouse
- i. Never type on the keyboard

4. FITBITS

a. By tapping the screen in rapid succession

5. If the device is on, you can and should make observations about data on a screen, in a display, or in a notification message. Such data is excluded from the search warrant requirement of the Fourth Amendment.

B. Place the device into a mode, that will not transmit, such as:

1. Airplane mode

- a. Remember that evidence on devices can be destroyed remotely.
- b. To prevent remote destruction of evidence, you can navigate the device to find the settings mode to place the device into airplane mode to safely collect the device.
- c. If evidence is located while rendering the device safe, that evidence can be used during the investigation, but the evidence could be challenged during the court process.
- d. Document the steps you took to render the device safe.
- e. Android smartphones can usually be placed into airplane mode by depressing the power button to display the airplane mode option. Select that option.
- f. Android smartphones can also be placed into airplane mode by swiping down from the top of the screen, displaying the control panel, then activating airplane mode.
- g. Apple devices can be placed in airplane mode by swiping from the bottom of the screen toward the top, which displays the control panel. Then touch the airplane mode tab to activate.
- h. Apple devices can also be placed into airplane mode by going to the settings app, finding airplane mode, and selecting “on.”
- i. Once the device is placed into airplane mode, power down the device.
- j. IMPORTANT: If a device cannot be placed into airplane mode, ensure the device is turned off and notify the forensic examiner the device could transmit when turned on.

2. Disabling Wireless Internet (Wi-Fi)

- a. Android and Apple devices have control panel settings to turn off Wi-Fi.
- b. On an Android device, slide from the top of the screen down to activate the control panel, look for the Wi-Fi graphic to see if Wi-Fi is activated. If activated, tap the graphic to turn off.
- c. If the Android device Wi-Fi cannot be turned off, you may have to navigate to the settings app to find the Wi-Fi tab. Turn off Wi-Fi.
- d. For an Apple device, slide from the bottom to the top to activate the control panel and look for the Wi-Fi graphic to see if Wi-Fi is activated. If activated, tap the graphic to turn Wi-Fi off.
- e. If the Apple device Wi-Fi cannot be turned off, you may have to navigate to the settings app to find the Wi-Fi tab. Turn Wi-Fi off.
- f. To see if a PC computer is connected to Wi-Fi:
 - (1) Locate the task bar on the bottom of the computer screen. To the righthand side will be a series of bars or a computer showing connection.
 - (2) Look for a separate display graphic on the keyboard that shows Wi-Fi is connected.
 - (3) Look for a sliding tab that shows a Wi-Fi graphic signifying “on” (common on laptops).

- g. To disconnect a PC computer from Wi-Fi, you should:
 - (1) If a desktop computer with a tower drive, unplug the power supply from the back of the computer.
 - (2) If a laptop, hold the power button down until the computer shuts down, remove from the power supply making sure to take the power cord, and remove the battery if possible.
- h. To disconnect an Apple Mac computer from Wi-Fi, you should:
 - (1) Press and hold down the power button until the computer shuts down, then remove from the power supply, and make sure to take the power cord.

3. Appropriately Powering Down Devices

- a. If you encounter a device not listed in this guide, search the Internet to learn how to properly shut down the device.

4. Provide the owner with a property receipt that identifies the technological device. Proper identification should include:

- a. Maker of the device
- b. Model of the device
- c. Color of the device
- d. Serial number of the device
- e. Specific description of the device, including identifying characteristics

VI. Proper Technology Device Storage

- A. Once you have properly collected the device, proper storage is required. Do this by:
 - 1. Placing the device into a container such as manila envelope or Ziploc bag.**
 - 2. Ensuring the device has proper packing to keep it from getting damaged.**
 - 3. Sealing the container with evidence tape, initialing the evidence tape with your identifying information, date, case number, description of the device, and property owner's name.**
 - 4. Attaching an evidence tag to the storage container.**
 - 5. Placing the device into proper evidence receptacle.**
- B. If there is any risk that the device may transmit or be compromised by outside sources, place it in a Faraday bag to secure it from transmissions or wiping.

VII. Mobile Data and Wireless (Cellphone/Smartphone) Carrier Information

- A. Technological devices can be connected to data and the Internet through mobile data and wireless carriers.
- B. Valuable information can be obtained from such a connection, which includes but is not limited to:
 - 1. Subscriber information**
 - 2. Physical billing address**

3. **Type of device**
 4. **Call logs**
 - a. Incoming
 - b. Outgoing
 - c. Conversation duration
 5. **Text message logs**
 6. **Text messaging content**
 - a. Limited retention
 7. **Connectivity records**
 - a. Tower location
 8. **Photo or image storage**
- C. The following is a list of common wireless carriers
1. **Verizon**
 2. **AT&T**
 3. **T-Mobile**
 4. **Sprint**
 5. **Local carriers**
- D. For a better understanding of what information can be obtained from a wireless company and what legal process must be followed to obtain such information, you should:
1. **Access the SEARCH website:**
 - a. SEARCH is a website that provides important information for law enforcement officers dealing with technology-related issues.
 - b. SEARCH has a quick access list of ISPs (Internet Service Providers) with important website, applications, and social media contact information for law enforcement officers regarding gathering electronic evidence.
 - c. SEARCH has law enforcement reference guides available that help in understanding websites, applications, and social media.
 - d. www.search.org
 2. **Use your state's criminal justice information center.**
 3. **Seek assistance from other investigators who specialize in technology-based crimes.**

VIII. Forensic Analysis

- A. It may help to request forensic analysis of a technological device.
- B. Forensic analysis of a technology device requires:
 1. **Written consent from the device's owner with identifying information, including the device maker, model, serial number, device phone number, passcode/swipe-code to device, and service provider; OR**
 2. **A search warrant describing the detailed information you want to recover from the device.**

- C. Forensic analysis of Android and Apple devices shall be conducted by anyone trained in the use of the most common extraction tools. The results may include the following information:
1. **Device information**
 2. **Personal information to include a call log, contacts, user accounts**
 3. **Messaging items – chats, e-mails, Short Message Service (SMS), Multi-Media Messaging Service (MMS), Instant Messages**
 4. **Web browser items – search history, bookmarks**
 5. **GPS information – fixes, journeys, locations**
 6. **Images**
 7. **Videos**
 8. **Audio**
 9. **Text**
 10. **Applications**
 11. **Documents**
- D. Forensic analysis of any computer shall be conducted only by a trained forensic examiner and may provide the following information:
1. **Device information**
 2. **Messaging items – chats, e-mails, instant messages**
 3. **Web browser information – search history, search terms, bookmarks, internet addresses, temporary internet files**
 4. **Internet cache – a location on a computer where information may be previewed and saved to the computer**
 5. **Programs installed and removed**
 6. **Photos**
 7. **Video**
 8. **Documents**
 9. **Potentially deleted items**
 10. **Other important data about the computer's operation**
- E. Forensic analysis of storage devices shall be done only by a trained forensic investigator in a computer lab setting.
- F. You WILL NOT connect an external storage device to a computer to analyze the contents. Connecting a storage device adds and alters information on the device; it will not be considered unaltered evidence. Also, connecting the device may allow data to be erased by a remote user.

- **Social Media**

I. What is Social Media

- A. Social media is the use of websites and applications to create and share content with others to participate in social networking.
- B. As an investigator, you should learn how to search for, identify, and harvest evidence from social media.
- C. A 2018 study found that 77 percent of the U.S. population uses social media.
- D. Research shows criminal activity is commonly posted to social media.
- E. You should follow up on social media concerns if the investigation shows social media may have provided a connection between the survivor and suspect.

II. Most Common Social Media Platforms

- A. Facebook
 - 1. A free social media platform that allows registered users to share information, photos, videos, and messages with other users**
- B. Twitter
 - 2. A free social networking micro-blogging service that allows registered users to broadcast short posts, called tweets, including pictures and video to other members**
- C. Instagram
 - 1. A free social networking application made for sharing photos and videos from a handheld electronic device to other registered users**
- D. YouTube
 - 1. A free popular video sharing website where registered users can upload and share videos with anyone able to access the information**

III. Online Dating Platforms

- A. Keep in mind that the survivor and suspect may have interacted on an online dating website, and the website may contain valuable evidence and information.
- B. The following is a list of popular dating websites
 - 1. Plenty of Fish**
 - 2. Match**
 - 3. Tinder**
 - 4. E-Harmony**
 - 5. Okcupid**

IV. Potential Facilitation

- A. Be aware that social media may be used to persuade or coerce a survivor to engage in sexual acts.

1. An offender may threaten to publicly post or share intimate photos or videos with family, friends, co-workers, etc. in order to coerce the survivor into sexual activity, consensually given or taken to coerce the survivor by threatening to share the photos
2. The intimate videos and photos may have been consensually taken or given or may have been made without the consent of the survivor.

V. Identifying Evidence

- A. Your investigation may lead you to decide that a search of social media is needed.
- B. To search social media, the following information may be useful:
 1. **E-mail addresses**
 2. **Screen names and usernames**
 - a. on social media
 - b. on dating websites
 3. **Cell phone numbers**
 4. **Nicknames**
- C. Based on case law, you do not need legal process to use the Internet to search for evidence.
- D. The following search sites are useful for finding personal identification and contact information:
 1. **PIPL - www.pipl.com**
 - a. Phone numbers, e-mail addresses, screen names, etc.
 2. **Google - www.google.com**
 - a. Any identifying information
 3. **PeekYou - www.peakyou.com**
 - a. Phone numbers, e-mail address, screen names, etc.
 4. **Zabasearch - www.zabasearch.com**
 - a. Phone numbers, e-mail address, screen names, etc.
 5. **Spokeo - www.spokeo.com**
 - a. Phone numbers, e-mail address, screen names, etc.
- E. Search sites may return additional useful information such as:

<ol style="list-style-type: none"> 1. Social media profiles 2. Dating website profiles 3. Employment history 4. Family members 5. Addresses 	<ol style="list-style-type: none"> 6. Other phone listings 7. Professional profiles 8. News articles 9. Public legal proceedings 10. Other electronic information
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- F. An Internet search may uncover the following evidentiary items:

<ol style="list-style-type: none"> 1. Videos 2. Photos 3. Messages 	<ol style="list-style-type: none"> 4. Posts 5. E-mails
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VI. Social Media Evidence Collection

- A. Collecting social media evidence can range from taking a photo document of social media information on a screen to executing a search warrant on the Internet Service Provider (ISP) or Electronic Service Provider (ESP) for more specific information.
 1. **Internet Service Provider (ISP) – A company that provides subscribers access to the Internet, e.g., Charter, AT&T, Comcast**
 2. **Electronic Service Provider (ESP) – A provider of electronic communication services, e.g., Facebook, YouTube, Amazon, Craigslist, or any website providing electronic services**
- B. If you locate publicly shared evidence during an Internet search, you can:
 1. **Collect the evidence by simply printing out the Internet page**
 2. **Use a screen capture tool to make a digital copy**
 - a. Smartphones and computers have “screen shot” features that can capture an image of the screen. You can Google the type of smart device to see how to use its screen capture function.
 3. **On computers, with the browser open to the desired webpage, click “Print” for a printout of the screen.**
 4. **Collect the evidence with a photograph.**
 5. **Search Google for screen capture tools to help you document publicly shared social media evidence on the device.**
- C. You shall document in writing how you found and collected the evidence.
- D. To obtain more detailed evidence on or about social media accounts, you will need a subpoena or search warrant.

VII. Social Media Evidence Collection by Subpoena/Search Warrant

- A. The term Electronic Service Providers or ESPs refers to social media websites, commercial websites, subscription services, and electronic applications.
- B. Federal law requires ESPs to maintain certain records and information about users of their electronic platforms, which may include:
 1. **Name**
 2. **Physical address**
 3. **Registration Internet Protocol (IP) address**
 4. **Log in IP address information**
 5. **E-mail address**
 6. **Devices used to log in**
 7. **Other ESP services used by an individual**
- C. Go to www.search.org to access law enforcement guides for ESPs and the type of evidence available for collection with a subpoena or search warrant.

D. When requesting specific information from social media, a subpoena or search warrant is required.

1. A subpoena allows an ESP or ISP to release:

- a. User's name
- b. Potential physical address
- c. Physical billing address
- d. Mobile number
- e. Registration e-mail address
- f. Registration IP address
- g. Log on IP addresses, including dates and times
- h. Device used to create profile/account/username
- i. No other information will be given

2. A search warrant allows an ESP or ISP provider to release:

- a. Protected electronic communication content including:
 - (1) E-mail contacts
 - (2) Messaging services
 - (3) Documents
 - (4) Search terms
 - (5) Calendars
 - (6) Billing information
 - (7) Other saved data
- b. Visual media including pictures and videos
- c. Messaging services
- d. Posted content

E. When you serve a person from an ESP or ISP with a subpoena or warrant, and when you obtain the requested information from them, you must document their name and job title:

3. Commonly called "Keepers of the Records."

4. If the case is adjudicated, the records require certification. Certification of records in court requires a designated person from the ESP or ISP to certify (a) that the records were those requested by the officer and (b) the process of how the records were provided to the officer. This is done by in-person testimony or by sworn affidavit.

F. Seek assistance from a forensic analyst or computer crimes investigator to fully understand ESP or ISP evidence.

VIII. Undercover Operations (UC Ops)

- A. Undercover operations (UC Ops) are a common practice used by law enforcement to obtain evidence in a criminal investigation.
- B. UC operations are legal and admissible in court.

C. Sexual assault investigations often use two primary UC Ops tools:

1. Pretext phone calls

- a. A pretext phone call follows a written script of controlled questions drafted by the investigator. It is designed to obtain incriminating information from the alleged suspect.
- b. A pretext phone call is usually made by the survivor and supervised by the investigator handling the case.
- c. To conduct a pretext phone call, you must:
 - (1) Have a search warrant
 - (2) Obtain explicit permission from the survivor to place the phone call
 - (3) Provide a script for the survivor to follow
 - (a) Keep the script as evidence
 - (4) Have necessary recording equipment
 - (5) Ensure that the survivor's needs are met before, during, and after the phone call
 - (6) Be present during the phone call

2. Assuming Online Identities

- a. During the investigation, you may uncover exculpatory evidence¹ by assuming the survivor's online identity as part of a UC operation. You will:
 - (1) Obtain the survivor's written consent to use their social media and electronic accounts in UC operations.
 - (2) Use the survivor's electronic device to communicate with an alleged suspect if:
 - (a) Text messaging
 - (b) Social media messaging
 - (c) Using other electronic communication
 - (3) If unable to use the survivor's electronic devices, instead use a law enforcement computer dedicated to undercover operations.
 - (a) You will need to obtain:
 - Social media sites
 - Usernames
 - Passwords
 - (4) You shall use a screen capture tool to capture electronic messaging in real time.
 - (a) Use programs such as Camtasia and Snagit
 - (5) Document and maintain all communications between the investigator and the alleged suspect for evidence purposes.

1 Exculpatory Evidence: Evidence that shows, or tends to show person was not involved in an act.

D. Other UC Operations Considerations:

1. **The survivor's electronic communication before, during, or after the sexual assault may provide important evidence.**
2. **Be sure to document information posted by the alleged suspect before, during, or after the sexual assault, such as:**
 - a. Threats made to survivor after the sexual assault.
 - b. Photos or videos of the sexual assault.
 - c. Corroboration of survivor's statement.
 - d. Admissions of engaging in sexual activity with the survivor.
 - e. Other details only the survivor would know.

E. Survivor Concerns:

1. **In UC operations, when you assume a survivor's online identity, consider that you may find information the survivor would rather not share, such as:**
 - a. Embarrassing visual depictions.
 - b. Embarrassing communications.
 - c. Personal visual depictions.
 - d. Personal communications.
 - e. Other crimes.

F. **IMPORTANT** – To capture any verbal conversation requires that you first obtain a search warrant.

IX. Social Media Evidence Storage

- A. Investigators are responsible for the handling of electronic evidence, particularly electronic evidence collection and storage.
- B. Be aware of the legal processes for how the electronic evidence was obtained:
 1. **Subpoena**
 - a. Requires a return-of-service affidavit.
 - b. Subpoenaed electronic evidence is usually returned via e-mail or postal mail, with limited results.
 - c. You should document in a supplemental report when results were returned.
 2. **Search warrant**
 - a. Requirements:
 - (1) A search warrant return documents:
 - (a) How the search warrant was served.
 - (b) Person/entity that was served the search warrant.
 - (c) When the search warrant was served.
 - (d) Who served the search warrant.

- (2) Search warrant receipt documents:
 - (a) What is being requested.
 - (b) How the evidence will be delivered.
 - (c) What the evidence consists of:
 - Analysis CD
 - Thumb drive
 - Other documentation
 - (d) When the evidence was received.
- (3) Custody order and disposition

- (a) Authorizing evidence storage and dissemination.

C. Once you have obtained electronic evidence, you should:

1. **Verify that what you received was in fact the information you requested.**
2. **Document in a supplemental report when the evidence was received.**
3. **Document that all electronic evidence was viewed.**
4. **Document that the electronic evidence was secured according to agency policy.**
5. **Understand that the evidence may depict sensitive material and will not be shared with unauthorized persons.**

- **Suspect Investigation**

- I. Suspect Investigation**

In any type of investigation, your job is to collect facts, uncover evidence, and obtain information that suggests a person may have committed a crime or at least may have participated culpably in the circumstances. In broad terms, this is how you develop a “suspect.”

Sexual assaults usually involve two people—the survivor and the person committing the assault. (About six percent of assaults are committed by more than one attacker.) It’s important to gather information and hear the accounts of both people involved in the incident. The survivor’s perspective is paramount in a survivor-centered investigation but remember that a suspect remains innocent until proven guilty.

Interviewing both the survivor and the suspect will give you more details, evidence, and relevant information. This will help you gain insights and an understanding of what happened during the incident. It will also guide you in which investigative strategies and techniques to use.

IMPORTANT – Remember: the survivor has experienced a traumatic event, and your investigation must be based on the survivor’s perception of the experience. Bear in mind that survivor trauma may present itself in many forms, sometimes giving the impression that the survivor is untruthful, unreliable, uncooperative, or unwilling to help themselves. As the investigator, your job is to help the survivor and to consider all phases of the investigation to determine whether the adverse sexual experience was a criminal act. All phases of the investigation are important, including the possibility of discovering evidence by using various techniques to investigate the suspect.

CRITICAL – In any investigation, a critical step is a suspect background investigation. Background investigations are common practice in “high-risk” situations to help law enforcement officers avoid injury or death. Sexual assault investigations have a hidden element of “danger” when contacting a suspect. Do not get complacent and think that the situation is not high risk. It’s common for a suspect to claim that the sexual act was “consensual.” You can never predict how a person will react to being named as a suspect in a sexual crime.

II. Positive Suspect Identification

- A. You have a responsibility to gain as much information about a suspect as possible, but you also must confirm the identity of the suspect.
- B. Technological advances benefit law enforcement when conducting investigations. The vast amount of information at your fingertips can help you positively identify suspects very quickly.
- C. Verify a suspect's identity through:
 - 1. **NCIC criminal histories**
 - 2. **Local Jurisdiction Fusion Information Centers**
 - a. MT – MATIC
 - 3. **Interagency/local agency databases**
 - 4. **Internet searches**
 - a. Google
 - b. Pipl (www.pipl.com)
 - 5. **Search services – provided for a subscription price**
 - a. US Search
 - b. PeopleFinders
 - c. Intelius
 - d. Spokeo

III. Background Check/Investigation

- A. A background investigation is more than asking for a driver's license check, checking for warrants, or finding out if a person has an officer caution alert. It's an actual investigation looking for any relevant information and evidence available.
- B. A background investigation will give you important insight from different intelligence and information sources such as:
 - 1. **NCIC criminal histories:**
 - a. Prior sexual offenses
 - b. Registered sexual offender
 - c. Prior criminal convictions with sexual elements but not classified as sexual crimes:
 - (1) Fetish burglaries
 - (a) Intimate apparel
 - (2) Stalking
 - (3) Surreptitious behavior
 - (4) Disorderly conduct
 - d. Violent crimes
 - e. Domestic violence crimes

2. State Fusion Center Requests

A. Montana – MATIC

- (1) Employment
- (2) Concealed weapons permit
- (3) Vehicle information
- (4) Anti-government activity
- (5) Gang activity
- (6) Officer caution from other states
- (7) Social media activism
- (8) Other information

3. Internet Searches

a. Social media

- (1) Sexual posts
- (2) Sexually degrading images
- (3) Affiliation with adult websites
- (4) Dating profiles
- (5) Posts about suspect from prior relationships
 - (a) Potential M.O.
- (6) Potential evidence

b. Organization membership

- (1) Sporting clubs
 - (a) Firearms

c. Other information

- (1) Have you ever Googled yourself?

4. Other jurisdictions

- a. Similar crimes
- b. Transient suspect
- c. Active investigations

5. Prior/former partners

- a. Pattern of violence
- b. Suspect behavior such as:
 - (1) Non-consensual sexual acts
 - (2) Violent sexual behavior
 - (3) Rape fantasy
- c. General demeanor toward prior partner
 - (1) Humiliation
 - (2) Isolation
 - (3) Domestic violence

- d. Pornography preferences
 - e. Videoing sexual acts for humiliation
 - f. How the relationship was terminated
- C. During the background investigation, you may begin to establish clear and convincing evidence to support a criminal charge.
- D. Consider the use of other investigative techniques to establish inculpatory or exculpatory evidence before you interview the suspect.

IV. Undercover Operations

- A. Law enforcement practices evolve when a particular crime trend increases. For example, today most departments use personnel to combat drug crimes, prostitution, child sexual exploitation, and many other crimes.
- B. When investigating a particular crime, agencies often use undercover officers who specialize in assuming an undercover role and using specialized investigative techniques to gather evidence.
- C. Sexual assault investigations are no different. In many instances, undercover operations (UC Ops) provide many benefits to the survivor, the investigator, and the investigation.

1. For a survivor, UC Ops:

- a. Provide a controlled confrontation with a perpetrator
- b. Allow a sense of healing
- c. Provide a sense of control
- d. Provide reassurance

2. For an investigator, UC Ops:

- a. Provide a potential confession
- b. Provide details prior to a suspect interrogation
- c. Provide an indication of how to approach a suspect
- d. May reveal probable cause for custodial arrest
- e. Address safety concerns

3. For an investigation, UC Ops.

- a. Provide a better understanding of events
 - b. Identifies witnesses
 - c. Reveals other evidence
 - d. May discover a suspect's motivation
 - e. May reveal other crimes
- D. Undercover operations should be conducted before you contact a suspect to arrange an interview.

V. Types of Undercover Operations

A. Undercover operations are not considered entrapment if an investigator follows proper procedures as outlined in this guide:

B. Pretext Phone Call

1. A pretext phone call is simply a recorded voice phone call between the survivor and suspect. The phone call is made by the survivor under your supervision. You first prepare a script for the survivor to follow during the conversation. The suspect is unaware conversation is being recorded.

2. Considerations

- a. The survivor's emotional well-being must be ensured. If you have the slightest concern about a survivor's well-being, the phone call should not be made.
- b. Determine what phone to use:
 - (1) Survivor's phone
 - (2) Purchase an undercover phone
- c. Script (see appendix for sample responses)
- d. Survivor preparation
 - (1) Able to think on their feet
 - (2) Rehearse the call

3. Legal Considerations

- (1) Pretext phone calls are designed to capture a conversation between two persons using secure devices.
- (2) Pretext phone calls may require the use of a search warrant in certain jurisdictions.
 - (a) Montana – Requires a search warrant for a pretext phone call

C. Online Identity Assumption

- 1. A powerful investigative tool is the consensual assumption of the survivor's online identity to have a conversation with a potential suspect.**
- 2. Many people communicate through a variety of online platforms. This enables an undercover investigator to use those platforms to contact the suspect.**
- 3. Recent legal rulings from some of the highest courts in the nation commonly hold a "user beware" warning for people using online platforms to communicate. It's the user's responsibility to know who they are communicating with. A user voluntarily agreeing to communicate gives up a right to privacy to the end user.**
- 4. You should consider using:**
 - a. The survivor's smart/cell phone for texting
 - b. The survivor's Facebook services
 - c. The survivor's e-mail
 - d. Any other services the survivor used to communicate with the suspect

5. Before using the survivor's online identity, you will:

- a. Receive written consent
 - (1) Complete a Consent to Use Online Identity form
- b. Be aware of intimate or personal information in the survivor's online accounts.
 - (1) Ask "Should I be aware of anything you don't want me to see?"
- c. Review pertinent information before contacting the suspect to understand the flow of previous conversations between the survivor and suspect.
- d. Be patient.
- e. Your communication will need to be captured for evidence.
 - (1) Use screen capture applications
- f. Be aware that the process can be time consuming.
 - (1) You may need to have several undercover conversations to obtain the desired evidence.

6. Consider that a suspect may realize they are being investigated if the undercover operations are exposed.

VI. Suspect Investigation

- A. The final stage of a sexual assault investigation is when you make face-to-face contact with the suspect.
- B. Contacting a suspect is not as simple as a phone call arranging an interview.
- C. An investigator must consider several things prior to contacting a suspect, such as:
 - 1. Search warrants – If information during the investigation suggests that evidence may still be collected or destroyed when a suspect is contacted, you may want to obtain a search warrant for certain locations or items before you contact the suspect, such as:**
 - a. Vehicles
 - b. Residences
 - c. DNA
 - d. Clothing worn by suspect
 - e. Suspect's body
 - f. Electronic devices
 - 2. Officer Safety Concerns – Information may be uncovered during the investigation that suggests a more tactical approach may be needed when contacting a suspect, for example:**
 - a. Social Media posts hostile toward law enforcement
 - b. Affiliation with anti-government groups

- c. Background/intelligence reports
 - (1) Weapons arrests
 - (2) Concealed Weapons Permit
 - (3) Officer Caution Alerts
- d. Sexual crime circumstances
 - (1) Weapon involved
 - (2) Threats of violence

3. Arrest Warrant Considerations

- a. Always confer with a prosecutor about legal proceedings, but if probable cause exists for an arrest, you should consider applying for an arrest warrant before you contact a suspect. Also consider whether there are:
 - (1) Survivor Safety Concerns
 - (a) Suspect threatened to harm survivor
 - (2) Public Safety Concerns
 - (a) The likelihood to offend again
 - (b) Wanted by other agencies
 - (3) Probation or parole violations
- b. You have a responsibility to ensure the safety of the survivor and the public or face liability for failing to act.
- c. Be aware that a suspect may have committed a prior sex crime that's never been reported.

VII. Suspect Contact

- A. To complete the investigation, you must contact the suspect.
- B. Consider how you will contact the suspect:

1. Contact by phone

- a. You should place a phone call asking the suspect to come to a location of advantage for the investigator.
 - (1) Law enforcement facility
 - (2) Other law enforcement friendly facility
- b. The suspect will ask why you want to talk to them; be prepared with a proper response that doesn't give away any details:
 - (1) "I need to speak to you about a situation that occurred a few days prior."
 - (2) "It's a sensitive matter; I'd like to speak with you face to face."
- c. Ultimately, you may have to provide a better explanation, but don't provide any details; keep the reason general.
- d. During the call, the suspect may voluntarily provide information. Be aware of what the suspect says and document it in written notes.

2. Contact in person

- a. You may need to contact the suspect in person if other means have not been successful.
- b. Always be prepared for your first contact with a suspect:
 - (1) It may be the only conversation you have with the suspect.
 - (2) The suspect may be off guard and make voluntary statements that could be used as evidence.

VIII. Suspect Interview/Interrogation

- A. Bear in mind the importance of your interview/interrogation with the suspect. You're doing this to help the survivor.
- B. Remember that sexual assaults have elements of rage, power, and control.
- C. Draw upon your personal experience to understand the circumstances surrounding a consensual sexual encounter.
 1. **Be aware of details provided by a suspect suggesting anger, rage, control, isolation, ignoring the survivor's body language, ignoring the survivor's verbal responses, ignoring a lack of survivor verbal responses, or other outward signs that the survivor did not want to engage in sexual activity.**
- D. Focus on the actions of the suspect before, during, and after the sexual encounter with the survivor.
- E. Before making contact, you should be well versed in the facts of the investigation and be prepared to have a conversation with the suspect.
- F. Have all investigative materials ready in the interview room or with you when conducting the interview/interrogation.
- G. It's important to keep an open mind. Understand that the focus of the suspect interview is to have the suspect tell you their account of the incident.
- H. In a non-stranger sexual assault case, the suspect may claim the encounter was consensual. It is your job to use appropriate interview/interrogation techniques to determine if the sexual act was in fact consensual.
- I. In a case of a stranger sexual assault, the interview/interrogation of a suspect will primarily focus on placing the suspect with the survivor at the time of the assault.
- J. Interview/Interrogation
 1. **Greet the suspect with professionalism.**
 2. **Introduce yourself by name and as a law enforcement officer.**
 3. **Record the interview.**
 4. **Begin the interview by:**
 - a. Asking for personal information:

(1) Name	(4) Phone number
(2) Date of birth	(5) Work location
(3) Current address	(6) Work phone number

- b. Engage in a non-threatening conversation before starting the interview.
 - (1) “What type of hobbies do you have?”
 - (2) Use information gleaned from the background investigation to make them to feel at ease and start them talking.
- 5. IMPORTANT – Think about what information you are going to give the suspect as a reason for the conversation with the suspect before giving a Miranda Warning.**
- a. Important facts about the case should not be given to the suspect prior to giving a Miranda Warning.
- 6. You must consider whether a Miranda Warning is applicable:**
- a. Is the conversation going to elicit incriminating comments?
 - b. Is the suspect free to leave?
 - c. Is the conversation in a place of confinement?
 - d. Will the suspect be arrested? Do you have:
 - (1) An arrest warrant?
 - (2) Probable cause?
 - e. When a Miranda Warning is needed, use your agency’s standard warning.
 - (1) Memorialize the Miranda Warning
 - f. If a suspect exercises their Miranda Rights but asks and wants to know about the facts of the case, politely advise that providing information may draw an unintended response from the suspect and therefore would violate the suspect’s Miranda Rights.
- 7. Begin the interview/interrogation by obtaining the suspect’s account of the sexual encounter by asking:**
- a. “Tell me what happened?”
 - b. “What do you remember?”
 - c. “Give me your account of the incident.”
- 8. The investigator should:**
- a. Not interrupt
 - b. Focus on what the suspect says
 - c. Remain quiet once the suspect is done
 - (1) Silence is golden in a suspect interview
 - d. Question suspicious details
 - e. Ask detailed questions about what led the suspect to believe consent was given
 - f. If injury was present on the survivor, ask how the injuries got there
- 9. You may find it helpful to provide a theme, a way for the suspect to justify their actions, such as:**
- a. Intoxication
 - b. Good Cop/Bad Cop

- c. Removing them from the scene
 - (1) Suspect denying having contact with the survivor
 - (2) If you have physical evidence placing a suspect with the survivor, denying contact is as good as a confession.

10. The suspect may want to blame the survivor for the sexual assault; you can use this theme to get the suspect to talk.

11. Have suspect repeat key details.

12. Ask direct questions when a suspect does not provide truthful information.

13. You can ask questions such as:

- a. "Is the survivor lying?"
- b. "Why would the survivor interpret that the sex was not consensual?"

14. Alcohol consumption can be a key factor; ask the suspect:

- a. "How much did the survivor have to drink?"
- b. "Did the survivor appear intoxicated?"
- c. "Were you buying the drinks?"
- d. "Was the survivor passed out?"

15. You can ask questions such as:

- a. "What made you believe the survivor wanted to engage in sexual activity?"
- b. "Did the survivor say no?"
- c. "Describe the survivor's actions suggesting the survivor wanted to engage in sex."
- d. "Where did the sexual act happen?"
- e. "Why did you use that particular location?"
- f. "How could you tell the sexual act was done?"
- g. "What did you do after the sexual act was done?"
- h. "What did the survivor do after the sexual act was done."
- i. "Have you had any contact with the survivor since the sexual encounter?"
- j. "Did the survivor accuse you of sexually assaulting them?"
- k. "Have you ever been accused of this before?"
- l. "Was there any drug use?"

16. You may also want to ask questions such as:

- a. "Have you ever had sexual contact with the survivor before?"
- b. "Have you ever tried to have sexual contact with the survivor before?"

17. You may want to ask about being injured during the sexual encounter:

- a. "Did you get scratched during the sexual encounter?"
- b. "Do you have any bruises from the sexual encounter?"
- c. "Did you get injured during the encounter?"

18. If you learn that a suspect sustained injury during the sexual encounter, you may ask for consent to take photos of the injury.

- a. As investigator's, we sometimes forget to ask for consent to do certain things.
- b. If a suspect is injured, ask for consent to document photos.
- c. When asking for consent to check for injury, a suspect may provide reactions worth documenting.
- d. If a suspect refuses consent to a search for bodily injury, you can detain the suspect and apply for search warrant.

19. If the suspect claims there was no contact between them and the survivor, you should obtain DNA either by consent or search warrant if you already have evidence to suggest sexual contact:

- a. Biological evidence obtained from the survivor
- b. Physical injury to the survivor
- c. Biological evidence obtained from other locations

C. During your interview of the suspect, you may learn of the existence of other possible evidence that may include:

1. Items of Evidence

- a. Clothing
- b. Biological samples
 - (1) DNA
 - (2) Blood
 - (3) Bite marks
 - (4) Hair
 - (5) Fiber
- c. Vehicle
- d. Technology
 - (1) Videos
 - (2) Pictures
 - (3) Text messages
 - (4) Cell phone data
 - (a) Cell tower location data
 - (b) Phone calls
 - (c) Search history
- e. Social media
 - (1) Messaging
 - (2) Pictures
 - (3) Video
 - (4) Search history
- f. Surveillance video
- g. Suspect residence
- h. Illicit substance use
 - (1) "Date rape" drugs
 - (2) Recreational drugs
- i. Restraints
- j. Sexual toys
- k. Sexual aids
- l. Erectile dysfunction medications
- m. Other evidence

D. If you discover evidence or information important to the case during the suspect conversation, you should consider:

1. Evidence Security

a. Request assistance from:

- (1) Supervisor
- (2) Evidence technician
- (3) Support officers
- (4) Outside agencies

b. Circumstances

- (1) Can the evidence be destroyed?
 - (a) Remote electronic resets
 - (b) Destroyed or discarded by an accomplice
 - (c) Destroyed or discarded by suspect

c. Seizure

- (1) If you reasonably believe evidence exists, you can seize the items you believe to be evidence without a search warrant so that it is not destroyed, discarded, misplaced, or lost.

d. Consent

- (1) As investigators, we sometimes forget to ask for consent to do things.
- (2) You should ask for written consent in the following situations:
 - (a) When you reasonably believe evidence exists, you should ask for consent to seize the item.
 - (b) When you reasonably believe evidence exists, you should ask for consent to search for the item.
 - (c) When you reasonably believe evidence exists, such as for technology or social media, you should ask for consent to search that technology or social media.

e. Search Warrant

- (1) When you don't obtain written consent, you should apply for a search warrant:
 - (a) When you reasonably believe evidence exists, apply for a search warrant to search and seize items identified during the suspect conversation.
 - (b) When you reasonably believe evidence exists, such as for technology or social media, obtain a search warrant to search the technology or social media.

IX. Suspect Conversation Conclusion

- A. Be prepared to conclude the suspect interview—know what actions to take based on the possible results of the interview.
- B. You must consider many options when concluding the suspect interview, such as:
 - 1. You may consider a custodial arrest when:**
 - a. You have obtained a confession to a forceable felony.
 - b. You have discovered enough evidence requiring an arrest to safeguard the public.
 - c. You have a valid arrest warrant for the suspect.
 - d. A prosecutor instructs you to arrest the suspect.
 - e. You have obtained enough evidence to believe probable cause exists, a crime has been committed, and there is concern about the survivor's welfare.
 - 2. Suspect Safety Concerns**
 - a. Be aware of changes in the suspect's mood that indicate the suspect may be a danger to themselves.
 - (1) Do you observe indicators of suicidal behavior?
 - (2) Do you observe indicators of other potentially dangerous behavior?
 - (a) Reoffending?
 - (b) Fleeing prosecution?
 - 3. Release**
 - a. At the end of the interview, the elements of the crime may not have been established.
 - b. You may learn a crime has not been committed, and you release the suspect.
 - c. You may be required to release the suspect to conduct a search or seize evidence.
 - d. A supervisor may instruct you to release a suspect.
 - e. A prosecutor may instruct you not to arrest.
 - f. Upon release, advise the suspect that you may need to conduct a follow-up conversation with them.
- C. YOU MUST WARN THE SUSPECT TO NOT HAVE ANY CONTACT IN ANY MANNER WITH THE SURVIVOR AND THAT THE SUSPECT WILL BE ARRESTED IF CONTACT IS MADE.
- D. Upon conclusion of the suspect interview, you will either release the suspect or make a custodial arrest. Depending on the situation, appropriately complete the following important tasks:
 - 1. Provide a probable cause statement for arrest.**
 - 2. Serve time-sensitive documents:**
 - a. Preservation letters
 - (1) Social media
 - (2) ISPs
 - (3) Mobile data carriers

- b. Subpoenas
 - (1) Social media
 - (2) ISPs
 - (3) Mobile data carriers
 - (4) Other investigative reasons

3. Execute search warrants having time constraints

- a. For the suspect's property
 - (1) Residence
 - (2) Vehicle
 - (3) Technology
- b. For social media
- c. For other locations learned of during the suspect interview

4. Survivor Follow-Up

- a. You are obligated to contact the survivor to:
 - (1) Inquire about the survivor's well-being.
 - (2) Inform them of the suspect's arrest.
 - (3) Inform them of the suspect's release.
 - (4) Describe the suspect's demeanor regarding the investigation.
 - (5) Explain follow-up steps to the case.
 - (6) Ask about the survivor's recollection of events.
 - (7) Ask to conduct a follow-up interview about information learned from the suspect.
 - (8) Ask the survivor to keep a journal about new information the survivor remembers about the incident.
 - (9) Ask the survivor to document any contact by the suspect.
 - (10) Ask the survivor to document any contact from the suspect through a third party.
 - (11) Ask the survivor to consider an order of protection if there are safety concerns due to the suspect's demeanor.
 - (12) Provide information if the case will be referred to a specialized detective:
 - (a) Detective name
 - (b) Detective number
 - Do not refer to dispatch or administration unless that's the only contact number.
 - (c) When the case will be referred to the detective.
 - (13) Encourage the survivor to call about the status of the case.

- E. Refer to the Evidence Collection, Evidence Documentation, Technology and Social Media evidence sections (pages 85 through 102) for proper collection and storage of suspect evidence such as:

Photographs

DNA samples²

Clothing

Photographs

Blood

Urine

Technology

Social media

Video

- F. As required by state law, department policy, or when pertinent to the investigation, submit evidence to the crime lab, such as:

1. Sexual Assault Kits will always be submitted and screened for the presence of DNA.

- a. Many labs do preliminary tests to determine if multiple DNA profiles are present, requiring further testing.

2. DNA samples

- a. Remember a suspect's DNA profile may be linked to other sexual assault crimes in other jurisdictions.

3. Urine samples

- a. Evidence of drug facilitated sexual assault.

4. Blood samples

- a. Evidence of drug facilitated sexual assault.

5. Other evidence pertinent to the investigation

- a. Be sure to review the facts to decide what items of evidence are critical to the investigation, particularly in determining a lack of consent. Do not send every piece of evidence to the crime lab.

• **Initial Sexual Assault Investigation Completion**

The initial sexual assault investigation is completed when all the listed phases have been completed. Bear in mind that some investigative phases may not have yielded evidence, but you should still consider what you may have learned from those phases.

At this point, you will follow up on a number of responsibilities, including the following:

I. Documentation

1. Read and follow the steps in the next chapter on what to document during and following the sexual assault investigation.

II. Follow-Up

2. Investigative Follow-Up

- a. Secondary survivor interview
b. Secondary suspect interview

² DNA Samples: blood or swab from a person such as a buccal/mouth swab

- c. Lab results
- d. Photography
 - (1) Bodily injury
 - (a) Bruises
 - (b) Bites
- e. Secondary witness interviews
- f. Secondary surveillance video
- g. Secondary undercover operations
 - (1) Online Identity Assumption
- h. Other follow-up
 - (1) Recommended by prosecutor

III. Case Submission

Now the investigator is ready to begin the documentation phase of the investigation

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Chapter 4 – Documentation

FRAMEWORK: Documenting Sexual Assault Investigations

When investigating any crime, documentation is crucial, but it's perhaps even more important for sexual assaults. That's because sexual assaults are crimes of violence that can wreak havoc on the survivors and their families, and offenders will likely assault again if not apprehended and brought to justice. In addition, sexual assault investigations may be reviewed and analyzed more than other types of investigations. This raises the investigating officer's (and the agency's) exposure to liability if the investigation is not thoroughly and properly conducted. In today's society, social media and technology are everywhere, as are camera's, and law enforcement actions are frequently captured on video. Investigations are scrutinized in court and by legislatures and city councils, the news media, and watchdog groups, and by our own agencies. As a law enforcement officer, it's not if you'll be held to account for your actions, but when you'll be called to account.

Thankfully, we know how to reduce liability—through careful training and by following proper policies and procedures. A key part of those procedures is documentation. This chapter will highlight the importance of properly documenting a sexual assault investigation.

Protocol:

Documenting Sexual Assault Investigations:

After you have followed the investigation steps outlined in this guide, the next step is to document the case—that all the steps have been followed and the investigation is thorough.

Any given sexual assault investigation may not include certain sections covered in this guide but conducting the investigation in a uniform manner will give you a better chance of not missing crucial steps. Documentation is just as critical—by documenting a sexual assault investigation in the same fashion, you are less likely to miss critical steps and important evidence, thus protecting the integrity of the investigation, supporting the survivor’s case, and reducing your liability.

Documentation:

- **Documentation Considerations During A Sexual Assault Investigation**

- A. LAW ENFORCEMENT RESPONSE
- B. INVESTIGATION
- C. CRIME SCENE
- D. PHOTOGRAPHY
- E. VIDEO
- F. LAB SUBMISSION
- G. REPORT WRITING
- H. FOLLOW-UP
- I. PROSECUTION SUBMISSION

I. Law Enforcement Response

Be aware that every phase of the investigation will yield important details. Use all the available documentation methods in this guide to record your findings during the investigation. Some of the following methods may not apply in every case, but you should keep them in mind and at least consider their possible usefulness while documenting the investigation.

A. Types of Documentation

1. Use one or all of the following types of documentation:

- a. Dispatch Notes and Calls
 - (1) Dispatch notes and recordings often contain important information.
- b. Memory
 - (1) Your own recollection of the crime scene and initial investigation can help you recognize important facts or discrepancies as new information comes to light.
- c. Field Notes
 - (1) Rely on field notes taken during your response to the crime scene and investigation to prompt your memory later when writing a report.

- d. Sexual Assault Checklist
 - (1) Use the Sexual Assault Checklist in the field guide to take notes, prompt your memory, and remind yourself about each investigative phase and step that should be followed.
- e. Video
 - (1) Make sure that your body camera and digital recording devices connected to in-car cameras are working properly and turned on.
 - (2) Many locations are covered by security or surveillance cameras; always look for cameras and ask to see any relevant videos.
 - (3) Using cell phones and other mobile devices, people often video themselves, others, or abnormal situations. Seek access to these recordings to aid your investigation.
- f. Photography
 - (1) Take photographs to document evidence.
- g. Statements
 - (1) As needed, obtain recorded and written statements from the survivor, witnesses, and others involved in the incident.
- h. Technology Reports
 - (1) You may have access to technology reports from:
 - (a) Forensic examinations
 - (b) Social media/ISP providers
 - (c) Mobile data carriers
- i. Electronic Communication
 - (1) You may find important documentation in the form of electronic communications, including:
 - (a) Text messages
 - (b) Voicemail
 - (c) Social media posts
 - (d) Screen captures
 - (e) Other electronic communication
- j. Lab Reports
 - (1) You may have access to crime lab reports such as:
 - (a) A toxicology report
 - (b) Drug screens
 - Recreational drug usage
 - Drug usage to facilitate the assault
 - (c) DNA reports
 - (d) Physical evidence reports

II. Investigation

Once the investigation has started, you will make important decisions about information that must be documented.

A. **IMPORTANT** – You will document important information and evidence discovered during the investigation by the suggested documentation methods, which may include the following:

B. Officer/Investigator Observations

1. A sexual assault investigation begins the moment you receive the call, and you should begin documenting everything—from how the call was received to the conclusion of the investigation.

2. Your initial observations can be a critical aspect of the investigation. Be sure to document:

a. On Scene Arrival

(1) Location of survivor

(2) Survivor

(a) Physical appearance

(b) Clothing

(c) State of medical treatment

(d) Emotional state

(e) Other

(3) Survivor Support Group

(a) Friends

(b) Family

(c) Partner

(d) Children

(4) Witnesses

(5) Other observations

C. Survivor Investigation

1. As you begin this portion of the investigation, attention for documentation will be focused on the survivor's:

a. Appearance

(1) Demeanor and response to your introduction meeting you

(2) Style of speech

(3) Verbal comprehension

(4) Expressions

(5) Emotions

- b. Injury/Injuries
 - (1) Outward signs of injury
 - (a) Bruises
 - (b) Abrasions
 - (c) Cuts
 - (d) Scrapes
 - (2) Intimate injuries – a medical professional will examine the survivor and document and treat any injuries.
- c. Medical Attention
 - (1) Initial treatment
- d. Advocate Intervention
 - (1) How did you approach offering the services of an advocate?
 - (2) When did you offer an advocate?
 - (3) What is name of the advocate and the advocacy program offered to the survivor?
- e. Survivor Interaction
 - (1) Rapport building
 - (a) How did you build rapport?
 - (2) Interview
 - (a) Take notes.
 - (b) Digitally record the interview.
 - (3) Survivor Sensory Reaction
 - (a) Ask the survivor sensory questions—what was seen, felt, heard, smelled, and tasted—and observe the survivor’s reactions.
- f. Crime Identification
 - (1) Officer’s Checklist
 - (a) Use the Officer’s Checklist to determine if criminal elements have been met, including:
 - Sexual contact
 - Sexual intercourse
 - Sexual assault
 - Signals of non-consent
- g. Suspect Identification
 - (1) Name
 - (2) Physical description
 - (3) Clothing description
 - (4) Social media identity
 - (5) Vehicle description
 - (6) Residence description

- h. SANE (Sexual Assault Nurse Examiner)
 - (1) Name
 - (2) Official title
 - (3) Conversation with SANE about medical observations
- i. Diagnosis/Treatment
 - (1) Survivor statement to medical provider
 - (2) Sexual Assault Kit (SAK)
 - (a) Findings
 - (b) Evidence
 - (c) Paperwork
 - (3) Drug Facilitation (Optional)
 - (a) If you suspect drugs were used to facilitate the assault, you should document specialized lab analysis to determine the presence of drugs in the survivor's system.
 - (4) Chain of Custody
 - (a) Person who gave you the Sexual Assault Kit.
 - (5) Medical Records
 - (a) You can access medical records with a release from the survivor.
 - (b) You can access medical records with a subpoena or search warrant.
- j. Evidence Collection
 - (1) Photography
 - (a) Be aware that physical and intimate injuries will be photographed by a medical professional during the examination.
 - (2) Clothing
 - (a) Document any clothing that you take for evidence when you met with the survivor.
 - (b) Document how it was packaged.
 - (3) Biological
 - (a) Document any biological evidence taken outside the parameters of the medical examination.
 - (4) Storage
 - (a) Document how you properly stored all evidence.
 - (5) Submission
 - (a) You are obligated to submit certain evidence items to the crime lab. Document the date, time, and how each item was submitted to the crime lab.

- k. Survivor Concerns
 - (1) Mental Health
 - (a) If you recognize mental health concerns, document how you addressed those concerns. (*refer to page 44*)
 - (2) Responsible Party
 - (a) Document who arrives to take responsibility for the survivor and what their relationship is to the survivor.
 - (3) Victim's Rights
 - (a) Use the Victim's Rights Packet.
- l. Witnesses
 - (1) Document witnesses by name, contact information and any statement obtained.
- m. Follow-Up
 - (1) Document any follow-up you explained the survivor should expect after the initial phase of the investigation.

III. Crime Scene(s)

A. Number of Scenes

1. Original Location of Assault

- a. Document:
 - (1) Physical location.
 - (2) Sketch the scene if necessary.
 - (3) Photograph the scene.

2. Alternate Locations

- a. Document other locations where biological, trace, or physical evidence may be.

B. Legal Basis

1. Jurisdiction

- a. Document whether the offense occurred in another jurisdiction and the case is handed off to another agency.
- b. Document evidence located in other jurisdictions that may require assistance.

2. Consent

- a. You must document consent of any type.

3. Search Warrant

- b. When obtaining a search warrant, you must keep the following documentation:
 - (1) Copy of a signed search warrant application.
 - (2) Copy of a signed search warrant.
 - (3) Copy of a signed search warrant receipt.
 - (4) Copy of a signed search warrant return.

4. Exigent Circumstances

- a. Whenever you or other law enforcement officers act on exigent circumstances, you must document:
 - (1) Particularized facts of why exigent circumstances existed.
 - (2) Your actions during the exigent circumstances.

C. Security

1. Personnel

- a. Document all other law enforcement personnel used to secure the crime scene.

2. Contamination

- a. Document any contamination of a crime scene.

D. Searching

1. Personnel

- a. Document all other law enforcement personnel used during any search.

2. Location

- a. Document the location, property, item, or person searched.

E. Evidence

1. Identification

- a. Document the evidence identified.

2. Photography

- a. Photograph items of physical evidence.

3. Collection

- a. Document how evidence is collected and packaged.

4. Storage

- a. Document how evidence was stored.

IV. Suspect Investigation

When an arrest is made and prosecution has commenced, criminal defense attorneys begin their defense by focusing on whether the suspect was identified through proper procedures. Bear in mind that this phase of your investigation will be heavily scrutinized when the case goes to court.

Document in detail:

A. Suspect Identification

- 1. **Identification is more than just a name. Document the suspect's age, physical description, home address, phone number, email address, and online forum screen or usernames.**

B. Background Investigation

1. Document any inculpatory or exculpatory information learned during the investigation.

C. Undercover Operations

1. Pretext phone call

- a. Search warrant
- b. Script
- c. Audio recording of call
- d. Content of call

2. Social media

- a. Document information obtained during social media operations.

D. Suspect Contact

1. Initial contact with the suspect including what was said

- a. Don't use deception.

2. Interview

- a. How did the conversation start?
- b. Was a Miranda Warning provided?
- c. How was a Miranda Warning recorded?
- d. Recorded interview
- e. Document in detail any discrepancies between facts as provided by the suspect and other phases of the investigation.

3. Search Warrants

- a. Document if served on the suspect or suspect's personal interests.

4. Evidence

- a. Document any evidence seized from the suspect.
- b. Document how that evidence was collected and stored.

E. Suspect Considerations

1. Custodial Arrest

- a. Document when a custodial arrest is made, either with an arrest warrant or by establishing probable cause.

2. Protective Custody

- a. Document when a protective custody intervention was made and the reasons why.

3. Release

- a. Document when a suspect is released.

V. Photography

The adage, “A picture is worth a thousand words” certainly applies to criminal investigations. Photographs depict evidence at the time it was discovered and document what the investigator observed and learned at that time.

Consider the following when documenting:

A. Photos

- 1. Describe the content of photographs in writing.**

B. Photo Log

- 1. Maintain a photo log for all photographs taken including:**

- The date each photo was taken
- The time each photo was taken
- The location where each photo was taken
- Who took each photo
- The content of each photo.

C. Measurement Device

- 1. Take the first photo of an evidence item with nothing else in the shot, then take a second virtually identical photo with a scale, such as a ruler next to the item.**
- 2. This type of documentation demonstrates the size of an injury, wound, or bruise.**

D. Storage

- 1. Digital photographs should be stored not on the camera but in an external device such as a thumb drive or external hard drive. You must:**

- Keep original photos on an external device placed into secure evidence.

E. Supplemental Photographs

- 1. Photographs may be obtained from supplemental sources such as witnesses or security cameras. You should document:**

- Chain of Custody
 - (1) The source of the photo
 - (2) How you obtained the photo.
 - (3) How you stored the photo.

VI. Video

Consider the following when documenting video evidence:

A. Body Camera

- a. Ensure that body camera footage is downloaded and stored in accordance with department policy.**

B. In Car Camera

- a. If relevant dash-cam video footage is available, ensure that it is downloaded and stored in accordance with department policy.**

C. Surveillance

1. Ensure that surveillance video obtained from outside entities is documented, including:

- a. Who gave you the video.
- b. A description of the contents of the video.
- c. The name and location of the establishment the video is from.
- d. Date and time of the video.
- e. How you stored the surveillance video in evidence.

D. Supplemental Videos

1. Videos may be obtained from supplemental sources such as witnesses and security cameras. You should document:

- a. Where the video originated.
- b. Who gave you the video.
- c. The type of device used to record the video.
- d. A description of the contents of the video.
- e. How you stored the video in evidence.

E. Legal Considerations

1. Document any legal considerations when obtaining video such as:

- a. Who provided consent?
- b. Was a search warrant obtained?

VII. Lab Submission

Submitting evidence to an agency-approved crime lab is an important aspect of any sexual assault investigation. In some jurisdictions, state laws require that certain types of evidence be submitted to the crime lab for analysis. In a sexual assault investigation, one of those important items of evidence is the Sexual Assault Kit. Law Enforcement Officers must follow sexual assault kit testing procedures and policies as provided in Senate Bill 52.

As the investigator, you are responsible for determining which additional collected evidence to submit to the crime lab. You must review the facts of the case and identify the items of evidence that need to be submitted to the lab. The investigator will understand less critical items of evidence will be held in the agency's evidence facility until such time the evidence needs to be tested.

You will document:

A. Sexual Assault Kit Submission

1. When you submit a Sexual Assault Kit to the crime lab, you will:

- a. Document the date and time kit submitted.
- b. Document the delivery service used to deliver the Sexual Assault Kit.
 - (1) Require a signature from the crime lab upon delivery.
- c. Attach a copy of the submission form to your report.
- d. Document when the kit was accepted at the crime lab.
- e. Enter the kit submission into the DOJ/SAK Database.

B. Evidence Submission

1. **When you submit other relevant evidence to the crime lab, you will:**
2. **Document the date and time evidence was submitted.**
3. **Document the delivery service used to deliver sexual assault evidence**
 - a. Require a signature from the crime lab upon delivery.
4. **Attach a copy of the submission from to your report.**
5. **Document when the kit was accepted at the crime lab.**

VIII. Report Writing

As the investigation comes to completion, it's time for you to prepare an offense report about the investigation. An offense report will be seen by several people, including your supervisor, a prosecutor, a defense attorney, a victim advocate, a crime victim compensation expert, personal attorneys, etc. It's important for you to write the best report possible about the investigation.

During the investigation, a common theme has been that you conduct an unbiased, open-minded, and thorough investigation. If you have followed the steps in this reference guide, you will have demonstrated those qualities.

An offense report on a sexual assault should be written in chronological order. Follow the format outline below. You may not need to fill in every category but start the report with the initial call you received about the assault and the steps you subsequently took.

A. Written Report

1. **Your written report is a critical part of the investigation. To make sure you report on all phases and steps of the investigation, follow this outline:**

a. Initial Call

- (1) Begin with an opening paragraph describing the scope of your duties when you were dispatched to the call. For example:

(a) *"On this date, I, Officer Doe, of the [Agency Name] was on patrol when I was dispatched to the ACME Medical Facility for a report of a possible sexual assault. Dispatch further advised the following details. . . . I responded immediately."*

b. Response

- (1) In the next paragraph, describe your response to the call:

(a) *"As I responded, I [describe what you did before arriving at the scene, e.g., asked for more information, contacted the reporting party if it wasn't the survivor, obtained investigative materials in preparation]."*

c. Initial Observations

(1) Then describe the details of your arrival at the scene and your initial observations, for example:

(a) *“I arrived at ACME Medical Facility at 2000 hours and was met by Dr. Jones. I was escorted to room #1 and met with the survivor identified as Jane Doe. I immediately observed injury to the face around the right eye and scratches on her arms. She appeared upset; she was crying and clutching her knees in a seated position....”*

- *“With the survivor were two people identified as Mrs. Doe, the survivor’s mother, and Ms. Smith, the survivor’s friend.”*

d. Survivor Investigation

(1) Include as much information as you can about how you interacted with the survivor and what you did during your interview with the survivor, for example:

(a) *“I introduced myself and advised Jane Doe she could call me Joe. I began building rapport by talking about Jane Doe’s interests.”*

(b) *“I asked Jane Doe if she wanted an advocate with her; she declined.”*

(c) *“I conducted an interview with Jane Doe and learned the following information. . . .”*

(d) *“I checked to make sure the suspect was not a threat to Jane Doe.”*

(e) *“I received consent from Jane Doe about her having a Sexual Assault Kit examination done for her well-being.”*

(f) *Realize that there may be other reportable actions you did during this phase of the investigation.*

e. Witnesses

(1) Provide as much information as you can about any witnesses, their relationship with the survivor or suspect, and what observations the witnesses shared:

(a) *“I spoke to Ms. Smith, Jane Doe’s best friend. Ms. Smith indicated she didn’t witness the incident firsthand, but Jane Doe reported the sexual assault to her after Jane Doe was able to escape from the suspect’s house.”*

f. Crime Scene

(1) The report should describe each of the three initial crime scenes: the survivor, the suspect, and the actual location where the alleged assault took place.

(2) Describe what steps you took when investigating each crime scene, for example:

(a) *“I applied for and was granted a search warrant on January 3, 2019, for the suspect’s vehicle where the incident occurred. The vehicle had been impounded at the Police Impound and had been secured with evidence tape. The seal had not been broken until I opened the door. I used Officers Bee and Cee to assist in the search of the vehicle. During the search I located the following items of evidence. . . .”*

g. Evidence Collection

(1) Evidence collection is a crucial component of an offense report.

Describe in detail how you collected and stored evidence collection, for example:

(a) *“I received written consent from the suspect to obtain a saliva sample for DNA purposes. I used a buccal swab collection kit and followed the directions. Once the swab was dry, I packaged the swab according to department policy and placed the swab into evidence.”*

(b) *“I learned from Jane Doe that the clothing she was wearing the night of the assault had been placed in a laundry basket at her residence. After Jane Doe had been released from the hospital, I went to her home and she showed me where the clothing was located. I photographed the clothing and, wearing sterile gloves, placed each individual piece of clothing in a paper sack, sealed the sack with evidence tape, initialed the bag, and secured the items in the department’s evidence locker.”*

h. Suspect Investigation

(1) Describe in as much detail as needed your interaction with the suspect, for example:

(a) *“Prior to contacting Mr. Suspect, I was told by Jane Doe that she was willing to conduct a pretext phone call with Mr. Suspect. I applied for and received a search warrant to conduct a pretext phone call. I prepared a script for Jane Doe. On January 8, 2019, at about 1900 hours and using Jane Doe’s phone, she contacted Mr. Suspect and during a lengthy conversation got Mr. Suspect to admit that Jane Doe had repeatedly told Mr. Suspect that she did not want to have sex with him. Mr. Suspect began crying and said he was sorry for doing what he had done. Mr. Suspect begged Jane Doe not to go to the police. The phone call was concluded. I seized the recording as evidence.”*

(b) *“I contacted Mr. Suspect on January 10, 2019, around 1900 hours by calling his cell phone. Mr. Suspect answered. I identified myself to Mr. Suspect and asked him to come to the law and justice center to talk to me about the incident. Mr. Suspect asked what it was about. I let Mr. Suspect know it had to do with a situation with a woman the other night. Mr. Suspect said it was a consensual encounter but was willing to come in and talk to me.”*

- (c) *“When Mr. Suspect arrived at the law and justice center on January 11, 2019, at 0800 hours, I immediately advised Mr. Suspect of his Miranda Warning. Mr. Suspect stated he understood his rights and agreed to speak to me.”*
- (d) *“After hearing Mr. Suspect’s initial account of the incident, there were many discrepancies from the video I found on his Facebook feed. I pressed Mr. Suspect about the discrepancies, and he broke down crying and said he ignored the survivor’s pleas to stop and forcibly had sexual intercourse with her.”*
- (e) *“I provided Mr. Suspect with a copy of the search warrant after showing him the original that ordered me to take photographs of injuries the survivor reported would be on his body.”*
- (f) *“After completing my interview with Mr. Suspect, I advised Mr. Suspect that I had a valid arrest warrant and he was under arrest for the offense of sexual intercourse without consent.”*

i. Photography

(1) Report on any photographs you took during the investigation, for example:

(a) *“On January 3, 2019, at police impound, I photographed the suspect’s blue 2000 Dodge pickup, bearing MT plate 91-0001. I started by photographing indications that the vehicle had not been entered. I photographed the entire vehicle prior to entering. After entering the vehicle, I photographed all items of evidence. I made a photolog which is attached to this report. I placed the photos onto a CD and placed the CD into evidence.”*

(2) During the investigation if you obtained photos from an outside source, report on them as well, for example:

(a) *“During Ms. Smith’s interview, she indicated she had taken a photo of the suspect’s vehicle. Ms. Smith indicated she would e-mail the photograph to me. Ms. Smith e-mailed the photograph to my department e-mail where I copied the photo to a CD and placed the CD into evidence.”*

j. Video

(1) If you used any type of video recording device to record any part of the investigation, describe that process, for example:

(a) *“In speaking to the witnesses in this case, I recorded those interviews on my WatchGuard Body Camera, #1, which I placed in a docking station, then downloaded and stored the video in the department’s secure evidence location. The video was noted on the evidence form.”*

(b) *“I recorded Mr. Suspect’s interview from PD Interview Room #1. I burned the interview to CD and placed the CD into evidence.”*

(2) If you obtained video from an outside source during the investigation, describe it as well, for example:

(a) *"I learned from Mr. Laarsen, owner of The Far Side Lounge, that he had surveillance video of the area where the alleged incident took place. Mr. Laarsen reviewed his video and found the survivor and suspect in the location described by the survivor. Mr. Laarsen provided me a thumb drive with the video. I looked at the video for evidence purposes and found it to corroborate what the survivor indicated had happened. The thumb drive has been placed in secure evidence."*

k. Supporting Documentation

(1) If you obtained any type of supporting documentation, report on that documentation:

(a) Written Statements

"I obtained a written statement from Ms. Smith on January 9, 2019. I have attached the statement to this initial report."

(b) Logs

"I completed a photolog of the photos taken at Mr. Suspect's residence. See attached photo log."

(c) Sketches

"Officer Bee provided a rough sketch of the parking lot of The Far Side Lounge where the incident occurred. The sketch is not to scale. It is attached to this report."

(d) Notes

"I have kept my field notes and placed them in an evidence envelope. The notes were placed into evidence."

(e) Evidence Lists

"A copy of a list of all evidence has been attached to this report."

(f) Search Warrant

"I have attached signed copies of the search warrant application, search warrant, search warrant return, search warrant receipt, and custody order to this report. The originals have been returned to the court."

(g) Victim's Rights

"I advised Jane Doe of her victim's rights as afforded to her by state statute. A copy of the PD victim's rights form was given directly to Jane Doe, the original is attached to this report, and a copy was provided to the victim's advocate."

I. Lab Submission

- (1) Report on any evidence, particularly the Sexual Assault Kit, submitted to the crime lab, for example:

“On January 9, 2019, I took the Sexual Assault Kit of Jane Doe and packaged it according to crime lab standards. I placed the packaged kit in a FedEx box, filled out the delivery label, and contacted FedEx to pick up the package. FedEx arrived and took the package for delivery. See the copy of the FedEx label, attached to this report. I logged onto the DOJ/SAK Kit Tracking System and indicated that the kit had been shipped. On February 10, 2019, I received confirmation from the crime lab the kit had been received.”

- (2) Also place into the report any other pertinent evidence sent to the crime lab for analysis, for example:

“On January 10, 2019, I took the clothing of Jane Doe taken as evidence and sent it via US Postal Service Certified Return Receipt Requested to the crime lab. The clothing was properly packaged according to crime lab standards prior to shipping.”

m. Follow-Up

Before you complete the initial offense report, consider whether you need to do any follow-up, including what may be required by a specialized division. Failure to document such follow-up can expose you to liability or discipline. Include in the report things such as:

(1) Specialized Investigations

- (a) If your investigation and report will be forwarded to a specialized detective, include this in the report, for example:

“I have completed my initial investigation and report which will be forwarded to Detective Dee for any further follow-up. Jane Doe was advised of Detective Dee’s desk phone and that she should call on January 20, 2019, to give Detective Dee time to review the case. I advised Jane Doe that she could call me with any questions or if she couldn’t get in touch with Detective Dee.”

(2) Interviews

- (a) You may have supplement interviews to conduct and should note them in your report, for example:

“I have completed my initial investigation into the matter and will need to conduct follow-up interviews with Jane Doe and Ms. Smith about the night of the incident. I also learned during Mr. Suspect’s interview that an interview may need to be conducted with Mr. Suspect’s ex-wife. I will attempt to complete those interviews in a timely fashion.”

(3) Social Media

(a) You may need to follow up on social media aspects of the case. Be sure to document what that follow-up will be, for example:

- *“I will be following up with a subpoena to Instagram for connection information for Mr. Suspect’s Instagram account.”*
- *“I will be following up with Facebook by making a preservation request for Mr. Suspect’s account.”*
- *“I will be applying for a search warrant for Mr. Suspect’s Google e-mail account for videos made by Mr. Suspect and submitted to an amateur revenge pornography site.”*

(4) Technology

(a) You may have to conduct follow-up on any technology taken during the investigation, for example:

- *“I will be following up by conducting a Cellbrite extraction on Jane Doe’s Iphone 8 which was provided by consent.”*
- *“I will be following up by applying for a search warrant for Mr. Suspect’s Samsung Galaxy smart phone, which is currently in evidence. The Smartphone will be sent to the computer crime lab for analysis.”*

(5) Undercover Operations

(a) Document any further undercover operations conducted after the initial investigation such as:

“Jane Doe contacted me during the investigation and said Mr. Suspect had been using Facebook to message her about the incident. Jane Doe indicated Mr. Suspect made threats of bodily harm if she didn’t respond to his messages. I asked Jane Doe if she would consent to allowing me access to her Facebook account so I could converse with Mr. Suspect because it appeared Mr. Suspect was involved in committing another offense. Jane Doe agreed to allow me access and filled out the online identity assumption consent form. I will be conducting undercover operations in a timely manner.”

(6) Lab Results

(a) In the follow-up portion of the initial offense report, you should document any lab reports that will be coming in, for example:

“I am waiting for the results of the analysis of the Sexual Assault Kit to see if Mr. Suspect’s DNA was found on swabs in Jane Doe’s Sexual Assault Kit. Mr. Suspect denied having any sexual contact with Jane Doe, but during the sexual assault examination the examiner used an alternative light source and informed me that it indicated that seminal fluid was present around the groin area of Jane Doe.”

IX. Case Submission

Congratulations, you have reached the end of the investigation! You should be proud of your hard work, the mountain of information you gathered, and the offense report you wrote. Perhaps a suspect has been arrested. But there is still one more important step.

No matter what thoughts you may have about the case, your responsibility now is to submit the results of your investigation to a prosecutor for consideration.

Unfortunately, a high percentage of sexual assaults are not prosecuted. However, it is important that you at least submit the case to the prosecutor for review. Survivors may feel like they aren't heard and that they don't have a voice about what happened to them. As we have demonstrated throughout this guide, your role as the investigator has been to listen to the survivor, gather evidence, and to document what you learn. Falling short in any phase of the investigation is a disservice to the survivor, and it also exposes you to the risk of liability and disciplinary action. This holds true as well for the final step—submitting the case for review by a prosecutor.

Follow these steps when submitting the case for prosecution:

A. Submission Letter

- 1. Many agencies have a directive or procedure for submitting cases to a prosecutor for consideration. Follow those agency directives and procedures if your agency has them, but if not, you should write up a prosecution letter with the following information:**

- a. Date of the letter
- b. Name of the prosecutor and his or her official address
- c. Case number
- d. Greeting
- e. Brief explanation of the case and a request for prosecution review. For example

(1) *“Good Day Mr./Ms. Prosecutor. I am submitting case #19-01 for your review. The investigation began after I received a phone call from ACME Medical Center reporting that a female sought treatment there after an alleged sexual assault. The investigation revealed the survivor was injured, there was evidence of sexual assault, a suspect was identified, and evidence indicated the sexual contact may have been non-consensual. At this time, the case requires follow-up; mainly I am awaiting lab results to see if the suspect’s DNA was present on the survivor. Please provide your thoughts on this matter.”*

B. Initially Completed Case:

- 1. Provide a copy of the original offense report, with copies of any original documents attached to the case report, and the cover letter.**

C. Delivery Method

- 1. Use a delivery method approved by your agency’s procedures:**

- a. Interagency mail
- b. Paid delivery service
- c. Hand delivery
- d. Supervisor submission
- e. Other deliver methods

D. Supplemental Report

1. **Submit a brief supplemental report about delivery of the completed initial investigation.**

- a. *“On January 30, 2019, I copied the original case and submitted the case for prosecution consideration by delivering the case to the prosecutor’s secretary as by department procedure.”*

E. Case Action:

2. **Document what the prosecutor’s decision is by writing a supplemental report, for example:**

- a. *“On February 2, 2019, I received an e-mail from Mr. Prosecutor indicating declination of prosecution due to [insert reason given by County Attorney’s Office]. This case is closed. I will contact the survivor and advise of the prosecutor’s decision.”*
- b. *“On February 2, 2019, I was contacted by Mr. Prosecutor advising a complaint and warrant had been sought for Mr. Suspect and that an arrest was to be made.”*
- c. *“On February 2, 2019, I received an e-mail from Mr. Prosecutor advising that further follow-up needed to be conducted and providing me with a list of those steps.”*

X. Conclusion

Sexual assault investigations are time consuming, complex, and challenging. This manual is designed to guide you through all the phases of a survivor-centered/trauma-informed investigation. If you have followed this guide, your focus has been on the survivor, for whom you have provided a real and much-needed service—you have listened to the survivor, understood their perspective, and worked diligently to investigate the alleged assault. In addition, you’ve also reduced your own exposure to disciplinary action and liability.

Remember, you should “start by believing.” The actions you take and the rapport you build with the survivor during your investigation will have lasting ramifications throughout the survivor’s life. As a law enforcement officer, you cannot save the world, but you can make a difference. In the words of Hippocrates, “Make a habit of two things: to help; or at least to do no harm.”

Document Samples

Tear out, copy, and use these samples as templates to work from in the field.

SURVIVOR CONVERSATION TEMPLATE

Initial Contact with the Survivor:

Introduction

An investigator should start with a softer introduction such as:

“Hello, I’m (*First Name*), I’m with (*Your Agency*), nice to meet you.”

“Hi, I’m Officer/Deputy (*Last Name*), I’m with the (*Your Agency*), please call me (*your first name*), nice to meet you.”

An investigator needs to be aware that giving control back to a survivor, even the simplest of tasks such as asking for their name, is an important rapport building tool. Remember, a survivor has been traumatized by the loss of control of what happened to them.

As an investigator be careful about immediately asking for specific identifying information such as full name, date of birth, address, phone number, as investigators normally do in a normal interview.

An investigator should ask:

“What is your first name? Is it okay that I call you (*First name*)?”

Rapport Building:

RELAX! BREATHE!

The investigator needs to understand rapport building is a process. Rapport can take just a few minutes to several minutes.

Investigators should be aware “extensive” small talk can be detrimental to the investigator, the investigator needs to pay attention to the survivor’s demeanor.

The investigator should start the rapport process using one or a combination of the following statements:

“I want you to know you’re safe and I’m here for you.”

“Is there anything I can do for you right now?”

“I admire your courage for seeking help.”

“I know you’ve experienced something difficult and I’m here to help you.”

“Is there someone you would like me to call for you?”

“Are there things in your life that need to be taken care of such as work, children, pets or anything else that I can help you with?”

An investigator should try to find commonality between them and the survivor during the rapport building phase such as sharing something personal with the survivor or finding a link in something the survivor provides to the investigator such as (or other questions):

“Where do you work? (If you find something in common share your experience.)

“What are things that you do for enjoyment?” (If they share, ask them about those interests)

As an investigator explain your role.

“I want you to know I’m here for you and want to make sure you’re safe. Is there anybody that I need to worry about coming to harm you? I want you to know this is about you, and you can stop at any time. I want you to understand I know this type of situation can be uneasy and difficult to talk about but thank you for talking to me about it.”

“I am responsible about having a conversation with you about the situation you went through. I know this will be difficult to talk about. I know the circumstances are intimate and we may talk about sensitive things, but the conversation is not to make you feel bad and I thank you for being willing to talk to me about it.”

As an investigator, even in a medical setting, it’s important to ask if they are injured, need medical attention or have been seen by medical staff such as:

“I know we’re here at the medical facility, have you been seen by a nurse or doctor?”

“Do you need to see a nurse or doctor now?”

“Are you injured anywhere?” *If the answer yes, ask, “Where?”*

** If a survivor answers “yes”, inquire about the injury they received, where it’s located and how they received it. (Sometimes a survivor will begin to give details of the assault without being prompted by questions from the officer and the officer can begin asking about the need for a sexual assault examination.)*

“When did this happen?” *If the assault took place more than 120 hours (5 days prior) there may not be a need to ask for a sexual assault examination unless there is a possibility of evidence or the survivor wants the examination done.*

The investigator should explain the importance of a sexual assault examination and the sexual assault kit: (As the investigator, understand the following are important reasons for the sexual assault examination and sexual assault kit.)

- An investigator should consider the following when asking the survivor to submit to a sexual assault examination:

“I’m concerned about you and would appreciate it if you would get medically examined for...(use the following reasons*)”

- The primary reason for a sexual assault examination is for the wellbeing of the survivor but includes:
 - Medical Exam for the survivor for:
 - * **Survivor’s health and well-being**
 - * **checking extent of injury**
 - * **Other important aspects**
- An investigator should recognize a sexual assault kit is included in the sexual assault examination.
- The investigator should tell the survivor:

“The sexual assault examination includes a sexual assault kit and is a benefit since it will include...(use a combination of reasons*)”

- A sexual assault kit will include:
 - * **Statement taken by medical staff**
 - * **Photos documenting injury taken by medical staff**
 - * **Collecting evidence for the investigation**
- An investigator should be aware and inform the survivor about clothing being taken if the clothing the survivor was wearing is currently being worn. Understand if clothes need to be taken, make arrangements for a trusted person the survivor agrees too can bring the clothing.
- Regarding clothing, if the clothing at the time of the assault isn’t with the survivor, ask where it’s located.

.....

An investigator needs to ask if a survivor is willing to consent to a sexual assault examination and sexual assault kit. If the survivor does not consent to any or all of the examination or kit, the investigator does not have any other options.

- An investigator can suggest a Forensic Rape Examination Payment Program examination at least to get treatment
 - **Encourages survivor to seek treatment with:**
 - **No cost to survivor**
 - **No obligation to report to law enforcement**

.....

An investigator should ask if the survivor would like an advocate or trusted adult to be with them during the sexual assault examination by asking:

“Is there anyone that you would like with you right now during this?”

** Avoid significant other, boyfriend, spouse if there could be potential problems*

Actual Interview: (Take your time!!) (Be aware of your body language)

Understand a survivor will be suffering from trauma, PTSD or a whole host of other emotional situations. Survivors will have a fragmented memory and give you limited or scattered details. (DON'T GET FRUSTRATED OR PRESSURE THE SURVIVOR!) Understand YOU need to provide them a starting point to focus on.

- DON'T START WITH THE SEXUAL ACT ITSELF UNLESS DURING THE RAPPORT BUILDING PHASE A SURVIVOR DESCRIBED HOW THEY GOT THE INJURY.
- An investigator needs to provide a survivor with a starting point prior to the incident, things such as dinner, lunch, end of work, end of school, etc.

“I'd like to start by asking, can you tell me what happened around lunch today and how the day progressed until you came to the emergency room/calling law enforcement/speaking to friend, etc.?”

- Don't interrupt, allow them to talk.
- As the officer, avoid distractions, phones, clicking pens, writing down every detail.
- Acknowledge the survivor when they've answered a question, reassure survivor and if necessary, repeat details so they know you're paying attention such as:

“Thank you for telling me that. I'm going to repeat what you told me to make sure I understand...”

“I appreciate you being able to tell me that. I want to make sure I've got the information correct and am going to repeat what you told me.”

“You're doing a good job in telling me what happened, you told me (*repeat what they said*), is that correct?”

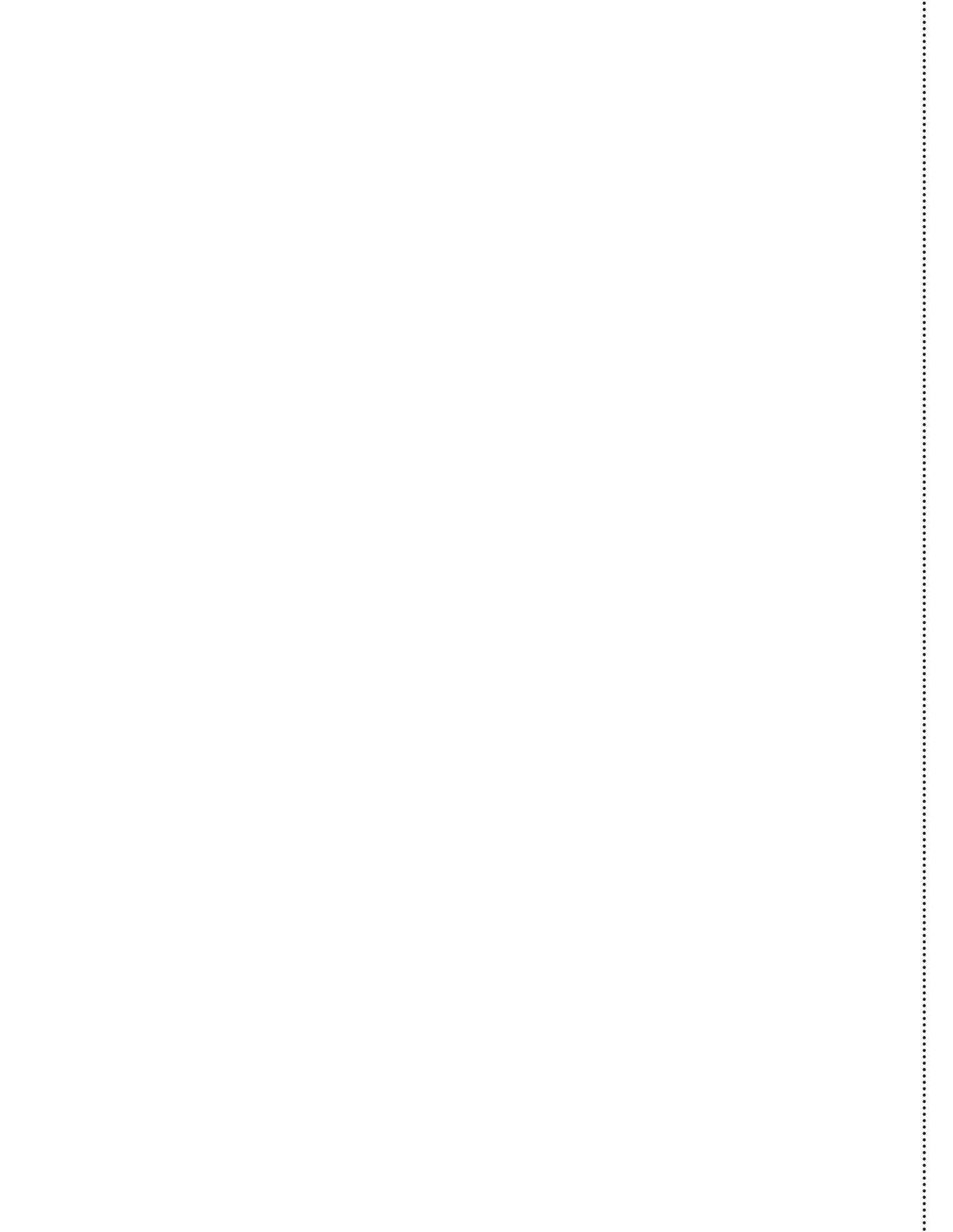
- If an investigator recognizes a survivor is struggling, tell the survivor it is okay to stop or take a break:

“I can see its upsetting to you, would you like to stop?”

“If you would like to take a break, we can. You are in control of this interview.”

- If a survivor uses a term to describe the act such as “He raped me” ask a follow up question:

“I know what rape means, but could you please explain what rape means to you?”



SEXUAL ASSAULT CHECKLIST

The following checklist is designed for the officer to follow when conducting a sexual assault investigation. This checklist can be utilized during the investigation to record proper field notes and observations by the officer for documentation purposes. The checklist will be broken down into sections for quick reference by the investigating officer.

What Is Consent?

In this guide, consent is defined by the Montana Code Annotated (MCA). As an investigator, you should also understand a commonsense approach to consent. “Consent is when someone agrees, gives permission, or says ‘yes’ to sexual activity with another person. For consent is to be genuine, it must be freely given—‘consent’ that is coerced or forced is not consent at all. Also, all people in a sexual situation must feel that they are able to say ‘yes’ or ‘no’ or to stop the sexual activity at any point. Anything less is not consensual.” (University of Michigan Sexual Assault Prevention and Awareness Center)

B. Montana Code Annotated (MCA) 45-2-101 provides definitions for elements of various forms of sexual assault and defines consent. You must know and understand these definitions because they inform the investigative work you will do, interviewing the people involved, collecting facts and evidence, and documenting your findings.

This section cites the definitions as they appear in MCA 45-2-101 and also gives examples of some activities that could be construed as criminal. The examples are not exhaustive—other activities not listed here may also be criminal.

DEFINITIONS: (45-2-101 General Principles of Liability)

- **Consent**

As defined in MCA 45-5-501, (1)(a), as used in 45-5-502, 45-5-503, and 45-5-508, the term “consent” means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined, but not limited by the following:

- “An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.”**
- “A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.”**
- “Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.”**

It is the duty of the law enforcement officer not to question or blame a survivor of an alleged sexual based offense. The officer is required to understand sexual activity is based on two individuals engaged in that sexual activity. Sexual activity is not just what happened at that moment, but before, during and after a sexual encounter. At any time during the encounter one or both parties may withdraw consent to a sexual act. An officer must keep an open mind while conducting the investigation and know differences between consensual and non-consensual activity. As a law enforcement officer, rely upon one’s own understanding of what a consensual sexual act would be.

- **Sexual Contact (*Criminal Elements*)**

Touching of the sexual or other intimate parts of the person of another

- **Directly or through the clothing in order to...**
 - Purposely or knowingly cause bodily injury (*pain, bruising*)
 - Purposely or knowingly humiliate (*survivor’s perception*), harass (*repetitive, annoying*), degrade (*power, control, demean, with or without an “audience”*)

- Arouse or gratify the sexual response or desire of either party (*arousal, stimulation, comments, bodily reaction*)

Sexual or intimate parts of the body can include but is not just limited to the breasts, buttocks, thighs, groin, vagina and penis. Other parts of the body can be classified as intimate or sexual if the contact stimulates either person (i.e., fetishes such as feet, toes, neck, etc.)

- **Sexual Intercourse (*Criminal Elements*)**

Penetration (any penetration, however slight, is sufficient for this element to apply) of the vulva, anus, or mouth of one person by the penis of another, a body member of another, or by a foreign instrument or object manipulated by another.

- Vulva** (*vaginal components*)
- Anus** (*either the suspect's or the survivor's during intercourse*)
- Mouth** (*either the suspect's or the survivor's during intercourse*)
- Causes bodily injury**
- Humiliates, harasses, or degrades** (*survivor's perception, suspect's actions*)
- Arouse, gratify the sexual response or desire of either party** (*arousal, stimulation, comments, bodily reaction of either party*)

The following are the definitions outlined in the Montana Code Annotated 45-5-501 describing the element of "without consent." Some examples are given to help you better understand the different non-consensual elements; other situations could also rise to be construed as "without consent." You must look objectively at all the circumstances before determining whether the act was "without consent." You may also want to consult with a prosecutor for assistance.

VOLUNTARY, INFORMED, AND KNOWLEDGEABLE CONSIDERATIONS: (VIK)

As the investigator, you can use the VIK test to refine your determination of whether consent was given. Was consent Voluntary, Informed, and Knowledgeable?

- Voluntary:** one's own choice and the choice being freely given (*not forced or coerced*)
- Informed:** aware and understanding of what was being consented to
- Knowledgeable:** aware and understanding of the circumstances

DEFINITIONS: (MCA 45-5-501 Sexual Crimes)

- **Without Consent – MCA 45-5-501 (*Criminal Elements*)**

- The victim is incapable of giving consent due to being mentally disordered or incapacitated.**
 - Developmentally disabled (*professional diagnosis*)
 - Injury impairing normal thinking (*concussion, can they make an informed decision?*)
 - Drug facilitation (*can the person act knowledgeably?*)
 - Intoxication (*impaired vs. intoxicated*)
 - Medically incapable (*in treatment*)
 - Neurological impairments (*Alzheimer's or dementia*)

- The victim is incapable of giving consent due to being or feeling physically helpless.** *(The survivor's perception may include the suspect's size, physical location of the sexual act, constant pressuring by the suspect, body language of the suspect, or intimidating actions of the suspect. To understand the "physically helpless" elements of "without consent," draw upon your training in use-of-force situations when you as the officer have exhausted all avenues to subdue a suspect, the suspect has gained the upper hand, and your last resort is the use of deadly force because you are physically helpless.)*
- The victim is incapable of giving consent due to being overcome by deception, coercion, or surprise.** *(The sexual act itself occurs before the victim can make an informed decision consenting to the sexual activity.)*
- The victim is incapable of giving consent due to being less than 16 years of age.** *(Important! This applies for both sexual intercourse and sexual assault.)*
- The victim is incapable of giving consent because the victim is a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting.**
- The victim is incapable of giving consent because the victim is a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated.**
- The victim is confined or incarcerated in a correctional facility, detention facility, or treatment facility or is on probation/parole.** *(It's important to understand that a person does not need be specifically imprisoned, only that their liberties have been restricted. In this sense, restricted liberty means the person is required to obey the rules of a facility or terms of probation. Failing to do so will result in punishment. As mentioned above, a person under the supervision of authority is deemed unable to voluntarily consent because they could reasonably fear punishment if they refuse sexual activity. In short, a potentially coercive situation exists.)*
- The victim is receiving services from a youth care facility.** *(Examples could be a children's hospital, group homes, foster homes, or foster care. This element includes anyone in a position of redirecting, correcting, or reporting on the victim's behavior or activity.)*
- The victim is admitted to a mental health facility, community-based facility, or residential facility or is receiving community-based services.** *(This section can include protected populations in those facilities such as the elderly and those with mental health concerns.)*
- As used in MCA 45-5-508, Aggravated Sexual Intercourse Without Consent, the term FORCE is defined in MCA 45-5-501, (2)(a)(b) as "the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."** *(Such force alters the victim's decision-making process through fear of harm to themselves or others.)*

- **Knowingly – 45-5-201 (Determining state of mind)**

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. In the case of sexual assault, an offender will take voluntary actions (such as placing their hands on the victim, physically pressing against the victim, or

displacing clothing) to engage in sexual contact. Such actions demonstrate the offender has thought about what to do to engage in sexual conduct and has thus acted “knowingly,” in both awareness of their own conduct and the likely result of that conduct. Knowingly making sexual contact without consent is a crime.

From the checklist, are any other elements met? Refer to MCA 45-5-501 “without consent,” officer’s observations, relevant facts, age, incapacitation, and other elements.

Montana Code Annotated: Sexual Assault (MCA 45-5-502)

DEFINITIONS: (MCA Title 45, Part 5, Sexual Crimes)

- **Sexual Assault – 45-5-502** (*Important information is outlined here to help you determine whether elements of the crime of Sexual Assault have been met. Use of this reference guide should in conjunction with the checklist.*)

A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

Fill in the following form to help determine and document whether the elements of the offense of sexual assault have been met. Refer to the checklist and document your findings. Remember: under Montana law, a person under the age of 16 years of age is unable to consent to sexual contact or sexual intercourse.

Age of Survivor: _____ **Gender:** Male Female

(If the assault occurred to a child under 12 years of age, you must follow Multi-Disciplinary Team protocol (see MCA 52-2-211). For any sexually related crime involving any child under 18 years of age, you are required to report the matter to Centralized Intake at 1-866-820-5437.)

- **Prior convictions of the suspect?** _____
- **Misdemeanor**
(For a 1st or a 2nd offense, or if the survivor is Over 16 YOA)
- **Felony**
(If the survivor is Under 16 YOA or for a 3rd or subsequent offense)

Consent:

Following MCA 45-5-501’s definition of consent, was the encounter consensual?

Facts documented: _____

Sexual Contact:

- **MCA 45-5-101 (Sexual Contact definitions)**
 - **Directly or through the clothing, causing:**
 - **Bodily Injury (pain, injury, or illness)**
 - **Humiliation, harassment, or degradation**
 - **Arousal or gratification of either the suspect or survivor**

Following MCA 45-5-101’s definition of sexual contact, are the elements of sexual contact met? YES NO

- **Describe the contact:** _____
- **On what intimate part of the body did the contact occur?** *(Be aware of the offender’s focus on the part of the body affected—it may not normally be thought of as “intimate.” Yet it may apply if the contact produced sexual stimulation,*

harassment, pain, injury, or degradation. Offenders may derive sexual stimulation from contact with a foot, neck, or other body part. If the contact with the body part meets the above listed elements, it is considered an intimate body part under this section.) _____

- **Direct or other contact?** _____

Bodily Injury:

(Injury includes the feeling of pain, not just physical evidence of contact such as bruising, swelling, or redness. Bodily injury can also include illness such as sexually transmitted disease.)

- **What Injury:** _____
- **What part of the body:** _____
- **How was it documented?** *(Photo? Statement?)* _____

Humiliation, Harassment, or Degradation?

(How does the survivor feel about the contact. Ask the survivor to describe his or her feelings about the contact.)

- **Document observations:** _____

Arousal or Gratification?

(Research shows sexual offenders seek to satisfy psychological and physical desires. Ask the survivor to describe how the suspect reacted to the sexual assault. Document if the survivor reports signs of arousal or gratification from the suspect such as heavy breathing, fondling of genitals, facial expressions, erection, ejaculation, comments or vocalizations made during the conduct, or other sexual responses?)

- **Document observations:** _____

Sexual Intercourse Without Consent (MCA 45-5-503)

- **SEXUAL INTERCOURSE WITHOUT CONSENT – 45-5-503** *(Important information is outlined here to help you determine whether elements of the crime of Sexual Intercourse Without Consent have been met. Use the reference guide along with the checklist.)*

A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent is always a felony offense.

Fill in the following form to help determine and document whether the elements of the offense of Sexual Intercourse Without Consent have been met. Refer to the checklist and document your findings. Under Montana law, a person under the age of 16 years of age is unable to consent to sexual contact or sexual intercourse.

(Age of Survivor: _____ Gender: Male Female

(If the assault occurred to a child under 12 years of age, you must follow Multi-Disciplinary Team protocol. For any sexually related crime involving any child under 18 years of age, you are required to report the matter to Centralized Intake at 1-866-820-5437.)

- **Felony Offense**
(Be aware of survivor and public safety considerations that require immediate apprehension of the suspect.)

Consent: MCA 45-5-501

(Montana Code Annotated 45-5-501 is the foundation of the meaning of consent. You must follow the definitions provided in statute and begin the investigation with an objective and non-biased approach to the crime.)

As defined in MCA 45-5-501, (1)(a) and as used in 45-5-503, “the term ‘consent’ means words or overt actions indicating a freely given agreement to have sexual intercourse and is further defined but not limited by the following:

- **“AN EXPRESSION OF LACK OF CONSENT THROUGH WORDS OR CONDUCT MEANS THERE IS NO CONSENT OR THAT CONSENT HAS BEEN WITHDRAWN”**
- **“A CURRENT OR PREVIOUS DATING OR SOCIAL OR SEXUAL RELATIONSHIP BY ITSELF OR THE MANNER OF DRESS OF THE PERSON INVOLVED WITH THE ACCUSED IN THE CONDUCT AT ISSUE DOES NOT CONSTITUTE CONSENT.”**
- **“LACK OF CONSENT MAY BE INFERRED BASED ON ALL OF THE SURROUNDING CIRCUMSTANCES AND MUST BE CONSIDERED IN DETERMINING WHETHER A PERSON GAVE CONSENT.”**

Determining Consent/No Consent:

Verbal Expressions: *(Did the survivor provide words or phrases to indicate their unwillingness to engage in the sexual act? Remember a person only has to say “no” in some form once and can include comments such as “no”, “stop”, “don’t,” “don’t do it”, “I don’t want to”, etc.)*

Document survivor’s verbal expressions: _____

Non-Verbal Conduct: *(Even if the survivor did not provide verbal expressions to indicate the unwillingness to consent, what non-verbal conduct did the survivor display suggesting the sexual act was unwanted? Remember things such as not feeling they had time to say “no” or resist, “frozen with fear”, “unable to do anything”, retreating to a defensive body posture, lack of non-sexual contact during the act, “fearful of being harmed,” “had to give in,” can be included in the non-verbal conduct. As the investigating officer there are other examples of non-verbal conduct that could arise during the investigation.)*

Document survivor’s non-verbal conduct: _____

- **The fact that there is a current or a prior dating, social or sexual relationship, between the parties by itself does not mean consent was given and is not to be considered.**
- **The manner of attire or dress by the survivor does not constitute consent. The investigating officer will not draw conclusions about the survivor’s dress and physical appearance in determining if the sexual act was consensual.**
- **The investigating officer can infer there was a lack of consent based on all the surrounding circumstances and those circumstances **MUST** be considered in determining if consent was given.**
- **The investigating officer can use the notes section to document other observations and findings during the course of the investigation.**

NOTES: _____

The following list of consent issues needing to be considered during the investigation, will assist the investigating officer to determine if other non-consensual elements of the crime exist.

FORCE: The investigating officer must remember if FORCE is deemed to have been used and meets the statutory element, then consent is deemed to have not been given.

The investigating officer must remember if FORCE is deemed to have been used then the correct statute is Aggravated Sexual Intercourse Without Consent, in violation of MCA 45-5-508.

As used in MCA 45-5-508, Aggravated Sexual Intercourse without Consent, the term FORCE is defined as “the infliction, attempted infliction, or threatened infliction of bodily injury, or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.” *(The victim’s decision-making process is compromised for fear of harm to themselves or others.)*

IF FORCE HAS BEEN DOCUMENTED...

- **Then continue with the investigation for sexual intercourse without consent,**
- **But go to the section on aggravated sexual intercourse without consent and refer to the checklist there for further examples and documentation.**

Consider other elements outlining a non-consensual encounter as described by statute:

INCAPABLE OF PROVIDING CONSENT: The statute addresses when consent is not effectively given due to contributing factors. Consider those contributing factors when evaluating consent.

- 1.) **Developmental disability: Determining a developmental disability can include a medical diagnosis, a caretaker makes necessary day-to-day living decisions, or the survivor displays outwardly delayed responses to what would be considered normal cognitive situations. Examples can include issues such as Down’s Syndrome and non-verbal autistic conditions. Other conditions may be present.**
- 2.) **Injury: Is there an injury rendering normal thought process to be diminished, e.g., concussion?**
- 3.) **Drug facilitation: Is the presence of a controlled substance rendering the survivor unable to make an informed decision? Remember that drug facilitation can be self-induced or administered by another.**
- 4.) **Alcohol consumption: Alcohol consumption can be a precipitating factor to a sexual assault. Do not assume that alcohol consumption led the survivor to effectively give consent. You must determine whether the amount of alcohol consumed would diminish the survivor’s ability to make an informed decision.**
- 5.) **Medically incapable: This situation usually arises when a person is under the care of an attending physician and being treated or on prescribed medications. Consider which drugs have been administered, the types of examinations, and the relationship of physician and patient. Consult with a prosecuting attorney for direction on how the investigation should proceed, but consider the surrounding circumstances.**

Use this notes section to document other observations and findings.

NOTES: _____

PHYSICALLY HELPLESS: Consider the survivor’s perception of the suspect’s size relative to the survivor, the physical location of the sexual act (such as isolation), constant pressuring by the suspect, body language of the suspect, intimidating actions of the suspect, more than one suspect, and other circumstances. Ask the survivor to explain why they felt physically helpless. (To understand what it means to be physically helpless, draw upon your training in use-of-force situations when you have exhausted all options to subdue a suspect and the suspect has gained the upper hand.)

DECEPTION, COERCION, SURPRISE: You may learn that the survivor engaged in sexual intercourse under a false pretense. Often, the suspect is a person of some authority over the survivor—a therapist, pastor, group leader, supervisor, or employer. For example, a cult may coerce sexual intercourse to be in good standing or to gain stature, or a counselor may claim that intercourse will be “therapeutic.” In the workplace, a supervisor may coerce sexual contact by threatening to fire the survivor if they don’t comply.

UNDER 16 YEARS OF AGE: If the survivor is under 16 years of age, consent can’t legally be given to sexual intercourse or sexual contact.

CONFINED, INCARCERATED, OR IS ON PROBATION/PAROLE: If the survivor was incarcerated in a correctional, detention, or treatment facility at the time of the alleged assault, then by law consent cannot be given. If the survivor is on probation or parole, by law they are unable to provide consent to anyone in authority over them, such as a probation officer, parole officer, or law enforcement officer.

It is appropriate to confer with the prosecutor reviewing your investigation to see if the criminal elements of sexual assault have been met. Also, seek advice from your supervisors or others with a strong background in sexual assault investigations to ensure that you haven’t missed anything and that your work is thorough.

NOTES: _____

To determine whether sexual intercourse occurred during the incident, consider the following.

PENETRATION: Any penetration of any orifice, however slight, is sufficient for this element to apply. During the course of the investigation, you will need to determine whether penetration occurred to the vulva (main components of the female sex organ), anus, or mouth of one person by the penis, body member (fingers, toes, tongue, etc.) of another person or by a foreign instrument or object manipulated by another.

To be considered sexual intercourse without consent, an incident does not have to meet all of the elements in the statute. Your focus should be on documenting what elements did occur and determining whether the intercourse caused bodily injury; humiliated, degraded, harassed, either person; or aroused or gratified the sexual response or desire of either person.

Psychological research has determined that certain sexual intercourse acts are deviant just by the nature of the act itself. So, it’s important to take into account the survivor’s perception of the sexual intercourse or penetration when you consider the element of humiliation, harassment, or degradation. Some types of penetration, intercourse, and gratification by themselves will meet the statutory elements of sexual intercourse without consent. You need to ask the survivor whether they would normally have consented to the type of sexual intercourse; also determine and document the survivor’s perception of how the sexual intercourse made them feel, before, during and after the sexual intercourse.

TYPE OF PENETRATION:

- Penis to Vagina
- Mouth to Vagina
- Vagina with Other Body Member Describe: _____
- Anus with Other Body Member Describe: _____
- Vagina with Other Foreign Object Describe: _____
- Anus with Other Foreign Object Describe: _____
- Penis to Anus
- Mouth to Penis

BODILY INJURY: If injury is inflicted during the act itself, and the act is deemed to be non-consensual, then Aggravated Sexual Intercourse Without Consent (MCA 45-5-508) has been committed.

“Injury” includes the feeling of pain, not only physical evidence of contact such as bruising, swelling, or redness. Injury also includes illness, such as sexually transmitted diseases.

What Injury: _____

What part of the body: _____

How was it documented? (Photo? Statement? By L.E.?) _____

HUMILIATION, HARASSMENT, OR DEGRADATION: Consider the survivor’s perceived feelings about the sexual intercourse, including any acts performed during the sexual intercourse that made the survivor feel humiliated, harassed, or degraded. In a non-consensual encounter, things to consider include sexual positions, comments made during the sexual act, or how the suspect gratified themselves. It’s important to ask about those actions during the investigation. These are difficult conversations to have with a survivor, but you must have that conversation. Ask the survivor about their feelings regarding the sexual contact.

Document observations: _____

AROUSAL OR GRATIFICATION? Research shows that sexual offenders seek to satisfy psychological and physical desires. Carefully ask the survivor to describe their perceptions of the suspect’s emotions. The suspect may have displayed outward signs of arousal or gratification, which could include heavy breathing, fondling of genitals, facial expressions, erection, ejaculation, or other sexual responses.

Document observations: _____

Aggravated Sexual Intercourse Without Consent (MCA 45-5-508)

When a crime rises to the level of an aggravated offense, the circumstances are more serious, and the punishment is more severe. Follow the checklist to help you determine whether the incident meets the elements of Aggravated Sexual Intercourse Without Consent. As you use this guide, your initial investigation into Sexual Intercourse Without Consent will touch on the elements of whether it was “aggravated.” The following section will help you to further document and outline the elements of Aggravated Sexual Intercourse Without Consent.

- **Aggravated Sexual Intercourse Without Consent – 45-5-508** *(Refer to the definitions to help determine if the incident meets elements of the crime.)*

“A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent.” *(The same elements of Sexual Intercourse Without Consent, MCA 45-5-503, apply, but to become an aggravated offense, the force elements must be met. The force elements are outlined below. This offense is always a felony.)*

FORCE: If force is found to have been used, and it meets the statutory element, then consent is deemed to have not been given. The offense now becomes an aggravated offense and the relevant statute is Aggravated Sexual Intercourse Without Consent, in violation of MCA 45-5-508.

The definition of force (see 45-5-501(2)(a)(b)) is:

“As used in MCA 45-5-508, Aggravated Sexual Intercourse without Consent, the term FORCE is defined as; the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.” *(In short, the survivor’s decision-making process is compromised for fear of harm to themselves or others.)*

Following the definition above, you should consider the following:

Infliction of injury: Did the incident result in injury to the survivor? *Injury can include scratches, redness, swelling, bruising, or the presence of pain.)*

Describe the injury: _____

Document the injury: *(Make sure the injury is documented. Intimate injuries must be documented by medical professionals.)* **How was the injury documented?** _____

Attempted infliction of injury: Were there circumstances that indicate there was an attempt to inflict injury? This could be the attempted use of a weapon *(such as a firearm that did not discharge or a knife that was dropped, etc.).*

Describe the attempted infliction: _____

Threatened infliction of injury: Did the survivor perceive they would be injured during the incident? The threatened infliction of injury not only includes verbal threats but also other circumstances in which other actions make the survivor feel they would be injured. Examples could be the clenching of a fist suggesting a punch, hands clenched moving toward the neck to suggest strangulation, and other actions indicating a threat of injury. Describe the actions that suggest there was a threatened infliction of injury: _____

Commission of a forceable felony: As defined in MCA 45-2-101(24), a forceable felony is one that involves the use or threat of physical force or violence against any individual. Consider whether a forceable felony was committed, e.g., aggravated burglary, felony partner/family member assault, or robbery, etc., in conjunction with the sexual intercourse. Describe the forceable felony: _____

The threat of substantial retaliatory action causing the survivor to reasonably believe the offender can execute the threat: Examples of threatening retaliatory action could be the threat of violence against the survivor’s children, significant other, or family members; isolation; adverse effects on social status; humiliation; embarrassment; or other situations to bring fear to the survivor affecting their decision-making process. Describe the retaliatory actions by the offender: _____

MONTANA CRIME VICTIM RIGHTS

The Montana Department of Corrections Victim Services Program is dedicated to ensuring that victim rights are enforced, and victims have a meaningful voice within the state correctional system.

Victim rights in Montana include but are not limited to the following:

The right to information about all events related to the case.

The right to have a prosecutor and/or victim advocate present when a victim is interviewed.

The right to know the offender's location at all times from arrest until his or her release from supervision.

The right to protection from intimidation, harassment, discrimination, and abuse throughout the criminal justice system.

The right to attend court proceedings unless the court determines that the victim's absence is necessary to a fair trial.

The right to one free copy of public documents in their case. Court documents are available from the clerk of the court in the county in which the case was prosecuted.

Victims and immediate family members of sex crimes have the right to request that the sentencing judge, parole board or probation officer order the offender to have no contact with them.

To learn more about statutes pertaining to victims please see Title 46, Chapter 24 of the Montana Code Annotated (MCA) or the National Crime Victim Law Institute.

RESOURCES FOR CRIME VICTIMS

Montana Sexual Assault Kit Initiative (SAKI) Hotline: 1-888-548-5463

- Visit the website below for an interactive map of Crime Victim Advocate resources across the state
<https://dojmt.gov/enforcement/specialservices/saki/saki-survivor-resources/>

Montana Sexual Assault Kit Tracking System: Check Kit Status

- Visit <https://dojmt.gov/enforcement/specialservices/saki/saki-kit-status/>

Montana Office of Victim Services: Toll Free 1-800-498-6455

- Visit <https://dojmt.gov/victims/>
- Visit <https://dojmt.gov/victims/forms/>

Montana Crime Victims Compensation Program: Toll Free 1-800-498-6455

- Visit <https://dojmt.gov/victims/crime-victim-compensation/>

Montana Forensic Rape Examination Payment Program: 406-444-3653

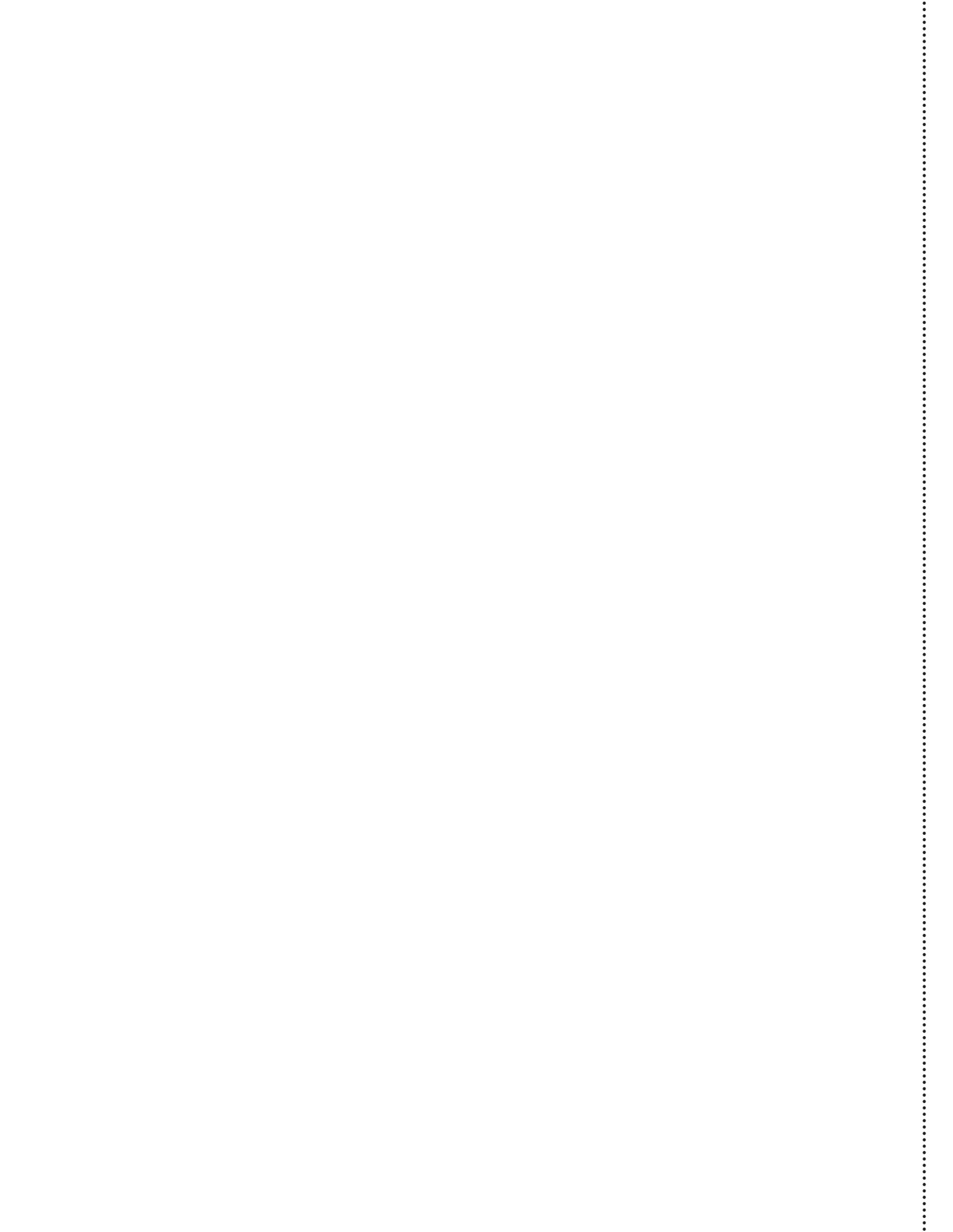
- Visit <https://dojmt.gov/victims/forensic-rape-examination-payment-program/>

National Sexual Assault Hotline (RAINN): 1-800-656-4673 (800-656-HOPE)

- Visit <https://www.rainn.org/>

Montana Coalition Against Domestic and Sexual Violence: 1-888-404-7794

- Visit <https://mcadsv.com/>



Montana Sexual Assault Kit Tracking System

The Sexual Assault Kit Tracking System was developed specifically for Montana. The system is designed to protect survivor's information and allow anonymity when checking kit status. The tracking system shall:

- (a) track the status of a sexual assault evidence kit from the collection site through the criminal justice process, including the initial collection at a health care facility, inventory and storage by law enforcement agencies, analysis at a crime laboratory, and storage or destruction after completion of analysis;
- (b) allow law enforcement agencies, health care facilities, a crime laboratory, and other entities that receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits; and
- (c) allow an individual to anonymously access the tracking system to track the location and status of the individual's sexual assault evidence kit.

Survivors have control to check real-time kit status or opt-in to receive notifications when a change in status has occurred.

Resources for Law Enforcement Officers

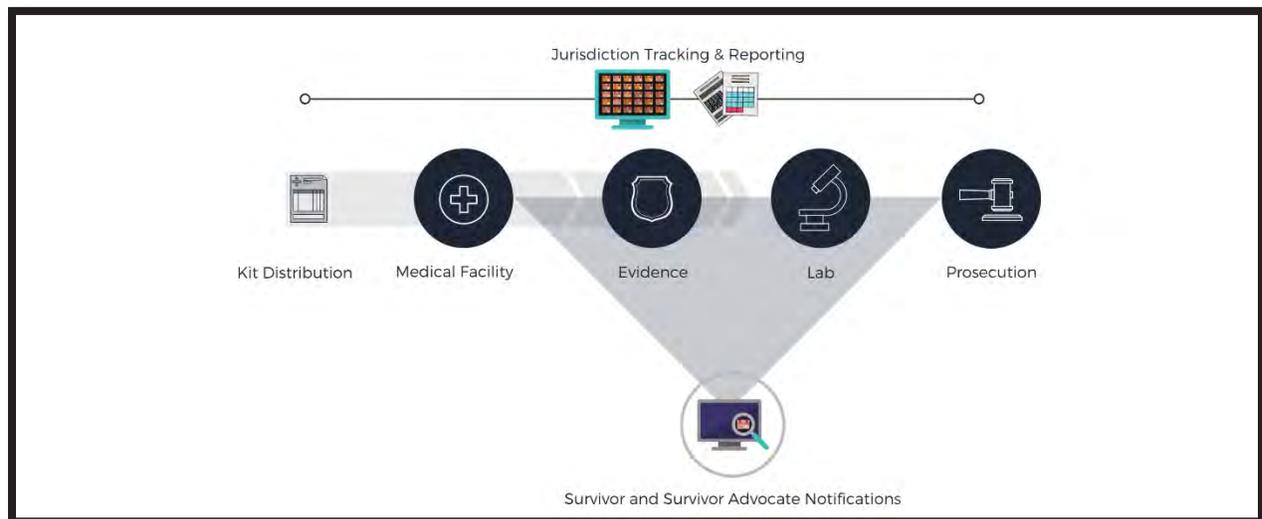
Law enforcement officers can access the Montana Sexual Assault Kit Tracking System by visiting the following website: <https://svc.mt.gov/doj/kittrack>

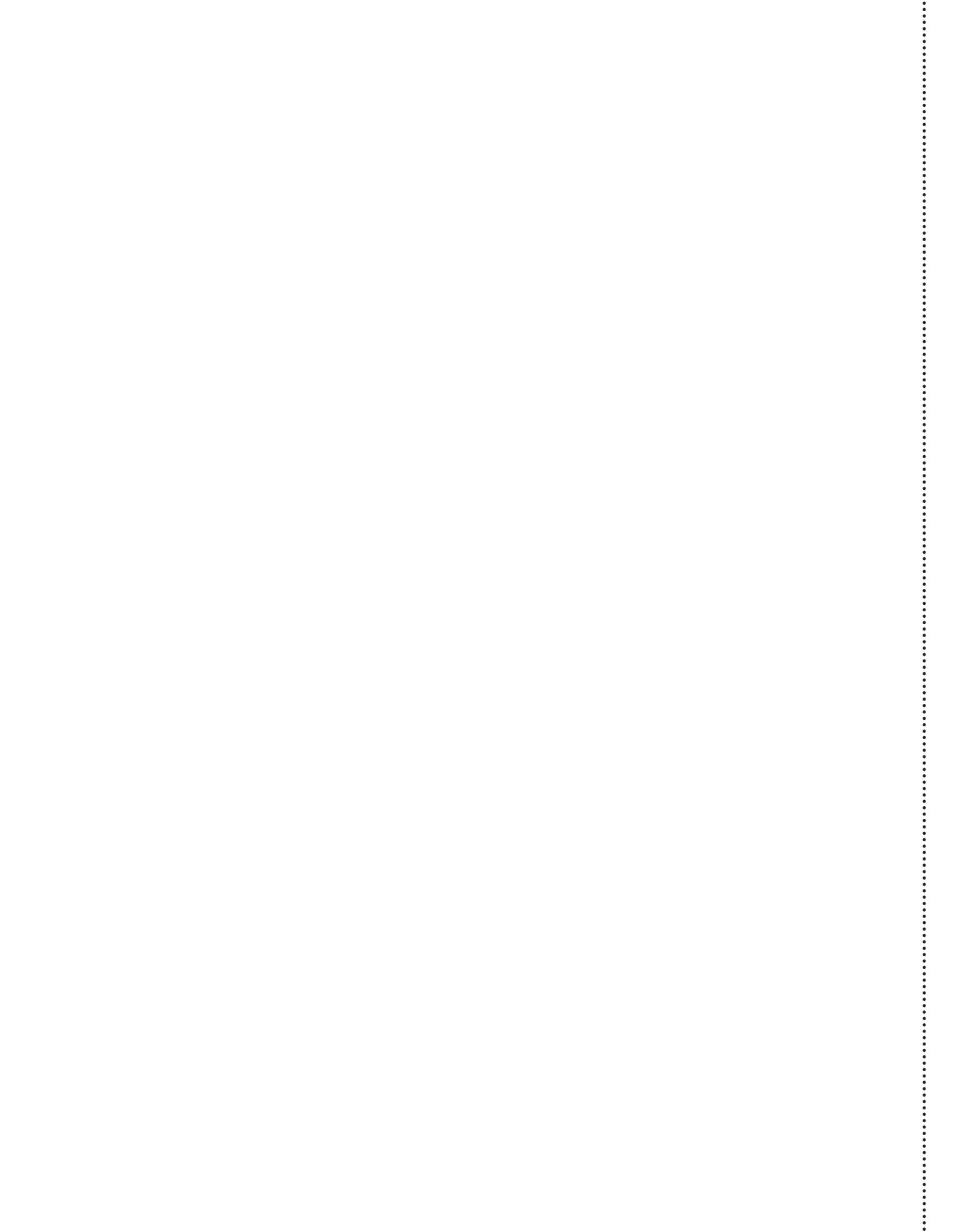
To view webinars and educations material, visit <https://dojmt.gov/enforcement/childrensjustice/saki/>

Please call Tech Support at (406) 444-3993 should any issues arise with the system.

Please direct survivors to the following website to check their kit status:

<https://dojmt.gov/enforcement/specialservices/saki/saki-kit-status/>





Electronic Device

CONSENT TO SEARCH

Case Number _____

I, (print name) _____ DOB _____
 after have been informed of my Constitutional Right not to have a search made of the property mentioned below without a search warrant and of my right to refuse consent to search, hereby authorize members of (Law Enforcement Agency - _____) or including but not limited to a computer/ electronic devise forensic examiner, who (Law Enforcement Agency - _____) may designate to assist, access and search, to conduct a complete search of any electronic device including cellular telephones, pagers, personal data assistance (PDA's), MP3 player or any other electronic or data storage device which may be pertinent to (Law Enforcement Agency - _____) investigation. This includes having any electronic or digital storage media found within the electronic device analyzed by authorized personnel who have specialized training necessary to conduct an examination.

I have decided to give this consent after careful thought, of my own free will and without being subject to any threats or promises. I know and understand that anything they may discover can and may be used against me in a court of law.

Signature _____ Date and Time _____

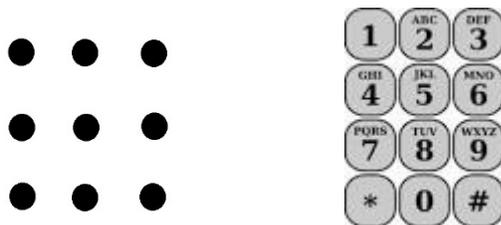
Witness (print)- _____ Witness Signature _____

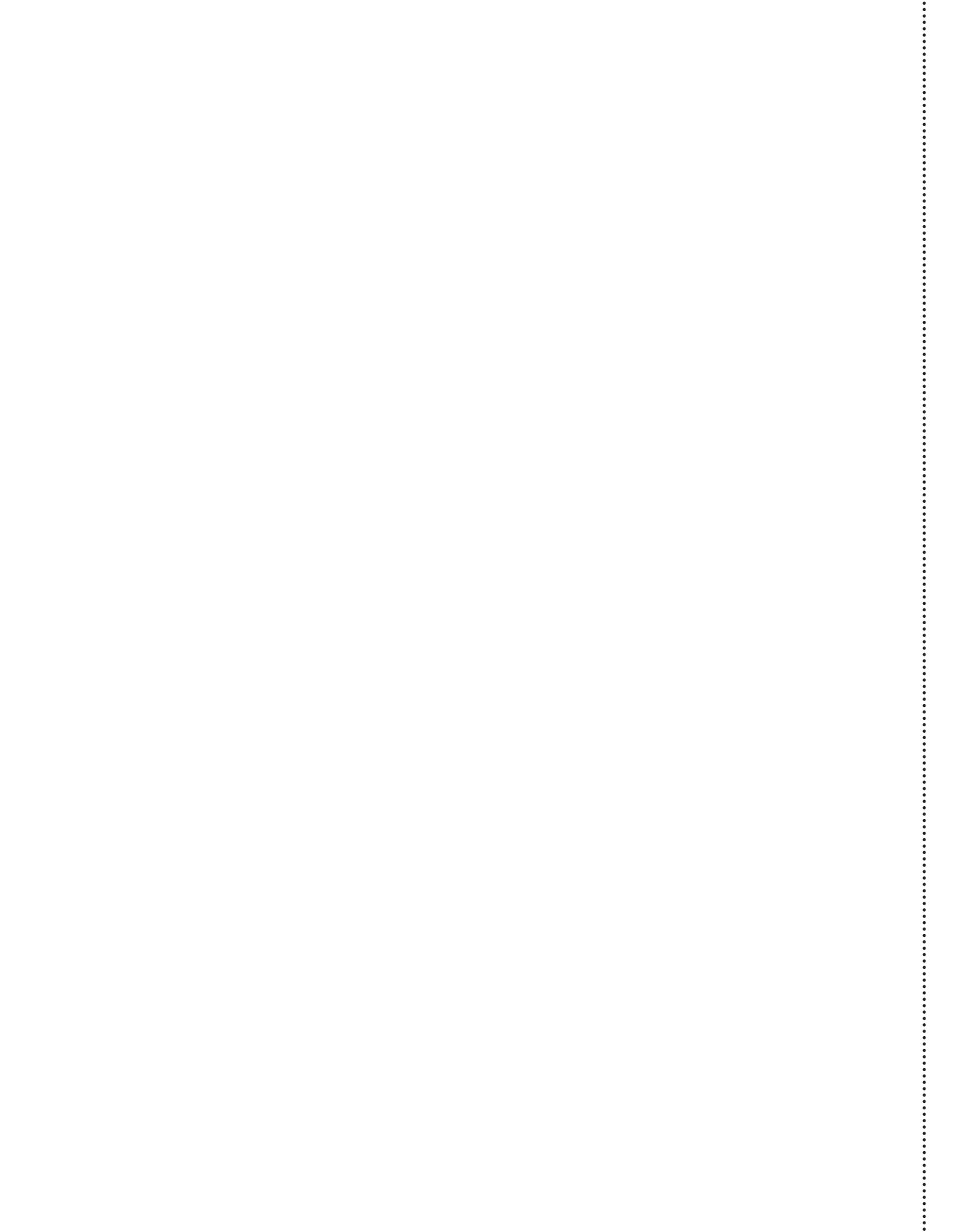
Device Description and Phone Number _____

Model # _____ S/N # _____

Service (AT&T, Verizon, etc.) _____

Passcode or Swipe code _____





NOTICE OF RIGHTS FOR VICTIMS OF VIOLENT CRIMES

Criminal Charges: The City or County Attorney's office can file criminal charges against an offender if that person committed the offense of partner or family member assault, sexual assault, or any other crime against you.

Orders of Protection: If you are the victim of a violent crime, you may petition the court for an order that:

- (1) prohibits the offender from hurting you or threatening to hurt you;
- (2) directs the offender to leave your home and prohibits the offender from having any contact with you;
- (3) prevents the offender from transferring any property, except in the usual course of business;
- (4) prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your work site or other specified place;
- (5) gives you possession of necessary personal property;
- (6) prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in District Court, the District Court may order all of the above and may award custody of your minor children to you or to the other parent. The District Court may order visitation of your children between the parents. The District Court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

Obtaining an Order of Protection: The forms that you need to obtain an order of protection (O.P.) can be obtained at: **(list local information)**. You may call **(no. of local victim-witness advocate)** for additional information.

Conditions of Bond: The Conditions of Bond ordered for an offender can provide many of the same protections as those in an Order of Protection and can address other concerns you may have such as the following:

Restitution and Compensation: You may be eligible for:

- restitution payments from the offender (the offender would be required to repay you for the costs you have had to pay as a result of the crime). You may call the victim/witness advocate at **(local number)** for additional information about restitution.
- crime victim compensation payments (a fund administered by the State of Montana for innocent victims of crime). Call the Crime Victim Compensation program at **800-498-6455**.

Release of Offender: You are entitled to know if the offender has been released from jail. You can call the victim/witness advocate at **(local phone no.)** or the county jail at **(local phone no.)** for this information.

As a crime victim, there are many resources available to you in _____ County:

List local and state resources

Signed: _____ Date: _____

Victim/Survivor Signature

Printed Name of Officer: _____

Signature of Officer: _____

Copies Given To:

- _____ Victim
- _____ Victim/Witness Advocate
- _____ Law Enforcement

EXAMPLE

1 The facts that this application relies upon to establish probable cause for the issuance of
2 a search warrant are:

3 Applicant is a *(YOUR AGENCY) Police Officer* and POST certified Peace Officer in
4 the State of *(YOUR STATE)* with *(Insert years' experience)*. I have training and experience in
5 **LIST OFFICER'S TRAINING AND EXPERIENCE, RELEVANT TO THE**
6 **ITEMS/INVESTIGATION CONCERNING THE SEARCH WARRANT.** I have been
7 assisted in this investigation by other POST certified Peace Officers employed by the *(AGENCY)*
8 Police Department.

9
10 **THIS SECTION IS WHERE THE OFFICER PLACES THE PROBABLE CAUSE**
11 **CONCERNING HIS OR HER REASON TO SEARCH THE ITEM.**

12
13 **If applicable consider using the following language:** This application contains criminal
14 investigative information. Mont. Code Ann. § 44-5-103(6). Criminal investigative information
15 is confidential criminal justice information, dissemination of which is restricted by law to
16 criminal justice agencies, to those authorized by law to receive it and to those authorized to
17 receive it by a district court upon a written finding that the demands of individual privacy do not
18 clearly exceed the merits of public disclosure. Mont. Code Ann. §§ 44-5-103(3)(a) and 44-5-
19 303 (1). Unauthorized dissemination of this information could damage the reputation and well-
20 being of innocent persons. Unless otherwise ordered by a district court, any person who accepts
21 confidential criminal justice information assumes responsibility for the security of the
22 information. Mont. Code Ann. § 44-5-303(3).

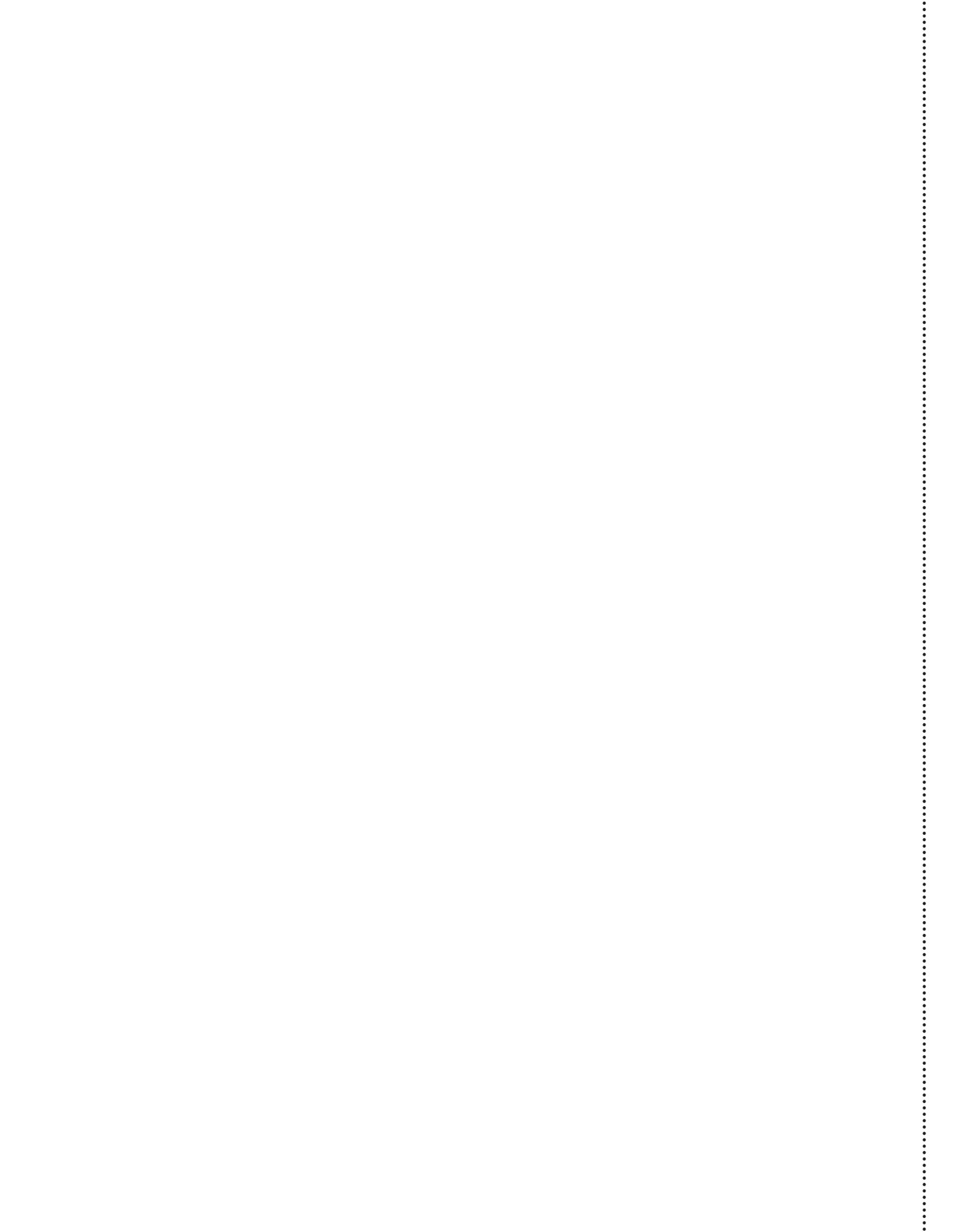
23 Based on Applicant's training and experience, criminal investigations require that the
24 suspect should remain unaware of the investigation until the investigation is complete. Suspects
25 or other third parties who become aware of the investigation may hinder the investigation by

1 disposing of evidence, changing their manner and method of conducting transactions and
2 threatening or otherwise tampering with witnesses. Disclosure of the existence of the application
3 and search warrant at this time may jeopardize an ongoing investigation, the privacy rights of
4 third parties and possibly expose others to physical harm. Applicant requests, therefore, that this
5 application and any search warrant or return of search warrant be sealed until this court gives the
6 (*JURISDICTION'S PROSECUTOR'S*) Office notice and opportunity to prevent its
7 unauthorized disclosure.
8
9

10 _____
Affiant

11
12 Sworn to and subscribed before me on the Day of Month, Year.

13 _____
14 DISTRICT COURT JUDGE
15
16
17
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*GENERIC E-MAIL PRESERVATION LETTER
(USE YOUR AGENCY'S LETTERHEAD)*

SEXUAL ASSAULT INVESTIGATION OR OTHER APPLICABLE CRIME

June 27, 2013

Google Legal Investigations Support
GMail
1600 Amphitheatre Parkway
Mountain View, California 94043
Fax: 650-249-3429
E-mail: uslawenforcement@google.com

Dear Google Legal Investigations Support Team:

This letter serves as a formal request for the preservation of records and other evidence pursuant to 18 U.S.C. § 2703(f) pending further legal process. For the Google/Gmail/Mail e-mail subscriber ID/addresses listed below:

(LIST E-MAIL, SCREEN NAME, SOCIAL MEDIA I.D., TO BE PRESERVED)

Joemith79@someemail.com

The requests are part of an ongoing investigation into ***(reason for investigation, type of investigation)***

You are hereby requested to preserve, for a period of 90 days, the records described below currently in your possession. This request applies only retrospectively. It does not in any way obligate Google/Gmail/Mail to capture and preserve new information that arises after the date of this request. This preservation request specifically applies to all records and other evidence relating to the subscriber(s), customer(s), account holder(s), or other entity(ies) associated with the subscriber(s) identified above, including, without limitation:

- Subscriber names, user-names, screen names, or other identities;
- Mailing addresses, residential addresses, business addresses, email addresses, telephone number and other contact information;
- Billing records;
- Information about length of service and the types of services the subscriber(s) or customer(s) used;
- Any other identifying information, whether such records are in electronic or other form;
- Connection logs and records of user activity for the subscriber(s) identified above, including log-in history and records identifying sent and received communications;
- All communications stored in the account(s) of the subscriber(s) identified above; and

- All files that are controlled by user accounts associated with the subscriber(s) identified above.

At this time, we are expecting to obtain formal legal process within 90 days. We acknowledge that if we do not serve legal process upon you in the next 90 days and do not request a 90-day extension, the preserved information may no longer be available.

Thank you.

Officer's Name

Officer's Agency

Agency's Address

Agency's Town

Officer Contact Phone

Officer E-mail

*GENERIC CONSENT TO ASSUME ONLINE PRESENCE
(USE YOUR AGENCY'S LETTERHEAD)*

I, _____ (Printed Name of Person providing consent), hereby voluntarily authorize _____ (YOUR AGENCY AND YOUR NAME), to take over control of an use my "online presence." This online presence includes the following screen name(s), nick name(s), and/or e-mail addresses, as well as the passwords associated with these accounts:

ACCOUNT NAME:

PASSWORD:

I consent to the use of my (or my child's) online presence for any purposes relating to an official investigation by the above law enforcement authority, including (but not limited to) sending and receiving e-mail or conducting any other electronic communications, accessing stored information, and using and disclosing such communications or information.

I understand and acknowledge that by signing the consent form, I relinquish all present and future claims to the use of these accounts. I understand that law enforcement authorities will change the password(s) to this account so that I will no longer have access.

I give this consent freely and voluntarily, without fear, threats, coercion, or promises of any kind. I have been advised of my right to refuse to allow the assumption of my (or my child's) online presence, and I hereby voluntarily waive the right.

Signature: _____

Witness: _____

Name (Printed): _____

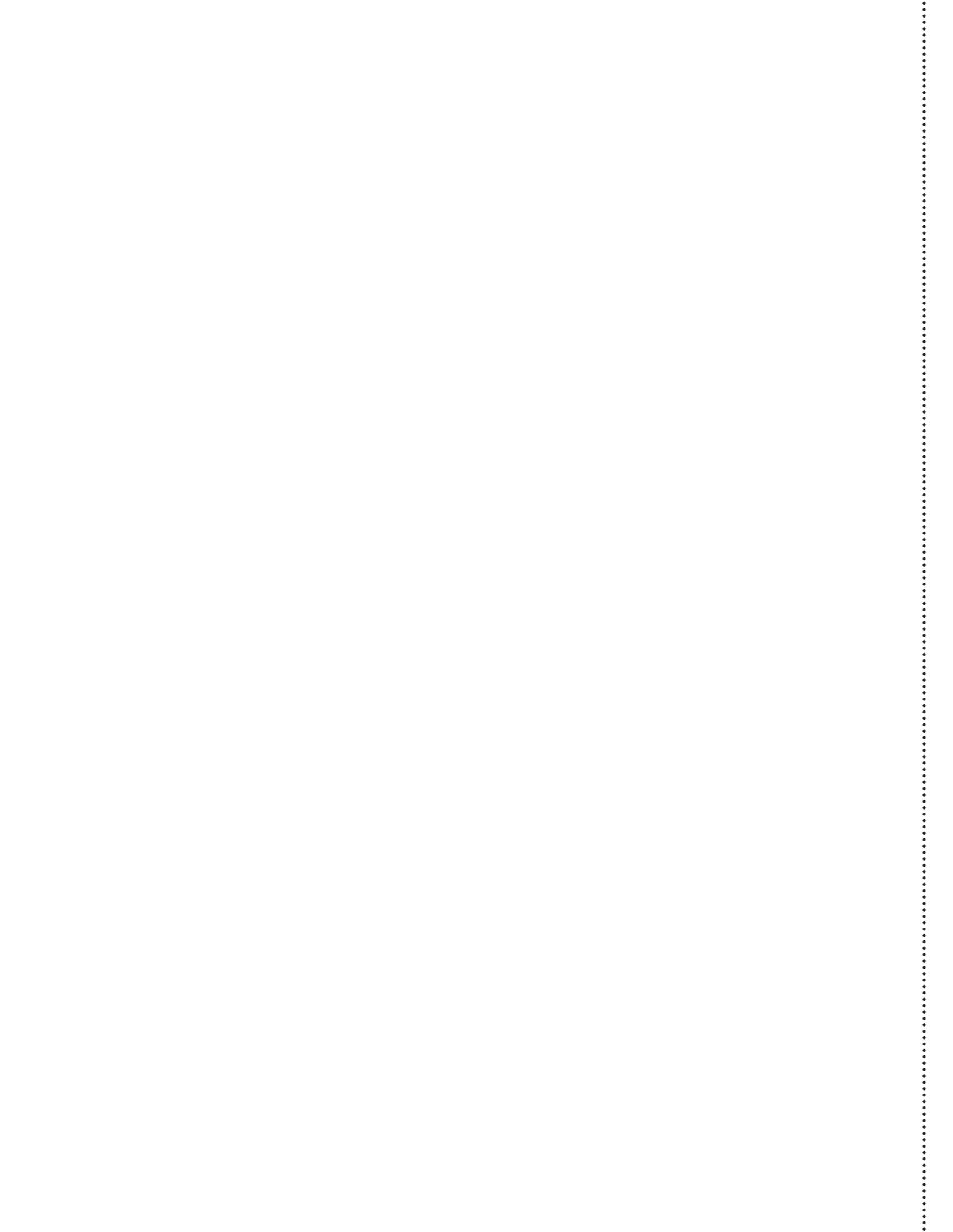
Name (Printed): _____

Date: _____

Signature of Parent/Guardian: _____

Name (Printed): _____

Date: _____



GENERIC PRESERVATION LETTER FOR WIRELESS
(Use your Agency's letterhead)

Date

AT&T
National Court Order Compliance
11670 US Highway 1, Suite 600
North Palm Beach, Florida, 33408-3029
Fax Number 1-888-938-4715

Case Number: (Agency Case Number)

Dear Custodian of Records:

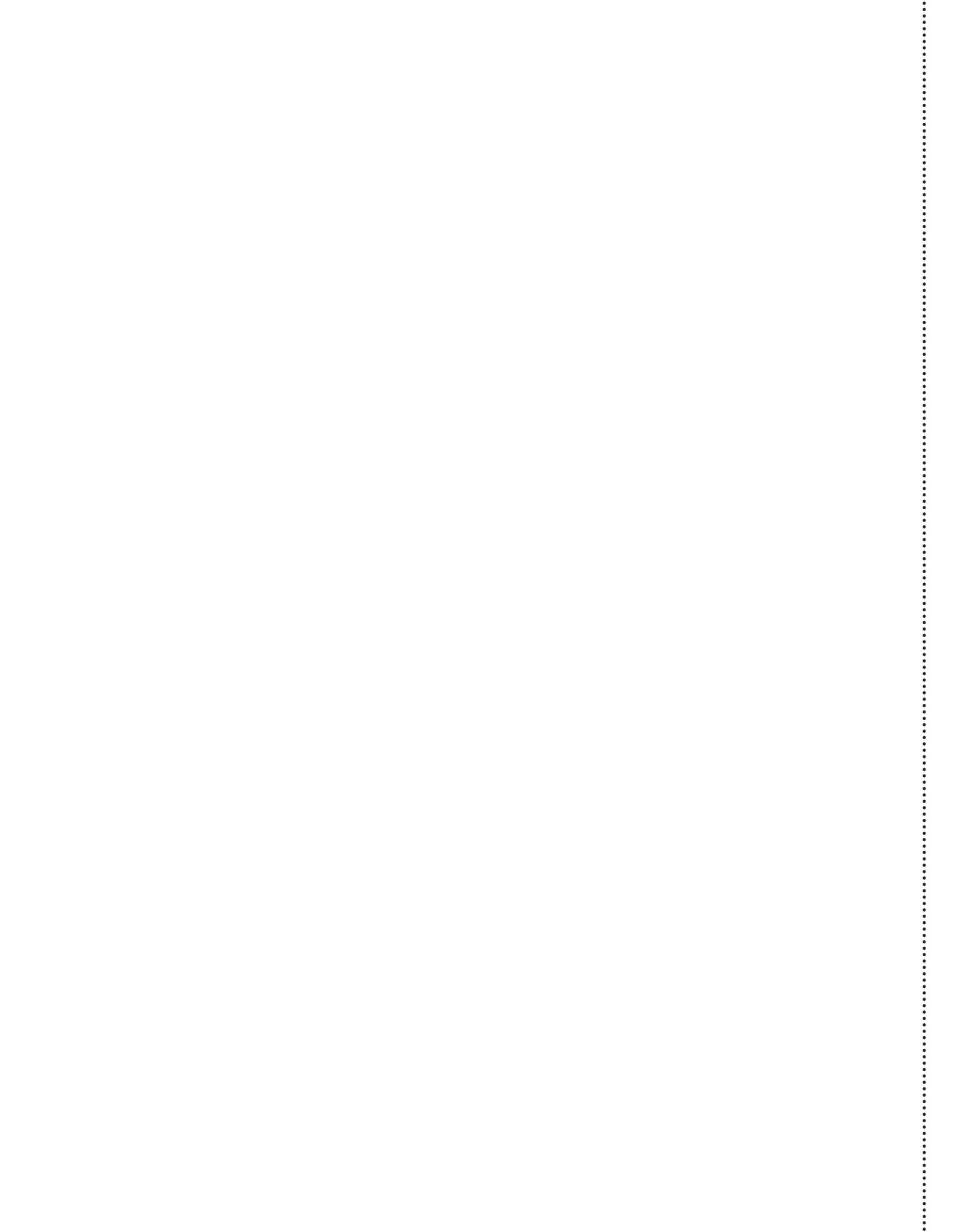
The below listed telephone number is the subject of an ongoing criminal investigation at this agency, and it is requested that said telephone numbers and all read, sent, and deleted text messages, read, sent and deleted picture messages, incoming and outgoing phone calls, cell tower connections, cell tower locations and other information contained herein, between December 1, 2011 and the present, be preserved pending the issuance of a search warrant. Please also preserve account histories, detailed billing information, payment history, method of payment and credit card numbers used, any files attached to e-mail/text messages and any other information maintained by or within the databases of AT&T.

- 1) Target phone number (999)999-9999 – Name of suspect - John Doe

We are expecting to obtain formal legal process in the next 90 days. We acknowledge that if we do not serve legal process upon you in the next 90 days, and do not request a 90-day extension, the preserved information may no longer be available. This request applies only retrospectively, and it does not in any way obligate AT&T to capture and preserve new information that arises after the date of this request

Thank you.

Officer's Name
Officer's Agency
Agency's Address
Agency's Town
Officer Contact Phone
Officer E-mail



IN THE DISTRICT COURT OF (*YOUR JURISDICTION*), (*STATE*) BEFORE
(*JUDGE'S NAME*), (*JUDGE'S AUTHORITY*)

IN RE THE SEARCH OF:
THE PERSON JOHN JOSEPH SMITH
DATE OF BIRTH (JANUARY 1, 1900)
PRESENT LOCATION (I.E. DETENTION CENTER,
HOSPITAL, INTERVIEW ROOM),

No. (*Agency Case Number*)

APPLICATION FOR SEARCH WARRANT

STATE OF (*YOUR STATE*))

: ss.

County of (*YOUR COUNTY*)

On (**Insert Date**), (*Your Name*) of the (*Your Agency*) has personally appeared before me and having been sworn, deposes and says:

That the offense of **SEXUAL ASSAULT**, in violation of Section 45-5-502, MCA (a felony), has been committed.

That he has good reason to believe and does believe that in and upon certain property and person located in (Your Jurisdiction and State), particularly described as follows:

THE PERSON JOHN JOSEPH SMITH DATE OF BIRTH (JANUARY 1, 1900), PRESENT LOCATION (I.E. DETENTION CENTER, HOSPITAL, INTERVIEW ROOM),

there have been and are now located certain items of property that are evidence of a crime, and are particularly described as:

Photographs of Smith's person. DNA swabs of Smith's person, fingernail scrapings of Smith's person and a DNA buccal swab of Smith's person, the clothing of Smith upon (I.E. booking into detention, emergency room examination, interview room).

The facts grounding this application that applicant relies to establish probable cause for the issuance of a search warrant are as follows:

Applicant is Post Certified as a Peace Officer by (*YOUR STATE*) with (*YEARS OF*

SERVICE) years law enforcement experience. I have been trained in sexual assault investigations and have investigated many sexual assault related crimes in my career. I have been trained in crime scene investigations and processed numerous crime scenes during my career. When conducting sexual assault investigations, evidence transfers from the body of a victim and suspect and can remain. That evidence can be things such as hair, semen, saliva, blood and other biological evidence. In the course of a victim defending him/herself, defense wounds can be present on the body of the suspect. The body is then considered a crime scene. I also know that evidence can also be transferred to clothing after the sexual assault has taken place and evidence such as hair, body fluids and other biological evidence can be present on the clothing of the victim and suspect. I make this application on the basis of my investigation as well as input from numerous other peace officers involved in the investigation.

(SUMMARY OF THE INVESTIGATION ESTABLISHING PROBABLE CAUSE)

Investigators would like to photograph the defendant's person to document the type and location of injury existing on his body at the time of the search and to identify the person searched. Investigators would like to obtain fingernail scrapings and DNA evidence from defendant's person. Investigators would also like to obtain a buccal swab as a control sample from defendant to establish DNA of the defendant. Investigators would like to obtain the clothing defendant was wearing upon **(I.E. booking into detention, emergency room examination, interview room)** to determine if evidence is present.

Based on the above, the applicant requests that a search warrant be issued, authorizing a search of the described property in the manner provided by law.

Applicant (***YOUR NAME***)

Sworn to and subscribed before me on the _____ day of **Month, Year.**

(***AUTHORITY OF THE JUDGE***)

IN THE DISTRICT COURT OF (*YOUR JURISDICTION*), (*STATE*) BEFORE
(*JUDGE'S NAME*), (*JUDGE'S AUTHORITY*)

IN RE THE SEARCH OF:
THE PERSON JOHN JOSEPH SMITH
DATE OF BIRTH (JANUARY 1, 1900)
PRESENT LOCATION (I.E. DETENTION CENTER,
HOSPITAL, INTERVIEW ROOM),

No. (*Agency Case Number*)

SEARCH WARRANT

To (*Your Name*) of the (*Your Agency*) or law enforcement officers acting at his/her direction
and control:

A sworn application having been made before me by (*Your Name*) of the (*Your Agency*) that
he/she has reason to believe that upon certain property and person in (Your Jurisdiction and State),
and particularly described as:

**THE PERSON JOHN JOSEPH SMITH DATE OF BIRTH (JANUARY 1, 1900),
PRESENT LOCATION (I.E. DETENTION CENTER, HOSPITAL, INTERVIEW ROOM),**

there have been and are now located certain items of property that are evidence of a crime, and are
particularly described as:

**Photographs of Smith's person. DNA swabs of Smith's person, fingernail scrapings of Smith's
person and a DNA buccal swab of Smith's person, the clothing of Smith upon (I.E. booking
into detention, emergency room examination, interview room).**

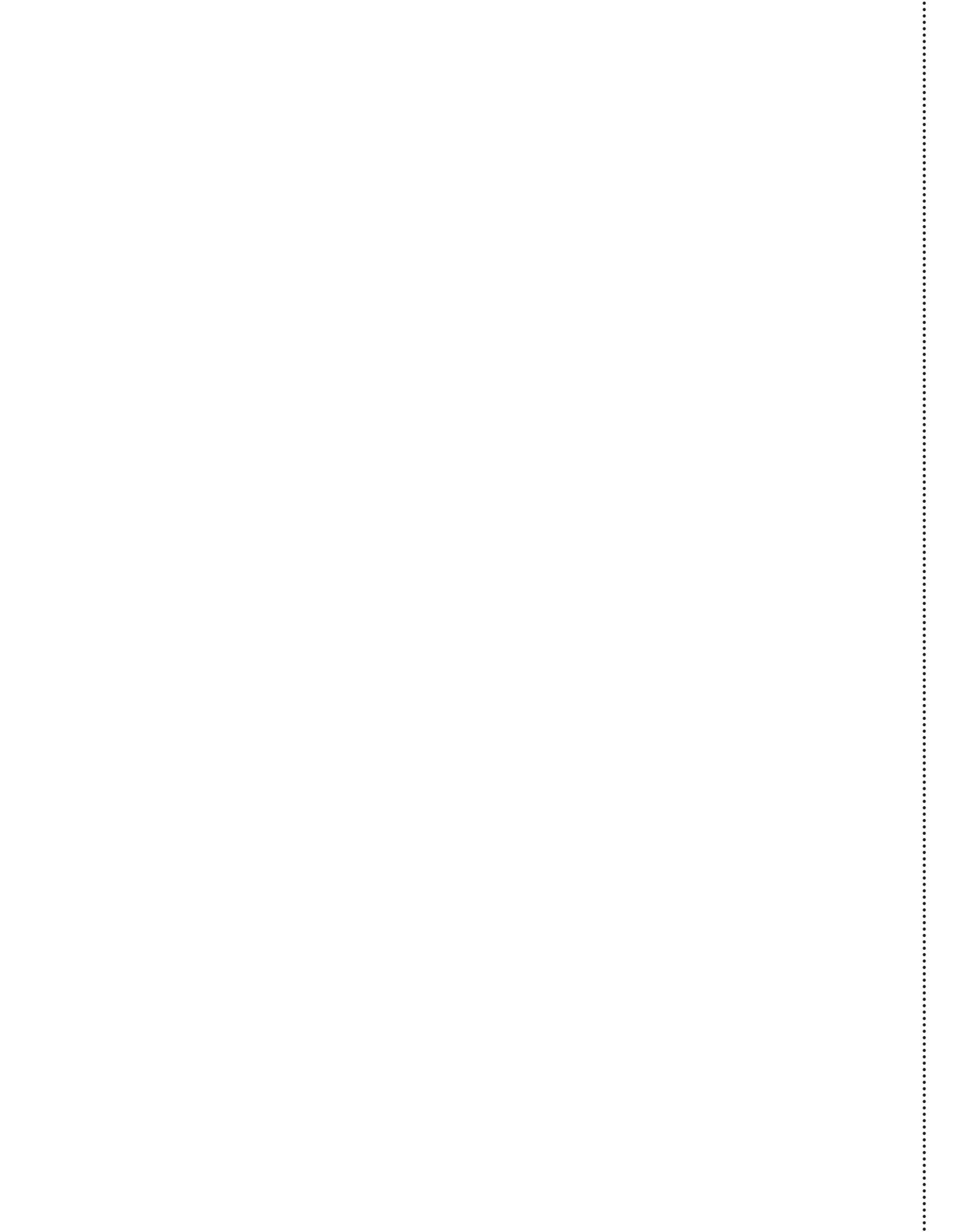
there have been and are now located certain items of property that are evidence of a crime, and are
particularly described as being:

I am satisfied that there is probable cause to believe that the property described is upon the
said premises.

You are hereby commanded to serve this warrant and search the place described above for the property specified, and if the property is found there to seize it, give a receipt for it, prepare a written inventory verified by you of the property seized and bring the property before me, all in the manner required by law.

DATED this _____ day of **Month, Year**.

(AUTHORITY OF THE JUDGE)



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Sexual Assault Kit Initiative Hotline:

888-KIT-LINE (888-548-4363)

ContactSAKI@doj.mt.gov

Or visit

doj.mt.gov/SAKI



MONTANA DEPARTMENT OF JUSTICE
Division of Criminal Investigation
Special Services Bureau
SAKI Program

**PO Box 201417
Helena, MT 59620**