

STATE OF NEW HAMPSHIRE

OFFICE OF THE ATTORNEY GENERAL



A MODEL PROTOCOL FOR RESPONSE TO ADULT SEXUAL ASSAULT CASES

<https://www.doj.nh.gov>

2024 Edition

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

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Adult Sexual Assault Investigation Checklists

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

Emergency Communications/Dispatcher

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

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EMS Responders

- Introduce yourself and explain you are there to help
- Explain any procedure and seek permission before touching the patient
- Empower patients to make decisions regarding their care
- Treat and document assessment findings using appropriate medical treatment protocols without causing undue trauma
- Assess patients for impaired capacity due to alcohol, drugs, disability, or age
- Limit questions to the identification of injuries and pertinent medical information
- Ask when the assault occurred and if patient has bathed, showered, or changed clothes since the assault
- Ask patient if strangulation occurred (was pressure applied to the neck by any means) and note if patient reports being “choked”; document signs/symptoms and statements, ask strangulation specific questions and advise the need for Emergency Department evaluation and imaging studies to rule out carotid artery dissection and other life-threatening conditions. See [Appendix E](#)
- Preserve and document the collection of all evidence

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Law Enforcement First Responder

- Introduce yourself and explain you are there to help
- Ask how the victim would like to be referred to (not just their name, but their personal pronouns – she/her/hers, he/him/his, they/them/theirs)
- Speak slowly and calmly; avoid asking why-type questions that may seem judgmental or victim-blaming
- If wearing a body worn camera (BWC), advise victim, obtain express consent (verbally and/or in writing) to continue recording per [RSA 105-D](#)
- DO NOT ASK A VICTIM TO PROVIDE A WRITTEN STATEMENT about their experience**
- Re-evaluate safety for the victim and any other person at potential risk; a crisis center advocate can assist with this
- Ask if the victim has been strangled or “choked” (was pressure applied to your neck by any means). If yes, ask strangulation specific questions and document signs/symptoms in a report (See [Appendix E](#)). Encourage emergency department examination, as advanced imaging is required to rule out life-threatening conditions
- Activate Emergency Medical Services as needed or encourage the victim to seek medical care; Use Strangulation Tool, See [Appendix E](#)
- Ask Dispatch to call for a crisis center advocate for the victim
- Identify the crime and the scene(s)
- Establish jurisdiction and promptly notify the correct jurisdiction involved, document notification efforts
- Secure the scene(s)/Preserve evidence
- Determine if the suspect’s identity is known and their possible location(s)
- If the Responding Officer is not SART trained, contact a SART trained officer or detective if available
- Always recommend the victim seek medical care, whether they want evidence collected using the kit (which can be used **up to 5 days** after the assault) or not, assist the victim appropriately
- Document visible victim injuries by photos and in report narrative; refer other photography needs to healthcare provider

- Remain with the victim until the assigned investigator arrives and initial information is transferred
- Consider the trauma that the victim may be experiencing and how it may be affecting their emotions, behavior and memory; distraught victims should not be left alone
- If the victim is a vulnerable adult, it is **mandatory** to report to the NH Bureau of Elderly and Adult Services at **1 (800) 949-0470**
- Listen but do not** conduct a comprehensive interview of the victim; seek confirmation of the crime, scene(s) and suspect information and document; refer to Conducting a Minimal Facts Interview, page 41.
- If suspect needs medical treatment or evidence collected from their body,

advise the hospital to keep suspect separate from the victim

- Take custody, transport, and secure **all** hospital evidence which may include:
 - Sexual Assault Evidence Collection Kit with paperwork; use Kit Tracking System (*Appendix M*)
 - Bag(s) containing clothing
 - Urine sample, if appropriate (must be on ice or frozen)
- Promptly complete the initial incident report and include: observations of victim, scene, suspect and witnesses, indicate if BWC was turned off, description of all evidence collected and where secured
- Securely store BWC recordings no later than end of shift or as soon as practicable (per [RSA 105-D](#))
- Make proper agency notifications per department policy or state law (i.e.: BEAS, County Attorney, etc.)

Law Enforcement Supervisor

- Coordinate securing crime scene(s)
- Coordinate evidence collection: ensure kit and associated evidence is properly stored prior to transport to the Forensic Laboratory for analysis
- Assess situation, determine needs and ensure competent response
- Notify detective/trained officer
- Be familiar with this best practice protocol
- Follow best practice for protection of victim privacy and identification
- Demonstrate sensitivity to victims and ensure a trauma informed response (with or without BWC in use) by all officers
- Ensure that NO victim is asked to take a polygraph exam
- When reviewing reports, ensure that documentation is thorough, complete and properly classified
- Ensure handling of kit is compliant with [RSA 21-M:18](#) upon return from the Forensic Lab. *See Law Enforcement section in [Sexual Assault Evidence Collection Kits, page 61](#)*

Law Enforcement Investigator Checklist

- Re-evaluate safety, activate Emergency Medical Services as needed
- Verify collaborative response has been initiated (crisis center advocate, SANE)
- Identify witnesses, including disclosure witnesses (medical professional, friend, family member or another) and schedule interviews
- If responding to the scene, conduct a Minimal Facts Interview (see page 41) if it has not yet been done.
- Follow up with a recorded comprehensive victim interview 24 to 48 hours after assault; this generally takes place after a medical/forensic exam; ***Consult with County Attorney's Office to determine if they want to observe interview.***
- Request victim sign a medical records release
- Determine need for consent or search warrant(s); secure location/person and execute (i.e.: known suspect DNA/evidence, electronic devices, cars, structures, trash). (*Appendices G, J, L*)
- Send preservation letters to collect available technology evidence (phones, e-mail, social media, etc.). (*Appendix K*)
- Photograph and collect evidence from the scene(s)
- Ensure transport of evidence to Forensic Lab for analysis **without delay**; use Kit Tracking System (*Appendix M*)
- Conduct and record suspect interview(s)
- Have appropriate follow up photos taken of any victim bruising or injuries 24-48 hours after the assault, then as needed depending on the injury pattern and progression
- Consider if a one-party call would be appropriate for the case. (*Appendix H*)
- Run suspect criminal and motor vehicle record checks
- Obtain/review all relevant surveillance and BWC recordings; Check for voice changes if strangulation occurred
- Promptly and completely document case
- Conduct thorough review of case prior to sending case to the County Attorney – including all reports, evidence, photos, and recordings; obtain and review medical/forensic documentation, witness statements, etc.
- Be available to provide case follow-up in consultation with the prosecutor

Evidence Checklist

- All Sexual Assault Evidence Collection Kits, including Anonymous Kits, MUST be transported to the NH**

State Police Forensic Laboratory as soon as possible.

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

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Prosecution Checklist

Pre-Charging/grand jury:

- Screen cases: Process all cases as quickly as possible; obtain & review all case-related information presently available from law enforcement
- Meet the victim with law enforcement and advocates present, identify victim's support network; comply with all aspects of [RSA 21-M:18](#).
- Discuss relevant evidence analysis issues with law enforcement and forensic laboratory personnel
- If decision is made not to charge, inform victim immediately & explain reasons;* have victim/witness assistance provider present
- If a decision is made not to charge, place a memorandum in the file explaining the reasoning behind this decision*
- Ensure victim safety planning is developed
- Identify victim privacy issues
- Identify partners, collaborate with law enforcement, advocates, medical professionals and forensic laboratory to ensure that all evidence collected by partners is forwarded to the county attorney's office.
- Keep in mind how trauma may be impacting victim's response/demeanor
- Ensure law enforcement does NOT polygraph the victim*
- Anticipate common defenses, as well as victim and offender myths that can impact a successful prosecution, strategize these issues
- Evaluate whether expert testimony would assist, and if so, identify potential experts

Pre-Trial:

- Develop appropriate bail conditions and possible criminal bail protective orders; consider protection issues; *make sure victim is notified if defendant is released*
- Ensure discovery is complete and provided to defense
- Include victim input when developing a plea, pursuant to the Victims Bill of Rights ([RSA 21-M:8-k](#))
- Develop motion practice; consider the admissibility of other bad act evidence

- Properly notice expert witness(es) in a timely manner
- Address privacy issues discussed with victim

- Consider effective use of the rape shield law ([RSA 632-A:6](#))
- Meet with witnesses, expert or otherwise, to prepare for trial and scope of testimony

Trial:

- Jury selection/voir dire
- Opening statements
- Use of exhibits
- Victim testimony

- Cross examination
- Evidentiary issues
- Closing arguments
- Jury Instructions

Post-Trial:

- Develop sentencing strategies: consult with the victim; review the Victim Bill of Rights ([RSA 21-M:8-k](#))
- Consider filing a sentencing memorandum to provide Court with rationale & basis for recommendation
- Consider restitution for victim's out of pocket expenses and reimbursement of Victims' Compensation

- Request no contact provision in sentencing form; Refer to [RSA 651:2](#) or *State v. Towle (2015)*
- Discuss with the victim if outcome does not meet their expectations; encourage the victim to seek civil protection order after an acquittal

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NEW HAMPSHIRE ADULT SEXUAL ASSAULT PROTOCOL COMMITTEE

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PREFACE

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

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

Adult sexual assault is the most under-reported violent crime in our country by a significant margin: in 2020, only about 23% of sexual assaults were reported to law enforcement². Victims may be ashamed, embarrassed, or afraid to tell the police, friends, or family about the violence. Victims may also keep quiet because they have been threatened with further harm if they tell anyone or do not think anyone will help them. In the United States, over half of women and almost 1 in 3 men have experienced sexual violence involving physical contact during their lifetimes; 1 in 4 women and about 1 in 26 men have experienced completed or attempted rape.³

The primary objectives of this document are to:

- minimize physical and psychological trauma experienced by victims of sexual violence by providing a victim-centered trauma-informed response;
- ensure opportunities for immediate and comprehensive medical care for victims;
- establish best practice guidelines for the multi-disciplinary response to adult victims of sexual assault and for thorough, complete investigation of the crime; and
- hold offenders accountable by keeping the investigation focused on the offender's behavior and actions.

¹ Murphy, S., Farr, H., *The Reality of Sexual Assault in New Hampshire*. 2009. <https://www.unh.edu/research/sites/default/files/media/2019/09/final-nhcadv-sexassault.pdf>

² Morgan, R.E., & Thompson, A. (2021). *Criminal victimization, 2020*. (NCJ 301775).

³ <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html>

HISTORY OF THE NEW HAMPSHIRE SEXUAL ASSAULT PROTOCOL PROJECT

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

The New Hampshire Attorney General's Office formed the Sexual Assault Protocol Committee representing the medical, legal, law enforcement, victim advocacy and forensic science communities, to establish a New Hampshire protocol and sexual assault evidence collection kit. The first protocol, *Sexual Assault: A Protocol for Forensic and Medical Examination*, was completed in 1989. Since then, the protocol has been continually revised and updated to include significant changes in forensic evidence collection.

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

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

Current versions of all protocols that have been developed by the New Hampshire Attorney General's Office can be found online at: <https://www.doj.nh.gov>.

PURPOSE STATEMENT

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

POLICY

This protocol represents a best practice model for New Hampshire's response to adult sexual assault cases. It defines a standard to which all agencies involved in the handling of these cases should strive to meet. It is not intended to create substantive rights for individuals. **Consistent compliance with the procedures set forth in this protocol will greatly increase the effectiveness of the State's response to adult sexual assault cases.**

SEXUAL ASSAULT RESOURCE TEAM (SART) MODEL

To address the various challenges surrounding crimes of adult sexual violence, the New Hampshire Attorney General's Office began a statewide initiative in 2010 to develop and implement Sexual Assault Resource Teams (SARTs) in all ten counties. A SART is a multi-disciplinary team of professionals with core members representing the various disciplines – medical (including Sexual Assault Nurse Examiners), victim advocacy, law enforcement, and prosecution – that may respond to or provide resources to an agency when investigating a report of sexual assault involving a victim who is 18 years of age or older.

Additional team members may include, but are not limited to, representatives from elderly and adult services, mental health agencies, institutions of higher education, faith-based communities, sex offender treatment programs, probation and parole, military and veteran affairs representatives, and the forensic laboratory.

Team members following the Resource model of a SART continue to function under their own agency policies, procedures, and protocols, but develop a Memorandum of Understanding (MOU), which describes how the various disciplines operate within the SART.

By meeting regularly, SART members learn about the different roles and responsibilities of the participating disciplines and determine what the values, commitments and goals will be in their specific community. Documents generated to reflect these ideals can be amended over time, as necessary.

SARTs work to improve the quality of criminal investigations by providing training opportunities on sexual assault related topics including the development of investigative skills, improved evidence collection and increased understanding of victim trauma which may lead to

The goal of a SART is to work collaboratively to provide a trauma informed response to adult victims while holding offenders accountable through successful prosecution.

improved victim interviews and overall professional responses. These efforts can result in more effective interactions, investigations, and prosecutions.

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

SARTs play a significant role in promoting public safety in their communities by working in a coordinated team approach. In addition to meeting victims' needs and enhancing the quality of investigations, this collaborative approach allows for discussions which help identify and track trends around sexual assault victimization in communities throughout the state. SART members can also become involved in educating their communities about the services that are available for the intervention and prevention of sexual violence.

THE LAW

This protocol addresses adult victims, individuals 18 years of age and older. For victims 17 and younger, refer to the Attorney General's [Model Protocol for the Multidisciplinary Response to Child Abuse and Neglect \(2021\)](#).

SEXUAL ASSAULT AND RELATED OFFENSES - DEFINITIONS

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

Aggravated Felonious Sexual Assault (“AFSA”) ([RSA 632-A:2](#)) With respect to adult victims 18 years of age and older, AFSA is defined as sexual penetration under certain circumstances. Sexual penetration is broadly defined in the statute to include: sexual intercourse; cunnilingus; fellatio; anal intercourse; any intrusion, however slight, of any part of the actor’s body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim’s body; any intrusion, however slight, of any part of the victim’s body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor’s body; and any act which forces, coerces, or intimidates the victim to perform any of the aforementioned acts on the actor, on another person, or on himself or herself.

With respect to adult victims 18 years of age and older, the following circumstances constitute AFSA:

- When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act. RSA 632-A:2, I(m).
- When the actor overcomes the victim through the actual application of physical force, physical violence, or superior physical strength. RSA 632-A:2, I(a).
- When the victim is physically helpless to resist. RSA 632-A:2, I(b).
- When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats. RSA 632-A:2, I(c).
- When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future. RSA 632-A:2, I(d).
- When the victim submits under circumstances involving false imprisonment, kidnapping or extortion. RSA 632-A:2, I(e).

MYTH: Sexual assault is often the result of miscommunication or a mistake.

FACT: Sexual assault is a crime. It is any unwanted sexual contact obtained without consent using force, threat of force, intimidation, or coercion.

- When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim. RSA 632-A:2, I(f).
- When the actor provides therapy, medical treatment, or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship: (1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or (2) Uses this position as such provider to coerce the victim to submit. RSA 632-A:2, I(g).
- When the victim has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability. RSA 632-A:2, I(h).
- When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist. RSA 632-A:2, I(i).
- When the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure. RSA 632-A:2, I(k)(2). Consent of the victim under this circumstance is not a defense. RSA 632-A:2, I(k)(3).
- When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances: (1) When the actor has direct supervisory, disciplinary, or other authority authorized by law over, or direct responsibility for maintaining detention of, the victim by virtue of the victim being detained or incarcerated in a correctional institution, the secure psychiatric unit, a juvenile detention facility, or any other setting in which the victim is not free to leave; or (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation. RSA 632-A:2, I(n). Consent of the victim under this circumstance is not a defense.

AFSA is a felony punishable by up to 10 to 20 years in the state prison. RSA 632-A:10-a, I(b).

After the Crime of Domestic Violence was passed via Joshua's Law, a section was added to the AFSA statute allowing for domestic violence related assaults to be recorded as "Aggravated Felonious Sexual Assault – Domestic Violence" and provides for additional penalties for such assaults. [RSA 632-A:2,V](#).

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

Felonious Sexual Assault also includes, but is not limited to:

- When the defendant subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in [RSA 632-A:2](#) (the aggravated felonious sexual assault statute mentioned above). RSA 632-A:3, I.

- Engaging in sexual contact with a person when the actor is an employee, contractor, or volunteer at a secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure. RSA 632-A:3, III(a)(3). Consent of the victim under this circumstance is not a defense. RSA 632-A:3, III(b).
- Engaging in sexual contact with the person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:
 - When the actor has direct supervisory, disciplinary, or other authority authorized by law over, or direct responsibility for maintaining detention of, the victim by virtue of the victim being detained or incarcerated in a correctional institution, the secure psychiatric unit, a juvenile detention facility, or any other setting in which the victim is not free to leave, RSA 632-A:3, IV(a)(1); or
 - When the actor is a probation or parole officer or a juvenile probation or parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation, RSA 632-A:3, IV(a)(2).
- Consent of the victim under these circumstances is not a defense. RSA 632-A:3, IV(b).

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

After the Crime of Domestic Violence was passed via Joshua's Law, a section was added to the FSA statute allowing for domestic violence related assaults to be recorded as "Felonious Sexual Assault – Domestic Violence," and provides for additional penalties for such assaults. [RSA 632-A:3, V.](#)

Sexual Assault (RSA 632-A:4) covers a variety of conduct, including, but not limited to, sexual contact with a person 13 years of age or older under any of the aggravating circumstances defined in [RSA 632-A:2](#). A person may also be charged with Sexual Assault if they cause another person to engage in sexual contact with the actor or with him/herself, when the actor is in a position of authority over the other person, as defined in the statute. RSA 632-A:4, III(a). Under those circumstances, consent of the victim is not a defense. RSA 632-A:4, III(b).

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

After the Crime of Domestic Violence was passed via Joshua's Law, a section was added to the Sexual Assault statute allowing for domestic violence related assaults to be recorded as "Sexual Assault – Domestic Violence," and provides for additional penalties for such assaults. [RSA 632-A:4, IV.](#)

Consent (RSA 632-A:6, III). It is important to note that consent is not a defense to any AFSA, FSA, or Sexual Assault "if, at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act."

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

- **Strangulation (RSA 631:2, II(c))**
- **Kidnapping (RSA 633:1)**

- ***Criminal Restraint*** ([RSA 633:2](#))
- ***False Imprisonment*** ([RSA 633:3](#))
- ***Stalking*** ([RSA 633:3-a](#))
- ***Trafficking in Persons*** ([RSA 633:7](#))
- ***Endangering the Welfare of a Child or Incompetent*** ([RSA 639:3](#))
- ***Domestic Violence*** ([RSA 631:2-b, I\(f\)](#); [RSA 631:2-b, I\(g\)](#); [RSA 631:2-b, I\(h\)](#))
- ***Nonconsensual Dissemination of Private Sexual Images*** ([RSA 644:9-a](#))
- ***Public Indecency; Indecent Exposure and Lewdness*** ([RSA 645:1, I](#))

Statute of Limitations ([RSA 625:8](#)): when a crime report is made to law enforcement where the statute of limitations *may* have expired, the crime should still be thoroughly investigated as an exception to the standard statute of limitations (*see, e.g.,* [RSA 625:8, I](#) and [RSA 625:8, III\(d\)](#)) may be applicable. *See, e.g.,* [RSA 625:8, VI\(a\)](#) (indicating the statute of limitations does not run during any time the accused is continuously absent from the state or has no reasonably ascertained place of abode or work within the state). The filing of a complaint describing the accused by way of a DNA profile tolls the statute for Aggravated Felonious Sexual Assault and Felonious Sexual Assault offenses as detailed in [RSA 592-A:7, II](#). Investigators with any concerns about the possible expiration of the statute of limitations in a case being investigated should let the victim know of the concerns and speak with a prosecutor for guidance.

HIV Testing: Under [RSA 632-A:10-b](#), any person convicted of sexual assault under Chapter 632-A shall be tested for HIV. The results of the HIV test are disclosed to the person convicted and to the Office of Victim/Witness Assistance at the New Hampshire Attorney General's Office. The Office of Victim/Witness Assistance may disclose the HIV test results to the system-based victims' assistance providers and to the victim. The practice of receiving information is that the Department of Corrections notifies the Office of Victim/Witness Assistance, which in turn forwards the information to the system-based advocate to notify the victim.

Investigations of sexual assault against a college or university student or employee may also be impacted by state and federal law, specifically, New Hampshire [RSA 188-H](#), the Clery Act and Title IX. Additional information can be found in the [Campus Sexual Assault](#) section of this document ([See page 91](#)).

Sexual assault is common in relationships where there is other verbal, emotional, or physical violence. Professionals should be aware of this and include questions about domestic violence in sexual assault investigations. For more specific information refer to:

[A Model Protocol for Law Enforcement Response to Domestic Violence Cases](#)

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

NEW HAMPSHIRE CRIME VICTIMS' BILL OF RIGHTS

Victims of felony level crimes, misdemeanor sexual offenses, domestic violence or violation of a protective order **committed by an adult offender** are entitled to the following rights under [RSA 21-M:8-k](#):

- The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
- The right to be informed about the criminal justice process and how it progresses.
- The right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.
- The right to be notified of all court proceedings.
- The right to attend trial and all other court proceedings the accused has the right to attend.
- The right to confer with the prosecution and to be consulted about the disposition of the case, including plea bargaining.
- The right to have inconveniences associated with participation in the criminal justice process minimized.
- The right to be notified if presence in court is not required.
- The right to be informed about available resources, financial assistance, and social services.
- The right to restitution or victim's compensation for their losses if eligible.
- The right to be provided a secure, but not necessarily separate, waiting area during court proceedings.
- The right to be advised of case progress and final disposition.
- The right of confidentiality of the victim's address, place of employment, and other personal information.
- The right to the prompt return of property when no longer needed as evidence.
- The right to have input in the probation pre-sentence report impact statement.
- The right to appear and make a written or oral victim impact statement at the sentencing of the defendant. No victim shall be subject to questioning by counsel when giving an impact statement.
- The right to be notified of an appeal, an explanation of the appeal process, the time, place and result of the appeal, and the right to attend the appeal hearing.
- The right to be notified and to attend sentence review hearings and sentence reduction hearings.

- The right to be notified of any change of status such as prison release, permanent interstate transfer, or escape, and the date of the parole board hearing, when requested by the victim through the victim advocate.
- The right to address or submit a written statement for consideration by the parole board on the defendant's release and to be notified of the decision of the board, when requested by the victim.
- The right to all federal and state constitutional rights guaranteed to all victims of crime on an equal basis, and notwithstanding the provisions of any laws on capital punishment, the right not to be discriminated against or have their rights as a victim denied, diminished, expanded, or enhanced on the basis of the victim's support for, opposition to, or neutrality on the death penalty.
- The right to access to restorative justice programs, including victim-initiated victim-offender dialogue programs offered through the department of corrections.
- The right to be informed of the filing of a petition for post-conviction DNA testing under [RSA 651-D](#).
- The right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause.

Note: Upon request to the prosecution, the victim of a "violent crime" (including aggravated felonious sexual assault and felonious sexual assault) committed by a juvenile offender shall have the rights provided under [RSA 169-B:35-a, II](#).

NEW HAMPSHIRE SEXUAL ASSAULT SURVIVORS' RIGHTS

All victims of sexual assault are entitled to additional rights outlined in a new subdivision of the New Hampshire Victims of Crime Bill of Rights. Under [RSA 21-M:18](#) this subdivision states that a sexual assault survivor, no matter their age, has:

- The right not to be prevented from, or charged for, receiving a medical examination.
- The right to have a sexual assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter.
- The right to be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation.
- The right to be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.

- The right, if the state intends to destroy or dispose of a sexual assault evidence collection kit or its probative contents before the expiration date of the maximum applicable statute of limitations to:
 - Upon written request, receive written notification from the prosecutor or appropriate state official with custody, not later than 60 days before the date of the intended destruction or disposal; and
 - Upon written request, be granted further preservation of the kit or its probative contents.
- The right to be informed of the rights under this section.

MANDATORY REPORTING

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

One exception is described under [RSA 631:6](#) which reads as follows:

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

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

BUREAU OF ELDERLY AND ADULT SERVICES (BEAS)

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

Adult Protection Program activities include:

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

REPORTING REQUIRMENTS

The Adult Protection Law requires any person who has reason to believe that a vulnerable adult has been subjected to abuse, neglect, exploitation, or self-neglect to make a report to the appropriate state agency or office. For assistance in determining whether an adult should be considered vulnerable, or for more information (during business hours), contact BEAS at 1-800-949-0470 or 603-271-7014. For a listing of District Offices, see [Appendix B](#).

Pursuant to [RSA 161-F:46](#), “any person, including, but not limited to, physicians, other health care professionals, social workers, clergy, and law enforcement officials, suspecting or believing in good faith that any adult who is or who is suspected to be vulnerable, at the time of the incident, has been subject to abuse, neglect, self-neglect, or exploitation or is, or was living in hazardous conditions shall report or cause a report to be made to the Department of Health and Human services” by calling the Bureau of Elderly and Adult Services Central Intake at 1-800-949-0470 or sending an email to apscentralintake@dhhs.nh.gov. While Central Intake does not have an official intake State Reporting Form, a document has been developed to help professionals know what kind of information is needed, especially if the reporter wishes to submit concerns via email. ([Appendix C](#)). Reporters are encouraged to confirm with BEAS, either by phone or email, that their report was received.

When law enforcement officials receive reports of suspected abuse, neglect, exploitation or self-neglect of a vulnerable adult, from sources other than BEAS, they shall notify BEAS within **72 hours** of receipt of such reports.

If the vulnerable adult is a resident of a nursing facility or assisted living facility, the report should be made to the Office of the Long-Term Care Ombudsman. To submit a report, use the [Facility Initial Report Transmittal Form](#) or

<https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents/2021-11/beas-facility.pdf>

For additional information, please refer to [Elderly Victims](#) and [Victims with Disabilities](#) in the following section of this protocol.

SPECIAL POPULATION CONSIDERATIONS

For purposes of this protocol, references in this section to “responders”, “first responders” and “investigators” may include, but not be limited to, Emergency Medical Service (EMS) personnel, law enforcement, adult protective workers, healthcare providers, social workers, and other professionals.

ELDERLY VICTIMS

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

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

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

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

Perpetrators will often target elders with dementia or limited cognitive abilities because their victims (if they do report the assault) will not likely be viewed as credible reporters. It is crucial, therefore, that all allegations of elder sexual abuse are taken seriously. It is recommended that anyone investigating talk with the elderly person alone and in private since they may be ashamed or too fearful to disclose information in front of family or caregivers. [See page 43 for guidance.](#) Document findings of injuries and other evidence in written reports and take photographs where appropriate. If the elderly person is in danger where they are, take immediate action. In an

First Responder Tips:

- *Speak with an elder at eye level*
- *Try not to stand over them*
- *Try to determine if impaired memory, vision, hearing, or speech may be an issue*
- *Law enforcement should be aware of having their weapon at an elder’s eye level*

emergency or crisis, attempt to convince the person of the need to be seen at a hospital. Alert other first responders and the hospital of the basis for concern. In circumstances where Involuntary Emergency Admission ([RSA 135-C:27](#)) or Protective Custody ([RSA 172-B:3](#))⁴ is warranted, consult with the Department of Health and Human Services, Bureau of Elderly and Adult Services.

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

Indicators of Elder Sexual Abuse:

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

MANDATORY REPORTING REMINDER

Anyone who suspects that a vulnerable adult is being abused must report that abuse by calling the Bureau of Elderly and Adult Services at **1 (800) 949-0470**. See [Mandatory Reporting](#) on page 13 for additional information.

REASONS WHY ELDERLY VICTIMS MAY NOT WANT, OR ARE UNABLE TO REPORT OR ASSIST WITH THE INVESTIGATION

- Victims may be reluctant to talk about the assault, report it, or accept help because of the stigma attached to being a victim of sexual abuse or out of fear of retaliation by the perpetrator. Generational values may make it difficult for some victims to talk about sexual abuse and/or body parts.

⁴ *Law Enforcement Guide Elderly and Adult Services*, Sponsored by the Elder Abuse Advisory Council, NH Department of Health and Human Services, Division of Community Based Care Services, Concord, NH.

NOTE: When working with an adult victim who is vulnerable, there is a mandate to report ([RSA 161-F](#)) the sexual assault to the Bureau of Elderly and Adult Services Central Intake. See [Appendix B](#) for contact information. Also refer to the [Mandatory Reporting](#) section in this protocol.

- Where the abuser is a relative or home caregiver, the victim may be completely dependent upon the caregiver to meet those essential needs (food, medicine, shelter, hygiene) that allow them to remain in their home.
- Impaired memory, vision or hearing loss may limit a victim's ability to report episodes or be an accurate witness.
- Examination may be much more difficult or even impossible due to physical conditions such as the victim's limited ability to move or reposition themselves for an examination.
- As a result of dementia, victims may not be able to understand that they were assaulted and may be unable to cooperate with exams.

VICTIMS WITH DISABILITIES

There is some research suggesting that victims with specific types of disabilities experience higher risk of sexual assault than victims with other disabilities or victims without disabilities. Intellectual disabilities, communication disorders, and behavioral disorders appear to be associated with very high levels of risk. For example, one study found that victims with developmental disabilities are four to ten times more likely to be sexually assaulted than those without a developmental disability. Moreover, victims with developmental disabilities are more likely to experience repeated victimization.

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

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

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

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

First Impression – How a first responder perceives the victim, how they respond to the victim and how the victim feels as a result will set the stage for the rest of the investigation.

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

As soon as a responder meets a victim with disabilities, the first impressions formed by the victim can be helpful or harmful to an investigation. These impressions are based on:

- How long the responder spends with other adults before addressing the victim directly
- The responder's facial expressions
- The responder's tone of voice, choice of words, and conversational style
- The responder's body language
- The responder's physical position in relation to the victim
- Eye contact (*Note: This may be difficult for victims with some types of disabilities.*)

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

- That the victim is not in trouble
- That the responder is there to help
- That what happens from that moment forward will be the responsibility of the perpetrator, not the victim⁵

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

Speech production problems do not signal an intellectual disability. Difficulties with speech or other cognitive disabilities should not prevent a crime victim or witness from being properly interviewed in an investigation. Failing to conduct a proper interview may lessen the strength of the case and may make it difficult to defend the interview process or content if the case is forwarded through the criminal justice system⁶.

The Americans with Disabilities Act (ADA) is a Federal civil rights law. It gives Federal civil rights protections to individuals with disabilities like those provided to individuals based on race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in state and local government services, public accommodations, employment, transportation, and telecommunications. Title II of the ADA prohibits discrimination against people with disabilities. The ADA also affects virtually everything that law enforcement officers

⁵ U.S. Department of Justice, Office for Victims of Crime, *Victims with Disabilities: Collaborative, Multidisciplinary First Response*, 2009. https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/vwd_firstresponse.pdf

⁶ U.S. Department of Justice, Office for Victims of Crime, *Victims with Disabilities: The Forensic Interview*, 2007. <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/ictimsguidebook.pdf>

do, for example: taking citizen complaints, interviewing witnesses, enforcing laws, and other duties.⁷ For additional resources, refer to [Appendix O](#).

INCARCERATED VICTIMS

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

Sexual misconduct includes such activities as:

- Sexual contact or penetration as defined by RSA 632-A
- Making obscene or sexual advances, gestures, or comments
- Touching of self in a sexually provocative manner
- Initiating or making promises in exchange for sexual favors (e.g., promising safety, privacy, housing, or privileges)
- Threats, intimidation, or retaliation for any actions described above

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

MALE VICTIMS OF SEXUAL ASSAULT

Men can be victims of sexual assault. Male victims have the same rights under the law as women. Men are entitled to the same services and support following a sexual assault.

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

⁷ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, *Commonly Asked Questions About the ADA and Law Enforcement*, 2020. https://www.ada.gov/q&a_law.htm

Victims of sexual assault often blame themselves for the attack(s). Men may feel that they should have been strong enough to defend themselves against the assault. For many male survivors, stereotypes about masculinity can also make it hard to disclose to friends, family, or the community. Men may face challenges believing that it is possible for them to be victims of sexual violence.

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

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

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

There are many reasons that male victims do not come forward and report being sexually assaulted, among them is fear that their sexual orientation will be questioned. It is important to remember that sexual assault is not related to the sexual orientation of the perpetrator or the survivor, and a person's sexual orientation is not defined by sexual abuse or assault. It is a violent crime that can happen to men regardless of their own sexual orientation. It is common, however, for men who have been assaulted to express confusion about their sexual orientation. This can be especially confusing if there was a physiological reaction to the assault.

LGBTQIA+ VICTIMS

According to The Williams Institute on Sexual Orientation Law and Public Policy⁸, approximately 8.8 million people in the United States are gay, lesbian, or bisexual. This is a rough estimate because definitions of sexual orientation and behavior are not standardized. For example, some individuals engage in same-sex behavior or intimacy and do not identify as gay or

⁸ <https://williamsinstitute.law.ucla.edu/lgbtstats/>

lesbian. Other individuals' gender identity or gender expression may be outside the gender binary of male or female and they may identify as being gender non-conforming.

The lesbian, gay, bisexual, transgender, queer (or questioning), intersex, and asexual (LGBTQIA+) community is diverse. The + includes other identities that are not represented. When LGBTQIA+ individuals disclose their sexual orientation, gender identity, or sex, they may suffer severe forms of discrimination and violence. For example, there have been numerous situations in which transgender persons have disclosed their sex and gender identity and have been sexually assaulted, seriously injured, and even murdered. Lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people experience higher rates of sexual assault and intimate partner violence than non-LGBTQ+ adults⁹.

There are many special considerations when working with LGBTQIA+ victims of sexual violence. It is important to avoid making assumptions about the perpetrator's identity or their relationship to the victim. The assailant could be a relative, a friend, an acquaintance, an intimate partner, or in rare cases, a stranger, and may be someone from outside or within the LGBTQIA+ community. In cases where the perpetrator is also a member of the LGBTQIA+ community, this can pose additional barriers and concerns. Given that many of these communities are isolated within their geographical area and often interconnected socially, an LGBTQIA+ victim may feel ostracized and no longer welcome in their support network. Inclusive groups, local businesses that have been identified as safe for LGBTQIA+ individuals, and organizations utilized in the past may no longer be options. In addition to the fears and concerns that may be experienced by any victim of sexual assault, LGBTQIA+ victims may experience:

- Fear of being “outed” or having their sexual orientation or gender identity disclosed to family, friends, employers, or in other situations where this disclosure may be against their wishes.
- The effects of societal misconceptions such as sexual assault does not happen in the LGBTQIA+ community or that it is a “normal” part of LGBTQIA+ relationships.
- Sexual violence or coercion within a relationship
- Derogatory language including the refusal to use their correct pronouns.
- Fear that a partner or another person in their household might interfere with gender-affirming healthcare, including withholding hormones being taken to transition or pressure to begin or delay a medical process to transition.

Sexual assault is a crime of power and control, and perpetrators use many methods to control their victims, including fear, shame, threats, and debilitating substances like alcohol and drugs.

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

⁹National Resource Center for Reaching Victims; Forge; Jan 2020 <https://www.reachingvictims.org/resource/lgbtq-youth-socialmediakit/>

- Heightened concerns about reporting to law enforcement and related systems, which may be compounded if the victim has additional demographic identifiers, such as immigration status or race.

Such attitudes and experiences, and the fear of encountering them, often pose additional barriers for LGBTQIA+ individuals seeking help. Victims may worry that they will encounter this kind of response from others in their community as well as from outside of it, including family, friends, school, or workplace acquaintances, and even the service providers and systems set up to assist victims. If the victim is also experiencing domestic violence, their partner may even use one or more of the above tactics to maintain control over them.

COMMUNITIES OF COLOR

While the impact of sexual assault crosses all social, economic, and racial lines, there are barriers and concerns that are unique to communities of color. Victims of color often face a lack of culturally appropriate services as well as prevention and supportive resources in diverse languages. For victims of color, obstacles to reaching out for help or reporting are often heightened due to existing cultural and institutional barriers, making them amongst the most vulnerable victims.

Communities of color have challenges and circumstances that are unique to its community. There are common factors that may contribute to the barriers sexual assault victims of color may face as they seek help:

- Strong loyalty bonds to race, culture, and family
- Distrust of law enforcement, the criminal justice system, and social services
- Lack of service providers that look like the victim or share common experiences
- Lack of trust based on history of racism and classism in the United States
- Fear that their experience will reflect on or confirm the stereotypes placed on their cultural identity
- Assumptions held by providers about the victim based on their race, ethnicity or skin color about their cultural identity, immigration status, or need for linguistic translation services
- Attitudes and stereotypes about the prevalence of sexual assault in communities of color

For additional information, refer to [Appendix O](#).

INTERNATIONAL MIGRANTS/REFUGEES

Although migrant, refugee and non-status community members experience the same forms of sexual violence as those experienced by other victims, they also face legal, economic, or community-based obstacles that can create barriers in accessing assistance. Many of these

challenges can make migrant, refugee, and non-status community members particularly vulnerable to sexual assault, as well as at increased risk of recurring sexual assault.¹⁰

Refugees and migrants may relocate to the United States from countries with conflict; many having endured various forms of trauma. They may have suffered sexual violence in their home country or as part of their migration experience. The lack of culturally and linguistically appropriate services, unfamiliarity with local laws, and less access to culturally appropriate support and resources can make it challenging to understand what has happened or what services are available to them.

Within a wider community, migrants or refugees are often isolated and viewed as “outsiders” due to language and cultural barriers, such as limited English proficiency (LEP) and/or unifying social doctrines like religion, ethnicity, age, regional or national origin. Additionally, they face anti-immigrant bias and misconceptions around immigration-related crime. Refugee and migrant victims may fear speaking out, if they believe their disclosure may result in criticism of their culture or country of origin. Many migrant and refugee victims feel pressured by familial and cultural norms and may not disclose abuse in deference to community and family wishes.

The language and cultural barriers experienced by migrants and refugees can make their communities insular and because of this, when seeking help or support, they are more likely to turn to family or leaders in their community, who may encourage them to remain silent about a sexual assault. This can be due to factors, such as:

- fear of shaming a spouse or family,
- fears about the impact disclosure may have on relationships in their community or with their family members,
- beliefs relating to the permissibility of sexual violence, or
- theological issues such as virginity and pre-marital sex, marriage and divorce, or suffering and forgiveness.¹¹

Interpreters for Victims

It is important to have linguistically or culturally qualified interpreters available for migrant, refugee, or non-status victims with limited to no English proficiency, to:

- ensure they are appropriately advised of their rights
- promote equal access to the criminal justice system
- make them aware of services available to them

Interpreters should be chosen carefully to ensure the victim's confidentiality, to avoid cultural bias and to provide trauma-informed care. Interpreters will need to be advised of appropriate language to avoid using victim-blaming words or phrasing.

¹⁰ "Victim-Centered Approaches," National Sexual Violence Resource Center, 2018
<https://www.nsvrc.org/sarts/toolkit/6-4>

¹¹ "Victim-Centered Approaches," National Sexual Violence Resource Center, 2018
<https://www.nsvrc.org/sarts/toolkit/6-4>

These factors can also impact their willingness to participate in a medical forensic exam. For example, some cultures may view a gynecological exam as one only a married woman should participate in.

Migrant and refugee victims may also experience specific types of coercive control which make them vulnerable to sexual violence and can act as barriers to accessing services. A spouse, family or community member may limit their ability to function independently outside of their household or community by not allowing them to learn English, wear Western clothing or make friends with Americans¹². Victims may also be vulnerable due to their legal status. They may depend on an abusive partner or family member for their legal documentation and may not understand their rights and what services are available to them as migrants or refugees. Migrants, especially non-status community members, are also more susceptible to sexual assault by being dependent on employers or housing providers who may be looking to exploit this population's vulnerabilities. In mixed-status families, victims may be reluctant to report an assault due to fear of deportation that may impact them or another family member. Migrant women experience sexual violence in marriages and intimate partner relationships at higher rates than US-born women and migrant girls are twice as likely as US-born girls to have suffered sexual assault by the time they reach high school.¹³

In addition to cultural factors, migrant or refugee victims often have difficulty accessing services because they are unaware of what services may be available, service providers may not be aware of the legal protections that exist, or appropriate language services may not be offered. It is important to identify and screen victims of sexual assault as early as possible for immigration relief eligibility, as this can provide further protections and greater access to public benefits, including healthcare. Access to these services can provide the victim with support that allows them to engage with criminal investigations and prosecution and empower them to contact law enforcement to report any future crime they experience.

For more information on U and T Visas and other legal options available for immigrant victims of sexual assault, see the Department of Homeland Security U and T Visa Law Enforcement Resource Guides.

U Visas: https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf

T Visas: https://www.dhs.gov/sites/default/files/2022-05/T-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf

Refer to [Appendix O](#) for statewide resources.

¹² Raj, A., & Silverman, J. "Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence". *Violence Against Women* 8, 3 (2002): 367–398. <https://refugeersearch.net/wp-content/uploads/2016/5/Raj-and-Silverman-2002-Violence-against-immigrant-women.pdf>

¹³ "Victim-Centered Approaches," National Sexual Violence Resource Center, 2018 <https://www.nsvrc.org/sarts/toolkit/6-12>

U.S. CITIZENS VICTIMIZED ABROAD

When United States citizens travel outside of the country and return to New Hampshire to report that they were the victim of a crime outside of this country, all first responders should refer to the guidance and resources provided by the Office of Victims of Crime (OVC) at the U.S. Department of Justice. With this information and support, U.S.-based victim service providers can prepare to deliver comprehensive and effective services to victims of overseas crimes by facilitating access to resources both abroad and in the United States. These victims could include tourists, business travelers and students studying abroad or involved in internships, overseas ministries, and other relevant activities. For additional guidance, please see <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/publications/infores/ServingVictimsAbroad/pfv.html>.

EMERGENCY MEDICAL SERVICES (EMS) RESPONSE

When responding to the scene of a reported sexual assault, maintain a heightened awareness of scene safety. Be aware that family members or caregivers may exhibit anger and that a family member or caregiver may be the perpetrator. Their presence may hinder the patient's disclosure of information. Victims of sexual assault span all ages, sexual orientations, gender identities and expressions, and levels of mental abilities. Patient medical care is the primary concern; however, providers' reactions can impact patient recovery and strengthen or hinder further investigation and potential prosecution of the perpetrator. Non-judgmental and compassionate care, thorough documentation and preservation of evidence are essential. Do not question the patient about the incident itself as victim recollections immediately following an assault are often distorted due to their trauma experience. Limit questions to the information needed to provide immediate care.

ROUTINE PATIENT CARE CONSIDERATIONS

MYTH: *A rape victim will be battered, bruised and hysterical.*

FACT: *Many rape victims are not visibly injured. The threat of violence alone is often enough for victims to submit to protect themselves from harm. People react to crisis in different ways. The reaction may range from composure to anxiety, depression, flashbacks, and suicidal feelings.*

If pre-hospital personnel are called to the scene of a reported sexual assault and are entering prior to law enforcement arrival and there is no life-threatening situation, be careful to avoid or limit disruption of possible evidence except to the extent necessary to provide effective patient care.

1. As soon as possible, assure the patient they are safe now.
2. Ask the patient if they have a gender preference for the treating EMS provider if that is an available option.
3. The primary EMS care provider should be the one to ask questions unless they are having difficulty establishing rapport with the patient. At this point, the providers should switch roles to ensure information is accurate to provide immediate care.
4. Provide emotional support and comfort. Explain any procedure before touching the patient. Empower patients to make decisions regarding their care.
5. Assess patients for impaired capacity due to alcohol, drugs, age, or disability.
6. The EMS provider's questions should be limited to the identification of injuries and pertinent medical information such as: What happened? When did it occur? Was pressure applied to your neck? Did bathing, showering, changing clothes, etc. occur since the assault? Do not question patient as to the details of the assault.

7. Discourage the patient from eating, drinking, smoking, bathing, or urinating until after hospital evaluation. Urine may contain evidence of a drug facilitated sexual assault. If the patient needs to use the restroom prior to transport advise the patient not to “wipe”.
8. Limit physical contact with patient to that which is required to perform assessment and treatment. An abbreviated assessment may be indicated based on the patient's emotional status due to the traumatic nature of the event.
9. Do not inspect genitals unless evidence of uncontrolled hemorrhage, trauma or severe pain is present.
10. If it is necessary to remove patient's clothing, take care not to damage evidence (e.g., rips, stains) if possible. Cut along seam lines.
11. Preserve any evidence, including patient's clothing, in paper bags. Label with patient name, date of birth and transfer to law enforcement or Emergency Department (ED) staff. Document transfer, including name of the ED staff or officer to whom it was given. Failure to document the transfer of evidence properly can render it useless.
12. Even if emergency medical care is not necessary, it is recommended that the patient be transported to the hospital for evaluation and treatment for sexually transmitted infections including HIV or pregnancy, and evidence preservation. If the patient is unsure about having evidence collected at the hospital, inform them that New Hampshire has an Anonymous Reporting option for victims 18 years of age or older. ([See page 57 for details](#)).
13. Strangulation is often used as a tool to show power and control over a victim of sexual assault. Injuries are not always externally obvious but can be potentially fatal. Strangulation should be suspected if any of the following signs or symptoms are present even subtly or have resolved since the attack, or if the patient reports being 'choked', strangled, or had any pressure applied to their neck:
 - Coughing
 - Swelling of the tongue
 - Neck pain
 - Abrasions or scratches
 - Voice changes
 - Dizziness
 - Swelling of the mouth/lips
 - Vision or hearing disturbances or changes
 - Difficulty breathing, speaking, or swallowing
 - Subconjunctival hemorrhage/petechiae or petechiae of the eyes, nose, or ears
 - Headaches
14. Additional documentation regarding strangulation should be thorough. Strangulation is an indicator of increasing lethality. Every effort should be made to have the patient medically evaluated and to connect the patient with crisis center support services. (See [Considerations for Strangulation](#), page 36, and [Appendix E](#)).
15. If after being clearly informed of the potentially serious health complications associated with strangulation, the patient ultimately decides not to seek emergency care at the hospital, contact Dispatch and request assistance from the local crisis center for the patient.
16. Document specific statements used by the victim in quotations. Do not paraphrase.

17. Treat and document assessment findings using appropriate medical treatment protocols without causing undue emotional trauma.
18. Utilize the telephone or secure app/web-based tool for communication with hospital; use of a recorded line is preferred. Communicate with receiving hospital early so that a Sexual Assault Nurse Examiner (SANE) and a local crisis center advocate may be available upon patient arrival or shortly thereafter. A SANE is a Registered Nurse or advanced practitioner with special training to provide comprehensive medical care to sexual assault victims. They demonstrate competency in conducting a medical/forensic examination and can be an expert witness in cases that go to trial.

Note: Adult victims of sexual assault may refuse care, transport, hospital examination and/or evidence collection. Victims may decide to report the assault to law enforcement later and the law provides several years for them to do so. Therefore, thoroughly document any care provided and any patient statements as if transporting. Leave patient's belongings with patient. Make any mandated reports as required by law. Provide patient the New Hampshire 24-hour statewide sexual assault hotline number: 1-800-277-5570.

LAW ENFORCEMENT RESPONSE

THE ROLE OF LAW ENFORCEMENT

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

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

*In their Concepts and Issues Paper, "Investigating Sexual Assaults", the International Association of Chiefs of Police (IACP) advise, "**The determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted. This determination can be made only after a thorough investigation.** This should not be confused with an investigation that fails to prove a sexual assault occurred. In that case the investigation would be labeled unsubstantiated. **The determination that a report is false must be supported by evidence that the assault did not happen.**"*

A thorough investigation of an adult sexual assault case is essential to hold offenders, including serial offenders, accountable. Crimes of sexual violence should be recognized as "critical incidents" and victims should be treated in a respectful and non-judgmental way. If the full cooperation of the victim is lost, it is usually impossible to successfully investigate and prosecute the crime.

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

Law enforcement agencies with a campus in their jurisdiction should refer to their existing Memorandum of Understanding (MOU) or work to develop one with their local institution of higher education. Response protocols described in the MOU should comply with New Hampshire [RSA 188-H:6](#) and federal statutes.

In many sexual assaults there are no eyewitnesses other than the victim, no obvious physical injury, and no physical or biological evidence. This does not mean the case cannot be proven beyond a reasonable doubt. In fact, New Hampshire law ([RSA 632-A:6](#)) states a victim's

testimony need not be corroborated. Notwithstanding this statute, it is important for investigators to look for evidence to support the victim’s report in the form of:

- Medical, physical, biological, and electronic evidence
- Witnesses who may have seen or heard something around the time of the incident
- Witnesses the victim and/or suspect may have talked to after the assault
- Photographic and/or video documentation of the scene(s)
- Social media posts/statements or other electronic evidence from cell phones/electronic devices
- Information about the suspect’s behavior, including efforts to groom or isolate the victim prior to the assault
- Evidence that the suspect has tried to prevent the victim from staying engaged with an investigation

A VICTIM-CENTERED, TRAUMA INFORMED RESPONSE

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

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

To better understand what this means, consider the impact on a victim who has been involved in a “critical incident”. A critical incident is defined as “any event that has a stressful impact sufficient enough to overwhelm the usually effective coping skills of an individual.”¹⁴ Sexual assault cases should be treated as “critical incidents”.

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

- Anxiety
- Fear for the safety of the victim or their loved ones

MYTH: *Victims who do not fight back have not been sexually assaulted.*

FACT: *Forced sexual contact against anyone is sexual assault whether the victim fights back or not. Shock, fear, threats or perpetrator size and strength are factors that influence a victim’s response.*

¹⁴ Kulbarsh, P., “Critical Incident Stress”, Officer.com, February 28, 2023, <https://www.officer.com/home/article/10249385/critical-incident-stress>

- Preoccupation with the stressful event
- Flashbacks in which the individual mentally re-experiences the event
- Short and long-term physical symptoms including muscle aches, headaches, and fatigue
- Disbelief at what has happened, feeling numb
- Concentration or memory loss surrounding recall of the traumatic event
- A misperception of time
- Increased startle response
- Feelings of guilt, shame or self-doubt related to the traumatic event, even if misplaced when evaluated by an impartial person

Offenders choose their victims based on their perception of the victim’s accessibility, vulnerability, and credibility. Law enforcement should recognize “victim blaming”, the effects of trauma on victims, and the offenders’ use of manipulation. All of these can combine to allow the offender to continue to re-offend if not held accountable for their behavior. Offender-focused investigations can lead to repeat and serial offenders being identified and increase public safety.

INITIAL VICTIM STATEMENTS

The initial victim statement is typically taken upon first contact with the victim. Taking this initial **verbal** statement from the victim is an opportunity for law enforcement to obtain basic information and establish the location and elements of the crime. It is **not** an opportunity to conduct a comprehensive interview. The initial statement is used to assess safety and health needs, ascertain jurisdiction, identify, and preserve sources of evidence and determine next steps. (*Refer to “Conducting a Minimal Facts Interview”, page 41*).

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

Best practice recommends victims of sexual assault should never be asked to provide a written statement about the assault, especially during the initial phase of their report to law enforcement. The impact of the trauma may affect the victim’s memory and the ability to give details of their experience¹⁵. Some victims may find it difficult, if not impossible, to write down what happened to them. Requiring sexual assault victims to write a statement may lead to timeline gaps, minimization of details, incomplete or disorganized information and the appearance of inconsistencies.

If the case proceeds to prosecution, an initial, incomplete written statement will likely be used against the victim and increase the long-term trauma they may experience. If the initial statement is provided verbally and is thoroughly documented by law enforcement, these challenges may be avoided. In addition, some victims may choose not to follow through with their report to law enforcement if they are required to provide a written statement because it is so

¹⁵ Wilson, C., Lonsway, K.A., Archambault, J. (2022). *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims*. End Violence Against Women International. https://evawintl.org/wp-content/uploads/2016-11_TB-Neurobiology-2.pdf

difficult for them. In these situations, there is no offender accountability, and the initial criminal justice response is not victim centered.

DELAYED DISCLOSURES

The term “delayed disclosure” is used to describe a case that is reported to medical forensic examiners or law enforcement outside of the short window associated with collecting evidence from a victim’s body (within 5 days of the assault). Victims may disclose to health care providers, law enforcement, or local crisis centers any time after a sexual assault — immediately, days, weeks, or years later. Immediately following an assault, many victims report to someone they trust, often a friend or family member. It is very common for victims to try to resume their normal lives as if the assault did not happen – they go to work, attend school, and keep appointments. For victims who report a sexual assault weeks, months, or years after the assault occurred, a trauma-informed response is still important.

All reports of sexual assault should be treated as a high priority at the time the report is made, regardless of when the assault took place or if it is within the evidence-collection timeframe.

Delayed disclosure can incorrectly imply that a victim actively inhibited a sexual assault investigation. The term discounts the fact that many sexual assault cases are reported to law enforcement years after the assault, far outside the timeframe when evidence can be collected during a medical forensic exam. The term does not account for victims’ individual trauma responses and does not take into consideration safety or cultural factors that influence whether a victim is willing to report the assault and trust the response from the criminal justice system.¹⁶ **Delayed and partial reports are normal and common in cases where the victim knows the perpetrator.**

While the evidence-collection window is important to be aware of, responders should also understand that the medical forensic exam, with or without evidence collection, can be beneficial to the investigation and prosecution of sexual assault.

Many adult survivors carry the burden of being sexually abused as a child for years before disclosing the abuse. In New Hampshire, a child sexual abuse victim has until they reach 40 years of age to report and still be within the current statute of limitations ([RSA 625:8](#)), barring any tolling if the perpetrator leaves the state. When an adult is ready to make a report to law enforcement, a complete investigation with all documentation should be forwarded to prosecution for review and appropriate action.

GENDER BIAS IN POLICING

In 2015, the US Department of Justice issued new guidance designed to help state and local law enforcement authorities more fairly and effectively address allegations of sexual assault. The guidance assists law enforcement to protect their communities, advance bias-free policing and uphold the civil rights of the people they serve. Gender bias in policing practices is a form of discrimination that may result in providing less protection to certain victims based on gender,

¹⁶ National Sexual Violence Resource Center, National SART Toolkit, Critical Issues in Responding to Reports of Sexual Assault, <https://www.nsvrc.org/sarts/toolkit/5-2>

failing to respond to crimes that disproportionately harm people of a particular gender or offering reduced or less robust services due to a reliance on gender stereotypes. Gender bias, whether explicit or implicit, conscious, or unconscious, may include:

- police officers misclassifying or underreporting sexual assault,
- inappropriately concluding that sexual assault cases are unfounded,
- failing to forward sexual assault kits to the forensic laboratory for testing; or
- interrogating rather than interviewing victims and witnesses.

In sexual assault cases, if gender bias influences the initial response to, or investigation of, the reported crime, it may compromise law enforcement’s ability to gather facts, determine if the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable.¹⁷

Updated guidance issued in 2022 more thoroughly addresses:

- the need for trauma-informed law enforcement training and responses to sexual and domestic violence,
- additional examples of how law enforcement agencies can incorporate these principles into their policies and procedures,
- ways that gender bias can intersect with other forms of bias to disproportionately affect survivors from marginalized communities, including but not limited to, communities of color, lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) survivors, immigrant survivors and individuals with limited English proficiency; and
- the need to address and prevent officer-committed domestic violence and sexual misconduct, on-duty and off-duty, to hold these offenders accountable and enhance community trust in the law enforcement agency.¹⁸

The Americans with Disabilities Act (ADA) is a Federal civil rights law. It gives Federal civil rights protections to individuals with disabilities like those provided to individuals based on race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in state and local government services, public accommodations, employment, transportation, and telecommunications. ***Title II of the ADA prohibits discrimination against people with disabilities. The ADA also affects virtually everything that law enforcement officers do, for example: taking citizen complaints, interviewing witnesses, enforcing laws, and other duties.*** See [Appendix M](#) for resources on ADA compliance.

¹⁷U.S. Department of Justice, Civil Rights Division, Community Oriented Policing Services (COPS), Office of the Attorney General; Office on Violence Against Women, 15-1526, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, December 2015.

¹⁸ U.S. Department of Justice, Civil Rights Division, Office on Violence Against Women, *Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias*, May 2022. <https://www.justice.gov/ovw/page/file/1509451/download>

CONSIDERATIONS FOR STRANGULATION AND SEXUAL ASSAULT

Strangulation is an extremely common and profoundly serious problem in sexual violence cases. Strangulation, commonly referred to as “choking,” is external pressure on the neck that closes off the airway or blood vessels or both¹⁹. This can result in acute and long-term injuries and even death²⁰. 40-80% of individuals experiencing intimate partner violence (IPV) or sexual violence experience co-occurring strangulation as part of the abuse^{21 22}. Victims may present with life-threatening injuries and no observable external evidence of injury.^{23 24 25} Victims who have experienced strangulation may suffer anoxic brain injury, or they may have serious internal injuries resulting in permanent impairment or death days or weeks after the strangulation event.²⁶

Because the more common term for strangulation is choking, first responders, including law enforcement, EMS personnel and Emergency Department staff should ask the sexual assault survivor if they were “choked” as opposed to “strangled.” This question should be a standard part of the minimal facts interview as well as a formal comprehensive interview. See [Appendix E](#) for First Responder tips and [Appendix F](#) for suggested comprehensive interview questions.

The lack of external signs of injury often causes victims, law enforcement and members of the medical community to overlook the potential lethality of an incident of strangulation.²⁷ **It is highly recommended that law enforcement request EMS response to all strangulation assaults.** It is also recommended that law enforcement agencies adopt a policy of automatic EMS dispatch in strangulation cases.

Victims of strangulation often experience new or changing symptoms in the hours and days following the assault and should be contacted, in person, 24-48 hours after the assault to check their welfare, ascertain if signs and/or symptoms are changing, worsening, or improving and to obtain follow-up photos of evolving or resolving injuries. It is preferable to have medical personnel conduct this follow-up.

¹⁹ Midttun, D. (2021). Involuntary loss of bowel-control in sexual assault with non-fatal strangulation: A case report. *Forensic Science International: Reports*, 3, 1-4. <https://doi.org/10.1016/j.fsir.2021.100200>

²⁰ Petrosky, E., Blair, J., Betz, C., Fowler, K., Jack, S., & Lyons, B. (2017). Racial & ethnic differences in homicide of adult women and role of intimate personal violence – United States 2003-2014. *MMWR Morbidity & Mortality Weekly Report*, 66(28), 741-746. <https://doi.org/10.15585/mmwr.mm6628a1>

²¹ Messing, J., Patch, M., Wilson, J., Kelen, G., & Campbell, J. (2018). Differentiating among attempted, completed, & nonfatal strangulation in women experiencing intimate partner violence. *Women’s Health Issues*, 28(1), 104-111. <https://doi.org/10.1016/j.whi.2017.10.002>

²² Mcquown, C., Frey, J., Steer, S., Fletcher, G., Kinkopf, B., Fakier, M., & Prulhiere, V. (2016). Prevalence of strangulation in survivors of sexual assault & domestic violence. *American Journal of Emergency Medicine*, 34(7), 1281-1285. <https://doi.org/10.1016/j.ajem.2016.04.029>

²³ Saturnus, K., Schleser, C., & Trubner, K. (2022). Biomechanics of a previously unknown thyroid cartilage fracture in fatal strangulation. *Legal Medicine*, 54, 1-5. <https://doi.org/10.1016/j.legalmed.2021.101999>

²⁴ Patch, M., Anderson, J. C., & Campbell, J. C. (2018). Injuries of women surviving intimate partner strangulation and subsequent emergency health care seeking: An integrative evidence review. *Journal of Emergency Nursing*, 44(4), 384-393. doi: 10.1016/j.jen.2017.12.001

²⁵ Midttun, D. (2021).

²⁶ White, C., Martin, G., Schofield, A., & Majeed-Ariss, R. (2021). “I thought he was going to kill me”: Analysis of 204 case files of adults reporting non-fatal strangulation as part of sexual assault over a 3 year period. *Journal of Forensic & Legal Medicine*, 79, 1-10. <https://doi.org/10.1016/j.jflm.2021.102128>

²⁷ “*How to Improve Your Investigation and Prosecution of Strangulation Cases*”, Strack, Gael B., McClane, Dr. George B., Updated May 1999.

Law enforcement should obtain a medical records release from the victim even if the victim declines EMS transport to the hospital or indicates that they will not be seeking medical attention. As a result of evolving symptoms, victims will often seek medical care later, and these medical records will be an important component of the case. A medical release should specifically request records of treatment and any follow-up care related directly to the incident under investigation.

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

- **Impeded breathing**– e.g., the victim feels as though they cannot breathe or take in air effectively, or the lips or fingers turn blue in color; the victim cannot effectively swallow or is drooling or spitting regularly as a result, the victim is able to speak before and after the assault, but not during.
- **Impeded blood circulation** – e.g., the victim feels dizzy, light-headed, passes out (syncope), has visual disturbances, ringing in the ears or feels increasing pressure or pain in his/her head during the application of pressure to their neck or after/since the pressure was released. Shortness of breath can also be a symptom associated with impeded blood circulation as the disruption of blood flow to the brain will create a hypoxic state and cause the victim to feel like they cannot breathe even if they are able to speak and their airway is open.
- **Change in voice** – This may not be noticeable to the victim. Even if the victim says no, ask a family member or friend if the victim's voice sounds different. Obtain audio of the victim's voice (e.g., 911 call or audio/video statement).

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

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

USE OF BODY-WORN CAMERAS (BWCS) IN SEXUAL ASSAULT CASES

[RSA 105-D](#), regulates the use of body worn cameras by law enforcement. This statute does not mandate the acquisition of body worn cameras. Rather it requires any New Hampshire law enforcement agency that opts to implement BWCs as a tool for policing to adopt policies and procedures relating to their use and the retention and destruction of data ([RSA 105-D:2](#)).

Several New Hampshire and national resources are available to assist law enforcement with the development of policies and protocols and curriculum for officer training. [Appendix M](#)

Agencies are strongly encouraged to develop policies that are victim-centered, trauma informed and compliant with both [RSA 105-D](#) and [RSA 91-A](#) (Right to Know) requirements.

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

OFFICER WITH ACTIVATED BWC AND INITIAL VICTIM CONTACT

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

Example: When an adult victim is unsure if they want to report the sexual assault to law enforcement yet or they do not give express consent for BWC recording.

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

Example: In a location where there is a reasonable expectation of privacy, officers shall inform the individual of their option to decline being recorded. If the individual declines, the officer shall deactivate the BWC. In such cases, any images shall, as soon as practicable, be permanently distorted or obscured. The officer shall document in their report the reason why the camera was deactivated ([RSA 105-D:2, IX](#)).

Example: When an officer is responding to a healthcare facility, the BWC should be turned off due to patient privacy rights²⁸, ***unless the officer is responding to a 911 call at that facility.***

- It is suggested that law enforcement agencies have conversations with local healthcare facilities to determine appropriate policies for BWC use at the facility. Established policies should be clear for both officers and hospital staff.
- If an officer does not deactivate their BWC in the healthcare setting, efforts need to be made **not** to capture incidental communications with other people present at the facility to protect their privacy and a verbal announcement made to inform individuals nearby of the camera's activation.
- If an officer with a BWC transports an individual who is in custody/under arrest and is requesting a sexual assault medical/forensic exam to a healthcare facility, the officer should be present in the exam room for security purposes only. The BWC should be deactivated for patient privacy since the criminal activity is not ongoing.

²⁸ Public.Law 104-191, Health Insurance Portability and Accountability Act of 1996.

- If an officer’s presence in the exam room is required for security, BWCs *should not be activated* during a medical/forensic examination and evidence collection as the camera should not be used to gather investigative information while a healthcare professional is providing comprehensive medical care and treatment.

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

Express consent can be obtained verbally and should be recorded.

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

Express Consent

“Express consent” is consent that is explicitly given. *State v. Sawyer*, 145 N.H. 704, 707 (2001). “Consent is expressed ‘when evinced by words either written or spoken.’” *Provosty v. Brooks*, 2 La.App. 590, 593 (1925). “Express consent is ‘[c]onsent that is clearly and unmistakably stated.’” *Satterfield v. Simon & Schuster*, 569 F.3d 946, 955 (9th Cir. 2009) (quoting Black’s Law Dictionary 11th ed. 2019).

Consent must be “free, knowing, and voluntary.” *Sawyer*, 145 N.H. at 707. Express consent “may be treated as invalid under some circumstances, such as where [it] result[s] from overriding coercion.” *United States v. Footman*, 215 F.3d 145, 155 (1st Cir. 2000).

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

Express consent **cannot** be obtained if the victim:

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

Asking For Express Consent

Victims need to have a complete understanding of what it means to be audio and video recorded before giving their express consent. They should be told that if someone is arrested and charged in this matter, the recording may be seen by other people. The recording **SHALL NOT** be used for commercial or other non-law enforcement purposes and victims and witnesses have the

option to decline being recorded and can change their mind at any point about the camera being on or off.

When the First Responder Has Obtained Express Consent from the Victim

The first responder should continue their contact with the victim by conducting a minimal facts interview ([Refer to page 41](#)), encouraging the victim to have a medical/forensic examination, and contacting a local crisis center advocate to respond for the victim.

When Express Consent Is Not Obtained from the Victim

The victim’s decision must be honored, and all recording devices must be deactivated. The reason for deactivation SHALL be documented in the associated police report (RSA 105-D:2,V). The first responder should continue their contact with the victim by conducting a minimal facts interview ([Refer to page 41](#)), encouraging the victim to have a medical/forensic examination, and contacting a local crisis center advocate to respond for the victim.

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

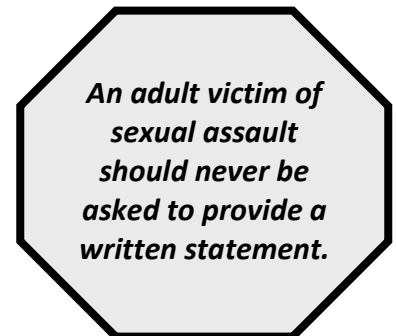
BEST PRACTICES FOR LAW ENFORCEMENT

THE FIRST RESPONDER

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

Responsibilities:

- Intervene in any in-progress assaults and separate all parties.
- Detain or apprehend the suspect.
- Call for emergency medical care for the victim, if necessary.
- Seek express consent to continue recording on BWC.
- Request additional personnel to respond, as appropriate.
- Ask the victim how they would like to be referred to (not just their name, but their personal pronouns - she/her/hers, he/him/his, they/them/theirs).
- Use appropriate language and sensitivity for a sexual assault investigation.
- Assist the victim to a neutral, safe place away from the scene when appropriate.



- Be careful not to stigmatize the victim by speaking loudly or calling unnecessary attention in any way.
- Attempt to determine if a crime occurred by conducting a Minimal Facts Interview with the victim. *Refer to the box at right.*
- ***If it appears to be a drug facilitated case, encourage the victim to seek medical treatment and a blood draw for toxicology purposes as soon as possible. If the victim is agreeable, assist as appropriate to ensure this is done in a timely manner. [See page 52](#) for more guidance.***
- Recommend the victim seek medical treatment if within 5 days of the assault, encourage the victim not to shower, wash up, eat, or drink, change their clothes, etc. until evidence can be collected by a Sexual Assault Nurse Examiner (SANE) or other trained professional at the hospital. Assist with transportation to the local hospital.
- A medical exam is recommended even if the report is made beyond 5 days as there could be long-term health concerns that result from the assault. [RSA 21-M:18](#) states that a sexual assault survivor has a right to: not be prevented from, or charged for, receiving a medical examination ([See Sexual Assault Survivors' Rights section, page 10](#)).
- Secure and protect the scene(s) until additional personnel arrive to assist.
- Request Dispatch contact the local crisis center for an advocate to respond for the victim (at the hospital, at the police department, or at the court).
- Explain to the victim what will happen as the process continues and who from the department will be responsible for case follow up, including who might be contacting the victim to schedule a more comprehensive interview.
- Provide the victim with telephone numbers and email address for the police department investigator handling the case.
- Document officer involvement, victim contact information, specific statements made by the victim about what happened, and officer observations, including of victim demeanor, clearly and in detail as soon as possible.

Minimal Facts Interview:

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

Let the victim know a more in-depth interview will be scheduled later to obtain additional information.

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

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

INITIATING THE COLLABORATIVE RESPONSE

The initial priority should be the safety of the victim.

When law enforcement is the first contact for a victim of sexual assault, a collaborative response should be initiated by requesting Dispatch call the local crisis center for an advocate ([Appendix A](#)). Advocates may respond to the police department, the hospital, or the court to meet with the victim.

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

LAW ENFORCEMENT'S ROLE DURING THE MEDICAL/FORENSIC EXAM

The victim should always be allowed to determine who is present during the medical/forensic exam. Law enforcement should not be present when the SANE or other healthcare provider is taking a medical history or conducting the exam. If a Sexual Assault Evidence Collection Kit is used during the exam, it will be signed over to law enforcement for transportation to the New Hampshire State Police Forensic Laboratory. Kits will be accompanied by paperwork (Step 1, Step 2-A and Step 2-B) which should be reviewed and included with the officer's report. These documents may contain initial details of the assault but do not replace a thorough and complete investigation.

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

With funding from the federal SAFE-ITR Program, New Hampshire's Sexual Assault Evidence Kit Tracking System launched in late 2022. All sexual assault kits should now be tracked using directions on the top left corner of the kit box. Kit tracking is initiated at the hospital and is completed at each step of the process. Law enforcement receives the kit from a hospital, delivers it to the New Hampshire State Police Forensic Laboratory or to another jurisdiction, and the lab returns kits to law enforcement for retention per [RSA 21-M:18](#).

Tracking system goals are to ensure that all kits are submitted to the lab without delay and to keep victims informed of the status and location of their kit.

To ensure that the victim portal within New Hampshire's Kit Tracking System is up to date, it is vital that hospitals, law enforcement agencies, and the lab update the kit status in the tracking system each time a kit is sent or received.

INVESTIGATION AND FOLLOW-UP

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

If the victim of sexual assault has a disability, it is recommended that investigators develop a strategy for case follow up that includes evaluation of the victim's general capabilities, capacity to consent to sexual acts and meeting the legal elements of the crime as in any other case through interviews, evidence and witnesses.²⁹ ([Appendix O](#))

CONDUCTING A COMPREHENSIVE INTERVIEW/ASSAULT HISTORY

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

Law enforcement should allow ample time to conduct a thorough victim interview. The comfort and needs of the victim should be taken into consideration throughout the course of the interview process. Law enforcement should consider that trauma, cultural differences, cognitive ability, fear, self-blame, and other factors can influence the victim's ability to provide clear and concise details about the assault. Best practice would have law enforcement conducting interviews in person. However, conducting virtual interviews may be an option in extenuating circumstances. If an agency is going to use technology for this purpose, it is recommended that there be a policy in place to maintain the integrity of the investigation while recognizing the pros and cons of using this method of interviewing.³⁰

WHEN POSSIBLE, A COMPREHENSIVE, AUDIO/VIDEO TAPED INTERVIEW OF THE VICTIM, WITH THEIR CONSENT, SHOULD BE CONDUCTED BY A TRAINED, EXPERIENCED INVESTIGATOR.

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

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

²⁹ Lonsway, K. A., Archambault, J., Paceley, S., Herrman, C. (2021). *Investigating Sexual Assault Against People with Disabilities: How to Develop an Investigative Strategy*. End Violence Against Women International. https://evawintl.org/wp-content/uploads/2021-09_TB-Victims-with-Disabiliies-How-to-Develop-an-Investigative-Strategy.pdf

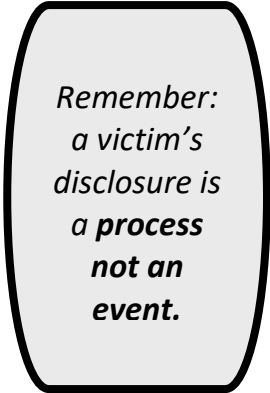
³⁰ Frances, G., Archambault, J., Stegner, M. (2020). *Using Virtual Meeting Software for the Law Enforcement Interview of Victims During COVID-19 and Beyond*. End Violence Against Women International. https://evawintl.org/wp-content/uploads/2020-04_TB-Tips-for-Virtual-Law-Enforcement-Interviews.pdf

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

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

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

- What is the victim *able* to tell about their experience?
- Follow up with: Tell me more. Tell me more about that.
- If the encounter began as consensual, at what point did the suspect’s behavior change?
- Obtain any information the victim can provide that is inconsistent with consensual behavior.
- Ask the victim to explain how they let the suspect know it was not consensual. *Remember, passivity can be a sign of a trauma response.*
- If force (physical), threat or coercion was involved, what was it and how was it applied on the victim? How did it make the victim feel?
- Does the victim have any bruises, scratches, marks, genital discomfort, or indications of other injuries? Remember, no sign of injury is common in these cases.
- Ask the victim to talk about specific threats, tone of voice used and any gestures and/or looks given to the victim. How did the victim react to this?
- What were the victim’s thoughts and feelings during the assault?
- Ask for sensory details - what was the victim seeing, hearing, feeling, tasting, smelling during the assault?



*Remember:
a victim's
disclosure is
a **process**
not an
event.*

- Ask the victim to describe (“Tell me about...”) the suspect’s physical size and strength in comparison to the victim and why the victim may not have been able to physically resist.
- Ask the victim to describe (“Tell me about...”) the location of the assault, including but not limited to the surrounding area (isolated, near a noisy party, etc.)
- Ask the victim to describe (“Tell me about...”) the suspect’s actions, statements and demeanor following the assault.
- What, if anything, can the victim ***not*** forget about their experience?
- What was the victim experiencing (thinking, feeling) the day after the assault? A week after? Currently?

ANTICIPATING POTENTIAL CASE CHALLENGES

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

The Consent Defense - “It was consensual.”

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

The Denial Defense - “It didn’t happen.”

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

Investigators should be prepared to deal with suspects who can be both persuasive and adamant that sexual contact did not occur. In these cases, it is important for investigators to obtain as many corroborating details of the victim’s account as possible. Investigate thoroughly and document/collect all available evidence. An investigative tool in these cases could be a

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

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

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

suspect polygraph conducted by an examiner with experience in criminal examinations. ([See page 52](#) for information on conducting polygraphs)

The Identity Defense - “It wasn’t me.”

This defense is usually used in cases where the victim and suspect **do not know** each other. The suspect can easily claim, “It wasn’t me.” Victim interviews in these cases should focus on:

- Establishing a detailed timeline to combat an alibi defense.
- Obtaining all possible information about the suspect’s method of operation to compare to other available information sources such as Fusion Centers, sex offender registries or the Violent Criminal Apprehension Program (ViCAP³¹). Criteria cases for ViCAP entry include sexual assaults committed by a stranger, are incestual in nature, or those known or suspected to be part of a series. Case information for entry includes:
 - Method of approach
 - Method of control
 - Amount/type of force/restraint on victim
 - Victim resistance
 - Foreign object inserted/props used
 - Possible/apparent fetishes
 - Countermeasures (evidence destruction)
 - Any prior stalking behaviors by suspect
 - Location of ejaculation
 - Suspect’s verbal statements
 - Suspect attitude/demeanor changes
 - Sexual dysfunction
 - Type/sequence of acts performed
 - Bite marks (location/size etc.)
 - Victim release/recovery location
 - Items taken from victim or scene after the assault³²
- Obtaining a complete physical description of the suspect, including clothing, facial features, any scars, marks or tattoos, distinctive gait or other habits, sensory descriptions like smell, taste and feel, to make a suspect identification.
- Obtaining a description of the suspect’s vehicle or residence, if known.

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

³¹ ViCAP Homicides and Sexual Assaults: <https://www.fbi.gov/wanted/vicap/homicides-and-sexual-assaults> Law enforcement and prosecution agencies seeking access to ViCAP, can contact the FBI Boston ViCAP Coordinator at vicap@fbi.gov for more information.

³² *A Pocket Guide for Police Response to Sexual Assault*, New York State Coalition Against Sexual Assault (NYSCASA)

OTHER INVESTIGATIVE CONSIDERATIONS

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

- Detailed documentation of the scene(s) by narrative description, sketch, photographs and/or video.
- Use of proper evidence collection and preservation techniques.
- Ensuring follow-up documentation/photography of any injuries to the victim from the assault after 24, 48 or 72 hours, including bruises, scratches, bite marks or signs of strangulation. Whenever possible, and if any of these injuries are in intimate areas of the victim's body (as may be reported by the victim), a SANE or healthcare provider should take these follow-up photographs. The investigator and a crisis center advocate could accompany the victim to the medical facility if the victim wishes. Obtain a medical release of information from the victim for a copy of the medical documentation in these circumstances to include in the investigative file. A search warrant ***should not be used to seek evidence from a victim's body.***
- Identifying all potential witnesses to conduct interviews, including a neighborhood canvas when appropriate.
- Identifying any surveillance cameras in the vicinity of the crime scene and collecting video footage for the relevant time.
- Determining when it is appropriate in the investigative process to conduct an interview with the suspect.
- Depending on case circumstances, considering consultation with a prosecutor on the course of action involving the suspect [e.g., evidence collection, use of a one-party intercept (*See Appendix H for guidance*), interview, arrest, detention, grand jury, etc.].
- Obtaining any corroborating information/evidence mentioned during interviews with the victim, witnesses and/or suspect.
- Obtaining written consent or search warrants when appropriate.
- Obtaining any appropriate electronic evidence.
Remember to submit preservation orders to appropriate technology providers (*See [Electronic Evidence Considerations on page 55](#), and Appendices [J](#), [K](#) and [L](#)*).
- Obtaining a signed release from the victim who sought medical care after the assault for **all** medical records, including photographs, pertaining to their report of sexual assault.
Law enforcement MUST get a "Release of Information" form from the specific

When requesting records of a sexual assault medical forensic exam, the following language is recommended:

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

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

hospital or healthcare provider where the victim was seen. The release MUST be submitted through the hospital's Medical Record Department during business hours.

- Ensure that medical records are received, reviewed, properly secured as evidence in the case, and that prosecution is provided with a copy.
- If a victim who initially used the anonymous option comes forward to make a report, **it is law enforcement's responsibility to convert the kit to a known victim and notify the Forensic Laboratory that it can be analyzed.** ([See *Converted Cases*, page 60](#)).
- If law enforcement receives laboratory notification of a DNA match and entry of that DNA information into the Combined DNA Index System (CODIS), appropriate investigative follow up should occur.
- Should the sexual assault kit not bear any probative DNA profiles, other evidence collected in relation to the assault may be submitted to the Forensic Lab for examination.
- Investigators should communicate with laboratory personnel with questions regarding submitted evidence, analysis timelines or results.
- Create thorough written reports ([See *Report Writing section*, page 50](#)).
- Ensure compliance with [RSA 21-M:18](#) ([See the *Law section*, page 10](#)).

Law enforcement should not hold a sexual assault evidence collection kit back from delivery to the forensic laboratory, including a kit associated with an anonymous victim or a deceased victim.

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

SUSPECT EVIDENCE COLLECTION

The forensic examination of a sexual assault suspect generally focuses on forensic evidence collection and documentation, not medical purposes. When evaluating potential sources of evidence, there is a tendency to focus on anything that might have transferred from the suspect to the victim; thus, forensic examinations of the victim are seen as critically important. However, keep in mind that evidence may also be transferred from the victim to the suspect. Therefore, depending on the type of contact involved in a sexual assault offense, the suspect's body may be another source of probative evidence. In many cases, the clothing worn by the suspect during the sexual assault is still available and, depending on the specific case history and the time since the assault, it may be another source of evidence in addition to the forensic examination of the victim.

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

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

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

- The suspect is arrested shortly after the sexual assault (generally within 3 days),
- The law enforcement investigator believes that the suspect has not bathed since the sexual assault (however, keep in mind that depending on the type of assault, an exam may still be warranted even if the suspect has bathed),
- There is reason to believe there might still be evidence of injury to the suspect, or
- The victim was able to describe physical characteristics of the perpetrator that could be confirmed by a physical examination³³

Factors to consider in addition to those listed above include the nature of the assault and the likelihood that cells, fluid, or other types of biological or trace evidence were transferred from the victim to the suspect. Examples of better sources of probative evidence may be found on the suspect's fingers in cases of reported digital penetration or the suspect's mouth or penis in cases of reported fellatio. Additional sources of evidence include the suspect's clothing worn during the assault and items associated with the suspect like condoms or items used to wipe off body parts.

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

If the suspect is in custody and a search warrant has been obtained to collect evidence, it is recommended that law enforcement read the defendant Miranda rights prior to any medical history questions being asked. The suspect does have a right to remain silent, including refusing to answer any questions regarding their medical history. The examination to collect evidence should continue. If the suspect is not in custody, technically Miranda rights do not apply. However, it is recommended that the investigator clearly document that the suspect was free to decline any part of the examination and to leave at any time.³⁴

Law enforcement personnel must always remain present during the forensic examination of a suspect conducted by a SANE or healthcare provider at a medical facility.

All evidence collected from a suspect should be appropriately packaged, stored, and transported to the forensic laboratory for analysis according to existing protocols. The collection of the evidence and its chain of custody must also be clearly documented. ***The sexual assault evidence collection kit provided by the Attorney General's Office to hospitals is to be used for victims ONLY.***

³³ Archambault, J. (2021). *Forensic Exams for the Sexual Assault Suspect*. End Violence Against Women International. https://evawintl.org/wp-content/uploads/2013-10_TB-Suspect-Exams.pdf

³⁴ IACP Concepts and Issues Paper, *Investigating Sexual Assaults*, page 12, July 2005.

Further guidance on the procedures and forms for healthcare providers when conducting suspect evidence collection can be found in the [New Hampshire Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation \(2018\)](#).

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

REPORT WRITING

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

- Basic information identifying the writer
- The date the report is written
- The date of the investigative activities being reported
- The date, time and nature of the complaint, offense, or situation under investigation
- The names, dates of birth and contact information, including email addresses, for victims, witnesses, suspects, and
- The name of any other officer who was present, assisted, or participated in the activities being reported.

The body of the report should include a narrative description of the officer's actions and observations, the information obtained, and the source of that information. The narrative should be organized in chronological manner, listing, and describing events and interviews in the order they occurred. It should also include **all** significant or relevant information, including information that might be viewed as favorable to a suspect. To avoid confusion, when writing about more than one person, it is helpful to refer to each person by name. The report should be a factual account of an event. ***It should not include the officer's opinions about witness credibility or theories of the case.***³⁵

When documenting adult sexual assault cases, clearly summarize all the evidence uncovered during the investigation from the crime scene(s), forensic examinations of the victim and suspect, and statements provided by the victim, suspect, witnesses, and others. Documentation should include a synopsis of any audio or video recording when the recording is collected as evidence and made a part of the investigation. A synopsis is important to provide the reader an indication of the content of the evidence without referring to a recording transcript. In the event of a subsequent digital evidence failure, this synopsis could become especially important in the case. Final case narratives should include an investigation conclusion or disposition articulating how the case is ending based on the facts. Police reports can assist in "putting the puzzle pieces

³⁵ New Hampshire Attorney General's Law Enforcement Manual, page 212, 2020 Edition.

together” about what happened and what was learned so it can be easily understood by prosecutors, judges, and jurors.

An important technique for effective report writing in these cases is to avoid using the language of consensual sex to describe or imply positive, mutual interactions or affection between a victim and a suspect. When possible, use the exact words used by a victim to describe the assault and put those words in quotation marks. If the victim uses slang or street language, those are the words and phrases that should be documented. Do not minimize or sanitize victim statements to “clean it up”. In other words, the report should clearly describe the parts of the body and what the victim was forced to do with those parts of the body.³⁶ Effective report writing also avoids using victim blaming language. Adult victims in New Hampshire can decline to engage in the criminal justice system because they may not be able to, or be ready to, for a variety of reasons. A “lack of cooperation” should not be interpreted to mean someone is not a victim. If a victim advises they do not want to proceed with the process, attempts should be made to determine the sources of their reluctance and it should be documented accurately. ([See Recantation section below](#))

National resources on this subject can be found by referring to [Appendix O](#).

RECANTATION

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

- A victim’s feeling of embarrassment, fear, and shame about the assault
- A victim’s fear they will not be believed
- A victim’s desire to put the assault behind them, avoid answering questions, avoid repeating the story or facing the suspect in court
- A victim’s fear of public opinion through media/social media
- Concern or confusion about the likely outcome of a prosecution
- Pressure from offenders, such as threatening the release of private sexual images
- Pressure from friends, family, community, or peer group
- Pressure from cultural/religious communities

Note: Be aware that recantation could be the result of criminal threatening, witness tampering, or other crimes and should be investigated accordingly.

³⁶ EVAWI On-Line Training Module *Effective Report Writing: Using the Language of Non-Consensual Sex*, Updated October 2012.

POLYGRAPHING A SEXUAL ASSAULT VICTIM IS PROHIBITED

The New Hampshire Attorney General's Office receives a significant amount of federal grant funding each year from the Violence Against Women Act (VAWA). This money is distributed statewide to direct service providers, law enforcement agencies, prosecuting agencies, and the courts to assist in the efforts to end violence against women. The polygraph testing prohibition at 42 U.S.C. 3796§-8 requires states to certify that their laws, policies, or practices "**will ensure that no law enforcement officer, prosecuting officer, or other governmental official shall ask an adult, youth, or child victim of an alleged sex offense...to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation for such an offense**". Failure to abide by this policy may result in New Hampshire losing VAWA funding (See [Appendix I](#)).

Polygraphing Suspects

In New Hampshire, polygraph test results are not admissible in court. ***However, polygraph testing can be used as an investigative tool when dealing with suspects and should be considered whenever appropriate.*** Investigators considering polygraph testing for suspects should ensure that a thorough investigation has been done to that point. They should also meet with the polygraph examiner to review information and discuss questions to be asked prior to the test being given.

DRUG AND ALCOHOL FACILITATED SEXUAL ASSAULT

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

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

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

This confusion or uncertainty leads to victims of drug/alcohol facilitated sexual assaults being less likely to report to law

MYTH: *It is not sexual assault if it happens after drinking or taking drugs.*

FACT: *Alcohol and drugs are weapons that some use to control their victim and render them helpless. Being under the influence of alcohol or drugs is not an invitation for non-consensual sexual activity and does not cause others to assault or take advantage of the victim. Alcohol and drugs are tools used by perpetrators.*

enforcement³⁷. Another significant challenge is the short time it takes for the ingested substance to be eliminated from the body. **It is especially important for healthcare providers to request that victims give their informed consent for toxicology samples to be collected as soon as possible in any case of a suspected drug/alcohol facilitated sexual assault.** Samples should be collected even if a victim is undecided at the time about reporting to law enforcement. If the potential evidence is not collected during the short window of time, it will not be available later when the victim decides to make the report. Urine samples allow for longer detection times than blood samples. **Urine samples should be placed on ice or in the freezer IMMEDIATELY until transportation to the forensic laboratory. Winter weather temperatures do not constitute adequate evidence storage conditions.**

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

- The type and amount of drug ingested
- The victim's body size and metabolism rate
- If the victim has food in their stomach
- If the victim has urinated since the assault
- How much time has passed between the ingestion and the taking of the sample

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

***Samples need to be collected as close to the event as possible:
Blood and urine up to 24 hours and
urine alone from 24 to 120 hours following the assault.***

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

VICTIM INTERVIEWS IN DRUG/ALCOHOL FACILITATED SEXUAL ASSUALTS

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

³⁷ Kilpatrick, Dean, Dean, PhD, et al. Drug-facilitated, Incapacitated and Forcible Rape: A National Study (2007) and the National SART Toolkit, 2011, Office for Victims of Crime & Office for Justice Programs

Questions for victims should include:

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

ELECTRONIC EVIDENCE CONSIDERATIONS IN ADULT SEXUAL ASSAULT CASES

Electronic communication is a pervasive part of everyday life. Electronic devices capture a wide variety of information relevant to sexual assault investigations, which is particularly valuable in cases where the suspect uses the consent defense. Electronic evidence should be considered as important as physical evidence and treated as such; the same rules of search and seizure apply. While the workings of the internet and social media may seem abstract, they are essentially large utilities providing a service and generating business records that can be obtained with proper legal process and used as evidence.

INVESTIGATIVE METHODS

IDENTIFYING ELECTRONIC EVIDENCE

The response to a sexual assault should include identifying and preserving potential sources of electronic evidence. Investigators may accomplish this by asking how the victim and suspect communicated. Social media and messaging accounts can often be identified or confirmed by simply searching publicly available data like Google or Facebook. The names of services or applications the suspect used to interact or communicate with the victim should be noted, along with any relevant usernames or user IDs for the suspect, victim, and any possible witness(es). Note that for many applications, the displayed name for a user is not the actual "User ID," and most services will not provide any information if the exact username is not specified. Investigators should note any relevant phone numbers. In cases involving non-consensual dissemination of private sexual images, it is essential to document the images and how the suspect sent them.

EXAMPLES OF ELECTRONIC EVIDENCE

- Messaging content
- Browser history
- Message logs
- Application usage data
- Installed applications
- Purchase and payment history
- Contacts
- Tracking and location data
- Media (photos and video)
- Deleted content
- Account registration data
- Search history
- Email
- Call logs

Investigators may find the same data stored in multiple locations; for example, if the victim has deleted a conversation, it may still be preserved on the suspect's phone, by a cellular carrier, or by an Electronic Service Provider (ESP) such as Snapchat or Instagram.

PHYSICAL DEVICES

Devices such as smartphones, tablets, and computers often contain relevant evidence. Physical devices may also include home security or DVR systems, baby monitors, doorbell cameras, etc. Because a suspect can instantly delete data from these devices, there is often an exigency to seize them to preserve evidence in anticipation of a search warrant. If an investigator seizes a device under exigent circumstances, they should not search it until they obtain a warrant. Even after investigators seize a device, a suspect may still destroy evidence if the device is allowed to connect to a signal of any kind.

The following steps are best practice when seizing an electronic device:

1. Always attempt to obtain the passcode for the device and verify that it works. Examiners can sometimes extract data from a locked device, but not reliably.
2. Separate the device from any signal by placing it in airplane mode if possible and place it in a signal-blocking (faraday) bag. A signal-blocking bag is required if the phone is not in airplane mode. Faraday bags are available from most evidence supply companies. Do not remove the SIM card. Anti-Static bags do not block signal.
3. Leave the phone in a powered-on condition until it reaches an examiner. Charge the device if needed. Power cables can sometimes act as antennas, so if a phone is not in airplane mode, you must charge it from a battery pack placed inside the signal blocking bag.
4. Keep a note showing the passcode with the device and notify the examiner what condition the phone is in, especially if it is not in airplane mode.
5. Do not access, preview, or change the settings on the phone in any way except as described above.

Also refer to [Appendix L](#).

VICTIM DEVICES

Investigators should avoid seizing devices from victims if possible. The loss of contacts and the ability to communicate will compound an already traumatic situation. The loss of a phone may be a financial hardship, even if the victim obtains a replacement through a crisis center. Further, a full extraction from a victim's cellphone could result in needless scrutiny of all areas of the victim's personal life. Law enforcement should be thoughtful and sensitive when communicating with a victim about what information would be helpful in a phone search and what the process and estimated return time will look like. If the victim indicates evidence is present on their device and provides consent for a search, investigators should thoroughly document any areas which contain evidence as follows.

1. **Manual search-** A manual search or review means opening the device as the user normally would and documenting its contents by photo, video, or both. If a text conversation is photographed, the last message in each photo should overlap with the first message in the next photo so the conversation can be reconstructed later. Investigators should document the time and date stamps wherever possible.

As a supplement to this method, the investigator or victim (in the investigator's presence) may "screenshot" a conversation, image, or video, then text or email it to the investigator's department-issued phone or email address. This can usually be accomplished in real-time and provides a much better-quality representation than a photo of a device. Personal email addresses or phones should never be used for this purpose.

2. **Alternate Sources-** Often, evidence that appears to be "on the phone" is stored remotely and may not be recoverable from the device. Examples of this are conversations in applications like Snapchat, Instagram, Facebook Messenger, or dating apps. Usually, the best evidence of these conversations can be obtained by submitting a preservation letter followed by a search warrant to the appropriate service provider (*See below*).
3. **Seizure-** In some cases, the investigator will have to seize the victim's device. This may include cases where the evidence stored on a device is so extensive or detailed that a manual search is impractical, cases where evidence has been deleted and may be recovered by a forensic extraction, or cases where the device contains Child Sexual Abuse Materials.

PRESERVATION LETTERS

Immediately upon identifying any user account which may contain evidence of a crime, a preservation letter should be submitted to the company which issued the account. The letter must be addressed appropriately and specify the exact username, including any numbers or special characters, and how long the data is to be preserved (typically 90 days). Search.org is an excellent resource for determining where preservation letters should be sent (*See Appendix K*). Some Electronic Service Providers (ESPs) and Internet Service Providers (ISPs) will notify their user if they receive legal process or, in some cases, a preservation letter. This will depend on the specific company's policy. Preservation letters should clearly state that the user is not to be notified. Many ESPs and ISPs will require preservation letters be submitted electronically through a verified Law Enforcement Account. It is worthwhile to preemptively register accounts with common ESPs such as Facebook and Google to speed the process.

Probable cause need not be established before submitting a preservation letter. It is sufficient that an account *may* contain evidence. Investigators can use preservation letters to preserve any possible source of evidence and follow up with search warrants later. Note that some companies, such as Verizon Wireless, will bill for preserving some types of data.

If no preservation letter is in place, users may delete evidence without a trace. In other cases, the service provider may keep records for only a few days before automatically deleting them. Once the service provider acknowledges a letter, electronic data should be retained in its entirety even if the suspect attempts to delete it. It is therefore critical that preservation letters be submitted as quickly as possible.

LEGAL PROCESS

Search Warrants: Search Warrants are required for any search of an electronic device or online account associated with an Electronic Service Provider. Any search warrant directed to an

Electronic Service Provider must include identifying account information, usually the specific username or User ID.

Grand Jury Subpoena: Grand Jury Subpoenas may be used to obtain basic subscriber information from an ESP or ISP, but ESPs will not provide user content without a search warrant. Subpoenas are particularly useful for identifying who is assigned a given Internet Protocol (IP) address at a given time. This is a common method for tying anonymous internet activity to a physical address and actual person.

Legal process should be submitted electronically in the manner specified by each ISP or ESP.

DATA PROCESSING

There are several software tools which can be utilized to bypass passwords, as well as gather and organize electronic data. Some examples of these tools include Cellebrite, GreyKey, and Oxygen Forensics for mobile device extractions, and Axiom for PCs. It is important for investigators to consider their options to understand which software may be the best fit to assist with their case. Examiners do not have to be certified. However, if the manufacturer/developer recommends or requires examiners to be certified, this should be followed. Officers holding certifications can add their expertise and credibility to support the evidence submitted in court when testifying about the process relating to extractions and findings during analysis. The Forensic Laboratory can assist with extracting data from electronic devices if you do not have an examiner in-house that can perform this service.

VICTIM OR WITNESS RECORDING THE DEFENDANT

There may be cases where the victim has recorded the defendant on a device during or immediately after an assault. This may implicate [RSA 570-A](#), commonly known as the “Wiretapping Statute.” If this occurs, consult with your prosecutor to discuss how to proceed.

NEW HAMPSHIRE'S ANONYMOUS REPORTING OPTION

Some adult victims who present to the emergency department for medical/forensic treatment may be undecided about whether to report the crime to law enforcement. The anonymous reporting procedure ensures that all **adult** victims have the option of evidence collection and preservation (within 5 days of the assault) even if they are not ready to report the crime to law enforcement.

The evidence is collected in accordance with the [New Hampshire Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation](#) except that the identity of the victim is not documented on any of the specimens or paperwork provided in the Sexual Assault Evidence Collection Kit. A unique serial number is provided on the end of each Evidence Collection Kit box and this serial number is used in place of the victim's name on all specimens and paperwork. At the time of hospital discharge, the victim who chooses the anonymous option will receive the kit serial number and instructions on how to report to law enforcement.

*Anonymous Kits
CANNOT be used
for anyone under
18 years of age.*

- After the victim is discharged, the examiner will give the anonymous kit to the law enforcement agency of jurisdiction and enter the kit into the New Hampshire Sexual Assault Tracking System. See [Appendix M](#) for guidance.
- The law enforcement officer receiving the kit will also enter it into the tracking system. See [Appendix M](#).
- **Law enforcement will then transport the evidence to the New Hampshire State Police Forensic Laboratory, just as they would in a reported case where the identity of the victim is known. Delivery of anonymous kits to the lab is important to ensure timely analysis if the victim reports to law enforcement within the first 60 days following kit collection. The tracking system should also be used by the law enforcement representative and the Forensic Laboratory personnel during this delivery process.**

VERY IMPORTANT:

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

If the victim does not report to law enforcement within 60 days of when the kit was collected, the New Hampshire State Police Forensic Laboratory will return it to the submitting agency for continued storage. At this point, the kit has **not** been analyzed but can be if the victim comes forward to report.

New Hampshire's Sexual Assault Survivors' Rights ([RSA 21-M:18](#)) requires that a sexual assault evidence collection kit or its probative contents be preserved, without charge, for the duration of the maximum applicable statute of limitations, or 20 years, whichever is shorter.

CONVERTED CASES

Converted cases are those where an adult victim has evidence collected by a SANE or other health care provider anonymously, but later reports to law enforcement and their identity becomes known. The victim can provide the kit serial number they received upon hospital discharge to the police so that the collected evidence may be associated with them, and an investigation of the crime may begin. If the victim cannot provide the kit serial number, the victim can obtain it from the hospital.

- If the anonymous kit is in the Forensic Laboratory's possession (within 60 days after collection), ***it is the responsibility of law enforcement to contact the lab and advise that the victim has reported and gives their authority for the evidence to be analyzed.*** This authorization from the victim needs to be documented in a supplemental report by the submitting agency. Upon return of the kit to the submitting agency, the victim's identity should be noted on the cover of the kit and the box checked indicating the conversion.
- If the kit is back in the possession of law enforcement, the victim's identity should be recorded on the outside of their kit, the box checked indicating the conversion, and it should be returned to the Forensic Laboratory for analysis. The Sexual Assault Kit Tracking System should be updated again to reflect that the kit has been "sent" to the lab again.
 - Note: Law enforcement should request the pink copies of the kit paperwork (Step 1, Step 2-A and Step 2-B) which are sealed inside the kit box and contains details of the assault provided by the victim at the time of the evidence collection from the lab upon its delivery. Documentation of the contact with the forensic laboratory, and these forms need to be included in the law enforcement report.

For all law enforcement agencies using a case management system for their reports, it is recommended that the property tab option be used when a kit and associated evidence is taken into custody, to ensure that all parties following up on or reviewing the case are aware that a kit was collected and that there should be a corresponding lab report.

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

Adult victims may maintain their anonymity with law enforcement until they are ready and able to report the crime.

SEXUAL ASSAULT EVIDENCE COLLECTION KITS

PRESERVATION AND STORAGE

Best practice regarding this evidence would include:

- Law enforcement retrieving the evidence kit as quickly as possible from the hospital. Hospitals do not have secure refrigerators to hold this evidence. Therefore, the SANE or healthcare provider must maintain possession of the kit for chain of custody purposes until it can be given to law enforcement.
- Medical personnel transferring the kit and any other evidence (e.g., a urine sample on ice separate from the kit box, clothing, etc.) to law enforcement using the chain of custody on the kit box cover. The New Hampshire Sexual Assault Kit Tracking System should also be used to reflect that a kit has been “sent” to law enforcement and identify that agency. (See [Appendix M](#))
- Law enforcement accepting custody, updating the tracking system, and properly securing the evidence. Refrigerating the kit if it contains a blood sample and keeping urine on ice or frozen. Winter weather temperatures do not constitute adequate evidence storage conditions until transport to the Forensic Laboratory. Blood samples may freeze and break if left in the trunk of a vehicle, destroying evidence and risking blood exposure to personnel. Metabolites in urine may break down causing loss of evidence if not frozen.
- Law enforcement transferring the kit and all other evidence for analysis to the Forensic Laboratory as soon as possible using the appropriate submittal forms. The kit tracking system should be updated to reflect that the kit has been “sent” to the Forensic Laboratory and lab personnel should update the tracking system to reflect their receipt of the kit.
- Upon return of the kit and any other evidence from the Forensic Laboratory, law enforcement properly securing the items at their agency and updating the tracking system to reflect that the kit has been received back from the lab for retention per [RSA 21-M:18](#).
 - If the kit has been analyzed, it may be stored at room temperature.
 - If there is a blood sample or urine sample returned with the kit (they will be separate items, not inside the kit), blood should be refrigerated and urine frozen.
 - The lab report should be reviewed and included in the case file.

THE ONLY EXCEPTION: KITS FOR OUT OF STATE JURISDICTION

- If the crime occurred outside of New Hampshire or the local law enforcement agency in the jurisdiction where the crime occurred cannot pick up the kit, the SANE or healthcare provider will give the kit to the New Hampshire State Police or other law enforcement agency willing to do a temporary courtesy pickup/hold until proper transfer can be completed. The agency in possession of the kit should update the kit tracking system to reflect that the kit has been “received from hospital – pending transfer”. The agency of jurisdiction should be noted.

- **The New Hampshire State Police Forensic Laboratory will not accept an evidence collection kit for a sexual assault that occurred outside of New Hampshire.**
- Law enforcement will notify the agency of jurisdiction to arrange transfer of the kit and any associated evidence. If it is not possible for in-person transfer, overnight shipping with tracking to maintain the chain of custody, is an option. Transfer is important so the kit is held according to each state’s kit retention protocols and Sexual Assault Survivors’ Rights. Upon transfer to another state, the tracking system should be updated to reflect that the kit was “sent out of state”.

KITS TRANSFERRED FROM OTHER JURISDICTIONS TO NEW HAMPSHIRE

- Upon notification of a sexual assault kit from another state, the agency of jurisdiction should arrange transfer of the kit and any associated evidence.
- If it is not possible for in-person transfer, to maintain the chain of custody, overnight shipping with tracking to the agency of jurisdiction, is an option.

Delivery of ALL kits to the Forensic Laboratory will ensure compliance with New Hampshire’s Sexual Assault Survivors’ Rights under [21-M:18, I\(b\)\(2\)](#) which states that a sexual assault survivor has the right to “be informed of any result of a sexual assault evidence collection kit ... if such disclosure would not impede or compromise an ongoing investigation”. Victims trust that their kit will be delivered to the lab and those with known victims will be analyzed after they go through the evidence collection process. Offender DNA, if found during kit analysis, can be entered into the Combined DNA Index System (CODIS) database possibly identifying repeat and serial offenders statewide and nationwide.

SEXUAL ASSAULT EVIDENCE COLLECTION KIT DOCUMENTATION

The officer taking custody of a kit, the associated paperwork, and any additional items of evidence from a health care provider should complete a thorough report which includes follow up actions such as temporary storage, lab submittal and transfer of information to detective. This documentation is important no matter if the victim is known to law enforcement or wishes to remain anonymous at the time evidence is collected, is deceased, or if the kit and evidence belongs to another jurisdiction. All attempts to notify the correct jurisdiction of the need to retrieve all items should be documented in supplemental reports, as necessary.

Sample 1 for another New Hampshire agency:

On xx/xx/20xx, this agency assisted the _____ Police Department by responding to _____ Hospital to take custody of Sexual Assault Evidence Collection Kit bearing serial # _____. This kit was collected by Dr./RN/SANE __ (name) _____. On xx/xx/20xx, the kit and any associated paperwork from the hospital was transferred to _____ of the _____ Police Department

Sample 2 for another New Hampshire agency

On xx/xx/20xx, this agency assisted the _____ Police Department by responding to the _____ Hospital to take custody of Sexual Assault Evidence Collection Kit bearing serial # _____. This kit was collected by Dr./RN/SANE _(name)_____. On xx/xx/20xx, after follow-up with the agency of jurisdiction, the kit was delivered to the NHSP Forensic Laboratory along with an Evidence Submittal record bearing the information for the agency of jurisdiction so it can be returned to the agency of jurisdiction after analysis

Sample for an Out-of-State Jurisdiction

On xx/xx/20xx, I responded to the _____ Hospital to take custody of Sexual Assault Evidence Collection Kit bearing serial # _____. This kit was collected by Dr./RN/SANE _(name)_____. On the kit box, the jurisdiction is listed as (City, State). On xx/xx/20xx, I contacted the _____ Police Department and notified Officer _____ that the kit needed to be transferred to their agency. On xx/xx/20xx, the kit and any associated paperwork from the hospital was transferred to _____ of the _____ Police Department. Because the kit will not be submitted to the NHSP Forensic Laboratory, the New Hampshire Sexual Assault Kit Tracking System has been updated to reflect that the kit has been transferred out of New Hampshire for jurisdictional reasons.

When receiving Reports of Laboratory Examinations associated with the testing of previously unsubmitted kits and kits not analyzed previously but were returned to the Lab:

- Consult with the respective county attorney to make a timely determination as to whether the investigation should be reopened, or
- Determine if the victim must be notified. *See, [RSA 21-M:18, I\(b\)\(2\)](#)* (a sexual assault survivor has the right “to be informed of any result of a sexual assault evidence collection kit . . . if such disclosure would not impede an ongoing investigation”).

DESTRUCTION OR DISPOSAL

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

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

It is recommended that the county attorney be consulted, or a court order obtained prior to kit destruction. If a kit is set for destruction, the kit tracking system should be updated with the status “Set for Destruction in accordance with [RSA 21-M:18.](#)” Please note that if a victim checks the kit tracking system’s victim portal after the kit has been “set for destruction,” they will receive a response to contact the appropriate law enforcement agency regarding the final disposition of the kit.

THE STATE POLICE FORENSIC LABORATORY

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

The Forensic Biology Unit develops DNA profiles for comparison with known individuals such as, suspects and victims, and/or entry into the Combined DNA Index System (CODIS), if applicable. These DNA profiles are derived from evidentiary samples which are contained in the sexual assault evidence collection kit. These samples typically consist of body cavity swabbings and samples of suspected biological materials collected from external areas of the patient's body. Information recorded by medical personnel on the *Sexual Assault Medical/Forensic Report* forms is referred to by laboratory staff when testing sexual assault kits. It is important for the healthcare provider to fill out these forms as completely and accurately as possible.

Hair specimens which may be collected as part of the healthcare provided or may be present in other evidence at the scene of the assault are evaluated when requested for their suitability for DNA testing. These hairs are microscopically examined and sampled for DNA analysis if the root contains follicular tissue that could develop a DNA profile. Most hairs recovered as evidence are not suitable for nuclear DNA analysis. In that situation, the lab can discuss with the investigating agency further testing at another laboratory that specializes in other methods for DNA analysis in hair, such as mitochondrial DNA analysis or rootless hair DNA extraction. A known DNA sample from the suspect(s) will be required for mitochondrial testing. Fees for evidence analysis performed by an outside laboratory are typically borne by the investigating agency or the prosecutor's office.

Should the sexual assault kit not bear any probative DNA profiles, other evidence collected in relation to the assault may be submitted to the laboratory for examination. Physical examination of these items may provide hairs or possible biological materials (e.g., blood, semen, and saliva) which may then be tested for DNA. Garments are also examined for any noteworthy damage which could have been caused by violence or weapons.

DNA results are reported to law enforcement agencies and DNA profiles that are eligible for entry into CODIS are uploaded for comparison to other forensic samples and lawfully collected offender or arrestee samples at the national and/or state level.

If there is a suspicion that drugs and/or alcohol were used to facilitate the sexual assault and a blood or urine sample was collected as part of the sexual assault examination, the samples are

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

The New Hampshire Sexual Assault Kit Tracking System will be utilized by the laboratory to document kit submission to the laboratory and subsequent return to the submitting agency.

sent to an external laboratory for testing using a date rape drug panel. No cost is incurred by the investigating agency for this testing.

The Forensic Biology Unit also performs DNA analysis for lawfully owed offender samples. Individuals who are convicted of a felony offense, or of a misdemeanor which would require the offender to be on the sex offender registry, are required to provide a DNA sample to the State of New Hampshire for entry into CODIS. Samples are collected in accordance to New Hampshire's DNA Testing of Criminal Offenders law, [RSA 651-C](#), and submitted to the laboratory for analysis and entry into CODIS.

The CODIS database is managed by the FBI and provides a mechanism to search DNA profiles at the state and national levels. The database allows for searches between recognized perpetrator DNA profiles derived from evidentiary materials and DNA profiles from qualifying offenders. Matches identified during the database search are evaluated by forensic lab staff, and in the event a match is confirmed, communicated to the investigating agencies. CODIS matches are intended to provide investigative leads, whether they provide the name of a potential suspect or link two criminal cases together by virtue of a common DNA profile found at each scene.

VICTIM ADVOCACY RESPONSE

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

Both community-based crisis center advocates and system-based victims' assistance providers ensure that victims receive the services, support, and information they need. Both provide support for victims, but there are significant differences in services and confidentiality, as outlined below.

One important role of both types of providers is to ensure that all victims are given information on the **New Hampshire Victims' Compensation Program**. If a victim reports a sexual assault that happened in state (or outside the U.S.) to a New Hampshire medical facility, the Victims' Compensation Program may assist with some or all the medical bills.

If the victim is examined within 10 days of the assault by a licensed medical provider, the Victims' Compensation Program can be directly billed for all hospital expenses, including for physical injuries that happened during the assault.

If the victim is examined more than 10 days after the assault, billing is dependent on whether the patient has insurance or not.

- If insurance is available, it must be used for any exam, labs, and medication as well as all treatment for all other physical injuries that happened during the sexual assault **AND** the victim must either present for a medical exam **OR** report the crime to law enforcement.
- If insurance is not available, the victim must either present for a medical exam **OR** report the crime to law enforcement. The victim must ask the hospital for a self-pay discount or charitable funds to pay the bill.

The victim may need assistance with further medical or mental health treatment, lost wages, mileage, and security, but must apply to the Victims' Compensation Program for those benefits. See [Appendix N](#) for detailed information.

Another role of community crisis center advocates and system-based victims' assistance providers is to offer victims information about the **Victim Information and Notification Everyday (VINE) Program**. This system provides victims of crime, their support network, and other community members access to the custody status of an offender (held, released, transferred, or escaped). Individuals may sign up for notifications or go to the VINE portal at any time. *It is completely free, confidential and features multiple language options. See [Appendix O](#) for program access information.*

THE ROLE OF THE COMMUNITY CRISIS CENTER ADVOCATE

There are 12 crisis center programs ([Appendix A](#)) throughout the state that provide services and support to victims of sexual assault, domestic violence, stalking, sexual harassment and human trafficking. Their services are free and are available to everyone regardless of age, race, religion, sexual orientation, physical ability, or financial status. Services provided include:

- 24-hour crisis line
- Access to emergency shelter
- Legal advocacy in civil and criminal courts
- Hospital and court accompaniment
- Information about resources and referrals for services
- Safety planning with survivors and non-offending family members

Immediate involvement of crisis center advocates is recognized as a **crucial service** for both the victim and the community. The role of the crisis center advocate is to provide emotional support and information, to listen, believe, and work to empower the victim while honoring the choices they make. Crisis center advocates are trained on what a victim can expect during a sexual assault medical examination, the investigative process, and the response by institutions of higher education when appropriate.

*Sexual assault victims seeking support from a crisis center advocate have **privileged communication** under [RSA 173-C](#). This statute prohibits advocates from disclosing any information shared by the victim without a waiver, release, or court order.*

When victims feel supported, believed, and safe, they are better able to work with law enforcement and medical staff. Best practice calls for crisis center advocates to be available to accompany victims through both the healthcare and criminal justice systems if the victim wishes. Crisis center advocates are **not** a part of the criminal justice system. It is not the advocate’s goal to find out the details of what happened to the victim, rather discussions between the victim and the advocate focus on the victim’s feelings and emotional needs. The role of the crisis center advocate is to be present and provide support to the victim through the investigation/interview process.

Involvement of crisis center advocates with victims as early as possible provides the victim with a link to an agency that can provide continuous support long after the medical exam and criminal justice system processes have concluded. Crisis centers support victims in the months and years after the assault, in hopes of connecting them with additional resources and aiding victims in their healing. Crisis center advocates are also core members of a Sexual Assault Resource Team (SART) as they bring victim/survivors’ needs and concerns to the overall collaborative response to adult sexual assault cases.

THE ROLE OF SYSTEM-BASED VICTIMS’ ASSISTANCE PROVIDERS

System based victims’ assistance providers may also be referred to as Victim/Witness Coordinators or Victim/Witness Advocates depending on their county or law enforcement agency. For the purposes of this protocol, they will be referred to as victims’ assistance providers ([Appendix D](#)). Their role is to inform victims of their rights and provide information, service-referrals, and support to victims of crime.

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

Victims' assistance providers are part of the United States Attorney's Office, District of New Hampshire, the Attorney General's Office, every County Attorney's Office as well as many local law enforcement agencies and city solicitor's offices. Victims' assistance providers have a detailed understanding of each stage of the criminal justice process from a victim's initial report to law enforcement through sentencing and post-conviction action. They also have a working knowledge of court rules and victim rights to explain the status of a criminal case at any stage.

According to the [Professional Guidelines for New Hampshire Systems Based Victims' Assistance Providers](#), all victims' assistance providers, whether paid or volunteer, should act with integrity, treat all victims of crime with dignity and compassion, and adhere to the principles of [RSA 21-M:8-k](#).³⁸

It can also be found at: <https://www.doj.nh.gov>.

Unlike crisis center advocates, communications between victims' assistance providers and victims are NOT confidential under the law.

Victims' assistance providers, and all professionals in the criminal justice system, are responsible for upholding the *New Hampshire Crime Victim's Bill of Rights* ([RSA 21-M:8-k](#)) for victims of a felony level crime, misdemeanor sexual offense, domestic violence, or violation of a protective order committed by an adult offender (*when offender is a juvenile, see [RSA 169-B:35-a, II](#)*). These rights include:

- To be treated with fairness and respect.
- To be informed as to the status of the case.
- To be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.
- To have confidentiality of your address, place of employment, and other personal information maintained.
- To be notified of any change of custody of the accused.
- To speak with the prosecutor.
- To be informed about the criminal justice process and how it progresses.
- To be able to attend all court proceedings on the same basis as the accused.
- To be notified if your presence in court is not required.
- To have your employer notified if your attendance in court is required (if requested).
- To provide a victim impact statement at any sentencing hearing regarding your case.

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

³⁸ <https://www.doj.nh.gov>

- To the prompt return of property when it is no longer needed as evidence.
- To receive restitution, as granted under applicable state law for losses related to the crime.

For a full list of a victim’s rights in New Hampshire, refer to the [Law section, page 9](#) or go to: [New Hampshire Victim Bill of Rights](#)

[RSA 21-M:18](#) states that *Sexual Assault Survivors* have a right to:

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

COLLABORATING WITH OTHER DISCIPLINES

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

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

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

Victims' assistance providers collaborate with probation and parole officers to provide victim contact information to set up defendant restitution payments. Providers will often alert the probation officer of victim concerns of non-payment. Victims' assistance providers also notify Department of Corrections victim services of the contact information for any victim who requests to be kept informed of inmate status, any changes, as well as parole hearings.

VICTIMS' COMPENSATION PROGRAM

Victims of violent crime may suffer financial stress as devastating as their physical injuries and emotional trauma. Recovering from violence or abuse is difficult enough without having to worry about how to pay for the cost of medical care or counseling.

The New Hampshire Victims' Compensation Program can provide substantial financial assistance to crime victims and their families; and, while no amount of money can erase the trauma and grief victims suffer, this aid can be crucial in the aftermath of crime. By paying for care that helps restore victims' physical and mental health, and by replacing lost income for victims who cannot work, the compensation program is assisting victims and their families in direct ways.

Victims' Compensation can pay for a wide variety of expenses and losses related to criminal injury, sexual assault, or homicide. This program assists with medical care, mental health treatment, funerals, lost wages, security systems, travel costs to receive treatment, moving expenses, reimbursement for clothing or bedding held as evidence by police in a sexual assault and removal of identifying tattoos or markings of human trafficking.

To be eligible for crime-related compensation, the victim or the parent/legal guardian must

- (a) report the crime promptly to law enforcement and cooperate with police and prosecutors; or present good cause for not reporting/cooperating
- (b) submit a timely victim compensation application;
- (c) have a cost or loss not covered by insurance or another government benefit program; and
- (d) not have committed a criminal act or some substantially wrongful act that caused or contributed to the crime.

Apprehension or conviction of the offender is not required.

It is important to note that hospitals and healthcare providers may not bill a victim or their family for a forensic sexual assault examination. The cost for this type of exam should be directly billed to the Victims' Compensation Program IF the victim does not have insurance or opts not to use their insurance. Expenses covered for the forensic sexual assault examination include cost for the exam and treatment, labs, medications, follow-up examinations and any other crime-related injury that occurred during the sexual assault (for the first 24-hours of hospitalization.) Also, if a victim sought medical treatment within 10 days of the sexual assault **and** agreed to the forensic evidence collection, but does not want to report to police, they are still eligible to apply for compensation. See [Appendix N](#).

Collaboration between law enforcement and the Victims' Compensation Program is essential to the success of this program. To assist victims with crime-related expenses, law enforcement reports pertaining to the crime must be provided to the New Hampshire Victims' Compensation

Program. The reports are necessary to determine that the victim is eligible for compensation pursuant to the laws that govern this program. Delays in receiving the reports may affect a victim's eligibility. Additionally, failure to submit the law enforcement reports when requested could result in the program's inability to process a victim's claim for crime-related assistance. **All information received, obtained, or maintained by the program in connection with any claim for victims' compensation shall be maintained as confidential material, and shall not be released or disclosed to any person or entity whatsoever, except as authorized by the claimant or as otherwise provided by law. Police reports are not shared with the victim or offender and are not subject to the Right-to-Know laws.**

Telling victims about compensation is the responsibility of every individual who works in victim services and law enforcement. The New Hampshire Victims' Compensation Program depends largely on law enforcement professionals who work with victims to spread the message that financial assistance is available. We encourage everyone with a role in helping victims to get more details about the program by contacting:

Victims can now apply
to the Victims'
Compensation
Program online at:

<https://ccvnh.org/>

NH Victims' Compensation Program

Attorney General's Office

1 Granite Place South

Concord, NH 03301

1-800-300-4500 (in NH only)

Or (603) 271-1284

E-mail: victimcomp@doj.nh.gov

For more information go to:

<https://www.doj.nh.gov>

MEDICAL RESPONSE

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

Please refer to the Suspect Evidence Collection section of the [Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation \(2018\)](#) for guidance, if appropriate.

SEXUAL ASSAULT EVIDENCE COLLECTION PROTOCOL AND KIT

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

providing physical examinations of victims of alleged sexual offenses". The protocol allows use of the kit if an adult victim seeks medical care within 5 days of the reported assault.

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

THE SEXUAL ASSAULT NURSE EXAMINER (SANE) PROGRAM

A SANE is a registered or advanced practice nurse who has received specialized education to provide comprehensive medical care to sexual assault victims. They demonstrate competency in conducting a medical/forensic sexual assault examination and may be called as an expert witness in cases that go to trial.

The goal is to ensure a trauma-informed and evidence-based response to the individualized medical/forensic needs of the victim. It is best practice to have all sexual assault medical/forensic examinations in New Hampshire be performed by a SANE or physicians and other advanced practice professionals who have gone through the SANE training.

BEST PRACTICES FOR HEALTHCARE PROVIDERS

- Immediately call the local crisis center for an advocate to respond to provide in-person support to the victim, if law enforcement has not already called
- Prioritize patient well-being
- Escort the patient to a private examination room as soon as possible
- Provide a patient-centered trauma-informed medical response
- Ensure the patient understands the medical forensic exam process before obtaining written consent

- Explain reporting options – including the option to complete an anonymous examination ([Anonymous Reporting Option, page 59](#)).
- Conduct the medical forensic examination uninterrupted and in a private room
- Assess the patient’s understanding and needs throughout the medical forensic examination
- Identify, collect, and preserve evidence in a timely manner
- Provide continuity of care from the beginning of the exam to discharge
- Refer the patient for further medical care or follow up based on the patient’s request or medical findings
- Provide prophylactic treatment according to the most current Centers for Disease Control (CDC) guidelines including emergency contraception
- Maintain confidentiality of records, photographs, and communications

MYTH: *You should have fought back.*

FACT: *Trauma triggers physical reactions that are not always controllable. Many sexual assault survivors experience tonic immobility, which is when the brain’s defense mechanism is to tell the body to freeze. It is not always possible to “fight back”, especially in situations when the assailant is bigger, stronger, or holds power (physical or mental).*

Treatment following sexual assault is considered a medical emergency. Victims are treated in a hospital emergency room. If the sexual assault occurred **within 5 days** of the examination, a **Sexual Assault Evidence Collection Kit is to be used with victim consent.**

The only time a law enforcement representative, male or female, should be present during the examination, is when the victim is in custody. In that circumstance, care should be taken to maintain the privacy and dignity of the patient while ensuring the safety of the medical personnel.

COMMUNITY BASED ADVOCACY

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

PRIORITIZING PATIENT WELL-BEING

The victim should **ALWAYS** be referred for medical assessment and care. The physical and psychological well-being of the sexual assault patient should always be given priority over evidentiary needs. In some cases, the investigation may have to be delayed for immediate medical treatment (e.g., if strangulation or a loss of consciousness occurred during the assault, or the victim complains of active bleeding, is pregnant or has abdominal pain). The medical/forensic examination of the victim may assist with the investigation and prosecution of the case, but it is foremost intended to assist the victim with their recovery. The victim may need prophylaxis to prevent pregnancy and sexually transmitted infections, including HIV.

EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA)

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

The law's initial intent was to ensure patient access to emergency medical care and to prevent the practice of patient dumping, in which uninsured patients were transferred, solely for financial reasons, from private to public hospitals without consideration of their medical condition or stability for the transfer.³⁹ EMTALA states: In the case of a hospital that has a hospital emergency department, if any individual . . . comes to the emergency department and a request is made . . . for examination or treatment for a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department to determine if an emergency medical condition exists.⁴⁰

An emergency medical condition is defined as:

... (A) medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual...in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part....⁴¹

³⁹ Zibulewsky, J. (2001) The Emergency Medical Treatment and Active Labor Act (EMTALA): what it is and what it means for physicians. BUMC PROCEEDINGS 2001;14:339–346.

⁴⁰ Examination and treatment for emergency medical conditions and women in labor. 42 USC 1395dd (1986). Available at <http://www.medlaw.com/statute.htm> (accessed July 2001).

⁴¹ 42 U.S.C.A. §1395dd(e)(1).

STRANGULATION

Strangulation, resulting from external pressure or blunt force trauma to the neck, is a type of asphyxia characterized by closure of the blood vessels or air passages.⁴² Studies indicate that women who experience intimate partner sexual violence often experience strangulation as a co-occurring issue.⁴³ Under New Hampshire [RSA 631:2](#) strangulation is a felony. It defines strangulation as “the application of pressure to another person's throat or neck, or the blocking of the person's nose or mouth that causes the person to experience impeded breathing or blood circulation or a change in voice.”

Patients may present with potentially lethal conditions such as fractured trachea, carotid artery aneurysm or cerebral artery infarct⁴⁴, like patients who have experienced blunt force trauma to the neck from accidental means.⁴⁵

Because the clinical picture can vary dramatically, from a patient without visible injury to one with significant visible injury, and because the patient may not mention the strangulation component of their assault, **asking about strangulation directly is an important aspect of clinical care.**⁴⁶

See the New Hampshire Attorney General’s [Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation](#) for a strangulation assessment tool, as well as recommendations for discharge.

PATIENT CONSENT

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

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

See the New Hampshire Attorney General’s [Sexual Assault: An Acute Care Protocol for Medical/Forensic Evaluation](#) for suggested guidelines for collection of evidence from patients who are unable to consent.

⁴² Iserson KV. Strangulation: Review of ligature, manual and postural neck compression injuries. *Ann Emerg Med.* 1984; 13(3): 179-185.

⁴³ Shields et al, 2010.

⁴⁴ Knight, 1996.

⁴⁵ McKevin EC, Kirkpatrick AW, Vertesi L, Granger R, Simons RK. Blunt vascular neck injuries: diagnosis and outcomes of extracranial vessel injury. *J Trauma Inj Infect Crit Care.* 2002;53(3):472-476.

⁴⁶ Clements PT, Pierce-Weeks J, Holt KE, Giardino AP, Seedat S, Mortiere CM. *Violence Against Women: Contemporary Examination of Intimate Partner Violence* (2015) STM Learning St. Louis, MO

TIMELINESS OF EVIDENCE COLLECTION

A medical assessment should be performed in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination. Some patients may ignore symptoms that would ordinarily indicate serious trauma, both physical and psychological. There may also be areas of tenderness which will later develop into bruises, but which are not apparent at the time of initial examination.

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

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

The New Hampshire Sexual Assault Kit Tracking System should be used to track **all** kits.

1. The bottom portion of the label on the box should be given to the patient with kit forms.
2. Using a smart device camera, scan the QR code found on the upper left corner of the kit box and follow the directions. If a smart device is not available, go to **doj.nh.gov/kit-tracking** and enter the 8-digit kit tracking code. Follow the instructions.
3. The **first kit status used by hospitals** would be “Sent to law enforcement”.
4. “Submit” your tracking entry and ensure a successful confirmation prompt is received.
5. **ALL kits**, including anonymous kits, are to be tracked to ensure transfer to the forensic laboratory.

Refer to [Appendix M](#) for additional guidance.

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

CONFIDENTIALITY OF MEDICAL INFORMATION

Findings from the medical/forensic examination should be documented as completely as possible on the forms provided in the evidence collection kit, which will become part of the

patient's medical record. **In addition, photographs taken in the context of the medical/forensic examination become part of the medical record.** Photographs should not be taken in place of diagrams or written descriptions and **should be taken by the examiner.** Examiners should adhere to their institution's photography policy for proper disposition of photographs. **Photographs should not be placed in the evidence kit.** The existence of photographs should be noted on the Medical/Forensic Examination Form. Evidence collection items should not be released from a hospital without the written authorization and consent of the informed adult patient, or an authorized third party acting on the patient's behalf, if the patient is unable to understand or execute the release. An "*Authorization and Disclosure Form*" (Step 1) contained in the kit should be completed, making certain that all items being transferred are checked off. In addition to obtaining the signature of the patient or authorized third party on this form, the top of the kit box has a designated chain of custody area for signatures from the examiner turning over the evidence to law enforcement, as well as from the law enforcement representative picking up the evidence and transporting it to the New Hampshire State Police Forensic Laboratory.

Health Insurance Portability and Accountability Act (HIPAA)

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

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

HIPAA regulations do not preempt the health care providers' obligation to report that which must be reported under New Hampshire law (RSA 631:6 or RSA 161-F:51,II). See [*Mandatory Reporting*, page 12.](#)

BODY WORN CAMERA (BWC) CONSIDERATIONS IN THE MEDICAL SETTING

Many law enforcement agencies in New Hampshire have instituted the use of body worn cameras by their officers. When working with officers who respond to medical facilities while wearing BWCs, consideration of the following is recommended:

- Healthcare facilities have conversations with local law enforcement agencies to determine appropriate policies for BWC use at the facility. Established policies should be clear for both officers and hospital staff.
- When an officer is responding to a healthcare facility, the BWC should be turned off due to patient privacy rights,⁴⁷ ***unless the officer is responding to a 911 call at that facility.***
- ***If an officer does not deactivate their BWC*** in the healthcare setting, efforts need to be made so that incidental communications with other people present at the facility are not captured to protect their privacy, and a verbal announcement made to inform those individuals, including the victim, of the camera's activation.

⁴⁷ Pub.L., 104-191.

- If an officer with a BWC transports an individual who is in custody/under arrest and is requesting a sexual assault medical/forensic exam to a healthcare facility, the officer should be present in the exam room for security purposes only. The BWC should be deactivated for patient privacy since the criminal activity is not ongoing.
- If an officer's presence in the exam room is required for security, the BWC should not be activated during a medical forensic examination and evidence collection as the camera should not be used to gather investigative information while a healthcare professional is providing comprehensive medical care and treatment.

PROSECUTION RESPONSE

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

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

- law enforcement observations,
- photos/videos of the victim's injuries,
- the defendant and the scene,
- EMS observations,
- SANE documentation,
- victim/witness/suspect interviews,
- physical and electronic evidence, and
- expert testimony, when appropriate.

Prosecutors must also consider the ethical issues of whether to file criminal charges or not.

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

BEST PRACTICES FOR PROSECUTION

VERTICAL PROSECUTION

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

MEETING WITH THE VICTIM

Just as prosecutors have an obligation to seek justice regarding a defendant, they also have obligations to the victim, including those outlined in the Victims' Bill of Rights ([RSA 21-M:8-k](#)). It is important to note that in cases where the offender is under the age of 18, the victim's rights are governed by [Chapter 169-B:35-a](#).

Meeting with the victim gives prosecutors increased insight not available through written reports. Meeting with the victim is also part of being victim-centered; it demonstrates to the victim that their case is being taken seriously and provides an opportunity to build trust between the victim and the prosecutor. Whenever possible, a victims' assistance provider should be present to support the victim and their family.

While it is true that the victim is not the prosecutor's client, it is the victim that has suffered some type of harm – emotional, financial, and/or physical – and this should be recognized and considered in the interactions prosecutors have with victims. Victims should be treated with respect, kindness and understanding. They should be spoken to honestly and appropriately, considering the often-emotional position a victim is coming from. Never tell a victim what they want to hear simply because it is easy. Always tell a victim the truth, in a manner that is fitting for the specific situation.

Meeting with the victim also provides an opportunity to review the case from the victim's perspective, explain the process, uncover details that may have been overlooked in the initial investigation, and determine what outcome the victim is seeking. If the prosecutor plans on discussing the facts of the case, it is recommended that the investigating officer or another law enforcement representative be present to document any new information provided by the victim in a report. Failure to have an officer present could result in the prosecutor becoming a witness at trial.

The Americans with Disabilities Act (ADA) is a Federal civil rights law. It gives Federal civil rights protections to individuals with disabilities like those provided to individuals based on race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in state and local government services, public accommodations, employment, transportation, and telecommunications. Title II of the ADA prohibits discrimination against people with disabilities. Necessary accommodations should be made in advance of victim meetings to ensure it is as productive as possible.

Creating a safe environment for the victim is essential to obtaining a full picture of the case. To do this, a prosecutor may establish rapport by:

- Conducting the meeting in a place where the victim feels safe and can speak freely
- Allowing adequate time for the meeting
- Answering the victim's questions as fully and accurately as possible
- Adopting a non-judgmental, "seeking to understand" perspective
- Explaining the legal process associated with the prosecution of a sexual assault and the prosecutor's discovery obligations including:
 - the accumulation of relevant materials
 - the disclosure and admissibility of sensitive or potentially privileged information concerning the victim (e.g., medical records, photographs, BWC footage)

- Reminding the victim that what they share with family, friends and victims' assistance providers is not privileged information and is subject to subpoena; explaining the right of privilege held by crisis center advocates and encouraging the victim to use those advocates for emotional support
- Reviewing the victim's rights and explaining the victim's role throughout the prosecution process
- Inquiring about any threats defendants have made toward victims, including through social media, and respecting and supporting the victim's efforts to maintain their safety
- Ensuring that all sexual assault survivors' rights are adhered to under [RSA 21-M:18](#) (See [Law section](#), page 5)
- Familiarizing oneself with state and federal statutes related to campus sexual misconduct ([RSA 188-H](#), Title IX, and the Clery Act) when a student is the victim and your local campus's process for response. (See [Campus Sexual Assault section](#), page 91)

Victim-centered, offender-focused responses to the prosecution of sexual assault crimes are based on the need to protect the victim's safety, privacy and well-being while holding offenders accountable.

VICTIMS' CONCERNS ABOUT PARTICIPATING IN PROSECUTION

A victim-centered approach also means that prosecutors should recognize and support victims who face challenges and are hesitant to participate in moving the case forward. Such challenges may include:

- Lengthy timeframes associated with the investigation and prosecution of the case
- Feeling uninformed about, and uninvolved in, the decision making or prosecution process
- Not initially realizing the toll that a criminal investigation and trial can take on them mentally, emotionally, financially, and physically
- Concerns about private information (i.e.: substance use or mental health history) that may come out at trial
- Fear of retaliation by the offender, either directly or through third parties
- Pressure from family, friends, and the community not to participate in prosecuting the defendant
- Fear of media coverage and public scrutiny

It is important for the prosecutor to understand the reasoning behind a victim's hesitancy to participate in a prosecution. In some instances, the victim's concerns may be addressed through discussion with the prosecutor, services from and made available through the victims' assistance provider, and/or referral to the local crisis center. However, when victims are unable to or choose not to participate in a prosecution, they should be treated with the same dignity and respect as victims who are able to fully participate in the prosecution of their case.

COLLABORATION WITH LAW ENFORCEMENT

Prosecutors should review the investigative file early in the process to identify incomplete information or gaps in the evidence. Working closely with law enforcement ensures the

collection of important evidence. The sooner this process begins, the more likely that evidence will be preserved and/or obtained, and thorough documentation completed and added to the case file.

For those cases that have sexual assault evidence collection kits, monthly kit tracking reports are sent to each County Attorney's Office and can help identify:

- agencies in each county that have received new sexual assault evidence kits
- the number of kits in each county that are at the Lab and how long they have been there
- kits that should have associated lab reports available as analysis was recently completed

CASES WITH BODY WORN CAMERAS

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

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

Prosecutors with cases involving BWCs should also anticipate defense strategies, particularly if there is a failure to record contact with a victim or witnesses during an initial response. There can be various explanations for these instances, and they should not be the basis for dismissing a case. Instead, arguments may be made that there was a failure to collect evidence or a loss of evidence that was not intentional on the part of the officer. Written policies *instituted by police departments* on equipment malfunctions, activation or deactivation of cameras, and preservation of recordings, along with data collection of malfunctions or errors, can help to alleviate suspicions of wrongdoing.⁴⁸

Prosecutor's offices may also have to respond to requests for public records. New Hampshire's BWC statute states, "Recorded images and sound made from an agency issued BWC shall be for law enforcement purposes only. All access to this data shall be audited to ensure that authorized users only are accessing the data for law enforcement purposes only." ([RSA 105-D:2, XIII](#)). New Hampshire's Right to Know statute was also amended to exempt from disclosure video and

⁴⁸ Wilkinson, John, J.D., *To Record or Not to Record: Use of Body-Worn Cameras During Police Response to Crimes of Violence Against Women*, AEquitas Strategies in Brief, Issue #29, March 2017.

audio recordings made by law enforcement officers using a body worn camera, except in certain situations depending on what the recording depicts ([RSA 91-A:5, X](#)).

DECISIONS NOT TO CHARGE

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

It is the responsibility of the prosecutor to notify a victim of sexual assault that a decision has been made not to charge the case. Best practice is to make notification in person whenever possible, with a victims' assistance provider present, or by phone. The notification should occur promptly and, if possible, before the defendant is notified. This will prevent the victim from hearing the disposition from the defendant or other people first. Notification to the victim should include an honest explanation of the reasons for the decision not to charge. In addition, as a courtesy to the investigating agency, the agency should be consulted and informed of the prosecutor's decision prior to disclosure to the victim. Finally, it is recommended that a comprehensive memorandum written by the prosecutor be added to the file setting forth a basic recitation of the facts of the case and the reason the case was not pursued.

PREPARING THE VICTIM AND FAMILY IN CHARGED CASES

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

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

- Understanding the victim's and family members' trauma
- Educating victims about the steps in the process of the investigation and prosecution
- Informing victims about potential media coverage throughout the court proceedings
- Preparing victims, family members or other loved ones on how to respond to inquiries from defense attorneys, investigators, and the media.
- Notifying the victim before documents are made public of their content, and how the victim is identified (e.g., full name, initials, letter or number, DOB)

- Educating victims on the estimated timeline of the case
- Informing victims about their right to attend court proceedings
- Preparing victims for testimony and estimating the amount of time they will be spending on the stand
- Preparing victims and family members for disclosure of traumatic information in the trial (e.g., 911 tapes, photos, etc.)
- Cautioning victims about potential consequences of discussing the case with others outside the criminal justice system

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

PROTECTING VICTIM SAFETY

Ensuring the physical and emotional safety of victims during the prosecution phase is critical.

In some cases, victims may be subject to intense pressure and harassment from others. To promote victim safety, prosecutors should:

PROSECUTOR CONDUCT

It is critical that members of the prosecution team always behave appropriately when interacting with victims and their supporters. Prosecutors should avoid joking or displaying unnecessary familiarity with the defendant or defense counsel at any time. What may seem like friendly courthouse banter could be easily misunderstood and cause pain to a victim.

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

- Advocate for bail conditions that consider the safety of the victim and the community
- Inform victims of bail condition terms for the offender
- Ensure “no contact orders” are written, not oral
- Consider requesting protective orders for sensitive case information (medical or counseling records, etc.) to avoid inappropriate use or further dissemination
- Assist victims to develop a safety plan in the event of retaliation or harassment
- Be mindful of the need to separate victims and defendants during any proceedings at the courthouse
- Advise victims participating in virtual hearings to keep their video camera off and audio muted until the hearing begins.

INITIAL COURT APPEARANCES OR PRE-TRIAL HEARINGS

A victim’s attendance at court may be a difficult experience. In some cases, it may be the first time the victim and defendant meet face to face after the assault. Undoubtedly, it will be an affirmation that the defendant is being held accountable for their actions.

Because of this, it is not uncommon for defendants to attempt to intimidate the victim. A victim-

centered response recognizes that court appearances are a critical emotional juncture for the victim. When working with victims, the prosecutor and/or victims' assistance provider should:

- Discuss the advantages and disadvantages of victim attendance at court proceedings
- Consider whether efforts should be made to quash a subpoena should the defendant subpoena a victim to testify at an initial court appearance or pre-trial hearing
- Be fully informed about the facts of the case
- Plan where the victim will be waiting prior to and during all court proceedings to limit the victim's exposure to the defendant, their family, or their supporters
- Attempt to ensure the victim and the defendant do not enter the courtroom at the same time
- Advise victims participating in virtual hearings to keep their video camera off and audio muted until the hearing begins

PLEA NEGOTIATIONS

New Hampshire's Victims Bill of Rights states that the victim has the right to be consulted on plea bargaining ([RSA 21-M:8-k](#)). Therefore, a victim's input should always be sought before plea discussions. Prosecutors should explain the rationale for offering a negotiated plea and ask victims for their feedback. Minimally, the prosecutor should:

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

TRIAL PREPARATION

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

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

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

JURY SELECTION

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

SENTENCING

At the time of sentencing, where the judge is free to impose anything up to and including the maximum penalty under the law, and the prosecutor feels that a significant sentence is appropriate, consider introducing evidence of uncharged conduct through witness testimony. *See State v. Tufts*, 136 N.H. 517, 519-520 (1992) (the State may attempt to prove, and the court may consider uncharged crimes where the State proves them to the point of probability); *see also State v. Rodrigue*, 127 N.H. 496, 500 (1985) (a judge may exercise wide discretion in choosing the sources and types of evidence on which to rely in imposing sentence). If attempting to introduce uncharged acts, it is suggested prosecutors file a motion requesting leave to do so. Further, prosecutors should provide sufficient discovery to the defendant/defense counsel regarding any uncharged act prosecution wishes the court to consider for sentencing purposes.

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

- Notify the victim that in the event the court orders a pre-sentence investigation, a probation officer may request to speak to the victim directly or through the victims' assistance provider to form an opinion as to the impact of the crime and what the victim feels is an appropriate sentence.
- Advise victims participating in virtual hearings to keep their video camera off and audio muted until the hearing begins.
- Review with the victim the possibility that the reading of the charges and sentencing arguments made by prosecution and defense may be potentially upsetting. Victims should be informed that the defendant may speak at the hearing and may address their statements directly at the victim. Victims should be aware it is entirely up to them if they want to acknowledge the defendant's comments.
- Inform the victim of their right to speak at sentencing. Victims who do not wish to speak at the hearing should be offered the option of providing a written Impact Statement directly to the court with copies provided to the defense and prosecution ahead of the hearing.
 - A sentencing hearing can be an emotionally charged event. Giving an oral Victim Impact Statement can be overwhelming. Assisting the victim in preparing the statement beforehand can be very helpful in assuring that a victim does not miss saying something they felt was important. It also prepares the victims' assistance provider or support person for reading the statement in the event the victim is unable to do so.

- If the court permits, victims should be offered the option of sitting or standing when giving their statement.
- Advise the victim that family members and friends may be present to support them.
- Make sure the sentence is structured in such a way that the court can include a no contact order. See *State v Towle*, 167 N.H. 315 (2015).
- Victims should be reminded that restraining orders should not be dropped in reliance on the criminal case “no contact” order.
- Encourage the victim to be clear in their Victim Impact Statement whether they are in support of the sentencing proposal.

Regardless of the outcome of a sexual assault case, prosecutors who want to sharpen their skills are wise to take cases to a SART meeting to review and discuss what went well and what could be improved in the future. Including multidisciplinary professionals on the team in the discussion may broaden the feedback received and improve the prosecution’s presentation in future cases. Surveying jurors after trial proceedings with a not guilty result will also provide additional insight about how to improve the prosecution’s presentation of future sexual assault cases.

CAMPUS SEXUAL ASSAULT

While the likelihood of crime victimization generally is lower on a college campus, college-aged students are sexually victimized at the same rate or higher than in the wider community. Victimization happens to students regardless of gender, gender identity, sexual orientation, ability, race, religion, country of origin, or age. Sexual assault is the most under-reported crime in our country; New Hampshire's college campuses are no exception. Some victims are sexually assaulted while impaired by drugs or alcohol - either due to a substance that was administered by the offender as an intentional tactic, or by an offender who takes advantage of their vulnerable state - and thus rendered incapable of consenting to any sexual act.

A 2019 survey of over 181,000 students at 33 institutions of higher education (IHEs) across the United States reported the following key findings:

- The overall rate of nonconsensual sexual contact by physical force or inability to consent since the student enrolled at the school was 13 percent. The prevalence rate varied significantly by student gender, affiliation, and year.
 - For undergraduate women, the estimate was 25.9%,
 - For undergraduate students who are transgender, genderqueer, non-conforming, questioning students, or a gender not listed on the survey (TGQN), the rate was 22.8%,
 - For undergraduate male students, the rate was 6.8%.
 - Year in school may also affect risk. For undergraduate women, the rate of reporting sexual contact by force or inability to consent within that academic year steadily declined from 16.1% in the first year to 11.3% in the fourth year (or higher). This pattern does not consistently hold for men and could not be determined for TGQN students due to the sample size.
- The survey also measured sexual contact by coercion and that occurred without voluntary agreement. Reported rates in this category were 10.6% for women, 15.9% for TGQN students and 2.5% for male students.⁴⁹

IMPORTANCE OF ON AND OFF CAMPUS PARTNERSHIPS

Given the prevalence of sexual assault among college students and the complexity of sexual assault investigations, it is essential that campus professionals see themselves as part of the system response to sexual assault. IHEs are strongly encouraged to participate on their county-based Sexual Assault Resource Team (SART) and the [New Hampshire Campus Consortium Against Sexual and Interpersonal Violence](#). Existing SARTs are also encouraged to reach out to IHEs in their county.

⁴⁹ Cantor, D., Fisher, B., Chibnall, S., Harps, S., R Townsend, (and more) (Revised 2020), Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct. Available at [https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20appendices%201-7_\(01-16-2020_FINAL\).pdf](https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20appendices%201-7_(01-16-2020_FINAL).pdf)

There are multiple and far-reaching benefits of including IHEs on SARTs for both campus-based and community-based systems. By participating in SART meetings, campus representatives can: better understand trends in sexual violence and how those trends affect their students; gain understanding about the criminal justice process and use that knowledge to assist students who want to report to law enforcement and learn more about community resources that can offer support and advocacy. By having campus representation on the SART, community-based members can: gain an understanding of the IHE's responsibilities under federal legislation; learn about services and supportive measures made available by the IHE; identify campus-based resources that will be able to best serve victims according to their different needs; and provide access to student input and research and resources focused on the higher education community.

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

FEDERAL LAWS RELATING TO CAMPUS SEXUAL ASSAULT

There are numerous federal laws that impact how IHEs respond to campus sexual assault, primarily Title IX, the Clery Act, and FERPA. Title IX is a civil rights law that prohibits sex-based discrimination in educational programs and activities, including sexual assault and related forms of interpersonal violence, which IHEs often categorize under the umbrella term of "sexual misconduct". The interpretation and application of Title IX has shifted multiple times since its initial passage in 1972, having been shaped by federal regulations, Department of Education guidance, and case law. However, it remains an important means by which IHEs can restore victim safety and hold offenders accountable.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), which passed in 1990, has its roots in consumer law. Many of its provisions focus on reporting crime statistics and communicating with the campus community about crimes, safety concerns, and ongoing threats. The Clery Act was amended by the 2013 Violence Against Women Act (VAWA) reauthorization, requiring IHEs to take additional measures to respond to and prevent sexual assault, domestic violence, and stalking.

Another federal law to be aware of is the Federal Educational Rights and Privacy Act (FERPA), a 1974 law that protects the privacy of student records, unless there is a legitimate educational interest, to comply with a search warrant or subpoena, or when there is an urgent health or safety concern.

STATE LAW RELATING TO CAMPUS SEXUAL ASSAULT

In addition to federal law, New Hampshire passed a bill in 2021 that created [RSA 188-H](#). This statute underscores the importance of establishing partnerships with off-campus service providers, requiring IHEs to collaborate with crisis centers and coordinate with local law enforcement. In working with crisis centers, each IHE is required to develop a Memorandum of Understanding (MOU) that addresses collaboration in the following areas: assisting with the

development of IHE policy, providing an off-campus option for students and employees to receive services, ensuring access to free and confidential services on- and off-campus, and cooperation and cross-training regarding roles that the IHE and crisis centers should play in responding to sexual misconduct ([RSA 188-H:15](#)).

In working with law enforcement, IHEs are required to develop policies and procedures with the law enforcement agency with primary jurisdiction where the primary campus is located to establish the roles and responsibilities of the IHE and law enforcement agency. These policies and procedures should address investigation and information sharing in response to reports of sexual misconduct, ensuring the safety of reporting parties, and coordination of training and programming on issues related to sexual misconduct. While creating an MOU is not explicitly required by this statute, it is strongly recommended as a best practice for documenting the relevant policies, procedures, and methods for coordinating the appropriate sharing of information.

According to [RSA 188-H:7](#), IHEs must designate at least one confidential resource advisor (CRA), who may either be an employee of the IHE or of the local victim advocacy organization. CRAs are required to receive relevant training and coordinate with crisis centers and on-and off-campus resources. According to [RSA 188-H:8](#), CRAs have legal privilege. In New Hampshire, the victim advocacy organizations that would be appropriate to partner with to provide effective CRA services and training are the local crisis centers (*See [Appendix A](#)*).

Key Provisions of [RSA 188-H](#) for SART:

- Collaboration with local crisis centers
- Coordination with local law enforcement
- Collaboration with the confidential resource advisor (CRA)

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

Students also have the right to decide whether to make a report to campus officials or not. However, if a student discloses to an IHE employee, that employee may need to make a report to the Title IX Coordinator or campus safety. IHEs need to balance the wishes of the student with reporting obligations and safety standards set forth under Title IX⁵⁰ and the Clery Act⁵¹. In the aftermath of an assault, some students may turn to IHE personnel for support. The reporting obligations of IHE personnel should be made clear to students, staff, and faculty members as part of orientation and ongoing outreach efforts to maintain victim privacy and autonomy over their reporting options whenever possible. Training should include which staff members, if any, offer confidentiality, the limitations of each person's confidentiality, both on- and off-campus, and how to access confidential support. It is important to note that legal privilege is a statutory protection restricted to a limited number of people. Because crisis center advocates have legal privilege-under New Hampshire [RSA 173-C](#), they should be offered as resources for victims (*See [Appendix A](#)*).

⁵⁰ <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq>

⁵¹ <https://www2.ed.gov/admins/lead/safety/campus.html#statute>

Given that the victim can choose to report to both campus officials and law enforcement, concurrent investigations may result. This makes it essential for IHEs to effectively collaborate with community-based partners. By working to build relationships and implement cooperative protocols, professionals from all fields can work toward ensuring an approach that will reduce harm to the victim and increase perpetrator accountability.

IHE administrators should ensure that their own policies and procedures are compliant with state and federal statutes and that all staff have clarity on their own role within the IHE's response.

INSTITUTIONAL INITIAL DISCLOSURE RESPONSE

The following priorities speak to the obligations of IHEs and how to best serve victims. Rather than directing every IHE employee to complete all the steps below individually upon a disclosure, the IHE should ensure that personnel are aware of their own role and responsibilities as outlined in their institution's policies and procedures. For example, students may often choose to initially disclose to someone they feel close to and supported by, including a resident assistant, academic advisor, or professor. In most cases, it would not be appropriate for that person to act as a factfinder or assume an investigative role. The exact order of these steps will vary depending on the timing and manner of the disclosure and details of the case. However, ***the priority is the health and safety of the victim with consideration for the security of the wider campus community.***

- Ensure the victim understands the IHE employee's reporting obligations and the limitations of confidentiality.
- Reassure the victim with a trauma-informed, non-judgmental approach to assist them.
- Allow the victim to take control over the situation as much as possible. Remind them that they have options and try not to make decisions for them.
- **Encourage the victim to go to the hospital for medical attention.** Emphasize that their health and safety is the first priority.
 - Ensure that the victim knows that going to the hospital does not mean they have to: have forensic evidence collected, report to law enforcement, or tell their parents. The hospital will not charge them or bill insurance. (*See [Appendix N](#)*) Offer to call a crisis center advocate to meet them at the hospital.
 - Victims should be informed of the option to have evidence collected from their body within 5 days of an assault during a medical/forensic exam. This process is completely voluntary. If they are considering this, advise that they not shower, wash up, etc. until evidence can be collected by a Sexual Assault Nurse Examiner (SANE) or another trained medical professional.

IHE administration should ensure that all employees receive role-specific training on sexual misconduct, reporting obligations, other relevant policies, and on how and to whom to report.

- If needed, arrange transportation for the victim. Administrators should craft a policy that details how to access timely transportation in a way that respects the victim’s privacy and confidentiality.
- Notify the hospital that the victim is on their way and request a SANE respond if one is employed by the hospital. In some cases, a SANE may be on call and giving advanced notice may reduce the victim’s wait time.
- **Encourage the victim to call the crisis center advocate or the CRA** to give the victim an opportunity to have a confidential conversation. As many victims are reluctant to call on their own, *offer to initiate the call*, and then step away to ensure that the conversation remains confidential. (See [Appendix A](#))
- **Advise the victim that they have the right to report to law enforcement.** Let them know that reporting to campus safety/security and Title IX is separate from reporting to the local law enforcement agency with jurisdiction, which would follow its own process and conduct its own investigation. Encourage the victim to talk to a crisis center advocate or the CRA for more information.
- **Take the steps necessary to comply with applicable reporting responsibilities under campus policy and procedure.** Being knowledgeable about reporting obligations before receiving a disclosure will help make the process smoother if a victim reaches out.

INSTITUTIONAL INVESTIGATION AND FOLLOW-UP

Certain IHE officials have additional responsibilities when it comes to the response to campus sexual assault. Generally, this group would include Title IX coordinators, deputy coordinators, and investigators; campus law enforcement for the IHEs that have sworn law enforcement, or the campus safety/security department for IHEs that do not; and other administrators. Once a report has been made to the campus personnel responsible for investigating violations of IHE policy, appropriate officials should:

- **Determine whether a timely warning or emergency notification is needed under the Clery Act⁵².**
- **Inform the victim of their right to report to law enforcement.** This information must be provided both verbally and in writing.
- **Work to maintain collaboration** between campus police/safety/security, other IHE authorities and municipal law enforcement to streamline the process. This can benefit the victim and each organization’s investigation.
- **Obtain initial *verbal* statement and minimal facts interview.** [See page 41.](#)
- **Provide information about the IHE investigative process.** Identify who will be conducting a comprehensive, trauma-informed interview with the victim and provide their contact information. Let the victim know that the investigator will contact them to

⁵² <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

schedule an interview and to follow up. Identify who will be responsible for implementing supportive measures and provide their contact information.

- **Give the victim resources.** Give the victim contact information for resources on and off campus. For each resource, provide clarity whether it is confidential and whether it is on- or off-campus. In accordance with the Clery Act, providing written notification of services and options offers the victim an opportunity to reference information about the process and resources at their convenience.
- **Identify locations where misconduct may have occurred** and assess the means by which any directly-relevant evidence can be recorded, maintained, or memorialized. *Be mindful of a potential simultaneous law enforcement investigation that might also involve evidence documentation and collection.*
- **Identify potential witnesses.**
- **Refer to campus policy for guidance on next steps.**

Additional information on the role of first responders and suggestions for working effectively with victims can be found in [Appendix P](#).

IMPORTANT

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

STUDENTS STUDYING AWAY FROM CAMPUS AND ON COLLEGE-SPONSORED TRIPS

Studying away and on college-sponsored trips affords students the opportunity to experience new places, cultures, and different styles of education. A study in the journal *Psychological Trauma*⁵³ reports that female undergraduates are three to five times more likely to experience sexual assault while studying abroad than on a U.S. campus. The prevention of and response to sexual assault in the international setting should be part of an institution's overall plans.

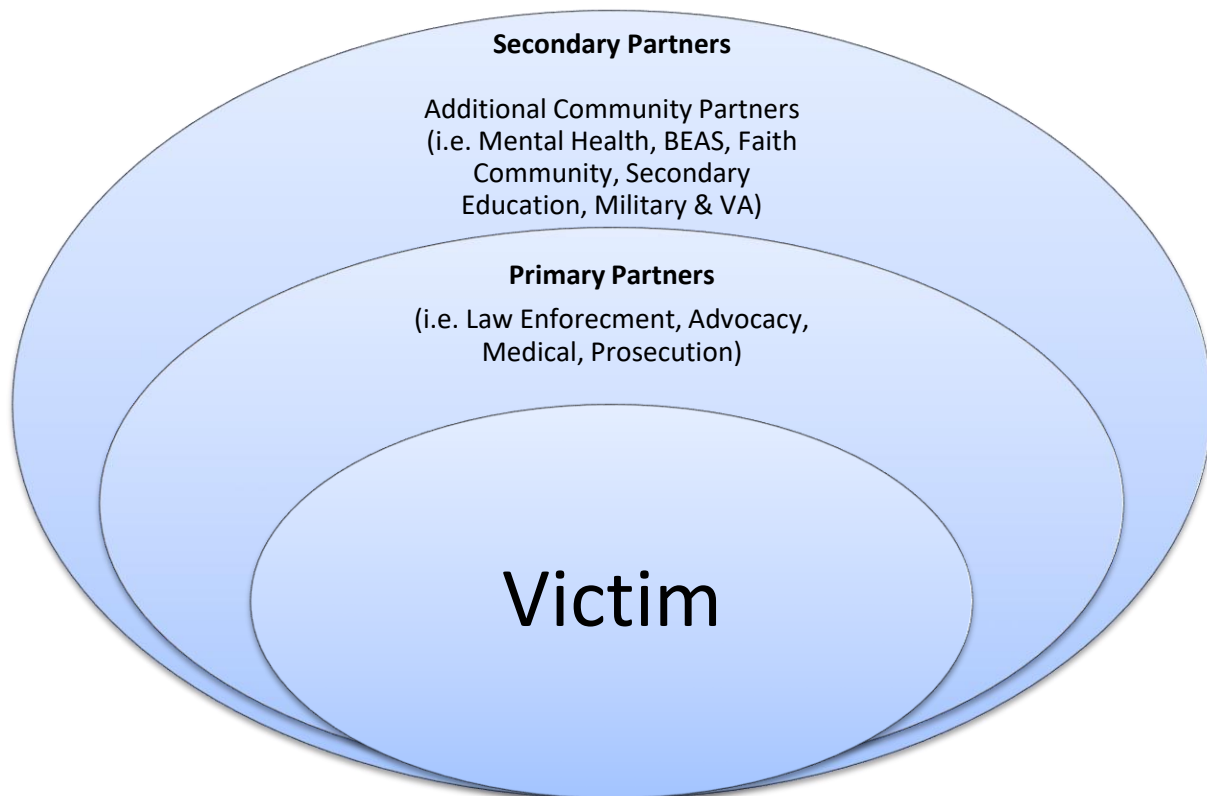
Certain aspects of the IHE's response to sexual misconduct, as required by federal and state law, may still apply in study away programs. Frequent communication between the IHE and other SART members will help ensure off-campus partners are kept informed of important changes to campus policies and procedures regarding students in study abroad programs. (See [Appendix Q](#) for additional resources)

⁵³ Kimble, Matthew; Flack Jr., William F.; Burbridge, Emily. *Psychological Trauma: Theory, Research, Practice, and Policy*, Vol 5(5), Sep 2013, 426-430. <http://dx.doi.org/10.1037/a0029608>

CONCLUSION

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

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



APPENDICES

APPENDIX A CRISIS CENTER LIST

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

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

NH Coalition Against Domestic and Sexual Violence - PO Box 353, Concord, NH 03302-0353 - Office Phone: 603-224-8893

General Web Site: www.nhcadv.org

The NH Coalition is comprised of 12 member programs throughout the state that provide services to survivors of sexual assault, domestic violence, stalking and sexual harassment. You do not need to be in crisis to call. Services are free, confidential, and available to everyone regardless of gender, age, health status (including HIV-positive), physical, mental, or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation. The services include:

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

RESPONSE to Sexual & Domestic Violence

54 Willow Street
Berlin, NH 03570
1-866-662-4220 (crisis line)
603-752-5679 (Berlin office)
603-237-5384 (Colebrook office)
603-788-8195 (Lancaster office)
603-575-5656 (Littleton Office)
<https://responsenh.org>

Turning Points Network

231 Broad Street
Claremont, NH 03743
1-800-639-3130 (toll free crisis line)
603-543-0155 (Claremont office)
603-863-4053 (Newport office)
www.turningpointnetwork.org

Thrive Survivor Support Center

(Formerly CCCNH)
PO Box 1344
Concord, NH 03302-1344
1-866-841-6229 (crisis line)
603-225-7376 (main office)
<https://cccnh.org>

Starting Point: Services for Victims of Domestic & Sexual Violence

PO Box 1972
Conway, NH 03818
1-800-336-3795 (crisis line)
603-447-2494 (Conway office)
<https://www.startingpointnh.org>

Sexual Harassment & Rape Prevention Program (SHARPP)

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

Monadnock Center for Violence Prevention

12 Court Street, Suite 103
Keene, NH 03431-3402
1-888-511-6287 (crisis line)
603-352-3782 (crisis line)
603-352-3844 (Keene office)
1-888-511-6287 (Peterborough)
603-209-4015 (Jaffrey)
<https://mcpvprevention.org>

New Beginnings – Without Violence and Abuse

PO Box 622
Laconia, NH 03247
1-866-841-6247 (crisis line)
603-528-6511 (office)
<https://www.newbeginningsnh.org>

WISE

38 Bank Street
Lebanon, NH 03766
1-866-348-9473 (crisis line)
603-448-5525 (local crisis line)
603-448-5922 (office)
<https://wiseuv.org>

YWCA Crisis Service

72 Concord Street
Manchester, NH 03101
603-668-2299 (crisis line)
603-625-5785 (Manchester office)
<https://ywcanh.org>

Bridges: Domestic & Sexual Violence Support

28 Concord Street
Nashua, NH 03064
603-883-3044 (crisis line)
603-889-0858 (Nashua office)
603-672-9833 (Milford office)
<https://www.bridgesnh.org>

Voices Against Violence

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

HAVEN

20 International Dr, Suite 300
Portsmouth, NH 03801
603-994-SAFE (7233) (crisis line)
603-436-4107 (Portsmouth office)
(Offices in Portsmouth, Epping and Rochester)
<https://havennh.org>

APPENDIX B
NEW HAMPSHIRE BUREAU OF ELDERLY AND ADULT SERVICES

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

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

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

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

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

Conway District Office
73 Hobbs Street
Conway, NH 03818
603-330-7411 or
1-800-552-4628

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

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

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

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

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

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

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

APPENDIX C
NEW HAMPSHIRE ADULT PROTECTIVE SERVICES GENERAL INTAKE
INFORMATION FORM

Fax: 603-271-4743 or email apscentralintake@dhhs.nh.gov

Alleged Victim Name	
DOB/Age	
Address	
Phone	
Alleged Perpetrator(s) name, relationship to alleged victim, and demographic info	
Diagnoses, suspected issues, impairments, assistive devices used	
Living Situation: alone, with spouse, with relatives, homeless, etc.	
Legal Representative(s): Guardian, DPOA Health or Finance, Rep Payee	
Medication(s)	
PCPs, Specialists, etc.	
Involved Agencies	
Collaterals who might have additional information for APS	
Safety concerns for our worker: weapons, drug use, animals, etc.	
Your concerns about the alleged victim	

APPENDIX D
COUNTY ATTORNEY'S OFFICES/VICTIM WITNESS PROGRAMS

**BELKNAP COUNTY
ATTORNEY'S OFFICE**

64 Court St.
Laconia, NH 03246
Phone: 603-527-5440
Fax: 603-527-5449

**CARROLL COUNTY
ATTORNEY'S OFFICE**

95 Water Village Road
Ossipee, NH 03864
Phone: 603-539-7769
Fax: 603-539-2160

**CHESHIRE COUNTY
ATTORNEY'S OFFICE**

12 Court St.
Keene, NH 03431
Phone : 603-352-0056
Fax : 603-355-3012

**COOS COUNTY ATTORNEY'S
OFFICE**

55 School St., Suite 102
Lancaster, NH 03584
Phone: 788-3812
Fax: 788-5560

**GRAFTON COUNTY
ATTORNEY'S OFFICE**

3785 Dartmouth College Highway
North Haverhill, NH 03774
Phone: 603-787-6968
Fax: 603-787-2026

**HILLSBOROUGH COUNTY
ATTORNEY'S OFFICE/NORTH**

300 Chestnut St.
Manchester, NH 03101
Phone: 603-627-5605
Fax: 603-627-5627

**HILLSBOROUGH COUNTY
ATTORNEY'S OFFICE/SOUTH**

30 Spring Street
Nashua, NH 03060
Phone: 603-594-3250
Fax: 603-594-3254

**MERRIMACK COUNTY
ATTORNEY'S OFFICE**

4 Court St.
Concord, NH 03301
Phone: 603-228-0529
Fax: 603-226-4447

**ROCKINGHAM COUNTY
ATTORNEY'S OFFICE**

PO Box 1209
Kingston, NH 03848-1209
Phone: 603-642-4249
Fax: 603-642-8942

**STRAFFORD COUNTY
ATTORNEY'S OFFICE**

259 County Farm Road, Ste. 201
Dover, NH 03820
Phone: 603-749-4215
Fax: 603-743-4997

**SULLIVAN COUNTY
ATTORNEY'S OFFICE**

14 Main St.
Newport, NH 03773
Phone: 603-863-7950
Fax: 603-863-0015

NH DEPT OF CORRECTIONS

Victim Services
PO Box 14
Concord, NH 03302-0014
Phone: 603-271-7351
Fax: 603-271-1867

APPENDIX E STRANGULATION QUICK REFERENCE GUIDE

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

Document All Findings in an Appropriate Report or Chart

Date/Time of Assault: _____ Date/Time of Exam: _____

Strangulation Quick Reference Guide

- How and where was the victim strangled?
- One Hand (R or L), Two Hands, Forearm (R or L), Knee/Foot, Ligature (describe)
- How long? _____ seconds _____ minutes
- Was the victim smothered?
- From 1 to 10, how hard was the suspect's grip? (low) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (high)
- From 1 to 10, how painful was it? (low) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (high)
- Multiple attempts: _____ Multiple methods: _____
- Was the victim shaken, straddled or held against a wall?
- Was the victim held against a wall?
- Was the victim struck in the head or did they strike it on something?
- Ask, "Did anything change about your hearing or vision?"
- What did the victim think was going to happen?
- What caused the strangulation to stop?
- Any prior incidents of strangulation? Prior domestic violence? Prior threats?

Prepared by Detective Bob Frechette – www.refconsultant.com

APPENDIX F

STRANGULATION INVESTIGATION QUESTIONS

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

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

Are there any visible injuries on the victim? Look for injuries behind the ears, all around the neck, under the chin and jaw, eyelids, shoulders, and upper chest area (as appropriate).

Photograph injuries and surrounding area. Photograph the lack of injury and any areas the victim feels pain. Photograph any object used and described by the victim and seize as evidence.

APPENDIX G
SUSPECT EXAM EVIDENCE COLLECTION CONSIDERATIONS

Please note that Sexual Assault Evidence Collection Kits should NOT be used for suspects.

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

1. DNA/Buccal Swabs (collect on every suspect)
2. Oral swabs
3. Clothing (List **ALL** items to be collected):
 - a. (Example:) Underwear/boxer shorts
 - b. _____
 - c. _____
 - d. _____
4. Fingernail scrapings (list one hand or both):
 - a. Right Hand b. Left Hand c. Both
5. Foreign Materials (List **ALL** items to be collected. *For example:* Swabs from right side of neck for possible saliva)
 - a. _____
 - b. _____
 - c. _____
6. Penile Swabs
7. Observation & documentation of any discharge or injury in genital area
8. External Genitalia Swabs (female suspect)
9. Vaginal/Cervical Swabs (female suspect)
10. Listing of observable injuries with associated body map diagram
Examples: bruises, scratches, bite marks

11. Photographs (List **ALL** areas to be photographed in search warrant & affidavit or on consent form. Examples: tattoos, piercings, all observable individual areas of injury, anomalies, head to toe, etc.)

12. Other item: Please list:

13. Other item: Please list

14. Other item: Please list

APPENDIX H

INVESTIGATIVE TOOL: ONE-PARTY INTERCEPTS

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

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

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

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

A. Evaluate whether a one-party intercept is appropriate for the specific case being investigated.

Discussion with a prosecutor in the County Attorney's Office is recommended.

B. Talk with someone who has done this before if you are unfamiliar with doing this. Check with other members of your department, other local departments, State Police or the Sheriff's Department.

C. Obtain the cooperating witness's consent, preferably in writing. Explain the process of the one-party interception to the witness and ensure that witness knows that the interception can only proceed with his or her consent. If the witness is a juvenile, you will need the written consent of a parent/guardian.

D. Be prepared to summarize the evidence that causes you to have reasonable suspicion that evidence of criminal conduct will be derived from such interception—that is, reasonable suspicion that the target has committed or will commit the crime you're investigating and discuss this with the cooperating witness. Reasonable suspicion is suspicion based on specific, articulable facts, together with rational inferences drawn from those facts. Some questions you may want to have answers to include:

Why is the cooperating witness credible?

- What has motivated the witness to make these allegations? Is there a reason to question the cooperating witness's incentive to accuse the suspect?

- What details has the witness been able to provide about the crime and about the target?
 - What evidence corroborates what the cooperating witness says?
 - Does the target have a criminal history which suggests he or she is someone likely to have committed the crime under investigation?
- E. Know when and how you plan to execute the intercept. Authorization for the intercept will be limited to a specific timeframe, so you must have a plan in place before requesting the authorization.
- F. Obtain authorization from the New Hampshire Attorney General's Office. Remember, the authorization is only valid for the specific date and time authorized.
1. Call the Criminal Bureau at **603-271-3671**
 2. Explain that you need to request permission to conduct a one-party intercept. You will be placed in contact with an on-call Assistant Attorney General.
 3. The on-call attorney will need certain information from you, such as: your name, rank, agency, and phone number; the name, date of birth, and address of the target; the evidence the officer has to reasonably suspect that evidence of criminal conduct will be derived from such interception; and the date and time period during which you plan to conduct the one-party intercept.
 4. The on-call attorney will need to document the information you provide in a memorandum. This includes the basis of your belief that the interception will produce evidence of a crime. That memo should reflect the reasonable suspicion articulated by the officer that the individual providing the information is reliable and that their information is reliable. In determining whether reasonable suspicion exists, the attorney will consider the same factors a judge would consider in evaluating whether an investigative stop was supported by reasonable suspicion. The memorandum must also reflect that the person who wears the body wire or places the call to the suspect consents to being recorded.

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

D. Equipment

1. Your department may have the proper equipment. However, if not, check with larger surrounding agencies, such as State Police or the Drug Task Force (DTF)

2. A “Y” jack is necessary for the conversation to pass directly to a recording device instead of to your phone, especially if the phone being used is not department- issued.
3. The call must be made from a secure location. Make sure the phone line is “clean”.
4. Check and double check the equipment.

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

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

G. **Tips**

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

REMINDER:

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

APPENDIX I

MEMO REGARDING POLYGRAPHING VICTIMS

ATTORNEY GENERAL DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

LAW ENFORCEMENT MEMORANDUM

TO: All New Hampshire Law Enforcement Agencies
FROM: John M. Formella, Attorney General *[Signature]*
DATE: March 28, 2023
RE: Polygraph Examinations of Sexual Assault/Sexual Abuse Victims

I am issuing this memo as a reminder to all New Hampshire law enforcement professionals that conducting polygraph examinations of sexual assault/abuse victims in sexual assault/abuse investigations is contrary to our best practices and will jeopardize New Hampshire's ability to receive federal grant funds under the Violence Against Women Act [VAWA].

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

The polygraph testing prohibition at 42 U.S.C. 3796gg-8 requires states to certify that their laws, policies, or practices "will ensure that no law enforcement officer, prosecuting officer, or other governmental official shall ask an adult, youth, or child victim of an alleged sex offense...to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation for such an offense".

In order for New Hampshire to continue receiving this significant federal grant program funding, the Department of Justice must certify that law enforcement is not engaging in the practice of polygraphing reported sexual assault victims. VAWA funding has been reduced over the years, and we as a State do not want to jeopardize this crucial funding. Loss of these funds would result in the reduction or elimination of critical services, including domestic violence/sexual assault prosecutors, dedicated domestic violence police officers, crisis center services, sexual assault nurse examiner services, and the annual statewide domestic/sexual violence conference.

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

#3950289

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

APPENDIX J

SEARCH WARRANT TIP SHEET FOR COMMUNICATION DEVICES

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

FOR THE SEARCH WARRANT FACE SHEET:

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

FOR THE AFFIDAVIT:

- I know through my training and experience⁵⁴ that cell phones store data to include text messages, call records, photos, received contacts and other data pertinent to an investigation.
- I know from my training and experience that even if the files were deleted by a user, they still may be recoverable by a trained computer forensic examiner.
- I know from training and experience that files related to the exploitation of individuals found on computers are usually obtained from the Internet using application software which often leaves files, logs or file remnants which would tend to show the exchange, transfer, distribution, possession or origin of the files.
- I know from training and experience that computers used to access the Internet usually contain files, logs or file remnants which would tend to show ownership and use of the computer as well as ownership and use of Internet service accounts used for the Internet access.

FOR THE SEARCH WARRANT APPLICATION:

- Based upon the foregoing information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described as any cell phones or hand held communication devices is evidence used in the commission of a felony crime (insert crime) as defined by (insert RSA here) and is the property of (insert name here),

⁵⁴ If you are not relying on your own training and experience, but instead are relying on another officer or expert's training and experience, please identify and articulate the source.

and may be found in the possession of (insert name here) at the residence of (insert address and town), New Hampshire.

- The property I intend to seize as a result of the issuance of a Search Warrant is the following:
 - Any cell phones or handheld communication devices.
 - And to examine the cell phones for subscriber and electronic communication documentation specific to this case, in specifically requesting that the search warrant authorize any appropriate law enforcement agency access to the items referred to in the search warrant, the authority to open these items, view their contents, and copy and reproduce all data contained therein as necessary for the investigation and prosecution of this matter.

APPENDIX K
GOOGLE PRESERVATION LETTER EXAMPLE

Incident Number:

Re: Preservation Request

Google LLC.

Dear Custodian of Records:

I am writing to make a formal request for the preservation of records and other evidence pursuant to 18 USC § 2703(f) pending further legal process.

You are hereby requested to preserve, for a period of 180 days, the records described below currently in your possession, including records stored on backup media, in a form that includes the complete record. You also are requested not to disclose the existence of this request to the subscriber or any other person, other than as necessary to comply with this request.

NOTE: If compliance with this request may result in a permanent or temporary termination of service to the accounts described below, or otherwise alert the subscriber or user of these accounts as to your actions to preserve the referenced files and records, please contact me before taking such actions.

This request applies only retrospectively. It does not in any way obligate you to capture and preserve new information that arises after the date of this request.

This preservation request applies to the following records and evidence:

Any media files including images and video, subscriber information, access logs, login dates, times and ip addresses, emails, chat or messaging logs, audio recordings, payment information and any other information associated with the following account identifiers:

[username]@gmail.com

These records are being sought in conjunction with an investigation into the violation of NH RSA 651-B:4-a Registration of Online Identifiers Notwithstanding Title 18, United States Code, Section 2252A, Google shall disclose responsive data, if any, by delivering encrypted files through Google's Law Enforcement Request System

If there is a problem with this request, please contact the investigating officer listed below.

Investigating Officer:

Agency:

Phone:

E-mail:

CELL PHONE RECORD PRESERVATION

AGENCY LETTERHEAD

Custodian of Records

[Check www.Search.org for this information]

Phone Number:

Fax Number:

Email:

Date:

Case #

PRESERVATION ORDER

90 DAY

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

Subscriber telephone number: _____ Time Period: From _____ To _____

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

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

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

Please refer any questions to:

Detective *****

Your agency info here

APPENDIX L GUIDELINES FOR SEIZING MOBILE DEVICES



Guidelines for Seizing Mobile Devices



Deputy Jaclyn M. Cortese
jcortese@carrollcountynh.net
(603) 393-2808

Detective Richard Theberge
rtheberge@conwaypdnh.gov
(603) 960-2470

PHYSICAL EVIDENCE CONSIDERATIONS:

In addition to digital content stored on a device, remember that mobile devices may be a source for physical evidence such as latent prints, smudges (which can help determine unlock patterns), and DNA. When physical evidence is relevant, take steps to preserve and collect it. Wear fresh gloves and use new packaging to avoid cross contamination.

IF THE DEVICE IS OFF, LEAVE IT POWERED OFF:

Determine if the device is OFF. The display screen may be in "sleep" mode, you may have to touch the display screen or a side button to confirm. **DO NOT** connect the device to a charger, this may inadvertently power on the device.

IF THE DEVICE IS ON, LEAVE IT ON AND ISOLATE THE DEVICE:

With a locked device, make every effort to gain cooperation from the device owner to get the device unlocked and identify the code/pattern/password. Write down the unlock code/pattern/password and/or have the owner unlock the device (i.e. fingerprint) then immediately access the Settings and turn OFF the display screen lock feature (code is still required to disable screen lock feature).

TYPICAL SETTINGS TO TURN OFF THE DISPLAY SCREEN LOCK FEATURE

APPLE: Settings → Face ID & Passcode → (enter PIN) → Turn Passcode OFF → (re-enter PIN)

ANDROID: Settings → Lock Screen → Screen Lock Type → (draw pattern) → select None or Swipe

MOST DEVICES CAN BE PLACED IN AIRPLANE MODE – EVEN IF THE DISPLAY SCREEN IS LOCKED

APPLE: Swipe UP from the BOTTOM of the display screen and select the Airplane Mode icon [older]

- OR Swipe DOWN from the Right Upper Corner of the display screen [newer]

ANDROID: Swipe DOWN from the TOP of the display screen and select the Airplane Mode icon

REMOVE NETWORK CONNECTION: Place the device in airplane mode. Ensure that Wi-Fi and Bluetooth capabilities are also turned off. If unable to disconnect the device from the mobile network, isolate the device using a faraday bag, wrapping the device in several layers of thick tinfoil, or as an absolute last resort removing the SIM card. (Please tape the SIM card to the back of the device so it can later be analyzed by the examiner and to prevent loss).

DO NOT POWER OFF A DEVICE IF THE PIN IS UNKNOWN: The forensic examiner may have the ability to "brute force" the passcode for the device. This process can be accomplished quicker and easier on devices that are already powered on and have been recently used by the owner. Keep the device powered up using a portable USB battery pack. If using a portable USB battery pack with a faraday bag or tinfoil, place the battery pack, device and any attached cables into the faraday bag or wrap several times with heavy duty tinfoil. The only exception to this is if you have successfully deactivated the screen lock feature.

EVIDENCE PACKAGING: Follow your department policy when it comes to securing devices in evidence bags, there is no preference from paper to plastic. However, the device should be properly secured in some tamper proof container.

APPENDIX M WORKING TOGETHER TO TRACK SEXUAL ASSAULT EVIDENCE KITS

For Hospitals, NH Law Enforcement, and NHSP Forensic Lab personnel

New Hampshire’s Sexual Assault Evidence Kit Tracking System launched in the Fall of 2022. All kits should be tracked through the system, from the hospital to the law enforcement agency to the New Hampshire State Police Forensic Laboratory, as well as when the kit is returned from the lab to law enforcement after analysis or transferred between NH law enforcement agencies.

Kit Tracking labels can now be found on the top left corner of each sexual assault evidence collection kit box:



Hospitals should provide the bottom portion of the kit tracking label to patients with kit forms. Victims have the option to access a separate victim portal in the tracking system.

For Hospitals, Law Enforcement, Lab to update kit tracking: With a smart device camera, scan the QR code and follow the directions to select:

- Date of transfer
- Agency type (hospital, law enforcement, lab)
- Agency name
- Kit Status (several drop-down options available for each agency type)
- Notes **only when required**

If a smart device is not available, go to: [Doj.nh.gov/kit-tracking](https://doj.nh.gov/kit-tracking) and enter the 8-digit character kit tracking code and follow the directions as above.

The **first kit status** used by:

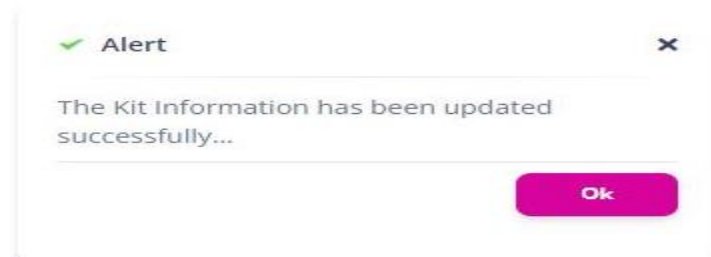
- **Hospitals** is typically “Sent to law enforcement”
- **Law Enforcement** is typically “Received from hospital – pending lab”
- **NHSP Forensic Lab** is either “Received by NHSP Lab for analysis” or ”Anonymous kit hold”

Other kit status options include:

- “Sent out of state” for hospitals to use when out-of-state law enforcement responds to NH
- “Sent to Lab” for law enforcement
- “Sent out of state” for law enforcement for jurisdictional reasons
- “Sent to” or “received by” another NH law enforcement agency when agency assists are involved
- “Received back from lab for retention per RSA 21-M:18” for law enforcement

Important Info: To ensure that the Kit Tracking System’s victim portal has accurate information, please update the kit status as soon as possible upon receipt and again before the kit is transferred.

“Submit” your tracking entry and ensure you receive a successful confirmation prompt:



General Information

- All kits, to include anonymous kits, are tracked and submitted to the lab. *It is law enforcement’s responsibility to contact the lab when a victim reports and gives their authority for analysis of a previously anonymous kit.* If that notification is not made, after 60 days, anonymous kits will be returned untested. If a victim comes forward after an anonymous kit is returned to law enforcement, it should be resubmitted to the lab and tracked accordingly.

- **No confidential or identifying information should be put into the tracking system.**
- Notes are only required to identify an agency that is not listed in the drop-down menu, when a kit is used for training purposes, or for other unique situations.
- Any kit not submitted to the lab or transferred to the state of jurisdiction will be flagged in the tracking system.
- County Attorneys receive monthly kit tracking reports and will be advised of any kits that are not moving forward through the system.
- New Hampshire's tracking system is funded by the SAFE_ITR (Sexual Assault Forensic Evidence – Inventory, Tracking, Reporting) Program and administered by the NH Department of Justice, Office of Victim/Witness Assistance.

OVWA Contact Info: (603) 271-6817 or ovwa@doj.nh.gov

APPENDIX N VICTIMS' COMPENSATION PROGRAM

WHEN A PATIENT REPORTS A SEXUAL ASSAULT THAT HAPPENED IN NH OR OUTSIDE OF THE US TO A MEDICAL FACILITY

Within 10 Days of Assault

- Patient can choose to use insurance if available for exam, labs and medication – victim is not required to go through insurance first.
- Patient can choose to submit to evidence collection or not (if within time frame).
- Victims' Compensation can be direct billed for all hospital expenses, including other physical injuries that happened during the sexual assault.

Over 10 Days After Assault

- If insurance is available: Patient must use insurance for exam, labs and medication as well as all treatment for all other physical injuries that happened during the sexual assault AND must either: present for a medical exam OR report the crime to law enforcement. Patient will be billed for balance after insurance and will need to apply to Victims' Compensation for payment or reimbursement.
- If insurance is NOT available: Patient must either: present for a medical exam OR report the crime to law enforcement. Patient must ask hospital for self-pay discount or charitable funds to pay the bill.
- After application to Victims' Compensation, patient is sent Free Care memo to be submitted to the Hospital. If application is approved by Commission, bill will be paid at the fee for service Medicaid rate.

Patient must ALSO apply to the Victims' Compensation Program for assistance with any of the following additional bills/services:

- Hospitalization for injuries requiring more than 24 hours in-patient
- Further out-patient medical treatment beyond initial visit
- In-patient mental health treatment
- Out-patient mental health treatment
- Lost wages from missed work
- Mileage to crime-related appointments, including appointments, trial preparation and court dates
- Security

APPENDIX O GENERAL RESOURCE LIST

Advocacy

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

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

NH Victim Information and Notification Every Day (VINE) Program: Call **1-800-542-9904**;
Visit www.vinelink.com or download the **VINELink** mobile app; TTY users call **1-866-847-1298**

Joyful Heart Foundation, *Navigating Notification: A Guide to Re-Engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog*:
<http://endthebacklog.org/information-survivors/victim-notification>

Body Worn Cameras

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

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

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

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

Campus Sexual Assault

The Jeanne Clery Act: <http://clerycenter.org/>

Clery Act Requirements for Study Abroad and Field Trips
<https://www.campussafetymagazine.com/university/clery-act-study-abroad-field-trips-tournament/>

The U.S. Department of State, <https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/students.html>

Communities of Color

Pennsylvania Coalition Against Rape (PCAR): Technical Assistance Bulletin
https://pcar.org/sites/default/files/resource-pdfs/tab_2017_racismsexual_violence_connections-508d.pdf

National Alliance to End Sexual Violence
https://endsexualviolence.org/where_we_stand/racism-and-rape/

Immigrants/Refugees

International Institute of New Hampshire: Provides Community Education, Visa Application Assistance (refugee, immigrants and undocumented community members may be eligible for Visa status because of the crime committed against them) and various ESL resources:
<http://iine.org/home> or (603) 666-4552 (1850 Elm Street, Manchester, NH 03104)

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

New Hampshire local crisis centers: *See Appendix A*

Law Enforcement

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

End Violence Against Women International (EVAWI), Training Bulletin *Forensic Exams for the Sexual Assault Suspect*: <https://evawintl.org/resource-library/>

International Association of Chiefs of Police (IACP): *Investigating Sexual Assaults*
<https://www.theiacp.org/resources/policy-center-resources/sexual-assaults>

International Association of Chiefs of Police (IACP): *Enhancing Law Enforcement Response to Victims (ELERV)*
https://www.theiacp.org/projects/enhancing-law-enforcement-response-to-victims-elerv?utm_source=Informz&utm_medium=email&utm_campaign=Informz%20Email

See additional LE resources for Victims With Disabilities in that section below.

LGTBQIA+

FORGE- [Home - FORGE \(forge-forward.org\)](http://forge-forward.org)

Home of the Transgender Sexual Violence Project. Provides services and publishes research for transgender persons experiencing violence and their loved ones.

Human Rights Campaign: Sexual Assault and the LGBTQ Community [Sexual Assault and the LGBTQ Community - Human Rights Campaign \(hrc.org\)](http://hrc.org)

National LGBTQ Institute on IPV - [Home | LGBTQ Institute \(lgbtqipv.org\)](http://lgbtqipv.org) expands the capacity of individuals, organizations, governmental agencies, and local communities to respond to the specific and emerging needs of diverse LGBTQ intimate partner violence survivors.

The Northwest Network of Bi, Trans, Lesbian, and Gay Survivors of Abuse - [The Northwest Network \(nwnetwork.org\)](http://nwnetwork.org) The Northwest Network provides direct advocacy support for individuals and families, community engagement and education, and training and technical assistance for providers.

Healthcare Providers

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

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

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

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

Prison Rape Elimination Act (PREA)

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

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

Prosecution

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

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

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

State of NH v. Armando LISASUAIN (2015)

<http://www.courts.state.nh.us/supreme/opinions/2015/2015045lisasuain.pdf>

Voir Dire Resources: AEquitas, *Educating Juries in Sexual Assault Cases Part I: Using Voir Dire to Eliminate Jury Bias* <https://aequitasresource.org/wp-content/uploads/2018/09/EducatingJuriesInSexualAssaultCasesPart1.pdf>

Strangulation

How to Improve Your Investigation and Prosecution of Strangulation Cases, Gael Strack and Dr. George B. McClane, updated September 2001 www.ncdsv.org/images/Strack-McClane_HowToImproveYourInvestigationProsecutorStrangulation_updated_9-2001.pdf.

Strangulation Training Institute: <https://www.StrangulationTrainingInstitute.com>

Technology

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

Internet Crimes Against Children (ICAC): www.nhicac.org

National White Collar Crime Center: www.NW3C.org

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

Trauma

The Impact of Trauma on Adult Sexual Assault Victims
<https://www.justice.gc.ca/eng/rp-pr/jr/trauma/p3.html>

Victim Responses to Sexual Assault
https://www.nsvrc.org/sites/default/files/publications/2018-10/pub_victim_responses_sexual_assault.pdf

Tips for Talking with Survivors of Sexual Assault
<https://www.rainn.org/articles/tips-talking-survivors-sexual-assault>

Victims With Disabilities

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

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

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

New Hampshire Coalition Against Domestic & Sexual Violence provides information, resources and factsheets related to working with victims with disabilities:

http://www.nhcadv.org/victims_disabilities.cfm

U.S. Department of Justice provides law enforcement agencies with guidance to commonly asked questions regarding compliance with Title II of the Americans with Disabilities Act (ADA): https://www.ada.gov/q&a_law.htm

National Trainings & Resources

End Violence Against Women International (EVAWI) has created a library of **On-line Training** courses for various professionals involved in sexual assault response. <https://evawintl.org/olti/>

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

National Sexual Violence Resource Center (NSVRC) National SART Toolkit
<https://www.nsvrc.org/sarts/toolkit>

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

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

APPENDIX P

ROLE OF ANY FIRST RESPONDER IN SEXUAL ASSAULT CASES

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

APPENDIX Q IACP TRAINING BULLETIN – CRITICAL NEEDS OF VICTIMS



TRAINING



Training Bulletin – Critical Needs of Victims

Crime victims require a continuum of support and services to heal. The seven critical needs of victims outlined below are a foundation for victim-centered, trauma-informed practices. While every victim will have specific needs, these seven categories highlight areas of focus for law enforcement.

Law enforcement plays a principal role in ensuring victims' needs are understood and addressed as victims move through the criminal justice system. In every interaction with a victim, ask yourself:

- Will my words and actions support this victim in exercising their rights and having their needs met?
- Or will this create a barrier?

Eliminate or minimize barriers and include victims in decision-making as much as possible.

1. Safety

People who have experienced victimization, especially those impacted by violent crime, are generally at a higher risk of revictimization in the future.¹

- Provide information about risk reduction and the likelihood of revictimization
- Recommend actions to take when experiencing intimidation and fears about future harm.

Physical, emotional, and psychological safety are all important for victims in the aftermath of crime.

- Recognize that victims' safety concerns may also extend to children, family members, friends, and others.
- Create an environment where victims feel safe reporting crimes and expressing their thoughts, fears, and needs.

2. Support

Opportunities for connecting victims with the help they need are often missed by law enforcement.²

- Allow support persons chosen by victims to be present when possible. When this is not possible, explain why.
- Facilitate connections with victim services personnel (agency employed and community-based) whose role is to provide ongoing support and assistance.

3. Information

Victims benefit from having information about their rights, available resources, and future points of contact in the criminal justice system.

- Provide victims' rights information and guidance around exercising those rights. Provide information in multiple ways (e.g., in conversation, through written material/brochures, on agencies' websites).
- Provide updates on the investigation. Notify victims when a case does not result in an arrest and prosecution. Explain why and how decisions are made.

4. Access

Victims need opportunities to participate in criminal justice system processes.

- Review how to physically access buildings (e.g., ramps, doorways, parking).
- Use technology if available and appropriate.
- Ensure information is available in languages used by community members (e.g., spoken languages, sign language, braille).

5. Continuity

Victims encounter multiple professionals and processes in the criminal justice system.

- Collaborate with other criminal justice professionals, community agencies, and victim services providers.
- Understand the roles and responsibilities of other professionals.
- Use consistent language and victim-centered approaches across agencies.
- Facilitate supportive handoffs to other professionals as cases progress (e.g., from law enforcement investigation to prosecution)
- Facilitate and participate in ride-alongs and sit-alongs with community partners and system professionals in various roles.
- Share and analyze data to promote research-informed practices.

6. Voice

Crime victimization involves direct or threatened physical, emotional, or financial harm as a result of actions taken by others. The response to crime also involves decisions and actions by others. It is important for victims to have a voice in the criminal justice system.

- Encourage victims to ask questions and listen to their concerns.
- Invite victims and victim services personnel (agency-employed and community-based) to participate in case-related and agency practice discussions.

7. Justice

Many cases do not result in arrest, prosecution, and maximum sentencing of offenders. Procedural justice, which refers to the concept of fairness in the processes that resolve disputes and allocate resources,³ may be the only form of justice that some victims receive.

- Recognize that not all victims define justice the same way.
- Explain criminal justice system processes and how decisions are made.
- Complete thorough, trauma-informed and offender-focused investigations.
- Do your part to hold offenders accountable.
- Ask victims for their input and views on case resolution.

¹ Barbara A. Oudekerk and Jennifer L. Truman, [Repeat Violent Victimization, 2005-14](#) (Bureau of Justice Statistics, August 2017); Katie Ports, Derek Ford, and Melissa Merrick, "Adverse Childhood Experiences and Sexual Victimization in Adulthood," *Child Abuse and Neglect* 51 (January 2016): 313-322.

² Rachel E. Morgan and Barbara A. Oudekerk, [Criminal Victimization, 2018](#) (Bureau of Justice Statistics, September 2019).

³ Laura Kunard and Charlene Moe, [Procedural Justice for Law Enforcement: An Overview](#) (Washington, DC: Office of Community Oriented Policing Services, 2015).