

First Edition

***North Dakota
Model
Law Enforcement
Sexual Assault
Policy
September 2011***

Developed in collaboration with the following grant partners:

North Dakota Department of Health
Minot State University, Rural Crime and Justice Center
University of North Dakota, Tribal Judicial Institute
North Dakota Council on Abused Women's Services /
Coalition Against Sexual Assault in North Dakota
Multi-Disciplinary Advisory Committee from across North Dakota

Sexual assault affects victims of all ages, races, ethnicities, religions, abilities and sexual orientations. Its impact on victims can be life-long and can touch individuals, friends, families, workplace and communities.

This policy is intended to be adapted by individual agencies and presents best practice responses. Technical assistance is available through the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota (NDCAWS/CASAND) to assist law enforcement agencies with the adaptation process.

For copies of this Model Policy or more information, contact:

NDCAWS/CASAND
525 North 4th Street
Bismarck, ND 58501
701-255-6240
888-255-6240
www.ndcaws.org

This project was supported by Grant No. 2004-WE-AX-0051 awarded by the Office on Violence Against Women, U.S. Department of Justice, to the North Dakota Department of Health. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Table of Contents

Acknowledgements	4-5
Policy Statement	6
History of the Development of the Sexual Assault Model Policy	7
Definitions	8
Critical Preparatory Information for Victims	9-10
Dispatch / Call Taker Response	11-12
Law Enforcement Response	13-14
Immediate Response	13-14
Delayed Investigation Response	14
Victim Interview	15-17
Conducting the Interview	16-17
Suspect Interview	18
Evidence Collection	19-23
On-Scene Evidence Collection	20
Victim Forensic Evidence Collection	20-21
Suspect Forensic Evidence Collection	21-22
Procedures for Suspect Examination	22-23
Follow-up Victim Interview	24-25
Follow-up Suspect Interview	26
Arrest and Prosecution Considerations	27
Report Writing	28-30
Documentation in non-arrest cases	29
Access to sexual assault reports	30
Supervisor Responsibilities	31
Sexual Assault Related Training	32
Interagency Collaboration	33-35
Multiple Jurisdictions	36-37
Appendices (separate section)	38
Statutes (separate section)	39

Acknowledgements

We gratefully acknowledge the assistance of the following organizations and individuals, without whose dedication, assistance and cooperation, this project could not have been completed. Thank you.

Department of Justice, Office on Violence Against Women (OVW)
International Association of Chiefs of Police
Prosecuting Attorney's Association of Michigan
North Dakota Department of Health

Special Thanks to: **Grants to Encourage Arrest Statewide Advisory Committee**

Steven Bay, Sheriff Grant County Sheriff's Department Carson, ND	Mary Dasovick, Director Division of Injury Prevention and Control Community Health Section ND Department of Health Bismarck, ND	Steve Hall, Detective Burleigh County Sheriff's Department Bismarck, ND
Rhonda Belgarde, Paralegal Legal Services of ND Belcourt, ND	Becky DeVries GTEA Coordinator Three Rivers Crisis Center Wahpeton, ND	Patsy Hall-Hammeren Sexual Assault Program Coordinator ND Council on Abused Women's Services Bismarck, ND
Michelle Bell, Sexual Assault Outreach Coordinator ND Council on Abused Women's Services Bismarck, ND	Darren Dyke, Detective Minot Police Department Minot, ND	Glen Hase, Advocate Rape and Abuse Crisis Center Fargo, ND
Jonathan Byers, Attorney Office of the ND Attorney General Bismarck, ND	Jane Ell, RN, SANE-A Trinity Health Care Minot, ND	April Jose, Officer Wahpeton Police Department Wahpeton, ND
Deanna Cleveland Assistant Director Domestic Violence Crisis Center Minot, ND	Darin Ferderer Parole/Probation Officer II Department of Corrections Bismarck, ND	Kari Kerr, Prevention and Education Program Coordinator Community Violence Intervention Center Grand Forks, ND
Luis Coca Jr., Chief of Police Rugby Police Department Rugby, ND	Mark Gaddis, Detective Bismarck Police Department Bismarck, ND	Caitlin Krenz, Advocate Abused Adult Resource Center Bismarck, ND
	Rod Hair, Associate Director Rural Crime and Justice Center Minot State University Minot, ND	Steve Kukowski, Captain Minot Police Department Minot, ND

Roza Larson, State's Attorney
Ward County
State's Attorney's Office
Minot, ND

Nina LaSeur
GTEA Coordinator,
Domestic Violence
Crisis Center
Minot, ND

Lori Lawson
GTEA Coordinator
Rape and Abuse Crisis Center
Fargo, ND

Heidi Leingang
Licensed Associate
Professional Counselor
Soul Survivor
Counseling Service
Bismarck, ND

Paul Leingang, Deputy Chief
Mandan Police Department
Mandan, ND

Vikki Lorenz
Victim/Witness Coordinator
Williams County
State's Attorney's Office
Williston, ND

Carly Mahoney
Training Coordinator
ND Council on Abused
Women's Services
Bismarck, ND

Kelly McLean, Sergeant
Grand Forks County
Sheriff's Department
Grand Forks, ND

Courtney Monroe
Criminal Justice
Project Coordinator
ND Council on Abused
Women's Services
Bismarck, ND

Janelle Moos
Executive Director
ND Council on Abused
Women's Services
Bismarck, ND

Pamela Nesvig
Assistant State's Attorney,
Burleigh County
State's Attorney's Office
Bismarck, ND

Hope Olson, Director
ND Crime Laboratory
Bismarck, ND

Bonnie Palecek
Economic Justice & Leadership
Development Coordinator
ND Council on Abused
Women's Services
Bismarck, ND

Donovan Rasmuson, Lieutenant
UND Police Department
Grand Forks, ND
Gloria Redroad, Advocate
Spirit Lake Victim Assistance
Fort Totten, ND

Michelle Rivard Parks, Attorney
UND Tribal Judicial Institute
Grand Forks, ND

Jake Rodenbiker
Assistant State's Attorney,
Burleigh County
State's Attorney's Office
Bismarck, ND

Amaya Roll
GTEA Coordinator
Domestic Violence and
Rape Crisis Center
Dickinson, ND

Rebecca Ruzicka
Research Associate
Rural Crime and Justice Center
Minot State University
Minot, ND

Brian Sauter
ND State Radio
Bismarck, ND

Mary Scott
St. Alexius Medical Center
Bismarck, ND

Heidi Smith
Victim Services Program
Department of Corrections
Bismarck, ND

Linda Thompson
Executive Director,
First Nations Women's Alliance
Devils Lake, ND

Tamara Unterseher
Direct Services Coordinator
Abused Adult Resource Center
Bismarck, ND

Jim Vigness, Detective
Grand Forks Police Department
Grand Forks, ND

Dan Wise, Deputy
Richland County
Sheriff's Department
Wahpeton, ND

Keith Witt, Chief
Bismarck Police Department
Bismarck, ND

Policy Statement

The purpose of this model policy is to:

- Establish guidelines for an effective law enforcement response to reports of sexual assault
- Reduce the incidence of and improve the response to sexual assault in local communities by setting forth best practices which encourage a consistent and effective law enforcement response by:
 1. Acknowledging and validating the experience of victims of sexual assault
 2. Investigating effectively to build strong cases against sexual assault suspects
 3. Supporting and empowering victims of sexual assault through effective collaborations
 4. Documenting sexual assault allegations thoroughly and accurately to assure effective prosecution and the successful delivery of services

History of the Development of the Sexual Assault Model Policy

The North Dakota Department of Health, Division Injury Prevention and Control Division initially received Grants to Encourage Arrest (GTEA) funding through the Department of Justice's Office on Violence Against Women (OVW) in September of 2004, and contracted with NDCAWS/CASAND to carry out the goals and objectives of the grant.

Through the work of the Statewide Advisory Committee and the project partners, the *North Dakota Model Law Enforcement Domestic Violence Policy* was created and distributed across the state. The model policy was also endorsed by the North Dakota Office of Attorney General (2005), the North Dakota Chief's of Police Association and the North Dakota Sheriff's Association (2006).

As a result of the success of the domestic violence model policy, the North Dakota Department of Health along with project partners NDCAWS/CASAND, Minot State University, Rural Crime and Justice Center (RCJC) and University of North Dakota, Tribal Judicial Institute (TJI) again requested funding from OVW in 2008, this time to create a sexual assault model policy.

The process began in February, 2009, with the gathering of the Statewide Advisory Committee to discuss and formulate the development of a sexual assault model policy. At the same time, RCJC conducted a survey of law enforcement agencies in North Dakota to determine whether or not they had a sexual assault policy. The majority of the agencies stated they would be interested in receiving the model policy upon completion. In addition, many also indicated their interest in training once the policy was complete.

These statements were a strong indicator of the importance of pursuing a sexual assault model policy and training related to that policy. Unlike domestic violence, there is no statutory mandate for law enforcement to have a sexual assault policy in North Dakota. Therefore, the fact that agencies were interested in receiving not only the policy but subsequent training speaks volumes.

Since February, 2009, the Statewide Advisory Committee has meet on multiple occasions, in August and October, 2009, and again in April and June, 2010. In addition, in September 2010 a subcommittee met to review and expand upon the policy. During this time the committee received assistance from the International Association of Chiefs of Police (IACP) and the Prosecuting Attorney's Association of Michigan. The committee has continued to evolve and to collaborate to create this sexual assault model policy.

Definitions

“Coercion” means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance. **N.D.C.C. § 12.1-20-02**

“Domestic violence / sexual assault organization” means “a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.” **N.D.C.C. § 14-07.1-01 (3)**

“Law enforcement officer” means “a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigation of violations of law.” **N.D.C.C. § 14-07.1-01(6)**

“Object” means anything used in commission of a sexual act other than the person of the actor. **N.D.C.C. § 12.1-20-02**

“Probable cause” to justify an arrest means facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing in the circumstances shown, that the suspect has committed, is committing, or is about to commit (in the case of a threat) a crime. Probable cause is frequently referred to in cases and statutes as “reasonable grounds.” (Black’s Law Dictionary, 2000)

“Sexual act” means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required. **N.D.C.C. § 12.1-20-02**

“Sexual contact” means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires. **N.D.C.C. § 12.1-20-02**

“State” means “a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.” **N.D.C.C. § 14-07.4-01 (7)**

“Victim” means “a natural person who has suffered direct or threatened physical or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.” **N.D.C.C. § 12.1-34-01(8)**

From: North Dakota Century Code (NDCC) for complete list of related rules and statutes see Appendix A.

Critical Preparatory Information for Victims

In situations in which an advocate is unavailable at the scene or at the hospital, the following information should be reviewed by law enforcement with the victim prior to proceeding with an interview, examination, or investigation of a sexual assault. *See Appendix B2.*

Victims' Rights:

- A victim has a right NOT to report the sexual assault to law enforcement.
- A victim has the right to receive a forensic examination at no cost to the victim.
- A victim has a right to refuse to have a forensic examination or to make a report to law enforcement, regardless of age.
- A victim has a right to refuse to answer questions from law enforcement related to the assault and cannot be compelled to submit to a polygraph examination, even if she/he is under the age of 18.
- A victim has the right NOT to answer questions related to being involved in criminal activity, including the use of alcohol or drugs.

Important Information for Victims: to be shared when relevant and appropriate

- A forensic medical examination is an examination that can be performed on a victim to gather evidence of the crime, at no cost to the victim. *See Appendix B3.*
- The examination will be conducted as privately as possible and may take between 2-4 hours and includes photographs and internal and external genital examinations.
- There may be long delays in the criminal process.
- The victim may have to testify in court; there may be a plea, or the case could be dismissed.
- The victim will be responsible for medical costs that are not part of the forensic medical examination.
- The victim cannot be prosecuted for illegal drug use and underage drinking which is discovered as part of a forensic medical examination. (N.D.C.C. § 12.1-34-07) However, a victim *can* be prosecuted if illegal drug use or underage drinking is determined by means other than the forensic medical examination.
- Court intervention to provide protective services, such as arrest of the defendant and issuance of orders prohibiting contact, can happen fairly quickly.

- Victim identification information entered into the law enforcement agency's data system is subject to North Dakota's open records law (N.D.C.C. § 44-04) and may be released when a victim chooses the delayed reporting option. Specific statute sections include: 44-04-18, procedures regarding disclosure; 44-04-18.7, criminal intelligence and investigative information; 44-04-18.20, identifying information regarding victims of domestic violence. *See Appendix A.*

Dispatch / Call Taker Response

Police dispatch/911 operators may be the first point of contact for victims of sexual assault. They serve a vital function in ensuring victim safety and in facilitating an immediate, effective law enforcement response. The following procedures are designed to ensure the safety of the victim, provide immediate or other medical aid to the victim, preserve evidence, and facilitate the apprehension of suspects. Best practice is to limit the number of times the victim is asked to recount the incident and avoid unnecessary, intrusive questions.

Call Priority

Reports of sexual assault shall be treated as high priority calls regardless of the length of time between the call to 911/dispatch and the incident of sexual assault.

Initial Information

- **Location**
 - Where is the emergency? Address? Apartment number? Call back number? Other phone number where caller might be located?
- **Nature of emergency**
 - What is the emergency?
- **Identify caller**
 - Who am I speaking to? Are you the victim? If not, where is the victim? Are you a witness?
- **Establish caller safety**
- **Victim's medical condition**
 - Is anyone injured? If yes, is an ambulance needed?
 - Secure medical assistance for the victim (if needed or requested)
 - Keep the caller informed of emergency response.
- **Suspect information**
 - Inquire about suspect's status, current location, and obtain information to identify the suspect (If they refuse to provide any suspect information, do not insist).

- Weapon
 - Identify whether any weapon was involved and any history of violence that has occurred.

Evidence Preservation Considerations

Direct the victim to preserve evidence by refraining from engaging in any of the activities listed below: Reassure the victim that law enforcement may be able to identify and recover evidence even if she has engaged in any of these activities:

1. Changing clothes
2. Washing, brushing teeth, rinsing mouth
3. Consuming any food, beverage or smoking
4. Combing hair
5. Touching, destroying, or, moving any items at the crime scene
6. Urinating or defecating: advise the use of a clean plastic container to collect urine should the victim have to urinate

Additional Procedures

Dispatch/911 operators can assist victims, promote victim and community safety, and facilitate victim cooperation with the ensuing law enforcement investigation by consistently employing the following practices:

1. Demonstrate patience and respect at all times with the victim reporting a crime of sexual assault. The victim may be in crisis and may exhibit behaviors ranging from rage, outbursts, and crying to calmness, unresponsiveness, or laughter.
2. Determine victim's relationship to the suspect and whether a restraining order is in place.
3. Whenever possible, stay on the line with the victim to provide additional information and assistance until an officer arrives at the scene.
4. For 911 or other emergency hang-up calls where the call location is known: Call back and dispatch an officer.
5. Do not cancel an officer dispatch regardless of whether the request is made during the initial or follow-up call. Advise the responding officer of the request so that the officer can determine whether the request was made voluntarily by the victim.
6. Record and preserve a tape of the conversation and print out a transcript, if possible, for the investigation.
7. Utilize a current list of domestic violence/sexual assault programs, shelters, and victim/witness programs to assist in making referrals. *See Appendix C or visit www.ndcaws.org for complete list.*

Law Enforcement Response

Immediate Response

Law enforcement's initial contact with victims of sexual assault can greatly influence the entire investigative process. Therefore, contact with victims should be guided by professional, respectful, and courteous behavior at all times.

Law enforcement initially responding to a report of sexual assault shall:

1. Respond immediately to the crime scene or location of the victim.
 - a. If responding to the scene, the officer shall:
 - Assess the crime scene
 - Arrange transportation to the hospital if needed
 - Inform victim of rights and reporting options

NOTE: See page nine and/or Appendix D.

 - Advise victim on preserving evidence
 - b. If responding to a hospital, the officer shall:
 - Initiate contact with medical staff for information
 - Determine if an advocate has been called or a Sexual Assault Response Team (SART) has been initiated.
 - If advocate is not available, review victim rights and reporting options

NOTE: See page nine and/or Appendix D.
2. Secure the scene to ensure the offender is not present or if present poses no additional risk to the victim.
3. Keep the victim safe and address any safety issues.
4. Administer first aid, if necessary.
5. Request medical support, if necessary.
6. Establish trust and rapport by demonstrating understanding, patience, and respect for the victim's dignity, including:
 - a. Limiting preliminary questions
 - b. Explaining each person's role
 - c. Contacting other officers or agencies for assistance

7. Remain aware that the sexual assault may have been committed by a family member, caretaker, neighbor or friend who may be present at the scene.
8. Conduct initial investigation of the crime that has been committed:
 - a. Obtain names of witnesses and contact information.
 - b. When possible, obtain statements from witnesses that were present.
 - c. Identify where the incident occurred, specifically to establish jurisdiction.
 - d. Determine whether drugs or alcohol were utilized to facilitate the sexual assault without the victim's knowledge in order to identify the need for additional evidence collection.
 - e. Determine the relationship between the victim and suspect, and whether a valid protection order is in force.
9. Be aware that a victim may make excited utterances which may have evidentiary value.
 - a. Record these utterances when practical and note them in your report.

NOTE: If available, utilize video microphones as the least intrusive recording method.

Delayed Investigation Response

It is not uncommon for delayed reports (any report after the 96 hour evidence collection limitation) to occur regarding sexual assaults. See Appendix E or visit www.ndcaws.org for current information.

In a delayed investigation, law enforcement shall:

1. Obtain a victim statement.
2. Identify witnesses present prior to and after the assault occurred and obtain contact information for them.
3. Contact witnesses and interview each of them regarding the reported assault.
4. Identify all possible evidence that may exist. This may include:
 - a. Any text messages discussing the incident
 - b. Electronic postings regarding the incident on sites such as Facebook or Twitter
 - c. Any physical evidence related to the assault: clothing, bedding, condoms, etc.
 - d. Any photographs that may have been taken prior to or after the assault occurred

Victim Interview

Prior to the interview, it is important to be aware of any unique cultural beliefs and practices the victim may have (for example, she may wish to engage in a culture-specific ritual or practice prior to proceeding). Also, it is important to be aware of behavioral or cognitive characteristics the victim may have, (such as limited eye contact, vocabulary), or developmental disabilities.

1. Prior to conducting an interview with the victim, law enforcement should contact the local sexual assault/domestic violence program. Advocacy programs will proceed in the following ways:
 - a. An advocate will respond to the identified location (hospital or law enforcement department).
 - b. If unable to respond in person, an advocate will be available by phone to the victim.
 - c. In both of these situations the advocate will review the reporting options with the victim. *See Appendix D.*

The officer should also:

2. Obtain an interpreter if needed.
3. Be mindful of the victim's needs during the interview process (i.e. if the victim needs to take a break or would like a support person present-when appropriate).
4. While documenting basic information, obtain the victim's name, date of birth and contact information. Ensure the victim wants to make a report, and understands what that involves.
5. Explain the process of the interview: who is involved and in the room and their roles. Ensure the victim is okay with everyone in the room, and understands why they are there.

NOTE: Officers should make every effort to tape record the victim's statement - with the victim's consent - for evidentiary purposes.

6. Ensure safety and privacy by interviewing the victim in a place separate from the suspect.
 - a. If responding to the scene, suggest finding somewhere private to speak; this may include going to the police department or hospital. Allow the victim to make that determination whenever possible.
 - b. If responding to a hospital, ensure privacy by requesting an examination room or conference room rather than remaining in a trauma area waiting room.
 - c. If the victim presents to the law enforcement department, use an interview or conference room to ensure comfort and privacy.

7. Maintain an appropriate demeanor by:
 - Listening, showing interest in the victim and the situation, maintaining objectivity, and remain aware of nonverbal communication signals.
 - Maintaining good eye contact through natural, spontaneous glances. (Fixed gazes or staring increase fear and hostility).
 - Demonstrating interest and encouraging the victim to continue speaking (appropriate facial and head movements with a relaxed stance).
8. Lead the interview; however, let the victim speak uninterrupted.

Conducting the Interview

1. Ascertain victim's relationship to the suspect.
2. Determine what happened. It may be most effective to have the victim begin with the events prior to the sexual assault, noting the victim's condition and demeanor. Obtain the following information:
 - a. A description of injuries, if any, to the victim.
 - b. Identify any injuries, if any, to the suspect, specifically any injuries inflicted by the victim.
 - c. Inquire how the incident began.
 - d. Identify the location of where the assault occurred.
 - e. Determine if there was any weapon involved.
 - f. Obtain as much information related to the suspect as possible, if known; where he lives and/or works, vehicles used, areas frequented.
 - g. Inquire if anything was taken from the scene or left at the scene by the victim or suspect.
3. Identify any witnesses, their contact information, and how they were involved.
4. After the victim has provided his/her statements, the officer(s) should ask about details for clarification, and summarize the stated account; this allows the victim to point out anything that might be misrepresented and ensures accuracy.
5. Photograph and document photographs in the report.
 - Photographs of extremely brutal injuries or bite marks can prove beneficial in court. Because some injuries become apparent only after several days, it is recommended that follow-up photographs be taken as there is always the possibility initial photographs will not show the extent or the severity of the injury.

NOTE: Photographs can be taken by law enforcement and/or medical personnel.

6. Answer any other questions the victim may have after the interview.

7. Address the victim's safety, such as whether the suspect knows where the victim lives, and any transportation issues.
8. Upon completion of the interview, ensure the victim has law enforcement's contact information.
9. Obtain the phone number of the victim's residence and include that number in the incident report so jail/court/victim-witness personnel may use this information to inform the victim of the suspect's release on bail. It is also important to obtain alternative contact information, (i.e. additional phone numbers, etc.) where messages can be left when necessary. If possible, record name, address, and phone number of two close friends or relatives of the victim who will know how to reach the victim 6-12 months from the time of the investigation.

NOTE: For safety purposes, avoid including the victim's contact information in reports.

10. Inform the victim of what will occur following the preliminary interview, including:
 - a. Provide the victim with contact for a follow-up interview with law enforcement.
 - b. Describe how law enforcement may proceed following the interview.
 - c. If advocate was not present during the interview, provide the victim with contact information for the local domestic violence/sexual assault advocacy program. *See Appendix C or visit www.ndcaws.org for complete list.*
11. Also, pretext phone calls often produce valuable information (one-party consent in ND: N.D.C.C. § 12.1-15-02 *See Appendix A.*) The victim's emotional and physical state should be considered before initiating such a call. A victim advocate is a source of valuable support. Pretext phone calls can be utilized with other witnesses as well.

Suspect Interview

1. If possible, the officer should tape record the suspect's statement for evidentiary purposes.

NOTE: Decisions about audio taping or videotaping the interview should be based on the policies of the prosecuting agency and investigating department; also see North Dakota Rules of Evidence 801(d) (2). See Appendix A.

2. Determine the suspect's relationship to the victim (stranger vs. non-stranger) and what happened. Determining the relationship is significant especially when discussing the victim's safety as well as during the interview and evidence collection.
3. Prior to the interview ascertain suspect's criminal history and any previous contact with law enforcement.
4. Determine what happened. It may be most effective to have the suspect begin with the events prior to the sexual assault, noting the suspect's condition and demeanor in the report.
5. Document any injuries to the suspect, who or what caused them, and if weapons or objects were used to commit the reported assault.
6. Photograph and document in report:
 - a. Any damaged or torn clothing on the suspect (keeping in mind the suspect may have changed clothing).
 - b. Any smeared or transferred makeup on either clothing or the suspect.
 - c. All evidence of injury, including any physical complaints the suspect may have.
 - d. The presence of any use of alcohol and/or drugs by the suspect.

NOTE: Photograph suspect regardless of whether there is visible injury. Use Appendix H to document injuries.
7. Make every attempt to obtain a suspect statement.

Evidence Collection

Law enforcement within the jurisdiction in which the offense was believed to have occurred is responsible for coordinating the collection of the Sexual Assault Evidence Collection Kit from the healthcare facility at which the examination was conducted. In order to ensure effective evidence collection, the officer should:

1. Once the victim has consented to the examination, ensure the following information is communicated:
 - She/he has the right to decline any or all parts of the examination.
 - The victim's name and date of birth will be on the evidence collection kit for storage purposes.
 - The sexual assault kit will be stored for seven years or until the victim turns 22, whichever comes later.
 - The examination will occur within the 96 hours following the assault (unless reason to extend the time period is given). N.D.C.C. § 12.1-34-07 *See Appendix A.*
 - If the victim does not consent to the examination, encourage the victim to obtain medical attention to address sexually transmitted infections and pregnancy testing.
2. Work with other professionals (SANE, advocate, physician) to explain the forensic examination process; this includes explaining what is done and what may be collected, such as clothing.

NOTE: Prior to beginning the evidence collection process ensure the victim consents to the examination and is aware of the reimbursement process for the sexual assault examination. See Appendix F.

3. Obtain a signed release for access to the victim's medical records as appropriate.

NOTE: To ensure the victim's privacy, obtain a release only for medical records related to the assault. See Appendix I.

4. Recognize drug-facilitated sexual assault considerations.

NOTE: Review information provided on drug-facilitated sexual assault in Appendix G.

NOTE: Inform the victim she/he will not be criminally charged if drugs or alcohol are identified in the urine and/or blood sample; however the results may be presented in court proceedings, N.D.C.C. § 12.1-34-07(4).

On-Scene Evidence Collection

1. Secure the crime scene (if not already done).
2. Maintain chain of custody and properly collect evidence.
 - a. All evidence should be collected wearing clean single use gloves (change gloves when needed).
 - b. All evidence collected should be dried, clearly marked, properly packaged and labeled.
 - c. Refrigerate the evidence as soon as possible.
 - d. When collecting evidence, use sterile swabs, papers, solutions and tools.
 - e. When packaging, use individual envelopes for each item collected.
 - f. Use new paper bags or envelopes rather than plastic bags to collect evidence.
3. Take photographs of and/or videotape the crime scene prior to collecting any evidence and prepare a photograph log.

NOTE: When documenting the scene photographically, officers are reminded to take both close-up and full scene pictures.

4. Create a diagram of the crime scene, specifically, the location of the incident.
5. Collect physical evidence such as:
 - a. Any clothing worn by the victim and suspect at the time of the assault-specifically undergarments, pants, and shorts (unless collected by medical personnel).
 - b. Other physical evidence that may corroborate the victim's account of the incident (i.e. condom wrappers, sheets, blankets, bottles, etc.).
 - c. Any damaged or torn clothing worn by the victim or the suspect.
 - d. Any smeared or transferred makeup on either the victim or the suspect or their clothing.
 - e. Document all evidence of injury including any physical complaints the suspect may have. *See Appendix H.*

Victim Forensic Evidence Collection

1. Prior to the examination if a SANE is unavailable, document and photograph the victim's external visible injuries (if any).
 - a. Expose as little as possible using sheets or other covers.
 - b. Ensure all of the needed photographs are obtained.
 - c. Arrange to take additional photographs approximately two days after the assault as more bruises may appear or become more visible.
 - d. Medical personnel and law enforcement should use an anatomical diagram to document the injuries on the victim as the primary crime scene.

2. The law enforcement agency in custody of the collected evidence is responsible for maintaining the chain of custody of that evidence.
 - a. Before taking custody of the sexual assault kit, identify that it is correctly sealed and labeled.
 - b. When taking custody of the sexual assault kit, ensure the officer signs for the kit correctly.
3. Follow proper kit storage requirements.
 - a. Refrigerate the sexual assault kit as soon as possible.
 - b. If urine sample is included with the sexual assault kit, freeze sample immediately; it is not necessary to freeze the entire kit, only the urine sample.
 - c. Transport sexual assault kit to the North Dakota Crime Laboratory Division if DNA evidence is necessary and the victim has consented to the investigation.
4. If not providing the sexual assault kit to ND Crime Laboratory Division for analysis (when a victim chooses not to report) proceed as follows:
 - The law enforcement agency in custody of the collected evidence is responsible for maintaining the chain of custody of that evidence.
 - Law enforcement agencies will determine the method for assigning a report number and maintaining custody of the evidence.
 - The victim's name and date of birth are required for collection and storage of the kit.
 - Sexual Assault Evidence Collection Kits and other evidence collected for victims who do not currently elect to proceed with an investigation should be maintained in the same manner as other evidence collection kits and evidence.
 - Sexual assault evidence collected from non-investigated cases should be kept by law enforcement for a minimum of seven years or until the victim turns twenty-two, whichever occurs later.

Suspect Forensic Evidence Collection

A sexual assault evidence collection kit can be utilized to collect the evidence on the suspect. Law enforcement should remain present during the evidence collection procedures.

- Law enforcement shall work with other agencies and community organizations to establish protocols regarding where the forensic examination of the suspect will take

place and what steps will be involved.

- It is essential everything possible is done to prevent any contact between the victim and suspect. Although not always possible, this may include examinations taking place at different times and/or locations, ensuring the victim has left the site of the examination prior to the suspect's arrival.
1. If in custody, the suspect shall be given a Miranda warning before being asked medical history questions by the forensic examiner or investigator.
 2. The forensic examiner or medical personnel shall document the suspect's medical history, document all injuries that are observed, and collect biological and trace evidence from the suspect's body.
 3. If the suspect invokes his right to remain silent, the examiner shall bypass the medical history portion of the examination and continue documenting any visible injury and collecting the appropriate specimens.
 4. Both the examiner and attending officer shall be prepared to document any spontaneous statements made by the suspect regardless of whether or not the suspect is in custody and whether or not the suspect was provided with a Miranda warning.

Procedures for Suspect Examination

1. Immediately after the suspect interview, the investigating officer shall determine whether a forensic sexual assault examination should be obtained for the suspect. Consider the following when making this determination:
 - a. What is the length of time since the assault occurred?
 - b. What was the nature of the assault?
 - c. Does the victim believe she/he may have injured the suspect?
 - d. Has the suspect showered?
 - e. Is the suspect wearing the same clothing she/he was wearing during or immediately after the assault?
2. A search warrant may be needed to collect any evidence from the body of the suspect or even to collect clothing. If the suspect consents to such evidence collection procedures, complete and obtain the suspect's signature on a consent form.
3. If the examination is being conducted pursuant to consent rather than a search warrant, the investigator shall clearly document the suspect's freedom to decline any part of the examination and to leave at any time.
4. Responding officers, investigators and supervisors shall be trained to collect buccal swab samples. DNA buccal swab collection kits are readily available to investigators in the

field. Law enforcement can also use a sexual assault evidence collection kit to collect this evidence.

NOTE: In all sexual assault cases, the investigating officer must evaluate the need for a search warrant to identify and collect evidence from the suspect, including any known photographs or video recordings as well as any of the victim's possessions in the suspect's home or vehicle (which are often overlooked). Law enforcement agencies are advised to work with the state's attorney's office in advance to have templates available for such warrants.

Follow-up Victim Interview

The purpose of the follow-up interview is to address any inconsistencies and clarify any confusion and to gather any further information. Law enforcement officers shall:

1. Conduct the interview in a location that is convenient, accessible and comfortable for the victim. This may include arranging for transportation and contacting the local advocacy agency to be present for the interview.
 - a. Discuss the purpose of the interview with the victim.
 - b. Review the victim's contact information.
 - c. Address arrest decisions made and explain the status of the case with the victim.
 - d. Identify any new information or developments and ask questions specifically related to how the sexual assault has impacted the victim.
 - e. Identify any need for follow-up photographs of injuries.

NOTE: Depending upon the location of the injuries, it may be necessary to enlist in medical personnel to assist in obtaining follow-up photographs.

2. Compile and review information already collected including:
 - a. Talk to the responding officer(s) regarding the preliminary investigation.
 - b. Review the first responder documentation: How was the call received? Where did the officer respond?
 - c. Review the first interview with the victim and identify any holes, gaps or questions.
 - d. Review the history of questions asked related to the incident:
 - Where did the incident occur?
 - What led up to the incident?
 - What happened following the incident?
 - e. Identify whether there were any additional witnesses and their contact information.
 - f. Clarify any inconsistencies with earlier accounts in a nonthreatening manner.
3. Ensure the following issues were addressed in the initial interview including:
 - a. Obtain specific circumstances of the assault, such as how it happened.
 - b. Review and clarify the details of the assault:
 - Were weapons involved?
 - Was there any struggling or fighting?
 - Did the suspect say anything?
 - How long was the suspect with the victim?
 - What happened after the assault?

- Were there any drugs or alcohol involved?
- c. Review the details provided by the suspect prior to meeting with the victim to identify discrepancies that may need to be addressed.
4. Discuss any safety concerns the victim may have. Work with local domestic violence/sexual assault advocacy programs to assist in addressing the victim's concerns and any questions they may have about obtaining a court order due to safety concerns. *See Appendices C and J.*
 5. Utilize pretext phone calls (one-party consent in ND: N.D.C.C. § 12.1-15-02 *See Appendix A*). These are valuable in non-stranger sexual assault cases. Involve the victim as an investigative tool as appropriate.

NOTE: Involvement of a victim in a pretext phone call to the suspect should take into consideration the victim's emotional and physical state. A victim advocate should be present whenever possible to offer support.

Follow-up Suspect Interview

Based on the nature of the assault, develop an investigative and interview strategy. This may require considering the potential defenses available to the suspect (for example: denial, mistaken identity or consent). This strategy will guide the questions and any additional evidence collection that may be needed. This interview may:

1. Re-photograph injuries on the suspect to document changes in visible injuries from the previous interview.
2. Compile and review information already collected including:
 - a. Talk to the responding officer(s) regarding the preliminary investigation.
 - b. Review the first interview with the suspect and identify any holes, gaps or questions.
 - c. Review history of questions asked related to the incident:
 - Where did the incident occur?
 - What led up to the incident?
 - What happened following the incident?
3. Obtain any clarifying information from the suspect, including addressing inconsistencies that may have come up during other interviews and throughout the investigation.
4. Gather any additional information and/or details from the suspect regarding the assault.
 - a. Obtain specific circumstances of the assault, such as how it happened.
 - b. Review and clarify the details of the assault:
 - Were weapons present?
 - Was there any struggling or fighting?
 - Was anything said during the incident by either the victim or suspect?
 - How long were the suspect and victim together?
 - What happened after the assault?
 - Were there any drugs or alcohol involved?
5. Identify whether there were any additional witnesses and their contact information.

Arrest and Prosecution Considerations

1. Law enforcement and prosecution are encouraged to communicate throughout the investigation and prosecution of a case. Decisions regarding prosecution should be communicated to law enforcement.
2. Some considerations in arrest and prosecution decisions might include:
 - a. The victim's safety and rights.
 - b. Requests made by the victim regarding the incident.
 - c. Any existing evidence related to the incident.
3. During this time prosecution may enlist in assistance from the victim witness program and/or local domestic violence/sexual assault advocacy program. These programs may aid with informing the victim of decisions made regarding arrest and/or prosecution. *See Appendices C and K.*

Report Writing

Effective prosecution of sexual assault cases relies in part on a strong written report. A thorough report will identify on-scene evidence and document details from the victim's and suspect's accounts of the incident. This will assist those investigating to overcome consent challenges and serve to refresh memories for court testimony. A high level of detail in the report and in the officer narrative will help in prosecution.

- Each officer who interviews a witness, the victim or suspect, identifies evidence, or processes a crime scene shall write his or her own report detailing the actions he or she took, including any referrals provided to the victim. These supplemental reports shall be compiled by the first responding officer (if there are multiple officers) regardless of whether an arrest is made.
- The investigating officer (this may be the same as the responding officer in smaller jurisdictions) shall prepare an investigation report regarding the incident in accordance with existing departmental policy/protocol. Any sexual assault call handled by this department shall have the initial report completed prior to the officer going off duty.
- The complete report, which shall include the initial report and all supplemental reports, shall be written, compiled, and forwarded to the prosecutor in a reasonable and timely manner, regardless of whether an arrest was made or not.

Although this information may be included in other sections of the policy, the following should be documented within the report:

1. Use quotations for the victim's and suspect's exact words during the interview.
2. Include any excited utterances made by the victim, suspect and/or any witnesses.
3. Document the victim and suspect's condition and demeanor as observed.
4. Identify evidence of all of the crimes investigated.
5. Document any visible injuries and/or complaints of pain made by the victim or suspect—documentation when reasonably available should include a description in the police report, as well as photographs and medical reports (include a medical release), if medical treatment was obtained.
6. Document whether either party was photographed and by whom.
7. Document whether alcohol and/or drugs were present or used in the incident.
8. Document whether weapons were involved and/or are possessed by the suspect.

9. List the phone number of the victim's residence along with alternative contact information, (i.e. additional phone numbers, etc.) where messages can be safely left if the victim decides to leave her or his residence for safety reasons. Also, if possible, record the name, address, and phone number of two close friends or relatives of the victim who will know of her or his whereabouts 6-12 months from the time of the investigation.

NOTE: If victim safety is a concern, KEEP A SEPARATE RECORD of the address and phone number where the victim will be located.

10. Include any referrals provided to the victim for the local domestic violence/sexual assault program and other victim services. *See Appendix C.*
11. If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them.
Use objective interpreters (someone who is not a family member or a witness) to obtain statements and/or tape-record statements.

NOTE: Officers may utilize Appendix H as a sample for documentation purposes.

Documentation in non-arrest cases

1. In addition to the above considerations, in cases in which an arrest is not made for sexual assault or related crime, the incident still must be documented. In such cases, law enforcement should note in the incident report:
 - a. What referral information was provided; and
 - b. Why no arrest was made, nor any warrant sought.

Documentation and guidelines in non-reported cases

In the event a victim seeks an examination but does not wish to make a report at that time documentation should occur as follows:

- The local law enforcement agency within the jurisdiction in which the offense was believed to have occurred is responsible for coordinating the collection of the Sexual Assault Evidence Collection Kit from the healthcare facility. The victim's name and date of birth shall be required for collection of the kit.
- Sexual Assault Evidence Collection Kits and other evidence collected for victims who do not currently elect to proceed with an investigation should be maintained in the same manner as other Evidence Collection Kits and evidence.
- Sexual assault evidence collected from non-investigated cases should be kept by law enforcement for a minimum of seven years or until the victim turns twenty-two, whichever occurs later.

Access to sexual assault reports

Victims and advocacy programs shall have access to any sexual assault related reports in accordance with the North Dakota open records law, N.D.C.C. § 44-04 *See Appendix A.*

Supervisor Responsibilities

1. Supervisors shall ensure victims are re-contacted in an appropriate time period after the initial report.
2. Each sexual assault incident report shall be reviewed by a supervisor, regardless of whether an arrest was made or not.
3. The supervisor shall ensure that all investigative steps as outlined in this policy/procedure manual have been completed.
4. If the investigation has determined probable cause, the supervisor shall ensure the case is referred to a prosecutor and shall meet with the prosecutor as required.
5. The supervisor shall ensure any follow-up requests from prosecutors are completed.
6. If the case is not charged by the prosecutor, the supervisor shall review the reason(s) for the lack of prosecution and utilize this information for development of in-service training as appropriate.

Sexual Assault Related Training

Legislation, technology, procedures and other issues related to sexual assault are always emerging and evolving. Because of this it is strongly encouraged that law enforcement makes every attempt to stay current with issues related to sexual assault.

Supervisors shall ensure officers are provided training as necessary. Additional in-service training shall be provided as appropriate and as resources allow.

Training topics may include the following:

- Drug facilitated sexual assault
- Sexual assault evidence collection protocol
- Suspect and victim interviewing techniques
- Sexual assault dynamics
- On-scene investigation
- Reporting requirements
- Available community resources
- Victim services
- Report writing
- Law changes
- Policy changes

Interagency Collaboration

Law enforcement must exercise leadership in the community in responding to sexual assault cases. This includes optimizing and coordinating all available resources for assisting victims in addition to collaborating and developing protocols with other agencies (not just law enforcement) to enhance victim safety and ensure accountability for the suspect.

Community Based Sexual Assault Advocates

Community based advocates are employees of local non-profit organizations whose primary purpose is to provide services to victims of sexual assault regardless of whether or not the victim is involved with the criminal justice process. Community based advocates provide 24-hour crisis hotlines, crisis intervention, information and referral to local professionals and agencies, support groups, and court and hospital accompaniment. They serve anyone who has been directly affected by sexual violence, including family members and loved ones. The services provided by community based advocacy services are free and confidential.

Victim/Witness Coordinators

Victim/Witness Coordinators act as general liaison between prosecutors and victims/witnesses of crimes. They communicate and coordinate with victims/witnesses of crimes regarding rights, court process and scheduling, available services, advocacy, travel arrangements, meetings with prosecutors, restitution information, and courtroom orientation. They monitor the subpoena process and jury trial schedules. They also gather and distribute feedback from jurors to improve prosecution methods. *See Appendix K for complete list.*

Sexual Assault Nurse Examiners (SANEs)

SANEs are specially trained and certified professionals skilled in performing quality forensic medical-legal exams. Should a case go to trial, the SANEs are then available to testify. SANEs will document the account of the assault, perform necessary medical exams, testing and treatment, then collect crucial, time sensitive evidence.

- SANEs provide medical care to survivors without interruption, therefore maintaining the chain of evidence from the exam
- SANEs provide preventive treatment for HIV, STDs, and pregnancy

Sexual Assault Response Teams (SART)

A SART is a multidisciplinary interagency team of individuals working collaboratively to provide services for the community by offering specialized sexual assault intervention services. Teams are specialized to fit the needs of each community and generally have goals of increasing reporting and conviction of sexual assaults and countering the experience of sexual trauma with a sensitive and competent response. Typically, teams consist of key responders such as advocates, law enforcement officers, forensic examiners (e.g.; SANE/SAFE/FNE), crime lab personnel, and prosecutors.

Information from Wisconsin Adult Sexual Assault Response Team Protocol
http://www.wcasa.org/pages/Programs_SANE.php

Collaboration with the Military

All sexual assault incidents involving military suspects shall be handled according to this policy in the event that:

- The incident occurred outside the boundaries of a military facility; and
- Local law enforcement agencies are called to assist in handling such an incident.

The intent of this policy is to eliminate all informal referrals, diversions, or report taking omissions in the handling of sexual assault incidents involving military personnel. No informal agreements with military police or a suspect's commanding officers shall take precedence over a suspect's arrest and prosecution by the non-military authorities.

Collaboration in Indian Country

Law enforcement in Indian country can be a complicated undertaking. The jurisdictional framework that exists in North Dakota for both tribal and non-tribal lands creates many law enforcement concerns. Like nearly every other state, North Dakota has encountered uncertainties about whether or not a particular law enforcement agency is authorized to act. It is imperative that each individual law enforcement agency work with individual tribal governments to strengthen cooperative relationships in order to provide safety for domestic violence victims and maximize law enforcement resources.

Agreements with Advocacy Programs

Enhancing victim safety is something law enforcement cannot do alone. In order to increase victim safety and offender accountability, law enforcement agencies should establish collaborative working agreements with advocacy programs. *See Appendix O.*

Multiple Jurisdictions

Working across jurisdictional lines can oftentimes be challenging. Criminal matters such as sexual assault are complex irrespective of jurisdictional issues. The fact remains, however that, by virtue of the fact that five federally recognized tribes have lands in the state of North Dakota, jurisdictional complexities are often encountered, therefore it is important that cross-jurisdictional collaboration occur and that specific roles and responsibilities be defined to ensure that criminal cases are not “falling through the cracks”.

Collaboration as a means to prevent jurisdictional complications is an essential component of emergency planning. For first responders, it is imperative that jurisdictions engage in a dialogue to ensure a timely and effective response to matters which may have jurisdictional implications. Such dialogue can help to establish a framework for response. As a best practice, memorandums of agreement or understanding provide a useful tool for solidifying such collaborative efforts.

In North Dakota, the most common jurisdictional issues arise between state agencies and tribal agencies. With five (5) federally recognized tribes and one federally recognized service area located in whole or in part within the state of North Dakota, these jurisdictional issues impact the vast majority of counties across the state. (Tribes in North Dakota include: Three Affiliated Tribes of the Mandan, Hidatsa and Arikara; Standing Rock Sioux Tribe; Spirit Lake Tribe; Turtle Mountain Band of Chippewa and the Sisseton Wahpeton Oyate. The service area in North Dakota is the Trenton Indian Service Area). In order to engage in meaningful dialogue and collaboration, it is important to understand basic criminal jurisdictional issues and to further understand how such issues impact first responders as well as the coordination of justice system services.

Tribal, Federal and State Criminal Jurisdiction (Non-PL-280)

Identity of Offender	Identity of Victim	Applicable Law	Jurisdiction
Indian	Indian Victim	Major Crimes Act Tribal Code	Federal Jurisdiction Tribal Jurisdiction
Indian	Non-Indian Victim	Major Crimes Act	Federal Jurisdiction Tribal Jurisdiction
Non- Indian	Indian Victim	Major Crimes Act	Federal Jurisdiction
Non-Indian	Non-Indian Victim	State law	State Jurisdiction

Practices to Improve Collaboration Across Jurisdictional Boundaries

Despite the many complex jurisdictional issues that might arise in sexual assault cases, there are ways in which law enforcement and other first responders can alleviate some of these issues. Some of the steps that law enforcement officers should take to develop a process for addressing jurisdiction in sexual assault cases would include:

- Establish a relationship with neighboring state and federal authorities
- Establish a relationship with tribal advocates and advocacy organizations
- Educate officers on issues such as: cultural competency, tribal jurisdiction, and multi-jurisdiction collaboration
- Work out a protocol or procedure for addressing such issues and defining roles and responsibilities of participating agencies
- Wherever possible, solidify such agreements with a Memorandum of Understanding to ensure consistency, promote longevity and provide accountability
- Be sure to include SART (sexual assault response teams) or other multi-disciplinary teams in such discussions.

NOTE: For complete information on Multiple Jurisdictions and additional local and national resources see Appendix P.

North Dakota Model Law Enforcement Sexual Assault Policy

Appendices

Please see folder titled “Appendices” for the following documents:

Appendix A: List of Common Charges Related to Sexual Assault*

Appendix B1: Forensic Medical Examination Advocacy Guidelines

Appendix B2: Reporting Options for Sexual Assault Victims

Appendix B3: VAWA Provisions

Appendix C: North Dakota Domestic Violence/Sexual Assault Advocacy Programs

Appendix D: Sexual Assault Reporting and Medical Examination Options Brochure

Appendix E: General Sexual Assault Information

Appendix F: FME Reimbursement Form “**DO NOT DUPLICATE**”

Appendix G: Drug Facilitated Sexual Assault Information

Appendix H: Sexual Assault Report Sample (IACP)

Appendix I: Authorization for Release of Medical Records and Information

Appendix J: ND Court Orders (protection, restraining and no contact)

Appendix K: Victim/Witness Programs

Appendix L: Victim Notification Information sheet

Appendix M: Statewide Automated Victim Information Network (SAVIN)

Appendix N: False Reports vs. Unfounded Reports

Appendix O: Working Agreement with Domestic Violence/Sexual Assault Advocacy Program

Appendix P1: Multiple Jurisdictions

Appendix P2: Summary of Jurisdictions

Appendix Q: Working with Adolescent Sexual Assault Victims

Please see folder “ND Century Code” or visit the ND Legislative Branch:

<http://www.legis.nd.gov/information/statutes/cent-code.html>