

SEXUAL ASSAULT **PROTOCOL** MANUAL



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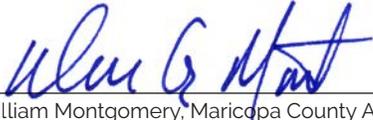
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SEX ASSAULT PROTOCOL SIGNATORIES


 William Montgomery, Maricopa County Attorney
 11-21-17 Date


 Mark Brnovich, Arizona State Attorney General's Office
 12/4/17 Date


 Dale Nannenga, Avondale Chief of Police
 11-28-2017 Date


 Larry Hall, Buckeye Chief of Police
 12/5/17 Date

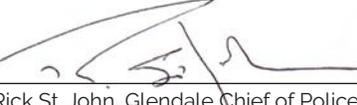

 Michael Thompson, ASU Chief of Police
 12-04-17 Date

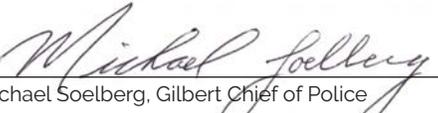

 Col. Frank Milstead, DPS Safety Director
 12-19-2017 Date

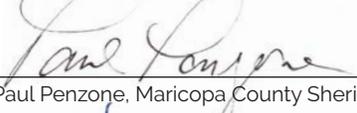

 Sean Duggan, Chandler Chief of Police
 12-11-17 Date

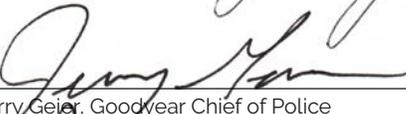

 Jessie Crabtree, Fort McDowell Yavapai Nation Chief of Police
 1/10/18 Date


 Paul Marzocca, El Mirage Chief of Police
 8-9-18 Date


 Rick St. John, Glendale Chief of Police
 11-30-17 Date

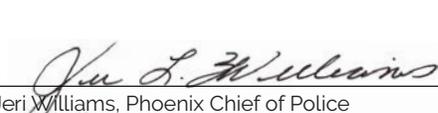

 Michael Soelberg, Gilbert Chief of Police
 12/12/17 Date


 Paul Penzone, Maricopa County Sheriff
 4/3/18 Date


 Jerry Geier, Goodyear Chief of Police
 11-28-17 Date

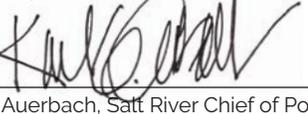

 Peter Wingert, Paradise Valley Chief of Police
 12/11/17 Date


 Ramon Batista, Mesa Chief of Police
 12-20-17 Date


 Jeri Williams, Phoenix Chief of Police
 01/11/18 Date


 Roy W. Minter, Peoria Chief of Police
 12-7-17 Date


 Alan G. Rodbell, Scottsdale Chief of Police
 12-7-17 Date

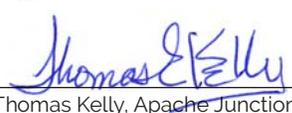

 Karl Auerbach, Salt River Chief of Police
 020918 Date


 Sylvia Moir, Tempe Chief of Police
 12-19-17 Date

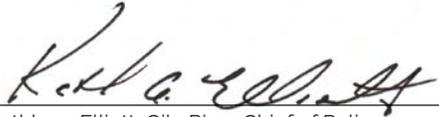

 Terry Young, Surprise Chief of Police
 01-09-2018 Date

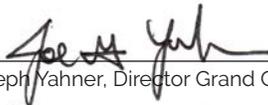

 Les Brown, Wickenburg Chief of Police
 12/7/17 Date


 Wayne Booher, Tolleson Chief of Police
 12-6-17 Date

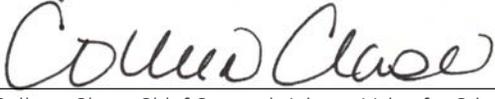

 Thomas Kelly, Apache Junction Chief of Police
 4/17/2018 Date

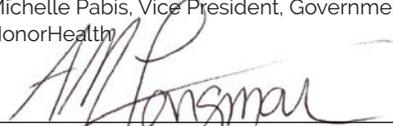
SEX ASSAULT PROTOCOL SIGNATORIES CONTINUED

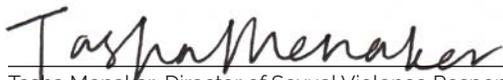
 12/15/17
Kathleen Elliott, Gila River Chief of Police Date

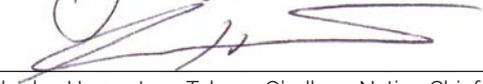
 1/6/18
Joseph Yahner, Director Grand Canyon University Public Safety Dept. Date

 1/11/18
Michelle Pabis, Vice President, Government & Community Affairs, Date
HonorHealth

 12/15/17
Colleen Clase, Chief Counsel, Arizona Voice for Crime Victims Date

 6 March 2018
Mikel Longman, Maricopa CC/Dept. of Public Safety Date

 12/14/17
Tasha Menaker, Director of Sexual Violence Response Initiatives, Date
Arizona Coalition to End Sexual and Domestic Violence

 12/15/17
Charles Hangartner, Tohono O'odham Nation Chief of Police Date

INTRODUCTION

As the County Attorney I am committed to assisting those who are victims of crime. Sexual Assault is a particularly insidious crime with devastating consequences to the victims. The Maricopa County Attorney's Office (MCAO) and the multi-disciplinary signatories to this Protocol are committed to vigorously prosecuting those who sexually assault others. MCAO and the multi-disciplinary signatories worked collaboratively for over a year to write the first Sex Assault Protocol for Maricopa County.



Sexual violence impacts all socio-economic levels, ages, genders, and races. Each year Maricopa County averages 1,000 reported sex assaults. Most sexual violence is not reported to the police.¹ Research underscores the depth of the problem of sex assault in our country. One in five women and one in 71 men report being sexually assaulted.² The reported numbers for college students are even higher.³

Sex assault and rape affects the lives of victims and their loved ones. There are significant short- and long-term consequences of sex assault. These consequences can be physical, psychological, and often both. For too long, victims of sex assault have encountered disbelief, blame, and/or discouragement from their closest friends and family, and at times from law enforcement.

 SEXUAL ASSAULT IS A PARTICULARLY INSIDIOUS CRIME WITH DEVASTATING CONSEQUENCES

Highlights of the Protocol include (for the first time in Arizona) a recognition of the need for standardized training on particular subjects directly related to the investigation of sex assault cases. The Protocol also calls for greater communication between disciplines and for DNA testing of all sex assault kits.

The primary objectives of this Protocol are to: (1) Set forth the best practices and training for all disciplines that work with victims of sex assault; (2) Promote thorough investigations of sex assault cases by trained police and prosecutors; (3) Outline the procedures to provide the opportunity for a forensic medical examination for victims of sexual assault; (4) Require professionals to be trauma-informed as it relates to the performance of their responsibilities and (5) Hold offenders accountable.



Bill Montgomery
Maricopa County Attorney

¹ *About Sexual Assault*, Rape, Abuse & Incest National Network, <https://www.rainn.org/about-sexual-assault> (last visited Jul. 19, 2017).

² *Id.*

³ *The Impact of Sexual Violence*, Ariz. Coalition to End Sexual & Domestic Violence, <http://www.azcadv.org/azcadv2014wp/wp-content/uploads/2014/09/ACESDV-Fact-Sheet-on-Sexual-Violence-with-graphics.pdf> (last visited Jul. 19, 2017).

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MEDICAL RESPONSE

MEDICAL PROTOCOL

This Protocol is written as a guideline for the medical forensic examination of the sexual assault patient. Individuals who report being sexually assaulted need to be seen by appropriately trained medical personnel who are sensitive to the unique issues with such patients. The primary duty of medical professionals is to tend to the health and welfare of the patient; but they also must remain neutral and objective in their evaluation.

In Maricopa County, there are five advocacy centers (Appendix D) staffed by medical personnel with the necessary qualifications to provide sexual assault examinations. Because of the nature of such an exam, it is strongly suggested that these exams be conducted at one of the five centers. This will ensure patient privacy, comfort, safety, and immediate attention. Exceptions may be necessary based on the physical condition of the patient.

Under Arizona law, the decision to report a sexual assault to law enforcement rests with the victim; victims are encouraged to report and cooperate with law enforcement in a timely manner in order to facilitate the successful investigation of the case. If the victim suffered a gunshot wound, knife wound or "other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act," attending medical personnel must make a report to police pursuant to A.R.S. § 13-3806. The victim, however, retains the right to refuse to talk with law enforcement, except under mandatory reporting situations where a child may also be a victim of physical or sexual abuse or neglect.



THE PRIMARY DUTY OF
MEDICAL PROFESSIONALS IS
TO TEND TO THE HEALTH AND
WELFARE OF THE PATIENT

MEDICAL PROVIDER QUALIFICATIONS AND TRAINING

Medical professionals [hereinafter "examiner"] who provide medical forensic examinations received specialized training to perform medical forensic examinations and may include physicians, medical examiners, forensic nurse examiners and nurse practitioners. Forensic Nurse Examiners (FNE) are the preferred medical provider for adult/adolescent sexual assault patients in Maricopa County. To maintain and enhance their skill proficiency, the examiner should participate in ongoing specialized continuing education.

INFORMED CONSENT

The purpose of the Patient Consent Form is to obtain the informed written consent of the patient for the following: medical evaluation and treatment, the sexual assault exam, taking photographs and documentation of injuries. Additional consent may be obtained based on hospital policies or legal statutes. The consent process should be completed verbally and in writing prior to beginning the patient history and examination in a language the patient can understand. The patient should be informed of the risks and benefits of the examination and of the right to decline any or all parts of the medical exam. In situations when an adult lacks the capacity to consent to the sexual assault examination, the patient's legal representative can consent to the examination. If no representative is available, an examination can be completed because of the time-sensitive nature of the examination. Reassessment of consent throughout the process of a medical examination is important.

CONFIDENTIALITY

Federal privacy regulations created by the Health Insurance Portability and Accountability Act (HIPAA) require patients to give written authorization for a release of health information to non-healthcare providers. Written consent to release medical information can be obtained at the time of the examination, authorizing law enforcement or a prosecutor access to a copy of the medical record. The contracted medical provider will retain all original medical records indefinitely.

OPERATIONAL CONSIDERATIONS

By Arizona statute, A.R.S. § 13-1414, Maricopa County must pay for all sexual assault examinations. The fees for the examination are established separately by the Maricopa County Attorney's Office (MCAO) and the contracted medical provider. Medical providers are prohibited from billing the sexual assault victim for the cost of the exam. The patient's insurance cannot be billed for the cost of the medical forensic examination. A patient's cooperation with police is not necessary for an exam to be paid by MCAO. An itemized billing form should be sent directly to MCAO for each service. A sexual assault examination should be offered at no charge to the patient with a chief complaint of sexual assault that occurred within the last 120 hours.

Emergency Medical Treatment and Labor Act (EMTALA) allows the transfer of an individual reporting sexual assault at a healthcare facility to one of the local advocacy centers after a medical screening examination (MSE) has been completed. The MSE is a minimal, uncomplicated procedure done to ensure that the patient is stable. Once the MSE is completed, the victim will be accompanied by law enforcement and transported to the advocacy center for completion of the medical forensic examination unless the patient requires emergency medical care.

The genital and anal exam should be performed by a trained examiner unless there is a concern about significant bleeding or other emergent injury to the genital or anal area. No urine should be collected unless indicated for medical treatment. If the patient is going to be admitted to the hospital, a specially trained examiner should be notified to perform the examination in the medical facility in which the patient is currently receiving care. The examination should not be delayed pending discharge or release from the facility.

GENERAL CONSIDERATIONS

The sexual assault patient should be thoroughly evaluated in the same manner as any medical patient. Acute medical concerns and stabilization of the patient takes precedence. Care should be taken to avoid or minimize altering the patient's state prior to collection of potential evidence.

Assessment of the patient should include a complete medical history to include the chief complaint and a detailed physical examination. The examiner should use accurate and detailed documentation to include the patient's previous medical history and description of the assault. The description of the assault serves as a guide for collection of samples for potential evidence. If the patient is unsure or unable to recall the details of the assault, routine samples of the unknown or undetermined sexual assault patient should be collected.

The Sex Crimes Evidence Kit (SCEK) is provided by Arizona Department of Public Safety and should be used in all cases. Examinations with collection of potential evidence will be performed up to 120 hours following a sexual assault. The examination should be completed as soon as possible as the potential for physical evidence to be collected decreases significantly over time.

The sexual assault patient not reporting to law enforcement should have access to a medical forensic examination. A patient requesting a medical forensic examination can directly receive care from the contracted provider by contacting the HonorHealth FNE at 480-312-6339. The specialized medical care and medical forensic examination will be completed by the FNE without a police report number and will be documented as a Violence Against Women Act (VAWA) examination. The VAWA patient will be informed of the SCEK storage and destruction process [VAWA consent appendix]. The SCEK and medical forensic examination records from the VAWA patient will be released to law enforcement only at the patient's request.

MEDICAL HISTORY

The examiner should obtain a complete medical history from the patient and should include medications, medication allergies, past medical/surgical history and other ongoing medical concerns. Current medical conditions and/or medications may have an impact on the examination and acute medical status.

The examiner should obtain a history of the chief complaint subjectively. The history should be obtained from the patient using both open-ended and clarifying questions describing the incident. The incident should be documented by the examiner using exact quotations from the patient and should help guide the examination and collection of swabs and items for potential evidence.

PHYSICAL EXAMINATION

The primary responsibility of the medical forensic examiner is to address the physical concerns as well as the psychological and emotional needs of the patient following sexual assault. The specialized care includes an explanation of the exam process. A thorough head to toe examination of the body is necessary to identify physical injuries. Sexual assault patients are often unaware of injuries sustained during a sexual assault and a complete examination of the entire body including the genitals is recommended. Documentation of the general appearance and demeanor of the victim is objectively noted. Documentation of all acute physical findings such as contusions, abrasions, lacerations, petechiae, cuts, etc. is important. A detailed description including size, color, location and type of injury should be noted. Body



SEXUAL ASSAULT PATIENTS
ARE OFTEN UNAWARE
OF INJURIES SUSTAINED
DURING A SEXUAL ASSAULT

maps are useful in accurately documenting findings from a physical exam and should accompany the written description of injuries noted. The Arizona Sexual Assault Kit Report should be completed by the examiner. Photographs of each injury can also capture an image to accompany any written notation of physical findings during an examination.

COLLECTION OF ITEMS

Clothing Collection

The clothing worn by the patient during the incident may contain trace biological evidence or may be ripped/torn/stained. The clothing may corroborate the patient's history of the event. A disposable paper or clean sheet can be used as a clean area for the patient to remove clothing. The changing sheet should be labeled and packaged. The examiner should wear gloves when handling the clothing and change their gloves in between items. Each article of clothing should be placed into a separate paper bag. Do not write on or cut through existing rips/tears/stains in clothing. If the clothing is damp/wet, the clothing should be placed in a secure location to thoroughly dry before packaging. Each item bag should be properly labeled indicating the clothing item type. The chain of custody should reflect each item as additional packages to the actual provided sexual assault kit.

Biological Standard

Collection of a buccal sample should be the standard mechanism for obtaining DNA for a victim's reference sample. A buccal swab or blood sample is routinely collected to positively identify the patient. Buccal swabs should be collected, dried and placed in properly labeled paper box indicating the source site (buccal).

If the patient reports oral penetration, DNA other than the patient's may also be present in the oral cavity. Collection of an oral specimen should be collected prior to collection of the biological standard. Following the collection of the oral swab, the patient should rinse the mouth prior to collection of the buccal swab. In such a case, the patient's blood sample also may be obtained to definitively identify the patient's DNA.

Oral Swabs

Oral swab collection is indicated with a history of oral contact with the genitals or when a patient reports biting the individual. Food and liquids should be avoided prior to the oral swab collection if possible. Oral swabs should be collected inside the mouth along the inner cheek, gum line, on the tooth surface, on the palate, and under the tongue.

Swabs should be properly dried and labeled with the source of the sample (oral). With a report of oral penetration many hours prior to the examination or in the case where the patient has eaten/drunk multiple times prior to the exam, oral swabs should still be collected. If oral swabs are collected, circumoral or palmar body surface swabs also should be collected.

Body Surface Swabs

Body surface swab collection is indicated with a history of potential body fluids, foreign materials or potential touch DNA. Use of an alternative light source (ALS) might be helpful in identifying potential evidence. Any area that fluoresces with the ultraviolet light/ALS or if the patient reports a history of an area where there may be body fluid transference (i.e. licking, kissing, sucking, biting, location of ejaculation) should be swabbed. Fingernail swabbing can also be obtained if the patient's history supports the need to collect this evidence.

Body surface swabs should be routinely obtained from high yield areas of patients with an unknown or undetermined history of suspected sexual assault. High yield areas for positive findings (with or without fluorescence) include the neck and breasts. If there are dried secretions matted in any of the body hair, they may be cut out and placed in the debris envelope. Body surface swabs are indicated with a history of manual strangulation and other forms of forceful friction contact for potential touch DNA.

The samples should be dried and placed in a properly labeled paper box indicating the source site of the sample (example: neck, right fingernail, left arm).

Anal Swabs

The collection of anal swabs is indicated when a patient reports any contact to the anus with a mouth, and penetration with a hand, penis or other object. Additionally, the collection of anal swabs should be considered in cases when a patient reports an attempted anal penetration or when trauma is noted upon examination. Anal swabs should be dried and placed in a properly labeled paper box indicating the source of the site (anus).

External Genital Swabs

The collection of external genital swabs is indicated when a patient reports any contact to the genitals with a mouth, hand, genital or other substance. External genital swabs should be collected prior to performing the vaginal exam. The swabs should be dried and placed in properly labeled paper boxes indicating the source of the site (external genital).

Penile Swabs

The collection of penile swabs is indicated when a patient reports any contact to penis with a mouth, hand, genital, anogenital or other other substance. Penile swabs should be dried and placed in properly labeled boxes indicating the source of the site (penile).

Vaginal Samples

The collection of vaginal swabs is indicated when a patient reports vaginal penetration or when it is believed that vaginal penetration occurred. Additionally, the collection of vaginal swabs should be considered on all cases of penetration of the vulva. Swab collection and inspection of the external genitals for trauma with separation of the surrounding tissue should be completed before the speculum exam. Placement of a speculum is discouraged in pre-menarchal, post-menarchal or other non-estrogenized patients. The rationale for a speculum exam should be discussed with the patient; however it is the victim's choice to proceed unless medically indicated by factors such as obvious injury/bleeding. Blind vaginal swabs can still be carefully collected if a speculum is not used.

Vaginal swabs should be obtained from vaginal walls, around and behind the cervix, the face of the cervix and gently in the cervical os. The swabs should be dried and placed in properly labeled paper boxes indicating the source of the site (vaginal).

Because laboratories have varying capabilities, local forensic laboratories have determined vaginal aspirate is a valuable sample for DNA evidence. The benefits of proper collection by a trained examiner and subsequent DNA

analysis outweigh the risk of harm to the patient. The examiner should obtain informed consent for all medical procedures prior to and throughout the examination. Patients have the right to decline any portion of the examination and collection¹.

Miscellaneous Items

The collection of debris, foreign material, or other potential trace evidence that may be found on the patient's body or clothing can be carefully packaged in the debris envelope using a pharmacy fold method. The item should be properly labeled identifying the contents and listed on the chain of custody.

Toxicology

The collection of blood and urine samples is indicated when a patient reports suspected or known ingestion (voluntary or involuntary) of alcohol and/or legal and illegal substances. A gray top tube blood sample should be collected (prior to all other blood tube samples) along with a urine sample for toxicology. Ideally, patients should not urinate until after the genital examination and swab collection is complete. The number of times a patient has urinated prior to collection should be documented. The samples should each be properly labelled including the following: sample collected (blood, urine), date and time sample was collected and the date and time of assault. The blood and urine toxicology samples envelopes should be packaged separate from the SCEK and refrigerated. If the patient voids/urinates prior to the medical forensic examination, but while in the company of the examiner or law enforcement officer, that urine should be collected and submitted by the law enforcement officer for toxicology. The examiner should only submit samples that were collected in his or her presence.

THE PATIENT'S MEDICAL
STABILITY TAKES PRIORITY
OVER THE SEXUAL
ASSAULT EXAMINATION



PHOTOGRAPHS

Photographs may accompany the examiner's documentation. With the patient's permission, photographs should be taken by the examiner to supplement the written report and capture images of physical findings related to the incident. The photographs of the patient's body and genitals should be considered for the medical purpose and should not replace investigative photography. All medical photo documentation should be considered a part of the permanent medical record and all original RAW and JPEG images should be stored and retained by the medical provider indefinitely. Photographic images may accompany investigative copies of medical records as patients permit in sexual assaults reported to law enforcement. However, genital photographs will not be released to non-medical personnel at any time without a court order. Include a color bar in the photograph to ensure accurate color reproduction.

MEDICAL TREATMENT

The patient's medical stability takes priority over the sexual assault examination. Recommended referrals to a specialist or transfer to a higher level of care should be considered for treatment of injuries and examination findings if indicated.

The most recent CDC Treatment Guidelines for sexual assault and STI preventive therapy are available at [cdc.gov](https://www.cdc.gov).

Emergency contraception should be considered when the assault could result in pregnancy.

Patients who have been sexually assaulted should be informed of post exposure vaccines for Hepatitis B and Human Papilloma Virus and treatment options for nonoccupational postexposure prophylaxis (nPEP) for HIV. Recommendations for HIV PEP are individualized according to risk as advised by the CDC. Referrals for vaccines and nPEP should be readily available for a patient's continued care needs along with follow up testing for sexually-transmitted infections.

1 US Department of Justice, National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach, <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

CHAIN OF CUSTODY

All items collected as a part of the medical forensic exam will be properly packaged, labelled, and sealed with the examiner's handwritten date, time and initials across the tape and package or kit. The Chain of Custody form should be filled out by the examiner as a complete list of the items collected. A copy of the medical forensic examination record and the individually sealed envelopes should be sealed within the SCEK. All individual items such as blood, urine, clothing items and changing sheet should be packaged and sealed separately from the SCEK. The total number of items collected, including a copy of the physical injury photos, should be documented and logged prior to being secured and locked into an evidence refrigerator. Chain of custody of SCEK and collected items should be maintained at all times.

POST MORTEM SEXUAL ASSAULT EXAMINATIONS

If a decedent's death investigation falls under the jurisdiction of the Maricopa County Office of the Medical Examiner pursuant to A.R.S. § 11-593, postmortem sexual assault examinations will be performed, if indicated by history and/or circumstances or upon request of an investigating agency, by a forensic pathologist medical examiner (ME) or under their direct supervision in compliance with the most current National Association of Medical Examiners (NAME) Forensic Autopsy Performance Standards and in accordance with departmental policies and procedures. Standard SCEKs will be collected, packaged, labeled, stored, and released in accordance with departmental policies and procedures which are reviewed at least every 2 years and developed in collaboration with law enforcement crime lab partners.

LAW ENFORCEMENT RESPONSE

Law enforcement responds to reports of sexual assault committed against adults by conducting a thorough and fair investigation with a trauma-informed approach, while holding offenders accountable in the criminal justice system.

Effective investigation requires cooperation with a multidisciplinary team that includes professionals from the following disciplines: medical professionals, victim advocates, dedicated forensic interviewers, criminalists, other law enforcement and prosecutors. Law enforcement should consult and share information with the team and keep the victim apprised of the status of an investigation.



LAW ENFORCEMENT RESPONDS
BY CONDUCTING A THOROUGH
AND FAIR INVESTIGATION WITH A
TRAUMA-INFORMED APPROACH

All persons will be treated with fairness, dignity and respect. Law enforcement must be cognizant of victim safety, victim needs and victim and suspect rights and establish partnerships with other organizations involved in the treatment and support of victims. Advocacy centers should be utilized for sexual assault investigations when possible (Appendix D).

This Protocol will outline the best practices for sexual assault investigations within Maricopa County. Law enforcement agencies should follow these practices bearing in mind that circumstances and resources may call for deviations from these practices. Because of the differences between agencies, it is recognized that some investigations, or parts of investigations, may be carried out by patrol officers, rather than detectives. For that reason, the Protocol distinguishes between "first responders" and "investigators", the latter being either a patrol officer designated as the investigator or a detective.

This Protocol will incorporate: communications/dispatch, patrol officer response, crime scene investigation, detective investigation, evidence collection including the Sex Crime Evidence Kit (SCEK), Combined DNA Index System (CODIS), cold case investigations, and training.

I. COMMUNICATIONS, 9-1-1 & DISPATCH

Those who serve in this capacity should receive training on the impact of trauma, the dynamics of victimization and appropriate questioning of victims who report sexual assault.

The call taker's primary focus is victim well-being and safety and officer safety. Call takers will obtain appropriate information regarding the sexual assault, location, suspect and suspect's location, information and description.

The investigator should secure the audio recording and printed details of the call and preserve as evidence.

II. FIRST RESPONDER RESPONSIBILITIES

A. In addition to any other training mandated by the agency, officers who will be serving as first responders to calls of sexual assault should receive training on the following topics:

1. Law Enforcement section from the Maricopa County Sexual Assault Protocol.

2. Arizona Constitution, Article 2, § 2.1 Victim's Bill of Rights; Title 13, Chapter 44.
3. Relevant sections of A.R.S. Title 13 for specific criminal conduct provisions.
4. Scene preservation.
5. Impact of trauma on sexual assault victims.
6. Interviewing the sexual assault victim.

B. First Responder responsibilities are as follows:

1. Attend to the victim's immediate medical needs.
2. Secure the safety of those at the scene.
3. Contact the victim as described below.

C. Victim Contact

Sexual assault investigations typically include both an initial victim interview in the response phase and a subsequent in-depth interview in the investigative phase. The preliminary interview is a minimal fact interview to establish scenes and elements of the crime. It is best practice to conduct an investigative interview, even when the first responder and the investigator are the same person. This practice may allow the victim to recover from the initial assault so that memory will be less-impacted than it is immediately after the trauma.

1. Officers equipped with body worn cameras should audio and video record all contact and investigation efforts and document that these recordings exist in the police report.
2. The first responder should conduct a brief and non-judgmental initial interview of the victim. The interview should be structured and conducted in a manner that allows the victim in these scenarios to give this information in an uninterrupted free-flowing manner. This interview should be recorded and take place in a private, safe setting. If the victim insists a support person be with them, the first responder should make sure that that person is not a witness to the case (e.g., the first person the victim told). The interview should be limited to the following:
 - a. The purpose of the initial interview is to gather basic facts that establish the elements of the crime and a more detailed interview will be done later.
 - b. Obtain victim information, including phone numbers, date of birth and secondary contact information such as a close relative.
 - c. Tell me about what happened? (Let the victim talk without interruption. Do not press the victim.)
 - d. If victim does not provide the information below, you may ask the following questions:
 - i. Follow up questions concerning immediate safety issues of either the victim or the public (e.g., "Where did you last see him?" or "Which way did he go?").
 - ii. Where did it occur? (To determine scene(s)/ jurisdiction)
 - iii. When did it occur? (To determine need for an immediate sexual assault examination)
 - iv. Was a weapon used? If so, where is that weapon now?
 - e. If the victim knows the suspect, get as much information as possible as to the suspect's description and any locating information.
 - f. If the victim does not know the suspect, obtain a description by asking open ended questions about appearance such as "Describe what the person looked like." "Describe what the person was wearing."
 - g. Document your observations about the victim's appearance and demeanor during the interview in the departmental report (e.g., crying, laughing, unemotional, dirty clothes, torn/missing item, visible injuries). Do not include personal opinions or beliefs about what you think.

INTERVIEWS SHOULD BE
CONDUCTED IN A MANNER
THAT ALLOWS THE VICTIM
TO GIVE INFORMATION
IN AN UNINTERRUPTED
FREE-FLOWING MANNER



- h. If the sexual assault occurred within 120 hours or it appears there is potential to collect physical evidence or document injury, ask the victim if he/she is willing to participate in a medical forensic examination. If an exam is appropriate, explain the importance of such an exam (to provide need medical treatment) and that the exam will be done in an advocacy center in a professional and sensitive manner. Understand that a victim may need time to make such a decision.
- i. Ask the victim if he/she is willing to speak with an investigator.
- j. Do not ask victim if he/she wants to press charges or wants to be a victim.

3. Ensure that the victim has transportation to an advocacy center, which has 24-hour access (Appendix D).

Ideally, a victim should be transported to the advocacy center by an advocate or crisis worker who works with the police department. If such a resource is unavailable, the police should transport the victim, understanding that a victim always has the right to choose to be transported in a private car by a friend or family member. If the victim opts to be transported in a private car, he or she should be instructed not to eat, drink, chew gum, brush teeth, change clothes, wash, use the bathroom or talk about the sex assault. Follow the victim or allow him/her to follow you to ensure he/she does not get lost or stop somewhere.

4. Notification and Coordination of the Medical Forensic Exam.

Forensic Nurse Examiners (FNE) are available 24 hours a day, every day of the year. Per A.R.S. § 13-1414, these FNE exams will be paid for by the county. Victims will not be charged for the exam.

- a. If the assault took place within the past 120 hours, an FNE exam should be done as soon as possible.
 - b. If the victim needs to be transported and admitted to a hospital, FNEs will respond to the hospital to collect a Sex Crime Evidence Kit.
 - c. The officer who has interviewed the victim should brief the FNE on essential information about the victim and briefly about the described assault.
 - d. Medical examination – Photos taken during the FNE exam are for medical purposes only. A police representative must take any necessary photographs for evidence purposes.
5. First responder should remain at advocacy center/medical facility during the FNE exam, but may be relieved by an investigator.
- a. Provide victim with victim rights information and advocacy/resources.
 - b. Discuss victim safety concerns which may include Orders of Protection and other resources. (An advocate or crisis worker who works with law enforcement may do this).
 - c. Either the first responder or the investigator shall take custody of the Sex Crimes Evidence Kit within five business days after the FNE exam is completed.

6. Documentation In Departmental Report

- a. The first responder, any officer who interviews a witness, victim or suspect and any officer who identifies evidence or processes a crime scene shall write his or her actions, including any referrals provided to the victim.
- b. Obtain biographical victim information.
 - i. Include the victim's full name, date of birth, home address, email, occupation, work address, work phone number, cellular phone number, email address, next of kin contact information, etc.
 - ii. Victim's rights mandates that some of this information must be redacted by the county attorney's office prior to disclosure to defense. Therefore, limit the number of times this information is listed in the police report.
 - iii. The victim's name and other personal information should not be included in court documents, such as the probable cause statement. The victim(s) should be referred to as, e.g., "Victim 1".
- c. Names and contact information of all involved persons.
- d. Summarize the interview of all involved persons.
- e. Document FNE's name and the location where the examination took place.

D. Suspect Contact/Interview

1. First responders should only interview the suspect if the suspect is present and aware of the investigation. If the agency has an on-call investigator, that investigator should be consulted with prior to conducting an interview.
2. If the suspect is not present, consult with detective, investigator or supervisor prior to contact bearing in mind that the suspect may possess evidence that needs to be immediately collected.
3. If evidence needs to be collected from the suspect, the following are recommended:
 - a. Court Order for Identifying Physical Characteristics (A.R.S. § 13-3905) - This requires reasonable suspicion and cannot be used to draw blood.
 - b. Search Warrant – This requires probable cause.

III. INVESTIGATOR RESPONSIBILITIES:

It is recommended that each agency have a specialized unit to investigate or direct investigations of sexual assaults. Assignment to such a unit should be voluntary. Because of the complexity of these cases and the training, knowledge and expertise required, every effort should be made to retain skilled investigators in the unit as long as possible. Size of agency, resources and other special circumstances may make alternatives necessary. Because of the sensitive and personal nature of these cases, law enforcement should maintain timely communication and information sharing throughout the investigation with the victim. Special care should be taken to maintain a victim's privacy by not contacting friends and family members who may not be aware of the situation. (Refer to Victim Advocate Section of Protocol for list of victim services/advocate resources)



A. Those responsible for such investigations should receive training in the following areas:

1. Arizona Constitution, Article 2 § 2.1 Victim's Bill of Rights, Title 13, Chapter 44.
2. Training on the investigation of sexual assaults. (Appendix B)
3. 8 hours of continuing education each year relating to the investigation of sexual assaults.
4. Basic and advanced forensic interview training.

B. Investigator responsibilities are as follows:

1. Where applicable, ensure the crime scene(s) remain secure.
2. Identify, document and collect crime scene evidence when available.
3. Impound and submit evidence to the crime laboratory for testing.
4. Conduct a detailed interview of the victim. (See below)
5. Identify and interview other witnesses in the case.
6. Identify and interview the suspect.
7. When appropriate, work with agency's public information officer on which, if any, details should be disclosed to the public.
8. Obtain a DNA sample from victim's consensual sex partner, if relevant sexual activity occurred in the past 7 days or if any items seized (e.g., bed linens) may contain DNA from the partner. The investigator role does not end once the case is submitted for prosecution. Investigators need to be aware of legal requirements and timelines with which prosecutors must comply. Therefore, at the earliest juncture, the investigator should work with the prosecutor assigned to the case. This will help ensure that discovery is completed in a timely fashion. Open communication also will provide the means to advise the prosecutor of any potentially exculpatory information.

MCAO sex crimes bureaus have an on-call prosecutor. The prosecutor may want to visit the scene or observe parts of the investigation, such as interviews. The on-call prosecutor should be contacted under the following circumstances:

1. An arrest is imminent and charges will be submitted.
2. The case involves multiple victims, serious injury, or a complex or lengthy investigation.
3. In any other circumstance where the investigator deems it appropriate.

The on-call prosecutor may

1. Review the search warrant.
2. Answer some legal inquiries.
3. Attend the initial appearance.
4. Attend case briefings/multidisciplinary team meetings.

C. Scene Processing

The lead investigator must recognize that there could be multiple crime scenes such as the contact location, assault location, release location, victim and suspect (person, personal belongings, clothing, etc.). Some of the functions the investigator may complete at a scene include the following:

1. If scene is undetermined, the investigator may attempt to locate it by transporting the victim to the location.
2. Preserve the victim's fingerprints for comparison, if appropriate.
3. Ensure photographs are taken.
4. Photographs should depict victim injuries, if any, and in a way that shows the scale of the injury. When appropriate, photograph the absence of injuries. Ideally a person of the same gender as the victim should take these photographs.
5. Document name of person who took photographs.

D. Investigation/Interview of Suspect

1. Run criminal history to:
 - a. Obtain past reports and court records on sex-related offenses.
 - b. Review other offenses, such as burglary, kidnapping or trespass, for possible sexual motivation.
2. Conduct interview – If video recording is not possible, audio record.
3. If evidence needs to be collected from the suspect, the following are recommended:
 - a. Court Order for Identifying Physical Characteristics (A.R.S. § 13-3905) - This only requires reasonable suspicion and cannot be used to draw blood.
 - b. Search Warrant if probable cause exists to arrest and/or blood is needed.

IV. DETECTIVE CALLOUT CRITERIA (FOR AGENCIES WITH SPECIALIZED UNITS/PERSONNEL)

While it is recognized that the resources of each law enforcement agency may impact the ability of a detective to respond to assist patrol officers with investigations, the following criteria should be considered:

- A. Safety concerns. (e.g., whereabouts of suspect is unknown and there is a safety concern for the victim)
- B. Suspect is in custody and decision to make an arrest is needed.
- C. Need for court order for identifying physical characteristics or a search warrant for collecting evidence from the suspect or a crime scene.
- D. Need to process complex or multiple scenes. (apartment, vehicle, etc.)
- E. Serious physical injury.
- F. Multiple victims or a complex initial investigation and immediate follow-up investigation necessary.
- G. Any other situation where law enforcement determines detective response is appropriate.

V. VICTIM INTERVIEW BY INVESTIGATOR

- A. Interview victim as soon as possible at an advocacy center or other safe and private location that has audio and video recording capabilities. Only if video recording is not possible, audio record.
- B. If the victim is under the stress of the traumatic event, consider waiting a period of time.
- C. Do not ask a victim if he or she wishes to prosecute or wants "to be a victim". Instead, explain the process of the investigation to the victim.
- D. Victims should be interviewed using principles taught in the basic and advanced forensic interviewing courses as applied to victims of sex assault. (Appendix B)
- E. Subsequent interviews may be necessary and conducted for clarification purposes or if additional information and evidence warrants it. These should be video or audio recorded.

VI. EVIDENCE IMPOUND – GENERAL

- A. All items should be impounded in separate bags to prevent contamination.
- B. Wet items should be thoroughly dried to prevent mold/mildew.
- C. Once dried, items should be placed in paper evidence bags.
- D. Dried items should be stored in a refrigerator or freezer.
- E. Glass items should be stored at room temperature.
- F. Blood tubes and urine should be refrigerated.
- G. SCEK should be stored in freezer.
- H. Items may be stored at room temperature after completion of lab analysis. Cases will involve various types of evidence. Adhere to agency policies for specific collection, impounding and analysis procedures.

VII. SEX CRIME EVIDENCE KIT (SCEK)

- A. SCEK
 - 1. FNE personnel will notify law enforcement of a completed SCEK within 48 hours.
 - 2. Law enforcement should collect and impound SCEK from FNE within 5 business days of notification.
 - 3. Law enforcement should submit SCEK to appropriate crime laboratory within 15 business days.
- B. FNE medical report (provided by FNE at time SCEK is picked up)
 - 1. Incorporate with departmental report.
 - 2. Scan and/or impound as evidence.
- C. Detectives will document lab results in report and conduct appropriate follow-up investigation (See CODIS section).
- D. Each agency is responsible for storage and preservation of each SCEK.
- E. SCEKs will not be destroyed, regardless of lab results, unless:
 - 1. Allegation is "unfounded", meaning evidence proves crime was not committed.
 - 2. Violence Against Women Act (VAWA) - Anonymous SCEK.
 - a. Medical forensic examiners should provide the victim with information on procedures for retention of the SCEK and reporting to law enforcement.
 - b. VAWA SCEKs should not be submitted for testing absent the victim's agreement to involve law enforcement.

EVIDENCE MAY BE
USED IN FUTURE
CASES REGARDLESS
OF THE OUTCOME OF
THE INVESTIGATION



VIII. EVIDENCE RETENTION

Evidence may be used in future cases regardless of the outcome of the investigation. Therefore, all evidence in a sexual assault case will be retained by the investigating agency pursuant to A.R.S. § 13-4221.

- A. Evidence Rules 404(B) & (C).

IX. CODIS – COMBINED DNA INDEX SYSTEM

A. Databases:

1. LDIS – Local DNA Index System.
2. SDIS – State DNA Index System.
3. NDIS – National DNA Index System.

B. Eligibility for entry into CODIS.

1. Documentation a crime was committed.
2. Documentation that evidence originated from or can be associated with the crime scene.

C. CODIS hits (matches) – Notification will be made to investigator.

1. Sample matched to specific person.
 - a. Determine whether this person was victim's consensual partner.
 - i. Case to case sample - Investigator needs to obtain records from other case to determine what follow up needs to be done.
2. A DNA sample of the suspect is necessary to ensure the integrity of the database hit.
 - a. Locate and interview suspect.
 - b. Obtain court order for identifying characteristics or search warrant.
3. The decision on whether the victim is notified regarding a CODIS hit should be made by an investigator and in compliance with the Victim Notification Protocol.
4. No CODIS Hit – Consult with crime lab for alternative DNA searches and the most current approaches which may help identify a suspect or lead. (such as familial searches, or other characteristic identification).
5. Forensic samples are compared against other profiles in the appropriate level of CODIS at least twice weekly.

X. COLD CASES

A "cold case" sexual assault is defined as any case that is not actively being investigated and has remained unsolved for one or more years after reported to law enforcement. Investigators have the following responsibilities:

- A. Identify all unsolved sexual assault investigations within their agency.
- B. Evaluate, assess and prioritize all unsolved sexual assault cases including whether there is a potential scientific analysis of untested evidence.
- C. Create a case assessment document to identify critical information and summarize the incident, i.e., evidence still available, evidence not tested, suspect identified, etc.
 1. This assessment should include a thorough review of of the case and an evaluation of additional steps that can be taken to revive the case.
- D. Create tracking database, Excel workbook, or department records management system for pertinent information to include:
 1. Modus Operandi (MO), drug use, stranger/known, etc.
 2. SCEK collected, analyzed, results.
- E. Collaborate with designated crime lab and property management in the identification, testing and preservation of any evidence related to the case.
- F. Conduct timely, complete and appropriate follow-up investigation in which the suspect has been subsequently identified.
- G. Statute of limitations:
 1. No statute of limitations for class 2 felony sexual offense (effective August 9, 2001).
 2. Earlier reports may be prosecuted under certain circumstances and/or used as an aid in prosecution of another

case (Rule 404). Therefore, the detective must consult with the prosecutor before deeming a case as not prosecutable due to the statute of limitations. In cold cases, the following should be considered in deciding whether and/or how to make contact with the victim upon receipt of a CODIS hit or other new evidence:

3. Previous willingness to cooperate with law enforcement.
 - a. Circumstances often change.
4. If the CODIS hit or new evidence provides an actionable lead.
5. Contact with the victim is necessary to advance the investigation.

XI. FILED CHARGES

Investigators may be called on to testify multiple times (release hearing, grand jury, pretrial hearings, trial). They should prepare for each of these by:

- A. Reviewing the entire case, not just the investigation they did.
- B. Consulting with the prosecutor as to the nature of their testimony (areas to be covered, possible issues, rulings, whether they will be testifying to hearsay of other witnesses, etc.).

The assigned investigator should sit with the prosecutor throughout trial.



DEPARTMENTS SHOULD WORK TOGETHER
TO ALLOW INVESTIGATORS AND
SUPERVISORS TO SHADOW SPECIALIZED
DETECTIVES IN DIFFERENT AGENCIES

XIII. SUPERVISOR RESPONSIBILITIES

The supervisor plays an important role in sexual assault cases, and these cases often require unique investigatory and interview methods that may require additional guidance and supervision.

- A. In addition to any other training mandated by the agency, supervisors should receive training on the following topics:
 1. Arizona Constitution, Article 2 § 2.1 Victim's Bill of Rights, Title 13, Chapter 44.
 2. Training on the investigation of sexual assaults (Appendix B).
 3. 8 hours of continuing education each year relating to the investigation of sexual assaults.
- B. Supervisor Position
 1. Assignment to a sex crimes unit as supervisor should be voluntary. Strong preference should be given to those who have investigative experience. He/she must possess strong interpersonal, investigative, organizational, and administrative skills.
 2. The supervisor must have a thorough understanding of DNA and its analysis, crime scene investigation and interpretation, and they must have a good working relationship and understanding with the prosecuting attorneys.
 3. The supervisor should be able to work with outside agencies in coordinating investigative efforts and be able to identify and work to obtain grant funding if the need should arise.
- C. Policy and Direct Supervision
 1. Provide ongoing and in-service training opportunities to ensure patrol officers and detectives are familiar with the policy, understand victim response, and comply with statutory requirements.
 2. Review all suspected sexual incident reports, regardless of whether they will be forwarded to detective/arrest made/or warrant requested.
 3. Ensure that the first responder/investigator has completed all steps outlined in this policy and other department procedures.

4. Ensure that the investigating officer re-contacts the victim in person or by phone an appropriate time after the initial report to conduct a follow-up interview or inform the victim of the status of the case.
5. Ensure any follow-up requests from the prosecutor are completed, including providing discovery in a timely fashion.
6. Review all case closure determinations to ensure policy/procedure regarding case closure has been followed correctly.
 - a. Notify officers and investigators that they cannot close a case as unfounded based solely on the victim's initial statement or a cursory preliminary investigation.
 - b. Review investigators' caseloads to ensure no officer has a disproportionate number of unfounded cases or cases in which the victim no longer participates.
 - c. Document and review incidents that are presented as unfounded, including those where it is unclear if the legal elements of sexual assault are met.
 - d. Do not pressure investigators to clear a high percentage of cases.

XIV. NETWORKING/RESOURCES

- A. Mentorship – Departments should work together to allow investigators and supervisors to shadow specialized detectives in different agencies. This includes responding to scenes, monitoring interviews, etc.
- B. The Maricopa County Sex Crimes Investigator Association (MCSCIA) is hereby established. Each year, one law enforcement agency will serve as coordinator of the MCSCIA. Responsibilities of that agency include:
 1. Finding a location for quarterly meetings and/or trainings.
 2. Setting the agenda for the meetings/trainings.
 3. Maintaining an email list for the purpose of distributing:
 - a. Crime bulletins.
 - b. Crime trends.
 - c. Training literature.
 - d. Information regarding available training.

FORENSIC LAB RESPONSE

This Protocol encompasses four aspects of the laboratory testing of SCEKs and is not all inclusive of every scenario that may be encountered in casework or by any individual laboratory. Each CODIS participating laboratory responsible for testing SCEKs in Arizona will be an accredited laboratory and adhere to the FBI's DNA Quality Assurance Standards for DNA Testing Laboratories. Each laboratory will have detailed technical and administrative protocols that will be specific to the testing of evidence for the agencies they serve.



COMMUNICATION BETWEEN FORENSIC LABORATORIES AND THEIR CUSTOMERS / STAKEHOLDERS IS KEY TO ACHIEVING SUCCESS

A. Case Acceptance

1. Forensic laboratories must remain independent and neutral when evaluating evidence items to test and methodologies to use. Forensic laboratories, like other agencies, have limited resources. Therefore, exceptions to case acceptance policies should be a collaborative effort between the laboratory and its stakeholders (law enforcement, prosecution, defense, etc.). Communication between forensic laboratories and their customers/stakeholders is key to achieving success.¹
2. Each laboratory shall have a case acceptance policy that documents the prioritization of analysis of crime types and a mechanism for deviations to prioritization. The analysis of sex crimes evidence kits in general should be of a high priority. Additional parameters may be used to further prioritize the caseload at each laboratory including case specifics and discovery deadlines due to Arizona Criminal Rules of Procedure.
3. Each laboratory may establish a limit to the number of items that will be analyzed for DNA but this should be based upon the results of Serology/Y-screening, combined with the medical examination information and synopsis information provided by the forensic nurse examiner and law enforcement official.
 - a. An objective of laboratory testing is the development of a DNA profile that can be used to identify an individual(s). If initial testing yields the development of a CODIS eligible profile, additional item(s) may be processed in collaboration with criminal justice stakeholders.
 - b. If the results of the screening process are negative or demonstrate a low likelihood of obtaining a probative DNA profile, DNA testing may not be completed on these items thereby preserving sample for future analysis using advancing technology.
 - c. Ideally, reference samples will be collected from the victim, consensual sex partner(s), and suspect(s), if known.² Buccal swabs or other appropriate reference samples should be collected to assist with the interpretation of the DNA results. Often mixtures are obtained from evidentiary items. Therefore, the victim's DNA profile as well as the consensual sex partner's, if indicated in the SCEK paperwork, may be used to deduce a more informative DNA profile.

¹ Scientific Working Group on DNA Analysis Methods, *Guidelines for the Processing of Sexual Assault Evidence Kits in the Laboratory* and the National Institute of Justice's *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

² The victim standard is typically contained within the SCEK. The laboratory should request the submission of a reference sample from the consensual sex partner prior to the entry of CODIS eligible profiles. Each laboratory may have specific policies regarding when other standards should/must be submitted to the laboratory.

- d. In instances where the suspect has been identified, law enforcement personnel should obtain buccal swabs (reference samples) from the suspect for comparison purposes. These samples must be packaged separately from the SCEK and be clearly labeled.

B. Screening

1. Screening of a sex crimes evidence kit.

- a. The SCEK should be packaged separately from other sex assault evidence items, including clothing collected at the time of SCEK collection.
- b. The SCEK should be submitted to the laboratory prior to other sex assault evidence unless the case synopsis indicates other evidence is more probative – i.e. condom, clothing, bedding, etc.³
 - i. The SCEK medical history report and/or a brief synopsis are required upon submission to the laboratory for processing.
 01. If neither of these are provided to the laboratory upon submission of the SCEK, the laboratory may return the SCEK to the requesting agency. The SCEK should be re-submitted to the laboratory for analysis once the required information is included.
 - ii. The submitting agency should provide information about consensual sex partner(s) upon submission of the SCEK or when available.
- c. SCEK samples should be screened via Y-screening (Direct to DNA approach) or traditional serology processes.
 - i. Y-screening may be employed for screening of SCEK samples collected from a female, when male DNA is relevant to the case.
 - ii. When the SCEK has been collected under alternative scenarios, e.g. male on male assaults, traditional serology screening may be employed for testing of the SCEK samples.
- d. Screening of non-SCEK sex assault evidence will be performed as needed and in collaboration with criminal justice stakeholders.
 - i. The laboratory may triage the non-SCEK evidence based on the results of the SCEK analysis, sexual assault history information, and/or consultation with criminal justice stakeholders.
 - ii. Screening will generally be performed using serological methods.

C. DNA Testing

1. Laboratory methodology

- a. In general, the four steps of DNA testing in the laboratory are:
 - i. Extraction (Normal and Differential)
 01. Differential extractions can be used when sperm may be present in the sample.
 001. In the absence of a sperm search, a normal extraction may be used for samples collected from above the victim's waist.
 002. In the absence of a sperm search, a differential extraction may be used for samples collected from below the victim's waist.
 003. Additionally, a differential extraction can be used from any location in which the analyst expects the sample to contain sperm, i.e., according to the SCEK medical history report the perpetrator ejaculated on victim's breast and breast swabs are collected in the SCEK.

³ If the agency has adopted a 'Test All' policy to testing all SCEKs, then the kit will always be submitted to the laboratory for analysis. Other probative evidence may also be submitted for analysis depending on the facts of that particular case.

ii. Quantitation

01. The amount of DNA present in any sample may be quantified using validated kits and methods. The Laboratory may have an established quantitation threshold that returns either no DNA at all or no male DNA. If an established threshold is determined, then samples that fall below that threshold do not need to be amplified.

iii. Amplification

01. Autosomal STR DNA Testing – samples will be processed using appropriate STR amplification kits that include, at a minimum, the approved core CODIS loci. Most samples selected for DNA analysis will undergo the autosomal STR DNA testing process.
02. Y-STR Testing – samples will be processed using appropriate Y-STR amplification kits. In general, only select samples will be processed using the Y-STR testing methods. Typically, these are samples that have very low levels of male DNA, male DNA that may be masked by higher levels of female DNA, or in situations where the Y-STR profile is informative to the case.

iv. Typing

01. Genetic analyzers will be used to complete the DNA testing of amplified product.
- b. If a full autosomal DNA profile is not developed, a partial STR and/or Y-STR profile may be achievable and informative to the investigation.
 - c. Automated and robotic platforms may be used for high throughput processing, but they are not a requirement for the development of a DNA profile from SCEKs.



IF A FULL AUTOSOMAL DNA PROFILE IS NOT DEVELOPED, A PARTIAL STR AND/OR Y-STR PROFILE MAY BE ACHIEVABLE AND INFORMATIVE TO THE INVESTIGATION

2. Interpretation and Reporting

- a. The laboratory will have written procedures for taking and maintaining case notes to support the conclusions drawn in the report. These can be in hard copy or electronic format.
- b. The analytical documentation shall be sufficient to support the reported conclusions so that another qualified individual could evaluate and interpret the results.
- c. The report may include but is not limited to the following:
 - i. The detection of male DNA if the Y-Screening method is used.
 - ii. The development of an unknown probative DNA profile.
 - iii. The entry of CODIS eligible profiles and the level to which the profile was uploaded.
- d. The laboratory will follow the Quality Assurance Standards (QAS) and accreditation standards for reporting and reviewing results.
- e. The laboratory may use DNA interpretation software, including probabilistic genotyping software, to aid in the analysis and interpretation of the DNA results.
- f. The laboratory will only release results and provide copies of reports to approved criminal justice stakeholders, i.e. requesting law enforcement agency, prosecutor's office, assigned defense attorney, etc. Analytical results will not be released directly from the laboratory to the victim, victim's advocate, or other interested private party.

3. Outsourcing

- a. The laboratory may also utilize the services of a private DNA laboratory (non-CODIS participating) to complete the DNA testing of SCEKs. The laboratory will follow Standard 17 – Outsourcing from the DNA QAS to ensure CODIS eligible profiles can be entered into CODIS.
- b. The laboratory will perform a technical review of all cases containing a CODIS eligible profile and take ownership of the data prior to the profile being entered into CODIS.
- c. The laboratory may issue an outsourcing report to the requesting agency detailing the vendor's results and the laboratory's corresponding actions.
- d. The laboratory should include in the contract with the private DNA laboratory a negotiated cost for potential interviews, discovery, and courtroom testimony.

4. Review

- a. All analytical documentation and scientific reports associated with the analysis of SCEKs will undergo a technical and administrative review process per the corresponding QAS and accreditation standards.

D. CODIS Entry

1. Once a profile has been developed, CODIS eligibility for a forensic category is determined.

- a. The profile must be from crime scene evidence.
- b. The profile must be attributable to a putative perpetrator. If a consensual sex partner is listed, the laboratory must request that an elimination sample be submitted for comparison purposes prior to entering the DNA profile developed. After a request for the elimination sample has been made, eligible profiles can be entered into CODIS even if an elimination sample cannot be obtained.⁴

2. Entry Requirements

- a. If the profile developed meets the requirements to go to the National DNA Index System (NDIS) it will be entered into the appropriate forensic category and uploaded to both the state and national databases. It will be searched on a regular basis.
- b. If the profile developed does not meet the requirements to go to the national database, but does meet the requirements to go to the State DNA Index System (SDIS) it will be entered into the appropriate forensic category and uploaded to the state database. It will be searched on a regular basis.
- c. If the profile developed does not meet either the national or the state database requirements, it could possibly be stored and searched in the Local DNA Index System (LDIS) depending on the individual laboratory's policies.

3. If a hit occurs in CODIS

- a. For offender hits, the name of the individual will be released by the laboratory to the law enforcement agency once the confirmation process is completed.
 - i. The law enforcement agency is responsible for collecting a reference sample from the named individual so that match statistics, if applicable, can be reported to criminal justice stakeholders.
 - ii. If the CODIS hit identifies a consensual sex partner, the law enforcement agency must notify the laboratory so that the DNA profile developed from the SCEK evidence is removed from CODIS.
- b. For forensic hits, the case(s) information will be released by the laboratory to the law enforcement agency once the confirmation process is completed.

4. Turnaround Times

- a. Turnaround times for the analysis of an SCEK is defined as the time from when the laboratory request for the analysis of the SCEK is received by the laboratory to the release of a laboratory report to criminal justice stakeholders providing results from the analysis of the SCEK.

⁴ Each laboratory will have policies and procedures which direct the entry of DNA profiles into CODIS. When the profile developed is attributable to the CSP, the profile will not be entered into CODIS.

- b. Both the volume of SCEKs submitted to the laboratory and the laboratory's corresponding analytical capacity will dictate a laboratory's ability to complete the analysis of the SCEK within a specified time limit.
- c. The existence of a backlog of items pending DNA analysis in the laboratory will impact the ability to achieve ideal turn around times.
- d. The laboratory will utilize existing resources to process SCEKs as a priority assignment within their system and complete the analysis accordingly.
- e. If the laboratory does not have sufficient resources to meet the demand of casework being submitted to the laboratory, regardless of case type (sexual assault, homicide, etc.), delays in the analysis of evidence will occur.

Glossary of Terms

Unsubmitted: A sex crimes evidence kit (or other evidence) that is in police custody but has not yet been sent or submitted to a crime laboratory for forensic testing.

Untested: A sex crimes evidence kit (or other evidence) that is at a crime lab but has not yet been through DNA testing.⁵

Backlogged: Evidence received by the laboratory but has remained untested for more than 30 days.⁶

Tested: Forensic testing has been completed on one or more samples from the SCEK that resulted in a CODIS eligible profile or exhausted all probative samples within the SCEK.

Prioritize: To designate or treat as more important than other things. (Each agency may have a system to evaluate incoming requests for analysis to appropriately prioritize sex crimes evidence kits and sexual assault casework. Please contact the laboratory you are working with for information regarding their case acceptance policy.)

DNA Testing: Testing of an evidence sample to obtain a DNA profile. Generally, the DNA testing process includes extraction, quantitation, amplification and DNA typing.

Autosomal STR Testing: All humans inherit half of their genome from their biological mother (22 autosomal chromosomes plus one sex chromosome) and the other half from their biological father (22 autosomal chromosomes plus one sex chromosome). Thus, there are two copies (or two alleles) of each gene in our genome. Short tandem repeats (STRs) are repeated segments of DNA that are typically 2-6 base pairs in length. These STRs are scattered throughout our genome. At each of the tested genetic sites, one STR allele comes from the mother and the other STR allele comes from the father. The number of repeats of each STR at each genetic site varies within the human populations, and this variability in the number of repeats makes autosomal STR testing extremely valuable as a human DNA identification tool.⁷

Y-STR Testing: Targeted short tandem repeat testing of the Y chromosome found in males due to paternal inheritance. Y-STR testing is useful for detection of male DNA from evidence when there are high concentrations of female DNA, or generally when low amounts of male DNA are present. It can be used in conjunction with, or in lieu of autosomal STR testing.⁸

CODIS: Stands for the *Combined DNA Index System*. It is the generic term used to describe the program and software supplied by the FBI to support criminal justice DNA databases used. One aspect of CODIS links DNA evidence obtained from crime scenes, thereby identifying serial criminals. The second aspect of CODIS compares crime scene evidence to database profiles (which includes convicted offenders and arrestees) thereby providing investigators with the identity of a possible putative perpetrator. In addition, CODIS can link DNA evidence obtained from unidentified humans (remains) to relatives of missing persons and/or missing persons. The goal of CODIS is to provide investigative assistance to law enforcement.

CODIS consists of three levels: The LDIS that contains the DNA profiles from individual laboratories; the SDIS that serves

5 *NIJ – Sexual Assault Kits – Using Science to Find Solutions – September 2015*

6 Consistent with NIJ CEBR and FORESIGHT definitions of backlog.

7 <http://www.celllineauthentication.com/what-is-str-profiling-.html>

8 <http://www.nij.gov/topics/forensics/evidence/dna/research/pages/y-chromosome.aspx>, SWGDAM: http://media.wix.com/ugd/4344b0_da25419ba2dd4363bc4e5e8fe7025882.pdf

as the state's DNA database including DNA profiles that are eligible from LDIS; and the NDIS is the nation's DNA database that contains DNA profiles that are eligible from participating laboratories at the federal, state, and local level.

CODIS Eligibility: A term used to describe what is allowed to be entered and searched within the CODIS system. In order for DNA records to be eligible for entry and searched in the forensic indexes at NDIS or SDIS, they must be from crime scene evidence. The DNA records offered to NDIS and/or SDIS must also be attributable to the putative perpetrator. DNA records voluntarily provided solely for the purposes of elimination are not acceptable. In regards to offender and arrestee samples, in order to be eligible for the Arizona CODIS database, they must be collected with respects to the A.R.S. § 13-610.

Offender Hit: When an unknown forensic profile matches an offender, arrestee, or other known standard.

Forensic Hit: When an unsolved forensic profile matches another forensic profile.

Probative: Relates to the effect of proving an issue or other information; serving to prove or substantiate.

Y-Screening: An alternative laboratory process for testing of biological samples (e.g. sex assault kit samples) for the presence of male DNA. This laboratory process is useful when dealing with mixtures containing female and male components.

Timely Manner: Once sufficient resources have been provided to the forensic DNA laboratory, time for DNA testing of the SCEK will be completed as soon as possible.

VICTIM ADVOCACY RESPONSE

Introduction

The prosecution of sexual assault crimes creates special challenges to all those who work with these types of victims. The law enforcement agencies involved in working with victims of sexual assault must take the following into consideration: concerns about privacy, dignified treatment, protection, and the effects on the victim in situations where testing has been delayed. In these types of circumstances, victim notification following the delayed testing of kits can trigger emotional reactions by trauma survivors; therefore, a victim-centered approach is necessary to help victims avoid re-traumatization.

Investigations and prosecution will be strengthened by an effective trauma-sensitive victim notification process. Officers and advocates should work together to notify a victim of the status of their case. A specialized victim advocate and a law enforcement officer, who can foster trust through collaboration, are more likely to get victims who may otherwise be hesitant to participate in the criminal justice system engaged in the process.



OFFICERS AND ADVOCATES
SHOULD WORK TOGETHER
TO NOTIFY A VICTIM OF THE
STATUS OF THEIR CASE

Feelings of shame, embarrassment, fear, and betrayal, which are often associated with sexual assault, can exacerbate the mistrust experienced by victims if this process is not handled with sensitivity and compassion. A specialized advocate who can notify and support victims, along with a law enforcement officer who

can provide the status of the investigation and criminal case, are essential to both the investigation and prosecution. Victims who feel supported are most likely to participate in the prosecution of a case. A specialized advocate can also engage in a comprehensive effort to address sexual violence, intimate partner violence, domestic abuse, and human trafficking through collaboration with community agencies and social service providers. A specialized advocate will have the knowledge to be able to refer victims to culturally appropriate resources to include support groups, counselors, and community service agencies. Thus, a victim advocate with specialized training in the area of sexual assault will be in an ideal position to assist victims with resources.

A specialized advocate can facilitate the expression of emotions, reassure victims that their reactions are not uncommon, help counter self-blame, and encourage victims to rely on their strengths to enhance their coping skills. This advocate can educate victims on what to expect in the criminal justice process and help them to understand their rights. The specialized advocate will also be uniquely situated to provide a seamless and coordinated approach in helping to transition the victim from the investigative phase to the prosecution phase. During the prosecution phase an advocate from the County Attorney's Office will be assigned to work with the victim throughout the prosecution of the case.

A specialized advocate, who is well-versed in trauma, grief, and traumatic stress, can also focus on building trust and rapport, remain empathic, engage in active listening, be able to address victim's concerns and provide honest and accurate information. A specialized advocate, who is able to provide initial notification, in consultation with a law enforcement officer is essential for a victim-centered approach that achieves our best efforts to help crime victims.

Creating a Victim-Centered Practice

Any sound structure for notifying and meeting the special needs of sexual assault victims in a Sexual Assault Protocol requires that it be victim-centered and strength-based. This requires the following attributes:

A. Training on Trauma

Encourage educational training on trauma to those who will work directly with victims of sexual assault. Encourage both formal and informal educational opportunities to create a victim-centered team response.

1. Neurobiology of Sexual Assault

Victims of sexual assault experience a violation of safety and a loss of control. This distress can be exhibited in what may seem like counter-intuitive behaviors. Increasing awareness and understanding of biological responses, such as a flight, fight or freeze reaction resulting from a neurochemical release, can help increase the understanding of how victims cope with this type of violation and aid in finding ways to foster resiliency and recovery as well as participation with law enforcement leading to effective investigations.

Understanding these behaviors as responses to the assault is an integral component to decrease the risk of re-traumatization.

2. Victim-Centered Practice

A victim-centered practice is founded upon a strength-based focus with the awareness of the impact of trauma and the ability to treat victims with empathy and compassion.

This victim-centered approach will guide each notification. Because each sexual assault victim and circumstance is unique, the training will include practical notification strategies that have the flexibility to adapt to a wide range of possible responses, circumstances, and needs of the victim.



UNDERSTANDING THESE BEHAVIORS
AS RESPONSES TO THE ASSAULT IS AN
INTEGRAL COMPONENT TO DECREASE
THE RISK OF RE-TRAUMATIZATION

In addition, interagency cross-training with responders of sexual assault should be considered. Cross-training is a process by which responders explain their role in addressing sexual violence and the services provided by their agency. Training on each responder's role and responsibilities will assist multidisciplinary teams in understanding how agencies can contribute to the notification process and the development of a collaborative response to sexual assault.

It is important to recognize that some populations, such as people of color, tribal communities, as well as lesbian, gay, bisexual, transgender, queer or questioning (LGBTQ) individuals, are often subject to stigma and institutionalized discrimination. As a result, members of these populations might be reluctant to engage in the criminal justice process when victimized. It is critical that criminal justice responders be sensitive to the needs of underserved populations to decrease barriers to reporting sexual assault. Cultural-responsiveness can be achieved through specialized training and community partnerships with organizations currently serving these populations.

B. Self-Care

The term "vicarious trauma" is generally associated with the "cost of caring" for others. Sometimes referred to as "compassion fatigue" or "secondary traumatic stress," all of these terms relate to the emotional response experienced by victim service providers working with crime victims. Vicarious trauma can be experienced by victim

service providers after hearing the traumatic stories of the victims and witnessing the pain, fear, and terror that they have endured.

It is important that victim service providers are continually mindful of the signs and symptoms of vicarious trauma and the potential emotional effects of working with trauma survivors.

Self-care is the practice of intentionally caring for our physical, psychological, emotional, and spiritual well-being. While self-care practices are unique to the individual, some common self-care practices include: adequate sleep, nutritious diet, exercise, meditation, yoga, journaling, fun and leisure activities, supportive relationships, music, and humor. Implementing self-care practices promotes overall good health and well-being. It is therefore recommended that the training include a module on the practice of self-care.

C. Law Enforcement to Develop a Method for Victim Notification

Law enforcement may consider developing a method of communication for victims requesting information, such as a telephone hotline, webpage or other method to receive victim inquiries. The telephone hotline, webpage, or other method will provide victims the opportunity to choose to contact law enforcement to learn more about his or her case investigation.

D. Law Enforcement Officer along with Specialized Advocate to Provide Notification

When law enforcement determines that there is potential that the victim's case may be revived, or that victim contact is necessary to complete forensic analysis, the law enforcement team will develop a plan to contact the victim.

Ideally, and if resources allow it, the law enforcement team should include a detective and victim advocate, but could include other team members as appropriate. Before contacting the victim, the case file will be reviewed for information about the victim that could shape the notification process. For example, if the sexual assault was by the victim's intimate partner and occurred in the context of domestic violence, then the notification can be appropriately focused on the victim's safety. It is also helpful to understand whether the victim initially wanted to move forward with filing charges.

On a case-by-case basis, the officer and/or the specialized law enforcement advocate will make first contact with the victim to advise of the change in case status. Ideally and if resources allow it, the first contact with the victim to notify them of the change in status is encouraged to take place in person with the law enforcement team present at a location that the victim prefers. If the victim prefers to go over this information over the phone, the law enforcement officer will provide the details of the change in status and may have the victim advocate available to continue the call as necessary to provide information, support and resources.

Advocates and law enforcement should spend the time necessary to address the safety needs of sexual assault victims and when practical, to promote face-to-face meetings with victims to provide crisis response, intervention, support, guidance, and advocacy to be able to further assess their needs.

Victims will be provided the opportunity to receive notification of the status of the case.

E. Victims' Rights at Law Enforcement Stage

Victims may need to be provided the Victims' Rights Request/Waiver Form (A.R.S. §§ 13-4405/8-386) depending on the date of the crime, victims' rights may not have been in existence or the victim may not have returned the original form. The advocate should work with the law enforcement officer to make this form available to the victim. This form is a tool for the officer to gather victim or lawful representative contact information and allow the victim to opt in or out of victims' rights.

If there is an arrest in the case, the advocate and/or law enforcement officer will make sure the victim is notified of the arrest, if the victim has opted in for notice. (A.R.S. §§ 13-4405 or 8-386(f) or 13-4405.01/8-386.01)

Upon arrest, the advocate can also help ensure that the victim is notified of the date, time and place of the initial appearance and of the victims' right to attend and be heard at this hearing. (A.R.S. § 13-4406). Timely notification is essential as the hearing may be scheduled within 24 hours of the arrest. A victim's statement at this hearing could affect the release conditions that may be set by the court.

F. Record Information in an Internal Secure Data System

To protect victim privacy, data entry and sensitive victim information will be limited to those who are directly involved in the case and working directly with victims. Ensure agency policies correlate with A.R.S. §§ 13-4430 and 8-409 (privileged info) and 13-4434 and 8-413 (victim privacy).

G. Safety Planning and Resources

Upon first contact with law enforcement, efforts should be made to help the victim feel safe. Safety planning with the victim may be necessary. Intervention may take the form of emergency referral and counseling or other services as needed. An effective protocol would maintain a current registry of all available services. Intervention from an advocate will help address issues that arise out of the initial victim contact. The advocate can also guide the victim in helping him/her to understand the role of the victim advocate and the type of assistance and advocacy the victim will receive throughout the criminal justice process. A part of this intervention would also include assisting the victim in developing a safety plan which could be implemented as needed.

H. Victim Rights and Services at the Prosecution Stage

As the case progresses from the investigation and arrest, the law enforcement advocate should contact the County Attorney's Office Advocate to discuss pertinent issues that would assist the victim in the transition from one agency to the next.

The role of the advocate in the County Attorney's Office is to assist the victim in navigating through a complex criminal justice system once the case moves to prosecution. The advocate can help reduce the stress of the court process and ensure that everything is being done to help a victim exercise his/her victim rights.

The advocate will inform the victim of all hearings and trial dates. The advocate will explain the criminal justice process so the victim knows what to expect as the case moves through the system. The prosecution advocate will keep the victim updated on all case proceedings as needed. The advocate will provide emotional support and accompany the victim to interviews, hearings, trial, and throughout the post-conviction phase. During trial, the advocate will provide information about appropriate courtroom decorum and can help calm a victim who is waiting to testify. Advocates can refer victims to community resources to help address their needs.

Throughout the criminal justice process, the advocate will confer with the victim on plea offers and the scheduling of interviews and pretrial hearings. The advocate can assist in arranging meetings between the victim and the prosecutor when the victim wishes to confer with the prosecutor about the disposition, (including declinations) dismissals, plea negotiations and pretrial diversion programs. The advocate will assist the victim with his/her impact statement and may assist the victim in gathering the appropriate documentation for restitution.

Closely related to the need for crisis intervention and safety planning in the immediate aftermath of a crime and during the criminal justice process, is the victim's need to have assistance in exercising the right to be notified of, present at, and heard at the first post-arrest release proceeding. Conditions of release which are set at these proceedings clearly are related to victim safety. Every victim wanting to exercise the right to address the court regarding release and the conditions of release should be afforded the opportunity to do so (whether at the initial

EVERY VICTIM WANTING
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appearance or at a future hearing on modification of release conditions). Advocates should work closely with law enforcement and prosecutors to assist these victims in receiving proper notice of court proceedings.

Safety concerns of the victim do not end with the arrest and pre-trial detention or release of the defendant. These concerns also extend to require reasonable measures to protect the victim from the defendant or agents of the defendant while the victim attends court proceedings. This means that advocates should work with victims to advise them of the separate and secure waiting areas that are available to them. Victims' Rights (not inclusive of all rights):

1. The right to be present at and, upon request, be informed of all criminal proceedings where the defendant has the right to be present.

Victim notification for court-related events is the responsibility of the County Attorney's Office. The County Attorney's Office should provide notice to every victim who opts-in to receive rights. The notice should be provided sufficiently in advance of any proceeding and with sufficient detail so that victims can arrange their schedules to attend.

The right to be present applies to every proceeding where the defendant also has the right to be present. The County Attorney's Office should provide court accompaniment for every victim of sexual violence. This support must be provided by an advocate who can help the victim through trying and often stressful proceedings. A victim advocate will assist the victim to ensure their attendance if the victim chooses to exercise his/her right to be present. The role of the advocate is to provide support to the victim and to aid the victim to enhance his or her understanding of the criminal justice process.

2. The right to be heard at any public proceeding involving post-arrest release, a negotiated plea, and sentencing.

The victim has a right to have an independent voice at plea proceedings, sentencing, release hearings, etc. Advocates should assist every victim who wishes to be heard in exercising this right at any and all of these proceedings. Victims of crime should receive assistance in exercising their participatory rights.

3. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

The right to confer can arise throughout the consideration of a case in the County Attorney's Office. This right, to be meaningful, must obligate the County Attorney's Office to discuss with victims the reason for a decision and to give victims the right to express a view on the matter before a final decision is made. This should include, for example, charging and plea offer decisions. Victim advocates can assist the prosecutor in the discharge of this duty such as, setting up meetings, arranging phone calls or acting as a liaison between the victim and the prosecutor to facilitate communication to help address any questions or concerns.

4. The right to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

The right to restitution requires the County Attorney's Office to provide victim assistance at two critical stages: sentencing and collection. The right to restitution is hollow if the court never learns of the full economic impact of the offense on the victim and if no reasonable efforts are made to assist a victim with having the court order restitution. An advocate can help to educate and/or assist the victim in the preparation of full and documented restitution claims, and how they might collect restitution once imposed.

5. The right to a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

Delay and rescheduling challenges are issues that deeply affect a crime victim. In order to protect this right to proceedings, free from unreasonable delay, a victim advocate should be available to help with scheduling issues from the vantage point of the victim. Too often, scheduling decisions are made and matters are rescheduled for the convenience of the defendant, the court, or the lawyers, with little regard for the victim's schedule. This could stem from a lack of victim participation in the court system during the course of a case. A victim advocate

should be available to communicate with the victim and to the court, through the prosecutor, the interests of the victim on scheduling issues. Moreover, the victim needs to be advised that there is a right to be heard whenever a change in scheduling or a delay is requested and an advocate should be available to help the victim assert the right to be heard.

6. The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment or abuse throughout the criminal justice system.

The right to fairness includes the general right to due process which touches every aspect of how a victim is treated throughout the prosecution of a case. Special considerations should be given to respect the dignity and privacy of victims of sexual violence.

For a full list of constitutional rights and prosecutorial duties:

Arizona Constitution, Article 2, Section 2.1, Victims' Bill of Rights. (http://www.azleg.state.az.us/const/2/2_1.htm)

Arizona Revised Statutes, Title 13, Criminal Code; Chapter 40, Crime Victims' Rights (<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=13>)

Title 8, Chapter 3, Article 7, Victims' Rights for Juvenile Offenses (<http://www.azleg.state.az.us/ArizonaRevised-Statutes.asp?Title=8>)

Victim Assistance

- Advise victims of their rights.
- Treat victims as human beings, not as pieces of evidence.
- Always provide victims with information about case-related events, notice of hearings and inform them of what to expect next in the criminal justice system.
- Work together with the trial team to help prepare victims for their testimony and for what to expect in trial.
- Advise victims of proper courtroom decorum.
- Provide courtroom accompaniment for emotional support.
- Inquire about any concerns the victim may have about trial.
- Work together with the trial team to inform and confer with victims about potential plea-bargain negotiations or proposed plea offers.
- Work together with the trial team to give victims the opportunity for input into pretrial proceedings and assist victims with their victim impact statements.
- Pay attention to any response the victim may be experiencing, provide assistance to help reduce stress and provide community resource referrals to meet his/her needs

Victim Compensation:

Victim Advocates can help crime victims complete an application for crime victim compensation if eligible, to receive assistance for their counseling and potentially other eligible expenses related to the crime.

Evaluation

An evaluation tool will be created and disseminated to victims to assess their experience with the criminal justice system. This evaluation tool will be submitted to the law enforcement agency or the County Attorney's Office for an assessment of needs to improve the experiences of crime victims.

The Sexual Assault Multidisciplinary Team involved in implementing this protocol will continue to meet regularly to provide ongoing feedback and implementation of this protocol. Each meeting will involve networking to: (a) address issues, successes, and concerns; (b) coordinate training; (c) identify emerging issues; (d) and share insight from evaluation tools.

PROSECUTOR RESPONSE

Prosecution of sex crimes cases requires special attention to issues involving sensitivity to the victim, prosecutor access, prosecutor continuity, and the coordination of various services.

The County Attorney's Office has two sex crimes bureaus that specialize in the handling of sex-related offenses. Assignment to such a bureau should be voluntary. Because of the complexity of these cases and the training, knowledge and expertise required, every effort should be made to retain skilled attorneys in the bureau as long as possible. The following procedures are recommended for handling sex assault cases:



PROSECUTION OF SEX CRIMES CASES REQUIRES SPECIAL ATTENTION TO ISSUES INVOLVING SENSITIVITY TO THE VICTIM

General Principles

- Prosecutors should receive extensive training in prosecuting adult sex crimes. This training should include:
 - Forensic interviewing of sex assault victim
 - Victim behavioral characteristics.
 - Neurobiology of trauma.
 - Offender dynamics.
 - Current case law.
 - Alleging, evaluating and presenting 404 evidence.
 - Proving lack of consent.
 - Prosecuting non-stranger sex assault cases.
 - Medical findings in sex assault cases.
 - Medical/SANE testimony.
 - Presentation of DNA evidence.
 - DNA Mixture testimony.
 - Understanding DNA components.
 - STR v. YSTR results.
 - Non-DNA forensic science.
 - Advanced trial advocacy.
 - Statute of limitations.
- Victim sensitive approach: Prosecutors should facilitate victim participation, promote treatment that is compassionate and respectful of the victim and ensure offender accountability.
- Prosecutor continuity: Ideally the same prosecutor should handle the case from beginning to end.
- Team approach: Prosecutors should utilize a team approach that includes the victim, the victim advocate, legal assistants, investigators, law enforcement, lab personnel, and medical personnel.
 - The prosecutor should work with the victim advocate in ensuring that the victim is well informed about the status of the case.
 - The prosecutor should encourage the case agent to maintain an active role in the case from beginning to end. This would include having the case agent provide feedback during the case, complete follow-up and assisting the prosecution as needed.

Submittals Declined for Prosecution

To the extent practical, before a case is declined for prosecution, the assigned attorney must have a second attorney review the submittal. If both concur that charges should not be filed, the assigned prosecutor must notify the victim and/or the victim's lawful representative and provide the victim with an opportunity to confer with the prosecutor. Prosecutors should be available to discuss with victims the reason why the decision was made not to prosecute. Prosecutors should also advise the case agent when a case is turned down and explain the reasons for the turn down

Charging Decisions

- The standard for charging is whether there is a reasonable likelihood of conviction at trial. If the prosecutor believes that additional information is necessary in order to make an informed charging decision, the prosecutor should further the submittal to the case agent for additional investigation.
- If charges involving more than one victim are submitted on a suspect the prosecutor should consider filing charges involving each victim, in the same indictment. Each act should be set forth in a separate count.
- Separate and distinct acts occurring during the same or overlapping time periods should be distinguished in the charging document, by using "to wit" parentheticals.
- The prosecutor should consider charges for each criminal act committed against the victim, including non-sex offenses.
- If the defendant is charged with non-sex offenses such as aggravated assault, burglary, kidnapping or trespass, but the offenses are sexually motivated, the prosecutor should consider filing an allegation of sexual motivation (A.R.S. § 13-118)

Case Dispositions, Plea Agreements and Victim Involvement

GENERAL CONSIDERATIONS

- Once a case is assigned to a prosecutor, the victim advocate should contact the victim as soon as possible to set up a meeting between the victim, the victim advocate and the prosecutor, to discuss the prosecution process and obtain the victim's views about possible dispositions. If the victim does not want to meet or is not ready to meet, the advocate should still obtain the victim's input.
- During the initial contact with the victim, the victim should be given realistic expectations as to how long the prosecution process may take. Unless there are issues the victim would like to address, the advocate and/or prosecutor should avoid discussing the facts of the case during this meeting.
- Although the right of the victim to confer with the prosecuting attorney does not include authority to determine disposition of the case, the prosecutor should respect the feelings of the victim. If those feelings are contrary as to what plea offer the prosecutor believes is appropriate, the prosecutor should explain to the victim that he/she has a right to attend the plea and sentencing hearings and how he/she can address the court regarding their concerns
- The advocate or prosecutor should explain to the victim how a plea disposition may be advantageous, in part because it ensures a conviction and eliminates the need for victims to testify, and eliminates the right to a direct appeal.
- Explaining charging decisions, a discussion of the strengths and weaknesses in the case will help in victim understanding the reason for the plea
- Encourage victims to attend settlement conferences. The victim's presence may convey to the court and parties the victim's willingness to participate in the process. It also may be helpful to hear a judge's evaluation of the strengths and weaknesses of a case.

PLEA GUIDELINES

The prosecution agency should develop plea guidelines to achieve consistency among similar cases while taking into account the strengths and weaknesses of each individual case. All offers must be staffed with the bureau chief or assistant bureau chief, along with others in the bureau.

- In any plea offer, prosecutors should stipulate to lifetime probation on at least one count and preferably, if possible, two counts to ensure that the offender is adequately supervised. A plea should include these stipulations even if the defendant is to serve a term of incarceration. This is done to ensure that the defendant



RESTITUTION SHOULD BE KEPT OPEN IN CASE THE VICTIM IS IN NEED OF ONGOING MEDICAL/COUNSELING ATTENTION

is supervised after release from custody

- If only one count of sexual assault is initially charged, the prosecutor should seek to try to have the defendant plead to an additional count, if a factual basis can be made for the additional count.
- The prosecutor should include sex offender probation terms with any plea involving probation.
- If the offender has a license that may give him or her access to future victims, the prosecutor should consider forfeiture of the license as part of the plea.
- If the defendant pleads guilty to a non sex offense, the prosecutor should consider requiring the offense to be plead to as a sexually motivated offense if a factual basis can be made, (A.R.S. § 13-118) so the court has the option of requiring the defendant to register as a sex offender pursuant to A.R.S. § 13-3821.
- Prosecutors should consider pleading a defendant to at least one count for each victim named in the indictment to ensure retention of post-conviction rights for all victims.
- The prosecutor should include any restitution in a plea agreement. If necessary restitution should be kept open in case the victim is in need of ongoing medical/counseling attention. Examples of restitution expenses are as follows:
 - Counseling
 - Psychiatric expenses
 - Medication
 - Wage loss
 - Mileage to/from court, to/from doctor's appointments
 - Medical bills
- Prosecutors should strive to obtain guilty pleas and limit acceptance of no contest pleas. Alford pleas should not be used.
- Pleas must include all statutory assessments pursuant to A.R.S. §§ 12-116, 13-824 and 13-1414.

HIV/AIDS TESTING

If a defendant is charged with a sexual offense or an offense involving significant exposure, as defined by A.R.S. § 13-1415(G)(2) upon victim request the prosecutor must petition the Court for an order requiring the defendant to be tested for human immunodeficiency virus pursuant to A.R.S. § 13-1415. This can be done prior to charging, so long as the requirements are met under the statute.

General Duties of the Prosecutor' Office Re: Victims' Rights

When working with victims of sexual assault, prosecutors should observe the following guidelines:

- To ensure that the defendant be held non-bondable pursuant to A.R.S. § 13-3961, contact with the victim must be made as soon as a suspect is placed under arrest. Information should be gathered to determine how much danger the victim would be in, if the suspect is released pending trial. The victim should also be advised that they can provide input to the court handling the release hearing. If the prosecutor is aware of the case at the time of arrest, the prosecutor may need to ensure that information presented to the initial

appearance court is sufficient.

- Confer with the victim early in the case to explain the criminal justice process and the likely route of prosecution.
- If a Victim's Rights attorney has become involved with the case, the prosecutor and the advocate should keep him/her advised as to the status of the case
- To the extent possible provide realistic expectations as to how the case will proceed through the criminal justice system.
- Speak with the victim about the disposition of the case before a formal offer is made and consider the views of the victim when deciding how to proceed with the case.
- Inform the victim that he/she will have to testify if the case goes to trial
- Advise the victim that they have the right to be present at any court hearing, although their presence is not always necessary. Ensure that the victim is informed as to the nature of upcoming court proceedings so they can decide whether they want to attend or not.
- Inform the victim they have the right to decline an interview request from the defense.
 - Advise the victim that their statements could be introduced at trial.
 - Inform the victim they may set reasonable conditions for the interview and they can stop the interview at any time.
 - Don't advise the victim that you would prefer that they not talk to the defense
 - The prosecutor should be present at the interview and actively participate.
 - Make necessary arrangements for any reasonable conditions requested by the victim, including the presence of an advocate, courthouse dog or a non-witness support person.

PREPARING THE VICTIM FOR TRIAL

If the case is not disposed of by plea agreement, the prosecutor should recognize that the victim may experience trial apprehension. To reduce the victim's trial apprehension, the prosecutor may do the following depending on the facts:

- Discuss the victim's trial testimony. This would include going over the questions that the prosecutor will ask the victim as well as anticipated cross examination. The prosecutor should also discuss with the victim the defenses that the defendant will likely raise.
- Advise the victim about courtroom procedures. If possible show the victim the courtroom, without telling the victim where the defendant will be sitting if the identity of the perpetrator is at issue.
- Address any safety concerns the victim may have
- Advise the victim of the availability of the courthouse dog
- Advise the victim of any rulings that may limit his or her testimony
- A victim's advocate should be present at all meetings with the victim.
- If the prosecutor becomes aware that the victim may be recanting or changing his or her account of the facts, the case agent or an investigator should be present at the meeting.

WORKING WITH THE CRIME LAB

Special considerations should be given when with the crime lab.

- Requests for additional evidence testing after an affidavit has been submitted shall occur as soon as possible and may require a new affidavit.
- The prosecutor shall notify the lab of trial dates and continuances in a timely manner.
- The crime lab will be alerted of any plea agreements as soon as possible.
- Before, trial, the prosecutor shall confer crime lab witnesses to prepare them adequately for trial.

Trial Considerations

CASE CONTINUANCES

When a trial is continued the prosecutor should ensure that the new dates are agreeable to the victim and witnesses. To the extent possible, these dates should be affirmed in advance. The reason for the continuance should be explained to the victim. If the victim objects to the continuance, the Court should be apprised of the victim's position.

EXPERT WITNESSES

Sexual assault cases often require retention of expert witnesses. The prosecutor should meet with and discuss the testimony of the expert before trial. This should include reading any studies or reports upon which the expert is basing their opinion. Experts may testify in the following areas:

- Victim behavioral characteristics, be prepared with appropriate case law in support of such testimony.
- Process of victimization.
- Non-stranger sexual assaults/Domestic Violence.
- DNA evidence.
- Other forensic sciences.
- Medical findings (or lack of) in sexual assault cases, including non-genital injuries.
- 404 evidence.

PRO PER DEFENDANT

If the defendant is pro per, the prosecutor should request the court to order that all questioning take place from counsel table, that exhibits be shown to the victim by court personnel, and that objections be made from a seated position.

SPECIAL EVIDENTIARY CONSIDERATIONS WITH SEX CRIMES CASES

The prosecutor should recognize that sexual assault cases often require the filing of certain motions, including the following:

- Motion to Admit Evidence of Other Acts under Rule 404(b) (other crimes wrongs or acts) and (c) (evidence to show that the defendant has an aberrant sexual propensity).
- Motion to Preclude Evidence of Victim's Sexual History, pursuant to A.R.S. § 13-1421.
- Motions for Protective Orders in the event the case involves sensitive information or images.

JURY VERDICTS

The prosecutor or the advocate should inform the victim of his/her right to be present at the reading of the verdict. If the victim desires to be present, the prosecutor should advise the Court of the victim's desire and wait for the victim to get to the Court before the reading.

SENTENCING

PREPARING THE VICTIM

- Whether the conviction is obtained either through a plea or at trial, the prosecutor should prepare the victim for the sentencing.
- Let victims know that their input can impact the sentence imposed by the Judge in a variety of ways and can help the Judge to make a more informed decision. Victims should be encouraged to write victim impact statements and/or make statements in court. Victims should be informed that they can have family members/friends speak on their behalf as well.

SPECIAL SENTENCING CONSIDERATIONS

- Introduce evidence of aggravating circumstances when appropriate. Prior notice of these factors must be previously filed with the court at the time the case was opened.
- As a condition of probation include no contact with victim and his or her family when appropriate. Request restitution where appropriate, or ask the Court to leave restitution open.
- Seek input from law enforcement and the victim advocates for sentencing recommendations.
- The prosecutor should submit a written sentencing recommendation to the pre-sentence report writer.

POST CONVICTION RELIEF AND APPEALS

The prosecutor and/or the victim advocate should explain to the victim and his/her representative the possibility of review via petition for Post-Conviction Relief or an appeal.

APPENDIX A

Informed Consent for a Sexual Assault Examination and Evidence Collection (Non Mandatory Reporting Cases)

I, _____, am requesting a Sexual Assault Examination and Evidence collection. I do not want to be interviewed or seen by Law Enforcement at this time. However, I might wish to prosecute in the future.

I have read and understand the following:

- A. I will not be billed for the examination or evidence collection. _____(initial)
- B. The benefits of cooperating with law enforcement include:
1. Law enforcement will have an opportunity to collect evidence from me, the suspect and from other possible crime scenes. _____(initial)
 2. Witnesses may be interviewed in a timely fashion. _____(initial)
 3. I may be eligible for Victim's Compensation. _____(initial)
- C. By delaying the involvement of law enforcement, I understand the following may occur:
1. Evidence that would normally be collected by law enforcement may be permanently lost. _____(initial)
 2. Suspects and witnesses will not be interviewed and they may not be willing to cooperate at a later date. _____(initial)
 3. It may be more difficult, if not impossible, for a prosecutor to file charges against the suspect, if I later decide to speak with law enforcement. _____(initial)
- D. This examination is not done for the purpose of testing for Sexually Transmitted Infections and/or pregnancy. _____(initial).
- E. I give consent for my kit to be analyzed for investigative purposes. Yes No (circle) _____(initial)

My kit will be held for a minimum of 90 days. After that, my kit and all the evidence collected may be destroyed after one year. Should I desire the involvement of Law Enforcement, it is my responsibility to call the Police Department in the city where the assault occurred, file a report and receive a Department Report number (DR#).

_____(printed name) _____(date)

_____(signature) _____(time)

_____(witness) _____(date)

APPENDIX B

Interview Protocol for Victims of Sexual Assault

A. General Principles

1. Investigative interviews are to be approached with a neutral, fact finding attitude for the purpose of collecting information after an allegation of sexual assault has occurred.
2. The interviewer should be neutral and supportive.
3. The well-being and the best interests of the victim should be of primary concern.
4. The interviews should be conducted in a comfortable atmosphere that enables the victim to speak freely.
5. The language and interview approach used by the interviewer should be developmentally informed and culturally sensitive.
6. Interview procedures may be modified to accommodate victims with cognitive impairments or communication challenges.

B. Preservation of Interviews

1. All investigative interviews of victims alleging sexual assault should be audio and video recorded.
2. Whenever possible, initial interviews of victims alleging sexual assault by the patrol officer should be audio-recorded.
3. In order to protect a victim's rights, locating information (e.g., the victim's address and place of employment) shall be obtained off of the recording.

Law enforcement agencies should make every effort to make sure that those responsible for the investigation of sexual assault allegations should have the following qualifications as soon as possible;

1. Eight (8) hours of training in investigative interviewing using a semi-structured cognitive interview technique.
2. Six (6) hours of training in the neurobiology of trauma, dynamics of abuse, and substance use and abuse and brain effects.
3. Sixteen (16) hours of training in sexual assault, including but not limited to: basic sexual assault investigation training, one-party consent calls, offender dynamics, interviewing suspects, and courtroom testimony.
4. Familiarity with legal issues, including domestic violence and sexual assault laws.
5. Ongoing training (minimum of 8 hours a year) in sexual assault, special needs, and interviewing techniques through attendance of continuing professional education conferences, in service training and an ongoing review of professional literature.
6. Participation in peer review at least twice each year.

C. Use of Dedicated Forensic Interviewers

It is recommended that dedicated forensic interviewers be utilized in the following situations:

1. Victims with an intellectual or developmental disability or brain trauma.
2. Victims with significant mental health challenges.
3. Any other situation in which the detective deems it necessary to utilize a dedicated forensic interviewer.

D. Process of the Interviews

1. If the victim is not the reporting source, obtain relevant background information from the reporting source and/or the caretaker without having the victim present.
2. Interview the victim with only the interviewer and the victim present in the interview room. In certain circumstances, a third party, such as an interpreter may be present for the interview. The third party sits in his/her own chair out of direct sight of the victim and does not interject questions other than what the interviewer is asking.

3. Conduct a semi-structured cognitive interview as follows:
 - a. Develop rapport discussing neutral topics to briefly ascertain the victim's processing and language abilities.
 - b. Obtain free narrative/recall - - allow spontaneous disclosures.
 - c. Ask open-ended questions concerning the alleged assault to obtain further description of the specific incident(s).
 - d. Utilize focused questions in a non-leading manner to ascertain details of alleged assault.
 - e. Allow the ventilation of emotions, understanding that the person may show a wide range of emotions.
 - f. Summarize and close on a neutral topic.

4. Modify interview techniques as necessary for victims with special needs or communication difficulties.

E. Observation of the Interviews

The interview may be monitored from another location/room by only the following professionals:

1. Law enforcement personnel.
2. APS specialists investigating the allegations.
3. Medical personnel.
4. Deputy county attorneys.

F. Use of Assistive Tools

The use of assistive tools, such as paper and pen to allow the victim to write and then discuss the written disclosure may be utilized at the interviewer's discretion to assist a victim when providing further details of a specific act. Tools, such as photo lineups, may also be utilized in the process of identification of the alleged suspect(s).

G. Use of Therapy Animals

In certain cases, the use of a properly trained therapy animal may be appropriate. Such an animal may be used by a person who has been trained in the proper handling of therapy animals.

H. Peer Review Advocacy

Center leadership will establish and implement a peer review program for agencies responsible for conducting forensic interviews. Participants should include, dedicated forensic interviewers, law enforcement agencies, and prosecutors.

APPENDIX C

Sex Assault and Other Relevant Laws from the Arizona Revised Statutes

§ 13-1401. Definitions; factors

- A. In this chapter, unless the context otherwise requires:
1. "Oral sexual contact" means oral contact with the penis, vulva or anus.
 2. "Position of trust" means a person who is or was any of the following:
 - a. The minor's parent, stepparent, adoptive parent, legal guardian or foster parent.
 - b. The minor's teacher.
 - c. The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
 - d. The minor's clergyman or priest.
 - e. Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent or stepparent.
 3. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.
 4. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.
 5. "Spouse" means a person who is legally married and cohabiting.
 6. "Teacher" means a certificated teacher as defined in section 15-501 or any other person who provides instruction to pupils in any school district, charter school or accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.
 7. "Without consent" includes any of the following:
 - a. The victim is coerced by the immediate use or threatened use of force against a person or property.
 - b. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For the purposes of this subdivision, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.
 - c. The victim is intentionally deceived as to the nature of the act.
 - d. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.
- B. The following factors may be considered in determining whether a relationship is currently or was previously a sexual or romantic relationship pursuant to subsection A, paragraph 2, subdivision (e) of this section:
1. The type of relationship.
 2. The length of the relationship.
 3. The frequency of the interaction between the two persons.
 4. If the relationship has terminated, the length of time since the termination.

§ 13-1404. Sexual abuse; classification

- A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.
- B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

- C. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-705.

§ 13-1406. Sexual assault; classification; increased punishment

- A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.
- B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 years	15.75 years	28 years

- C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.
- D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

§ 13-1407. Defenses

- C. It is a defense to a prosecution pursuant to section 13-1402, 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person who renders emergency care at the scene of an emergency occurrence, the act consisted of administering a recognized and lawful form of treatment that was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
- D. It is a defense to a prosecution pursuant to section 13-1404 or 13-1405 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to section 13-1406 that the defendant was the spouse of the victim at the time of commission of the act.

§ 13-1412. Unlawful sexual conduct; peace officers; classification; definitions

- A. A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation.
- B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with a victim who is at least fifteen years of age but less than eighteen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.
- C. This section does not apply to either of the following:
 - 1. Any direct or indirect touching or manipulating of the genitals, anus or female breast that occurs during a lawful search.
 - 2. An officer who is married to or who is in a romantic or sexual relationship with the person at the time of the arrest or investigation. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently a romantic or sexual relationship:
 - a. The type of relationship.
 - b. The length of the relationship.
 - c. The frequency of the interaction between the victim and the defendant.
 - d. If the relationship has terminated, the length of time since the termination.
- D. For the purposes of this section:
 - 1. "Custody" includes the imposition of actual or constructive restraint pursuant to an on-site arrest, a court order or any contact in which a reasonable person would not feel free to leave. Custody does not include detention in a correctional facility, a juvenile detention facility or a state hospital.
 - 2. "Peace officer" has the same meaning prescribed in section 1-215 but does not include adult or juvenile corrections or detention officers.

§ 13-1413. Capacity of minor sexual assault victim to consent to medical examination

Notwithstanding any other provision of the law, when it is not possible to contact the parents or legal guardian within the short time span in which the examination should be conducted a minor twelve years of age or older alleged to be the victim of a violation of section 13-1406 may give consent to hospital, medical and surgical examination, diagnosis and care in connection with such violation. Such consent shall not be subject to incapacity because of the victim's age. The consent of the parent, parents or legal guardian of such minor shall not be necessary to authorize such hospital, medical and surgical examination, diagnosis and care, and such parent, parents or legal guardian shall not be liable for payment for any services rendered pursuant to this section.

§ 13-1414. Expenses of investigation

Any medical or forensic interview expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section 13-705 or a sexual assault shall be paid by the county in which the offense occurred.

§ 13-1415. Human immunodeficiency virus and sexually transmitted disease testing; victim's rights; petition; definitions

- A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus and other sexually transmitted diseases and to consent to the release of the test results to the victim.
- B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing by the department of health services or another licensed laboratory for the presence of the human immunodeficiency virus and other sexually transmitted diseases. The court, within ten days, shall determine if sufficient evidence exists to indicate that significant exposure

occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the testing be performed in compliance with rules adopted by the department of health services. The prosecuting attorney shall provide the victim's name and last known address of record to the department of health services for notification purposes. The victim's name and address are confidential, except that the department of health services may disclose the information to a local health department for victim notification purposes.

- C. After a specimen has been tested pursuant to subsection B of this section, the laboratory that performed the test shall report the results to the submitting entity.
- D. The submitting entity shall provide the results to the department of health services or a local health department. The department of health services or a local health department shall notify the victim of the results of the test conducted pursuant to subsection B of this section and shall counsel the victim regarding the health implications of the results.
- E. The submitting entity or the department of health services shall notify the person tested of the results of the test conducted pursuant to subsection B of this section and shall counsel the person regarding the health implications of the results. If the submitting entity does not notify the person tested of the test results, the submitting entity shall provide both the name and last known address of record of the person tested and the test results to the department of health services or a local health department for notification purposes.
- F. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the department of health services.
- G. For the purposes of this section:
 - 1. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.
 - 2. "Sexually transmitted diseases" means:
 - a. Chlamydia.
 - b. Genital herpes.
 - c. Gonorrhea.
 - d. Syphilis.
 - e. Trichomonas.
 - 3. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.
 - 4. "Submitting entity" means one of the following:
 - a. A local health department.
 - b. A health unit of the state department of corrections.
 - c. A health unit of any detention facility.
 - d. A physician licensed pursuant to title 32, chapter 13, 17 or 29.

§ 13-1420. Sexual offense; evidence of similar crimes; definition

- A. If the defendant is charged with committing a sexual offense, the court may admit evidence that the defendant committed past acts that would constitute a sexual offense and may consider the bearing this evidence has on any matter to which it is relevant.
- B. This section does not limit the admission or consideration of evidence under any court rule.
- C. For the purposes of this section, "sexual offense" means any of the following:
 - 1. Sexual abuse in violation of section 13-1404.
 - 2. Sexual conduct with a minor in violation of section 13-1405.
 - 3. Sexual assault in violation of section 13-1406.
 - 4. Sexual assault of a spouse if the offense was committed before the effective date of this amendment to this section.
 - 5. Molestation of a child in violation of section 13-1410.
 - 6. Continuous sexual abuse of a child in violation of section 13-1417.

7. Sexual misconduct by a behavioral health professional in violation of section 13-1418.
8. Commercial sexual exploitation of a minor in violation of section 13-3552.
9. Sexual exploitation of a minor in violation of section 13-3553.

§ 13-1421. Evidence relating to victim's chastity; pretrial hearing

- A. Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence is one of the following:
1. Evidence of the victim's past sexual conduct with the defendant.
 2. Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma.
 3. Evidence that supports a claim that the victim has a motive in accusing the defendant of the crime.
 4. Evidence offered for the purpose of impeachment when the prosecutor puts the victim's prior sexual conduct in issue.
 5. Evidence of false allegations of sexual misconduct made by the victim against others.
- B. Evidence described in subsection A shall not be referred to in any statements to a jury or introduced at trial without a court order after a hearing on written motions is held to determine the admissibility of the evidence. If new information is discovered during the course of the trial that may make the evidence described in subsection A admissible, the court may hold a hearing to determine the admissibility of the evidence under subsection A. The standard for admissibility of evidence under subsection A is by clear and convincing evidence.

§ 13-1423. Violent sexual assault; natural life sentence

- A. A person is guilty of violent sexual assault if in the course of committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.
- B. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.

§ 13-1304. Kidnapping; classification; consecutive sentence

- A. A person commits kidnapping by knowingly restraining another person with the intent to:
1. Hold the victim for ransom, as a shield or hostage; or
 2. Hold the victim for involuntary servitude; or
 3. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony; or
 4. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or the third person; or
 5. Interfere with the performance of a governmental or political function; or
 6. Seize or exercise control over any airplane, train, bus, ship or other vehicle.
- B. Kidnapping is a class 2 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place before arrest and before accomplishing any of the further enumerated offenses in subsection A of this section in which case it is a class 4 felony. If the victim is released pursuant to an agreement with the state and without any physical injury, it is a class 3 felony. If the victim is under fifteen years of age kidnapping is a class 2 felony punishable pursuant to section 13-705. The sentence for kidnapping of a victim under fifteen years of age shall run consecutively to any other sentence imposed on the defendant and to any undischarged term of imprisonment of the defendant.

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

- (a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
 - (1) Character of accused or civil defendant. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or evidence of the aberrant sexual propensity of the accused or a civil defendant pursuant to Rule 404(c);
 - (2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
 - (3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.
- (b) Other crimes, wrongs, or acts. Except as provided in Rule 404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- (c) Character evidence in sexual misconduct cases

In a criminal case in which a defendant is charged with having committed a sexual offense, or a civil case in which a claim is predicated on a party's alleged commission of a sexual offense, evidence of other crimes, wrongs, or acts may be admitted by the court if relevant to show that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged. In such a case, evidence to rebut the proof of other crimes, wrongs, or acts, or an inference therefrom, may also be admitted.

- (1) In all such cases, the court shall admit evidence of the other act only if it first finds each of the following:
 - (A) The evidence is sufficient to permit the trier of fact to find that the defendant committed the other act.
 - (B) The commission of the other act provides a reasonable basis to infer that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the crime charged.
 - (C) The evidentiary value of proof of the other act is not substantially outweighed by danger of unfair prejudice, confusion of issues, or other factors mentioned in Rule 403. In making that determination under Rule 403 the court shall also take into consideration the following factors, among others:
 - (i) remoteness of the other act;
 - (ii) similarity or dissimilarity of the other act;
 - (iii) the strength of the evidence that defendant committed the other act;
 - (iv) frequency of the other acts;
 - (v) surrounding circumstances;
 - (vi) relevant intervening events;
 - (vii) other similarities or differences;
 - (viii) other relevant factors.
 - (D) The court shall make specific findings with respect to each of (A), (B), and (C) of Rule 404(c)(1).
- (2) In all cases in which evidence of another act is admitted pursuant to this subsection, the court shall instruct the jury as to the proper use of such evidence.
- (3) In all criminal cases in which the state intends to offer evidence of other acts pursuant to this subdivision of Rule 404, the state shall make disclosure to the defendant as to such acts as required by Rule 15.1, Rules of Criminal Procedure, no later than 45 days prior to the final trial setting or at such later time as the court may allow for good cause. The defendant shall make disclosure as to rebuttal evidence pertaining to such acts as required by Rule 15.2, no later than 20 days after receipt of the state's disclosure or at such other time as the court may allow for good cause. In all civil cases in which a party intends to offer evidence of other acts pursuant to this subdivision of Rule 404, the parties shall make disclosure as required by Rule 26.1, Rules of Civil Procedure, no later than 60 days prior to trial, or at such later time as the court may allow for good cause shown.

- (4) As used in this subsection of Rule 404, the term "sexual offense" is as defined in A.R.S. § 13-1420(C) and, in addition, includes any offense of first-degree murder pursuant to A.R.S. § 13-1105(A)(2) of which the predicate felony is sexual conduct with a minor under A.R.S. § 13-1405, sexual assault under A.R.S. § 13-1406, or molestation of a child under A.R.S. § 13-1410.

APPENDIX D

Locations of Maricopa County Family Advocacy Centers

City of Phoenix Family Advocacy Center

602-534-2120

602-534-2122 (fax)

2120 North Central Avenue, #250

Phoenix, AZ 85004

www.Phoenix.gov/fac

Glendale Family Advocacy Center

623-930-3720

623-939-0489 (fax)

6830 North 57th Drive

Glendale, AZ 85301

GlendaleAZ.com/advocacycenter

Mesa Family Advocacy Center

480-644-4075

130 North Robson

Mesa, AZ 85201

MesaAZ.gov/residents/police/divisions/ mesa-family-advocacy-center

Scottsdale Family Advocacy Center

480-312-6300

480-312-6305 (fax)

10225 East Via Linda

Scottsdale, AZ 85258

ScottsdaleAZ.gov/social-services/advocacy-center

Southwest Family Advocacy Center

623-333-7900

623-333-0790 (fax)

2333 North PebbleCreek Parkway, Suite A-200

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