



## SEXUAL ASSAULT INVESTIGATION POLICY

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## Definitions

For purpose of this policy, the words and phrases in this section have the following meaning given to them, unless another intention clearly appears.

**Consent:** As defined by Minn. Stat. § 609.341, which states:

1. Words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.
2. A person who is mentally incapacitated or physically helpless as defined by Minnesota Statutes § 609.341 cannot consent to a sexual act.
3. Corroboration of the victim's testimony is not required to show lack of consent.

**Child or Minor:** a person under the age of 18.

**Medical Forensic Examiner:** The health care provider conducting a sexual assault medical forensic examination.

**Sexual Assault:** A person who engages in sexual contact or penetration with another person in a criminal manner as identified in Minn. Stat. §§ 609.342 to 609.3451.

**Family and Household Member:** As defined in Minn. Stat. § 518.B.01, subd.2b to include:

1. spouses or former spouses.
2. parents and children.
3. persons related by blood.
4. persons who are presently residing together or who have resided together in the past.
5. persons who have a child in common regardless of whether they have been married or have lived together at any time.
6. a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
7. persons involved in a significant romantic or sexual relationship.

**Sexual Assault Medical Forensic Examination:** An examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients.

**Victim Advocate:** A Sexual Assault Counselor defined by Minn. Stat. § 595.02, subd. 1(k) and/or Domestic Abuse Advocate as defined by Minn. Stat. § 595.02, subd. 1(1) who provide confidential advocacy services to victims of sexual assault and domestic abuse. Victim advocates as defined provide coverage in all counties in Minnesota. Minnesota Office of Justice Programs (MN OJP) can assist departments in locating their local victim advocacy agency for the purposes outlined in this policy.

**Victim Centered:** A victim-centered approach prioritizes the safety, privacy and well-being of the victim and aims to create a supportive environment in which the victim's rights are respected and in which they are treated with dignity and respect. This approach acknowledges and respects a victims' input into the criminal justice response and recognizes victims are not responsible for the crimes committed against them.

**Vulnerable Adult:** any person 18 years of age or older who:

1. is a resident inpatient of a facility as defined in Minn. Stat. § 626.5572, subd. 6
2. receives services at or from a facility required to be licensed to serve adults under sections [245A.01](#) to [245A.15](#), except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4)
3. receives services from a home care provider required to be licensed under sections [144A.43](#) to [144A.482](#); or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections [256B.0625, subdivision 19a](#), [256B.0651](#) to [256B.0654](#), and [256B.0659](#); or
4. regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:
  - a. that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and
  - b. because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

## Policy Statement/Objective

The purpose of this policy is to ensure conformity with the requirements outlined in Minnesota Statutes § 626.8422. The jurisdiction of the Commerce Fraud Bureau (CFB) is outlined in Minnesota Statutes § 45.0135 and responding to allegations of sexual assault do not fall within the CFB's primary jurisdiction and/or authority.

It is the policy of the Commerce Fraud Bureau (CFB) to recognize sexual assault as a serious problem in society and to protect victims of sexual assault by ensuring its Agents understand the laws governing this area. Sexual assaults are under-reported to law enforcement and the goal of this policy is in part to improve victim experience in reporting so that more people are encouraged to report.

It is also the policy of the CFB to take a professional, victim-centered approach to sexual assaults, and coordinate with the appropriate investigative agency to handle the allegation in a manner that helps restore the victim's dignity and autonomy, with the goal to decrease the victim's distress, increase the victim's understanding of the criminal justice system and process, and promote public safety.

## Scope

This policy applies to all CFB personnel.

## Procedures

### Agent Awareness and Actions

Responding to allegations of sexual assault do not fall within the CFB's primary jurisdiction and authority as outlined under Minnesota Statute § 45.0135. However, it is possible that agents may be made aware of a sexual assault allegation while investigating a complaint that falls within our purview. As such, it is important that all Bureau members have knowledge of the best practice guidelines for conducting these investigations.

When an agent becomes aware of a sexual assault allegation, they should immediately notify the law enforcement agency that has primary jurisdiction over the allegation. If requested, CFB agents may assume a support role in the investigation if requested by the agency with primary jurisdiction over the matter.

All subsequent processes and procedures should be viewed as agents acting in that support capacity.

Agents acting in a support role should inform the victim of ways to ensure critical evidence is not lost, to include the following:

1. Suggest that the victim not bathe or clean him or herself if the assault took place recently.
2. Recommend that if a victim needs to relieve themselves, they should collect urine in a clean jar for testing and should avoid wiping after urination.
3. Asking the victim to collect any clothing worn during or after the assault and if possible, place in a paper bag, instructing the victim not to wash the clothing.
4. Reassure the victim that other evidence may still be identified and recovered even if they have bathed or made other physical changes.

## Agent Interactions

When interacting with a victim of a sexual assault agents will do the following:

1. Recognize that the victim experienced a traumatic incident and may not be willing or able to immediately assist with the criminal investigation.
2. The Agent must attempt to determine the location/jurisdiction where the assault took place.
3. Explain the reporting process including the roles of the first responder, investigator, and anyone else with whom the victim will likely interact during the course of the investigation.
4. Agents are encouraged to connect the victim with local victim advocates as soon as possible. Inform the victim that there are confidential victim advocates available to address any needs they might have and to support them through the criminal justice system process. Provide the victim with contact information for the local victim advocate. Upon victim request, the Agent can offer to contact local victim advocate on behalf of the victim.
5. Ask about and document signs and symptoms of injury, to include strangulation. Agents must attempt to obtain a signed medical release from the victim.
6. Ensure that the victim knows they can go to a designated facility for a forensic medical exam. Offer to arrange for transportation for the victim.
7. Identify and attempt to interview potential witnesses to the sexual assault and/or anyone the victim talked to about the sexual assault.
8. Request preferred contact information for the victim for follow-up.

## Victim Interviews

The CFB recognizes that CSC victims due to their age or physical, mental or emotional distress, are better served by utilizing trauma informed interviewing techniques and strategies. Such interview techniques and strategies eliminate the duplication of interviews and use a question-and-answer interviewing format with questioning nondirective as possible to elicit spontaneous responses.

In recognizing the need for non-traditional interviewing techniques for CSC victims, Agents should consider the following:

1. Offer to have a confidential victim advocate present (if possible) if the victim would benefit from additional support during the process.
2. Whenever possible, conduct victim interviews in person.

3. Try to conduct the interview in a welcoming environment.
4. Let the victim share the details at their own pace.
5. Recognize victims of trauma may have difficulty remembering incidents in a linear fashion and may remember details in days and weeks following the assault.
6. After the initial interview, consider reaching out to the victim within a few days, after at least one sleep cycle to ask if they remember any additional details. Depending on the victim, additional interviews might be needed to gather additional information. Offer support from a victim advocate to the victim to help facilitate engagement with the investigative process and healing.
7. Some victims do remember details vividly and might want to be interviewed immediately.
8. During initial and subsequent victim interviews, officers should note the following information as victims share it, recognizing that a victim may not be able to recall all the details of the assault during a particular interview.
  - a. Whether the suspect was known to the victim
  - b. How long the victim knew the suspect.
  - c. The circumstances of their meeting and if there is any indication of the use of drugs or alcohol to facilitate the sexual assault.
  - d. The extent of their previous or current relationship
  - e. Any behavioral changes that led the situation from one based on consent to one of submission, coercion, fear, or force.
  - f. Specific actions, statements, and/or thoughts of both victim and suspect immediately prior, during, and after assault.
  - g. Relevant communication through social media, email, text messages, or any other forms of communication

## Special Considerations-Minors and Vulnerable Adults/Domestic Abuse Victims

### Minors and Vulnerable Adults

This agency recognizes that certain victims, due to their age or a physical, mental, or emotional distress, are better served by utilizing interview techniques and strategies that eliminate the duplication of interviews and use a question-and-answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. Agents should be alert for victims who would be best served by the use of these specialized interview techniques. Agents, in making this determination, should consider the victim's age, level of maturity, communication skills, intellectual capacity, emotional state, and any other observable factors that would indicate specialized interview techniques would be appropriate for a particular victim. When an agent determines that a victim requires the use of these specialized interview techniques, the officer should follow the guidance below:

1. Agents investigating reports of sexual assaults involving these sensitive population groups must limit their actions to the following:
  - a. Ensuring the safety of the victim.
  - b. Ensuring the scene is safe.
  - c. Safeguarding evidence where appropriate.
  - d. Collecting any information necessary to identify the suspect; and
  - e. Addressing the immediate medical needs of individuals at the scene.
2. Agents should not attempt to interview the victim in these situations but should instead attempt to obtain basic information and facts about the situation, including the jurisdiction where the incident occurred and that a crime most likely occurred. Agents should seek to obtain this information from parents, caregivers, the reporting party, or other adult witnesses, unless those individuals are believed to be the perpetrators.
3. Agents that identify victims with special considerations must comply with the mandated reporting requirements of Minnesota Statutes § 626.556 and 626.557, as applicable. Agents investigating cases involving victims with special considerations should coordinate these investigations with the appropriate local human services agency where required. Any victim or witness interviews conducted with individuals having special considerations must be audio and video recorded whenever possible. All other interviews must be audio recorded whenever possible.

Not all sexual assaults of minor victims require a mandatory report to social services. This policy recognizes that in certain cases, notifying and/or the involvement of a parent/guardian can cause harm to the minor and/or impede the investigation. Agents responding to the sexual assault of a minor victim that does not trigger a mandated report under Minnesota Statutes § 626.556 should assess for the impact on the victim and the investigation if parents/guardians were notified before making a decision to involve them.

4. Agents should obtain necessary contact information for the victim's caregiver, guardian or parents and where the victim may be located at a later time. Agents should advise the victim and/or any accompanying adult(s), guardians or caregivers that the agency with primary jurisdiction will follow up with information on a forensic interview.
5. The Agent should advise the victim's caregiver, guardian or parent that if the victim starts to talk about the incident, they should listen to them but not question them as this may influence any future statements.

### Victims of Domestic Abuse

Agents investigating a report of sexual assault committed against a family and household member must advise the investigating agency with primary jurisdiction so that they can follow that agency's domestic abuse policy and protocol.

## Protecting Victim Rights

1. Confidentiality: Agents should explain to victims the limitations of confidentiality in a criminal investigation and that the victim's identifying information is not accessible to the public, as specified in Minn. Stat. section 13.82, subd. 17(b)
2. Crime Victim Rights: Agents must provide the following information to the victim:
  - a. Crime victim rights and resource information required to be provided to all victims as specified by Minn. Stat. section 611A.02, subd. 2(b)
  - b. If the suspect is a family or household member to the victim, crime victim rights and resource information required to be provided to domestic abuse victims, as specified by Minn. Stat. section 629.341, subd. 3.
  - c. The victim's right to be informed of the status of a sexual assault examination kit upon request as provided for under Minn. Stat. section 611A.27, subd. 1.
  - d. Pursuant to Minn. Stat. sec. 611A.26, subd. 1, no law enforcement agency or prosecutor must require that a complainant of a criminal sexual conduct or sex trafficking offense submit to a polygraph examination as part of or a condition to proceeding with the investigation, charging or prosecution of such offense.
3. Other information: Agents should provide to the victim the CFB's case file number and contact information for the agent as well the primary agency investigator or person handling the follow up contact information.
4. Language access: All agents must follow agency policy regarding limited English proficiency.

## Evidence Collection

### Considerations for Evidence Collection

1. Agents should make the following considerations in regard to the crime scene:
  - a. Collect evidence regarding the environment in which the assault took place, including indications of isolation and soundproofing. The agent should consider utilizing a crime lab for processing the scene where the assault took place.
  - b. Document any evidence of threats or any communications made by the suspect, or made on behalf of the suspect, to include those made to individuals other than the victim.
  - c. In situations where it is suspected that drugs or alcohol may have facilitated the assault, agents should assess the scene for evidence such as drinking glasses, alcohol bottles or cans, or other related items.
  - d. If the victim has declined or a medical forensic exam will not be conducted, the agent should obtain victim consent and attempt to take photographs of visible physical injuries, including any healing or old injuries. Victim should be given directions about how to document any bruising or injury that becomes evidence later after these photographs are taken.



## Sexual Assault Medical Forensic Examinations

If a victim is willing to consent to a sexual assault medical forensic examination the investigating Agent should do the following:

1. Ensure the victim understands the purpose of the sexual assault medical forensic exam and its importance to both their general health and wellness and to the investigation. Offer assurance to the victim that they will not incur any out-of-pocket expenses for forensic medical exams and provide information about evidence collection, storage and preservation in sexual assault cases.
2. Provide the victim with general information about the procedure and encourage them to seek further detail and guidance from the forensic examiner, health care professional, or a victim advocate. Agents cannot deny a victim the opportunity to have an exam.
3. Agents should be aware and if necessary, relay to victims who do not want to undergo an exam that there might be additional treatments or medications they are entitled to even if they do not want to have an exam done or have evidence collected. Victims can seek that information from a health care provider or a victim advocate. If possible, transport or arrange transportation for the victim to the designated medical facility.
4. Ask the victim for a signed release for access to medical records from the exam.

Agents must not be present during any part of the exam, including during the medical history. Following the exam, evidence collected during the exam must be handled according to the requirements of Minnesota Statutes § 299C.106.

## Contacting and Interviewing Suspects

Prior to contacting a suspect in a sexual assault, the agent should consider the following:

1. Conduct a background and criminal history check specifically looking for accusations, criminal charges, and convictions for interconnected crimes, especially crimes involving violence.
2. Consider conducting a pretext or confrontational call or messaging. Involvement of a victim should be based on strong consideration of the victim's emotional and physical state. A victim advocate should be present whenever possible to offer support.
3. When possible, an attempt should be made to interview the suspect in person.
4. In situations where suspects do not deny that a sexual act occurred, but rather assert that it was with the consent of the victim, Agents should do the following:
  - a. Collect evidence of past communication, including but not limited to all relevant interaction (including social media) between the suspect and victim.
  - b. Identify events that transpired prior to, during, and after the assault in an effort to locate additional witnesses and physical locations that might lead to additional evidence.

5. For sexual assaults involving strangers, the Agent should focus investigative efforts on the collection of video, DNA, and other trace evidence used for analysis to identify the perpetrator.

## Forensic Examination and/or the Collection of Evidence from the Suspect

When conducting a forensic examination and/or collection of evidence from a suspect, the following considerations should be made:

1. Prior to or immediately after the preliminary suspect interview, photograph any injuries.
2. Determine whether a sexual assault medical forensic examination should be conducted.
3. Ask for the suspect's consent to collect evidence from their body and clothing. However, the Agent should consider obtaining a search warrant, with specific details about what evidence will be collected, and should be prepared in advance to eliminate the opportunity for the suspect to destroy or alter evidence if consent is denied.
4. During the suspect's sexual assault medical forensic examination, the Agent should do the following:
  - a. Strongly consider penile swabbing, pubic hair combings, and collection of other potential DNA evidence.
  - b. Collect biological and trace evidence from the suspect's body.
  - c. Document information about the suspect's clothing, appearance, scars, tattoos, piercings, and other identifiable marks.
  - d. Seize all clothing worn by the suspect during the assault, particularly any clothing touching the genital area.
  - e. Document the suspect's relevant medical condition and injuries.

Note: A suspect's forensic examination and/or the collection of evidence from a suspect may be done by either an investigating officer/investigator, Forensic Medical Examiner, or [an] agency/county/state crime lab personnel.

## Role of the Supervisor

Supervisory Special Agents may do the following in support of the CSC investigation:

1. Assist Agents conducting CSC investigations when possible or if requested by an Agent.
2. Provide guidance and direction as needed.
3. Review the narrative reports to ensure that necessary steps were taken during the investigation.
4. Conduct an analysis of the following:
  - a. Case dispositions
  - b. Decisions to collect evidence

- c. Submissions of evidence for lab testing
- d. Interviewing decisions