

University of Montana

Office of Public Safety/Police Sexual
Assault Investigation Policy

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I. PURPOSE

The purpose of this policy is to provide officers and investigators with guidelines for responding to reports of sexual assault, sexual intercourse without consent, assisting victims, collaborating with local health, outside law enforcement and service agencies, and conducting interviews with victims, witnesses, and suspects. Because of the special needs involved in sexual intercourse without consent investigations an attached appendix serves as an all-inclusive document that covers first response, investigation and prosecution.

II. POLICY

Trauma from crime victimization complicates a victim's participation in the investigation. The trauma may be so overwhelming that a victim cannot function well enough to assist in the investigation at certain stages of the case. Trauma also affects memory and the ability to explain events in a narrative form for the investigator. Officers and investigators play a significant role in both the victim's willingness to participate in the investigation and ability to cope with the emotional and psychological after effects of the crime. Therefore, it is especially important that these cases be handled objectively without bias, with respect, sensitivity, and consideration for the victim.

III. DEFINITIONS

Sexual Assault as defined by MCA 45-5-502 is detailed below.

Sexual Assault

- A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault
- First and second convictions for sexual assault are punishable by misdemeanor fine amounts and/or incarceration
- Third and subsequent convictions for sexual assault are punishable by felony fine amounts and/or incarceration

Sexual Assault can occur with the act of any unwanted sexual contact ranging from unwanted touching through clothing to more forceful acts. A potential victim is under no lawful mandate or obligation to have informed the suspect to stop or to have immediately removed themselves from the situation.

Sexual Intercourse Without Consent as defined by MCA 45-5-503 is detailed as follows, the investigation of this crime will be covered in more depth in the Appendix portion of this policy.

Sexual Intercourse Without Consent

- Penetration of the vulva, anus, or mouth by the penis of another person

- Penetration of the vulva or anus of one person by a body member of another person
- Penetration of the vulva or anus with a foreign object manipulated by another person to knowingly or purposely:
 - Cause bodily injury or humiliate, harass, or degrade
 - To arouse or gratify the sexual response or desire of either party

Sexual Intercourse Without Consent constitutes a felony and could have occurred if the following conditions exist:

- Force was used or threatened, even if there is no bruise or injury to the victim
- The victim was afraid, even if this did not lead the victim to physically resist
- The victim was disabled and could not legally give consent (that is, the victim could not understand the nature or condition of the act due to illness or disability)
- The victim was severely intoxicated or unconscious as a result of drugs or alcohol and was therefore unable to give informed consent at the time of the sexual act
- The victim was under the age of legal consent at the time of the sexual act

Victim

For the purpose of this policy, victim refers to the person reporting that they have been the victim of a criminal offense.

Victim Advocate

This generic term may apply to a wide range of service providers, rape crisis counselors, social workers, or victim witness providers within a prosecutor's office. Depending on the primary functions of these different advocates, the levels of confidentiality and privilege they have will vary and should therefore be understood by each member of the sexual assault response team and communicated to the victim.

OPS: Office of Public Safety

MPD: Missoula Police Department

MCSO: Missoula County Sheriff's Office

MOU: Memorandum of Understanding, the agreement for mutual aid between departments.

IV. PROCEDURES

A. Dispatcher or Call-Taker Response

1. Due to the trauma of sexual assault, a victim reaching out for assistance may be in crisis. The victim's behaviors may actually be symptomatic of this condition and can range from hysteria, crying, rage, laughter, calmness, and unresponsiveness. There is no one typical reaction and reactions are likely to change over time. Therefore, it is critical to refrain from negative personal judgments and to continuously treat the victim with respect, sensitivity, and consideration.

An officer is to be dispatched upon dispatcher's receipt of report. Explain to the caller that it is necessary to ask some preliminary questions and that these questions will not delay an officer's response to the caller's location.

2. When a caller reports a sexual assault or sexual intercourse without consent, communications personnel shall follow a standard emergency response to include evaluating and properly prioritizing the call, commend the victim for contacting the police, victim's safety, securing medical assistance, inquiring about a suspect's current location, and obtaining detailed information to identify the suspect. Information about the alleged perpetrator's relationship with the victim, weapon use, and history of violence shall also be obtained. Regardless of delayed report, sexual assault should always be a priority call.
3. In some cases DNA evidence may be available. To ensure critical evidence is not lost, communications personnel shall:
 - a. Advise victim an officer is on the way and request the victim not bathe, douche, urinate, or make other physical changes
 - b. Let the victim know that other evidence may still be identified and recovered so the crime should still be reported if the victim has bathed or made other physical changes
 - c. Advise the victim against cleaning or altering the potential crime scene areas
 - d. Preserve the communications tape and printout for the investigation

B. Initial Officer Response

1. ***Emergency Response. As part of the emergency response, officers shall:***
 - a. Make contact with the victim as soon as possible to address safety concerns and summon emergency medical assistance if needed
 - b. Evaluate the scene for evidence, witnesses, and suspects as well as possible threats

- c. Relay all vital information to responding officers and supervisors, including any possible language barriers
 - d. Secure the crime scene to ensure that evidence is not lost, changed, or contaminated
 - e. The primary responding officer will utilize the Adult Sex Crime Supplemental Report Form to document any information obtainable during the preliminary investigation. This form is intended for use throughout the course of the investigation and will be turned over with the case file to MPD or MCSO if the case is turned over per MOU
 - f. Record observations of the crime scene, including the demeanor of the suspect and victim, alcohol or other drug use, and document other visible evidence including injuries, disheveled clothing or lack thereof, missing clothing
 - g. Conduct a preliminary victim interview, officers will not ask the victim if they intend to prosecute the suspect. Officers may inform the victim that decisions about how to proceed will remain with the victim
 - h. **Request a Criminal History check on the suspect to determine any previous Sexual Assault convictions. If history check shows two prior convictions contact MPD or MCSO (if occurred outside city limits) and turn over investigation per MOU**
 - i. **If upon arrival crime is thought to be Sexual Intercourse Without Consent, notify MPD or MCSO (if occurred outside city limits), secure crime scene and turn over to MPD or MCSO per MOU and inform the victim that MPD or MCSO has jurisdiction and explain what will happen next**
 - j. Begin a search for the suspect when appropriate
2. ***Assisting the Victim. As part of the emergency response, officers shall:***
- a. Show understanding, patience, and respect for the victim. Guard their dignity and attempt to establish trust and rapport.
 - b. Commend the victim for coming forward to the police.
 - c. Inform the victim that an officer of the same sex will be provided if desired and available.
 - d. Contact and introduce an advocate to the victim as soon as possible, and allow the victim to decide if they would like the advocate with them during the preliminary interview and throughout the reporting and investigative process
 - e. While on scene the victim may choose to volunteer general information about the incident, or the situation may require that the officer seek immediate information,

before an advocate is available. However, the preferred response is to introduce an advocate to the victim as soon as possible, and allow the victim to decide if they would like the advocate with them during the preliminary interview and throughout the reporting and investigative process.

- f. Provide victims with the Sexual Assault Victim/Survivor Resources Form, which provides contact information for the following resources:
 - 1) Student Advocacy Resource Center (SARC) 406-243-6559
 - 2) First STEP Resource Center (24-hour medical care by trained examiner) 406-329-5776
 - 3) Crime Victim's Advocate (CVA) 406-830-3830
 - 4) Missoula YWCA 406-542-1944 or 800-483-7858
 - 5) UM Counseling Services 406-243-4711
 - 6) UM Title IX Coordinator 406-243-5710
- g. Notify OPS command staff.
 - 1) OPS command staff will assess criteria and advise on activation of notification system
 - 2) OPS command staff will advise if an OPS detective needs to be contacted to assist in the investigation depending upon the nature of the offense
 - 3) If MPD or MCSO are not able to take over a felony investigation in accordance with the MOU, then proceed with **Sexual Intercourse Without Consent Appendix** and investigate the incident in accordance with the guidelines therein.

3. Evidence Collection Issues

All potential victim evidence will be collected by a First Step Forensic Nurse. For potential evidence at the crime scene and crime scene processing, officers will request assistance from MPD crime scene technicians. If MPD is not able to respond, officers will secure and process the scene referring to the Appendix for evidence collection procedures and ensuring compliance with the published directions of the Missoula Crime Lab.

4. Identify and Locate Witnesses and Suspects

Based on the victim's emotional and physical state, questions of the victim concerning the assault and description and location of the suspect may be limited. Responding officers must identify and interview any potential witnesses, bearing in mind that there

may be multiple crime scenes. It is especially important that the first person the victim told about the sexual assault be identified and interviewed.

5. Documentation

Any officer who interviews a witness or a suspect, identifies evidence, or processes a crime scene shall write his or her own report detailing the actions he or she took. These supplemental reports shall be compiled by the first responding officer for the follow-up investigation regardless of whether an arrest is made.

6. Stranger vs. Non-stranger Assaults.

Responding officers shall be familiar with common defenses to the charges of sexual assault.

a. Non-stranger Assault

The majority of non-stranger sexual assaults result in a consent defense. Thus, evidence of particular importance includes:

- 1) Evidence of physical or verbal resistance on the part of the victim
- 2) Evidence of genital or nongenital injury
- 3) Detailed account of the victim's thoughts and feelings during the assault
- 4) Information regarding the suspect's size and strength in comparison to the victim's
- 5) Information regarding the environment in which the assault took place (such as isolation, soundproofing)
- 6) Information regarding the victim's behavior after the assault, including posttraumatic stress

b. Stranger Assault

Evidence in stranger sexual assaults often center on a question of identification pending the processing of DNA evidence. Therefore, investigative strategies must remain flexible. An identity defense will typically include latent fingerprints, lineups, DNA, and trace evidence.

C. Preliminary Victim Interview

Sexual assault investigations typically include both a preliminary and a subsequent in-depth follow-up interview with the victim. The preliminary interview is intended to establish whether a crime has occurred. In the initial response, the officer shall first establish the elements of the crime(s) and identify any and all witnesses, suspect(s), evidence, and crime scene(s). The officer must understand and the reports must indicate that the preliminary interview is not intended to be a comprehensive or final interview. Additional interviews will be needed as the investigation develops.

1. Involve a Victim Advocate

A victim advocate will be contacted by the investigating officer as soon as possible. The victim advocate will be introduced to the victim so the victim can decide if they want the advocate with them during the preliminary interview and throughout the reporting and investigative process.

2. *Victim Interview Protocol*

- a. Based on the length of time between the assault and report of the crime and the individual's personal history, the victim may be in crisis, experiencing posttraumatic stress, and/or exhibiting a range of behaviors that will likely change over time.
- b. The victim's response to the trauma of a sexual assault shall not be used in any way to measure credibility. When drugs or alcohol are involved, the victim may have limited recollection or be unable to give a complete account of the crime. Not knowing the details of what happened may exacerbate the trauma experienced by the victim. Asking the victim to retell the account multiple times may cause additional trauma.
- c. Preliminary interviews shall be conducted promptly if the victim is coherent and consensual.
 - 1) Officers shall:
 1. Remain patient and maintain an open mind while listening to the victim's account
 2. Commend the victim for coming forward to the police
 3. Remember that victims may struggle with gaps in memory
 4. Avoid leading questions while conducting the interview
 5. Use terminology appropriate to the victim's age and situation
 6. Avoid using jargon or police, medical, or legal terms
 7. If the decision was made to allow a support person to be present, establish with the support person they may not interrupt or interfere with the interview
 - 2) During the interview, the officer shall:
 1. Accommodate the victim's request for a victim advocate or support person whenever possible
 2. Take responsibility for excluding a support person when appropriate and offer the victim and support person an explanation
 3. Secure a private location for the interview that is free from distractions
 4. Obtain contact information for the victim, including temporary accommodations. Take reasonable efforts to confirm that the contact

number and location is a safe and secure place to leave a message if and when follow-up is necessary.

5. Explain the nature of the preliminary interview as a brief statement to help further the investigation
 6. Ask victims to explain what they remember and how they felt, allowing them to give an uninterrupted account if possible
 7. Revisit the possibility of a support person for victims who initially declined the offer
 8. Explain to victim that OPS is focusing on sexual assault, not drug use or other minor student conduct violations. Inform the victim of the need and importance of full disclosure throughout the reporting process.
 9. Explain that other professionals such as detectives and prosecutors may have additional questions
- 3) At the conclusion of the interview, the officer shall:
1. Give the victim the officer's contact information
 2. Encourage the victim to contact the officer with any additional information or evidence
 3. Remind the victim that visible evidence of injury may appear later, and to contact the officer for additional photographs or other documentation
 4. Follow-up with the victim for additional photographs after 24 hours if not contacted by the victim
 5. Explain the procedures and resources available for obtaining an Order of No Contact and ensure that requests for victim protection orders are made where indicated
 6. Provide written referrals for victim service organizations if the Sexual Assault Victim/Survivor Resources Form or, the It's Your Call 911 pamphlet, have not already been provided
 7. Provide transportation when reasonably possible
 8. Inform the victim about next steps in the investigation

3. *Protecting Victim Rights*

- a. Throughout the investigation of the case, officers shall protect the confidentiality of the victim's information to the maximum extent possible by law and policy.
- b. In addition, victims should be provided information on:
 - 1) The rights of a crime victim
 - 2) How to contact police if harassed or intimidated by the suspect(s)

- 3) What information is part of the public record and what is confidential
- 4) The possibility of media coverage and information the media has access to regarding sexual assault crimes
- 5) Provide victim with the It's Your Call 911 pamphlet
- 6) The University policy on sexual harassment, stalking, and retaliation and explain it is separate from the criminal process and might provide a helpful avenue for stopping disruption to a victim's life on campus, whether or not the criminal process is proceeding

D. Follow-Up Victim Interview

Prior to a follow-up interview, the investigating officer shall consult with agency personnel who responded to the scene, retrieve communications tapes and printouts, and review all reports. The investigator should coordinate with relevant agencies, assistance organizations, service providers, or sexual assault response professionals to address the needs of the victim and to discuss the best means for keeping the victim informed.

1. *Investigative Strategy*

In preparing for the interview, the investigator shall develop an investigative strategy based on the nature of the assault and the possible defenses available to the suspect (such as denial, mistaken identity, or consent). This strategy shall guide the questions and other evidence collection efforts.

2. *Follow-Up Interview Protocol*

- a. An in depth follow up interview shall be conducted if the complexity of the case dictates or the development of further evidence deems it necessary.
- b. In the event that the victim is still under the influence of drugs or alcohol, has been injured, or as a result of the assault has not slept, and barring exigent circumstances requiring an arrest or identification, the interview shall be delayed.
- c. Arrange for equipment to tape record or videotape the interview so the officer can focus on listening.
- d. Prior to the follow-up interview any witness who might have seen or spoken with the victim before, during, or after the assault should be contacted and interviewed.
- e. The interview shall be conducted in a location that is convenient, accessible, and comfortable for the victim. The investigator shall provide or arrange for transportation for the victim when needed.
- f. When scheduling the follow up interview inquire if the victim worked with an advocate during the initial response. If so make every effort to involve the same advocate during the follow up interview. Inform the victim that it will be their

decision if they want an advocate present, or another support person. If necessary, discuss with the victim why some support persons might not be a good idea such as witnesses, parents, etc. If an advocate has not already been involved notify and make available a victim advocate at the time of the follow-up interview and allow the victim to decide if they would like the advocate with them during the follow-up interview.

- g. At the start of the follow-up interview, the officer shall:
 - (1) Discuss the purpose and scope of the interview
 - (2) Review contact information for both the victim and investigator that may need to be updated
 - (3) Explain the victim's rights, including confidentiality
 - (4) Explain the need to tape record or videotape the interview and request the victim's consent
 - (5) Explain to victim that OPS is focusing on sexual assault not drug use or other minor student conduct violations. Inform the victim of the need and importance of full disclosure throughout the reporting process.
 - (6) Address arrest decisions including an explanation of the status of the case
- h. While conducting the follow-up interview, the investigator shall:
 - (1) First allow the victim to describe what occurred without interruption
 - (2) Relay what he or she heard for accuracy, identify new information or developments, and ask questions
 - (3) Clarify any inconsistencies with earlier accounts of the sexual assault in a nonthreatening manner
 - (4) Document the victim's actions in response to the attack, the victim's state of mind during the attack, specific statements made by the perpetrator, and the nature of any relationship with the suspect and explain the importance of these questions from an investigative standpoint
 - (5) Inquire about any circumstances that may indicate the use of a drug to facilitate the sexual assault (such as whether the victim experienced any loss of memory, disorientation, severe illness, or hallucinations)
 - (6) Assist the victim in developing a safety plan, in the event safety concerns exist. Provide victim with information about obtaining an Order of Protection and offer assistance as appropriate. Provide victim with information about campus Title IX resources and explain that the Title IX Office or Dean of Students can

assist with campus no contact orders. Encourage the victim to call police if the suspect violates any existing criminal or court orders or if the suspect contacts the victim in any way

- i. Once a thorough follow-up investigation has been completed, the investigating officer shall:
 - (1) Evaluate impounded evidence and determine which items might have probative value based on the statements and other information
 - (2) Submit a lab service request such as DNA, biology, trace, or toxicology based on the assessment of the evidence
 - (3) Present the complete case file including forensic results as soon as available to the prosecuting attorney for review and work with the prosecutor's office to develop the case
 - (4) Encourage the victim's continued support in the investigation, apprising the victim of future investigative and prosecutorial activities that will or may require involvement. Encourage victim to work with advocates for continued support

3. *When Lacking the Victim's Involvement*

This department shall respect a victim's inability or decision not to be involved in criminal justice proceedings and always be willing to offer continued assistance and referrals. Inform the victim that they can reinitiate the investigation with police at a later time and provide an explanation of the statute of limitations.

E. Contacting and Interviewing the Suspect - It is important to allow the suspect an opportunity to provide an account of the incident. Efforts should be made to approach the suspect lawfully with this goal in mind. Officers shall assess the circumstances for a lawful approach for either a non-custodial interview, or a custodial interview. When the standard of custody dictates a Miranda warning will be issued.

1. The investigating officer(s) shall follow department procedures on identifying the suspect, conducting the suspect interview, and collecting evidence in a sexual assault investigation.
2. If practical, prior to contacting suspect officers will conduct a background check. Contact suspect in person and without unnecessary delay.
3. Involvement of a victim in a pretext phone call to the suspect should take into consideration the victim's emotional and physical state. A victim advocate should be present whenever possible to offer support.

F. Blind Reporting Protocol

Officers will speak with a victim anonymously in person, over the phone, or via electronic communication about sexual assault or sexual intercourse without consent reports.

1. Show understanding, patience, and respect for the victim's dignity and attempt to establish trust and rapport
2. Inform the victim that an officer of the same sex will be provided if desired and available
3. Be supportive and provide information about the investigative process
4. Provide information on University, local, and national resources available to victims. Refer to Sexual Assault Victim/Survivor Resources Form
5. Inform the victim how to contact outside law enforcement agencies in the event the crime occurred in another jurisdiction. Assist the victim in making this contact and document officer's name and department
6. Be considerate of the victim's choice to remain anonymous and be available for re-contact should the need arise
7. Complete a brief narrative report and utilize the Adult Sex Crime Supplemental Report Form indicating that a sexual assault or sexual intercourse without consent was reported within the University of Montana's jurisdiction for Clery Act compliance. List the victim as Jane or John Doe in the name screen
8. Officers will record the name as Jane or John Doe, date reported, date crime occurred, and location of crime. The Title IX Coordinator will be notified via call out at the time of report. A Title IX Action form will be sent to the University's Title IX coordinator within 24 hours of the report being received.
9. Officers will not disclose personal information without consent of the victim

G. Role of the Supervisor

First-line supervisors shall demonstrate a detailed understanding of victim issues and proper response by subordinates. Supervisors shall:

1. Respond to assist officers investigating sexual assault or sexual intercourse without consent reports
2. Exhibit sensitivity to victims and ensure that victims are dealt with properly by clarifying their expectations of line officers
3. Assist in locating resources to effectively investigate the sexual assault or sexual intercourse without consent reports

4. Encourage problem-solving partnerships to enhance cooperation between the department and community organizations such as rape crisis centers and forensic examination programs using a victim-centered approach
5. Develop and encourage community partnerships to reduce the risk of sexual assaults and sexual intercourse without consent assaults
6. Create opportunities for ongoing training to improve the skills needed to properly investigate sexual assault cases
7. Work to increase interagency communication between law enforcement and prosecutors to ease the transition for victims moving from the investigation phase to prosecution
8. Incorporate victim services issues into the evaluations of officers and detectives
9. Counsel and redirect officers where problems are evident
10. Recognize and reward officers for rendering effective victim services

H. Title IX

1. Officers shall be familiar with the University of Montana Policy on Discrimination Harassment, Sexual Misconduct, Stalking and Retaliation.
2. Officers responding to incidents or otherwise taking reports of sexual harassment, sexual assault and other forms of sexual misconduct will provide information about University and community health and advocacy resources and describe the function of the University Title IX Coordinator as well as provide contact information for the Title IX Coordinator. The responding officer shall offer to contact the Title IX Coordinator on behalf of the victim. The victim will be advised that the Title IX Coordinator will send them a letter explaining their options under University policy.
3. The Title IX Coordinator will be notified via call out at the time of report. However officers shall complete a Referral for Student Conduct or Title IX Action form and route it to the University's Title IX Coordinator for all reports of sexual harassment, sexual assault, or other forms of sexual misconduct. This shall be done within 24 hours of report.

Acknowledgment

This policy was prepared by Detective Christopher Croft of the Office of Public Safety University of Montana. Example policies were provided by Joanne Archambault/IACP Model Policy, and the Missoula Police Department. Other publications utilized: IACP Sexual Assault Guidelines and Investigative Strategies and IACP Sexual Assault Supplement Report Form. Reviews and suggestions on the policy were provided by Director Gary Taylor Office of Public Safety University of Montana, Captain Ben Gladwin Office of Public Safety University of Montana, Michael Reid VP Administration & Finance University of Montana, Lucy France Legal Counsel University of Montana, Claudia Denker-Ecles Legal Counsel University of Montana, Mira Patrick Office of Public Safety University of Montana, Casey Gunter Office of Public Safety University of Montana, Chief Mark Muir Missoula Police Department, Drew Colling SARC Director Curry Health Center University of Montana, Mary Pat Hansen APRN MSN First Step Resource Center and Tom Tremblay Retired Police Chief and Law Enforcement Consultant & Trainer.