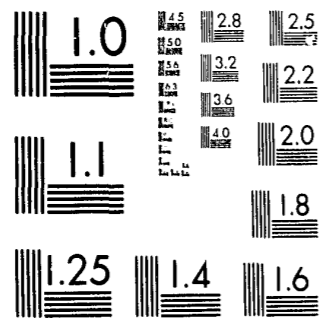


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National Institute of Law Enforcement and Criminal Justice  
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Prepared By:  
Hennepin County  
Coroner's Office  
300 Government Center  
Minneapolis, MN 55487



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

2000 GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487

Dear law enforcement, medical, social service, volunteer and prosecutorial personnel:

Because crime continues to increase, we must employ new methods of dealing with crime. This office has embarked on an effort to increase public awareness, and, in our instance, professional awareness about crime prevention and sensitivity to a victim's emotional needs, as well as criminal apprehension when dealing with the heretofore "unspeakable" crime of sexual assault.

It is hoped that this manual will be able to serve not only Minnesota, but also law enforcement, medical, social service and prosecutorial agencies in other locales. It is an attempt to set forth in clear language what we have learned about sexual assault and what we have implemented to deal with sexual assault. We know this works. Since early 1974, law enforcement, medical, social service, volunteer and prosecutorial personnel and agencies have been developing and using what this manual contains. It has been tested. We have used it. We hope it may be of assistance to you as you develop efforts to deal with sexual assault crimes.

To be of further assistance to you, this office has developed an Office of Sexual Assault Services:

Sexual Assault Services  
Citizen Protection Division  
Office of the County Attorney  
2000 Hennepin County Government Center  
Minneapolis, Minnesota 55487  
Telephone: (612) 348-5397 or 348-5545

Sexual Assault Services not only serves this office by providing public information services, but also as a resource available to law enforcement, medical, social service and prosecutorial personnel and agencies. You are urged to contact this office if we may in any way assist you in your efforts in dealing with sexual assault crimes.

We want you to learn from us and we want to learn from you so that we may together enlarge efforts to combat the "unspeakable" crime. Please share your reactions, suggestions, and the benefits of your experience with us.

Sincerely,

GARY W. FLAKNE  
Hennepin County Attorney

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I. HENNEPIN COUNTY ATTORNEY'S SEXUAL ASSAULT SERVICES

The Sexual Assault Services has been in the Office of the Hennepin County Attorney and is now operating with LEAA grant funding distributed through the Minnesota Governor's Crime Commission to the Commissioner of Corrections Task Force on Victims of Sexual Assault.

It is the first such service available in Minnesota which is sanctioned by law enforcement, medical, social service and prosecutorial agencies.

The Sexual Assault Services has a dual function:

(1) To serve the citizens of Hennepin County through a variety of services including, but not limited to, receiving calls relating to sexual assault and making appropriate referrals and providing public information designed to inform the public about sexual assault; and

(2) To serve law enforcement, medical, social service, and prosecutorial personnel and agencies in Hennepin County by assisting in conducting training programs for such personnel and agencies, by developing and providing information that may serve as a resource to such agencies and personnel and by keeping abreast of all efforts and services developed within and without the state, to deal with sexual assault, and communicating such developments.

The Sexual Assault Services also gathers information and latest developments regarding sexual assault and incorporates them into its own efforts where appropriate.

The Sexual Assault Services has been developed due to the pervasiveness and traumatic repercussions of the crime of sexual assault. It is a crime different from others and requires special attention. Finally,

sexual assault has for too long been shelved as a back-burner crime. The Sexual Assault Services is making up for that slow start.

I. HENNEPIN COUNTY ATTORNEY'S SEXUAL ASSAULT SERVICES

The Sexual Assault Services program is within the Citizens' Protection Division of the Hennepin County Attorney's Office.

The Sexual Assault Services is developing a county-wide system with three major objectives:

- (1) To encourage victims of sexual assault to report the incident, either to law enforcement or counseling agencies;
- (2) To provide continuing care for the emotional needs of sexual assault victims and their families; and
- (3) To develop evidence-gathering techniques, public awareness, prosecutorial expertise and necessary legislation to increase the incidence of successful prosecution of sexual assault offenders.

To realize these goals, the Sexual Assault Services is doing the following:

- (1) Informing victims that reporting sexual assault serves a real community need and permits the victim to obtain any necessary counseling services;
- (2) Providing crisis intervention training programs for medical, police, prosecutorial and volunteer personnel with specific emphasis on the emotional and physical needs of sexual assault victims;
- (3) Coordinating and informing the public as to the availability and cooperation among services available to sexual assault victims in Hennepin County, including law enforcement agencies, medical institutions, prosecutor's offices, public services agencies, and voluntary organizations;
- (4) Establishing procedures for investigating and gathering evidence in sexual assault cases;

(5) Developing and providing educational programs for the general public, which will be aimed at sexual assault preventional awareness; and

(6) Seeking legislation improving the current Criminal Sexual Conduct Laws.

Above all, the Sexual Assault Services seeks to prevent sexual assault and to minimize the emotional trauma suffered by victims of sexual assault and their families, while at the same time seeking to identify, prosecute and effectively rehabilitate, where at all possible, criminal sex offenders.

## II. SEXUAL ASSAULT -- THE WHO, WHY, AND WHAT

In order for law enforcement, medical, social service and prosecutorial personnel and agencies to deal with sexual assault, there must be a basic understanding of the nature of the crime.

This chapter discusses the nature of the crime. We acknowledge the fact that a great deal is not known about sexual assault. However, it is certainly worthwhile to be aware of what is known.

This chapter briefly sets forth what sexual assault is, who is assaulted, the age of victims, where sexual assault happens, when it happens, who sex offenders are and why sexual assault occurs.

As little as is known of sexual assault, it is, nevertheless, clear that no one is safe from it and it is precisely for this reason, coupled with the heinous nature of such an ultimate intrusion, that special efforts are being made to confront the crime.

We must understand it as best we can before we can adequately deal with it.

## II. SEXUAL ASSAULT -- THE WHO, WHY AND WHAT

The vast majority of us will never experience the immense suffering produced by sexual assault. However, some will. Research indicates that roughly one of ten American women will be criminally sexually assaulted some time in her life. Once every ten minutes a woman is raped in the United States. If all such assaults were reported, experts guess the number of criminal sexual assaults could be anywhere from five to twenty times greater than it is now.

Current records do not provide enough information by which accurate analysis can be made regarding the who, why and what of sexual assault. However, some trends can be generalized.

### What Is It:

Sexual assault is rape, same sex assault, child molestation, and any other sex act not consented to by each participant. In some instances, such as with children, even consensual sex acts are punishable under the law. Sexual assault is much more than rape. Sexual assault includes a variety of sex acts, such as cunnilingus, fellatio, anal sodomy, buggery, masochism, sadism, child molestation, incest, homosexual assault, forcing a loved one into an undesired sexual act, and even, in some instances, wife beating.

### Who Is Assaulted:

Sexual assault is perpetrated upon men, children, and most of all women. National statistics variously estimate that only five to twenty percent of women who are criminally sexually assaulted report the crime.

It is reasonable to assume that even fewer instances of homosexual assault, incest, and child molestation are ever reported.

### Age:

Sexual assault knows no age limits. National statistics reflect sexual assault upon persons ranging from six months to 91 years of age.

The majority of female sexual assault victims fall into the 15 to 25 year-old range. Persons cannot allow themselves to believe they are immune from sexual assault just because of their age.

Where Does It Happen:

Sexual assault occurs everywhere: In the city, in the suburbs, in rural areas, in your own home, in church, in school, and in your neighbor's home. Many assaults occur in a person's own home due to break-ins or because the assailant was innocently admitted as someone entitled to enter, such as a repairman or a friend. A large number of assaulted persons are forcibly attacked on the street while hitch-hiking or merely out walking.

When Does It Happen:

Sexual assault occurs any time, day or night, at any time of year. Many forcible sexual assaults, especially rape upon women, occur during the evening and night hours, particularly on weekends. Summer months generally have much higher rates of sexual assault than do winter months.

Who Is The Assailant:

The assailant can be anyone. Persons are sexually assaulted by strangers, friends, neighbors, dates, acquaintances, groups of persons known or unknown, family members, repairmen who enter the home, and many others. A recent survey of reported sexual assaults in Minnesota reflect that over 50 percent of such assaults are perpetrated by an assailant known to the assaulted person.

Why Sexual Assault Occurs:

Sexual assault occurs for many reasons. It is primarily an aggressive, hostile act rather than a sexual act. Some offenders were physically or sexually abused as children. Others act out their anger at parents, spouses, society, or persons with authority over them through sexual assault upon innocent persons. Some offenders are unable to communicate their sexual needs in an adult relationship, and others simply

assert their dominance over a weaker person through sexual assault.

Very few offenders are mentally ill.



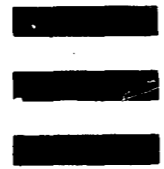
### III. THE DO'S AND DONT'S OF SEXUAL ASSAULT

Because you, as law enforcement, medical, social service and prosecutorial professionals do, and will continue to, deal with the public and sexual assault, it is necessarily appropriate that you be equipped to deal with the question: "Should I fight an assailant or give in?"

That is a difficult question to answer and one frequently asked. You will probably be frequently confronted with it.

Although there is no fool-proof absolutely effective answer, experience has shown that some methods of dealing with the assailant by the victim are more effective than others.

This chapter discusses what has developed as the most frequently supported reaction by a victim. Granted, there will be experts who disagree with the following. Nevertheless, our research shows what is contained herein to be the most frequently articulated and supported reaction to an attempted sexual assault. It has gathered its support from law enforcement, medical, social service, prosecutorial and behavioral science professionals.



### III. THE DO'S AND DONT'S OF SEXUAL ASSAULT

#### A. To Fight or Not To Fight:

The two traditional theories on how to react to a sexual assailant are direct opposites: One theory advocates as much physical resistance as possible; the second theory advocates cooperation with and little or no resistance to the assailant. Unfortunately, there is evidence that physical resistance sometimes causes the assailant to become angry and inflict serious physical injury to the victim and that some assailants desire physical resistance. On the other hand, there is also evidence that cooperation can result in serious physical injury because of the assailant's total dominance over the victim. Fear and the instinct for self-preservation also make cooperation far more difficult than resistance. Neither theory has much support today.

Today's dominant approach advocates strong resistance to the assailant and refusal to be intimidated at the outset, and relative cooperation if the assailant is armed with a weapon or if the victim is helpless. If a person suspects a sexual assault is imminent and a weapon is not apparent, the victim should be assertive and:

1. Immediately yell, scream, run, kick and do everything possible to verbally assert an unwillingness to be assaulted. Such an immediate display of self-confidence and refusal to be intimidated will probably surprise the assailant. Sexual assailants frequently rely on fear and intimidation and an immediate, loud verbal response may discourage the assailant;

2. If the assailant continues to advance after a loud, immediate verbal response, the victim should do something that is as physically disgusting as possible: urinate, vomit, belch, or do whatever can be done that is traditionally unattractive;
3. If screaming and vomiting have no effect on the assailant's advances, and if the victim is physically trapped or the assailant has some kind of weapon, the victim should not attempt to resist any further. However, there is no need to pretend a willing participation; and

ABOVE ALL, THE VICTIM SHOULD REMEMBER THAT LIFE IS MOST IMPORTANT. COMMON SENSE is the key to resisting a sexual assailant. However, resistance should not be attempted if there is reason to believe that resistance will jeopardize life.

#### B. Proof of Resistance in Criminal Sexual Assault Prosecutions:

Minnesota law used to require proof that the victim of a criminal sexual assault "resisted to the utmost of his/her ability" under the circumstances of the case before a conviction could be obtained. The new Minnesota law eliminates the requirement of resistance, stating specifically that there is "no need to show that the complainant (victim) resisted the actor."

#### IV. WHY REPORT SEXUAL ASSAULT

This chapter discusses the need for prompt reporting of sexual assault crimes by victims, persons close to victims, or persons observing an assault.

There are numerous reasons for immediate reporting such as speedy apprehension of the assailant by law enforcement personnel, and most importantly, immediate care for the victim's emotional and physical needs.

It is imperative that law enforcement, medical, social service and prosecutorial personnel, all of whom in most instances will receive reports of sexual assault, realize the vitalness of reporting sexual assault crimes.

Again, because of the above personnel's contact with the public they should be prepared to educate the public when possible. In order to so educate, they themselves must be fully aware of not only the fact that reporting is essential, but why it is essential and to whom it is essential.

This chapter provides such information.

Furthermore, upon the reporting of a sexual assault the above personnel must be able to immediately advise the victim what to do and what not to do so that the immediate investigation will not in any way be hampered.

Reporting the crime is the first essential to a successful prosecution of sexual assault. It is not at all as simple as picking up the telephone. The general public still has reservations about reporting sexual assault.

Your job is to effectively dispel this public reluctance. The best way is to give pragmatic, sound reasoning as to why victims should report. The other method is, of course, simply by your demeanor when dealing with a sexual assault victim.

**IV**

You must act with this chapter in mind if you are to convince the victim of your concern and professional responsibility.

Reporting sexual assault is not easy. We want it to be as easy as reporting a burglary.

#### IV. WHY REPORT SEXUAL ASSAULT

##### A. Report Sexual Assault Immediately:

It is important for a number of reasons that any sexual assault be reported to the police and be reported immediately.

Ordinarily, evidence of sexual assault disappears rapidly. Prompt police investigation will best preserve evidence that is so necessary to an effective prosecution.

Further, immediate reporting will allow police investigators to contact and treat the assaulted person as soon as possible and thereby minimize emotional, mental, and physical injury.

Prompt reporting will also enable police to pursue the assailant more effectively and increase the chances of the assailant being taken into custody more rapidly. The sooner a suspected assailant can be detained, the better the chances are of saving someone else from possible sexual assault.

If everyone were to report sexual assault, the police would be better able to assist. The more reports there are, the greater will be the number of arrests, prosecutions and convictions. For sexual assailants to be truly deterred, their chances of being caught must be increased. Clearly, the only way to increase their chances of being caught is by increasing the number of reports.

Educated estimates variously suggest that only five to 20 percent of sexually assaulted women report the crime, and the percentage of same sex assaults, incest and child molestations that are reported is probably much lower.

Sexual assault victims frequently do not think they will prosecute at the time of the crime. Experience has shown that many assaulted persons do, however, change their minds later

on. If the assaulted person has not reported promptly because of the initial reluctance to prosecute, chances of a successful prosecution later on are remote. This is because necessary evidence that was not obtained at the time of the crime has been forever lost.

Sexual assault cases are generally difficult to successfully prosecute. When they are not reported immediately and evidence is therefore not obtained, they can be even more difficult, if not impossible to prosecute.

Sexual assault can be doubly traumatic if it is not reported. The trauma of the assault itself, coupled with the trauma of the helplessness of not being able to do anything about it, can cause severe emotional problems. Help of all kinds is available to sexually assaulted persons, but no one can offer any help without knowledge of the assault.

Reporting a sexual assault does not require prosecution. However, reporting may help save another person from sexual assault, or even death.

Prompt reporting will permit evidence to be gathered soon after the crime. This will permit a sound legal foundation to be constructed that will result in a case that includes not only the assaulted person's word against the offender, but also medical evidence and police investigation results that are valid in prosecution.

Juries tend not to believe a sexually assaulted person's testimony if the assault was not immediately reported, and guilt must be proven beyond any reasonable doubt before an assailant can be convicted of a crime.

#### B. How And To Whom A Sexual Assault Should Be Reported

An assault may be reported by telephone or by walking into any number of places. You may be the assaulted person yourself or you may know the person assaulted. In either instance, you should report the crime.

Reports should be made to the police, if at all possible. However, you may report to hospitals or to any number of counseling centers.

Again, reporting a sexual assault does not mean the victim must prosecute. Immediate reporting followed by prompt medical attention will, however, insure both a proper evidentiary examination and appropriate treatment of any injury to the person assaulted.

In Minnesota, the County must pay the reasonable cost of an evidentiary medical examination following a sexual assault if the assaulted person does not have insurance coverage. This applies regardless of whether the examination is performed in a public or private hospital or by a private physician. THE EVIDENTIARY EXAMINATION IS ALWAYS FREE to the assaulted person.

An emergency hospital is usually better equipped to perform the examination and laboratory tests that are necessary to a proper evidentiary examination than a non-emergency medical facility or a private physician. This is especially true because the medical examination must be done as quickly as possible, before evidence disappears.

The Hennepin County Medical Center (formerly General Hospital) performs the vast majority of evidentiary sexual assault examinations in Hennepin County each year, and the trained staff is particularly aware of and concerned about, the

needs of sexually assaulted persons. The other emergency hospitals in Hennepin County are also concerned about appropriate care of sexual assault victims.

An immediate evidentiary examination will also ensure appropriate medical treatment of any injury sustained by the assaulted person.

The County pays only for medical treatment of the most minor injuries. The cost of diagnostic tests and/or treatment and all of the costs of hospitalization for most injuries will be charged to the victim. In some limited circumstances, the costs of diagnostic tests and treatment performed at the time of the initial evidentiary medical examination will be paid by the County, but only if the victim has no insurance coverage. Appropriate treatment of a sexual assault victim requires that the victim have two follow-up examinations, the first one approximately three days after the assault and the second one approximately thirty days after the assault. These two examinations are to determine whether the victim contracted gonorrhea or syphilis from the assailant. These examinations do have evidentiary value, but they are of primary importance to safeguard the victim's health. Hennepin County will pay the costs of these two follow-up examinations if they are performed at the same facility where the initial evidentiary examination was conducted or if the victim has them at the Hennepin County Medical Center GYN clinic. In all other cases, the victim will bear the expense of these examinations.

A sexually assaulted person, however, like the victim of any other violent crime in Minnesota, is eligible for compensation for medical expenses and lost wages due to the assault that are not covered by insurance under the "Minnesota

Crime Victims Reparations Act." To be eligible for these benefits, a sexually assaulted person must report the assault within five days and must cooperate fully with the police and prosecution. The first \$100.00 of such medical expenses and lost wages are not recoverable and the maximum benefit is \$10,000.00. A death benefit of up to \$10,000.00 is also available to the family of a deceased sexually assaulted person.

For more information, or to file a claim, write to:

Crime Victims Reparations Board  
504 North Rice Street  
St. Paul, Minnesota 55103  
Telephone Number: (612) 296-7080

When reporting sexual assault, the victim may call any law enforcement agency and they will assist. However, if at all possible and in order to speed up the police response, the victim should call the Minneapolis Police Department Dispatcher (348-2861) or the Minneapolis Police Department Sex Division (348-2941) if the assault occurred within the Minneapolis City limits.

If outside the Minneapolis City limits, the call should go to the police department in the city where the assault occurred. If the victim is in Hennepin County and hitch-hiking, or simply unsure of his/her location, calls should go to the Hennepin County Sheriff's Department (348-3771).

Other agencies to call in Minneapolis are:

Hennepin County Medical Center  
Emergency Department.....348-3930  
Ambulance Service (for severe injuries).348-2624  
Rape Counseling Center  
(24 hour hotline).....348-HELP  
Red Door for Venereal Disease...348-6300  
Meadow Brook Women's Clinic for Abortion....925-4640  
Teenage Medical Services.....335-6408  
Hennepin County Attorney's Office  
Sexual Assault Services .....348-5397,5545

If the assault occurred in Ramsey County or St. Paul, the agencies to call are:

St. Paul Police Department.....291-1234  
St. Paul Ramsey Hospital  
Sex Offense Service (SOS).....222-4260  
Emergency Social Service.....225-1575  
Ramsey County Sheriff.....484-3366

Sexual assault may also be reported to any of the numerous suburban police departments or hospitals, or to the University of Minnesota Police Department or Hospital if the assault occurred there.

Most important of all is not to whom the victim reports, but simply that the assault is reported so that the victim's physical injuries and emotional needs may be treated.

Very frequently the sex offender will threaten future reprisals if the victim reports the crime. It has been shown that such threats are almost always idle attempts to frighten the victim from reporting. Very few, if any, sex offenders would chance a second attempt with the same person. Victims may rest assured such threats are common and are not given with any intent to fulfill. It is understandable that an assault victim will be inclined to heed the threat. But remember, if the crime is not reported, the assailant is free to attack the victim or anyone else again. Upon reporting, the victim will receive police protection and prompt, understanding medical and counseling attention.

C. What To Do During A Sexual Assault:

During the assault, the victim should be advised to use his/her senses as discussed supra. If possible, the victim should leave evidence at the scene of the crime, such as finger-

prints, a coat or blouse button, ear-rings, a shoe or anything else that could confirm the victim's presence at the scene of the crime.

D. Immediately following the crime, the victim is advised:

DO NOT bathe or otherwise clean up. This probably will be very difficult, but is absolutely necessary in order to preserve evidence critical to identification of the assailant.

DO NOT comb hair, put on make-up, cover up a physical injury or in any way straighten up because pictures will be taken and submitted to the jury. The worse the victim looks, the better the case against the assailant will be.

DO NOT clean, rearrange or alter the scene of the crime. Again, valuable evidence may be destroyed in the process and pictures will also be taken. Fingerprints or other evidence identifying the assailant may also be obtained.

While these DO NOT'S following a sexual assault are very difficult to resist, please remember they can make or break a sexual assault prosecution.

## V. THE SEXUALLY ASSAULTED PERSON'S FEELINGS

Probably the most difficult aspect of sexual assault to predict, let alone understand, is the victim's emotional state.

Obviously, because of the severity of the crime on the victim's emotional well-being and because you, the law enforcement, medical, social service and prosecutorial personnel, will be dealing with the victim at all stages of their emotional state, it is necessary for you to be familiar with what observation has shown, generally, to be standard emotional reactions.

If you know where someone "is coming from" you will be much better able to meet their personal needs and those of their families as well as perform your other professional responsibilities.

Clearly, one of your responsibilities is to care for the victim's emotional health which is, indeed, perhaps the most difficult to diagnose.

This chapter briefly states what emotional progression the victim will manifest. You will undoubtedly experience the victim's confrontation with these stages as you work with the victim. You will find that this emotional progression closely parallels the emotional stages that you identify with a dying person, but these stages occur to a greater or lesser degree in a person suffering from any emotional crisis.





## V. THE SEXUALLY ASSAULTED PERSON'S FEELINGS

During the assault itself, the victim will probably be frightened, scared or threatened beyond anything the victim has known. It is terribly traumatic and beyond comprehension.

Following the assault, observations indicate a variety of emotional reactions. The sequence, duration and intensity of these reactionstages will certainly vary with each assaulted person. Generally the following reactions will emerge:

A. Relief--It's finally over; the assailant is gone and I'm alone.

B. Shock, numbness--Almost any traumatic event or crisis produces this response. It's an attempt to believe the assault has not occurred. An attempt to regain the normal living pattern occurs. The victim will be very brittle and will more than likely fluctuate between hysteria and over-control.

C. Guilt, shame--The victim begins to ask his or herself if "I asked for it" or if he/she fought hard enough. Victims even blame themselves. Depression sets in and the victim's self-respect disappears. Nightmares, flashbacks and thoughts of suicide frequently occur.

D. Fear, paranoia--This reaction is usually present throughout all of the stages of reaction. Threats of reprisal and fear of being assaulted again, even by people loved and trusted justifiably enter the victim's mind. This fear is certainly justified because the assault was never expected the first time. It can happen again, and the victim knows it.

E. Discomfort--There is an unwillingness by the victim to accept his/her own bad feelings about self, such as

hangups the victim may have about sex. This stage may last a lifetime. It can inhibit the victim's ability to discuss the actual crime, although the victim may be comfortable generalizing about sexual assault or about the "mentally disturbed" assailant. Often nightmares and flashbacks subside during this stage.

F. Recognition--The confusion and discomfort still twist up the victim's insides and the victim wants to discuss it but has difficulty finding anyone to listen. The victim can't work it out without a listener but most people urge the victim to forget it and not drag it up again.

G. Anger--This is the best stage because it cleans, is healthy, honest and long overdue. The anger is frustrating because it is directed both at the assailant and at society.

H. Acceptance--This stage puts it all behind as the victim begins to look ahead. "It happened; it was terrible, but it's over."

Many sexually assaulted persons find that reporting the crime, and prosecuting the assailant helps them to work through the emotional trauma of the crime. Even when prosecution is impossible, such as when the assailant is never identified, reporting enables the assaulted person to find whatever emotional help is needed.

VI. MINNESOTA'S CRIMINAL SEXUAL CONDUCT LAW

Because law enforcement, medical, social service and prosecutorial personnel and agencies are cooperating toward the same end, they must all be aware of the legal standard required by the state.

The 1975 Minnesota Legislature enacted a Criminal Sexual Conduct Law that is as far reaching as any in the country.

This chapter is an exhaustive and detailed summary of that new law. Under the new law, Criminal Sexual Conduct is much more than rape, sodomy and indecent liberties. Criminal Sexual Conduct is now, instead, unconcerned with the gender of the victim or assailant and is readily applicable to the prosecution of such things as same sex assault or an unauthorized touching of another person's "intimate parts".

The new law also makes significant changes in the admissibility of evidence. It is no longer possible for the defense to, in effect, put the victim on trial by being able to drag up the victim's past sexual conduct (except in certain restricted instances and under close court scrutiny).

The new law also defines what will be the new legally acceptable terminology regarding Criminal Sexual Conduct.

To work with law, you must know what it says.

VI

## VI. MINNESOTA'S CRIMINAL SEXUAL CONDUCT LAW

The 1975 Minnesota Legislature took a significant step when it enacted a broad far-reaching new sex offense law.

The changes are comprehensive: The law provides that sex offenders and victims, whether male or female, will be treated equally, and provides a rational scheme for determining the severity of sex crimes. This law makes Minnesota's sex offense law one of the best in the nation.

Definitions have been specified and updated:

Actor: Person accused of criminal sexual conduct.

Force: When an actor commits or threatens to commit a crime against someone which causes the complainant to believe the actor is capable of doing what is threatened and which also causes the complainant to submit to the actor's wishes.

Consent: A voluntary unmistakable appearance of agreement to perform a particular sex act, which agreement must be at the time of the act.

Intimate Parts: Includes the primary genital areas, groin, inner thighs, buttocks, or breast of any person.

Mentally Defective: A person suffering from a permanent or temporary mental defect that makes that person incapable of understanding his/her conduct.

Mentally Incapacitated: A person who, due to liquor, drugs or other substance taken without the taker's consent, or due to some act upon the taker, that temporarily makes the person unable to understand or control his/her conduct.

Personal Injury: Bodily harm, severe mental anguish or pregnancy.

Physically Helpless: A person physically unable to communicate that he/she does not consent to an act, and the actor should know such inability exists.

Position of Authority: A parent or a person acting in place of a parent with a parent's rights and duties to a child; or a person who, even for a brief period, is responsible for the health, welfare or supervision of a child.

Sexual Contact: Includes the following acts committed without the complainant's consent (except where consent makes no difference, such as with a child), if the acts were for the actor's sexual or aggressive satisfaction:

(a) Intentional touching by the actor of complainant's intimate parts;

(b) Forcing complainant to touch another's intimate parts;

(c) Forcing another to touch complainant's intimate parts; and

(d) In any of the above instances, the touching of the clothing covering the immediate area of the intimate parts.

Sexual Penetration: Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, no matter how slight, into the genital or anal openings of complainant's body by any part of the actor's body or any object used by the actor, if done without complainant's consent (except where consent makes no difference). An emission of semen is not necessary.

Complainant: Person alleging to have been subjected to criminal sexual conduct.

The new law also classifies "criminal sexual conduct" into four degrees.

"First degree criminal sexual conduct" is punishable by up to 20 years imprisonment and occurs when the actor sexually penetrates another person and one of the following circumstances exist:

- (1) Complainant is under 13 years old and the actor is more than three years older. Mistake of the complainant's age and complainant's consent are not defenses by the actor,\* or
- (2) Complainant is 13 to 16 years old and the actor is four years older and is in a position of authority over complainant, and uses such authority to force the complainant to submit. Mistake of age and consent are not defenses,\* or
- (3) Circumstances at the time of the act cause the complainant to reasonably fear that great bodily harm will result to him/her if he/she does not submit, or
- (4) Actor has a dangerous weapon and threatens complainant with it in order to get complainant to submit, or
- (5) The actor personally injures complainant and forces sexual penetration or the actor knows the complainant is mentally defective, mentally incapacitated or physically helpless, or
- (6) The actor is aided by others who use force or a dangerous weapon to get complainant to submit.

"Second degree criminal sexual conduct" is punishable by up to 15 years in prison and occurs:

- (1) If the actor has sexual contact (first degree requires penetration) with another and
- (2) One of the above (1-6) circumstances of first degree exist.

"Third degree criminal sexual conduct" requires sexual penetration and is punishable by 10 years imprisonment, if one of the following circumstances exist:

- (1) Complainant is under 13 years old and the actor no more than three years older (in first and second degree, actor must be more than three years older)\* or

- (2) Complainant is aged 13 to 16 and actor is more than two years older and not in a position of authority. If, however, the actor is no more than four years older and shows he/she believed complainant was over 16, actor can only be imprisoned up to five years,\* or
- (3) The actor uses force to penetrate (without inflicting personal injury, as in first degree), or
- (4) The actor knows complainant is mentally defective, mentally incapacitated or physically helpless (consent is no defense).

"Fourth degree criminal sexual conduct" does not require sexual penetration (unlike first and third degrees) and is punishable by up to five years imprisonment if the actor sexually contacts another and any of the following exist:

- (1) The complainant is less than 13 years old and the actor is at least three years older (consent is a defense here and sexual contact short of penetration between children is not a crime),\* or
- (2) Complainant is 13 to 16 years old and actor is more than four years older or is in a position of authority, which position the actor uses to coerce submission,\* or
- (3) The actor forces the contact (without inflicting personal injury as in second degree), or
- (4) The actor knows the complainant is mentally defective or incapacitated or physically helpless (consent is no defense).

\* In Minnesota, a child under 14 years of age is incapable of committing a crime and must be prosecuted in Juvenile Court. A finding of Delinquency in Juvenile Court is not a criminal record. A child between 14 and 18 years of age is presumed incapable of committing a crime, but if the crime is particularly severe and/or the Juvenile Correction Facilities

are inadequate for rehabilitating the child, the child can be certified by the Juvenile Court to stand trial as an adult. A person who is 18 years of age or older is an adult under Minnesota law. Accordingly, an actor under 14 years old cannot be prosecuted under the Minnesota Criminal Sexual Conduct Law, and an actor between 14 and 18 years old can only be prosecuted if the actor is certified to stand trial as an adult.

The new law also provides a minimum three-year sentence for a second offense within a fifteen-year period following the first offense, unless the defendant successfully completes an anti-social sexual behavior treatment program.

The new law makes sweeping changes in the evidence requirements in a rape prosecution. The law specifically states that the victim's testimony need not be corroborated.

The victim is also not required to have resisted the actor.

A major change in evidence no longer permits the victim's previous sexual conduct to be used in court. Women, in particular, will no longer be subject to the familiar defense tactic of dragging up her past sexual behavior. The very specific exceptions to this general rule are:

- (1) When the victim has engaged in very similar sexual behavior under similar circumstances in the prior calendar year and the actor-defendant is suggesting the victim therefore consented to the act or fabricated the whole story;
- (2) Evidence showing sexual activity explaining the source of semen, venereal disease or pregnancy that is present at the time of the crime or that becomes apparent between the incident and trial;
- (3) Evidence of complainant's past sexual conduct with the defendant;

- (4) Evidence to show the complainant has not told the truth at the trial; or
- (5) Evidence that the complainant has made previous wholly unsubstantiated claims of criminal sexual conduct to establish that the victim fabricated the charge against the defendant.

Introduction of the above exceptions must be in accordance with a set procedure requiring court review and court permission before any such evidence can be presented at the trial.

The court can no longer instruct juries that:

- (1) A complainant who has consented to prior sexual intercourse with other persons would be likely to consent with defendant;
- (2) Complainant's other sexual conduct in and of itself may be used in determining complainant's credibility;
- (3) Criminal sexual conduct is easily charged but difficult to disprove; or
- (4) The complainant's testimony should be scrutinized any more closely than that of any other witness in any other felony.

The law does not cover adults living together and maintaining an ongoing voluntary sexual relationship. Married persons also are not covered under the law unless living apart and one has filed for separate maintenance or dissolution of the marriage.

The law also provides that the county where the crime has been committed shall pay the expense for the medical examination conducted to gather evidence for possible prosecution.

The law also reduces the age of consent from 18 to 16.

Finally, the new law makes death caused while committing first or second degree criminal sexual conduct (formerly only rape and sodomy were covered) subject to a first degree murder charge.

On the last day of the 1975 Legislative Session, when the Criminal Sexual Conduct bill was passed, a provision in the bill was deleted that would have repealed a number of statutes that make consensual sex acts criminal. However, not only did the Legislature retain bestiality, fornication, adultery, and consensual sodomy as criminal acts, but also the Legislature retained the old statute on aggravated sodomy, sodomy, and sodomy upon or with a child. As a result, any act of sodomy that is subject to criminal charges under the old sodomy law is necessarily also subject to criminal charges under either first or third degree Criminal Sexual Conduct. We recommend that prosecutors file a two-count complaint in sodomy cases; for example, Count I, Aggravated Sodomy (the old law), and Count II, Criminal Sexual Conduct in the First Degree. Two-count complaints may facilitate plea negotiations inasmuch as the old law carries higher penalties and they will facilitate trials as well. The new evidentiary laws apply to the old statutes that were retained, as well as to the new law.

## SEX CRIMES

## CHAPTER 374

H.F.No.654

[Coded in Part]

An Act relating to crimes; specifying the acts constituting sexual offenses; admissibility of evidence in sex offense prosecutions; providing penalties; amending Minnesota Statutes 1974, Section 609.185; and Chapter 609, by adding sections; repealing Minnesota Statutes 1974, Sections 609.29; 609.291; 609.292; 609.295; and 609.296.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1974, Section 609.185, is amended to read:  
**609.185 Murder in the first degree**

Whoever does either of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life:

- (1) Causes the death of a human being with premeditation and with intent to effect the death of such person or of another; or
- (2) Causes the death of a human being while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence, either upon or affecting such person or another.

Sec. 2. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.341 Definitions**

Subdivision 1. For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. "Actor" means a person accused of criminal sexual conduct.

Subd. 3. "Force" means commission or threat by the actor of an assault, as defined in section 609.22, or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat, and also causes the complainant to submit.

Subd. 4. "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

Subd. 5. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct.

Subd. 7. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct due to the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his agreement, or due to any other act committed upon that person without his agreement.

Subd. 8. "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to act and the condition is known or reasonably should have been known to the actor.

Subd. 10. "Position of authority" includes but is not limited to any person acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Subd. 11. "Sexual contact" includes any of the following acts committed without the complainant's consent, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses, except in those cases where consent is not a defense:

- (i) The intentional touching by the actor of the complainant's intimate parts, or
- (ii) The coerced touching by the complainant of the actor's, the complainant's, or another's intimate parts, or
- (iii) The coerced touching by another of the complainant's intimate parts, or
- (iv) In any of the cases above, of the clothing covering the immediate area of the intimate parts.

Subd. 12. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant's body of any part of the actor's body or any object used by the actor for this purpose; where the act is committed without the complainant's consent, except in those cases where consent is not a defense. Emission of semen is not necessary.

Subd. 13. "Complainant" means a person alleging to have been subjected to criminal sexual conduct.

Sec. 3. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.342 Criminal sexual conduct in the first degree**

A person is guilty of criminal sexual conduct in the first degree and may be sentenced to imprisonment for not more than 20 years, if he engages in sexual penetration with another person and if any of the following circumstances exists:

- (a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or
- (b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to coerce the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or
- (c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or
- (d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

- (i) The actor uses force or coercion to accomplish sexual penetration; or
- (ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

- (i) An accomplice uses force or coercion to cause the complainant to submit; or
- (ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

Sec. 4. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.343 Criminal sexual conduct in the second degree**

A person is guilty of criminal sexual conduct in the second degree and may be sentenced to imprisonment for not more than 15 years if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to coerce the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

- (i) The actor uses force or coercion to accomplish the sexual contact; or
- (ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) An accomplice uses force or coercion to cause the complainant to submit; or

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

Sec. 5. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.344 Criminal sexual conduct in the third degree**

A person is guilty of criminal sexual conduct in the third degree and may be sentenced to imprisonment for not more than ten years, if he engages in sexual penetration with another person and any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant and not in a position of authority over the complainant. In any such case it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor believes the complainant to be 16 years of age or older. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, he may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense; or

(c) The actor uses force or coercion to accomplish the penetration; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless.

Sec. 6. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.345 Criminal sexual conduct in the fourth degree**

A person is guilty of criminal sexual conduct in the fourth degree and may be sentenced to imprisonment for not more than five years, if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no less than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant and uses this authority to coerce the complainant to submit. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older; or

(c) The actor uses force or coercion to accomplish the sexual contact; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless.

Sec. 7. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.346 Subsequent offenses**

Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.346 within 15 years of the prior conviction, the court shall commit the defendant to the commissioner of corrections for imprisonment for a term of not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted; provided, however, that the court may invoke the provisions of section 609.135, if a specific condition of the probationary term under section 609.135 includes the successful completion of a treatment program for anti-social sexual behavior, and such person shall not be eligible for parole from imprisonment until he shall either have served the full minimum sentence herein provided, or until he shall have successfully completed a treatment program for anti-social sexual behavior as herein provided notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

Subd. 2. For the purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has been at any time convicted under sections 609.342 to 609.346 or under any similar statute of the United States, or this or any other state.

Sec. 8. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.347 Evidence**

Subdivision 1. In a prosecution under sections 609.342 to 609.346, the testimony of a complainant need not be corroborated.

Subd. 2. In a prosecution under sections 609.342 to 609.346, there is no need to show that the complainant resisted the actor.

Subd. 3. In a prosecution under sections 609.342 to 609.346, evidence of the complainant's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4, and only to the extent that the court finds that any of the following proposed evidence is material to the fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) When consent or fabrication by the complainant is the defense in the case, evidence of such conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue on the part of the complainant, relevant and material to the issue of consent or fabrication. Evidence of such conduct engaged in more than one year prior to the date of alleged offense is inadmissible;

(b) Evidence of specific instances of sexual activity showing the source of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial;

(c) Evidence of the complainant's past sexual conduct with the defendant;

(d) For purposes of impeachment, when such evidence is offered to rebut specific testimony of the complainant.

Subd. 4. The defendant may not offer evidence described in subdivision 3 except pursuant to the following procedure:

(a) A motion shall be made by the defendant prior to trial, unless later for good cause shown, stating to the court and prosecutor that the defendant has an offer of proof of the relevancy of the evidence of the sexual conduct of the complainant which is proposed to be presented;

(b) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the defendant to make a full presentation of his offer of proof;

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the sexual conduct of the complainant is relevant and material to the fact of consent, and is not so prejudicial as to be inadmissible, the court shall make an order stating the extent to which evidence is admissible under subdivision 3 and prescribing the nature of questions to be permitted at trial. The defendant may then offer evidence pursuant to the order of the court;

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in subdivision 3 admissible, the defendant shall make the disclosures under clause (a) of this subdivision and the court shall order an in camera hearing to determine whether the proposed evidence is admissible by the standard herein.

Subd. 5. In a prosecution under sections 609.342 to 609.346, the court shall not instruct the jury to the effect that:

(a) It may be inferred that a complainant who has previously consented to sexual intercourse with persons other than the defendant would be therefore more likely to consent to sexual intercourse again; or

(b) The complainant's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the complainant; or

(c) Criminal sexual conduct is a crime easily charged by a complainant but very difficult to disprove by a defendant because of the heinous nature of the crime; or

(d) The jury should scrutinize the testimony of the complainant any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

Sec. 9. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.348**

Laws 1975, Chapter 374 shall not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

Sec. 10. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.349**

A person does not commit criminal sexual conduct under Laws 1975, Chapter 374 if the actor and complainant were adults cohabiting in an ongoing voluntary sexual relationship at the time of the alleged offense, or if the complainant is the actor's legal spouse, unless the couple is living apart and one of them has filed for separate maintenance or dissolution of the marriage. Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by any person against his legal spouse.

Sec. 11. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.35 Costs of medical examination**

No costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a complainant of criminal sexual conduct, when the examination is performed for the purpose of gathering evidence for possible prosecution, shall be charged directly or indirectly to the complainant. The reasonable costs of such examination shall be paid by the county in which the alleged offense was committed. Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private.

Sec. 12. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

**609.351 Applicability to past and present prosecutions**

Except for section 609.347, crimes committed prior to August 1, 1975, are not affected by its provisions.

Sec. 13. Minnesota Statutes 1974, Sections 609.29; 609.291; 609.292; 609.295; and 609.296 are repealed.

Approved June 5, 1975.



## VII. THE POLICE INVESTIGATION

Because effective criminal sexual assault prosecution relies on the combined efforts of law enforcement, medical, social service and prosecutorial personnel and agencies it is necessary, as a practical matter, to be fully cognizant of the professional responsibilities of one another when dealing with sexual assault.

Three of the following chapters (VII The Police Investigation, VIII The Hospital Examination, X The Prosecution) will state in detail what the responsibilities of each of you are.

This chapter, The Police Investigation, includes statements of the basic principles that investigating officers ought to keep in mind. It further states what kind of situations the officer will most likely confront upon investigating and also what his goals should be when investigating.

This chapter sets forth the duties of the various officers involved in a sexual assault investigation, namely, the dispatcher, the investigating officer generally, the first squad to respond, and the detective.

The evidence that is normally required for a sexual assault prosecution is also explained in detail. In order for you to obtain such evidence you must obviously be aware of what you are seeking and why. This chapter contains such information.

Finally, the chapter explains in medically understandable language the tests that the hospital examination will probably perform.

Because the officer will most likely be the victim's first contact after the assault, he necessarily should be able to briefly explain what tests the hospital will take and why.

**VII**

The better equipped the officer is the better able to deal with the situation the victim will be.

The victim is by far the most important concern of the police officer.

## VII . THE POLICE INVESTIGATION

There are two basic situations with which police officers must be concerned when investigating a sex offense.

The first situation confronting the officer is to deal appropriately with the emotional distress of the victim and the victim's family. The second situation is to properly investigate the case and preserve the evidence for possible prosecution.

The following guidelines are ways in which police officers are trained and which can most effectively satisfy both the needs of the victim and the needs of the prosecution, which need not be inconsistent. A victim who is treated with kindness and patience and who understands what the officer is doing and why, will be of far more assistance in the investigation and will usually be a better witness for the prosecution. At the same time, a thorough investigation at first will produce a stronger case for trial than the situation where the initial investigation is sketchy and a detective must later attempt to reconstruct evidence that has disappeared or been destroyed.

The guidelines here are of particular use to the police officer who responds to the victim's complaint, and whose initial investigation often provides the bulk of the prosecution's evidence at trial.

### A. IMPORTANT PRINCIPLES:

1. In the crisis situation, the police officer is both a social worker providing human services and a trained investigator. Both roles are equally important.
2. The victim of a sex offense is always humiliated, defensive, and distrustful, and may also be angered,

afraid, or hysterical. The victim might also be in shock and appear absolutely calm and collected.

a. In dealing with the victim of a sex offense, the officer will be patient and explain what he is doing and why so that the victim understands the need for each step in the investigation procedure. The officer will offer alternatives, such as "would you like to tell me what happened here or would you like to sit down first," so that the victim feels some control of the situation. The victim will be far more willing to cooperate and be able to offer real assistance to the investigation only when it is understood what is needed and why. A successful prosecution can only result if the entire truth is known and if the victim feels further victimization by police, accurate and full details may be lost.

3. The victim's family is likely to show emotions ranging from silence to hysteria to vicious anger. The victim's parents, spouse or lover may react with anger because they feel helpless to correct the situation. That anger may be turned against the victim by blaming the victim for whatever happened.

a. The officer will not interview the victim in the presence of family or friends except when dealing with a very small child, in which case the parent will be asked to encourage the child to tell the story without permitting the parent to tell it for the child. The victim usually will not be

as candid if family or friends are present, and may not want family to hear the details at all, so the officer should briefly inform the family generally what happened and suggest that they should not inquire into details unless the victim volunteers them. To do otherwise could lead to confusion and problems with the investigation.

b. The officer will contact a relative or close friend for the victim if desired, and request that person to meet either at the hospital after the medical examination or some place else that is convenient and at a time that will not interfere with the initial investigation. The officer must make sure that someone is present to comfort and be with the victim once the investigation has been completed. However, care must be taken to not let family or friends interfere in any way with the investigation.

4. Ordinarily, the only witnesses to a sex offense are the victim and the assailant. Corroborating evidence, which is evidence tending to prove the crime ultimately charged, is often necessary to achieve a conviction, although not required by law. However, a jury will rarely convict a defendant unless there is some corroborating evidence in addition to the victim's testimony. There is not much corroborating evidence available in a sexual assault case. Unfortunately,

what available evidence there is, is most often subject to rapid destruction such as sperm, blood stains, dirty or messy clothing or hair, minor abrasions or scratches, physical evidence to identify the scene, or evidence of a struggle. Even minor details such as the victim's recollection that there was a red light bulb in the ceiling of the room to which the defendant took the victim, if proven, will provide very important corroborating evidence. It is therefore essential that every bit of possible evidence be preserved and gathered immediately.

5. In a sex offense, statements by the victim soon after the crime about what happened and the identity and description of the assailant are admissible in court to corroborate the victim's testimony. In Minnesota, such statements made by the victim soon after the offense are admissible as evidence of the victim's prompt complaint, which is a specific exception in sexual assault cases to the general exclusionary rule against hearsay evidence. They are admissible basically because of the principle that an immediate statement made under the influence of an exciting or traumatic event before the individual has an opportunity to reflect or to fabricate a story is likely to be reliable. Frequently, the police officer is the first person to whom the victim tells the story in any detail. If the police officer's interview with the victim occurs reasonably soon after the crime or reasonably soon

after the victim was able to reach safety, the officer will be able to testify at trial what the victim related to him. It is therefore important for a police officer initially interviewing the victim to make a complete report of the story, but he should make it in his own words rather than attempt to recall quotations that might later be used to embarrass the victim, who may not remember the exact words used originally.

6. The officer who initially interviews the victim should do his best to report the details of what the victim informs him but should not attempt to question the victim about minute details not volunteered. If he does, the victim is likely either to clam up or to tell him a partial story which will later cause problems in any trial. The initial investigating officer, under that stressful situation, will not have the time to establish the same kind of rapport with the victim that the investigating detective will later be able to establish, so the inquiry concerning details should be left to the detective and the prosecutor.
7. The detective must discover the entire story and the complete truth about the incident. A victim will usually withhold important intimate details about the offense because of embarrassment or because some aspect of it, such as sodomy, was very repugnant. Evidence of prior sexual conduct is no longer allowed under Minnesota law except in very limited circumstances. The fear of having one's past sexual behavior laid bare before the world is no longer possible. Only in rare

instances will previous sexual conduct be admitted into evidence in court, such as previous activity with the assailant. The initial investigating officer needs to achieve sufficient rapport with the victim so that when he leaves, he is personally convinced as to whether or not a crime occurred, he is confident the victim has given him an accurate description of the suspect, and he has gathered or preserved and turned over to detectives all available physical evidence and the names of any potential witnesses. The detective, on the other hand, must develop a rapport with the victim to enable him to be convinced that he knows everything about the offense and everything about the victim that is relevant to the case.

## B. DUTIES OF THE OFFICERS INVESTIGATING A SEX OFFENSE

### 1. Dispatcher:

The police dispatcher receiving a call about a sex offense will advise the victim to wait wherever the victim is for a police squad. If in a safe place, he will advise the victim not to comb hair, clean up, change clothes or bathe. If possible, the dispatcher should keep the victim on the line and let the victim know when the squad has arrived to answer the call so as not to be further frightened by the arrival of the police.

### 2. Police Officers investigating a sex offense generally:

- a. Never write a joint report with another officer -- each officer must always write his own.
- b. If one officer has interviewed the victim, the other officer shall direct questions to him rather than subjecting the victim to repeated police questioning.
- c. As soon as one police squad has arrived and has the situation under control, all other squads should leave the scene immediately to avoid confusion both at the scene and at trial. The sergeants or detectives squad and the laboratory squad will be called, and should be the only squads present in addition to the initial squad of patrolmen.
- d. Officers, when writing reports, should never use ambiguous or qualified language such as the "alleged" victim: Such language sounds like the officer does not believe the story and a defense attorney will destroy the officer with cross-examination at trial. Officers should report completely, but not attempt to quote the victim

directly. Paraphrasing the victim's statement in the officer's own words is advised so the victim will not appear to be lying when the victim cannot recall word for word what the officer was told.

- e. Officers dealing with the victim should be honest about their own feelings. In other words, if embarrassed and uncomfortable, he should say so! The victim will be more comfortable knowing the officer is human.
- f. The officer will photograph the victim before any clothing is removed or before any cleaning or straightening up of the victim is done. Close-up photographs will be taken of any injuries to the victim, no matter how minor. The officer will need to obtain the assistance of the crime laboratory for the photographs of the victim and to process the scene. However, if the crime laboratory is unavailable, the evidence must be protected at the scene and the officer must take pictures himself. The pictures will be used to illustrate to the jury the victim's physical condition at the time immediately following the assault.
- g. If the officer accompanies the victim to the hospital for a medical examination, he should ask the examining doctor and any crisis center counselors who are present not to question the victim at all about the details of what happened. Obviously, the doctor must find out all relevant information for his medical examination, but ordinarily does not need to question about the lurid details of the crime itself. The officer should ask the doctor to take swabs for sperm and other tests

and if there is any bloody clothing or blood stains at the scene, ask him to take and preserve a blood test as well. These will be preserved for possible analysis.

- 3. Duties of the first squad responding to a sex offense complaint:
  - a. The officers who initially respond to a sex complaint usually provide the bulk of the evidence for the prosecution. The initial investigation is probably more important for a sex offense than for any other kind of case. Upon arrival, one officer will undertake the sole responsibility for dealing with and questioning the victim while his partner will assume primary responsibility for preserving the scene, gathering evidence, and seeking assistance from detectives and the crime laboratory.
  - b. The officer who interviews the victim will determine the exact time that the offense occurred to enable himself and the detectives to obtain all of the available evidence and to prevent phony alibis by the suspect.
    - 1) Investigative procedure will be explained to the victim. He will explain the need to hear what happened and that he needs a full description and any identifying characteristics of the suspect. He will explain what kinds of evidence he needs to enable the victim to assist him, that he must know the exact location of the offense, and that the victim will have to undergo a medical examination, both to discover and treat any injuries and to gather evidence for a possible prosecution.
    - 2) He will take notes of what the victim tells him to make his report as complete and accurate as possible,

not only to assist the detective with further investigation, but to assist himself and the prosecutor at trial.

- 3) The officer will stay with the victim throughout the initial investigative procedure, which means staying until she/he is free to return home, at which time he will deliver the victim to a family member or friend, if possible. The officer will answer the questions of other officers at the scene or he will present their questions to the victim himself, rather than permit other officers to question the victim. The officer will do this until the investigating detective can take over and take the detailed statement. The officer will seek to obtain not only the facts, description of the suspect and his identification if available, but also ascertain whether the victim has any injuries. The officer will make sure the victim's injuries and person are photographed and will take the victim to the hospital and remain there until the victim has finished at the hospital. He will obtain all clothing. The officer can be relied upon and is available should the victim need him.
- c. The officer will ask the victim to be available the next day because a detective will want an interview and a formal statement.
- d. The officer will obtain the names, addresses and phone numbers of all witnesses who saw the victim before the incident, who may have seen the victim with the suspect, anyone who may have seen or heard any part of the incident itself, and everyone to whom the victim spoke after the incident

and before the officer arrived. Statements from those individuals will have to be taken and may provide corroborating evidence at trial.

#### 4. Detectives:

- a. Burglaries that are committed where there is no evidence of theft or intended theft will be cross-referenced to and handled like sex cases because they are often committed by sex offenders.
- b. One detective or supervisor will act as coordinator to read and assign all sex offense cases and burglary cases where there was no evidence of theft or intended theft. Similar cases will all go to the same detective because sex offenders tend to repeat their crimes and this will make solving such crimes more likely.
- c. One detective will be assigned to be responsible for each sex offense case from the beginning of the investigation through trial.
- d. Identification Procedures:  
A lineup is always better to use than photograph identification. If there is not a suspect, photographs will not be shown to a victim unless it is a last resort, because the victim may well point out one or more pictures looking like the assailant, which will make any subsequent identification by the victim worthless in Court and will probably prevent prosecution of the suspect. REMEMBER, more than a mere identification of the suspect by the victim is needed to obtain a conviction.

5. Gathering the Evidence: Checklist In Sex Offense Cases

Most of the evidence will be preserved and gathered by the investigating officers, with the exception of intimate details to be learned from the victim by the detective assigned to the case.

a. Obtaining facts:

1) Victim- name, age, home and work addresses and phone numbers, permanent (family) address, marital status, number of children including illegitimate children, source of income, current friends' names and addresses, date of last intercourse and identity of partner, dates of any prior sexual assaults, details about any prior relationship with the suspect and its duration.

2) Offense- Exactly when it occurred, where it occurred, just how it occurred, what happened prior to its occurring and what happened after it occurred, as well as any reason for its occurrence, if one can be ascertained.

3) Suspect- Name and address, if known, or full and complete description:

Did the victim previously know or see the assailant before, and if so, for how long or when? How, at what time, where, and why did the victim meet up with the suspect on the date in question, did the victim ever date the suspect before, did the victim ever have conversation with, flirt with, or have any sexual contact, including kissing, with the suspect before or on the date in question? Obtain details of all conversations the victim had with the suspect on the date in question.

4) Witnesses- Obtain names, addresses and phone numbers of all parties who saw the victim before the incident, who saw or heard any part of the incident, who saw the victim with the suspect, or who talked with the victim after the incident and before the police arrived. Each of these individuals should be interviewed by the detective and statements taken from anyone with relevant information or to whom the victim stated what happened before the police arrived. This is in order to preserve the victim's statements of prompt complaint and for such individuals to report in testimony at trial.

5) Photographs-

a) Victim- If the victim has not changed clothing or cleaned up, be sure that full length photographs are taken, showing any damage or messing of clothing or hair before you take any of the clothing. Get close-up photographs of any injuries to the victim's person, no matter how minor.

b) Scene- If the scene is available without a search warrant, ask the crime laboratory to take detailed photographs of the scene, and to make a complete diagram of the scene where the incident occurred. The initially responding officers must protect the scene and see to it not only that photographs are taken and a diagram is made, but also that any relevant articles are seized and property inventoried as well as finger print examinations made. If it is impossible to get the laboratory officers at the time, make sure that the scene is preserved until they can get there, and



warn the victim not to disturb anything if the scene is in the victim's home. Obviously, if a rapist enters the victim's apartment through a window, any finger print evidence will be destroyed if officers or the victim are touching the window frame or window. If the scene is not available, but can be ascertained, the detective should obtain a search warrant to investigate the scene and to photograph and make a diagram of it, as well as to seize any relevant articles including any items identifying the room or area that the victim recalls and can describe.

6) Physical evidence from victim-

a) As stated, take all of the victim's clothing before letting the victim go home again or take the victim home to change and then obtain the clothing worn during the assault.

7) Medical examination of the victim- This must be done by a licensed or resident physician (an intern cannot always be qualified as a medical expert in Court and therefore should not conduct the examination).

a) The officer(s) should never be present in the examining room, and he should so inform a physician who mistakenly believes that his presence is necessary to conduct a legally proper examination.

b) Encourage the victim to sign a Medical Waiver, authorizing the release of the medical reports to the appropriate police and prosecuting agencies. Inform the victim that there is no obligation to prosecute by reporting the crime or by signing the medical waiver.

c) The medical examination should include the ordinary pelvic examination, blood and urine samples for VD and pregnancy tests, blood pressure, pulse, temperature, etc. Any evidence of abrasion, bruises, scratches, or other injuries should be photographed (by the doctor or by a nurse if they are located in private areas) and reported by the doctor in detail. If anal or oral intercourse occurred, the doctor should make the appropriate examinations for the presence of seminal fluid.

d) The officer should receive the following evidence from the doctor or nurse:

(1) Victim's clothing (everything) unless the victim must be taken home to get other clothing first.

(2) Photographic film to be developed by police if photographs have been taken at the hospital.

(3) Fingernail scrapings in sealed containers, if relevant.

(4) Pubic hair combings together with the comb used, in a sealed envelope.

(5) Victim's saliva sample on a 2" x 2" sterile gauze in a sealed container.

(6) 2 tubes of victims blood (1 serum tube and 1 Oxylate tube) for police lab testing for blood-type. The victim's blood may also be used to test for blood alcohol and/or the presence of certain drugs, such as barbiturates.

(The blood must be refrigerated.)

- (7) Urine sample if it is suspected that the victim may have been given or may have taken any drugs other than alcohol- urine must also be refrigerated.
- (8) A 2" x 2" gauze in a sealed and labeled container from the vagina. If other body orifices are involved, e.g., the anus or oral cavity, these will be included in separate containers. This test is usual for laboratory sperm typing, and can be used for acid phosphatase testing.
- e) All evidence received must be marked with the victim's name, date, hospital number, name of person taking evidence, name of any other person in the chain of evidence, and the name of the officer receiving it.
- (1) Properly inventory all items taken, making sure that items needing refrigeration are properly preserved.
- f) The purposes of the various laboratory tests follow this section.
- 8) Physical evidence from the suspect - In addition to photographs of the suspect's person, clothing and any injuries, and the taking of the suspect's clothing, a search warrant should be obtained for a blood sample and samples of head, chest, or pubic hair if relevant to evidence found on the victim or at the scene of the crime, to be analyzed at the BCA for further identification of the suspect. If the suspect is arrested shortly after the crime, and appears to be intoxicated, an immediate blood test should be done to determine the alcohol or drug level, and a detective

should consider making a video tape of his interview with the suspect to show that the suspect understands what is going on and is capable of making decisions.

Sex offense investigations present some unique problems in gathering and preserving the evidence so that the case for prosecution will be as strong as possible. Proper procedure in the investigation is particularly important because of the difficulty of obtaining a conviction in a sex case, even with a relatively strong case. The patrolman's efforts are more essential and important in a sex case than they usually are in any other felony case. In addition, police officers have the extra problem of dealing with the victim's emotional crisis, as well as conducting the crime investigation itself.

### C. THE SEXUAL ASSAULT LABORATORY TESTING

Hennepin County Medical Center, the Minneapolis Police Department, the Hennepin County Attorney's Office, and the Neighborhood Involvement Program Rape Counseling Center, jointly developed the following medical evidentiary procedures:

The victim will be asked to report the incident to the Police and will later make the decision whether to prosecute. Many victims first think they will not prosecute but decide days or weeks later to prosecute. If the victim has had a medical evidentiary examination, the victim will have a legally correct foundation for prosecution, should he/she later decide to prosecute.

The medical examination has three goals:

- (1) Tests to determine and treat the full extent of the victim's injuries;
- (2) Care for the victim's emotional needs; and
- (3) To obtain legally correct evidence.

If a person is sexually assaulted and goes to the hospital, he/she will first be asked by the hospital to sign a waiver authorizing a complete medical examination and releasing the examination records to the police. The waiver in no way obligates the victim to prosecute.

The following medical questions will be asked of the victim by a nurse and/or doctor, where applicable. Some of the questions can be embarrassing, but they are important for the victim's medical well-being, as well as being important if he/she decides to prosecute.

- (1) Are you having pain, internal or external bleeding?
- (2) How old are you? (At Hennepin County Medical Center, if you are 16 years or older, you make the decision as to who knows about your assault...parents, guardian, relatives.)

(3) When was your last menstrual period and the length of your normal menstrual cycle, as well as any menstrual abnormalities?

(4) When was your last pap smear? (If you desire, you can have a pap smear with the exam.)

(5) Are you using any birth control method? What method or device are you using?

(6) Are you taking any drugs or medication? Were you drugged by your attacker?

(7) When did you last have sexual relations before the sexual assault?

(8) What was the time and date of the sexual assault?

(9) Did the attacker force you into several kinds of sexual acts? (This is very common, although often embarrassing to talk about.)

(10) Did ejaculation occur? If so, where on your body is the sperm or seminal fluid?

These are the tests which will be performed at the hospital:

(Prepared by Garry F. Peterson, M.D., Forensic Pathologist, Deputy Hennepin County Medical Examiner, Minneapolis, Minn. Pathologist, St. Paul-Ramsey Hospital, St. Paul, Minnesota.)

(1) Fingernail scrapings, if foreign substance is observed under your fingernails:

Material removed from beneath fingernails may occasionally have value. Fibers, hairs, bits of skin, blood, etc., which have been recovered may be matched microscopically, chemically, or serologically (by blood group) to material from the scene, the assailant, etc. Broken fingernails may occasionally be matched with nails found at the scene or on the assailant's clothing.

(2) Wood's Lamp Examination of any areas on the victim's body where sperm or seminal fluid may have been deposited:

Examination of sperm or seminal fluid under the Wood's Lamp may occasionally be of value. Seminal fluid usually fluoresces in a pale yellow to a violet color; while the fluorescence is not distinctive and does not necessarily reflect the presence of seminal fluid, it may suggest areas on the body for examination.

(3) Pubic Hair Examination:

This test seems to be the one that most surprises people. Hair has 22 characteristics and can be matched. Microscopically, hairs may be somewhat distinctive and the assailant may be ruled in or ruled out by their presence, although the test can never positively determine that a particular hair came from a particular assailant. If pubic hair from the attacker is found on the victim, the hair can be important evidence. For the purposes of the test, preliminary combing is necessary at the time of the original examination. A comb is used to pick up the attacker's pubic hair (as well as the victim's). The comb and hairs are put into a container and the actual testing is done by the Minnesota State Bureau of Apprehension through coordination with the Police Department. If a suspect is picked up, the pubic hair will be matched to him, if possible, and if foreign hairs were found on the victim's body, In order to perform the necessary tests for matching, samples of the victim's head hair and pubic hair, as well as head hair and pubic hair from the suspected assailant must be taken. Since the head and pubic hair of a particular person do not change

with time, however, the patient may be able to return at a later time to have head and pubic hair samples taken at the hospital. This may even be done under local anesthetic inasmuch as 20 hairs with roots must be plucked from the pubic area, head, or any other area of the body where the hair which is the subject of testing is located. A search warrant should be obtained in order to take head, chest, or pubic hair samples from the suspect. The same search warrant may also authorize taking a blood sample for blood type testing.

(4) Sperm Motility:

Material from the vagina (or other body areas) can be examined under the microscope for sperm cells. If the sperm have been deposited recently (within the past six hours), they may still be alive (motile), and move about on the slide. A second slide is also made and stained with various dyes. The stained slide can often detect immotile sperm as long as 24 hours after intercourse. Stained specimens have two advantages. First, they may be cover-slipped and preserved indefinitely for review at a later time, even in court, and, secondly, this procedure will often detect sperm which are not picked up on the unstained motility specimen.

Presence and possible motility of sperm at the time of the initial examination is important. Sperm usually become immotile (dead) after approximately six hours in the vaginal vault and presence or absence of motility may be important if they are consistent with the stated time of the incident. False positives may occasionally be encountered if material is sampled from the endocervical mucous, which is physiologically part of the upper reproductive tract. Because of this, sperm

remain motile in the cervical mucous for extended periods of time and may cause confusion.

(5) Sperm Typing:

Under certain circumstances, it is possible to determine blood types of the attacker from sperm found on or in a victim. Body secretions (e.g., saliva, perspiration, mucous, vaginal secretions and seminal fluid) in approximately 80% of persons (secreters) contain blood group material for the ABO system, so that a secreter's blood type (O, A, B, or AB) can be determined from an analysis of such a body secretion. Depending upon the blood types of both the victim and the assailant, and depending upon whether either or both of them are secreters, material retrieved from the vagina has the potential of including or excluding a particular assailant. For the test, material from the vagina is collected on a gauze pad and actual threads from the pad are employed in a modified immunodiffusion procedure. Saliva samples from the suspect and the victim are used to determine secreter status. The saliva samples are quickly taken by having the victim (and the suspect, through use of a search warrant) moisten a sterile 2x2 gauze pad with saliva. Blood samples from both the victim and suspect are needed to establish their blood types. This test is especially valuable in excluding a wrongly accused suspect, but can also be helpful in corroborating the victim's identification of the suspect. The saliva samples and the blood samples should all be taken to the Minnesota Bureau of Criminal Apprehension (BCA), where the testing will be performed. The blood samples must be kept refrigerated.

(6) Acid Phosphatase:

Acid Phosphatase is an enzyme found in the secretions of the male prostate gland. It is found in extremely high concentrations in seminal fluid. Its presence definitely confirms recent sexual intercourse, and since it is independent of the spermatozoa, it can be especially useful where the assailant is sterile or has had a vasectomy. It may also be positive after sperm can no longer be detected and is detectable from 18 to 36 hours after secreted.

(7) Mouth, Anal and Body Surface Examination:

If oral sodomy or anal sodomy was involved in the assault, or if seminal fluid may have been deposited someplace on the body other than in the vagina, swabs will be taken and properly prepared from each part of the body where seminal fluid may have been deposited to determine the presence of sperm and acid phosphatase and for sperm typing, just as such tests are taken from the vagina.

(8) Toxicology Testing:

It is important to tell the physician whether the victim has been drinking or has taken any other drugs. If the victim has, blood and possibly urine tests will be taken to determine just how intoxicated the victim is. This will be important evidence in the event the defense attorney attempts to establish that the victim was so intoxicated as to have consented to the act. In addition, if the victim was forced to drink alcohol or take other drugs, the crime committed will be of a higher degree.

(9) GC Culture (Gonorrhea Testing):

Swabs for culture for phosphatase positive colonies are taken from the cervix, the urethra, and the rectum. Taking samples

from the three sites decreases the number of false negatives. Cultures taken at the initial examination will only rule out pre-existing gonorrhea. Re-culture in approximately 72 hours is necessary to detect gonorrhea contracted at the time of the assault. The cultures must be carefully plated and grown in a suitable atmosphere. Care must be taken to begin culture immediately after the sample is taken.

(10) VDRL -- Venereal Disease (Syphilis) Test:

A blood test for syphilis is important. An immediate VDRL will only detect a pre-existing venereal disease. However, the follow-up in 30 to 45 days will detect syphilis contracted at the time of the assault. Prompt treatment for syphilis is important to prevent permanent physical damage.

(11) Urine Test for Pregnancy:

An immunologic urine test for pregnancy can be important in establishing whether the victim was pregnant at the time of the assault, or determining whether she subsequently became pregnant. If there is a possibility that the victim could get pregnant from the attacker, the victim and the doctor will decide whether the victim should take the "morning after pill", which is D.E.S. therapy. This medication is highly effective in preventing pregnancy; however, it is remotely possible that a pregnancy could occur in spite of the medication. Should this happen, an abortion is indicated because of the serious effects on the development of the fetus from the D.E.S. therapy. If the victim should take this medication, the victim may experience a feeling of nausea (feeling sick to your stomach). If it is severe, the victim should call the Ob-Gyn Clinic at the Hennepin County Medical Center or the emergency room where

the victim was examined for advice. The victim should not stop taking the medication. It is necessary for the victim to take the entire five-day supply for it to be effective.

(12) Photos:

In addition, close-up photos may be taken of any injuries. A photo of an injury is strong evidence for the jury.

Follow-up:

- (1) Three days later the victim should have a test to see if he/she contracted gonorrhea from the attacker.
- (2) Thirty days later the victim should have a test to see if he/she contracted syphilis from the attacker.
- (3) If the victim fails to have a menstrual period within seven weeks of her last menstrual period that preceded the assault, she should have a pregnancy test performed. The pregnancy test can be taken at any number of clinics; refer to the directory and abortion information in this pamphlet.

### VIII. THE HOSPITAL EXAMINATION

Perhaps the most technical aspect of a sexual assault investigation is the hospital or medical evidentiary examination.

It is certainly the aspect that many sexual assault victims fear most and are most apprehensive about. The reason for this apprehension is not only the fact that the victim may think that hospital personnel are judgmental but also because it is an almost immediate physical and emotional intrusion, although for medical reasons, after the intrusive assault. A victim almost automatically seeks physical security, which is stripped away by the examination.

The general public attitude makes most people believe such an investigation is humiliating. That is not true. The medical exam is entirely performed by trained sensitive nurses and physicians who are fully aware of the trauma accompanying sexual assault.

Many sexual assault victims do not report for fear of what many believe to be a humiliating examination.

You as law enforcement, medical, social service and prosecutorial professionals must dispel this public miscomprehension and ignorance. A sexual assault medical exam is nothing more than a factual medically proper physical checkup designed first, to treat the victim and second, to obtain evidence.

This chapter contains the nursing protocol including the nursing history and physical sheet, the waiver form authorizing both the examination and release of the medical tests to law enforcement agencies and the follow-up information provided the victim upon the victim's exit from the medical center.

Also contained herein is the examining physician's protocol and standards of procedure.

A complete summary of the medical protocol from the time the victim enters the medical center until exit is also included.

Finally, this chapter sets forth the medical follow-up procedure for physicians, a discussion of the "morning-after" pill, a list of equipment needed for a complete medical evidentiary exam and a guide to expert medical legal testimony by physicians, nurses, and laboratory personnel.

Hopefully the victim's apprehension of the unknown, namely the medical exam, can be dispelled by all personnel coming in contact with sexual assault victims having, at the very least, a rudimentary understanding of the medical protocol which can be easily, simply and quickly explained to the victim.

#### VIII. THE HOSPITAL EXAMINATION

##### A. Nursing Protocol For Examination Of Sexual Assault Victim

###### General Guidelines:

In order to facilitate the care of the patient-victim and to provide for empathetic on-going support, the registered nurse has been designated as the primary care departmental staff member.

In practical terms, this means that nurses will be responsible for guiding the victim through the system as follows:

(1) A nurse will meet the patient-victim at the registration desk, introduce herself and escort the patient to an examining area where the victim will be registered. Every effort should be made to provide a room as soon as possible.

(2) If the patient is accompanied by a police officer, most of the necessary details can be obtained from him. (It has been established by the Police Department that unnecessary repetition of the incident by the victim tends to cause unconscious alteration of the basic details and may later, in court, cause the victim's testimony to lose credibility because of rapport with other persons. The additional details which must be gathered by the nurse will be elicited in the course of the history taking.)

(3) In addition to explaining the procedures which are part of the nurse's examination, she should also explain in general what will be done in terms of the physician's exam (answering any questions which the patient may raise).

(4) If the patient-victim is a minor, the nurse should, through conversation with the patient-victim, determine whether it is advisable to have a parent present during the exam and



communicate that information to the physician. Parents need not be contacted if the patient is (old enough) to understand (sixteen and older).

(5) To insure the continuity which seems to provide support for the patient-victim, it is essential that as few staff members as possible be involved. The R.N. should make every effort to be with the patient as much of the time as possible. If she has to leave the area, she should introduce a staff nurse to the patient-victim and that nurse will be responsible during her absence. If she must leave the patient alone, she should explain the reason for her absence to the patient.

(6) It is also important for the nurse to monitor the identification of lab and police specimens for legibility and completeness.

(7) In summary, the nursing staff should deal empathetically and responsibly with the patient-victim during the entire time the victim is in the department. At discharge, the victim is to be given the follow-up sheet and its contents explained as needed.

REMEMBER that the Rape Crisis Center has an on-call list in the department and, whenever indicated, that person should be notified of the need for her services, when the patient requests that assistance.

The R.N. should also encourage and explain why the patient-victim should report to police and also encourage and explain why the patient-victim should sign the medical examination waiver, even if the victim refuses to report it.

HENNEPIN COUNTY MEDICAL CENTER  
EMERGENCY DEPARTMENT  
NURSING SEXUAL ASSAULT REPORT

Pt. No.  
Address  
Phone No.  
Birthdate

OB-GYN HISTORY

Parity:	Last Pap Smear: Month Day Year	
L.M.P.:	Ave. Length Menstruation: Days	
Abnormalities of Menstruation:		
Last Intercourse:		
Current medications: (List)		Date:
A. Contraceptives:		Date of Incident: a.m.
B. Other:		Time of Incident: p.m.
Examination (Circle if taken):		

Examining Physician:

HCMC LAB TESTS				CRIME LAB TESTS			
1. Seminal Fluid on Body:	Yes	No		5. Fingernail Scraping:	Yes	No	
A. Where:				6. Pubic hair combing:	Yes	No	
B. Swab for sperm mobility & P-tase:	Yes	No		7. Saliva Sample:	Yes	No	
C. Swab for sperm stain:	Yes	No		8. Blood Type:	Yes	No	
2. VDRL	Yes	No		9. Sperm Typing Test:	Yes	No	
3. Pregnancy Test:	Yes	No		10. Blood Alcohol/Drugs	Yes	No	
4. GC if Indicated:	Yes	No		11. Urine for Drug I.D.:	Yes	No	
12. Photographs taken:	Yes	No		A. How many?			
B. What of?							

13. Blood Pressure: / T.P.R.  
14. Description of Physical Injuries (Subjective & Objective):

15. Orifices Involved:  
16. Ejaculation: Yes / No Where:  
17. Contraceptive Devices Used by Assailant:  
18. Since Assault (Circle): Bathing, Clothing Change, Douching, Other.  
Describe:

19. Stains on Clothing: Yes / No Describe:

20. Emotional Status (Subjective & Objective):

21. Disposition (Rape Crisis Center, Home, Clinic Appointment, Etc.):

22. Other Relevant Comments:

SEXUAL ASSAULT REPORT

NURSE

POLICE OFFICER Receiving Crime Lab Specimens

SEXUAL ASSAULT REPORT



It is also important that you return for a thirty day follow-up examination when a second test for syphilis will be conducted to determine whether you received syphilis from your assailant. The incubation period for syphilis is about four weeks and it cannot be discovered prior to that time.

The most important aspect of the venereal disease test at the time of the assault and at the three day and thirty day follow-up examinations is to ensure that you receive appropriate treatment as soon as possible. Women especially often have no symptoms of a venereal disease until the disease has already progressed a good deal. It is also important as evidence in a possible prosecution to determine both whether you had a venereal disease at the time of the assault and whether you received a venereal disease from your assailant. If you received a venereal disease from your assailant or if you gave one to your assailant, that evidence will be important corroboration of your testimony identifying your assailant.

The Emergency Department exam and both follow-up visits to the GYN clinic are done without charge to you. Because of our computer billing system, it is necessary to provide you with a temporary hospital card which you must bring for your follow-up visits to the clinic (this card ensures that you will not be billed for those follow-up visits).

On the day that you first return to the GYN clinic (348-6447), please come about a half-hour before your appointment. Stop at the cashier's desk in the Annex Building (on the corner of 5th & Portland) and show your blue clinic appointment slip to them. They have a copy of the Emergency Department registration sheet from which they will get the necessary information and your hospital card will be ready very shortly.

PT. NO.  
ADDRESS  
TELEPHONE NO.

HENNEPIN COUNTY MEDICAL CENTER  
MEDICAL-LEGAL EXAMINATION  
WAIVER OF MEDICAL PRIVILEGE  
AND AUTHORIZATION OF RELEASE OF  
MEDICAL INFORMATION FOR VICTIMS OF ASSAULT

I, \_\_\_\_\_, hereby authorize the Hennepin County Medical Center to examine and treat \_\_\_\_\_ for any injury or disease sustained as a result of this assault. I also authorize the Hennepin County Medical Center to take any and all medical tests that may be necessary or helpful for treatment or for legal evidence, and to take and/or photograph any injury, or abnormality found.

I also authorize the Hennepin County Medical Center to release all of the evidence found and all of the information contained in the medical records concerning this assault examination and treatment to the law enforcement agencies that may be involved in investigating this assault or in prosecuting the assailant.

I hereby waive all medical privilege in connection with such examination, treatment and evidence found, and I expressly authorize the use of such medical information in any subsequent criminal prosecution in the State or Federal Courts against the assailant.

Care was received on or about \_\_\_\_\_

Emergency Department \_\_\_\_\_ In-Patient \_\_\_\_\_

Under the name of \_\_\_\_\_

Hennepin County Medical Center Number: \_\_\_\_\_

I UNDERSTAND THAT THIS WAIVER AND RELEASE AUTHORIZES A COMPLETE MEDICAL-LEGAL EXAMINATION TO BE DONE AND ALSO AUTHORIZES RELEASING THE RECORDS OF THAT EXAMINATION TO THE APPROPRIATE LAW ENFORCEMENT AGENCIES, BUT THAT NOTHING CONTAINED IN THIS WAIVER AND RELEASE OBLIGATES ME TO PROSECUTE THE ASSAILANT.

SIGNATURE OF WITNESS:

SIGNATURE OF AUTHORIZING PERSON(S):

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_

TIME: \_\_\_\_\_

Relationship to Patient \_\_\_\_\_

M  
E  
D  
I  
C  
A  
L  
  
L  
E  
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E. Physician's Medical Protocol For Examination Following Sexual Assault  
General Guidelines

The physician performing an examination in a sexual assault case has a dual role. He/she must both provide emotional first aid to the victim while gathering all of the available medical evidence to provide a permanent record of all aspects of the examination and to best assist future prosecution. Such an examination provides extremely important legal evidence in a criminal prosecution and must necessarily be detailed and thorough.

(1) Take time to calm and quiet the patient, explaining the procedures that will be followed. If family members are available, the patient should be asked if he or she desires their presence either before or during the examination, and the physician should use his/her own judgment about whether such persons should be present.

Even a child may not be free with the physician about medical history and the assault itself with the family members present, because such a history may include matters that the child does not want the family to know. In addition, family members will often be very upset and may vent their anger against the victim.

(2) A nurse may readily be able to inform the patient-victim about the examination and may be able to answer most questions. Ideally, one nurse should be assigned to the patient as soon as the patient enters the hospital and should remain with the patient as much as possible until the patient is free to leave. The nurse should also briefly inform any family members of the situation and should make sure that the patient-victim leaves with a family member, friend, or the police, and is not left stranded to find a way home.

(3) If the police have not already been called, the patient-victim should be encouraged to report the crime and the physician should ask the patient's permission to call the police to the hospital.

(4) The physician performing the examination should be licensed to practice in the State of Minnesota, or, if not, must be at least a resident who is eligible for licensing in the State of Minnesota. An intern is not qualified for licensing and is not a medical expert who is qualified to give opinions or medical conclusions in court. For example: An intern may testify that he observed the patient's temperature to be 99.2 degrees F., blood pressure to be 150/90, respiration to be 25 and pulse rate to be 120. However, an intern is not qualified to testify that these vital signs mean that the patient was excited.

(5) Write legibly and print all names of physicians, nurses, laboratory personnel and police officers who handle any item of evidence or who participate in the examination. Remember, the physician's report will most likely be read by a number of other people.

(6) Judgmental statements should not be made in notes. For example: If the patient does not exhibit emotional upset, do not say: "The patient appears unusually calm".

(7) All references to the assault should be brief and factual. Do not report details of the incident and do not use qualifying language such as "alleged". A good format is: "The patient says that...".

(8) Be certain that all specimens are carefully and accurately labeled and identified with:

- (a) Patient's name.
- (b) Patient's hospital number.
- (c) Date specimen collected.
- (d) Person collecting sample.
- (e) Person receiving sample.
- (f) Keep a record of the chain of evidence indicating who collects and receives all items of evidence from start to finish.

F. Summary Of Complete Hospital Protocol For Examination Following Sexual Assault

Objectives:

- (1) Care of immediate injuries.
- (2) Evaluation of pregnancy possibilities.
- (3) Prevention of venereal disease.
- (4) Minimization of immediate stress.
- (5) Maintenance of legal record.

Methods:

Responsibilities of specifically trained nurse:

- (1) Escort the victim through the Emergency Department from registration to discharge.
- (2) Stress importance of reporting incident to authorities and request permission to contact them immediately for their cooperation.
- (3) Obtain written authorization for examination and release of medical information using the assault waiver form.
- (4) Obtain a pertinent history.
  - (a) Age.
  - (b) Parity.
  - (c) Last menstrual period and length of normal menstrual cycle, as well as any menstrual abnormalities.
  - (d) Latest pap smear (to be included in physician's examination if indicated and desired by the victim).
  - (e) Current contraceptive used by the victim.
  - (f) Other medications.
  - (g) Any contraceptive device used in the incident.
  - (h) Last coitus before the incident.
  - (i) Time and date of the incident.

(j) Nature of sexual acts performed (e.g., vaginal intercourse, sodomy, etc.)

(k) Did ejaculation occur? If so, where on patient's body seminal fluid deposited?

(l) Physical injuries inflicted.

(m) Current symptoms (e.g., pain, bleeding, etc. -- pelvic or otherwise).

(5) Begin physical examination:

(a) Describe emotional state and behavior (e.g., pain, bleeding, etc. -- pelvic or otherwise).

(b) If clothing is damaged, stained or disarranged, obtain a photograph of the patient before disrobing.

(c) Secure all clothing for the police, noting blood stains, secretions or other stains.

(d) Note name and obtain signature of individual receiving clothing (police officer) and all lab work.

(e) Obtain pulse, blood pressure, temperature and respiration rate.

(f) Photograph any external bruises, scratches, etc. Look at breasts, abdomen, elbows, knees, head, etc.

(g) Note and photograph any broken nails. Take fingernail scrapings if material is noted under the nails. Preserve these in a container provided by the police.

(h) Woods Lamp examination of any suspicious areas for seminal fluid. Seminal fluid will usually fluoresce.

(i) Comb pubic hair for foreign hairs and fibers using new plastic comb. Place all comb material and comb itself into an envelope and seal, noting date, patient's name and hospital number. Envelope flap should be signed by the patient and the nurse across the seal.

(j) Using sterile forceps, have the victim saturate a 2x2 Gauze with saliva. Place the specimen in the specimen in the container provided by the police.

(k) Using Zephiran for prep, obtain blood in two serum tubes and an oxylate tube. One serum tube and the oxylate tube goes to the police lab. The remaining serum tube goes to the hospital lab for VDRL.

(l) Obtain urine for pregnancy test in the hospital laboratory.

(m) If other medications may be involved, collect another urine sample and give to the police officer.

(n) If semen was deposited on the patient's body or in her mouth, obtain the following specimens:

1. Swab for sperm motility and acid phosphatase determination using a saline moistened swab or cotton tipped applicator. Swirl it in 3ml of sterile saline and ring it out against the edge of the tube and discard the swab.

2. Swab for sperm stain and typing using a saline moistened swab or cotton tipped applicator. Smear a clean glass slide which has been labeled with the name, hospital number and date. Place the slide in a bottle of pap smear fixative. Place the swab into a sterile container labeled with the patient's name, date and hospital number. Turn this over to the police representative.

3. Culture the area for GC using a saline moistened cotton tipped applicator. Swab this onto a room temperature Thayer-Martin plate. Prepare the patient for the doctor's exam, explaining its necessity and what it consists of.

Physician's responsibilities -- OB/GYN resident, emergency medicine resident or staff:

- (1) Establish rapport with the victim.
- (2) Review thoroughly the nurse's record and discuss it with the victim.
- (3) Do a general physical examination looking for signs of injury.
- (4) Do a pelvic examination.
  - (a) External genitalia:
    1. Examination.
    2. GC culture from urethra and rectum onto Thayer-Martin plates.
  - (b) Speculum:
    1. Use only water for lubricant.
    2. Examination.
    3. Posterior fornix.
      - a. Swab posterior fornix and swirl the swab in 3ml of sterile saline. Ring out the edge of the tube and discard the swab. This is for sperm motility and acid phosphatase.
      - b. Swab posterior fornix and smear a clean glass slide which is placed in pap smear fixative. This is a smear for sperm.
      - c. With sterile ring forceps, swab the posterior fornix with a 2x2 Gauze and place in a labeled container to be given to the police for sperm typing.
      - d. Swab the cervix for GC culture. Smear onto a Thayer-Martin plate.
  - (c) Do a bi-manual examination noting uterine size and pain. This may be done rectally in children.

Treatment and Follow-Up:

- (1) Venereal disease follow-up and possible treatment in the GYN clinic or by private practitioner. (See following guidelines.)
- (2) Trauma follow-up and treatment in the Emergency Department or appropriate clinic.
- (3) Pregnancy possibilities. (See following guidelines for morning-after pill use.)
- (4) All references to assault should be brief and factual. Do not report details of the incident and do not use qualifying language, such as "alleged". A good form is "the patient says that...". Make no judgmental statements in writing.
- (5) Be gentle, calm and quiet.

G. Venereal Disease Follow-up and Treatment Following Sexual Assault  
(To be Distributed to Examining Physicians)

Tests for GC (gonorrhea) and VDRL (a syphilis test) are ordinarily taken at the time of the examination. These tests will only determine if the patient was suffering from a venereal disease prior to the assault, but are important both because the absence or presence of venereal disease at the time of the assault may be evidence in the case and also because the presence of venereal disease requires immediate treatment. Venereal disease may be present in women for quite some time before any symptoms are revealed.

It is essential that the victim of a sexual assault go back to the physician twice after the initial evidentiary examination. Three days after the assault another GC culture (gonorrhea test) will be taken to determine whether the victim contracted gonorrhea from the assailant. Thirty days after the assault another VDRL test for syphilis will be taken to determine whether the victim contracted syphilis (which has a long incubation period) from the assailant. These follow-up examinations are important to ensure that the victim receives prompt treatment for venereal disease. In addition, if the victim received a venereal disease from the assailant or gave a venereal disease to the assailant, that evidence is important as additional evidence of the assailant's identity.

H. POSTCOITAL DIETHYLSTILBESTROL

In agreement with its extragovernmental physician advisers, FDA has approved under restricted conditions, postcoital (contraceptive) uses of diethylstilbestrol (DES), a synthetic estrogen. Adequate evidence to support the use of any other estrogen for this purpose is not presently available.

This Agency considered the use of DES for this purpose to be safe only as an emergency measure (in situations such as rape, incest, or where in the physician's judgment, the patient's physical or mental well-being is in jeopardy) and explicitly warns against its routine or frequent use as a contraceptive.

Physicians are urged, prior to prescribing DES for this purpose to inform patients (or guardians) fully of the possible side effects of the drug and of alternative measures available and their hazards so that the patient may use the drug. Pregnancy should be ruled out by appropriate tests prior to instituting therapy, so that no unnecessary exposure of a fetus to DES occurs.

"The efficacy of DES in preventing pregnancy depends upon the time lapse after coitus and dosage is 25mg twice a day for 5 days continuous beginning preferably within 24 hours and not later than 72 hours after exposure. When this dosage is given within the specified time interval after sexual intercourse, DES is highly effective in preventing conception. But the patient must be warned to take the full course of the drug in spite of the nausea which commonly occurs if it is to be effective."

"There is at present no positive evidence that the restricted postcoital use of DES carries a significant carcinogenic risk whether to the mother or fetus. However, because existing data



support the possibility of delayed appearance of carcinoma in females whose mothers have been given DES later in pregnancy, and because teratogenic and other adverse effects on the fetus with the very early administration recommended are all understood, failure of postcoital treatment with DES deserves serious considerations of voluntary termination of pregnancy."

"Before prescribing, the physician should be familiar with the complete FDA approved labeling on products intended for this use."

Reprinted from May 1973  
FDA Drug Bulletin

The use of post-rape DES should probably be restricted to situations in which the likelihood of conception occurring as a result of the assault is high. This would include cases in which the victim was not using effective contraception and when vaginal intercourse with ejaculation occurred, and with the assault having taken place during the fertile period of the victim's menstrual cycle. DES should not be given later than 72 hours after exposure.

# CONTINUED

# 1 OF 2

I. INSTRUMENTS AND EQUIPMENT REQUIRED FOR  
SEXUAL ASSAULT EXAMINATION

Camera

Bags for Clothing

Container for fingernail scrapings

Comb and envelope

Woods lamp

Vaginal speculum

Cotton swabs

Slides

Pap fixative

Diamond pencil

Ring Forceps (2)

2 x 2 gauge (sterile) plus containers

Thayer Martin Plates (3)

Tubes with 3 c.c sterile saline

Serum tubes (red top)

Oxalate tubes (grey top)

Urine container

J. GUIDE TO MEDICAL TESTIMONY BY THE EXAMINING PHYSICIAN, NURSE,  
OR LABORATORY PERSONNEL IN A CRIMINAL PROSECUTION

1. You will be subpoenaed in only a small fraction of the total cases in which you perform medical examinations that may lead to criminal prosecution. Even when you are subpoenaed, it is probable that some of those cases will result in a guilty plea at the last minute and you will not be required to testify.
2. If you are subpoenaed:
  - (1) Telephone the attorney who is responsible for the subpoena (the name will usually appear on the subpoena itself), and obtain the name of your patient and hospital number from that attorney.
  - (2) Obtain the medical records and study them.
  - (3) If the subpoena is for a District Court case, the attorney ordering the subpoena will probably inform the physician that testimony will not be needed on the date and time specified on the subpoena. A subpoena continues until the matter in litigation is completed. However, if a District Court subpoena comes from the Prosecutor, it must request the physician's presence on the date and time that the trial is scheduled to begin. Most felony trials begin with a constitutional hearing, followed by selection of a jury prior to any testimony being taken. These proceedings may take several days. In any case, it is quite likely that you will be able to schedule the physician's appearance to some extent, such as morning or afternoon or an alternative of two possible days to testify. All of this must be arranged with the attorney who is handling the case.

(4) Once you have reviewed the medical records and findings in the case, telephone the attorney handling the case again and insist upon a personal meeting with the attorney requesting your testimony, several days prior to trial if the medical evidence is complex. In all cases, be certain that you will have at least an hour with the attorney on the day that you will testify to review the matter prior to your testimony.

(5) Homework: Try to remember exactly what happened when you review the case and your findings. Go back to the test-books if necessary. Remember, that you are the expert and you will necessarily have to explain all of your medical findings, opinions, and conclusions in terms that the layman can understand. If you have difficulty, feel free to telephone Dr. Garry Peterson, Deputy Hennepin County Medical Examiner at 348-3821, and pathologist, St. Paul Ramsey Hospital at 222-4260, or any member of the Medical Examiner's Staff.

(6) If you are subpoenaed by the Hennepin County Attorney's Office in a felony case, the Assistant County Attorney handling the case will schedule your appearance so that you will not be tied up in court any longer than is absolutely necessary (you usually will not lose more than one morning or one afternoon in testimony), and most other prosecuting offices will do the same for you.

### 3. Testifying:

(1) You will be asked your qualifications (education and training; any special training; publications, etc.), to qualify you as an expert medical witness.

(2) You will be led into the examination by a question, such as "Dr. \_\_\_\_\_, on January 1, 1975, did you have occasion in your capacity as a resident at the Hennepin County Medical Center, to examine 'Jane Doe' at approximately 11 o'clock p.m.?"

(3) You will be asked to relate the following in detail:

(a) Your meeting with the patient and your observation of the patient's demeanor, condition, and general physical appearance.

(b) All details of your physical examination, including vital signs, the external examination, internal pelvic and laboratory specimens collected and what you did with each of the specimens, together with anything else that you may have done, including ordering X-rays, etc.

(c) Interpretation of all tests performed and the laboratory results of those tests, the examination itself, etc.

(d) Speak plain English -- explain all technical terms: Remember that the jury, judge, court reporter, and lawyers must understand what is being said.

(e) Answer each question fully and truthfully.

1) If you don't know the answer to a question, say so.

2) If you don't understand a question, ask to have it repeated or rephrased.

3) Respond only to the question asked and do not elaborate beyond the question asked.

4) If you are asked a question demanding a "yes" or "no" answer, which cannot be answered merely "yes" or "no", but instead demands an explanation, say so.

5) Do not go out on a limb, claiming certainty of an answer when you are, in fact, uncertain, because a skillful cross-examiner will then be able to destroy the effect of all your testimony.

f) You may be asked particularly by the opposing counsel:  
"Do you recognize (a certain publication) as an authority  
in this field?" Don't get caught -- if you are familiar  
with the work, say so, but never advocate any given work  
as the definitive source for the field.

g) Remember that you will be cross-examined fully by  
the opposing counsel. The value of your testimony depends  
entirely upon your ability to clearly state your medical  
findings in such a way that they are virtually unimpeachable.

IX. WHY PROSECUTE SEXUAL ASSAULT

Because it is a crime.

Law enforcement, medical, social service and prosecutorial personnel must be able to speak convincingly to sexual assault victims about why it is advisable to prosecute.

Without prosecution there is little deterrent. Sex offenders will not stop unless they are stopped.

This chapter is about why every victim should prosecute.

No victim is required to prosecute, so we must do our utmost to convince, persuade and advise victims to exercise their public responsibility to prosecute.

IX. WHY PROSECUTE SEXUAL ASSAULT

Would you report a burglary or auto accident in order to get the guilty party?

Probably. Most of us would. None of us like crime and we all basically believe the criminal should be dealt with according to our nation's legal justice system.

Granted, no one is required to prosecute anyone else who has criminally wronged them. But, unless law enforcement agencies are able to effectively show that "crime does not pay", it will continue to grow. We must fight crime with the highly effective machinery available to us. Only by being intolerant to crime can we deter crime.

Criminal sexual conduct is a crime. A serious crime. A traumatic crime. A frequent crime. A crime that can easily touch any one of our lives, either personally or through our spouses, children, sisters, brothers, mothers, or fathers. The new Criminal Sexual Conduct Law in Minnesota now makes sex crimes more susceptible to prosecution. We must use that law.

Ultimately, of course, the victim must make the decision to prosecute if assaulted. But remember, an assailant who is not prosecuted will not be at all deterred from future assaults. The assailant may again assault you or a member of your family, or a friend, or someone you don't even know.

Not prosecuting is doing nothing. Prosecuting is doing something.

The media in Minneapolis/St. Paul have agreed not to use the names or addresses of sexual assault victims in local news accounts unless the victim dies. This understandable fear of having the world know that you are a sexual assault victim no longer exists.

Criminal sexual conduct is a crime just like robbery, assault and murder. All are strongly condemned by society. Yet, one of the most heinous of crimes, sexual assault, the ultimate violation of one person by another, has earned a reputation as a crime not to be talked about lest someone label the victim as immoral, asking for it, or some other equally ridiculous societal stamp of disapproval.

Until sexual assault is unreservedly brought into public focus as a crime running uncontrolled, there will be no effective deterrent or prevention.

Sexual assault is not a crime to be prudish about or whispered about. It is a crime to be openly talked about.

Bring criminal sexual conduct into the open. Help stop it. Report it. Prosecute it. Do not tolerate it.



X. THE PROSECUTION AS IT INVOLVES THE VICTIM

Because all roads lead to prosecution of the sex offender, it is also essential that all law enforcement, medical, social service and prosecutorial personnel know what prosecution involves.

Since no victim is ever required to prosecute, it is advisable that any questions victims may have regarding prosecution be quickly and accurately answered, as the victim is deciding whether or not to prosecute.

Again, victims and the general public cradle some misconceptions about prosecution. The old myth that the "victim is on trial" is false as is the former defense tactical practice of dragging out the victim's prior sexual conduct (thanks to the new Minnesota Criminal Sexual Conduct Law).

Prosecution will not be an easy experience for the victim. We know that -- but the fear of the unknown need not be a detriment to convincing victims to prosecute. We should surely make efforts to inform victims as to the prosecutorial process.

This chapter explains the prosecutorial procedure, as it involves the victim, in detail and explains proceedings and terminology in lay terms.

Prosecution is one of the strongest deterrents available to law enforcement; we must do our utmost to use it as wisely and effectively as possible.

X. WHAT THE PROSECUTING VICTIM CAN EXPECT:

A. A detective from the Sex Division of the Minneapolis Police Department or a detective assigned specifically to the case in the Sheriff's Office or any of the suburban police departments will ask the victim to come to his office, at the police station, to give a detailed typewritten statement which will be recorded by a stenographer. The victim will be questioned about all of the details of the crime and will then be asked to read the statement, correct any inaccuracies, and sign it. The victim may ask for a copy of the statement if the detective fails to offer one.

(1) The police may contact the victim at another time for any of the following reasons:

(a) The police may wish to make a more thorough examination of the scene of the crime and may wish to photograph or take any additional evidence. The victim's presence will usually be requested to assist them.

(b) The victim may be requested to view photographs and/or lineups to identify the assailant, and if identification is made, an additional statement will be taken from the victim.

(c) If a suspect is identified and/or arrested, the victim may be asked to give physical evidence such as a sample of pubic hair, saliva, or blood. These samples would be used by the State Bureau of Criminal Apprehension Laboratory to identify or trace evidence such as seminal fluid, blood, or pubic hairs found on the suspect's body, and may also be used to determine whether a particular suspect committed the crime. In some instances, it is possible to determine the blood type of the assailant from his seminal fluid,

for example, or it may be possible to determine whether pubic hairs left on the victim's body may have come from the suspect. Such evidence can be very useful in strengthening the case for the prosecution.

B. Prosecution: When the suspect has been identified and/or arrested, the prosecutor, who will usually be an Assistant County Attorney, will wish to speak personally with the victim, who will be asked to go to the County Attorney's Office for such an interview. The Assistant County Attorney who speaks with the victim will have knowledge of the entire investigation and will inform the victim about court procedures. The Assistant County Attorney will question the victim about all of the details of the incident and will answer any questions the victim may have. The victim will probably be asked to sign a complaint against the suspect that will be prepared by the Assistant County Attorney according to the facts that have been stated. A complaint sets out the basic facts of what occurred and how the suspect has been identified as the assailant. The complaint also sets forth the offenses with which the suspect will be charged. If the victim is asked to sign the complaint, the victim will be taken to a District Court Judge before whom the victim must swear to the truth of the facts contained in the complaint. The victim will then be asked to sign the complaint and the Judge will sign the warrant authorizing either the arrest or continued detention of the suspect.

(1) The victim's initial interview with an Assistant County Attorney: This interview will ordinarily be private. The prosecutor will explain the entire procedure and will necessarily ask detailed questions because the prosecutor will ordinarily be responsible for the trial of the case. The victim should be sure to have the name and telephone number of the prosecutor who is handling the case. The victim should not hesitate at any time to ask questions that may arise. This is so the victim

can learn of the progress of the case, or seek assistance for any problems that arise from the case.

C. Omnibus Hearing: The victim will be subpoenaed to appear before the District Court in Hennepin County to give testimony at this hearing, which will usually be held reasonably soon after the suspect is arrested. In some Minnesota counties, this hearing may be held before the County Court, but the procedure is the same. The purpose of the Omnibus hearing is:

- (1) To show probable cause that the offenses charged were committed;
- (2) To show probable cause that the suspect charged was in fact the assailant; and
- (3) To determine whether any of the defendant's constitutional rights were violated by reason of a search and seizure, by reason of any statements he may have made to the police, or by reason of the identification procedures used in the case, such as a lineup or showing photographs.

The victim will testify under oath before a Judge of the District Court. The victim will be questioned by an attorney from the County Attorney's Office and will be cross-examined by the suspect's attorney. The victim's testimony will be recorded by a court reporter and the victim will be interviewed briefly before the hearing by the attorney from the County Attorney's Office, who will be handling the case. It is possible that the attorney prosecuting the case will not be able to handle the Omnibus hearing because of other commitments in trial, but the victim can be sure that whoever handles the Omnibus hearing is interested in the victim and the case. The opportunity to testify at the Omnibus hearing, which is usually quite short, is a good opportunity to become acquainted with the courtroom atmosphere and will help the victim be more comfortable at trial. The suspect has a right to waive the probable



cause and/or constitutional aspects of the Omnibus hearing. Waiver of the probable cause aspects of the Omnibus hearing simply means that he acknowledges that probable cause exists, that the offenses charged were committed and that he committed them. The suspect does not admit his guilt by waiving the Omnibus hearing. The purpose of the Omnibus hearing is simply to determine whether or not there is sufficient evidence to hold the suspect for trial and to determine whether evidence obtained from the defendant is constitutionally admissible against him at the trial. The suspect's attorney may want his client to waive the probable cause aspects of the Omnibus hearing to avoid giving the victim the opportunity to gain the experience of testifying prior to the trial. If the suspect either waives his right to an Omnibus hearing or the Judge finds that probable cause exists, the suspect will be ordered to stand trial.

D. Pretrial Procedures: Once the case is set for trial, the prosecutor handling the case will ordinarily request one or more conferences with the victim. Some of the conferences will be handled by telephone, but the victim should expect to have at least one personal meeting with the prosecutor shortly before the trial:

(1) When the matter is set for trial, the victim will receive a subpoena to appear before the District Court, which has jurisdiction over the trial of Felony offenses. The victim ordinarily will not be needed to testify at the start of the trial but will be asked to keep in touch with the prosecutor until he needs the testimony. The subpoena will state the time and date for the beginning of the trial which ordinarily begins with jury selection. Depending upon circumstances of the case, the jury selection may take a few hours or several days. When the jury has been selected the actual trial begins, at which time

the victim's testimony is the most significant evidence in the case.

E. Plea Negotiations: It is possible that the suspect in the case may wish to plead guilty to a lesser offense than the crime charged, or that he may ask to plead guilty upon agreement by the prosecutor to recommend a prison term that is shorter than the maximum authorized for the offense charged, or in some cases, to recommend some form of probationary disposition with or without treatment. Plea negotiation is quite frequently considered in sexual assault cases, particularly where, after fully reviewing the case, the prosecutor knows that a conviction may be difficult to obtain, that the jury may be likely to find the defendant guilty of a lesser offense, or to avoid the emotional trauma of a trial for the victim. The victim will usually be contacted by the prosecutor before any plea negotiation is decided upon. Remember that a conviction of some kind, even if the suspect is on probation, gives the court a great deal of control over the suspect which cannot be obtained if there is an acquittal.

F. Trial: The prosecutor will review all of the details of the case and will warn the victim of difficulties in the case or of any questions concerning the victim's personal life that may be asked. The victim's testimony will be given in the same way at the trial as it was given at the Omnibus hearing, except that the victim can expect to be questioned at greater length and will be questioned by both the prosecutor and the defense attorney. At the trial, the jury must decide the case; therefore, it is important to speak clearly and answer every question fully and honestly. The jury necessarily must believe the victim before they can be convinced beyond a reasonable doubt of the suspect's guilt, which is required for them to return a verdict of guilty.

G. At all stages of the proceedings, and particularly during the victim's testimony:

(1) The absolute and complete truth must be told to the police, the prosecutor, and when testifying. The victim should not be concerned whether something sounds good or bad.

(2) During the testimony, each question asked should be answered completely, but should not go beyond the question asked, so as not to be misunderstood.

(3) If a question during testimony is not understood, the victim should ask to have it repeated or rephrased. The victim should be certain to understand the question before trying to answer it.

(4) If an objection is made to any question asked, the person testifying should wait until the Judge rules on the objection before answering the question.

(5) Conservative dress is appropriate for court: Wear a skirt, panty hose and dressy shoes if female, or a jacket and tie if male. It is important to be natural, clean, neat and not overdressed. This is important because a jury's verdict must be unanimous and if any one juror is offended by the manner of dress, that juror could prevent a conviction no matter how strong the proof against the assailant.

H. The victim is the case. In a jury trial all 12 jurors must be unanimously convinced beyond any reasonable doubt that the suspect is guilty before they can obtain a verdict of guilty.

I. A not guilty verdict: If the suspect is found "not guilty", it does not mean that the jury has found him "innocent"; instead, a "not guilty" verdict means only that the suspect's guilt was not proven beyond a

reasonable doubt to all 12 jurors, and this should never be considered to be a reflection on the victim's character or integrity.

J. Prosecution if the case is capable of prosecution is strongly advised. If the suspect is permitted to plead guilty to a lesser or a different charge or receives probation through a negotiated plea, the victim can be saved a great deal of emotional strain. The prosecutor will be glad to explain the negotiation or answer any questions about the court proceedings or the procedures of the Minnesota Corrections Authority, which determines when prisoners are released on parole. The suspect may be sent to prison or to the Commissioner of Public Welfare for commitment to a mental hospital or may be placed on probation. The convicted offender may receive treatment for anti-social sexual behavior in an effort to rehabilitate him or her in prison, in a mental hospital, or as a condition of probation. If the defendant is acquitted following a trial, he will remember that he has been through a very traumatic ordeal and it may have a deterrent effect on his future behavior. In any case, the victim can have the satisfaction of having fully performed a duty as a citizen to help protect others from the kind of assault the victim suffered.

## XI. HOW TO PREVENT SEXUAL ASSAULT

You, the law enforcement, medical, social service and prosecutorial personnel who have extensive contact with victims of sexual assault should be aware of the many thoughts, some research, and conflict as to the best methods or methods of how to prevent sexual assault. The old myths of how to prevent sexual assault are still prevalent among much of the public, such as:

- (1) Cross your legs.
- (2) Women can run faster with their skirts up than a man can with his pants down.
- (3) Only those who "ask for it" get sexually assaulted, so don't ask for it.
- (4) Don't live in the city because that is where people are sexually assaulted.

Many more myths can be added to this list. Often those who believe these myths are more vulnerable to sexual assault because, for example, crossing your legs is not a preventive method and will give a person a false sense of security.

The best way to prevent sexual assault is, first, to realize it can happen to anyone. Until a person realizes that he or she is vulnerable, he or she will not take the many steps for proper protection, none of which will be the ultimate to prevent sexual assault.

This chapter goes through various common sense methods and practices of preventing and avoiding sexual assault.

## XI. HOW TO PREVENT SEXUAL ASSAULT

### Self Protection:

There are several methods by which persons can protect themselves against sexual assault, whether the assault is criminal or not, and which you should be familiar enough with to advise the public. However, no method is going to absolutely protect everyone. To realize that anyone can be a victim of sexual assault is the first step to public self protection, because by everyone realizing their vulnerability, they then start to examine why, how and where they are vulnerable.

Assertiveness training can teach persons how to cope effectively with sexual conflicts that may be encountered. Assertiveness training teaches how to trust one's senses, as well as how to use those senses to protect one's self in many different situations, some being very dangerous, others being annoying.

Assertiveness training is taught at:

University of Minnesota  
Continuing Education for Women  
Telephone Number: 373-9743

The course is taught throughout the year.

Karate and Self Defense for Women is offered by the Y.W.C.A. and by a number of private enterprises.

The Minneapolis Police Department also offers self defense courses for women.  
Telephone Number: 348-6870

Books to refer to:

When I Say No, I Feel Guilty  
Manuel J. Smith, Ph.D.  
The Dial Press, 1975

Against Rape  
Andra Medea and Kathleen Thompson  
Farrar, Straus, and Giroux, New York, 1974

Your Perfect Right  
Alberti, R. E., and Emmons, M.L.

You might also advise the public to use some common sense precautions around their homes, on the street, hitch-hiking, in their cars, and for their children.

### In Your Home:

- (1) Do not allow anyone in unless you know them.
- (2) Keep doors and windows locked at all times. Use effective locks.
- (3) Have a viewer or sighthole in your door and make use of safety chains.
- (4) Receive packages by signing the slip and having the package left outside.
- (5) Keep shades closed at night so passers-by can't peek in. If you see a "Peeping Tom", call the police.
- (6) Don't announce that you are home alone.
- (7) If you are going to hide your keys, use some imagination!
- (8) Turn on lights, both inside and out; if you aren't at home, use a timer for the lights.
- (9) Ask neighbors to be aware of people lurking near the house.
- (10) If someone is at your door, ask who is there and for identification before you open the door.
- (11) Dogs are excellent protection. Even friendly dogs can sound the alarm.
- (12) Take a companion with you when using laundry facilities in an apartment building if they are accessible to the public.
- (13) Don't list your first name on the mail box or in the phone directory; use your first initial. Avoid using "Miss", "Mrs." or "Ms."
- (14) Hang up on lewd or nuisance phone calls. Don't prolong suspicious calls; report them to the phone company.

- (15) Don't give your name, address or phone number to a stranger on the phone. He may have just called your number at random.
- (16) Verify the identity of an unfamiliar voice by calling him back before giving out any information on the phone.
- (17) Never allow small children to answer the door. Because they are friendly and unafraid, they will usually admit anyone.
- (18) Do not keep valuable articles in plain view from your windows.
- (19) If you will be away from home, ask a neighbor to take in your newspapers and mail, and ask your local police to watch your home.

On The Street:

- (1) When out at night, try to be with other people -- there is safety in numbers!
- (2) Carry a flashlight.
- (3) If you feel you are being followed, turn to look and be alert; you will be less likely to be attacked.
- (4) Stay in well-lighted areas; avoid parks.
- (5) Carry a purse close to your body or under your coat.
- (6) Walk facing traffic.
- (7) When out at night, take note of open stores and businesses.
- (8) When using public transportation, be aware of everyone getting off with you.
- (9) Don't sleep or doze while using public transportation.
- (10) When arriving home late at night, don't stop to pick up the mail.
- (11) If someone is following you, go to the first lighted house or phone booth and call the police. If you don't know the number, have the operator ("0") connect you directly. Don't lead the person to your own home.

- (12) Use the Red Box Emergency phones on the street for immediate emergency police protection.
- (13) Don't take chances or be over-confident.
- (14) Never engage in physical combat unless it is unavoidable. It is far better, when possible, to run.
- (15) Remember, if you are alone at night, to:
  - (a) Yell "FIRE" if attacked.
  - (b) Walk toward curb or in street, not near buildings, trees or shrubs.
  - (c) If someone is following your car, drive to the nearest police station or open service station.
  - (d) If walking to a neighbor's, walk under street lights where others can see you.

If You Must Hitch-hike:

Hitch-hiking is always dangerous.

If you insist upon hitch-hiking:

- (1) Try not to hitch by yourself.
- (2) Try not to hitch at night, but remember that hitching during daylight can also be dangerous.
- (3) Try to get rides where there is a lot of traffic, and don't hitch to deserted places.
- (4) Never accept a ride with more than one man. (Don't be afraid to say "No Thanks" to a larger group -- stay away from the door when you refuse.)
- (5) If you get a ride from a woman, encourage her to continue picking up other women.
- (6) When accepting a ride from a man, do the following things when entering the car:

- (a) Look in the back seat of the car; a person could be hiding.
  - (b) Make sure the man is not exposing himself and that he is fully clothed.
  - (c) Watch to make sure he keeps his hands on the steering wheel or leaning on the window.
  - (d) Don't accept the ride if the car floor has beer or liquor bottles on it.
  - (e) Don't accept a ride from a person who was speeding and slammed on his brakes to stop.
  - (f) Don't accept a ride from a person who changed directions to pick you up.
- (7) Keep your window partially down in case you have to scream.
  - (8) Wear a whistle (good metal ones cost 50¢); blow in the driver's ear and out the window as a signal for help.
  - (9) If you smoke, always have a lit cigarette. If he grabs you, the cigarette should be jabbed in his face.
  - (10) Ask him "how far he's going" before he asks you -- never get dropped off directly where you are going.
  - (11) If you carry a purse, hold it in your lap with your left hand and keep the right hand on the door handle. (The bag can be used against an attack and you might need to get out quickly.) Your left elbow can also be jabbed into his ribs.
  - (12) Try not to wear sexy clothes when you know you have to hitch. Many men judge their riders this way.
  - (13) If the man wants to make a "stop" first, get out as soon as possible.
  - (14) Make sure you know where you are going in case he makes a "wrong turn" and don't ever ride out into the country or even outer-urban areas.

- (15) There may be a time when you might have to jump from a moving car. Make sure you can roll to a clear spot away from moving cars. Throw your shoulders first with your right hand near your body. Tuck your head in and keep your body curved. Let your feet follow. It will hurt but if you fear danger, and you aren't near any stop lights, it may be your only choice.
- (16) Try to get the license plate number of threatening men.
- (17) KEEP YOUR DOOR UNLOCKED AND KEEP YOUR HAND NEAR THE DOOR HANDLE.

In Your Car:

- (1) Always keep the doors locked and before getting in, check to see that no one is hiding in the car. Lean on the horn if there is trouble.
- (2) Make sure that your car is in good running condition and don't let your gas tank go below half-full, so that there will be less chance of your getting stranded.
- (3) Keep your windows rolled up if you are riding through a bad area. Always keep the doors locked while driving; the passenger side is most vulnerable.
- (4) Don't let strangers into your car for any reason. If someone indicates something is wrong with their car, drive to the nearest service station, and send help to them.
- (5) Avoid parking in the dark, uninhabited areas, if possible.
- (6) Be cautious when giving directions to pedestrians or other drivers.

Precautions For Children Are Necessary, Too:

- (1) Warn children about accepting rides or gifts from someone they don't know.
- (2) Make sure someone is home to meet the children after school; never permit them to come home to an empty house.

(3) Teach them to be aware of anyone following them and to go home or to a neighbors immediately.

(4) Remember, boys are just as vulnerable as girls.

## XII. WHAT YOU CAN DO TO HELP SOMEONE SEXUALLY ASSAULTED

This entire manual is designed to discuss how the professional, the police, medical, social service and legal personnel can help someone who has been sexually assaulted. New programs, procedures, laws, and increased awareness have been developed. A human concern from a professional person for a person who has been sexually assaulted is essential. This chapter directs itself to the quality of awareness necessary so these programs, procedures and laws can work to help people.

## XII. WHAT YOU CAN DO TO HELP SOMEONE SEXUALLY ASSAULTED

How does sexual assault affect a person? How does sexual assault affect those closest to the victim? How can you help? Far more than anyone else, it is the people closest to the victim who influence how the victim will deal with the attack.

Most victims react to the terror and the fear that is involved. Often the immediate reaction is "I could have been killed". The best way for you to understand what the victim is feeling is to try to remember a situation where you felt powerless and afraid. You may remember feeling very alone, fearful, and needing comfort.

Often a sexually assaulted person needs much love and support. Affection is very important. Try to show, in your own way, that you care and would like to help. This can help to break down the victim's loneliness and alienation.

It seems advisable and therapeutic for a victim of a sexual assault to talk about the assault, but it is not helpful to probe or to ask pointed questions. People who listen to a victim often wonder if it actually happened or if it happened the way the victim tells the incident. This attitude is not helpful because it may cause anxiety and guilt for a victim who needs support and trust.

You should share your feelings and ask what bothers the victim without threatening. You should allow the victim to talk about his/her immediate concerns. Remember, too, the victim may want to talk about other things. After the assault the victim may often concentrate on other problems and it is important that he or she talk about these other concerns. Probably the most practical suggestion is that you communicate your own willingness to let the victim talk. Because of your closeness to the victim, he or she may be more sensitive to your feelings. If the assault distresses you, it may be impossible for the victim to talk to you. The victim may also try to protect you. In these and other such



cases, where he or she really will not be able to talk with you -- encourage the victim to talk to someone trusted. Remember that the assault has brought on feelings of powerlessness -- encourage the victim to talk to whomever he or she wishes, when he or she wants. This may be more helpful than feeling that it is necessary to talk to you. Encourage professional help, if necessary. This is not a sign of weakness or failure on your part or on the victim's part.

Whether or not counseling is sought, it is not a replacement for warm, concerned, loving communication. A counselor may help, but he or she cannot replace your role in the victim's life. Sexual assault not only affects the victim, but also you, as it plays upon your own fears and fantasies. Try to recognize the fears for what they are; otherwise you may end up projecting them on the victim and cause some serious problems for your relationship with the victim. Give the victim the right to make his or her own decisions. Don't be over-protective.

It should be noted that, if the victim has pressed charges, the whole process of prosecution involves much stress. Your awareness of the legal processes and problems involved, and your support, will be helpful.

### XIII. OTHER SEXUAL ASSAULTS AND FAMILY ABUSES

We (law enforcers, medical professionals, social scientists, and prosecutors), along with the general public, have, for too long, viewed sexual assault as only rape.

That clearly is not true.

The new Minnesota Criminal Sexual Conduct Law recognizes this fact and has been worded to encompass other sexual assaults besides rape -- including homosexual assault, child molestation, incest and even such new concepts as the unconsented to touching of the clothing covering another's "intimate parts" for a sexual or assaultive purpose.

In addition to the above criminal sexual conduct, there is also other family related misconduct such as battered women, obscene telephone calls, alcohol and drugs, abortion and child abuse (child abuse covered by the "Required Reporting Law" summarized herein).

A sexual assault is any sexual conduct to which each participant is not a willing party. This definition includes even those acts to which a spouse or date might reluctantly agree out of a sense of guilt or fear, but to which the spouse or date does not willingly consent. Such acts result in emotional trauma of a greater or lesser degree. The trauma is greater for the victim, but the assaultive party usually suffers a degree of guilt or anger as well.

These abuses are common, largely unreported, and difficult or impossible to prosecute.

Because you will frequently confront these crimes, you must understand what they are, who the victims are, how to investigate them, what evidence is needed or apparent, and what is needed to prosecute them. Most importantly, you must know how to advise the victim and where to send the victim, the victim's family, and often the abusive person for appropriate counseling.

When we say sexual assault, we use an inclusive term. Such an inclusive term is needed and desirable. Sexual misconduct other than rape is frequently just as traumatic and intrusive as rape and in many instances more difficult to investigate and impossible to prosecute.

Progressive efforts on our part regarding criminal sexual conduct is only the beginning of efforts to truly combat sexual assault.

We cannot discriminate in our attitude toward sexual assault.

Homosexual assault is no less heinous than rape. The law says we must treat it that way.

This chapter deals with other sexual assaults and family abuses.

### XIII. OTHER SEXUAL ASSAULTS AND FAMILY ABUSES

#### Same Sex Assault:

Sexual assault against a person of the offender's own sex is not uncommon. These same sex assaults occur equally against children and adults. They happen under all types of circumstances, including prison settings, social circumstances, and activities such as hitch-hiking, as well as by total strangers on the street or in the victim's own home. Homosexual adults are frequent victims of sexual assault. A homosexual has a right to choose his or her sexual partner and sexual practices; however, sex offenders often seem to feel that if a person is a homosexual, that person is necessarily willing to engage in sexual activity with any person of the same sex. As a result, homosexuals are frequent victims of sexual assault by offenders of the same sex, particularly in prison. At times a homosexual is brutally beaten and/or sexually assaulted by heterosexuals who believe that homosexuals are open targets for their hostilities.

Minnesota law governing criminal sexual conduct now applies to all sexual assaults, regardless of the sex of either the victim or the assailant. Former Minnesota law provided that only a female could be the victim of Rape or of Sexual Intercourse with a Child. The only criminal sexual assaults that could be committed against a male under the former law were those of sodomy (carnally knowing another by or with the mouth or by the anus) and indecent liberties. A female was necessarily immune from prosecution for Rape or Sexual Intercourse with a Child against a male victim because those laws only applied to a female victim of sexual intercourse. The only sexual assaults for which a female could be prosecuted were indecent liberties or sodomy, regardless of the victim's sex. A male who sexually assaulted another male was only subject to prosecution for sodomy or indecent liberties.

Same sex assault should be reported and prosecuted. Such assaults are just as criminal as traditional rape, and will be treated in the same way by the police, prosecutors, and courts. Victim's should not be embarrassed or humiliated about reporting a homosexual assault; it is not a disgrace. It is a crime.

#### Battered Women

To report a battering incident is often embarrassing and humiliating. Women who experience battering or beating can be from low, middle or high-income classes, educated or not educated, married or not married, with or without children. Most women who are beaten don't realize that this has and is happening to many others. To be in a relationship where beating occurs can be very emotionally confusing. The victim may be very angry with the person who beats her and yet feel love for the person and not want him to get into trouble. For women who are married, have children and don't work outside the home, it is very frightening when they are beaten because their options to get out of the situation are limited and they often feel as if it is impossible to change the situation. If a person is beaten, it is best to get help as soon as possible. The victim should not wait until next time. In most cases the beatings become more frequent, and physical and mental damage increases.

To exist in a relationship, on either side, where beating occurs is destructive and possibly fatal for all members of the relationship, including children.

There are a number of options for women in a battering situation. More options are being explored by concerned people. It is important that the options be helpful, confidential, and not compound the existing problem.

Counseling can be the first step in changing a battering situation. At times husbands or boyfriends may refuse to go to counseling. In that

situation, the victim may have to call the Police and take legal action, but should not hesitate about seeking counseling for themselves.

The Rape Counseling Center, 2617 Hennepin Avenue, South, Minneapolis, Minnesota, (Telephone: 374-HELP, 24-hour hotline), or the Hennepin County Attorney's Office Sexual Assault Services (Telephone: 348-5397) will assist with emergency information, legal advice, counseling information, and information on emergency shelter for the victim and her children.

A battered person with pain, injuries, or bruises, should go to the Hennepin County Medical Center Emergency Room, Portland Avenue and South Fifth Street, Downtown Minneapolis (Telephone: 348-2464).

If the victim wants to bring legal charges against the person who beat her, she should:

- (1) Tell the police officer she wants to press charges.
- (2) See a doctor as soon as possible. If pressing charges, photos should be taken while the injuries are most visible.
- (3) Contact the City Attorney's office in the city where the assault occurred to discuss filing a complaint. The Minneapolis City Attorney's Office telephone number is 348-2010. The police will also inform the victim how to file a complaint.
- (4) The victim may make a citizens' arrest by telling the police officer she is arresting the person for assault immediately after it happens and while the assailant is present. The victim must also tell the person she is arresting that she is doing so.

REMEMBER: A person who physically abuses another is reflecting some type of emotional or physical problem that should be cared for IMMEDIATELY. The physically abusive person is deeply troubled and everyone who lives or associates closely with such a person will also develop severe emotional problems. No one should be embarrassed about seeking help for this problem. It is a common problem and it is never

a disgrace to seek help. The abusive person and the victims of that abuse can all be helped, but they must first be willing to seek that help.

Child Abuse:

Minnesota law requires that professionals practicing the healing sciences, social services, hospital administration, psychological or psychiatric treatment, child care, education or law enforcement, who have knowledge or cause to believe a child under sixteen years of age is being sexually or physically abused must report such knowledge to the police or to the county welfare agency. Any other person may report such information.

Eight hundred and ninety-five children were reported to the Hennepin County Welfare Department's Child Protection Services from July 1, 1963, to December 31, 1974, as allegedly physically abused. These children range from seven days to 17 years. While the children and their families got help and rehabilitation, the unfortunate fact about that statistic is that for every case uncovered, there could be 100 more.

1963		6
1964	--	15
1965	--	9
1966	--	22
1967	--	34
1968	--	56
1969	--	61
1970	--	68
1971	--	112
1972	--	131 **
1973	--	168
1974	--	213

\*\* Prior to 1972, The Department did not keep statistics on reported sexual abuse of children. The 1972, 1973 and 1974 figures combine reports of alleged physical or sexual abuse.

Anyone who suspects abuse, physical or sexual, should immediately call the Child Protective Services program at 348-3522. Calls are confidential.

Incest and sexual abuse of children has been and still is often hidden as a well-guarded family secret. For a child who has experienced or is experiencing sexual abuse by a family member, relative or friend, it is difficult, if not nearly impossible, to report or tell of the incident. Children need support and confidentiality from all concerned people who may be involved. Often the abused child thinks this has only happened to him or her and that another person would not understand the problem. In fact, many people do not understand the child's situation.

Children react to incest and sexual assault by family members in various ways. Some children will tell of the incidents; most often children don't tell an adult but may briefly discuss it with a sibling, especially if the sibling is also being sexually abused. Many children will try to force the experience out of their consciousness, in an effort to forget what happened because they are unable to understand or to cope with the problem.

Children know that telling someone outside the family will cause a lot of family problems, so they generally keep sexual abuse a secret.

#### Child Molestation:

Child molestation should be reported to your local Police Department. The child could be taken to Hennepin County Medical Center for an evidentiary medical examination, as well as for medical treatment, if necessary. The medical exam could be a very important part of evidence if the case is prosecuted. In most cases where a child has been a victim of a molestation, the child is embarrassed, afraid, and often will not tell anyone it happened. It is important that Police, hospital personnel and parents be sensitive and supportive to a child who has been molested, and treat the child's information confidentially. Be calm, and don't imply that the child is "bad", "ruined" or "dirtied". At times, molestation will have long-term effects on a child. It may be an

incident the child becomes very embarrassed about, especially if it is handled improperly.

Openness from the parents, yet confidentiality concerning the matter is important. The child needs support from family members. Each family will have its own way to handle this situation. Call 348-5397, Hennepin County Attorney's Office Sexual Assault Services, for help or information.

Prosecution of child molesters can be extremely difficult. There are rarely any witnesses to the assault and the child frequently does not tell anyone about the assault until days or weeks or even months later, when any physical evidence has all been destroyed. In addition, Minnesota law presumes that a child under 10 years old is incompetent to testify in Court unless the prosecution can demonstrate that the child understands the difference between truth and a lie, understands the meaning of an oath to tell the truth, and is able both to recall and to relate the facts of the incident. Young children are usually incompetent to testify, so that the only way to successfully prosecute the molester of a young child is to have independent witnesses and/or physical evidence.

A child molester needs help and should be reported to the Police Department.

#### Alcohol and Drugs:

Chemical dependency (alcoholism and/or drug dependency) is an illness, a disease, and it attacks both men and women equally. The disease affects a person mentally, emotionally, and physically. It makes the people close to the dependent person sick, too. A chemically dependent person is often the last person to recognize his or her illness and you may wait a lifetime for a chemically dependent person to voluntarily seek treatment. The disease cannot be cured, but total life-long abstinence from the chemical and treatment for the underlying emotional, mental and

physical problems does enable a chemically dependent person to recover and lead a happy, useful life. A recovered chemically dependent person must never use the chemical or chemicals which resulted in dependency again.

Alcohol and mood-altering drugs decrease our natural inhibitions and emotional controls. Alcohol, for example, can result in very pleasant feelings when used in moderation, but it can be very unpleasant to be around an intoxicated person.

A sexual assault occurs whenever one person forces any sexual activity upon another person who does not desire that sexual activity. Some sexual assaults are criminal in nature and the offender may be intoxicated at the time; however, the vast majority of sexual assaults under this broad definition are not criminal and occur between friends, lovers, or spouses. Intoxication from alcohol or drugs is all too frequently the cause of these "friendly" sexual assaults. For example, a loving wife or girlfriend may be forced into an unpleasant (to her) sexual act by an intoxicated husband or boyfriend. She feels angry, hurt, betrayed and used by this conduct, while he will later feel guilt and remorse. He may be unusually loving and attentive or bring her expensive gifts to seek forgiveness after such an episode, which often leaves her confused and feeling guilty for her initial anger. A chemically dependent person usually keeps his/her loved ones "off balance" emotionally through this kind of double message. The loved ones become "enablers" by forgiving, excusing and covering up for the chemically dependent person's conduct, thus enabling the chemical dependent to continue using alcohol or drugs and ultimately making the entire family sick. If the offender does not show appropriate remorse the next day or doesn't seem to remember everything that happened, he or she may have been in a "black out". A "black out" is a period of time when a person,

while intoxicated, will do or say things of which he or she has no recollection after becoming sober. The "black out" may last for minutes or for hours.

If someone close suffers "black outs" or seems to become a totally different person after using alcohol or drugs, even though he or she rarely uses the chemical, that person is very possibly chemically dependent. Persons should not be forced by remorse and promises that "it will never happen again" when they know that it has already happened many times. People must not be an enabler: They will make themselves sick and the loved one will get worse.

If a person has any reason to suspect that a loved one is chemically dependent, they should contact the Hennepin County Alcohol & Drug Information and Referral Service at 348-8013. They will help understand the illness and to obtain appropriate treatment for the loved one. It is not shameful or humiliating to seek help for chemical dependency. Chemical dependency is a disease which is recognized and identified as a disease by the American Medical Association. It is a common disease and it can be treated.

#### Abortion:

Females who have been raped, or sexually assaulted and become pregnant because of the incident can receive pregnancy and abortion counseling from:

Abortion Counseling Services  
544 Turnpike Road  
Golden Valley, Minnesota 55416  
Telephone Number: 545-8085

It offers counseling for the undecided, referrals for abortion, and birth control.

Or if you decide you want an abortion:

Meadowbrook Women's Clinic  
6498 Excelsior Boulevard  
St. Louis Park, Minnesota  
Telephone Number: 925-4640

#### Phone Calls:

If an obscene telephone call is received, hang up. Victims should not ask "Who is this?" or "What do you want?".

Contact by phone to answer questions about sex life should not be cooperated with. Researchers who are doing legitimate sexual research are not contacting people by phone. Hang up.

Instruct children and baby sitters never to talk on the phone to anyone they don't positively recognize. An innocent comment like "Daddy's out of town", or "Mommy's not home", may indicate to a sex offender a vulnerable situation.

Call the telephone company when the above kinds of calls are received. Threatening calls should be reported immediately to the police.

#### Incest:

Both males and females can be the victims of incest, which is committed by both male and female family members. These incestuous relationships can be either heterosexual or homosexual, but they are most frequently engaged in by adult males and female children, and the male is usually the child's father or stepfather. Incestuous relationships can also occur between adult family members, of course, but these are apparently rare.

#### Overall Family Characteristics Common To Incestuous Relationships:

- (1) Serious confusion and role disturbance occurs in the family, primarily with the loss of parental fulfillment of parental roles, or inability of parents to fulfill their parental roles.
- (2) Reclusive family -- The child victim lives in a secretive home environment and is generally discouraged from outside activities or events.
- (3) May be overly zealous religious family. This type of

family frequently stresses the authority of the father figure... closeness of the family, heavy dependency relationship.

(4) May be strong delineation of right and wrong, good and evil, superimposed upon the children by authoritarian type parent. Fear is an important control.

(5) Marriages of incest offenders were typically undertaken at an early age.

(6) Eldest daughter is usually the victim.

#### Characteristics of Father/Male Parent Role in Incestuous Relationship:

- (1) Frequently responds with violent outbreaks of temper and physical violence when his commands are not met.
- (2) High degree of alcoholism or chemical dependency.
- (3) The personalities of incestuous fathers differ, but many tend to be relatively passive, dependent people who often experienced unhappiness or insecurity in childhood.

#### Characteristics of Mother/Female Parent Role:

- (1) Seen as passive and dependent.
- (2) At time incest is initiated, mother has usually withdrawn from sexual and maternal roles.
- (3) Mother is seen as ill-equipped to handle own personality, let alone personality of husband. As a consequence, she is usually overwhelmed by maternal and wifely responsibilities especially by the thought of terminating an incestuous relationship of father and daughter or heading a single household.
- (4) Mother may help initiate incestuous relationship...bringing daughter into sexual role with father in order to maintain family. Others have adopted an illusory/avoidance system to prevent seeing or comprehending relationship.

Factors Which Keep Primary Victim Within Family And Sustain An Incestuous Relationship:

- (1) Victim's feelings of shame and guilt toward mother and/or father.
- (2) Fear of men.
- (3) Passive behavior, low value of self.
- (4) Lack of knowledge of their own rights.
- (5) Fear of removal from home.
- (6) Break up of family.
- (7) Loss of father.
- (8) Alienation from rest of family.
- (9) Social isolation of family.
- (10) Dependency of daughter.
- (11) Threats to child.
- (12) Ill-equipped to deal with outside world.
- (13) Fear incest will then occur with next eldest daughter.
- (14) Confusion about her sexuality.
- (15) Disturbed relationship of marital partners.

Aftermath:

According to one study, fathers confronted with detection frequently deny the incest or, if they admit it, attempt to minimize their guilt, and often express surprise that incest is punishable by law. They frequently insist that they have done nothing wrong; some fathers believe sexual access to be one of their parental rights.

Even after incarceration of the fathers, some wives refuse to believe that incest occurred; thus, the father may remain the dominant member of the family, although in prison. Frequently, the cost of the mother's admitting that incest occurred is the dissolution of the family and the mothers in these families are often especially incapable by both background and temperament to head a household. Very often the fathers

return to the home and the ingredients which make up a condition for incestuous relationships remain and are either resumed by the eldest daughter, or if she is removed from the home, voluntarily or otherwise, the role is then passed to the next eldest daughter. Usually, neither the child nor the mother desires to prosecute the father.

Characteristics Of Girls Involved In Incest:

The following descriptions of girls involved in incestuous relationships may help you to recognize them if they come to you for help. Most of the victims share some or all of the characteristics listed below:

She may be likely be forced to fill a "mature" role in the family, i.e., the wife's role to the father and, perhaps, the mother's role to younger children. She may feel frustrated and helpless in that she does not have a mother she can depend on. Underlying this appearance of maturity is a feeling of immaturity, lack of self esteem and a fearfulness of the world outside the family.

This poor self-concept is constantly reinforced and she may frequently deny her own needs. She may feel fear and anger towards her father and extend it towards all men. She may be depressed. She may be very confused about sex and feel disgust towards her body and that of a man.

Some hints that may suggest incest to you are:

- (1) Alcoholism or drug dependency in the family; however, very few chemically dependent person ever engage in incestuous relationships.
- (2) Poor school work.
- (3) Excessive parental restrictions.
- (4) Depression.
- (5) Frequently young women that run away from home are



running from an incestuous environment.

The long-term effects of incest are far reaching. The victim tends to see herself as a sex object and may learn to use sex to manipulate favors. She can also hold other women in contempt.

Generalizations such as "men only want one thing", or "all men are animals" are reinforced and, consequently, she may develop a cynical and defensive behavior toward men. Guilt and shame are experienced as well as the feeling of being used. She may also exhibit great anger toward her mother for not protecting her. Sex is something to be kept secret... "Don't tell".

Incest usually takes place over a long period of time, from six months to several years. It may take many years of intensive professional counseling to deal with some of the woman's feelings as a result of this experience. These feelings cannot be dealt with all at once.

Caution: If you become aware of an incestuous relationship, it is natural for you to want to help the victim get out of this situation. Do not burden her with your feelings; handle the situation judiciously. There are many ways of resolving this type of situation, and not all are the kind of resolution you may have in mind...specifically, running away, homicide or suicide.

If an incestuous relationship occurs ~~in your family~~, seek help at once, not only for the participants but also for every member of <sup>the</sup> ~~your~~ family.

For counseling and assistance, call:

Family and Children's Services  
414 South Eighth Street  
Minneapolis, Minnesota  
Telephone Number: 340-7444

Hennepin County Welfare Department, Adult Services  
400 South Fifth Street  
Minneapolis, Minnesota  
Telephone Number: 348-8125

Hennepin County Welfare Department, Child Protective Services  
400 South Fifth Street  
Minneapolis, Minnesota  
Telephone Number: 348-3560

Hennepin County Attorney's Sexual Assault Services  
2000 Hennepin County Government Center  
Minneapolis, Minnesota  
Telephone Number: 348-5397 or 348-5545

Minnesota's Maltreatment of Minors Reporting Law:

The 1974 Minnesota State Legislature enacted a "Maltreatment of Minors Reporting Law" wherein public policy is stated to be the protection of children whose health or welfare may be jeopardized through physical or sexual abuse or neglect. The public policy is also to protect children from such abuses and by strengthening the family, providing safe homes for abused children, and by establishing a policy whereby abuses may be reported.

Definitions

The new statute clarifies some words and phrases:

(1) Sexual abuse - is when a child's parents, guardian or person responsible for the child's care subjects a child under 16 years of age to the sex acts of rape, sodomy, intercourse, indecent liberties or any other violations of the four degrees of criminal sexual conduct as set forth in the new Minnesota Criminal Sexual Conduct Law (1975).

(2) Neglected child - is a child under 18 years of age who is (a) abandoned, or; (b) without proper care through faults or habits of parents, or; (c) without necessary care for physical or mental health or morals because parents refuse to provide it, or; (d) whose behavior, condition, environment or associations are such as to be dangerous or injurious to the child or others, or; (e) who is living in a foster care facility not licensed in accordance with the law unless so living by Court order, or; (f) whose parent has made planned arrangements in a manner detrimental to the child's welfare or in violation of the law, or; (g) a child who is legally "delinquent" but whose delinquency is due in whole or in part to parental neglect.

Good faith spiritual reliance or prayer by parents for child's benefit and care shall not be considered neglect.

(3) Physical abuse - is any physical injury to a child by a parent other than by accident or any physical injury to a child that cannot be reasonably explained by the history of injuries provided by the parents.

Reporting

The law provides that certain professionals must report physical or sexual abuse they have knowledge of or have reasonable cause to believe is occurring. All professionals or their employees engaged in the healing act, social services, hospital administration, psychological or psychiatric treatment, child care, education or law enforcement must comply with this reporting provision. Failure for these professionals to comply with the law is a misdemeanor punishable by not more than 90 days in jail, or to payment of a fine of not more than \$300, or both.

Any person, although not engaged in any of the above-mentioned professions, may report child abuse if they have knowledge or reason to believe abuse is occurring.

Reporting in all instances should be to the police department or to the local welfare agency.

Any persons reporting under this law shall be immune from any liability if they exercised due care and acted in good faith. False reports are given no such immunity and will be subject to both civil and criminal liability.

Any reports should be made immediately by telephone or other verbal contact. Persons required to report must follow with a written report as soon as possible.

Reports should identify the child, the parent, the nature and extent of the child's injuries and the reporter's name and address.

#### Evidence

Evidence regarding injury to a child is not protected by the doctor-patient privilege or by the husband-wife privileges.

#### Duties of Local Welfare Agency

The local welfare agency shall immediately investigate any reports and shall offer protective and preventive services, and seek to remove the child from the parent where justified.

#### Records

All records of child abuse shall be private except that the individual subject of a record shall have access. However, the reporter's name shall be disclosed only by the local welfare agency (1) if the report is found unsubstantiated or (2) by court order if the report is substantiated. Unsubstantiated records shall be destroyed immediately, substantiated shall be destroyed after seven years after records final entry, and records not substantiated upon initial investigation shall be destroyed after one year if substantiation is not obtained in that period.

### CHILDREN—MALTREATMENT

#### CHAPTER 221

H.F.No.306

[Coded]

An Act relating to children; requiring reports of maltreatment of minors to be filed by certain individuals; authorizing reports to be filed by citizens under certain circumstances; prescribing penalties for failing to report or falsifying reports; amending Minnesota Statutes 1974, Chapter 626, by adding a section; repealing Minnesota Statutes 1974, Section 626.554.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1974, Chapter 626, is amended by adding a section to read:

#### 626.556 Reporting of maltreatment of minors

**Subdivision 1. Public policy.** The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; to strengthen the family and make the home safe for children through improvement of parental and guardian capacity for responsible child care; and to provide a safe temporary or permanent home environment for physically or sexually abused children.

In addition, it is the policy of this state to require the reporting of suspected physical or sexual abuse of children; to provide for the voluntary reporting of neglect of children; to require the investigation of such reports; and to provide protective and counseling services in appropriate cases.

**Subd. 2. Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by the child's parents, guardian, or person responsible for the child's care, to any act which constitutes a violation of Minnesota Statutes, Sections 609.291, 609.292, 609.293, 609.295, or 609.296.

(b) "Neglected child" shall have the meanings defined in Minnesota Statutes, Section 260.015, Subdivision 10. Nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child.

(c) "Physical abuse" means:

(i) Any physical injury inflicted by a parent, guardian or other person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the history of injuries provided by the parent, guardian or other person responsible for the child's care.

(d) "Report" means any report received by the local welfare agency pursuant to this section.

**Subd. 3. Persons mandated to report.** A professional or his delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement who has knowledge of or reasonable cause to believe a child is being physically or sexually abused shall immediately report the information to the local welfare agency or police department. The police department, upon receiving a report, shall immediately notify the local welfare agency. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this subdivision may voluntarily report to the local welfare agency or police department if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse. The police department, upon receiving a report, shall immediately notify the local welfare agency.

**Subd. 4. Immunity from liability.** Any person participating in good faith and exercising due care in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

**Subd. 5. Falsified reports.** Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

**Subd. 6. Failure to report.** Any person required by this section to report suspected physical or sexual child abuse who willfully fails to do so shall be guilty of a misdemeanor.

**Subd. 7. Report.** An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department or local welfare agency. Any report shall be of sufficient content to identify the child, the parent, guardian, or other person responsible for his care, the nature and extent of the child's injuries and the name and address of the reporter. Written reports received by a police department shall be forwarded immediately to the local welfare agency.

**Subd. 8. Evidence not privileged.** No evidence regarding the child's injuries shall be excluded in any proceeding arising out of the alleged physical or sexual abuse on the grounds of either a physician-patient or husband-wife privilege.

**Subd. 9. Mandatory reporting to a medical examiner or coroner.** When a person required to report under the provisions of subdivision 3 has reasonable cause to believe a child has died as a result of physical or sexual abuse, he shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency or police department. Medical examiners or coroners shall notify the local welfare agency or police department in instances in which they believe that the child has died as a result of physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the appropriate law enforcement authorities and the local welfare agency.

**Subd. 10. Duties of local welfare agency upon receipt of a report.** The local welfare agency shall immediately investigate and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abuse or neglected minor, and preserving family life whenever possible. When necessary the local welfare agency shall seek authority to remove the child from the custody of his parent, guardian or adult with whom he is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

**Subd. 11. Records.** All records maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private. The records shall be collected and maintained in accordance with the provisions of Minnesota Statutes, Sections 15.162 to 15.168, and an individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be disclosed only (a) by the local welfare agency if the report is found to be unsubstantiated or (b) by the local welfare agency upon court order if the report is found to be substantiated.

Records maintained by local welfare agencies under this section must be destroyed as follows:

(a) All records relating to reports which, upon investigation, are found to be unsubstantiated shall be destroyed immediately;

(b) All records relating to reports which, upon investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record; and

(c) All records of reports which, upon initial investigation, cannot be substantiated to the satisfaction of the local welfare agency may be kept for a period of one year. If the local welfare agency is unable to substantiate the report within that period, all records relating to the report shall be destroyed immediately.

**Sec. 2. Minnesota Statutes 1974, Section 626.554, is repealed.**

Approved June 2, 1975.

**XIV**

XIV. Directory of Support and Community Services

Minneapolis Police Department

Sex Crime Unit  
Court House, City Hall  
Minneapolis, Minnesota  
Telephone Number: 348-2921

Detective will take your statement

Hennepin County Sheriff's Office

Court House, City Hall  
Minneapolis, Minnesota  
Telephone Number: 348-3771

Sexually Assaulted while hitch-hiking or unsure of your location

Hennepin County Medical Center -- Emergency

Emergency Department  
Portland & Fifth Avenue, South  
Minneapolis, Minnesota  
Telephone Number: 348-2464

Sexual Assault, Evidentiary Medical Exam  
Free and Confidential

N.I.P. Rape Counseling Center

2617 Hennepin Avenue, South  
Minneapolis, Minnesota 55408  
Telephone Number: 374-HELP (24-hour hotline)

Counseling for sexual assault victims  
Support groups for victims of sexual assault  
Outreach counselors; someone will come to be with you at the  
Police Department, Hospital, and/or the County Attorney's Office  
Speaker Available

Hennepin County Attorney's Office

2051 Hennepin County Government Center  
Minneapolis, Minnesota 55487  
Telephone Number: 348-5397 (Sexual Assault Services) or  
348-5545

Speakers Available  
Legal information for sexual assault persons

Minneapolis City Attorney's Office

City Hall, Court House  
Minneapolis, Minnesota  
Telephone Number: 348-2010

Women who have been battered or beaten

Child Protective Services

Hennepin County Welfare Department  
400 South Fifth Street  
Minneapolis, Minnesota 55415  
Telephone Number: 348-7506

Child abuse; child sexual abuse

Planned Parenthood of Minnesota

230 Walker Building  
803 Hennepin Avenue, South  
Minneapolis, Minnesota  
Telephone Number: 336-8931

Family planning  
Educational and medical services

Meadowbrook Women's Clinic

6490 Excelsior Boulevard  
St. Louis Park, Minnesota  
Telephone Number: 925-4640

Abortion Clinic

Abortion Counseling Services

544 Turnpike Road  
Golden Valley, Minnesota 55416  
Telephone Number: 545-8085

Offers counseling for the undecided, referrals for abortion, and  
birth control

Red Door

501 Park Avenue  
Minneapolis, Minnesota  
Telephone Number: 348-6300

V.D. Clinic

Teenage Medical Service  
2425 Chicago Avenue, South  
Minneapolis, Minnesota 55404  
Telephone Number: 874-6125

Medical follow-up for sexual assault

Program In Human Sexuality  
University of Minnesota  
2630 University Avenue, Southeast  
Minneapolis, Minnesota 55414  
Telephone Number: 376 7520

Individual and group counseling and education for sexual matters

Walk-In-Counseling  
2421 Chicago Avenue, South  
Minneapolis, Minnesota 55404  
Telephone Number: 870-0566

Battered or beaten women

Family And Children's Services  
414 South Eighth Street  
Minneapolis, Minnesota  
Telephone Number: 340-7444

Group counseling, marriage and relationship counseling, total family counseling, parent-child counseling, individual personality adjustment counseling

Hennepin County Welfare Department, Adult Services  
400 South Fifth Street  
Minneapolis, Minnesota  
Telephone Number: 348-8125

All information needs and referrals within Hennepin County Welfare Department

Assertiveness Training  
Continuing Education for Women  
200 Westbrook Hall  
University of Minnesota  
Minneapolis, Minnesota  
Telephone Number: 373-9743

Y.W.C.A. also offers assertiveness training

Karate - Self Defense is offered by various groups. For referrals call:

N.I.P. Rape Counseling Center  
Telephone Number: 374-HELP

Hennepin County Attorney's Office  
Telephone Number: 348-5397 (Sexual Assault Services) or  
348-5545

Hennepin County Police Departments:

Minneapolis Police Department  
Court House, City Hall  
Minneapolis, Minnesota  
Telephone Number: 348-2921

Hennepin County Sheriff's Office  
Court House, City Hall  
Minneapolis, Minnesota  
Telephone Number: 348-3771

Suburban Police Departments:

Bloomington Police Department  
2215 West Old Shakopee Road  
Bloomington, Minnesota  
Telephone Number: 884-3591

Brooklyn Center Police Department  
6301 Shingle Creek Parkway  
Brooklyn Center, Minnesota  
Telephone Number: 561-5440

Brooklyn Park Police Department  
5700 North 85th Avenue  
Brooklyn Park, Minnesota  
Telephone Number: 425-4513

Champlin Police Department  
512 Highway 52  
Champlin, Minnesota  
Telephone Number: 421-6400

Crystal Police Department  
4141 Douglas Drive  
Crystal, Minnesota  
Telephone Number: 537-4571

Deephaven Police Department  
20225 Cottagewood Road  
Excelsior, Minnesota  
Telephone Number: 544-9511

Eden Prairie Police Department  
8950 Eden Prairie Road  
Eden Prairie, Minnesota  
Telephone Number: 941-6869

Edina Police Department  
4801 West 50th Street  
Edina, Minnesota  
Telephone Number: 925-2242

Golden Valley Police Department  
7800 Golden Valley Road  
Golden Valley, Minnesota  
Telephone Number: 545-3781

Hopkins Police Department  
1010 First Street, South  
Hopkins, Minnesota  
Telephone Number: 935-3321

Maple Grove Police Department  
14310 93rd Avenue, North  
Osseo, Minnesota  
Telephone Number: 425-2525

Medicine Lake Police Department  
232 Peninsula Road  
Minneapolis, Minnesota  
Telephone Number: 374-6232

Medina Police Department  
2812 Willow Drive  
Hamel, Minnesota  
Telephone Number: 473-8917

Minnetonka Police Department  
13231 Minnetonka Boulevard  
Minnetonka, Minnesota  
Telephone Number: 933-2511

Minnetonka Beach Police Department  
Minnetonka Beach, Minnesota  
Telephone Number: 471-9303

Mound Police Department  
5541 Shoreline Boulevard  
Mound, Minnesota  
Telephone Number: 472-3711

New Hope Police Department  
4401 Xylon Avenue, North  
New Hope, Minnesota  
Telephone Number: 533-1521

Orono Police Department  
P.O. Box 66  
Crystal Bay, Minnesota  
Telephone Number: 473-7357

Osseo Police Department  
3 Central Avenue, Southwest  
Osseo, Minnesota  
Telephone Number: 425-2825

Plymouth Police Department  
13800 Highway #55  
Plymouth, Minnesota  
Telephone Number: 546-3571

Richfield Police Department  
6700 Portland Avenue, South  
Richfield, Minnesota  
Telephone Number: 866-5061

Robbinsdale Police Department  
4145 Hubbard Avenue, North  
Robbinsdale, Minnesota  
Telephone Number: 537-4534

Rogers Police Department  
Rogers, Minnesota  
Telephone Number: 428-2463

St. Anthony Police Department  
2900 Kenzie Terrace  
St. Anthony, Minnesota  
Telephone Number: 789-8884

St. Louis Park Police Department  
5005 Minnetonka Boulevard  
St. Louis Park, Minnesota  
Telephone Number: 920-3000

South Minnetonka Public Safety  
339 Third Street  
Excelsior, Minnesota  
Telephone Number: 474-3261

Wayzata Police Department  
600 Rice Street  
Wayzata, Minnesota  
Telephone Number: 473-0234

University of Minnesota Police  
2030 University Avenue, Southeast  
Minneapolis, Minnesota  
Telephone Number: 373-3550

St. Paul Resources:

St. Paul Police Department

101 East Tenth Street  
St. Paul, Minnesota  
Telephone Number: 291-1234

St. Paul Ramsey Hospital

Sex Offense Services  
640 Jackson Street  
St. Paul, Minnesota  
Telephone Number: 222-4260

Emergency Social Services

Telephone Number: 225-1515  
(Telephone Service run by the Red Cross)

Ramsey County Sheriff's Office

340 North Rice Street  
St. Paul, Minnesota  
Telephone Number: 484-3366

Planned Parenthood of Minnesota

Hamm Building  
408 St. Peter Street  
St. Paul, Minnesota  
Telephone Number: 224-1361

Family Planning  
Educational and Medical Services

This Directory does not intend to be an exhaustive list of resources available to you in Hennepin County. Your church, church agencies, neighborhood organizations, and other non-profit organizations and agencies may be able to provide you with whatever services you need.



XV. Acknowledgments

Deborah S. Anderson  
Director, Sexual Assault Services  
Office of the Hennepin County Attorney

Ann L. Alton, J.D.  
Assistant County Attorney  
Citizens' Protection Division, Acting Chief  
Office of the Hennepin County Attorney

John W. Borg, J.D.  
Assistant County Attorney  
Citizens' Protection Division  
Office of the Hennepin County Attorney

Rebecca J. Pearson  
Secretary  
Citizens' Protection Division  
Office of the Hennepin County Attorney

N.I.P. Rape Counseling Center  
2617 Hennepin Avenue, South  
Minneapolis, Minnesota

Betty Cavanaugh, R.N.  
Nursing Supervisor, Emergency Department  
Hennepin County Medical Center

Garry F. Peterson, M.D.  
Forensic Pathologist  
Deputy Hennepin County Medical Examiner  
Hennepin County Medical Center  
Pathologist, St. Paul Ramsey Hospital  
St. Paul, Minnesota

Lieutenant Richard Hansey  
Minneapolis Police Department

Robert Flint, Ph.D.  
Clinical Psychologist  
Student Counseling Bureau  
University of Minnesota

Walk-In-Counseling  
2421 Chicago Avenue, South  
Minneapolis, Minnesota

Representative Linda Berglin  
Minnesota House of Representatives  
217 State Office Building  
St. Paul, Minnesota

Senator Jack Davies  
27 Capitol Building  
Minnesota State Senate  
St. Paul, Minnesota

State of Minnesota Task Force on Sexual Assault  
Suite #430, Metro Square  
Department of Corrections  
St. Paul, Minnesota

Materials on incest prepared in part by volunteers from the  
N.I.P. Rape Counseling Center

Our thanks to the Minneapolis Police Department, the Hennepin County Medical Center, the Hennepin County Sheriff's Office, the Hennepin County Welfare Department, the Hennepin County Board of Commissioners, and all the other individuals and agencies, both public and private, that have made the Hennepin County Attorney's Sexual Assault Services program and this pamphlet possible.

**HENNEPIN COUNTY GOVERNMENT**

Board of County Commissioners  
2400-A Hennepin County Government Center  
Minneapolis, Minnesota 55487

District No. 1  
Commissioner Jeff Spartz

District No. 2  
Commissioner Randy Johnson

District No. 3  
Commissioner Richard Kremer

District No. 4  
Commissioner John E. Derus

District No. 5  
Commissioner E. F. Robb, Jr.

District No. 6  
Commissioner Sam S. Sivanich

District No. 7  
Commissioner Nancy Olkon

Hennepin County Attorney  
Gary W. Flakne  
2000 Government Center  
Minneapolis, Minnesota 55487

Hennepin County Sheriff  
Donald Omodt  
Room 6, Courthouse  
Minneapolis, Minnesota 55415

**IXX**

This manual has been produced to increase awareness to the crime of sexual assault by law enforcement, medical, social service, volunteer and prosecutorial personnel and agencies.

Because of the traumatic nature of the crime and the traditionally "unspeakable" attitude society has developed toward sexual assault, this manual is considered necessary and worthy of this special treatment not afforded other crimes.

It is intended that this publication serve as a resource and a guide for you as you develop your efforts to fight sexual assault crimes and as you perform your jobs from day to day, whereupon you will confront sexual assault crimes.

Sexual assault suffers from a public reluctance to report. You are in a position where you may work to dispel this reluctance and ignorance. You have that responsibility. We want this manual to be of service to you as you fulfill that responsibility.

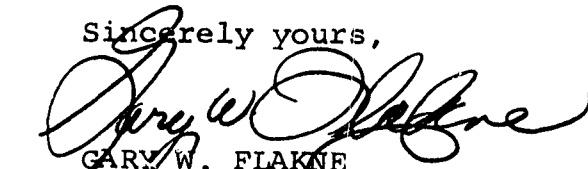
Sexual assault -- "the unspeakable crime" -- must be confronted. It is the violation of a human being, perhaps the ultimate violation. The emotional and mental destruction it produces is unknown.

We can no longer whisper about this crime. Public ignorance breeds tolerance and inaction. We must not merely react to crime, but we must also act to prevent it.

It is the duty and responsibility of every citizen to understand what this crime is, who it affects, how it can be dealt with, what is being done about it, how it can be prevented, and what to do if it happens to them. We are in a position to increase public awareness to these needs. First, we must be aware.

We must learn from one another by sharing our knowledge and experiences. This manual is our effort to share with you what we know. Please do likewise and share your efforts and discoveries with us.

Sincerely yours,

  
GARY W. FLAKNE  
Hennepin County Attorney

PROSECUTION OF A  
SEXUAL ASSAULT CASE

Prepared by  
Edward C. Anderson

for

The Minnesota Program  
for Victims of Sexual  
Assault

## I. CASE PREPARATION

Treat every case like the big one!

### A. CASE NOTEBOOK (blank paper)

- 1) Log
- 2) Ideas
- 3) Obligations

### B. EVIDENCE COLLECTION

- 1) Every report
- 2) Notes
- 3) Assisting agencies
- 4) Statements
- 5) Exhibits
- 6) Records
- 7) Spreigls
- 8) News

So much for preliminaries

### C. REVIEW INVESTIGATION

- 1) Check lab tests
- 2) Assure contact with all witnesses
- 3) Assure defendant has been interviewed (suggest)
- 4) Arrange interview with victim

### D. CHARGE!!

- 1) Draft affidavit or select materials
- 2) Draft offense  
Know the law i.e., "reasonable fear" and "mental incapacity"
- 3) Substantial but defensible bail  
Effect on victim
- 4) Weed them out!!

### E. PREPARE LAW

- 1) Instructions  
Helps prepare you (language)
- 2) Prepare evidentiary briefs  
A load off your mind
- 3) Prepare omnibus briefs  
Shovel them to judge as issue arises

## F. PREPARE EXHIBITS

- 1) Who
- 2) Where
- 3) Handling (chain; co-defendant)
- 4) Trial preparation; marking, listing, etc.

## G. PREPARE WITNESSES

- 1) Not just victim  
Credibility feeds on itself
- 2) Start with prior statement
- 3) Narrative  
Narrowed to issues, time, distance, etc.
- 4) Show biz  
Clothing, conduct, location
- 5) Warnings  
You and the bad guys
- 6) Victim  
You, not bureaucracy  
Everything: visits, rehearsal  
Relationship

## II. PRETRIAL PROCEDURE

### A. NOTICES & DEMANDS, SPREIGL, "RASMUSSEN", DISCLOSURE, ETC.

### B. DISCLOSURE AND DISCOVERY

- 1) Know your file; Brady, MRCrP 9.01
- 2) Know why you disclose
- 3) Force disclosure
- 4) File

### C. FURTHER INVESTIGATION UNDER MRCrP 9.03

### D. PROBABLE CAUSE HEARING

- 1) Florence it
- 2) Defendant's case  
Advantages; cross examination, discovery;  
No State witnesses  
Irrelevant  
No effect on PC -  
Offer of proof  
If defendant has a case -  
Attack specifically

E. OMNIBUS HEARING

- 1) Know the law  
Not "there's a case"
- 2) Use your facts  
Touch the law -  
Prepare Judge
- 3) Don't extend hearing  
Emotional disadvantage -  
Judge, defense counsel, you  
Exception: pleas

III. VOIR DIRE

A. PURPOSES

- 1) Not to select fair or impartial jurors  
No such thing  
Federal system
- 2) Pump up friends
- 3) Weed out enemies
- 4) Present your case and witnesses  
As badly as is polite

B. METHOD MRCrP 26.02 Sd. 4(3)

- 1) Civil
- 2) Criminal
- 3) Murder I

C. CHALLENGES

- 1) Panel
- 2) Cause  
Rehabilitation
- 3) Pre-emptory  
Timing  
Use

D. QUESTIONING

- 1) Panel present  
Friendly juror  
Unfriendly juror
- 2) Panel absent  
Defendant advantage
- 3) Let them talk
- 4) Contract if you can State V. Bauer
- 5) Keep Defense Counsel under Control State v. Bauer

E. QUESTIONS

- 1) Pedigree
- 2) Jury experience
- 3) Tough decision
- 4) Rights - not harm
- 5) Prosecutor's role  
Friend of victim, prisoner of formality, servant
- 6) Elements jury
- 7) Response to boiler plate
- 8) Can't change facts
- 9) "Disposition" for Judge
- 10) Worst part of case
- 11) Sympathy questions

F. WHO - WHY

- 1) Generally  
Age, sex, background
- 2) Intellectuals
- 3) Students
- 4) Artists
- 5) Scientists
- 6) Social scientists
- 7) Minorities
- 8) Civil servants
- 9) Teachers
- 10) Alternates
- 11) Organization

IV. OPENING STATEMENT

A. PREPARATION

- 1) Aim for the end
- 2) Can't be faked
- 3) Can be waived (Johnson v. Lundforss)  
Spreigl strength

B. THEORIES

- 1) Iceberg
- 2) Advertising
- 3) Memory failure
- 4) Always - tell them x 3
- 5) Never, never, never oversell

C. FOCUS

- 1) Logic
- 2) Chronology
- 3) Investigation
- 4) Always - VICTIM

D. PRESENTATION

- 1) Friend of victim
- 2) Dominate courtroom
- 3) Equal of the jurors
- 4) Personalize

V. CASE IN CHIEF

A. PRESENTATION

- 1) Position
- 2) Organization
- 3) Speed
- 4) Language
- 5) Approach to witnesses
  - Yours
  - Theirs
  - Defendant

B. ORDER OF WITNESSES

- 1) Chronology
- 2) Sandwich
- 3) Crescendo
  - Ex: Spreigls
- 4) Court sessions
- 5) Victim to clincher
  - Ex: Something on defendant
- 6) Strong witness at corroboration follows weak witness

C. EVIDENCE

- 1) Victim
  - Know weaknesses
  - Get every nickel's worth
- 2) Corroboration
  - One point each
- 3) Hostile witnesses
- 4) Cumulative evidence
  - Cops or civilians
- 5) Harmful evidence
  - Disarming defense
  - Defendant's case
- 6) Sandbagging
  - Impractical and illegal
- 7) Listen!!

D. EXHIBITS

- 1) Psychology
- 2) Disadvantages
  - Relevancy
  - Balance
- 3) Negative advantage
- 4) Chain
- 5) Handling
- 6) Toys or photos
  - Generally
  - Too much impact?

VI. DEFENDANT'S CASE

A. DEFENSES

- 1) Notice
- 2) Relevance
- 3) Witnesses
- 4) Offer of proof

B. OBJECTIONS

- 1) Highlighting
  - Arguing
- 2) Confusion factor

C. CROSS EXAMINATION

- 1) Talked to defendant (Defendant's Counsel)
- 2) When knew defendant innocent
- 3) What they don't know
- 4) Prior inconsistent
  - Watch Wolf & Doyle
- 5) Advantageous information
  - Timing
- 6) Don't let them float
- 7) Make experts establish foundation
- 8) Thoroughness
- 9) Good Finish

VII. REBUTTAL

A. GENERAL PRINCIPLES

- 1) Never let liar talk last
- 2) Repetition of good stuff
- 3) Use good victim
- 4) Explanation for failure to use in your case
  - Instruction?
  - Argument
- 5) No exhibits
- 6) Narrow the issue!!

VIII. CLOSING ARGUMENT

A. MINIMIZE GENERAL LAW

- 1) Presumptive Innocence, Burden of Proff,  
Reasonable Doubt
- 2) Review each
- 3) Explain definitions
- 4) Create favorable viewpoints

B. REVIEW ELEMENTS

- 1) Should be repetition
- 2) Cannot hide from weak proof
- 3) Connect to evidence
- 4) Explain inferences

C. DEPERSONALIZE DEFENDANT

- 1) No name
- 2) Reference as actor
- 3) Connection to "forces of evil"

D. PERSONALIZE VICTIM

- 1) Build record  
Press it
- 2) Names, of course  
Victim, family, friends
- 3) Familiar but polite
- 4) Refer to unconnected facts
- 5) Relate the feelings  
Disclaim the hokum

E. REPEAT THE FACTS

- 1) Organize from opening
- 2) Repeat every favorable fact  
90% won't remember
- 3) Dwell on scientific advantage  
Don't apologize
- 4) State of mind is a fact
- 5) Present your exhibits

F. ARGUE!!!

- 1) Know what you're going to say
- 2) Emphasize
- 3) Silence
- 4) Creative language
- 5) Leave them with your best

IX. INSTRUCTIONS

A. DRAFT

- 1) Sex law
- 2) Evidence
- 3) Clarify
- 4) Persuasiveness
- 5) Control

B. LAW

- 1) Choose authorities
- 2) Minimize statutes
- 3) Know the negatives
- 4) Resist the boilerplate

C. PRESENTATION

- 1) Early
- 2) Best
- 3) Personalize case
- 4) Not guilty of Defendant
- 5) Know your Judge

PROTOCOL FOR EXAMINATION OF CHILDREN  
FOLLOWING SEXUAL ASSAULT

I. GENERAL GUIDELINES

In order to facilitate the care of the patient-victim and to provide for empathetic on-going support, the registered nurse has been designated as the primary care department staff member.

In practical terms, this means that nurses will be responsible for guiding the victim through the system as follows:

- A. A nurse will meet the patient-victim at the registration desk, introduce herself and escort the patient to an examining area where the victim will be registered. Every effort should be made to provide a room as soon as possible.
- B. If the patient is accompanied by a police officer, many of the necessary details can be obtained from him. The staff should encourage (not force) the child victim to express his/her feelings about the incident. The nurse and doctor should record in the third person i.e. "He said... She said..." as they document the report of their interaction with the child. (Ordinarily, hearsay testimony is not accepted in court, but in the case of sexual assault there is a specific exception to the hearsay rule. Those individuals to whom the victim speaks about the incident shortly after it happens will be able to relate the conversation in courtroom testimony. The importance of this evidence cannot be overestimated. The additional details which must be gathered by the nurse will be elicited in the course of the history taking.

- C. In addition to explaining the procedure which are part of the nurse's examination, she should also explain in general what will be done in terms of the physician's exam (answering any questions which the patient may raise.)
- B. If the patient-victim is a minor, the nurse should, through conversation with the patient-victim, determine whether it is advisable to have a parent present during the exam and communicate that information to the physician. Parents need not be contacted if the patient is old enough to understand (sixteen and older if of normal intelligence). Parents of children under sixteen years of age will be contacted unless contraindicated.
- E. To insure the continuity which seems to provide support for the patient-victim, it is essential that as few staff members as possible be involved. The R.N. should make every effort to be with the patient as much of the time as possible. If she has to leave the area, she should introduce a staff nurse to the patient-victim and that nurse will be responsible during her absence. If she must leave the patient alone, she should explain the reason for her absence to the patient.
- F. It is also important for the nurse to monitor the identification of lab and police specimens for legibility and completeness.
- G. In summary, the nursing staff should deal empathetically and responsibly with the patient-victim during the entire time the victim is in the department. At discharge, the victim is to be given the follow-up sheet and its contents explained as needed.

II. CARE OF THE CHILD

The emotional difficulty accompanying sexual molestation can be increased by the insensitive imposition of adult standards. The protection of the child is an important duty of the hospital staff. Psychosexual trauma



must be recognized and minimized. Emotional support and gentle sympathetic understanding of both child and family are important; therefore TACT and KINDNESS are imperative. Parents should be given reassurance and guidance and warned specifically against magnifying the situation. Avoid such terms as "ruined," "violated," "dirty," or "lost her innocence" lest the child develop severe guilt feelings and anxiety.

### III. PRIVACY

- A. Assault victims are priority patients - escort them immediately to a private exam room. A primary nurse will accompany the child as much as possible.
- B. The child who has recently experienced potentially traumatic episodes must be protected from curious onlookers, and others who may be insensitive to the child's feelings.
- C. Therefore, it may be necessary to separate the child from his parent at the discretion of the professional who has considered the child's wishes and rights.
- D. If the history is taken with parents present it should be repeated with the parent absent to substantiate the facts. A girl who had had intercourse and is afraid that she is pregnant, for example, may tell a parent that she has been raped.

### IV. OBJECTIVES

- A. To give care for injuries.
- B. To prevent future psychological damage.
- C. To minimize stress.
- D. To evaluate pregnancy possibilities.
- E. To prevent venereal disease.
- F. To maintain a medical-legal record.
- G. To initiate follow-up health care.

### V. PREPARATION OF THE CHILD/FAMILY

- A. The nurse will discuss the objectives of treatment with the child/family in private before any procedure (including undressing the child) is begun. Stress the importance of recording and reporting the incident to the police and request permission to contact them immediately for their cooperation.
- B. If permission for reporting the incident to the police is granted, the nurse will obtain written consent for examination and release of medical information; and instruct the secretary to notify the police.
- C. Via telephone:
  1. Explain the importance of reporting the incident.
  2. Instruct family not to bathe or undress the child/victim before coming into the hospital to be examined.
- D. Stress that this written consent does not obligate the victim to prosecute the assailant. The exam will enable collection of evidence which will be used if the child/family wish to prosecute the assailant at a later date.

### VI. NURSING RESPONSIBILITIES

- A. Notify mental health representative.
- B. Obtain a pertinent history.
  1. Current symptoms (pain, bleeding and swelling, pelvic and other).
  2. Physical injuries inflicted.
  3. Time, date and place of incident.
  4. Age.
  5. Nature of sexual acts performed (e.g. vaginal intercourse, sodomy, etc.).
  6. Last menstrual period and length of normal menstrual cycle as well as any menstrual abnormalities.
  7. Parity - if appropriate.

8. Current contraceptive used by victim; other medications.
  9. Any contraceptive device used in incident.
  10. Last coitus before sexual assault.
  11. Did ejaculation occur? If so, where on patient's body was seminal fluid deposited?
  12. Age of assailant.
  13. Relationship of assailant to victim.
- C. Begin physical examination
1. Describe emotional status - objective observations.
  2. Record vital signs: T-P-R-BP.
  3. If clothing is damaged, stained or disarrayed, photograph patient before she disrobes.
  4. Secure all clothing for police, noting blood stains, secretions or other stains. Place each garment in separate paper bag. Place separate bags in one large paper bag.
  5. Note name and obtain signature and department of the police representative receiving clothing.
  6. Photograph any external bruises, scratches, or broken nails. Identify patient on each picture. Take fingernail scrapings if material is noted under the nails. Preserve these in container provided by the police.
  7. Make Woods lamp examination of suspicious areas for presence of seminal fluid which will fluoresce.
  8. Comb pubic hair for foreign hairs and fibers using new plastic comb. Place all comb material and comb itself wrapped in lens paper or tissue into an envelope and seal, noting date, patient's name and hospital number. Envelope flap should be signed by the child/parent and the nurse, across the seal.
  9. Ask child to place a 2 x 2" piece of sterile gauze in her mouth

- and saturate it with saliva. Place the saturated gauze in container provided by police representative.
10. Obtain a urine sample for pregnancy testing, and tests for presence of other medications in the body (to CHC lab).
  11. If semen was deposited on the patient's body or in the mouth, obtain the following specimens:
    - a. Swab for sperm motility and acid phosphatase determination using a saline moistened swab or cotton tip applicator. Swirl it in 3 cc sterile saline and ring it out against the edge of tube and discard swab. Give to police.
    - b. Swab for sperm stain and typing using a saline moistened swab or cotton tip applicator. Smear a clean glass slide which has been labeled with the name, hospital number and date. Place the slide in a bottle of pap smear fixative. Place the swab into a sterile container labeled with the patient's name, date and hospital number. Give to police.
    - c. Culture the area for GC using a saline moistened applicator, if indicated. Prepare the child for the physician's exam.

#### VII. PHYSICIAN RESPONSIBILITIES

- A. Review thoroughly the nurses record and discuss.
- B. Establish rapport with the victim and clarify question on nurse's exam PRN.
- C. Give a general physical examination looking for signs of injury.
- D. Perform a pelvic exam when indicated by age, history & physical findings.
  1. External genitalia
    - a. Examination
    - b. GC culture from urethra and rectum into Stewart's Transport Media. Send to (CHC) lab.

2. Speculum (only when indicated by History & Physical findings).

- a. Use only water for lubricant
- b. Examination
- c. Posterior fornix

- (1) Swab posterior fornix and swirl the swab in 3 ml of sterile saline. Wring out against the edge of the tube and discard the swab. This is for sperm motility and acid phosphatase. Secure for evidence.
- (2) Swab posterior fornix and smear a clean glass slide which is placed in pap smear fixative. This is a smear for sperm. Secure for evidence.
- (3) With sterile ring forceps swab the posterior fornix with a 2 x 2 gauze (do not contaminate with perspiration) and place in a labeled container to be given to the police for sperm typing. Secure for evidence.
- (4) Swab the cervix for GC culture, send to lab in transport media for smear.

3. If indicated by preceeding portion of the physical examination or history do a bi-manual examination noting uterine size and pain.

VIII. TREATMENT

- A. Physician diagnose and treat physical trauma
- B. Physician and nurse assess emotional status of child/family and provide immediate intervention and make certain that the mental health professional becomes involved. Ongoing needs should be referred to mental health professional.
- C. Nurse counsels on available counseling services at the Community Agencies.
- D. Nurse arranges follow-up
  - 1. Return in 3 days for GC culture.
  - 2. 1 week visit by Mental Health Professional involved.

3. Visits as necessary by mental health professional

4. 6 week OPD visit for VD check.

IX. POINTS TO REMEMBER

- A. All references to assault should be brief and factual. Do not report details of the incident and do not use qualifying language such as "alleged". A good format is "the patient says that...."
- B. Take time to calm and quiet the patient.
- C. Do your most gentle exam.
- D. Make no judgmental statements in documentation. Record problem or assessment or impression as "sexual assault exam - interpretation pending lab results".
- E. Make arrangements for appropriate medical follow-up.
- F. Be certain all specimens are carefully and accurately labeled and identified.
  - 1. Patient's name
  - 2. Patient's hospital number
  - 3. Date specimen collected
  - 4. Person collecting sample
  - 5. Person receiving sample
- G. Assure that family's questions are answered, that they understand the situation and know what to do next.
- H. Make sure victim leaves with a family member, friend or police escort to get them home.

C.H.C. 8/18/75  
Revised 8/27/75  
Revised 9/15/75  
Revised 11/13/75  
Revised 12/11/75  
Revised 11/1/78

**END**