



Town of Lexington

Police Department

| | |
|---|---------------------------------|
| Subject: Sexual Assault Investigations | |
| Reference: none | |
| Effective Date: January 1, 2012 | Review Date: Annually |
| By Order of: Mark J. Corr, Chief of Police | |

Policy & Procedure

421

The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 2.07 "Sexual Assault Investigations."

GENERAL CONSIDERATIONS AND GUIDELINES

Sexual assaults are one of the most difficult crimes that police officers are called upon to investigate. It is imperative that officers involved in this type of investigation show the utmost compassion for the victim as well as possess an understanding of the trauma the victim may have endured. An investigator possessing the delicate balance of patience with and sympathy for a victim will be more apt to solicit the cooperation needed from a victim necessary to successfully prosecute this crime. A skillful and professional interview can provide the information necessary to apprehend the suspect and the evidence necessary to obtain a subsequent conviction.

Officers should be knowledgeable of the "first complaint" exception to the "hearsay" rule and its importance in rape and other sexual assault cases. The first person told of a sexual assault by the victim may testify in court to the statements concerning the sexual assault made to that person by the victim as well as why the statements were made at that particular time.ⁱ

Because police officers and investigators often qualify as "fresh complaint" witnesses, it is especially important for them to note every detail of the victim's account of the attack so that the officer or investigator will be able to testify accurately and effectively at any subsequent court proceeding. Qualified sexual assault counselors, may not disclose certain information without written authorization from the victim.ⁱⁱ

It is the Policy of the Lexington Police Department in responding to the report of a sexual assault to:

- Minimize the traumatic experience suffered by the victim;
- Thoroughly investigate, with the goal of a speedy apprehension and ultimate conviction of the assailant;
- Reduce the opportunity for the crime of sexual assault to occur by educating the public in preventive measures (See also Department policy **45A – Crime Prevention**);
- Cooperate with local social service agencies, hospital personnel and community groups in sexual assault prevention programs; and
- Impress upon the public that the role of the police in investigating reports of sexual assaults or attempted sexual assaults is to provide a professional response.

DEFINITIONS

Rape: Sexual intercourse or unnatural sexual intercourse by force or threat of force against the will of the victim.ⁱⁱⁱ

Sexual intercourse: penetration of the victim, regardless of degree.

Statutory Rape: Sexual intercourse or unnatural sexual intercourse with a person under the age of sixteen. No person under the age of sixteen is legally capable of consenting to sexual intercourse.^{iv}

Unnatural Sexual Intercourse: Oral or anal intercourse.

First Complaint: An exception to the hearsay rule, which may be applied only in sexual assault cases.^v

1. This doctrine replaces the “fresh complaint” exception.
2. The first person told by the victim of an alleged sexual assault may testify about the fact of the “first complaint” and the circumstances surrounding the making of that *first complaint* including:
 - a. Observations of the victim during the complaint;
 - b. Events or conversations that culminated in the complaint;
 - c. Timing of the complaint;
 - d. Other relevant conditions that might help a jury assess the veracity of the victim’s allegations or assess specific defense theories as to why the complainant may be making a false allegation.
3. Testimony from additional complaint witnesses is not admissible. There may only be one *First Complaint* witness.

PROCEDURES

A. Preliminary Investigation

1. Introduction

- a. The first officer at the scene of a reported sexual assault shall:
 - i. Identify himself/herself as a police officer by name and rank;
 - ii. Express concern for the well-being of the victim;
 - iii. Obtain/render any necessary medical attention; and
 - iv. Be careful of word usage - do not use words or phrases that could add to the victim's emotional state.

- b. A sexual assault victim is often in a state of shock or severe emotional distress requiring sympathetic attention.

- c. Victim interviews shall be conducted by an officer who is trained and certified to investigate sexual assaults (if such officer is available). A victim of sexual assault who is male shall, whenever possible, be initially interviewed by a male officer. Likewise, a victim of sexual assault who is a female shall, whenever possible, be initially interviewed by a female officer.^{vi}
 - i. Keeping in mind the *First Complaint* witness rule, it may be best to advise the victim that the Department has specially trained officers to conduct this type of interview. If immediate examination is not necessary the victim may be given the option of waiting until a sexual assault investigator is available to conduct a detailed interview.
 - ii. Should the interview start before the arrival of a trained investigator, the officer should seek to continue the interview until the arrival of the investigator. The officer should then remain and continue to take notes as additional questions are asked. The officer **is the First Complaint** and should remain so he/she can fully document the interview.
 - iii. Employees answering the phone or tending to walk-in customers in the lobby should ask why the person has come to the lobby. If told that it is a sexual assault, the employee should immediately cease any questioning other than that of a first aid/first responder. A qualified officer should be summonsed to begin an interview as a potential First Complaint witness.

- d. Depending on the severity of the act, the Commanding Officer should immediately make notification to the following members of the command staff:
 - i. Chief of Police

- ii. Captain of Operation
 - iii. Lieutenant Detective Commander
 - iv. Family Services Detective (The Family Services Detective shall be made aware of all of these types of reports on his/her next tour of duty)
2. Observations
- a. The officer should make observations of the victim's condition including:
 - i. Clothing - if clothing articles are missing, torn, soiled.
 - ii. Injuries including bruises, cuts, abrasions, etc.
 - b. Photographs or video should be taken whenever possible (however discretion must be exercised!).
 - c. Observations of the victim's emotional state should be noted.
3. Interview Victim
- a. One officer should conduct the initial interview.
 - b. Obtain immediate, preliminary information as to:
 - i. Where the crime occurred (note—if the crime did not occur in Lexington, it is important to notify an investigator from the appropriate jurisdiction or the State Police immediately);
 - ii. How it occurred;
 - iii. A description of the assailant and any information that could lead to his/her apprehension;
 - iv. Who the victim has told of the sexual assault, particularly who the victim told first; and
 - v. If there are any witnesses available.
 - c. An officer conducting such an interview may be the "first complaint" witness (see definition of "First Complaint" in this policy.).
 - d. Furnish information to the Dispatch Center for the attention of all other on-duty officers if probable cause exists to make an immediate arrest and such arrest is deemed to be in the best interest of the investigation.
 - e. If the victim is a juvenile (under the age of 17 years old), a SAIN (Sexual Abuse Investigation Network) interview shall be set up through the Middlesex District Attorney's Office. Interviews of Juveniles are not conducted in the field by police officers without

the guidance and direction of the Middlesex County District Attorney.

4. Medical Examination of Victim
 - a. The victim should be encouraged to submit to a forensic examination (also known as a “rape kit”) and provided with transportation to the nearest medical facility capable of providing such an examination.
 - b. Ideally, prior to the examination, the victim should not:
 - i. Shower, bathe or douche
 - ii. Brush or comb his/her hair
 - iii. Eat or Drink Anything
 - iv. Smoke
 - v. Use the bathroom
 - vi. Brush his/her teeth or gargle
 - vii. Change clothes. If the victim does change clothes after the assault they should be collected as evidence in a paper bag. (See also Department policy **83A - Collection and Preservation of Evidence.**)
 - c. The examination should be conducted at a medical facility by a Sexual Assault Nurse Examiner (SANE Nurse) whenever possible.
 - d. Clothing and evidence collected during the examination and turned over to a police officer shall be placed into evidence and refrigerated as needed. Care must be taken to maintain the chain of custody and to preserve the integrity of potential DNA evidence. For further information, see also Department policy **83A - Collection and Preservation of Evidence.**
 - i. There is a specific refrigerator dedicated to cold storage on the first floor next to the evidence lockers.
 - ii. Evidence to be refrigerated will not be kept in other refrigerators within the building (used for personal storage of food etc.).
5. Suspect
 - a. Arrest: If the suspect is located and probable cause exists for an arrest, [s]he may be taken into custody. In making the decision whether or not to arrest, the officer should consider:
 - i. Was the suspect a stranger to the victim?
 - ii. Was a weapon or overwhelming physical force used?
 - iii. Was a “date rape” drug used?

- iv. Is the victim in danger from the suspect?
 - b. Interview: Suspects may be interviewed or afforded an opportunity to make a written or oral statement. For further information, see also Department policy **41K - Interrogating Detainees and Arrestees**.
 - c. Evidence:
 - i. If an arrest is made soon after the crime, obtain the suspect's clothing and underwear for laboratory examination.
 - (a) Suspects not arrested may voluntarily turn over such items.
 - (b) Items may be seized and a search warrant obtained in order to process such evidence.
 - ii. Items of evidentiary value may be seized in a search incidental to an arrest (soiled condoms, date rape drugs, etc.).
 - iii. If an arrest is made, hair samples may be taken from the suspect's head, chest and pubic area for laboratory examination as part of a search incident to arrest.^{vii}
 - iv. Suspects may voluntarily consent to submit to buccal swabbing for DNA, see also Department policy **83A - Collection and Preservation of Evidence**.
 - v. Without consent, samples must be obtained via search warrant. See also department policy **42E - Search Warrant & Affidavits**.
 - d. Note his/her general appearance and demeanor
6. Crime Scene
- a. Officers should secure the crime scene.
 - b. If investigators/detectives will be searching the crime scene, no evidence at the scene should be collected unless it is in danger of being lost, damaged or contaminated.
 - c. Any property or evidence collected must be photographed prior to being collected, if possible. For further information, see also Department policy **83A - Collection and Preservation of Evidence**.
- B. Follow-Up Investigation
- 1. Victim Interview

- a. Victim interviews shall be conducted by an officer who is trained and certified to investigate sexual assaults.
- b. Attempt to conduct an in-depth interview of the victim to obtain a full account of the reported crime.
 - i. When possible, the interview should be conducted by a female investigator if the victim is female and by a male investigator if the victim is male.
 - ii. If the victim finds it difficult to relate the details of the crime, the victim may write out the information. The written statement should be used as a basis for an oral interview to ensure that complete details are obtained. Retain the written statement as a piece of evidence.
 - iii. Use professional or medical terms when questioning a victim about the sexual assault itself.
- c. The victim shall be questioned to obtain the following information where available:
 - i. The time and place that the victim and the suspect met (if applicable);
 - ii. The time and place of the reported attack;
 - iii. Whether the victim knew the suspect, his/her home address or place of employment;
 - iv. The full physical description of the suspect to the best of the victim's knowledge, including any identifying marks or scars, the clothing [s]he wore and his/her manner of speech or language;
 - v. If a motor vehicle was involved, a description, including any unusual characteristics, or its contents;
 - vi. A description of any other persons present when the victim and suspect met or any persons present when the attack took place;
 - vii. Any conversation with the suspect that might lead to his/her identity; and
 - viii. Evidence of aggravating factors such as use of a weapon, threats to use any weapon, etc.

2. Suspect Interview

- a. The suspect may be afforded an opportunity to be interviewed and submit a written or oral statement.
- b. Such interview or oral statements should be audio and/or video recorded if at all possible. If the suspect refuses audio or video recording, such refusal should be noted (it is always good practice

to record the refusal). For further information, see also Department policy **41K - Interrogating Detainees and Arrestees**.

3. Crime Scene Search

a. Authority to Search

- i. Officers must be aware of the possible need for voluntary consent to search or a search warrant in order to lawfully conduct a search.
- ii. In the event that there is a question as to whether consent to search is voluntary, officers should obtain a search warrant.
- iii. See also Department policy **42E - Search Warrant & Affidavits**.

b. Processing the Scene

- i. The scene should be photographed or video taped prior to conducting a search.
- ii. The search should be conducted in a thorough and methodical manner.
- iii. All items of evidence collected shall be carefully noted and documented.
- iv. See Department policy **83A - Collection and Preservation of Evidence**.

c. Crime Scene Services

- i. State Police Crime Scene Services may be contacted at any time to assist in processing a crime scene.
- ii. Such services should be considered when searching for body fluids, DNA, and trace evidence on vehicles, bedding, or large bulky items such as sofas or carpets.

C. Report Writing

1. Preparing Reports

- a. A full report of this interview shall be submitted according to departmental procedures, including the time of the initial report of the sexual assault.
- b. All departmental reports of rape, sexual assaults or attempts to commit such crimes, and all conversation between police officers and the victims of such crimes, are confidential records and shall be maintained in a manner that will assure their confidentiality. All such reports are excluded from the category of public records and

any unauthorized disclosure thereof is a criminal offense (M.G.L. Ch. 41 sec. 97D).^{viii}

2. District Attorney’s Assistance / Review
 - a. If there is any indication that a sexual assault has occurred, this Department will contact the Middlesex District Attorney’s Office for guidance, direction and assistance.
 - b. It is recommended that prior to seeking a criminal complaint, sexual assault reports be forwarded to the Office of the District Attorney for review.

ⁱ*Com. v. King*, 445 Mass. 217, 834 N.E.2d 1175 (2005)

ⁱⁱM.G.L. c. 233, §20J

ⁱⁱⁱ Common law definition, *Com. V. Lopez*, 433 Mass. 722, 745 N.E.2d 961 (2001)

^{iv} M.G.L. c. 265, §23

^v *Com. v. King*, 445 Mass. 217, 834 N.E.2d 1175 (2005)

^{vi}M.G.L. c. 41, §97B

^{vii} *Com v. Tarver*, 369 Mass. 302, 345 N.E.2d 671 (1975)

^{viii}M.G.L. c. 41, §97D