

Sexual Assault Investigations

507.1 VERSION

Review Date	Effective Date	Approving Authority
01/29/19	07/09/18	Eric D. English, Chief of Police

507.2 POLICY AND PURPOSE

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims (Va. Code § 9.1-1301). When responding to reports of sexual assaults, Harrisonburg Police Department will strive to minimize the trauma experienced by the victims, and will proactively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

Mandatory notification requirements are addressed in the Child Abuse policy.

507.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

507.4 DEFINITIONS

Aggravated Sexual Battery - Sexually abusing someone under any one of the following circumstances (Virginia Code Section §18.2-67.3):

- (a) If the victim is less than 13 years old
- (b) Through the use of the victim's mental incapacity or physical helplessness
- (c) The offender is a parent, grandparent, step-parent, or step-grandparent *and* the victim is between 13 and 18 years old
- (d) Against the victim's will by force, threat or intimidation, *and either* (1) the witness is between 13 and 15 years old, (2) the offender causes serious injury (bodily or mental) to the victim, or (3) the offender used or threaten to use a dangerous weapon.

Forcible Sodomy - an accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person (Virginia Code Section §18.2-67.1)

- (a) The complaining witness is less than 13 years of age

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- (b) The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

Object Sexual Penetration - an accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with other other person or to penetrate, or to be penetrated by, an animal (Virginia Code Section §18.2-67.2)

- (a) The complaining witness is less than 13 years of age
- (b) The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

Rape - Sexual intercourse with a person, whether or not their spouse, under one of the following circumstances (Virginia Code Section §18.2-61):

- (a) Against their will by force, threat or intimidation against the victim or another person
- (b) Through the use of the victim's mental incapacity or physical helplessness
- (c) If the victim is under 13 years old

Sexual Assault - Any crime or attempted crime of a sexual nature

Sexual Battery - Sexually abusing a person under any one of the following circumstances (Virginia Code Section §18.2-67.4):

- (a) Against their will by force, threat, intimidation, or trick
- (b) Within a two-year period more than one victim or with one victim on more than one occasion without consent
- (c) If the victim is an inmate and the offender is in a position of authority over the victim
- (d) If the victim is a probationer, parolee, or pretrial defendant and the offender is in a position of authority over the victim

Sexual Assault Response Team (SART) - A multidisciplinary team generally comprised of advocates; law enforcement officers; forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs), Adult Protective Services (APS), Child Protective Services (CPS), Social Services, Collins Center, Court Appointed Special Advocate Program (CASA); and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

Taking indecent liberties with children - any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years (Virginia Code Section §18.2-370)

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- (a) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person
- (b) Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child
- (c) Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under Virginia Code Section §18.2-361.
- (d) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this subsection.

507.5 INVESTIGATORS

Investigators should be available for assignment of sexual assault investigations. These investigators should:

- (a) Have specialized training in, and be familiar with, interview techniques and the medical and legal issues that are specific to sexual assault investigations.
- (b) Conduct follow-up interviews and investigation.
- (c) Present appropriate cases of alleged sexual assault to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and medical personnel as needed.
- (e) Provide referrals to therapy services, victim advocates and support for the victim.
- (f) Participate in or coordinate with the local or regional SART or other multidisciplinary investigative teams as applicable (Va. Code § 15.2-1627.4).

507.6 INVESTIGATION

The primary considerations in sexual assault investigations, which begin with the initial call to the Emergency Communications Center, should be the health and safety of the victim, the preservation of evidence and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect. In cases where treatment is declined or not necessary, officers should keep in mind it is necessary to immediately transport the victim to the hospital for examination and collection of evidence.

- (a) The officer should attempt to determine basically what happened; location of the event, time and date of the event. The elements of the sex crimes should be determined. Once this is accomplished, further questions concerning the sex act should be avoided. The officer should contact the on-duty patrol supervisor and brief him/her on the incident. The supervisor should then contact a detective and a representative from the Collins Center and request their response. The victim should be interviewed in a private, quiet place where interruptions may be avoided.

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- (b) Once the scene has been located, a second officer should be requested to respond and secure the scene until it can be processed by an evidence technician. Supervisors and Major Crimes Unit should be contacted prior to crime scene processing by officers.
 - 1. Victims should be requested not to wash, bathe or douche, as such acts will destroy evidence. If the victim has not changed clothes, ask him/her not to do so.
 - 2. If the victim has changed his/her clothing, all clothing worn prior to or following the assault should be secured.
 - 3. Clothing or other evidence located indoors and not subject to damage by weather, etc., should remain in place until collected as part of crime scene processing.
 - (a) Note: A change of clothing should be brought to the hospital with the victim when possible.
- (c) The officer should obtain name, address, date of birth, business and home phone numbers of victims and witnesses. The officer should also determine where and at what hours the victim and witnesses might be contacted for follow-up investigation.
- (d) Victims should be transported to Sentara Rockingham Memorial Hospital or other medical facility as appropriate by ambulance when appropriate based upon medical conditions or injuries. Officers should accommodate the victim in alternative transportation for an examination if the victim does not want to be transported in a law enforcement vehicle. The officer should also arrange for transportation of the victim after completion of the examination. An officer should ensure that the Collins Center is contacted and that a representative will respond to Sentara RMH to counsel with the victim if so desired. Officers should request a detective, and contact the Collins Center if a SANE is not available.
- (e) The victim should not be left alone. If a victim is emotionally upset and cannot be calmed, the officer may request aid from the Hospital Social Worker or the Collins Center.
- (f) A detective will have complete responsibility for the investigation of the offense. If a patrol officer can affect an immediate arrest, he/she may place the charge(s). The patrol officer may also assist the detective with the permission of the patrol supervisor.
- (g) All officers should be familiar with the Rape Crisis Network and should make referrals for victims and/or families.

507.7 REPORTING

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

The officer assigned to handle the preliminary investigation is responsible for filing a complete Incident Report.

Supplementary Reports shall be filed by all other patrol officers responding to the scene who carry out additional investigations, move or gather evidence, or in any way obtain further information

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reference the crime. These reports shall be filled out and submitted with the original Incident Report.

If at any time any officer (patrol or detective) acquires further information concerning the offense, he/she shall file an additional Supplementary Report containing the information and its source. This report shall be turned over to the detective handling the case.

507.7.1 FOLLOW-UP INTERVIEWS

An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The officer should allow for a victim advocate to be present during the interview, if the victim so prefers. The follow-up interview may be delayed to the following day based upon the circumstances. Whenever practicable, the follow-up interview should be conducted by a qualified investigator.

Victims are often reluctant or embarrassed to discuss details. Recanting or changing one or more aspects of a prior statement is not necessarily an indication of false reporting or that the case is unfounded. If the officer has reason to believe the incident may be without merit, he/she should document the evidence and inconsistencies. Due to physical and emotional trauma, and the myths and stereotypes associated with sexual assault, inconsistencies in the victim's report are not uncommon. No opinions of whether the case is unfounded shall be included in the report.

Victims shall not be asked or required to take a polygraph examination. Victims may voluntarily submit to a polygraph examination and shall be informed in writing that the results cannot be used in evidence and that their voluntary submission is not a condition for initiating or continuing the investigation (42 USC § 3796gg-8; Va. Code § 19.2-9.1).

507.8 RELEASING INFORMATION TO THE PUBLIC

In cases where the perpetrator is not known to the victim, and especially if there are multiple crimes where more than one appear to be related, consideration should be given to releasing information to the public whenever there is a reasonable likelihood that doing so may result in developing helpful investigative leads. The Major Crimes Unit supervisor should weigh the risk of alerting the suspect to the investigation with the need to protect the victim and the public, and to prevent more crimes.

Except with the written consent of the victim, the Department may not disclose to the public information that directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse or family abuse, except to the extent that disclosure is (Va. Code § 19.2-11.2):

- (a) Of the site of the crime
- (b) Required by law
- (c) Necessary for law enforcement purposes
- (d) Permitted by the court for good cause

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Victims should be apprised of applicable victim's rights provisions, as outlined in the Victim and Witness Assistance Policy.

507.9 CASE REVIEW

The Major Crimes Unit supervisor should ensure cases are reviewed on a periodic basis, at least annually. The reviews should include an analysis of:

- Case dispositions.
- Decisions to collect biological evidence.
- Submissions of biological evidence for lab testing.

The SART and/or victim advocates should be considered for involvement in this audit.

507.10 EVIDENCE

In situations where there has been a significant delay in getting biological testing results (e.g., delays in testing the evidence or CODIS hits that are delayed) the SART should be consulted regarding how the case information should be delivered to the victim so as to minimize victim trauma.

The Physical Evidence Recovery Kit (PERK) will be completed by a nurse examiner, specially trained to conduct examinations. The nurse examiners are trained in the collection and preservation of evidence, and in the applicable rules of evidence. If a nurse examiner is not available, the examination will be completed by a physician. Officers will not be present during the examination. Evidence collected will be turned over to the investigating officer or to an officer who has been designated to retrieve the evidence from the hospital staff. The retrieving officer will maintain a chain of custody through a supplemental report.

When the facts of the case indicate that collection of biological evidence is warranted, it should be collected regardless of how much time has elapsed since the reported assault. If a drug-facilitated sexual assault is suspected, it is critical to the investigation that a blood or urine sample from the victim be collected by a medical professional.

Upon notice from a health care provider that a physical evidence recovery kit (PERK) has been collected, officers shall respond promptly to the facility to receive possession of the evidence (Va. Code § 19.2-11.7). The PERK will be completed by hospital staff and given to the investigating officer or to an officer who is designated to retrieve the PERK from hospital staff, if the investigating officer is not available. Officers receiving kits after testing should book the evidence into the Property and Evidence Unit.

Physical evidence recovery kits and other biological evidence from all sexual assault cases, including cases where the suspect is known by the victim, should generally be submitted to the Virginia Department of Forensic Science for biological testing. Perk kits will be maintained for 10 years. Submission shall occur within 60 days unless (Va. Code § 19.2-11.8):

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- (a) It is an anonymous physical evidence recovery kit that shall be forwarded to the Division for storage;
- (b) The physical evidence recovery kit was collected by the Office of the Chief Medical Examiner as part of a routine death investigation, and the medical examiner and the law-enforcement agency agree that analysis is not warranted;
- (c) The physical evidence recovery kit is connected to an offense that occurred outside of the Commonwealth; or
- (d) The physical evidence recovery kit was determined by the law-enforcement agency not to be connected to a criminal offense.

The results and the case information should be entered into local, state and national registries in a timely manner (Va. Code. § 19.2-11.8).

507.11 TRAINING

Subject to available resources, periodic training should be provided to (Va. Code § 9.1-1301):

- (a) Employees who are first responders. Training should include:
 - 1. Initial response to sexual assaults.
 - 2. Legal issues.
 - 3. Victim advocacy.
 - 4. Victim's response to trauma.
- (b) Qualified investigators should receive advanced training on additional topics. Advanced training should include:
 - 1. Interviewing sexual assault victims.
 - 2. SART.
 - 3. Medical and legal aspects of sexual assault investigations.
 - 4. Serial crimes investigations.
 - 5. Use of community and other federal and state investigative resources, such as the Violent Criminal Apprehension Program (ViCAP).
 - 6. Techniques for communicating with victims to minimize trauma.