

### Rationale

With the exception of homicide, sexual assault is the one crime that generally has the most traumatic effects on the victim and those persons associated with the victim. The investigation of sexual assault is complicated by the nature of physical evidence, the collection of which may be particularly complex, as well as the other elements necessary to verify the offence which are unique. Further complicating the investigation, the subsequent laying of charges as well as the reporting of sexual assault are existing myths and stereotypes and the social context within which sexual assault takes place that may place additional burdens on a victim. Recognition and appreciation of these factors must influence the actions taken by police and their response to victims.

Since the initial investigation of a sexual assault can affect the outcome of the case, it is imperative that police adhere to prescribed methods of collection and preservation of evidence. Without careful collection and development of evidence, the offender is unlikely to be apprehended, the case may not proceed to prosecution or may not result in a successful prosecution.

One of the primary objectives of the police when they become involved in the investigation of allegations of sexual assault is to obtain sufficient information and evidence to support the laying of a charge under the Criminal Code of Canada which is to be achieved with the least amount of additional trauma to the victim. Through the adoption of effective procedures and the development of protocols with other agencies serving victims of sexual assault, the quality and integrity of the evidence collected and the credibility of the information provided should enhance the likelihood that charges of this nature will be supported through the judicial process. The purpose of protocols is to ensure that the response is coordinated and effective, to facilitate the development of a network of inter-agency contacts, to

provide a mechanism for sharing information and expertise and to provide for the needs of victims. Assistance to and sensitivity towards victims of sexual assault is of paramount importance. High quality police-victim contacts might help to assure and maintain the cooperation of the victim during the investigation and prosecution of the case. Such contacts might help to alleviate the adverse psychological consequences due to victimization and prevent re-victimization from occurring as a result of the victim's participation in the judicial process.

In addition, an effective police response to sexual assault may engender confidence in the police, encourage the reporting of sexual assaults, provide information that will influence the direction of the investigation, or provide the investigative clue that leads to the identification and/or the apprehension of the offender. In sexual assaults, including those involving acquaintances which comprise the majority of sexual offences, the skilled officer, through positive contact with the victim, can clarify the points of non-consent; develop areas to corroborate the victim's report; affect whether there will be a trial or plea of guilty; influence the evidential success of the case; and affect the sentence imposed.

***NOTE: This standard only applies to adult sexual assault and does not address sexual assault perpetrated against children.***

#### **Prescribed Standards**

Not Developed

#### **Guidelines**

#### **0223.01**

The Governing Authority shall:

- a. Ensure that a written process is in place to monitor all responses to complaints of sexual assault to ensure consistency with the police service's policy and procedures.
- b. To accommodate the needs of victims, ensure that protocols are established with hospitals and agencies which provide services to victims of sexual assault, including Sexual Assault Treatment Centres, Sexual Assault/ Rape Crisis Centres, and Victim Services. Protocols should outline agreed procedures and provide for:

practical assistance and support to victims;  
the receipt of information from third party and anonymous sources;  
information sharing;  
referrals;  
information to victims regarding their cases;  
the collection, preservation and transfer of medical/ forensic evidence (including provisions to allow for a Sexual Assault Evidence Kit to be stored for up to six months when a victim chooses to attend the hospital to have the examination completed but chooses not to report the assault to the police at that time);  
the dissemination of Sexual Assault Evidence Kits; and  
community education.

Protocols should also be established with the local Crown Attorney which address:

responsibilities of the police and the Crown;  
preparation of victims for court, including the identification of victims' particular needs;  
sharing of information between the police and Crown Attorney and the appropriate access of personal/privileged information;

provision of information to victims regarding their cases; and other provisions of the Act Respecting Victims of Crime.

- c. Ensure that a policy is in place regarding the notification of the community or members of the community who may be at particular risk in the event that sexual assault offences are taking place within the community.
- d. Ensure that the by-law respecting freedom of information and privacy reflects that records and documentation pertaining to sexual offenders are to be retained for a period of at least twenty-five years for the purposes of proving similar fact offences, for example, or establishing recidivism in relation to a dangerous offender hearing.
- e. Direct the Chief of Police/Commissioner of the OPP to ensure that officers who have responsibility for the investigation of sexual assault offences are, in the opinion of the Chief/Commissioner, appropriately qualified in relation to all of the core competencies contained in Appendix A and that other officers who assist in an investigation meet the core competencies specific to their individual functions and responsibilities.
- f. Ensure that a process is in place to contact the Ontario Provincial Police (Behavioural Sciences Section) for assistance in profiling and other investigative strategies when necessary (e.g., in cases involving suspected sexual predators, serial offenders, etc.).

- g. Direct the Chief of Police/Commissioner of the OPP to ensure that written procedures are in place to respond to sexual assault which, at a minimum, include:
  - i. Communications procedures;
  - ii. Initial response procedures (including the receipt of information from anonymous and third party sources);
  - iii. Procedures regarding medical/forensic evidence and the Sexual Assault Evidence Kit;
  - iv. Investigative procedures;
  - v. Bail/pre-trial release;
  - vi. Interviewing the victim; and
  - vii. Victim assistance.
- h. Ensure that the policies and procedures contained in this standard are implemented by January 1, 1998.

**0223.02**

The Chief of Police/ Commissioner of the OPP will ensure that procedures are in place to promote an effective and consistent response to reports of sexual assault. Procedures shall include the following:

**0223.03****COMMUNICATIONS**

The procedures shall outline practices to be adopted by communications personnel upon receipt of a complaint of a sexual assault that has recently occurred. These shall include:

- i. Dispatching police and any necessary emergency services;
- ii. Obtaining brief particulars of the assault, including suspect information; and
- iii. Advising the complainant of precautions which should be taken in order to preserve physical evidence.

The procedures shall also outline practices to be adopted by communications personnel upon receipt of a complaint of sexual assault that has occurred in the past (i.e., "historical" complaint).

**0223.04****INITIAL RESPONSE PROCEDURES**

The procedures shall outline steps to be followed during the initial response to a complaint of sexual assault and will address assisting the victim, providing referrals to or accessing appropriate community support services, accommodating victims with particular needs, establishing a safe and comfortable environment for the victim, conducting the preliminary investigation, protecting the crime scene, preserving evidence, and ensuring that appropriate personnel (e.g., identification services) are contacted.

The procedures shall indicate that all complaints of sexual assault are to be referred to a qualified investigator (as per section 0223.01(e)) either prior to the initial response or as soon as is practicable after the initial response. The -- procedures shall also indicate that the responding officer or investigator, will not make any determination as to whether a sexual assault complaint may be unfounded unless approved by a supervisor.

The procedures will indicate that the police service's policies and procedures respecting wife assault/domestic violence will be adhered to when a sexual assault case involves a spouse, common-law partner, etc. (see "Police Response to Wife Assault", Policing Standards Manual, 0217.00).

The procedures will also indicate that if the victim is under sixteen years of age, compliance with relevant statutes and the police service's policies and procedures respecting child abuse will be assured.

The procedures shall include the following: .

- a. Officers will respond as quickly as possible to the report of a sexual assault that has recently occurred. At the time the police become involved in the investigation, all attempts will be made to interview the victim, secure any evidence and gather information as quickly as possible.
- b. The responding officer should ascertain basic information about the incident from the victim in a professional and sensitive manner while ensuring suitable privacy.
- c. In the event that the assault is reported within seventy-two hours (as per requirements of the Centre of Forensic Sciences), the officer should explain to the victim the need to attend the hospital (Sexual Assault Treatment Centre, if available) to retrieve medical/forensic evidence and/or to receive medical treatment to identify and treat any disease or injury or to provide reassurance that no physical harm was inflicted.
- d. The officer should accommodate any request by the victim for a support person of the victim's choice (e.g., family member, advocate from a Sexual Assault/ Rape Crisis Centre lesbian/gay or ethno-specific agency, etc.) to accompany the victim at the hospital, and should provide assistance, if necessary.
- e. If the complaint is received seventy-two hours after the assault, the officer should recommend that at some point during or following the investigation, the victim seek medical treatment. The officer should provide the victim with referrals to appropriate community service agencies.

**0223.05**      Medical/Forensic Evidence and the Sexual Assault Evidence Kit

The procedures shall provide instructions regarding medical/forensic evidence and ensuring the continuity of the chain of evidence, the purpose and use of the Sexual Assault Evidence Kit, and the collection, processing, storage and transfer of forensic evidence.

The procedures shall indicate that, upon receipt of a complaint of sexual assault, the officer may, in consultation with appropriate medical personnel and the victim, determine the nature of medical/forensic evidence to be obtained.

In addition, the procedures should require that officers be familiar with the medical/ forensic examination procedures in order to explain the potentially high value of the Sexual Assault Evidence Kit, provide emotional support, discuss the appropriate use of the examination, and provide assistance to victims in giving informed consent to the use of the kit.

**0223.06**      **INVESTIGATIVE PROCEDURES**

The procedures shall identify steps to be followed in the investigation of a sexual assault and include the functions and responsibilities of relevant personnel such as the sexual assault investigator and supervisory and identification personnel. The lead investigator must ensure that any officer involved in the investigation meets the core competencies contained in Appendix A that are consistent with the officer's functions and responsibilities (see section 0223.01 (e)).

All procedures shall reflect the sensitive nature of the information to be gathered during the investigation and the necessity that officers be responsive to the needs of the victim.

The procedures shall provide for effective communication and the sharing of information with other police agencies regarding sexual assault cases and the retention of information on offenders including the *modus operandi* of offences. The procedures will also provide for the submission of a Violent Crime Linkage Analysis System (ViCLAS) report in accordance with the ViCLAS submission criteria.

Officers should be aware that, in some cases, the activities of sexual predators may be consistent with criminal harassment/ stalking. Harassing conduct such as watching and following may constitute planning or preparation for sexual assault on the part of sex offenders and serial offenders, in particular. Reported incidents should be responded to and documented in accordance with approved procedures. Relevant procedures contained in "Criminal Harassment", Policing Standards Manual, 0222.00, should be adopted, and assistance should be obtained as per section 0223.01 (f) of this standard.

Procedures will also be adopted with respect to firearms in accordance with "Offences Involving Firearms", Policing Standards Manual, 0224.00.

In cases in which the motivation for the assault is suspected to be hate or bias, relevant procedures contained in "Hate/Bias Motivated Crimes", Policing Standards Manual, 0219.00 should be adopted.

The procedures shall include the following:

- a. All attempts should be made to ensure that the officer who is in charge of the investigation maintains consistent contact with the victim throughout the process.

- b. In cases of sexual assault involving a spouse, common-law partner, etc., charges will be laid in accordance with "Police Response to Wife Assault", Policing Standards Manual, 0217.00. In other cases, if the investigator deems that charges are not warranted, he/she shall consult with a Crown Attorney prior to not laying a charge.
- c. If no charges are laid in relation to a complaint of sexual assault, the occurrence report will detail facts of the case and reasons for the decision. The investigator will also advise the victim of the reasons for the decision.
- d. As part of the post-charge screening process, the investigator will provide all information about a sexual assault case to the Crown Attorney who will determine whether to proceed with a prosecution.
- e. The investigator should advise the victim of the provisions of the Criminal Code, that allow for the protection of the victim's identity

Despite legislative changes that eliminate the necessity of proving corroboration, recent complaint or physical evidence of injury, investigators must be vigilant in ensuring that all evidence that corroborates the allegation is obtained.

- g. The victim should be invited to complete a Victim Impact Statement upon conviction of the offender to be provided to the Crown Attorney for the purpose of sentencing. However, it should be emphasized to the victim that the making of a statement is voluntary and may be used for parole purposes at which time the accused will have access to the statement. The victim should also be offered the option of filing the statement in an alternate format (e.g., audiotape).

**0223.07****Bail/Pre-trial Release**

- a. When the accused has been arrested as a result of an investigation into a complaint of sexual assault, procedures will be adhered to in accordance with "Violent Crime Bail Standard", Policing Standards Manual, 0221.00.
- b. In the event the accused is released, the investigator should recommend conditions for release which are to be included in the information provided to the Crown Attorney. Such conditions may include:
  - prohibition of contact or communication with the victim, witnesses or family;
  - restrictions on movement, such as non-attendance at victim's place of work, home or school;
  - release of the accused to a surety who can supervise the accused;
  - prohibition on possession of weapons or firearms; and
  - prohibition on consumption of drugs and/or alcohol.
- c. The victim shall be informed of the release of the accused, the conditions, if any, which apply to the release as well as the procedures to follow in the event of a breach of any condition.
- d. The victim should be invited to attend the bail hearing and to assist the investigator in determining the extent and type of conditions of release that will be requested at the bail hearing.

**0223.08****INTERVIEWING THE VICTIM**

The procedures shall emphasize that victims will be interviewed in a professional, tactful and sensitive manner. Where a communication barrier exists as a result of language differences or a physical disability, investigators should access the services of a cultural/linguistic interpreter, intervenor, or other appropriate community resource.

Efforts should be made to alleviate the potential trauma arising from the victim having to repeat the allegations, and procedures should be in place to minimize the unnecessary repetition of the report to different police personnel.

The procedures shall include the following:

- a. If resources permit and circumstances dictate (e.g., where a perceived need exists), the victim may be offered a choice with respect to the gender of a qualified investigator (as per section 0223.01(e)) to conduct the investigation or interview.
- b. Interviews with the victim should take place in a private setting. The victim should be advised that a support person may be invited to be present if the victim so desires. The victim and the support person should be advised that the latter may be asked to leave, must not interfere in the investigation, and may be required to testify in court.
- c. Where resources permit and the victim consents, electronic equipment may be utilized to record the interview in accordance with established procedures outlined in local protocols.
- d. Following the interview/investigation, the investigator should ensure that the victim is transported to a safe location.

**0223.09**

**VICTIM ASSISTANCE**

Procedures shall provide for assistance to be rendered to victims of sexual assault as well as information to be supplied regarding the status of the victim's case.

Procedures should also be adopted in accordance with "Victim Assistance", Policing Standards Manual, 0403.00.

The procedures (or protocols) will indicate in what manner information is to be provided to the victim and by whom.

**APPENDIX A****CORE COMPETENCIES FOR SEXUAL ASSAULT INVESTIGATORS**

- 1. Effective interviewing skills for sexual assault suspects**
    - a. knows the law regarding the admissibility of statements
    - b. knows specific issues and the law regarding young offenders
    - c. when appropriate, follows proper video taping procedures
    - d. uses interview techniques to obtain confessions
    - e. takes steps in planning and preparation for a sexual assault suspect interview
    - f. understands profiles of sexual assault suspects in order to effectively interview the suspect
  
  - 2. Basic knowledge and application of profiling requirements**
    - a. has basic knowledge of profiling requirements and limitations
    - b. is aware of resource services for investigators provided by the OPP Behavioral Sciences Section to assist in sexual assault investigations and how to access them
    - c. is cognizant of information required to complete a ViCLAS submission
    - d. is aware of information required for an indirect personality assessment
    - e. is aware of and can respond to the profile characteristics of a suspect who poses a threat to the victim and/or the public
  
  - 3. Knowledge and application of community resources**
    - a. can identify applicable services to sexual assault cases
    - b. knows how to access community resources
    - c. knows limitations around confidentiality policies and access to confidential records
    - d. understands the role of community support persons in sexual assault investigations
    - e. has working knowledge of existing hospital or other interagency protocols, where applicable
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**4. Effective victim-centered interview skills**

- a. Interviewing Techniques
  - i. can plan and prepare for the interview
  - ii. can explain what questions will be asked and why (e.g., graphic, explicit, questions defence lawyers will ask)
  - iii. uses current procedures for interviewing and statement taking (e.g. verbatim statement, videotape with consent)
  - iv. determines what happened (who, what, when, where, how) using a cognitive interviewing process when necessary
  - v. demonstrates interviewing process to elicit information that is relevant to the investigation and prosecution
  - vi. can assess progress during the interview (e.g., demonstrates that interview is suitably paced)
  - vii. balances the goals of the interview with the needs of the victim
  - viii. can analyze the impact of questions and interviewer behaviour on the victim
  - ix. can analyze the impact of questions on the court outcome
  - x. conducts a behavioural-oriented interview to satisfy ViCLAS requirements and ensures all information is obtained through the least number of interviews
  
- b. Victim Awareness
  - i. demonstrates that the victim's personal needs are a priority (e.g., medical attention, comfortable interview environment, support person, etc.)
  - ii. shows sensitivity, respect, empathy
  - iii. explains the victim's rights (e.g., Victims' Bill of Rights, right to independent legal advice)
  - iv. offers the victim information about community support services
  - v. can identify and respond to special needs of victims from diverse communities
  - vi. is able to acknowledge and to respond to the victim's emotions
  - vii. explains next steps, investigative and legal processes and options (e.g., publication bans)
  - viii. has knowledge of and can respond effectively to the rape trauma syndrome

- ix informs the victim of their privacy rights, including the right to independent legal advice relating to disclosure and third party records (e.g., medical, therapeutic or psychiatric records)

**5. Knowledge and application of investigative support resources/ experts**

- a. knows what services Centre of Forensic Sciences offers relating to Sexual Assault Evidence Kits and DNA
- b. knows what services identification units can offer in relation to sexual assault suspects/victims and crime scenes
- c. is able to access appropriate experts such as doctors, psychologists, psychiatrists, counsellors, etc.
- d. has working knowledge of any relevant protocols

**6. Knowledge and application of relevant criminal code sections relating to offences and procedures for sexual assault investigations**

Demonstrates knowledge of offences and procedures relating to:

- a. sexual assault, sexual offences
- b. abduction, kidnapping, unlawful confinement
- c. threatening, criminal harassment, choking, using a disguise
- d. drafting informations
- e. previous sexual history, corroboration, complaint evidence and spousal provisions
- f. weapon prohibitions, search & seizure
- g. bail opposition and conditions
- h. preventative measures (e.g., s. 810.1 C.C.C., dangerous offenders)
- i. publication bans

**7. Knowledge and application of the law for obtaining evidence for sexual assault cases**

Demonstrates knowledge in relation to the following:

- a. legal consent (i.e., in accordance with Wills [Ont. C.A.] and Borden [S.C.C.] )

- b. traditional s.487 C.C.C., general s.487.01 C.C.C. and DNA s.487.05 C.C.C. search warrants
- c. Sexual Assault Evidence Kit submission requirements
- d. ss. 101 & 103 C.C.C. provisions (firearms)

**8. Knowledge of procedures relating to the Sexual Assault Evidence Kit**

Demonstrates knowledge in relation to the following:

- a. prioritizing the need for use of the Sexual Assault Evidence Kit
- b. impact on the victim and victim sensitivity
- c. consent (informed choice) of the victim (i.e., reinforces S.C.C. O'Connor judgment)
- d. procedures for using the kit and submissions to the Centre of Forensic Sciences
- e. hospital protocol(s)
- f. continuity issues

**9. Knowledge and application of procedures in preparation of sexual assault prosecutions**

Demonstrates knowledge in the following:

- a. Seaboyer Applications
- b. O'Connor Applications
- c. Corbett Applications
- d. K.G.B. Applications & s.9(2) Canada Evidence Act
- e. s.715.1 C.C.C. videotape procedures
- f. current case law impacts
- g. facilitating communication between the victim and Crown counsel
- h. Crown policies on sexual offences, previous sexual history, bail hearings, disclosure and victims
- i. recent complaint / fabrication evidence
- j. dangerous offender applications
- k. preventative measures (e.g., ss. 810.1, 161, 741.2 C.C.C.)

**10. Knowledge and application of case management principles**

Demonstrates knowledge in the following areas:

- a. scene control register, exhibits
- b. investigators, witnesses, suspects, victim(s)
- c. media
- d. investigative approaches to different types of sexual assaults (i.e., acquaintance, stranger, historical)
- e. ongoing working relationship with Crown including trial procedures, (e.g., bail opposition, witness preparation, dangerous offender application), Crown briefs and disclosure requirements
- f. weapons procedures
- g. relevant forms, records and documents, search warrants