

Rules and Procedures

Rule 204

January 26, 2007

Rule 204 - PROCEDURES TO FOLLOW IN SEXUAL ASSAULT CASES

In conformance with Rule 112, Sec. 2, Special Order 92-43, "Procedures to Follow in Sexual Assault Cases," issued September 24, 1992, is hereby rescinded and replaced with Rule 204, "Procedures to Follow in Sexual Assault Cases." The provisions of this Rule are effective immediately and replace all previously issued Rules, Orders, Memorandums, and Directives on this subject.

Sec. 1 GENERAL CONSIDERATIONS:

The Department's establishment of the Family Justice Division (FJD), which includes the Sexual Assault Unit (SAU), the Crimes Against Children Unit (CACU) and the Domestic Violence Unit (DVU), necessitates the need to issue an updated and comprehensive rule with procedures to follow in sensitive and classified sexual assault investigations. The purpose of this rule is to provide officers and investigators with guidelines for responding to reports of sexual assault, assisting victims, conducting interviews with victims and witnesses and interrogating suspects. Timely and responsive law enforcement intervention can increase the reporting of sexual assault crimes, enhance the community's confidence in the police department, strengthen investigations, and facilitate successful prosecution.

SEC. 2 RAPE SHIELD CONSIDERATIONS IN OFFICIAL POLICE REPORTS:

Massachusetts General Laws provide for confidentiality protection for victims of sexual assault, specifically:

- A. **M.G.L. c. 41 s. 97D - Confidentiality of reports of rape and related offenses; violations; penalties** - "All reports of rape and sexual assault or attempts to commit such offenses and all conversations between police officers and victims of said offenses shall not be public reports and shall be maintained by the police departments in a manner which will assure their confidentiality. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both."
- B. **M.G.L. c. 265 s. 24C - Victim's name; confidentiality** - "That portion of the records of a court or any police department...which contains the name of the victim in an arrest, investigation or complaint for rape or assault with intent to rape...shall be withheld from public inspection, except with the consent of a justice of such court where the complaint or indictment is or would be prosecuted. Said portion of such court record or police record shall not be deemed to be a public record under the provisions of section seven of chapter four. Except as otherwise provided in this section, it shall be unlawful to publish, disseminate or otherwise disclose the name of any individual identified as an alleged victim of any of the offenses described in the first paragraph. A violation of this

section shall be punishable by a fine of not less than two thousand five hundred dollars nor more than ten thousand dollars.”

- C. **Complaint Control Form (1920)** - In the event that a Complaint Control Form 1920 (Form 1920) is completed against a Department employee alleging the employee committed a sexual assault or for conduct arising out of an incident that involved a response to a sexual assault, do not identify the complainant or anyone else as a sexual assault victim in the Form 1920. Personnel must comply with M.G.L. c. 41, s. 97D, “Confidentiality of Reports of Rape and Related Offenses” and M.G.L. c. 265, s. 24C, “Withholding Rape Victim’s Name From Public Disclosure.” Instead, input the original Incident Report Central Complaint number (CC #) on the Form 1920 where the sexual assault victim would have been identified.

- D. **Other Department Reports** – Do not identify the victim of a sexual assault in any other Department reports. For example, when completing a Recommendation for Commendation form, do not include the name(s) of sexual assault victim(s) or the address of the incident. Personnel must always be mindful of the confidentiality of rape reports and the protection of the victim’s identity.

SEC. 3 OPERATIONS DIVISION - DISPATCHER and 911 CALL TAKER RESPONSIBILITIES:

Communications personnel play a critical role in focusing the initial police response by compiling necessary information concerning the victim and offender, providing initial aid to the victim, and helping to preserve evidence. When a caller reports a sexual assault, communications personnel shall follow standard emergency response procedures to include:

- A. Evaluating and properly prioritizing the call, securing medical assistance, inquiring about a suspect’s current location, and obtaining detailed information to identify the suspect. Information about the relationship with the victim, weapon use, and history of violence should also be obtained.
- B. Ensuring that a uniformed patrol officer(s), and the Patrol Supervisor are dispatched to respond to any and all reports of a sexual assault.
- C. Ensuring that an on-duty District Detective is dispatched.

SEC. 4 FIRST RESPONDING OFFICER’S RESPONSIBILITIES:

- A. As part of the emergency response, officers must:
 - 1. Make contact with the victim as soon as possible to address safety concerns and summon emergency medical assistance, if needed.
 - 2. Evaluate the scene for people, vehicles, or objects involved as well as possible threats.
 - 3. Communicate all vital information to the Patrol Supervisor and other responding officers, and address any possible language barriers.
 - 4. Secure the crime scene and ensure that evidence is not lost, changed, or contaminated.
 - 5. Ask the victim whether he/she has reported the sexual assault to anyone (police officer, friend, neighbor, relative, etc.)

- a. If the victim has reported the sexual assault to anyone else at any time previously, the officer shall obtain that person's name, address, and contact information.
 - b. If the victim has not reported the sexual assault to anyone previously, the officer shall ask the victim to tell him/her in his/her own words what happened. The officer shall document the victim's statement, including the victim's demeanor as he/she makes the statement. The officer shall limit questions to clarify basic information. The SAU Detective will perform a later in-depth interview.
6. Begin a search for the suspect when appropriate.
 7. If the responding officer requests assistance from the SAU, the officer should clearly explain to the victim his or her role. The responding officers shall limit the preliminary interview so that the SAU Detective does not later ask the victim the same questions. Responding officer(s) shall record their observations of the crime scene in writing by completing a Form 26.

B. Preliminary Victim Interview:

1. The purpose of the preliminary interview is for the first responding officers to establish whether a crime has occurred.
2. In the initial response with **adult victims**, the first responding officers must first establish the elements of the crime(s) and identify any and all witnesses, suspect(s), evidence, and crime scene(s).
3. In the initial response concerning a **child victim** (under age 16), the first responding officers shall interview the child's parent, guardian, caretaker, or adult to whom the child reported the sexual assault. The first responding officer shall not conduct an interview of a child except to solicit basic information or to clarify information that the child has not previously disclosed the information to another adult. Only the responding SAU Detective and the Suffolk County District Attorney's Office will conduct in-depth interviews with child victims.

C. Identifying and Locating Witnesses and Suspects:

1. First responding officers shall question the victim to obtain a complete description of the suspect, whether or not a weapon was used, what vehicles were used, if any, the suspect's direction of flight, and names, addresses and telephone numbers of the victim and all witnesses.
2. First responding officers shall identify any potential witnesses, bearing in mind that there may be multiple crime scenes. It is especially important that the first person the victim told about the sexual assault be identified and interviewed by the SAU Detective. The SAU Detectives will conduct a more in-depth follow-up interview of all witnesses and suspects.

D. Additional Duties and Responsibilities of First Responding Officers:

1. If probable cause exists to arrest, the responding officers shall make the arrest. The responding officers should not wait for the SAU Detectives to arrive on scene before making the arrest. If an arrest is made, the victim's name **shall not** appear on the Application for Complaint. (See the addendum to this rule that contains a sample copy of an Application for Complaint in sexual assault cases).
2. Brief the Patrol Supervisor and the on-call SAU Detective. The SAU Detective is the Investigator-in-Charge of the investigation.
3. Preserve and protect the crime scene, just as an officer would in a homicide crime scene under Rule 205, "Death Investigation," Section 6 and Rule 309, "Procedures for Handling Physical Evidence." The SAU Detective(s) shall first respond to where the victim is located, usually a hospital. After the SAU Detective(s) completes his/her preliminary interview with the victim, he/she shall then proceed to the crime scene. Officers must hold and secure the crime scene until the SAU Detective arrives on scene and subsequently releases the crime scene.
4. Do not collect any evidence from the crime scene unless there is an emergency, such as inclement weather, and evidence may be lost or destroyed. During an emergency, and only when a District Detective is not on a tour of duty, the Patrol Supervisor is responsible for collecting and preserving evidence. Otherwise, the responding SAU Detectives shall be responsible for the collection of physical evidence (See Section 8D).
5. Complete the original 1.1 Incident Report. Include all relevant facts and information. If there are multiple victims, there must be a separate and distinct 1.1 Incident Report completed for each victim.
6. Ensure that each and every element of the crime(s) charged is articulated in the narrative of the 1.1 Report to ensure the existence of **probable cause** for each crime charged. In order to do this, officers shall ask the victims to tell him / her in his / her own words what happened. The officer shall not question the victim, except for clarification. Additionally, officers must utilize specific words to describe the actual sexual assault that occurred. (Acceptable example: "The suspect sexually assaulted the victim by penetrating the victim's vagina with his penis without the victim's consent." Unacceptable example: "The suspect sexually assaulted the victim.")
7. Ensure that any and all excited utterances by the victim, suspect, or witnesses, are recorded verbatim in the narrative of the 1.1 Report.
8. Ensure that all responding units are identified by call sign and name in the 1.1 Report.
9. Document the call sign and name of the SAU Detective who responded to the scene.
10. Ensure that a Form 51A and other mandated reporter forms, such as Elder Abuse and Disabled Persons, are completed whenever applicable.

SECTION 5. PATROL SUPERVISOR'S RESPONSIBILITIES:

A. Upon arrival:

1. Debrief the First Responding Officers.

2. Confirm or dispel whether or not a sexual assault has occurred, and make contact with the SAU Detective, when necessary.
 - a. In general, unless connected to a sexual assault crime, indecent exposure, open and gross lewdness, and sexual harassment are not sexual assaults. The District Detectives shall be responsible for investigation these types of incidents. Do not contact the SAU for these types of incidents.
 - b. If the Patrol Supervisor confirms that a rape, aggravated rape, or attempted rape has occurred, he/she shall notify the Operations Division and request that the on-call SAU Detective be contacted and requested to respond in person.
 - c. The on-call SAU Detectives shall respond in person to all confirmed reports of aggravated rape, rape, and attempted rape.

They generally will not respond in person to reports of indecent assault and battery but they will conduct a complete and thorough follow-up investigation. However, if the Patrol Supervisor or Duty Supervisor believes that a particular indecent assault and battery requires an in-person SAU Detective response, then the Patrol Supervisor or Duty Supervisor should discuss and resolve this issue with the on-call SAU Supervisor.

3. Ensure that the First Responding Officer(s) complies with this rule.
4. If probable cause exists to arrest, make the arrest. Do not wait for the SAU Detectives to arrive on scene before making an arrest.

B. Upon arrival of the SAU Investigator-in-Charge (IIC):

1. Brief the SAU IIC. This will be the on-call SAU Sergeant-Detective or SAU Detective.
2. Assist the SAU IIC with crime scene management during the preliminary investigation, utilizing whatever personnel are deemed necessary.
3. Preserve and protect the crime scene according to Rule 205, "Death Investigation," Sections 6 and 7 and Rule 309, "Procedures for Handling Physical Evidence." The responding SAU Detectives shall first respond to where the victim is located, usually the hospital. Officers must preserve and protect the crime scene until the SAU Detectives arrive on scene.
4. Ensure that the crime scene is vacated only at the direction of the SAU IIC as relayed through the Operations Division Duty Supervisor.
5. Notify and update your Duty Supervisor and seek his/her assistance, if necessary.

SEC. 6 OPERATIONS DIVISION DUTY SUPERVISOR RESPONSIBILITIES:

- A. Ensure that the Sexual Assault Unit is contacted by telephone at 617-343-4400 concerning any confirmed report of an aggravated rape, rape, or attempted rape as ordered by the Patrol Supervisor. This notification shall include: the nature of the incident, the responding officer's call sign, the Patrol Supervisor's call sign, the location of the incident, the hospital where the victim was transported, and any other pertinent information that the SAU Detective may need.

- B. Between the hours of 1:00a.m. and 7:30a.m, notify the on-call SAU Detective by Department pager and provide similar information as above.
- C. Do not dispatch a uniformed officer from any district to respond outside the city to complete a 1.1 Incident Report. Whenever a person is a victim of rape, aggravated rape, or attempted rape in the city of Boston, but fails to report the incident until he/she returns to his/her residence located outside the city of Boston or proceeds to a hospital located outside the city of Boston, the on-call SAU Detective shall respond to the outside residence or hospital and complete the original 1.1 Incident Report.
- D. Concerning reports of indecent assault and battery, the SAU Detective will not respond in person to a residence or hospital located outside the City of Boston. However, this will be decided on a case-by-case basis by the on-call SAU Detective. Regardless of whether the on-call SAU Detective responds in person outside the city for reports of indecent assault and battery, the on-call SAU Detective shall still complete the original 1.1 Incident Report.

SEC. 7 DUTY SUPERVISOR'S RESPONSIBILITIES

- A. Ensure that the Patrol Supervisor, First Responding Officer(s), and District Detectives have complied with this rule.
- B. Ensure that the type of crime listed in the 1.1 Incident Report cites a specific crime, e.g., rape, rape of a child by force, indecent assault and battery over 14. Also ensure that any other crimes that are committed such as kidnapping, and assault and battery by means of a dangerous weapon (gun/knife, etc.) are also articulated in the narrative with the appropriate elements and probable cause for each crime.
- C. Ensure that the type of crime cited as the type of incident, matches the type of crime articulated in the narrative.
- D. Ensure that 1.1 Incident Reports are complete and accurate.
- E. Ensure that only sworn personnel complete sexual assault 1.1 Incident Reports. Civilian employees, cadets, and any other special police officers, including but not limited to, Municipal Police, Housing Police, and School Police, are **prohibited** from completing sexual assault 1.1 Incident Reports.
- F. Ensure that a 1.1 Incident Report is completed for all reports of sexual assault, regardless of which police district the crime occurred in.
- G. Ensure that a 1.1 Incident Report is completed for all reports of a sexual assault that occurred outside Boston. The type of incident should be "Sexual Assault – Outside Agency." These reports should specifically state that a sexual assault occurred in another jurisdiction and that jurisdiction has been notified. Contact that outside agency immediately to inform them of the crime and ascertain, what, if any, assistance is warranted.
- H. Ensure that a completed copy of the 1.1 Incident Report is immediately faxed to the Sexual Assault Unit at 617-343-4861. Simply faxing a copy of the 1.1 Incident Report to the Sexual Assault Unit is not deemed to be proper notification to the SAU that a sexual assault has occurred. Proper notification to the SAU means **both** faxing a copy of the completed 1.1 Incident Report **and** ensuring that the Patrol Supervisor has

communicated verbally with an on-duty SAU Detective, SAU Civilian Liaison, or the on-call SAU Detective.

- I. Between the hours of 1:00 a.m. and 7:30 a.m., contact Operations to page the on-call SAU Detective concerning all aggravated rapes, rapes, and attempted rapes. This is not necessary for reports of indecent assault and battery, unless the Patrol Supervisor or Duty Supervisor deems it necessary to speak with the on-call SAU Detective or on-call SAU Supervisor.
- J. Do not dispatch any district police officer or detective to any hospital to retrieve any rape kits. Rape kits shall be collected and entered into the Evidence Management System by SAU Detectives.
- K. When a person is arrested for a sexual assault committed in Boston, (aggravated rape, rape, attempted rape, and indecent assault and battery) with or without a warrant, the Duty Supervisor must immediately notify the Operations Division and request notification of an on-duty SAU Detective or the on-call SAU Detective (1:00 a.m – 7:30 a.m.) for response to the district police station in person. This SAU Detective shall attempt to interrogate any and all suspects arrested for any sexual assault crimes committed in Boston.
- L. Ensure that no sworn police officers, detectives, or supervisors conduct an interrogation of any sexual assault suspect. Only the SAU Detectives shall conduct interrogations of sexual assault suspects. However, if a suspect makes a statement, utterance, or admission after receiving Miranda warnings, and the SAU Detective has not arrived at the station, ensure that such statements are documented in writing (Form 26).
- M. If a victim reports a sexual assault by a Boston Police Officer, contact the on-call SAU supervisor to respond to interview the victim. Once it is confirmed that a Boston Police officer is a suspect, the SAU supervisor shall request the Operations Division to notify the on-call investigator from the Internal Affairs Division.

SEC. 8 DISTRICT DETECTIVE'S RESPONSIBILITIES:

- A. Respond with the uniformed Police Officer and Patrol Supervisor to all reports of sexual assaults.
- B. Assist the uniformed Police Officer and Patrol Supervisor in preserving and protecting any crime scene, and in identifying and locating any witness and suspects.
- C. Assist the on-call SAU Detective.
- D. In the event there are exigent circumstances such as inclement weather, and where the destruction of evidence is imminent and the SAU Detective has not arrived on scene, the District Detective shall photograph, collect, and preserve the evidence. The District Detective shall document and complete all relevant paperwork before transferring the evidence over to the SAU detective. If a District Detective is not performing a tour of duty at the time, the Patrol Supervisor shall assume responsibility for the collection and preservation of evidence (See Section 4D).

SEC. 9 DISTRICT DETECTIVE COMMANDER'S RESPONSIBILITIES:

- A. Assign a District Detective to investigate reports of indecent exposure, open and gross lewdness, or sexual harassment that are not connected to a sexual assault crime. The SAU will not investigate these types of incidents.
- B. Ensure that District Detectives comply with this rule.

SEC. 10 THE ON-CALL SEXUAL ASSAULT UNIT DETECTIVE'S RESPONSIBILITIES:

The on-call SAU Detective is the IIC. The IIC has primary responsibility for the investigation of all incidents involving sexual assaults. This also includes the follow-up investigation, interviews of victims and witnesses, interrogations of suspects, seeking criminal complaints, arrest warrants and search warrants, and the preparation of cases for prosecution.

The IIC shall ensure that the following steps are taken, as applicable:

- A. Respond in person to any hospital, whether inside or outside the City of Boston, when notified that a victim was sexually assaulted in the City of Boston and the crime alleged is aggravated rape, rape, or attempted rape.
- B. Establish radio contact with the officers at the scene.
- C. Complete a 1.1 Incident Report whenever responding to a hospital or victim's residence located outside the city of Boston.
- D. Collect and preserve any and all physical evidence from the crime scene and hospital.
- E. Photograph and/or videotape the crime scene.
- F. Utilize the services of the Crime Lab, Identification and Photography Unit, Crime Scene Response Unit and any other Department resources whenever necessary.
- G. Ensure that Rape Kits and Toxicology Kits are retrieved from hospitals and entered into the Evidence Management System and forwarded to the Crime Lab or other appropriate unit for analysis in a timely manner.
- H. Confirm with the Operations Division Duty Supervisor that proper notifications are being made.
- I. Record your arrival on crime scene and make note of those present. Evaluate the adequacy of the inner and outer perimeters and ensure that the crime scene is protected.
- J. Ensure witnesses have been identified and located.
- K. Debrief the Patrol Supervisor, the first officer(s) on the scene and the first responding officer(s).
- L. Record the condition of the crime scene in notes.
- M. Interview witnesses and suspect(s) and obtain statements.
- N. Obtain a search warrant to search the crime scene, if necessary. If the crime scene is in a residence the preferred method of search shall be with a search warrant approved by an SAU Supervisor and the Suffolk County District Attorney's Office, before submitting such warrant for judicial approval.
- O. If a search warrant is to be obtained, freeze the crime scene until a search warrant is obtained and executed.
- P. Record the processing of the crime scene while collecting and preserving evidence.

- Q.** Do not relinquish control over the crime scene until it has been completely processed. Notify the Operations Division Duty Supervisor with instructions to vacate the crime scene.
- R.** Prepare investigative reports.
- S.** Review all other reports, statements and forms for completeness and accuracy.
- T.** Conduct line-ups or photo arrays when necessary, in cases that require victim or witness identification of a suspect. Follow Rule 330, "Procedures for Collection and Preservation of Eyewitness Identification Evidence."
- U.** Arrange for arrest warrants and/or search warrants and the formal charging of the suspect(s).
- V.** Complete a supplemental 1.1 report in order to clear a case, i.e., "Cleared by Arrest", "Exceptionally Cleared" and "Unfounded."
- W.** Immediately establish contact with the District Attorney's Office and review the case and prosecution strategy.

SEC. 11 PROTECTING VICTIM'S RIGHTS:

SAU Detectives shall provide victims information on:

- A. The rights of a crime victim and the criminal justice process.
- B. How to contact police if harassed or intimidated by the suspect(s).
- C. The requirement of all agencies to obtain written permission from the victim prior to releasing information.
- D. What information is part of a public record and what will be held confidential.
- E. The possibility of media coverage and what information the media has access to regarding sexual assault crimes.
- F. The possibility of availability of compensation for victims of crime, including medical and counseling expenses.

SEC. 12 COMMUNITY NOTIFICATION PROCEDURES:

When there is a reasonable likelihood that public knowledge of certain information about sexual assault investigations will help prevent future assaults, the public has a right to know that information. It is the Department's responsibility to notify the public in those situations through the media and other established community notification systems. The Department shall consider the release of information on a case-by-case basis, while at all times keeping the best interest of the victim as the top priority.

Edward F. Davis

Police Commissioner