



End Violence Against Women International  
(EVAWI)

# Successfully Investigating Sexual Assault Against Victims with Disabilities

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This module is part of EVAWI's OnLine Training Institute (OLTI), which is available at no cost, and includes review exercises, practical applications, and an end-of-course test. Participants can download a personalized certificate of completion to use for continuing education or other purposes. For more information, please see the [EVAWI website](#).

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## Table of Contents

Public Domain Notice .....	5
Electronic Access .....	5
Recommended Citation .....	5
Authors .....	6
Acknowledgements .....	8
Course Objectives .....	9
Introduction .....	11
A Personal Note on Challenges Developing this Module .....	13
Definitions, Laws, and Dynamics of Sexual Violence .....	15
Disability: Definitions and Experience .....	15
The Americans with Disabilities Act .....	18
Sexual Violence Against People with Disabilities .....	26
Investigative Strategies .....	31
Establish Legal Elements .....	31
Develop an Investigative Strategy .....	33
The Critical Importance of Corroboration .....	37
Stages of the Investigation .....	40
Initial Response .....	40
Prepare for the Detailed, Follow-Up Interview with the Victim .....	52
Conducting the Detailed Victim Interview .....	57
Techniques for Effective Communication .....	62
In this video interview, Shirley Pacey offers tips for effectively communicating with sexual assault survivors with disabilities. ....	63
Identify Additional Evidence and Witnesses .....	69
Anticipate a Defense Strategy .....	70
Prepare for Courtroom Testimony .....	72
Special Considerations for Residential and Care Facilities .....	73
Evaluating Capacity to Consent: .....	76
Victims with Cognitive Disabilities .....	76
Conducting a Formal Evaluation of Capacity to Consent .....	77
Medical Forensic Examinations .....	81
Victims with an Intellectual Disability .....	84



Understanding Intellectual Disabilities.....	85
Culture of Intellectual Disability .....	88
Interviewing Victims with Intellectual Disabilities .....	89
Specific Interviewing Techniques .....	94
Obtain a Current Assessment of the Victim .....	114
Information on Specific Disability Types.....	115
Victims Who Have Alzheimer’s Disease .....	115
When the Victim has a Physical Disability.....	117
When the Victim has a Communication Disability .....	120
People who are Deaf or Hard of Hearing .....	125
People Who are Blind or Have Low Vision.....	136
People with Epilepsy .....	140
People with Autism.....	143
People with Mental Illness.....	146
People who Use Service Animals .....	150
People with Hidden Disabilities .....	151
Conclusion .....	152
References.....	153
Appendix A: Federal Laws for Victims with Disabilities .....	157
Americans with Disabilities Act .....	157
Definition of Disability .....	157
Covered Disabilities .....	157
General Protections .....	158
Enforcement.....	158
For More Information.....	159
Appendix B: Police Executive Research Forum (PERF) Model Policy on the American with Disabilities Act.....	160
Appendix C: Severity Levels for Intellectual Disability .....	173
Appendix D: Gathering Victim-Specific Information.....	176
Appendix E: People First Language .....	178
Exception: Deaf Community .....	179
Uncertain? Just Ask!.....	179
Other Recommendations.....	179



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Appendix F: Individual State Laws .....	180
Appendix G: Training Resources .....	190
Appendix H: Improving the .....	193
Accessibility of Documents and Websites .....	193
Files and Documents .....	193
Making Websites Accessible .....	194



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**Christine Herrman** has over two decades of working to end violence against women. She started her career as a victim advocate and community services coordinator at a domestic and sexual violence program in her hometown of Ketchikan, Alaska. In that role, she provided prevention education and victim services to communities in the area, including towns, logging camps, Native villages, and settlements. Christine attended law school at Duke University, where she established a collaboration between the local rape crisis center and law students to provide advocacy services to sexual assault victims. After graduating from law school in 1999, Christine returned to the Pacific Northwest, where she served as a prosecutor in King County, Washington, focusing on sex crimes and crimes against children. In 2008, Christine assumed leadership of the Oregon Attorney General's Sexual Assault Task Force, a statewide nonprofit organization that provided training and technical assistance to professionals in Oregon and nationwide on prevention of and response to sexual violence. Christine recently joined the Vera Institute of Justice in New York City as Project Director in the Center on Sentencing and Corrections. In this role, she is working on national technical assistance and research projects related to the conditions of confinement of vulnerable individuals, including one addressing the overreliance on segregation and one providing assistance to facilities implementing the Prison Rape Elimination Act. Christine is a member of the board of directors of the Oregon Crime Victim's Law Center, and a member of CounterQuo.



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Some content and themes in the module were adapted from materials developed by the Office for Victims of Crime (OVC), Office of Justice Programs, Department of Justice:

- [\*Victims with Disabilities: The Forensic Interview – Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities\*](#) (First Edition April 2007, Revised July 2011). [57-minute video and 72-page guide].
- [\*Victims with Disabilities: Collaborative, Multidisciplinary First Response. Techniques for First Responders Called to Help Crime Victims Who Have Disabilities\*](#) (First Edition March 2009, Revised January 2011). [72-minute training video and 70-page trainers' guide].
- [\*First Response to Victims of Crime: A Guidebook for Law Enforcement Officers\*](#) (April 2008). [30-minute training video and 104-page guidebook].
- [\*First Response to Victims of a Crime Who Have a Disability\*](#) (2002). [25-page guidebook].





## Course Objectives

At the end of this training module, the learner will be able to:

- Explain the general concept of disability and outline the definition and legal protections offered in the Americans with Disabilities Act (ADA).
- Explore the responsibilities of law enforcement agencies under the ADA and recognize the need to develop comprehensive policies addressing these issues.
- Recognize that people with disabilities are more likely to be sexually assaulted than other members of the general US population and explore the similarities and differences in the dynamics of perpetration, victimization, and response.
- Consider the importance of effective responses to victims with disabilities in the successful investigation and prosecution of sexual assault cases.
- Outline the legal elements of various sexual assault offenses committed against people with disabilities and craft an appropriate investigative strategy.
- Explain what an accommodation is and appreciate the need for accommodations for people with disabilities who are victims of crimes such as intimate partner violence and sexual assault.
- Conduct a preliminary investigation of a suspected sexual assault, including an initial evaluation of the victim's general capabilities and adaptive functioning.
- Plan and execute a successful detailed, follow-up interview with the victim by ensuring that the victim's needs are met and incorporating best practice recommendations for gathering accurate information.
- For victims who have severe cognitive disabilities, obtain a formal assessment of the victim's capacity to consent to sexual acts, in coordination with forensic interviewing specialists and other community resources.
- Incorporate respectful and effective communication practices when interviewing victims who have one or more disabilities.
- Access sign language interpreters, Video Relay Services, and other communication aids and services when needed.
- Identify local resources that can provide support, resources, accommodations, and services to victims with disabilities.



- Overcome barriers to investigations, including those arising when the victim receives residential or day services from a disability program or organization.
- Identify additional evidence and witnesses in a thorough follow-up investigation.
- Recognize common defense strategies and plan appropriate investigative strategies to collect and document relevant evidence.
- Adapt and utilize sample tools to increase effectiveness when responding to victims with disabilities.



## Introduction

In 2008, researchers Modell and Mak conducted a study to assess police officers' knowledge and perceptions of people with disabilities and to determine whether they play a significant role in how cases involving people with disabilities are handled by law enforcement. Surveys were administered to 124 sworn police officers of various ranks, from patrol officers to senior detectives, who worked in different sized communities. Findings indicated that the officers viewed people with disabilities as "different from the norm" and that they had difficulty distinguishing among the various disabilities.

Moreover, within this sample of police officers, nearly half indicated that they had received *no training at all* on how to respond appropriately to people with disabilities. Of those who had received some training, they considered it to be minimal (Modell & Mak, 2008). Our goal with this training module is to fill this void, by providing concrete guidance for law enforcement and other professionals who might be involved in responding to crimes against people with disabilities.

Law enforcement personnel have always interacted with people who have disabilities in a variety of situations. However, this may remain outside their "comfort zone," as it does for many other professionals. Fortunately, with some knowledge and experience, effective responses can be achieved.

**SARRT Tip:**  
Use this module and other resources in Appendix G to provide cross-training for professionals who respond to crime victims with disabilities in your community.

### Course Overview

This module is written from a law enforcement perspective, providing information and guidance for first responders as well as investigators and even prosecutors. However, it is intended to be equally helpful for others whose work intersects with the criminal justice system, to ensure that people with disabilities who are victimized have equal access to information, programs, and services – and that they are treated with fairness, compassion, and respect. Everyone involved in the criminal justice and community response system plays a critical role in providing that access and fair treatment.

- We begin this training module by offering definitions and an overview of the prevalence and impact of sexual assault committed against people with disabilities. Detailed information is also provided on the Americans with Disabilities Act (ADA).
- We then review the prevalence of sexual violence against people who have disabilities and explore similarities and differences in the dynamics of perpetration, victimization, and response when the victim does or does not have a disability.



- Next, we examine the general framework for crafting an investigative strategy, based on key factors such as whether the victim is capable of consenting to sexual activity and whether the suspect is in a caregiver role or other position of authority.
- Various stages of the investigation are described in the following section, including the initial response and preliminary investigation, the detailed follow-up interview(s) with the victim, and other steps taken to identify additional evidence and witnesses.
- For victims who have a severe cognitive disability, the key determination will be whether they have the capacity to legally consent to sexual acts. We dedicate an entire section of this module to addressing the legal tests and strategies used to answer this question.
- The next section focuses exclusively on the sexual assault of victims who have cognitive disabilities, with particular emphasis on intellectual disabilities. This type of case is commonly reported to law enforcement, and there are fundamental implications for how the investigation and prosecution will proceed, particularly during the interview. Detailed guidance is offered for how to ask questions.
- Information is then presented for victims who have physical, sensory, or communication disabilities. This is followed by a section on victims who have mental illnesses or other disability issues. The goal is to help law enforcement investigators and other professionals prepare to interact effectively with a range of victims.

The module then concludes with various Appendix materials that provide supplemental information as well as resources and tools. These materials can be used for training purposes and also to improve the application of these principles to daily practices.

### **SARRT Tips**

Throughout the module, you will also find tips for use with a community-based Sexual Assault Response and Resource Team (SARRT). A SARRT is "a multidisciplinary interagency team of individuals working collaboratively to provide services for the community by offering specialized sexual assault intervention services."<sup>1</sup> SARRTs are recommended as a means for achieving best practices within our communities.

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<sup>1</sup> Definition taken from the [National Sexual Violence Resource Center](http://www.nsvr.org).



### Resource: SARRT

For more information on SARRTs, please see the OnLine Training Institute (OLTI) modules entitled: (1) [Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams \(SARRT\)](#), and (2) [Sexual Assault Response and Resource Teams \(SARRT\): A Guide for Rural and Remote Communities](#).

You can also review the [SART Toolkit](#) developed by the Office for Victims of Crime (OVC), Office of Justice Programs, US Department of Justice. This online toolkit provides information, guidance, and resources to help establish a Sexual Assault Response Team (SART) in your community.

## A Personal Note on Challenges Developing this Module

Before we conclude the introduction, we want to include a personal note from the authors on the challenges faced while developing this module. While we at EVAWI have developed a number of training materials that have been very time- and labor-intensive, this one has unquestionably been the most difficult. In fact, it took us 15 years from inception to completion. We believe this is true for a number of reasons, and they poignantly illustrate some of the points made in the module itself.

### Resource: Victim Interview

In this [video interview](#), Shirley Pacey describes the importance of giving all survivors, including those with disabilities, a chance to participate in the criminal justice process.

## Lack of Information Specifically on the Investigation and Prosecution

For example, while we were reviewing the training materials that were previously available, we found that many of them focus on the following issues:

- Definitions of disability.
- Legal requirements (e.g., ADA compliance).
- Descriptions/characteristics of various disabilities.
- Physical accessibility issues.
- Communication guidelines (e.g., language use, communication aids and services).
- Etiquette/respect.



These are critically important areas, and the primary message of such training is often to “see the person, not the disability.” Police officers are taught to approach victims with disabilities and the investigation “like they would in any other case.” The hope is that victims who have a disability will be treated with the same respect as other victims, and this is an important goal we all need to support.

However, when training for law enforcement focuses solely on respect, police officers are left wondering what they should actually *do* when they are assigned to investigate a crime against a person with a disability. How do they approach the victim, craft an investigative strategy, and gather and document the relevant evidence? How do they effectively communicate with victims, and ensure they are doing everything they can to protect victims’ safety while still respecting their self-autonomy? How do they access and utilize the people, technologies, and resources that might be available to help?

### **The Problem of Professional “Silos”**

Other challenges stemmed from the segregation of professionals in their own disciplinary “silos.” Again, this problem arose in the development of the module, but it is indicative of the difficulties faced by professionals when responding to these cases.

All too often, we can only see a problem from our own personal and professional perspective, and this makes it difficult to piece together a comprehensive view that incorporates all of the relevant complexities.

- In this area, for example, disability advocates are uniquely equipped to understand the challenges faced by people with disabilities, as well as the resources designed to empower them. As a result, training materials created by disability advocates often emphasize recommendations designed to promote empowerment, increase access, communication, and respect.
- Sexual assault advocates, on the other hand, are particularly attuned to the dynamics and impact of sexual assault victimization, as well as the resources to support survivors. As a result, their training materials tend to focus on these issues and recommendations.
- However, many of the materials developed solely by advocates or disability experts fail to address the intersection of the two worlds (i.e., sexual violence within the context of disability). As a result, they lack the unique perspective needed to offer detailed guidance on the knowledge, skills, and abilities required to successfully handle these cases. Practitioners need a multi-faceted perspective, grounded in concrete realities, to develop a sense of competence



and confidence when responding to these victims within the criminal justice system.<sup>2</sup>

In fact, when recommendations are offered in clear or absolute terms – without concrete guidance or tools to help implement them – this can communicate a false message that it is “easy” to provide equal access for victims with a disability, and the only explanation for failure is a lack of will. This can feel insulting to well-meaning professionals who want to do the right thing but lack sufficient guidance and support to apply new information in their daily practice.

### **The Challenge and the Goal**

In our experience, doing the right thing for victims with disabilities can be challenging. This is something we have learned as we have sought to increase the accessibility of our own training and technical assistance resources. This effort has required a dedicated commitment of time and money, as well as collaboration with professionals from a variety of disciplines who brought a range of perspectives to the table. During the process, we found answers to questions we have had for years, if not decades.

Success is a profoundly worthy goal, but it will most likely not come easy. We hope this module provides you with the information, resources, and referrals you need to improve your community's response to crime victims with disabilities. Together, we can bridge the limits of our professional silos and meet the needs of victims who are relying on us.

## **Definitions, Laws, and Dynamics of Sexual Violence**

When we think about a person with a disability, we often think of someone who uses a wheelchair or other mobility device. In actuality, there are many kinds of disabilities. Some disabilities are physical and impact the way a person's body functions. Others are sensory, including those that affect a person's hearing or vision. Some disabilities are psychiatric (such as depression, bipolar disorder, or schizophrenia). Still others are developmental, such as an intellectual disability that can occur either at birth or during the developmental years. Some disabilities are easy to see, while others are invisible, and many people have more than one disability.

### **Disability: Definitions and Experience**

According to the United States Census Bureau (2012), 57 million Americans have some kind of disability (Brault, 2012). This translates to 19% of the US population, or nearly

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<sup>2</sup> For an exception, see the training materials and other resources developed by [Temple University's Institute on Disabilities](#). They provide detailed guidance and concrete recommendations for practitioners, and they are available at little or no cost. For more information, including how to order these materials, please see Appendix G.





one in five Americans.<sup>3</sup> This is more than the representation of Hispanics (17%), the country's largest ethnic, racial, or cultural minority group.<sup>4</sup> In other words, people with disabilities are the single largest minority group in the country. About 38 million (or 13% of the US population) have a disability that is characterized as *severe* (Brault, 2012).

## General Categories of Disabilities

While there are countless forms of specific disabilities, they can be grouped into several general categories:

A **physical disability** is a limitation on a person's physical functioning, mobility, dexterity, or stamina. This includes impairments that limit facets of daily living, such as respiratory disorders and epilepsy, as well as **sensory disabilities** like blindness or hearing impairments.<sup>5</sup>

**Cognitive disabilities** impair a person's ability to think and learn. This is a broad concept encompassing various intellectual or cognitive deficits: intellectual disability (formerly called mental retardation), deficits too mild to properly qualify as an intellectual disability, specific conditions (such as a specific learning disability), and problems acquired later in life through acquired brain injuries or neurodegenerative diseases like dementia.<sup>6</sup>

**Communication disabilities** interfere with a person's ability to understand and/or express speech or language.<sup>7</sup> They can have a variety of causes, including physical disabilities, cognitive disabilities, or other mechanisms. There is thus considerable overlap between this concept and the two previous definitions (physical and cognitive disabilities).

The definition of a **developmental disability** also overlaps with others. The term is used for a diverse group of severe chronic conditions caused by physical or cognitive impairments that cause difficulties with language, mobility, learning, self-help, and independent living. These impairments can be detected early on and persist throughout the lifespan. Examples include intellectual disability, Down syndrome, fragile X syndrome, pervasive developmental disorder, fetal alcohol spectrum disorders, and cerebral palsy.

**Mental disorders** (also referred to as mental illness, psychiatric disorders, or emotional disabilities) are generally understood as mental or behavioral patterns or anomalies. These patterns are not developmentally or socially

<sup>3</sup> See the [fact sheet](#) for the Anniversary of the Americans with Disabilities Act, US Census Bureau, July 25, 2012.

<sup>4</sup> See the [fact sheet](#) for Hispanic Heritage Month, US Census Bureau, August 6, 2012

<sup>5</sup> Definition adapted from [Wikipedia](#).

<sup>6</sup> Definition adapted from [Wikipedia](#).

<sup>7</sup> Definition taken from the Office for Victims of Crime (2011).





normative, and they can cause distress by disrupting a person's thinking, feeling, daily functioning, and/or the ability to relate to others.<sup>8</sup>

Disabilities in these various categories can occur independently or co-occur together.

### **The Experience of Having a Disability**

Clearly, "disability" is a complex experience, reflecting an interaction between features of a person's body and features of the society in which he or she lives. Moreover, the definition of a disability and the corresponding worldview has evolved over time, as circumstances and cultural perspectives change. For many people with disabilities, it is therefore the practical impact that is most important. Consider the following statement:

*It is not my disability but society that causes me difficulties.*

Our goal for this module is to help reduce some of those difficulties, at least within the context of the criminal justice response to victims of crime, including sexual assault and intimate partner violence. Often this will involve making reasonable accommodations.

### **Reasonable Accommodations**

In the most general terms, an accommodation is something that allows people to perform a task they would not otherwise be able to do or allows them to do something with increased ease. Many people need accommodations to function at their highest level, not just people with disabilities. For example, some people depend on spellchecking when they type on a computer (because they are not good at spelling), whereas others use food processers (either because they are not good at mixing food by hand or because they simply want to accomplish the task more quickly).

In fact, many homes are now being built with devices and other accommodations such as wide doorways, grab bars and elevated toilets. These are not just for people with disabilities, but for the general population as well. As new devices are created to make our lives easier, these devices tend to become the norm over time.

For people with disabilities, accommodations can take a number of different forms, including:

- A physical device (such as a wheelchair, hearing aid, or grabber).
- An adaptation (including a computer application that reads documents aloud).
- A service (such as a sign language interpreter or in-home care provider).
- An approach (e.g., speaking calmly and avoiding sudden movements).
- A communication adaptation (including handwritten notes, gestures, or pictures).

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<sup>8</sup> Definition adapted from [Wikipedia](#) and the [National Alliance on Mental Illness](#).



Some of these accommodations are essentially no-cost, while others are available for a minimal cost, and still others can be quite expensive. Some are also easier to utilize than others. While this section is intended to be an introduction to the topic of accommodations for people with disabilities, specific examples will be mentioned throughout the module. Some will be addressed while discussing various stages of the criminal justice process, whereas others will be presented for specific disability types.

### Resource: Expert Interview

In this [video interview](#), Shirley Pacey explains how important accommodations are when law enforcement is investigating a sexual assault committed against a person with a disability.

## The Americans with Disabilities Act

In 1990, the Americans with Disabilities Act (ADA) was enacted to prohibit discrimination against people with disabilities on a federal level. Protections are similar to those offered through other federal legislation for people based on their race, gender, color, national origin, age, or religion. ADA protections cover state and local government activities, public transportation, public accommodations, and telephone communications. The protections are summarized in the *Model Policy on the Americans with Disabilities Act* developed by the Police Executive Research Forum (PERF):

*Departments of any state or local government may not exclude qualified individuals with disabilities from participation in any program, service, or activity or deny qualified individuals with disabilities the benefits of programs, services, or activities, or otherwise subject them to discrimination on the basis of a disability (PERF, 1992, p. 3).*

These protections even extend to people who are *associated with* someone who has a disability (e.g., a caregiver or relative). These people cannot be discriminated against on the basis of their association with the person with the disability.

### Legal Definition of Disability

The ADA also provides a legal definition for what constitutes a person with a disability:

*Any person with a physical or mental impairment that substantially limits one or more of an individual's major life activities, including people with a record of impairment or who are regarded as having an impairment.<sup>9</sup>*

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<sup>9</sup> 42 U.S.C. §12102(1).

The first part of this definition focuses on a *substantial impairment of major life activities*, which includes:

*Caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. To be substantially limited means that such activities are restricted in the manner, condition or duration in which they are performed in comparison with most people (US Department of Justice, 2006, p. 2).*

The second part of the definition clarifies that it includes people *with a record of such an impairment* as well as those who are *regarded as having such an impairment*. This is critical, because it means the ADA covers individuals who have a disability but may not have received a diagnosis or treatment for it. It also includes people who are generally perceived as having a disability, regardless of whether there is any “proof” of it.

### Requirements for Accessibility

The ADA requires that government agencies make reasonable accommodations in their policies and procedures, when necessary to avoid excluding people with disabilities from accessing their programs, services, and activities. Exceptions can be granted if the agency proves that the accommodation would cause undue burden, “which is defined as significantly difficult or expensive” (US Department of Justice, 2014a, p. 6). Exceptions can also be granted if the accommodation would fundamentally alter the nature of the services provided.<sup>10</sup> However, the burden of proof is rather substantial, and even when an exception is granted, the agency still has to take some action to ensure that the person with a disability receives the service they provide.<sup>11</sup>

*The ‘undue burden’ standard is a high one. For example, whether an action would be an undue financial burden is determined by considering all of the resources available to the department. If providing a particular auxiliary aid or service would impose an undue burden, the department must seek alternatives that ensure effective communication to the maximum extent feasible (US Department of Justice, 2006, p. 7).<sup>12</sup>*

In other words, when someone with a disability requests a reasonable accommodation for equal access to programs, services, or effective communication, it is generally incumbent upon public entities such as law enforcement agencies to provide it.

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<sup>10</sup> One illustration of this principle is offered: “In the performing arts, for example, slowing down the action on stage in order to describe the action for patrons who are blind or have vision loss may fundamentally alter the nature of a play or dance performance” (US Department of Justice, 2014a, p. 7).

<sup>11</sup> See 28 C.F.R. §35.130(7) (2010).

<sup>12</sup> Specific requirements apply to the process for making the determination that a particular accommodation would create an undue burden on the organization. For more information, see the US Department of Justice’ (2014a) revised ADA requirements on [Effective Communication](#).



Public entities “can require reasonable advance notice from people requesting aids or services,” to allow time to make arrangements. However, they “may not impose excessive advance notice requirements” (US Department of Justice, 2014a, p. 6):

*‘Walk-in’ requests for aids and services must also be honored to the extent possible* (US Department of Justice, 2014a, p. 6).

Given their unique role in society, law enforcement agencies frequently respond to such “walk-in requests.” Obviously, victims of crime cannot be expected to give advance notice when needing police services. Providing accommodations should therefore simply be seen as a “cost of doing business” for police agencies (New Mexico Coalition of Sexual Assault Programs, no date; referred to as “New Mexico Coalition, n.d.”).

### **Law Enforcement and the ADA**

Because law enforcement agencies are a part of state or local governments, they are required to comply with the ADA, regardless of their size and irrespective of whether or not they receive federal funds. In other words, law enforcement agencies must comply with the ADA even if they consist of a single officer. In fact, the ADA affects virtually everything that law enforcement agencies do, including:

- Receiving citizen complaints
- Interviewing victims and witnesses
- Arresting, booking and holding suspects
- Operating telephone (911) emergency centers
- Providing emergency medical services
- Enforcing laws (US Department of Justice, 2006, p.1)

Law enforcement agencies are therefore advised to develop a comprehensive policy to address ADA issues throughout all of their programs, activities, and services. An excellent place to start is the *Model Policy on the Americans with Disabilities Act* developed for law enforcement agencies by PERF. This *Model Policy* can be adapted for use by individual agencies, so it is provided (with permission) in its entirety in Appendix B. Several sections are also excerpted in the module where relevant.

For example, the PERF *Model Policy* begins with a clear statement of purpose:

*It shall be the policy of the \_\_\_\_\_ Department to ensure that a consistently high level of police service is provided to all members of the community including people who may require special consideration in order to access these services... This includes but is not limited to first responder recognition of the nature of physical and emotional support to people with*

*disabilities who seek to access police services or who come into contact with the police (PERF, 1992, p. 3).*

Examples are then provided for what this might entail:

- *Recognition of symptoms and appropriate medical and emotional support for people experiencing seizures;*
- *Sensitivity to and appropriate physical support in aiding people who are mobility challenged;*
- *Rapid access to interpreters for people with hearing and/or speech disabilities who have a need to communicate with police personnel;*
- *24-hour access to professional support systems for people with mental disabilities;*
- *Access to police information, programs, and publications for people who have impaired vision or hearing;*
- *Recognition of the difference between characteristics common to certain disabilities (such as epilepsy, diabetes, and deafness) and those associated with antisocial or criminal behavior or reaction to alcohol and drug abuse; and,*
- *Other accommodations to ensure service and access to all people with visual, mental, emotional and medical disabilities including ‘invisible’ disabilities such as diabetes, epilepsy, multiple sclerosis, loss of hearing and others (PERF, 1992, pp. 3-4).*

**SARRT Tip:**

Publicize the fact that criminal justice agencies and victim assistance programs are prepared to assist crime victims who have disabilities, by putting the universal symbol of access (the line drawing of a wheelchair) and a TDD/TTY number on all literature, promotional materials, business cards, and other published materials (New Mexico Coalition, n.d.).

The US Department of Justice (2012) has clearly stated that people with disabilities cannot be charged for the cost of providing these accommodations or services. Nor can they be required to provide them personally (e.g., bringing their own interpreter with them). In some situations, people with disabilities will provide their own communication aid or support, but the legal obligation is not on them; it is on the government agency.



## Collaboration with Community Resources

Community resources will be critical to ensure that the accommodation needs of victims and others are met. Agencies should thus create and maintain a “roster of support agencies and individuals who may be contacted on a 24-hour-per-day basis to provide support in situations involving people with disabilities” (PERF, 1992, p. 10).

This roster of community resources will also need to be updated in a continuous way, so victims of crime with disabilities can be offered the support they need, and law enforcement personnel can benefit from their guidance and direct assistance. This is particularly important, because many people have multiple disabilities. Collaboration is necessary for law enforcement agencies to ensure that all victims have equal access to high quality police services.

### **SARRT Tip:**

Establish a Memorandum of Understanding (MOU) with other agencies involved in providing services for people with disabilities. These MOU's can spell out the roles and responsibilities of the various agencies and outline the procedures for providing notification and support.

## Agency Compliance, Individual Responsibilities

The US Justice Department has the authority to pursue complaints against law enforcement agencies for failing to comply with the ADA, and individuals can sue police departments for violating their rights (Stonebrook, 2006). The onus for compliance is therefore based on an agency level, but individual officers must become familiar with their department policies and procedures, so they can implement them effectively.

To offer an illustration, police departments are generally required to modify the procedures for giving Miranda warnings when arresting an individual who has a cognitive impairment such as brain trauma or an intellectual disability. With the modification, an officer will use simple words and ask the individual to repeat each phrase of the warning in her/his own words. The officer will also evaluate the person's comprehension by asking him/her questions, such as “What is a lawyer?” “How could a lawyer help you?” or “Can you give me an example of a ‘right?’”

When it comes to responding to victims of crime, the PERF *Model Policy* on the ADA describes some responsibilities that similarly fall to individual personnel within the agency:

*Employees should be able to identify and apply appropriate responses, such as emergency medical aid, protecting and/or calming the individual, using basic sign language,<sup>13</sup> securing professional medical attention, locating and enlisting support of family and friends, and rendering proper physical support* (PERF, 1992, p. 9).

<sup>13</sup> It is unclear whether “basic sign language” refers to hand signals of a universal nature or specifically to American Sign Language, but this can be clarified if the policy is adapted for use.





To accomplish these objectives, law enforcement agencies must provide training and information in an ongoing way for individual personnel, both sworn and civilian:

*A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. Covered entities may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise (US Department of Justice, 2014a, p. 7).*

In fact, law enforcement agencies can incur liability for failing to train officers on the ADA and how to interact with people who have disabilities (Stonebrook, 2006).

The importance of training is therefore consistently highlighted throughout the PERF *Model Policy* on the ADA. Again, collaboration with community agencies will be needed to provide such training, including working with the local Center for Independent Living.

#### **Resource: Center for Independent Living**

To find the Center for Independent Living in your community, call the ADA Information Line at (800) 514-0301 or contact the [Disability Rights Section](#) of the US Department of Justice. More information is also available at <https://www.ada.gov/>.

#### **Not Just Physical Accessibility**

When people consider the question of equal access for people with disabilities, they often immediately think of *physical accessibility* issues. It is obviously critical for people who have physical impairments (including those who use a wheelchair) to be able to:

- Park near the police department or courthouse.
- Get to the sidewalk.
- Enter the building.
- Use the interior stairs, restrooms, drinking fountains, and telephones.
- Access spaces such as interview rooms and courtrooms.

However, it is also important that victims with disabilities have equal access to the *processes* involved in the criminal justice system, including thorough investigations and vigorous prosecutions. In that regard, the ADA explicitly requires that people with disabilities have equal access to reasonable modifications to policies, practices, and procedures as well as effective communication, including the use of auxiliary aids or services, if needed.



## Ensure Effective Communication

The requirement for effective communication is particularly crucial. As described in the current ADA requirements for *Effective Communication*, people who have disabilities affecting their vision, hearing, or speech (i.e., communication disabilities) may use a variety of different ways to give and receive information. The goal for the ADA is to ensure that communication with people who have such a disability is equally effective as it is for those who do not (US Department of Justice, 2014a).

Government agencies thus have a legal obligation to provide communication aids and services when needed to interact successfully with someone seeking to access their services. The requirement applies not only to people accessing the services, but also to their “companions,” which could include a parent, spouse, friend, associate, or other person who is appropriate to communicate with under the circumstances.<sup>14</sup> For victims of crime, this could include a friend, family member, or other support person who accompanies them to a law enforcement interview; the agency may have a legal obligation to communicate effectively with this support person as well as the victim.

However, there is no specific requirement for *exactly how* effective communication will be ensured, or what communication aid or support will be required. According to the US Department of Justice, this decision can only be made on a case-by-case basis:

*The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person’s normal method(s) of communication (2014a, p. 1).*

Some examples are offered to illustrate what this means. In a restaurant, for example, it would be sufficient to read the menu aloud to someone who is blind, since that will allow the person to accomplish the task of ordering a meal. In a store, the clerk could point to products and exchange written notes with someone who is deaf, so the person could make a decision about whether to buy anything. The solutions become more complicated, however, as the information being communicated increases in length, significance, and complexity. For example, a legal document may need to be provided in electronic form to someone who is blind, so the person can use a computer screen reader. To conduct a detailed interview with someone who uses sign language, an interpreter will likely be needed (US Department of Justice, 2014a).

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<sup>14</sup> The following guidance is offered in the revised ADA requirements on [Effective Communication](#): “For example, school staff usually talk to a parent about a child’s progress; hospital staff often talk to a patient’s spouse, other relative, or friend about the patient’s prognosis. The rules refer to such people as ‘companions,’ and require covered entities to provide effective communication for companions who have communication disabilities” (US Department of Justice, 2014a, p. 5).





## Consider Individual Needs

The individual needs and preferences of the person with the disability will also be taken into account.

*For example, some people who are deaf do not use sign language for communication and may need to use a different communication aid or rely on lip reading. Other communication aids may include the exchange of notes, telecommunications devices for the deaf (TDDs), assisted listening devices, or videotext displays. The ADA requires that the expressed choice of the individual with the disability, who is in the best position to know her or his needs, should be given primary consideration in determining which communication aid to provide (US Department of Justice, 2006, p. 5).*

For government agencies, it is a *requirement* that “primary consideration” be given to the choice of communication aid or service requested by the person with the disability (US Department of Justice, 2014a, p. 6).<sup>15</sup> However, in the *Commonly Asked Questions about the ADA and Law Enforcement*, it is clarified that:

*... the ultimate decision is made by the police department. The department should honor the individual’s choice unless it can demonstrate that another effective method of communication exists (US Department of Justice, 2006, p. 6).*

In other words, the agency can use a communication aid or service other than the one requested by a person, if it can be demonstrated that the alternative means is equally effective and/or that it prevents either placing an undue burden on the agency or fundamentally altering the nature of the service provided. Again, the agency still has a legal obligation to offer “an alternative aid or service that provides effective communication if one is available” (US Department of Justice, 2014a, p. 6).

As always, the question of what is legally required must remain firmly placed within the larger context of *what is right*. When we are talking about victims of crime, anything we can do to improve the accessibility of services will increase the chance that they can meaningfully participate in the criminal justice process.

### Resource: Americans with Disabilities Act

For more information on the ADA, including a list of resources, please see Appendix A.

<sup>15</sup> For non-governmental organizations the obligation is different. Non-governmental organizations are “encouraged to consult with the person with a disability to discuss what aid or service is appropriate ... The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person’s method of communicating” (US Department of Justice, 2014a, p. 6).



## Sexual Violence Against People with Disabilities

Research suggests that people with disabilities are far more likely to be sexually victimized than others. To illustrate, the Bureau of Justice Statistics (BJS) conducts an annual National Crime Victimization Survey (NCVS), and in 2011 they reported that the age-adjusted rates for violent crime victimization (including rape and sexual assault) were *almost twice as high* among people with disabilities as compared to those without (Harrell, 2011). People with cognitive disabilities had the highest rates of violent crime victimization, but this category was not broken down into various types (e.g., intellectual disability versus other types of cognitive disabilities).<sup>16</sup> Another survey of women in North Carolina revealed that women with a disability were *four times more likely* than others to have been sexually assaulted in the last year (Martin et al., 2006).<sup>17</sup>

These figures are the result of real as well as perceived vulnerabilities among people with disabilities, including vulnerabilities specifically created by perpetrators. Some people refer to this as a “grooming process,” where perpetrators take deliberate steps to establish an emotional connection with potential victims, as well as their family members or caregivers, all with the goal of lowering their inhibitions, increasing their vulnerability, and reducing the chances of any outcry. Psychological manipulation is also used, to slowly escalate the sexual nature of behaviors by “normalizing” them.<sup>18</sup> However, we believe this term minimizes the brutal nature of the fear, manipulation, and trickery used by perpetrators. Whether they are children, people with disabilities, or any other potential victim, perpetrators often use horrifying threats, emotional abuse, and even physical violence to enhance the vulnerability of their victims and decrease the odds of getting caught. Such behaviors belie the benign-sounding term “grooming.”

### Perpetrators Target or Create Vulnerabilities

Depending on the specific disabilities people have, they may be more easily manipulated by perpetrators into a dangerous situation, or they may be less able to recognize a potential threat or protect themselves by physically resisting or escaping.

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<sup>16</sup> It is also worth noting that crimes against people with disabilities have only been included in the NCVS since 2007. People living in institutions also continue to be excluded, which means people with disabilities are likely to be significantly underrepresented. NCVS findings can therefore be seen as providing some information about the criminal victimization of people with disabilities, but more research is clearly needed to address these methodological limitations.

<sup>17</sup> A telephone survey was conducted with 5,964 women who were asked a variety of questions to screen for various disabilities, but this methodology obviously limited the range of disabilities that would be represented. Residents would not be able to participate in the survey if they did not live in a household with a telephone, or they could not answer or communicate using a telephone. The question used to screen for sexual violence also had limitations; participants were asked whether anyone had “forced them to have sex or do sexual things” during the past year (Martin et al., 2006). While such factors limit the reliability and validity of the study, they also reveal the difficulty of conducting such research. The findings thus provide valuable information, as long as they are interpreted within the context of their methodological limitations.

<sup>18</sup> Definition adapted from [Wikipedia](#).



They may also be conditioned to be compliant and feel they have little control over what happens to their bodies, especially after years of being helped with intimate care activities such as washing, dressing, and using the toilet (New Mexico Coalition, n.d.). In addition, people with disabilities may be less able to call for help, either from bystanders, caregivers, or emergency personnel (Office for Victims of Crime, 2011).

Perpetrators take advantage of such vulnerabilities and often deliberately strive to increase them (e.g., isolating potential victims from outsiders, improperly administering medications, withholding communication aids, etc.).

Perpetrators also take advantage of the common perception that people with disabilities are less credible. All too often, disclosures made by people with disabilities are viewed with unwarranted skepticism, and as a result, they are not treated with the seriousness they deserve and therefore not investigated appropriately.

It is worth noting that these are the same reasons perpetrators target people who are vulnerable for other reasons. This includes people who are involved in drug or alcohol use, engaged in prostitution, or living on the streets. Such factors can dramatically increase their vulnerability, while at the same time reducing the likelihood they will disclose the abuse to anyone. The same factors also decrease their perceived credibility in the eyes of many people, including responding professionals and potential jurors. Even friends and family members often fail to believe victims when they disclose their sexual assault – or respond by blaming the victim, saying it wouldn't have happened if the victim wasn't engaged in such high-risk behavior.

**SARRT Tip:**

Make sure any crime prevention efforts such as youth programs and school presentations are adapted to reach people with disabilities. This may require specialized outreach, modification of the program schedule or content, and the use of interpreters or other auxiliary aids and services. To be successful, this will also likely require accommodations for participants (DEPE 1002)

When victims have a disability, such responses can be downright heartbreaking:

- “She couldn't have been raped.”
- “Who would want to rape him?”

Statements like these follow a twisted sequence of logic, implying that: (a) the victim is not attractive sexually, because of the disability, and (b) people sexually assault others because they find them attractive.

Alternatively, family members, caregivers, or others may focus on the victim's lack of sexual knowledge or the tendency to exaggerate or even fabricate events:



- “She doesn’t even know what sex is.”
- “He doesn’t know the difference.”
- “He just makes stuff up.”
- “She lies all the time.”

For those who sexually assault people with disabilities, beliefs like this can ensure they will not be caught or held accountable, by decreasing the likelihood that any disclosures by the victim will be believed, taken seriously, or investigated appropriately.

### Decreased Likelihood of Reporting

There are a number of reasons why people with disabilities are less likely to report sexual assault or other forms of abuse to law enforcement. For one thing, the abuse may have gone on for so long it has become normalized, so the victim does not recognize that it is a criminal matter. Moreover, depending on the specific disability a person has, they may never have been provided with even the most basic information about sexuality and healthy relationships. Particularly with people who have intellectual disabilities, family members and other caregivers often withhold such information. Alternatively, education may focus exclusively on anatomical facts rather than issues relating to the experience of romantic love, sexual feelings, dating, and sexual relationships, as well as the possibility of abuse (Baladerian, 1998a).

**SARRT Tip:**

Collect statistical information about crime victims with disabilities. Begin by recording the disability status of the victim in crime reports and create a category for suspects who are caregivers. This will allow tracking in a way that is similar to hate crimes or elder abuse. Caregivers could include family members, partners, and/or friends (New Mexico Coalition, n.d.). Such data can be used to help “plan accessible services, be proactive in serving all crime victims, and achieve better results in solving crimes. The data can also be used during the annual agency budgeting process to justify any needed architectural or service accommodations” (SafePlace, 2007, p. 4).

As a result, people with disabilities may be unaware of their legal rights, including the right to be free of sexual victimization, as well as their options for reporting and other forms of help seeking (D’Eusano, 2001). For example, they may not know how to connect with police.

Of course, some people with disabilities are literally *unable* to report their abuse, due to physical or cognitive impairments and the resulting communication barriers. They may not believe that anyone will be able to assist them in communicating effectively, or they may fear that the interpreter or other person helping them to communicate will fail to keep their information confidential. Depending on the situation, they may feel too



uncomfortable at the prospect of disclosing the abuse, or they may not have the words to describe what happened to them (New Mexico Coalition, n.d.).

In other words, victims with a disability are often reluctant to report their sexual assault for many of the same reasons as other victims: feelings of shame, fear of not being believed or being blamed for the assault, and fear regarding how they will be treated. For people with disabilities, there may be an added burden of exhaustion at the prospect of dealing with another social service agency, or there may be fears based on a prior bad experience dealing with the criminal justice system (D'Eusano, 2001). Even when they do report, people with disabilities may be less able to effectively participate in the law enforcement investigation and any potential criminal prosecution.

However, the most powerful force inhibiting reporting is often fear. People with disabilities are often afraid of retribution from family members or caregivers, which could be devastating if they are dependent upon these people for essential care and routine activities. Reporting could jeopardize even the most fundamental aspects of their world, including their home, family, finances, and caregiving arrangements. Especially for people with disabilities who live at home, they often afraid to report victimization because they fear they will be moved to a more restrictive environment such as a nursing home “for their own protection” (Martin et al., 2006, p. 824).

Again, it is worth noting that this dynamic is similar to victims who are targeted based on vulnerability factors other than having a disability. Children who are victimized suffer many of the same fears that people with disabilities do, including the fear that they will be taken away from their family – or that the perpetrator will be taken away from them. When perpetrators are family members or other loved ones, children usually continue to feel love for them even despite the horrors of sexual victimization. In fact, this tangled confusion between love and abuse is something perpetrators create and fuel --using positive reinforcement as well as fear and threats. On the one hand, perpetrators will say they love the child, offering gifts, treats, fun activities, and opportunities to spend “special” time together. On the other hand, they will also feed the child’s fears and make threats about what will happen if anyone finds out about the abuse. Many of these same dynamics are used with adolescents or adults who have disabilities.

Similar dynamics operate with victims who do not have disabilities, particularly when the perpetrator is an intimate partner or other loved one. While some features may be more pronounced when the victim has a disability, this is usually only a matter of degree, rather than a fundamental difference in the dynamics of sexual assault victimization.

### **Abuse from Caregivers and Others**

One dynamic that is somewhat unique for people with disabilities is the fact that caregivers are disproportionately the perpetrators of abuse; abuse from a caregiver is all too often a repeated or even longstanding feature of life for people with disabilities. To illustrate, in one study of 162 sexual assaults committed against a person with a



disability, as many as 96% were perpetrated by someone who was known to the victim (Sobsey & Doe, 1991). Another survey of 5,000 women with a range of disabilities found that current or former intimate partners were the most common perpetrators of sexual violence committed against them (Martin et al., 2006).

In general, research documents that the most common perpetrators of sexual violence against people with disabilities are family members and disability service providers (including volunteers and specialized transportation providers), along with acquaintances and other people with disabilities (Sobsey, 1994). This plays into many of the dynamics described above, because perpetrators are often in the perfect position to create or take advantage of the victim's vulnerabilities – with little fear that any disclosure will be made, or even if it is made, that it will result in any serious consequences. This is particularly true because perpetrators often take steps to ensure they are seen as a “nice person” and a valued member of the community: the most “dedicated teacher,” “caring minister,” “committed sports coach,” “community volunteer.”

What they are working to create is a response that sounds like this:

- “He could never do something like that!”
- “But she’s such a nice person!”
- “Look, he takes such good care of his mother.”
- “She’s the best teacher we’ve ever had.”
- “He even volunteers to help people with disabilities!”

While it is not true for all perpetrators of sexual assault, those who use the process often referred to as “grooming” are not just manipulating their victims; they are manipulating the entire community. In other words, they are “grooming” all of us. Their goal is to reduce the chance that victims will disclose their abuse – but in the event that such a disclosure is made, they want to make sure that *they* are the ones we believe, not the victim. With this module, we hope to level the playing field.

By providing criminal justice professionals and others with training, we hope to support the development of knowledge and skills to respond appropriately to victims who have a disability. Equally important, we want to ensure that practitioners have the tools needed to successfully investigate and prosecute these cases. It is to that task that we now turn.

However, as we turn to the topic of investigative strategies, it is worth noting that many of these same recommendations apply to *all victims of crime*, regardless of whether or not they have a disability. In many cases, the guidance offered here represents best practice for law enforcement responses and interview strategies that can be used successfully with anyone experiencing trauma.



### **Resource: Dynamics of Sexual Assault**

For more information on the dynamics of sexual assault and its impact on victims, please see the OLT modules on: (1) [Dynamics: What Does Sexual Assault Really Look Like](#), and (2) [Victim Impact: How Victims are Affected by Sexual Assault and How Law Enforcement Can Respond](#)

The [SafePlace](#) program in Austin, Texas offers a model of an extremely comprehensive advocacy program for people with disabilities who are victims of sexual assault or intimate partner violence. Among other resources, they offer a Law Enforcement Curriculum, Disability Services Fact Sheets and Frequently Asked Questions.

## **Investigative Strategies**

Investigating a sexual assault against a person with a disability can be uniquely challenging, because the strategy will vary depending on whether the victim has a physical or sensory disability, a cognitive or intellectual disability, and/or a disability impacting communication or mental health. It will also depend on the severity of the disability, because the nature and extent of the victim's disability determines what legal elements must be established to successfully investigate and prosecute the case. If there are drugs or alcohol involved in the sexual assault, this will also need to be considered. This includes medications taken by, or administered to, the victim.

### **Establish Legal Elements**

Criminal law requires investigators and prosecutors to establish the elements of a criminal offense in order to pursue an investigation. For example, the most commonly reported form of sexual assault is forcible penile/vaginal penetration, where the two primary elements are: (1) penetration (no matter how slight), and (2) force, threat or fear. In the case of a drug facilitated sexual assault, investigators and prosecutors must also establish the element of penetration, but instead of proving that force was used, they have to establish that: (1) the victim was too incapacitated to provide consent at the time, and (2) the suspect either knew or should have known that the victim was incapacitated. In addition, some states require that the suspect personally administer the drug (or alcohol) to the victim for the act to qualify as a sexual offense.<sup>19</sup>

### **Age-Based Offenses**

Cases involving statutory rape and child molestation or abuse also have two primary elements: (1) the age of the people involved and (2) sexual contact or penetration.

<sup>19</sup> See, e.g., La. Rev. Stat. Ann. §14:42.1(2).



Successful prosecution will also require establishing that the suspect knew, or should have known, the age of the victim.<sup>20</sup>

Laws prohibiting sexual contact with minors were enacted because society determined that consensual sexual activity requires a certain level of maturity; that is, the ability to understand the nature of the act and the possible consequences such as disease or pregnancy. Thus, in the majority of states, children under the age of 12 are not legally recognized as capable of consenting to sexual activity.<sup>21</sup> Many states also recognize that there can be no consent when a minor is over the age of 12, if the perpetrator is significantly older than the victim. For example, in California there is no consent defense available when the victim is 14 or 15 and the offender is 10 or more years older than the victim.<sup>22</sup> These and other laws have been designed to protect vulnerable individuals from people who have authority and power over them and who, because of that relationship, can easily take advantage of them. In such cases, consent cannot exist.<sup>23</sup>

### Inability to Consent to Sexual Acts

The same logic applies to laws prohibiting sexual activity with a person who has a severe cognitive impairment. Cognitive impairments (such as intellectual disabilities, traumatic brain injury, and dementia) can temporarily or permanently prevent a person from being able to legally consent to sexual activity. In such cases, investigators and prosecutors must establish that: (1) sexual contact or penetration took place, (2) the victim was unable to give consent because of the severity of the cognitive impairment, and (3) the suspect knew or should have known the extent of the victim's impairment. In theory, a consent defense cannot be raised in such a case. However, there is no clear legal standard for establishing how severe a cognitive impairment must be to render an individual incapable of consent, so this must be established with evidence gathered during a

#### **SARRT Tip:**

Sexual assault investigation protocols should include planning for cases where the victim has a cognitive disability, especially when the impairment is severe or profound. This will include appropriate health care and advocacy services.

<sup>20</sup> For more information, see the [Victim-Oriented Multidisciplinary Responses to Statutory Rape: Training Guide](#), created by the American Bar Association, Center on Children and Law and published in February 2000 by the US Department of Justice, Office of Justice Programs, Office for Victims of Crime.

<sup>21</sup> See, e.g., Ore. Rev. Stat. §163.375.

<sup>22</sup> See, e.g., Cal. Penal Code § 288 (c)(1).

<sup>23</sup> California has codified the definition of consent in Cal. Penal Code § 261.6: "...consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved." The Colorado definition is quite similar: "Consent" means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent ... Submission under the influence of fear shall not constitute consent" (Colo. Rev. Stat. § 8-3-401).



thorough law enforcement investigation. We will provide strategies and tools to assist with this investigative process throughout the module.

Unfortunately, much of the training for law enforcement on people with disabilities focuses on (admittedly important) topics such as how to use *People First Language*, and how to express respect, empowerment, and patience toward them. Professionals are often specifically told *not* to focus on the victim's disability, and instead to focus on a person's abilities. However, when evaluating sexual assaults against people with a severe cognitive disability, the investigation *must* focus on the disability, as well as any evidence or corroboration that the suspect was aware of the victim's disability.

### Caregiver Criminal Codes

Many states have also recognized how much power caregivers have over people with disabilities, and have enacted laws criminalizing sexual contact between a person with a disability and his/her caregiver. Caregivers can include people such as a family member, teacher, health care worker, bus driver, etc. This type of criminal offense is similar to statutes found in most states that prohibit sexual contact between correctional officers and inmates who are in custody and thus subject to the complete control of the Department of Corrections. In such cases, consent cannot be used as a defense to a charge of sexual assault.<sup>24</sup>

When abuse is suspected by a caregiver, investigators must therefore establish two primary legal elements: (1) sexual contact and (2) the relationship between the victim and the suspect. Of course, they must also prove that the sexual assault was committed by the suspect and not by some other person with access to the victim.

### Develop an Investigative Strategy

When an investigator responds to a suspected sexual assault against a person with a disability, there are a variety of investigative strategies that can be pursued, based on the facts of the case and the legal elements that must be proven. In fact, many if not most cases will require a combination of investigative strategies. This is because law enforcement will typically investigate more than one offense during the course of an investigation, and prosecutors may decide to file charges on none, some, or all of them. These charging decisions will ultimately be made based on the strength of the victim's statement and other available evidence. It is therefore best for law enforcement to collect information and evidence that could pertain to any of the various strategies.

### Factors to Consider

Other factors will also be taken into consideration by investigators and prosecutors when deciding which charges to pursue. For example, some charges are more easily

<sup>24</sup> See, e.g., Wash. Rev. Stat. §9A.44.050(1)(c)(i), 9A.44.010(8)(c), (16).

proven than others; this includes offenses based on the age of the victim or the suspect's role as a caregiver. These factors are typically more straightforward to establish than the level of force, threat, or fear – or, alternatively, victim incapacitation – required to overcome a consent defense. Criminal offenses are also easier to prove if they require a general intent on the part of the suspect, rather than a specific intent (e.g., “for the purpose of sexual gratification”). When reviewing all of the investigative findings, prosecutors may therefore decide to charge certain crimes rather than others, because they are seen as easier to prove “beyond a reasonable doubt” to a jury.

Another factor to be considered is the victim's well-being. When deciding between alternative charges, investigators and prosecutors should take into account which will incur the least amount of trauma for victims and their loved ones. There is no universal guidance for this determination; it will need to be made on a case-by-case basis. To illustrate, prosecutors will often decide to pursue only one or two charges in a case where the suspect regularly assaulted the victim over years of abuse. They might choose the incidents that can be most easily proven based on the strength of the evidence, rather than trying to pursue numerous charges on the basis of the victim's testimony – and increasing the likelihood of introducing reasonable doubt for each individual charge.

Of course, multiple charges may also be pursued. For example, the primary charge in a particular case may be a sexual assault offense based on the suspect's role as the victim's caregiver. However, if there is evidence that force and/or drugs or alcohol were used to commit the sexual assault, additional charges may include a forcible sexual assault, and/or a sexual assault based on the victim's incapacitation. There may even be other charges or enhancements if the suspect used a weapon, misused prescription drugs, supplied drugs or alcohol to a minor, or committed other crimes.

The selection of an investigative strategy can therefore be framed as a series of questions, rather than a simple or straightforward choice. We have provided a list of such questions below, to help guide investigators and prosecutors in considering the full range of information and evidence that could ultimately be important in a case.

### **Is the Suspect a Caregiver?**

First, investigators should ask whether the suspect is a caregiver for the victim. If the jurisdiction has a law prohibiting sexual contact on the basis of a caregiver relationship, this can be the most straightforward scenario for an investigator or prosecutor to pursue. This is because there are only two primary elements that must be proven: (1) the suspect's role as a caregiver and (2) the sexual acts committed by the suspect against the victim. Of course, any evidence of force, threat, or fear will still be documented if it is present. Information will also be gathered on any drugs or alcohol that may have been involved. We will address these issues in another question below.



However, if there is no law in your jurisdiction that prohibits sexual contact in a caregiver relationship, the case will need to be investigated using other strategies outlined below.

### **Is the Victim's Cognitive Impairment Severe or Profound?**

The next determination is whether or not the victim is capable of consenting to sexual activity, based on a cognitive disability that is severe or profound. This is no simple task, and we dedicate a significant portion of this module to providing guidance to help make this determination. You can also consult Appendix C for detailed information about the various levels of severity for intellectual disability, as defined by the most recent version of the *Diagnostic and Statistical Manual (DSM-5)*, published by the American Psychiatric Association (2013).

When a victim of suspected sexual assault has a severe or profound cognitive impairment, the criminal offense is based on the person's inability to consent to sexual acts. As a result, the investigative strategy will focus on documenting the extent of the victim's impairment. Specifically, three things must be established: (1) the sexual acts committed by the suspect, (2) the victim's lack of capacity to consent to sexual activity, and (3) the suspect's knowledge of the victim's level of impairment.

Proof of force is not needed to establish an element of this offense, but it is always advisable to collect and document evidence of force when it is available. The same is true for drugs and alcohol; this factor is not directly relevant for the three legal elements outlined above, but it may be critically important for other purposes.

Keep in mind that even when investigators assume that the victim's cognitive impairment is severe or profound, other experts may make a determination that it is not. The case will then revert to a standard consent defense, with evidence needed to establish the element of force or incapacitation (e.g., by using drugs or alcohol).

### **Is the Victim's Cognitive Impairment Mild or Moderate?**

When victims have a mild to moderate level of cognitive impairment, they will typically be seen as having the capacity to consent to sexual activity. Law enforcement will therefore need to investigate the case to overcome a consent defense, by documenting evidence of force, threat, or fear – or incapacitation of the victim due to drugs or

alcohol.<sup>25</sup> A disability may be framed as something that increased the victim's vulnerability and is thus relevant to the question of force. However, the disability itself will not be directly relevant to establishing a legal element of the crime.

### **Unsure About the Severity of the Victim's Cognitive Impairment?**

For investigators unsure about the severity of a victim's cognitive impairment, it is best to start from a position that the investigation may take any of these paths – and collect all of the information or evidence that could be relevant. In fact, investigators will often be uncertain about this question during the beginning stages of an investigation. Frequently, it will be evident that victims have some level of cognitive impairment, but a key point of contention during the investigation and prosecution will be whether it is significant enough to preclude the person from being able to consent to sexual activity.

If the information and evidence gathered during a thorough investigation supports a position that the victim is *incapable* of consenting to sexual activity, this will form the basis of the investigation and prosecution strategy. On the other hand, if the information and evidence appears to suggest that the victim *can* legally consent to sex, the case will revert to a standard consent defense and evidence will be needed to establish the element of force or incapacitation (e.g., using drugs or alcohol).

### **Were Drugs or Alcohol Involved?**

We have already mentioned that investigators should seek to determine whether drugs or alcohol played a role in the sexual assault. This includes the misuse of prescription medications, which are often easily accessible to those who care for people with disabilities or illnesses. Perpetrators frequently use prescription drugs to facilitate sexual assaults, either by rendering their victims unconscious or incapacitating them to the point where they cannot physically resist or cognitively process the perpetrator's actions. Drugs are also used to prevent victims from disclosing their abuse and to reduce the chance that any disclosures will be taken seriously or investigated properly.

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<sup>25</sup> The exception to this is when a charge of incest can be pursued. Historically, incest has been defined as a criminal offense in order to deter marriage and reproduction between closely related individuals; it was designed to reduce the chance of birth defects among any resulting offspring but also to reflect moral taboos and concerns for public decency. The crime is thus typically defined as including only penile-vaginal penetration. The criminal offense also exists to preserve the integrity of the family unit and to protect people who may not be in a position to freely consent to sexual activity because of power differentials. The [laws](#) in many jurisdictions set out degrees of consanguinity in relation to prohibited sexual relations and marriage between closely related family members; they usually include brothers, sisters, mothers, fathers, grandparents, aunts and uncles. The elements of the offense usually include marriage or fornication between people within such degrees of consanguinity, including those who are otherwise of legal age to consent to sexual activity. Incest can therefore be an appropriate charge in situations where the legal elements of the crime are met, and it may be the only charge available in a situation that does not fall under other criminal offenses (e.g., child molestation, forcible sexual assault). This is the case, for example, when the victim has a cognitive disability, but it is not so severe as to preclude legal consent to sexual activity, and the suspect is a family member. A charge of incest may be the only possibility in such a case.



The investigation of this question may also lead to additional charges for crimes related to the illegal possession of drugs, misusing prescriptions, or providing drugs or alcohol to victims who are minors or have disabilities and are under their care.

### **Is the Disability Unrelated to the Victim's Capacity to Consent?**

Finally, there are a number of physical, cognitive, and communication disabilities that will not have any impact on the victim's capacity to consent. For example, if the victim is blind or hard of hearing, this is irrelevant to the question of whether the person can consent to sexual activity.

These cases will therefore be investigated using the same general strategy as any other sexual assault where a consent defense is anticipated. Evidence will be gathered to overcome the consent defense, either by establishing the element of force, threat, or fear – or documenting the victim's incapacitation, typically due to drugs or alcohol. As described above, the evidence may suggest that the victim's disability increased his/her vulnerability and thus may be relevant to the question of whether force, threat or fear was used to perpetrate the sexual assault. However, it will not directly establish a legal element of the offense.

Of course, investigators should also prepare for the possibility that another defense will be raised, including a denial of the sexual acts or a claim of misidentification. Evidence to establish the sexual acts and identify the perpetrator is always important.

### **The Suspect's Defense May Change**

Another reason to pursue alternative investigative strategies is because the suspect's defense may change during the course of an investigation and prosecution. To illustrate, cases involving a caregiver will often start out with a defense of denial, rather than consent. This is because of the risk associated with admitting any sexual activity, particularly when the suspect is a paid caregiver or an employee of a facility that provides care or other services for people with disabilities. However, once a thorough investigation has been conducted and corroborative evidence documented, even suspects in this position will usually choose a consent defense and termination of their employment rather than incarceration. Investigators must therefore be prepared for the defense to change in these cases and document all of the suspect's statements, including denials of sexual acts as well as other inconsistencies and implausibility's.

### **The Critical Importance of Corroboration**

As we conclude this section on investigative strategies, it is important to emphasize that legal elements are not always established with physical evidence. Especially in cases of sexual assault, successful investigations and prosecutions are often based on a body of information and evidence that generally supports the credibility of the victim and

corroborates details in the victim's statement – including details not directly related to any legal element.

For example, in a case involving a victim with a severe cognitive impairment there may be no physical evidence to prove that the suspect committed specific sexual acts. However, any corroboration that supports the credibility of the victim or suspect will be critical. This is illustrated with two examples:

*When a suspect is first interviewed, he denies having access to the victim at the time of the sexual assault, yet staff logs clearly indicate that he had been assigned to bathe the victim on the day the suspected abuse occurred. When later interviewed, the suspect says he 'forgot' this fact.*

*A victim with an intellectual disability states that his school bus driver molested him after all of the other students had been dropped off. In his first interview, the driver may deny any sexual contact with the victim, but the investigator establishes that on the day of the suspected assault, the victim was dropped off at home 15 minutes later than normal.*

When this type of corroboration is uncovered, it should be seen as potentially significant. All too often investigators talk themselves out of seeing such information as important, because they know the defense will make every effort to “argue it away” with some plausible explanation. However, all corroboration is potentially important, no matter how insignificant it might seem at the time. This is similar to the investigation of other types of crime such as stalking or child abuse, where evidence or particular statements from victims or witness may seem insignificant at the time, but they could very well prove critical when looking at the totality of the circumstances. This is why it is so important to carefully document evidence and statements at the time they are made.

#### **Resource: Expert Interview**

In this [video interview](#), Shirley Pacey summarizes what investigators need to know about working with people with disabilities.

#### **Parallels with Child Abuse Investigations**

In fact, the significance of corroboration is well known to investigators and prosecutors who work child abuse cases involving very young victims, because this is often all that is available in these difficult cases. For example, during an investigation of child sexual abuse, the victim may be able describe where pornography was kept by the suspect. If this is confirmed by the investigator, it will not establish the legal element of sexual contact or penetration. However, it provides critical corroboration, because it raises the



question of how the victim had access to or knowledge of the suspect's pornography. The same is true for adolescents or adults who have a severe cognitive impairment.<sup>26</sup>

### Other Forms of Corroboration

Corroboration can also be found in statements made by the suspect. During the course of a sexual assault investigation, law enforcement will often conduct a pretext phone call (also referred to as a monitored call or a one-party consent call). Typically, suspects do not confess to the crime during such a call, but they often make admissions that corroborate the victim's statements. These statements should be seen as important corroboration and documented as such. Alternatively, suspects may make statements that deny any sexual contact with the victim. If they later claim during a law enforcement interview that they had sex with the victim, but it was consensual, this inconsistency could have a significant impact on the investigation and potential prosecution.

Corroboration may even be as simple as establishing that victims can give an accurate description of their daily activities. When the accuracy of this description is confirmed by the investigator, it supports the victim's credibility by demonstrating that the victim is capable of providing a truthful statement and giving an accurate narrative of events.

#### Resource: Corroboration

For more information on the types of evidence that can be used to establish legal elements and offer corroboration during a law enforcement investigation, please see the OLT modules on: (1) [Preliminary Investigation: Guidelines for First Responders](#), and (2) [Law and Investigative Strategy: What Kind of Sexual Assault Is This?](#)

Other helpful tools have also been developed to guide the investigation, from the Police Response to Violence Against Women Project at the International Association of Chiefs of Police (IACP). These tools include a [Model Policy on Investigating Sexual Assaults](#), a supporting [Concepts and Issues Paper](#), and a [Supplemental Report Form](#) for sexual assault that includes helpful guidelines for case documentation, effective techniques for victim and perpetrator interviews, and a pocket "tip" card for officers.

<sup>26</sup> If the pornography depicts child victims, possession may constitute a criminal offense on its own. In addition, if the suspect works at a facility providing care for children, patients, or people with disabilities – and the pornography is found on-site – this will likely constitute a violation of the organization's policy. The suspect may therefore be subject to discipline from the organization as well as any criminal penalties.



## Stages of the Investigation

### Initial Response

As previously stated, law enforcement agencies should develop policies and procedures to respond appropriately to crimes perpetrated against people who have disabilities. Yet beyond the development of policies, agencies may also need to make changes to their standard operating procedures and daily practices when victims have a disability. In this section, we explore some issues to be addressed during the initial response.

### Train Communications Personnel

In fact, the initial response begins even before officers arrive on the scene, when a call comes into the communications center. As outlined by the US Department of Justice (2006), this requires ensuring that “individuals with hearing and speech disabilities have direct access to ‘911’ or similar emergency telephone services” (p. 7).<sup>27</sup> It also necessitates training, so communications personnel can meet the needs of callers:

*All dispatchers will be trained to recognize characteristics of people whose disabilities may require special communications techniques and methods for providing service. The Department will maintain TDD services for deaf and hard of hearing people and provide direct access to telephone emergency systems for individuals who use TDD's (PERF, 1992, pp. 10-11).*

When dispatchers receive a call, their essential tasks are the same regardless of whether or not the victim has a disability. They have a duty to remain patient and nonjudgmental, gather as much information as they can, and explain that information will be given to officers on their way to the scene. When the victim has a disability, however, the call taker will also need to find out as much as possible about the nature and extent of the disability. This information can potentially help officers prepare for their approach, response strategy, and any accommodations that may be needed. For example, victims may not be able to hear the responding officers, may not be able to speak to the dispatcher, or may need a sign language interpreter (SafePlace, 2007).

Policies should also address the priority of calls and other procedural issues when responding to victims of crime. To illustrate, calls coming in through a third party are sometimes assigned a lower priority than those taken directly from a victim. However, communications personnel should be trained to keep in mind that a third-party call may be the only option for some victims with certain types of disabilities to reach out for help.

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<sup>27</sup> For more information, see the document entitled [Access for 9-1-1 and Telephone Emergency Services](#), published by the US Department of Justice, Civil Rights Division, Disability Rights Section (last updated July 15, 1998).





## Recognize Disclosures

Communications personnel and other first responders should also be trained to recognize that sexual assault disclosures unfold in various ways, and it will not always be clear from the outset exactly what is being reported. This is particularly true for victims with disabilities that affect their cognition or communication. In these cases, a clear picture is not likely to emerge until a thorough investigation has been completed.

For example, a victim with limited education, experience, or vocabulary may disclose details in an indirect manner, making spontaneous statements that serve as a red flag to a loved one who then reports the suspected abuse. These statements may be especially likely to emerge during the context of intimate caregiving activities such as feeding, bathing, or bedtime. Other times, disclosures are made by the victim, but they are tentative, disguised, or vague. As one illustration, Sgt. Joanne Archambault investigated a case where the victim disclosed that a stranger climbed through her window, sexually assaulted her, and burned her with cigarettes. Following a thorough investigation, it was revealed that the suspect was actually a relative who had been sexually assaulting family members for many years. Such disclosures can resemble those made by children, who may, for example, say they were sexually assaulted by a classmate when the perpetrator is actually a parent or another family member or friend.

In other situations, a report might be made by a caregiver or other third party who suspects abuse based on statements or behaviors of the victim, rather than any type of disclosure. There are a variety of signs that can serve as indicators of abuse.<sup>28</sup>

The key is therefore to listen very carefully to statements made by the victim as well as third parties (such as caregivers and family members), and not discount them immediately if they don't make sense or fit together in a coherent way. As previously described, there are often powerful forces preventing victims from making a clear and consistent disclosure of abuse, particularly when the perpetrator is someone who is very close to them and/or someone upon whom they depend for essential care. Even when the abuse is ultimately reported, it is not at all unusual for victims to recant. As with any other victim of crime, investigators can respond by exploring the reasons for the recantation and seeking to determine whether it is based on the victim's own fears of repercussion or possible coercion or intimidation on the part of others.

## Coordinate with Social Service Agencies

Policies and procedures for the initial response should also address coordination with social service agencies, because patrol officers are typically responsible for coordinating with Child Protective Services (CPS) or Adult Protective Services (APS) when a call comes in involving a victim with a disability. Responding officers can then

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<sup>28</sup> For detailed information on possible indicators of abuse among people with disabilities, please see Baladerian (1998a).



arrange to respond to the scene together with these social service providers and make a determination whether immediate actions should be taken to protect the victim from danger. This could include taking the victim into protective custody when necessary or relocating the victim to another safe place pending the results of a comprehensive investigation.

### **Gather Basic Information About the Victim's Disability and Accommodations**

Once immediate safety needs are met, responding officers can begin gathering basic information about the victim's disability and any accommodations that might be needed. This information can be used to prepare for the call and guide what information and evidence officers should look for when they arrive.

For example, when patrol officers respond to a call of a sexual assault they may have some information from communications personnel that the victim has a disability. However, the information provided is likely to be rather limited. Alternatively, the call may be the result of a mandated report from a health care provider, caregiver, or someone else who suspects abuse.<sup>29</sup> In that case, there may be more detailed information about the nature of the victim's disability.

Sometimes, however, the officer will have no such information in advance. Patrol officers often respond to a call involving a sexual assault, and only after they begin talking with the victim do they realize or suspect that the victim has a disability of some kind. Alternatively, patrol officers may not have been called to respond to a sexual assault, but to some other type of crime, and while talking to the victim they observe something or have a sense that raises this possibility. Regardless of how the situation unfolds, officers will need to gather some basic information about the victim's disability and find out if there are any urgent needs or accommodations required.

#### **SARRT Tip:**

Develop and promote the use of informational cards or forms to be completed by people who care for someone with a disability, to provide basic information for first responders in an emergency situation.

One place to start is by asking family members or caregivers whether they have a card or form that provides basic information about the victim's disability, including medical considerations or the need for certain accommodations. In many cases, the family will not have such an informational form/card but the use of such a tool can be promoted by law enforcement agencies to assist responding officers in an emergency situation.

<sup>29</sup> All US states have mandated reporting laws requiring certain professionals (e.g., law enforcement personnel, health care professionals, teachers, caregivers, and others) to report suspected abuse committed against children and vulnerable adults. For more information and to find out about the laws in your jurisdiction, see the website for [RAINN \(Rape Abuse and Incest National Network\)](http://RAINN.org).



### **Resource: Emergency and Personal Information**

Two examples of such a tool are provided in Appendix D: (1) an Emergency Information Form, and a (2) Personal Information Card. Through outreach efforts and public service announcements, law enforcement agencies can seek to disseminate such tools and promote their use within the community.

### **Address the Victim's Immediate Concerns**

When someone is sexually assaulted, they are likely to have a number of urgent questions and immediate concerns. Until these questions and concerns are addressed, it will be difficult for the victim to participate effectively in any interview with law enforcement. Dr. Nora Baladerian (1998a) describes what some of these might be for people who have a disability, particularly those who depend on others for essential care:

*'Is this abuse? What is abuse? What happens if I tell someone? What happens if someone finds out? Will I be hurt? Will I lose my home, my job, the love of my family? Will I be getting someone in trouble?'* (p. 13).

As Dr. Baladerian notes, such questions would be difficult for anyone to face, but for people with disabilities and those who depend on others for care, they can be overwhelming. By attempting to answer these (often unasked) questions whenever possible, investigators may be able to help reassure victims, so they can be "present" during an initial interview and effectively contribute to preliminary information gathering.

Such concerns are likely to be particularly pronounced when the report is initially made by a third party rather than the victim. Third party reports are common for sexual assault victims who have a disability, just as they are for those who do not. However, this may mean that the victim does not want to talk to law enforcement. During their initial contact, officers should therefore ask victims whether they want to talk with them. If not, there may be a fear or misunderstanding that can be addressed. Often when such concerns are addressed with respect and compassion, victims will decide they are willing to talk with responding officers. However, victims should never be forced to talk with you if they don't want to.

Victims may also have more practical concerns that need to be resolved first. For example, they may have an urgent need to replace some form of equipment or device, to restore their physical mobility or help them communicate or function as they normally would. Alternatively, the victim may be worried about a cat that hasn't been fed, a dog that hasn't been let out, or a child who needs to be picked up from school. When victims are worried about such urgent concerns, they are less able to focus on participating effectively in your efforts to gather information. It can thus be helpful to ask victims something like: "What are you most worried about right now?" or "Is there anything we need to take care of right away, before we talk about what happened?"



## Contact an Advocate

Another strategy for addressing the victim's immediate needs is to contact an advocate.

At the point where officers determine that a possible sexual assault has occurred, and urgent matters have been addressed, a victim advocate should be contacted. The specific resources available in the community for advocacy services will vary, as will the agency's policies on whether or not advocates can respond in the field.

- Some communities have advocates who can respond in the field to provide immediate crisis intervention for victims of sexual assault. Typically, however, this will be a system-based advocacy program based in a police department, or other governmental entity.
- Many communities also have a non-profit advocacy organization such as a rape crisis center or dual services center (for sexual assault and intimate partner violence). Community-based agencies often have policies prohibiting advocates from responding to the field or to a victim's home, but in some situations the officer and advocate could arrange to meet with the victim at a neutral location (such as a forensic examination facility, police department, or victim advocacy agency).
- Some communities may even have an agency that can send a disability advocate to support the victim during the initial response – or during the medical forensic examination, detailed follow-up interview, or other criminal justice procedures. However, there will be no such resource available in most communities; many of the services for people with disabilities focus on issues such as transportation, housing, health and employment rather than violence (New Mexico Coalition, n.d.).

As with other victims of sexual assault and intimate partner violence, those who have a disability should be offered the option of having an advocate or other support person present to accompany them during any law enforcement procedures beyond the preliminary response, including the medical forensic examination (if one is conducted) and the detailed follow-up interview. Advocates can also be helpful in a number of other ways, by providing victims and their support people with information, emotional support, and assistance when accessing resources that are available, such as crime victim compensation. Advocates can also help to ensure that victims and their support people are advised of their rights, at each stage of the criminal justice process. Of course, victims can always decline the services of any type of advocate, in which

### **SARRT Tip:**

Develop a protocol to coordinate the response for law enforcement officers and victim advocates. This protocol should be spelled out in a Memorandum of Understanding (MOU) between the relevant agencies for responding to all cases of sexual assault, not just those where a medical forensic examination is conducted.



case it will be especially important to provide them with written information and referrals for community resources. For victims who have a disability, informational materials may need to be provided in an alternative format, so they are accessible, or explained in a way the individual can understand. Even victims who initially decline the services of a victim advocate may decide to obtain these or other services at a later point.

### **Resource: Role of the Victim Advocate**

For more information on the role of advocates within the criminal justice system, and the critical benefits they can have for victims, please see the OLT modules on: (1) [Effective Victim Advocacy within the Criminal Justice System](#), and (2) [Breaking Barriers: Role of Community-Based and System-Based Victim Advocates](#).

### **Begin Formulating an Investigative Strategy**

The next task for responding officers will be to begin making initial determinations regarding what crime (if any) is being reported or suspected. These initial determinations will often provide the basis for deciding whether to clear from a radio call believing no crime occurred – versus initiating a crime report documenting a suspected sexual assault. They will also guide the information and evidence responding officers look for during the initial response, as they begin to craft an investigative strategy.

For example, once the responding officer has reason to suspect that a sexual assault has been committed against a person with a disability, the following questions can be used to begin formulating an investigative strategy:

- Is the person suspected of committing the crime a caregiver for the victim? Is there a criminal offense code specifically addressing caregivers? If so, the case will likely be investigated within that particular framework. Steps will also need to be taken to ensure the victim's safety and meet essential needs for care.
- Is there is reason to question whether the victim has the capacity to consent to sexual acts? In other words, does the victim have a cognitive impairment that is severe or profound? If so, then this will guide what officers should look for in the preliminary investigation. Responding officers will need to conduct an initial evaluation of the victim's general capacity and gather information to help make this determination.
- Is there evidence of force, threat, or fear? If so, the possibility of a forcible offense must also be considered. This evidence will need to be documented and a decision made regarding whether or not to call for emergency medical help and to facilitate a medical forensic examination. Keep in mind that the purpose of a medical forensic examination is not just to collect biological evidence but also to document any injuries.





- Were drugs or alcohol involved? If so, the question will be whether they rendered the victim too incapacitated to legally consent to sexual acts. Evidence will also be needed to document that the suspect knew or should have known the level of the victim's incapacitation. Your jurisdiction may even require that the suspect personally administered the drug or alcohol.

### Evaluate the Victim's General Capabilities

If there is any question whether the victim has the capacity to consent to sexual acts, due to a severe cognitive disability, responding officers will need to conduct a preliminary evaluation of the victim's general capabilities. This initial evaluation will not serve as the final determination regarding the victim's capacity, to be argued in court by prosecutors, defense attorneys, and expert witnesses. It will not even address the specific question of whether the victim has the capacity to consent to sexual acts. There will be time for that later, during the more formal assessment of victim capacity during a detailed, follow-up interview as well as an assessment performed by a clinician.

Rather, this initial evaluation should focus more generally on the victim's capabilities and functioning in daily life – because this will guide what happens next in terms of what crime is being investigated, what information and evidence are sought, and what steps need to be taken to protect the victim's safety.

Clearly, law enforcement officers have numerous responsibilities and training requirements that prevent them from becoming experts at everything they are required to respond to on a daily basis. For example, an officer may be responding to a radio call involving a person with a disability at 11:00 at night or 3:00 in the morning, long after most people have left their offices for the day. In that situation, an initial decision regarding the victim's capabilities will need to be made without the professional support that might be available from 9:00 to 5:00, Monday through Friday. Fortunately, this type of initial evaluation *can* be successfully conducted by responding officers, as long as they have training to prepare them for the situation and tools they can use to help.

For responding officers, the best place to start is by recognizing that there is some fact or observation causing you to suspect that the victim has a severe cognitive impairment. Otherwise, you would not even be considering it as relevant to the case. In other words, as a responding officer you can begin by asking yourself what leads *you* to believe that the victim has a cognitive impairment of some kind – and then document those facts.

#### **SARRT Tip:**

Produce an "investigation guide" that can be accessed by law enforcement officers on their mobile data terminals (MDTs), so it is available when responding to a call and conducting a preliminary investigation of a suspected sexual assault committed against a person with a disability.





The next question is whether there are trusted people who can assist with this initial evaluation of the victim's general capabilities. Because so many people with a cognitive disability depend on others for daily assistance, caregivers can often provide basic information about a victim's capabilities. Does the victim live with her/his parents? In a group home? If so, those caregivers may be a good place to start for gathering information.

Care must be taken, however, to respect the victim's privacy as much as possible. For instance, it may be possible to explain the nature of the crime you are investigating to caregivers or others, while still withholding certain details to protect the victim's privacy. It is also critical to avoid unwittingly using a possible suspect in this role of gathering information about the victim. This can be challenging during the initial stages of an investigation when it is not yet clear what crime has been committed, let alone who might be a suspect. In these early stages, it may also remain unclear what motivations might exist for other people to assist – or interfere – with the investigation.

### **Questions to Evaluate General Capabilities**

Responding officers can then proceed by asking victims a number of questions to assess their general capabilities. These questions will also solicit information about the victim's relationship with the suspect as well as family members and other caregivers.

For example, victims can be asked questions such as the following:

- Who decides what you are going to eat for dinner?
- Do you ever make dinner reservations?
- Who decides when it's time for you to go to bed?
- If you want to go to the store, how do you get there?
- If you wanted to buy something at the store, how would you do that?
- Do you have money of your own?
- Do you go to school?
- What do you learn at school?
- Can you read?
- Can you write your name?

For victims who have a cognitive disability, it is important to get a sense of whether they can make informed choices when presented with options. Also critical is whether they can say "no" to unwanted activity of any kind, particularly if it involves someone in a position of authority (Kennedy & Niederbuhl, 2001).



## Underlying Motivations for Capacity

Keep in mind that victims “may try to hide their disability or pretend to have greater capabilities than they actually possess” (Office for Victims of Crime, 2008, p. 25). This may be due to the basic human desire to present oneself as competent. However, it may also reflect serious concerns of people with disabilities as well as their caregivers, regarding the impact this determination will potentially have on their lives.

In terms of the investigation, the essential question is whether the victim had the capacity to consent to sexual activity; this determines the course of the investigation and the charges that may ultimately be filed. The decision will therefore be made on the basis of a formal evaluation conducted by a psychologist, social worker, or other clinician with expertise in diagnosing cognitive disabilities. However, once a decision is formalized in this way, it will likely affect other areas of the victim’s life that require capacity to make decisions and give informed consent, such as health care, financial transactions, living arrangements, and other legal matters. For this reason, victims, caregivers, family members, and others may have underlying motivations for which determination is made.

It is not the responsibility of law enforcement to take such factors into consideration when evaluating the victim’s general capabilities. However, they are important to keep in mind because they may influence the behaviors and statements that are observed during the process, both on the part of the victim as well as caregivers and loved ones.

## Collect Evidence and Information

Throughout the initial response, responding officers will collect and document any evidence and information that could be relevant for the various investigative strategies presented earlier. For victims with a cognitive or communication disability, this could include information about the victim’s general capabilities, as described above. If there is some question about whether the impairment is severe enough to preclude the victim’s ability to consent to sexual activity, then information and evidence will also be needed to document the suspect’s awareness of the victim’s level of impairment.

Evidence and information will also be needed to address the relevant legal elements, which vary depending on the specific facts of the case. However, they could include:

- The suspect’s role as a caregiver for the victim.
- Sexual contact or penetration between the victim and suspect.
- Force, threat or fear present during the sexual assault.
- Incapacitation of the victim (usually due to drugs, alcohol, or prescription medications).



Remember that physical evidence might not be available to prove all of the appropriate legal elements. Often, they are established with small pieces of evidence or information that slowly build to corroborate the victim's statement – and expose inconsistencies, absurdities and implausibility's in the suspect's statement. Of course, evidence or information may also corroborate the suspect's statement. During the initial response, the goal is to begin the process of gathering evidence and information. Determinations about the case should not be made until a thorough investigation has been completed.

### **The Importance of the Initial Response**

Unfortunately, there can be a tendency to minimize the significance of this initial response and the critical role played by responding officers. Yet this initial contact with victims is extremely important for the entire course of any sexual assault investigation.

The initial interview needs to be conducted in a compassionate and caring manner, both because it is good for victims' well-being but also to ensure that the case is not irreparably damaged by the loss of victim trust and rapport. In fact, a primary goal for responding officers should always be to establish trust and rapport with the victim, so that even when the investigation is assigned to someone else for follow-up, that officer can ease the transition for the victim.

For example, officers can explain their role as the first responder who will complete the preliminary investigation and forward the report to an investigator for follow-up. If the detective will call the victim to schedule a follow-up interview, the victim should be advised. Alternatively, if the detective responds to the scene or medical facility, the reporting officer should introduce the victim to the detective to facilitate the transition. If the detective responding in the field is the "duty detective," and the case will be referred to yet another detective for follow-up investigation, this will be particularly important to explain to the victim. Most victims do not understand that, depending on the agency and the size of the city, an on-call investigator might respond to more calls than he/she can possibly take on at one time. Unless this is explained to them, victims will only know that they had to talk to multiple police officers but not understand the reason why.

Of course, even when the case is assigned to an investigator, responding officers must still write a report documenting everything they learned and observed during the initial contact with a sexual assault victim, including everything they said and did themselves. This documentation will play an important role in the law enforcement investigation and potential prosecution.

### **Provide Contact Information**

After responding officers have gathered all the evidence and information they can during the initial contact, victims and caregivers should be advised that they will likely remember additional information at some point in the future. This is normal, and they should be encouraged to contact law enforcement when it happens.



Victims and their support people should also be left with contact information for law enforcement, whether it is the responding officer who will continue the investigation or an investigative unit (e.g., Detective Division) that will be conducting a follow-up investigation. They should be cautioned, however, that individual officers or investigators will not be available 24 hours a day, 7 days a week. Let them know they should call 911 immediately if they experience an emergency situation.

### Explain What Happens Next

Responding officers should then conclude the initial response by explaining to victims and support people what will happen next. For example, will the investigator call them or return to ask more questions? Will they be asked to schedule an appointment? Both victims and support people should then be asked if they have any questions. Family members and other support people are critical for protecting the victim's emotional well-being and helping victims to participate in the criminal justice process, so it is important they have their questions addressed as well as the victim's. Only then can they adequately support the victim throughout the investigation and serve as an ally during the process.

#### **SARRT Tip:**

Create informational material for crime victims with disabilities. For an excellent example, see the brochure developed by the [Office of the District Attorney for Essex County, Massachusetts.](#)

### Provide Resources and Referrals

It is the responsibility of responding officers to ensure that victims and their support people have received – and are able to access and understand – written information and referrals for community resources. This includes organizations providing sexual assault advocacy as well as other support services for people with disabilities. Written information may have already been provided by an advocate or health care provider, if a medical forensic examination was conducted. However, officers share responsibility with these other professionals to ensure that all victims and their support people walk away with material they can consult later. This is critical, because it is often very difficult for them to process and retain information during a crisis.

#### **SARRT Tip:**

Develop a protocol for taking victims into protective custody or providing alternative housing on a temporary basis, while a thorough law enforcement investigation is being conducted, when this is needed to ensure their safety.

In fact, every effort should be taken to ensure victims have the support they need to participate in the process of a law enforcement investigation and possible prosecution.

### Ensure the Victim's Safety

Once the initial response is complete, officers will again need to evaluate whether they are leaving the victim in a safe environment. If there is reason to suspect that a victim is at risk of further



victimization in the home or residential facility where they live, officers may need to initiate procedures to take the victim into protective custody. Alternatively, the victim may need alternative housing, pending the results of a thorough investigation. Law enforcement agencies should work with other criminal justice and social service agencies to develop policies and multidisciplinary protocols to follow in such a situation.

### **Decide Whether to Make an Immediate Arrest**

One of the most critical determinations made during the initial response is whether to make an immediate arrest of the suspect. This decision will be based on a number of factors, including whether there is evidence to support probable cause and whether an immediate arrest is necessary to protect the victim and the community from further threat. This complex issue is beyond the scope of this module; however, it is addressed in other OLTJ modules and technical assistance materials available on the EVAWI website.

#### **Resource: Investigating Sexual Assault**

For more information on the law enforcement investigation of sexual assault, including decisions about when to make an immediate arrest of the suspect, see the following OLTJ modules: (1) [Preliminary Investigation: Guidelines for First Responders](#), (2) [Law and Investigative Strategy: What Kind of Sexual Assault is This](#), and (3) [Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault](#).

Also helpful are materials developed by the International Association of Chiefs of Police (IACP), as part of the [Police Response to Violence Against Women Project](#).

### **Do Not Ask Victims if They Want to “Press Charges”**

It is not appropriate, however, to ask victims whether they want to “press charges.” This question is inappropriate as well as unhelpful, because it places an unfair burden on victims and can frighten as well as discourage them. While victims do make decisions about whether and how to participate in the criminal justice process, any determinations about the case outcome and potential prosecution will be made by investigators and prosecutors. Moreover, such decisions should only be made after a thorough law enforcement investigation has been completed. The victim’s wishes should certainly be taken into account during this process, but case decisions are ultimately made by criminal justice professionals.

### **Document the Initial Response**

For responding officers, the goal during this initial response is to document whatever information is available, not necessarily to conclusively establish whether or not a crime occurred. For this reason, it is best to err on the side of caution, documenting what you saw and did regardless of what you were able to conclude. As in the case of suspected



child abuse, law enforcement should complete a report, even if it is an informational report, when there is uncertainty whether or not a criminal offense has been committed. The standard should be reasonable suspicion, rather than probable cause, because more information will most likely become available during the follow-up investigation.

Documentation should also include information gathered on the victim's disability, including any specific communication patterns, transportation needs, required medications, and other any accommodation needs (Office for Victims of Crime, 2008). This information will be needed by the person conducting the follow-up investigation.

## **Prepare for the Detailed, Follow-Up Interview with the Victim**

One of the most important components of a sexual assault investigation is the detailed, follow-up interview conducted with the victim. In general, we recommend that this interview be scheduled for a day or two after the assault was committed (or initially reported), to allow time for the victim's acute trauma levels to subside. However, when the victim has a disability it is often necessary to wait longer, so the investigator can conduct background research, prepare for the interview, and access any community resources available. The interview can also be scheduled to accommodate the convenience of the victim. It is important to avoid creating unnecessary hassle for the victim or fueling concerns about losing a job, child care, or other critical arrangements.

Once these objectives are met, the interview should be scheduled for as soon as practically possible. This is done to prevent memory loss on the part of the victim, but also to defend against any claim that someone unduly influenced the victim's statement (e.g., family members, caregivers, or other professionals involved in the case).

## **Conduct Background Research**

To begin preparing for the interview, start by conducting background research on the victim. Depending on the type and severity of the disability, this might include talking with family members, caregivers, social service professionals, and other people who know the victim, to find out about the victim's living situation and work environment, as well as their abilities, habits, likes, dislikes, etc. In other words, you need to evaluate whether the victim's disability impacts her/his ability to understand and communicate. This will provide critical information regarding any accommodations that might be needed, including communication aids and services.

It is also important to get a sense for how victims typically function, as well as how this might change when they are under stress. You will also want to ask care providers about any medications the victim may be taking. This information may determine when the interview should be scheduled. Other steps can also be taken to increase the victim's ability to participate successfully in the interview. For example:



*Many individuals with disabilities need to follow a strict schedule for taking their medication, and for resting, exercising, and eating. It is important to accommodate this regimen as you make plans for the interview. Some individuals with disabilities adhere to a strict time schedule and become upset or distressed when changes in their routine occur.*

*Therefore, it is best to know if these factors exist and to schedule the interview for a day or time when the victim will not be distressed or distracted. Those who know the victim best can provide information about the victim's schedule and can offer your insight about the level of flexibility you will need to exercise to complete the interview (Office for Victims of Crime, 2011, p. 15).*

In general, the goal is to discover whatever information is available that will help you and the victim during the interview – and to avoid anything that might be harmful. You can use the tips offered throughout this module for each specific type of disability, as well as the sample tools for gathering information provided in Appendix D.

### **Write Key Interview Questions in Advance**

If the victim has a disability affecting cognition or communication, the next step is to write key interview questions in advance. If the interview questions are not written ahead of time, investigators have to formulate them “on the spot,” as ideas occur to them. As a result, they will likely revert to their standard patterns of communication, which are not likely to be effective for victims with cognitive or linguistic challenges.

If the victim has a difficult time understanding the questions and/or providing accurate responses, this reduces the chance that a thorough investigation will be conducted. This in turn makes it difficult to corroborate the victim's statement, which lessens the odds of successful prosecution. Regardless of whether misunderstandings are on the interviewer's part or the victim's, they are likely to be seen as inconsistencies and used by the defense as a basis to challenge the victim's credibility.

Follow-up questions will still need to be asked spontaneously during the interview, based on information provided by the victim, because investigators cannot anticipate the exact course any interview will take. However, if questions are written in advance, they can be evaluated in light of the specific recommendations offered in this module and other resources. They can also be reviewed by someone who knows the victim personally or has professional expertise in the victim's specific type of disability. Based on this review, the questions may need to be revised, to increase the likelihood that the victim will be able to understand the questions and provide a clear response. This process of review and revision has the potential to significantly improve the victim's ability to participate effectively in the interview and provide accurate information.



## Evaluate the Need for Accommodations

For a sexual assault victim with a disability, an appropriate accommodation might mean the difference between being able to participate in a successful investigation and prosecution – versus one that ultimately fails to provide the victim equal access to the criminal justice system. A number of factors are therefore worth considering. One is whether a specialist is needed to assist with communications, particularly if the victim's disability is severe. If the victim uses some kind of assistive communication aid or device, it will be necessary to identify what it is and learn how it works before using it in the interview. If a sign language interpreter or other service is needed, a qualified person will need to be located as soon as possible to perform the task.

Sometimes an accommodation that would help a particular victim is well-known to that person and their caregivers. In this case, it may be quickly identified and mobilized. In other situations, however, family members and caregivers may have adapted their mode of communication with the victim for so long they are not even aware of what they are doing anymore. By observing victims when they communicate with family members or caregivers, it is often possible to gather a great deal of information about how to best communicate with them.

For more information on accommodations a victim might need and guidance on how to access and utilize them, please see later sections addressing specific disability types.

## Consider Using a Forensic Interviewing Specialist

Another consideration is whether a forensic interviewing specialist should be used to conduct the detailed, follow-up interview. These specialists will most often be used to interview victims who have a severe disability affecting cognition or communication.

Forensic interviewing specialists are typically social workers or other child abuse professionals who are trained to use the skills and techniques for interviewing young children. For example, they will ask questions in a way that can be understood by a person with limited cognitive abilities and experience, by using concrete language and avoiding leading questions. They will also typically be trained to use tools such as drawings and anatomically correct dolls if this will help the victim communicate more effectively.

Because of their training and specialized background, forensic interviewing specialists may be able to more easily access and use communication devices. They may also be better able than the

### **SARRT Tip:**

Protocols for sexual assault investigation should identify which types of cases with an adolescent or adult victim with a disability are appropriate for the services of a forensic interviewing specialist. MOUs can then be established between the relevant agencies. SARRTs can also work with forensic interviewers to ensure that interview rooms generally used for children are also appropriate for use with adolescent and adult victims.



investigator to dedicate the amount of time needed to conduct the most effective interview with a person who has a cognitive or communication disability.

When a forensic interviewing specialist conducts an interview, it can be monitored by the investigator and prosecutor, as well as any representatives from Child or Adult Protective Services or other social service agencies. These professionals can typically observe the interview through a one-way mirror or live video feed, so they can pass along questions to the interviewer using written notes, text messages, or a listening device in the interviewer's ear. At an appropriate point, the interviewer can then take a break and ask observers whether they have any additional questions or issues that need clarification.

There is currently some debate regarding which types of cases should involve the services of a forensic interviewing specialist. In most jurisdictions, they are used only for forensic interviews with children. However, given their unique skills and expertise, it is reasonable to suggest that forensic interviewing specialists should also be used with adolescent and adult victims who have cognitive or communication disabilities that are severe or profound. They may even be used with victims who have mild to moderate impairments, but this requires weighing the potential advantages and disadvantages.

- On the plus side, forensic interviewing specialists will undoubtedly bring their unique knowledge, skills, and abilities to the task. This can potentially increase the effectiveness of interviews conducted with victims who have varying levels of impairment in their cognition or communication.
- On the other hand, many communities do not have the resources to use forensic interviewing specialists in such cases, considering the costs, personnel, and specialized facilities required. If it would cause a significant delay or burden on the victim to have the interview conducted by a specialist (e.g., travelling to a distant city), this disadvantage may offset any potential benefits.



More important, there is a significant benefit to having the law enforcement investigator assigned to the case conduct this interview, because this helps to establish rapport and build a trusting relationship with the victim. This relationship is often critical to the success of a law enforcement investigation and potential prosecution, because it provides victims with a personal link and emotional connection within the criminal justice process.<sup>30</sup>

### **Select the Appropriate Setting and Prepare to Record the Interview**

The site for the detailed, follow-up interview should be selected with care. It should be safe and comfortable for the victim, as well as private, quiet, and free from distractions. It must also meet law enforcement requirements for officer safety and confidentiality. Other concerns include space considerations for wheelchairs and/or interpreters, as well as advocates or other support people who will be present (Office for Victims of Crime, 2011). However, the decision regarding where to conduct the interview will also be related to the question of whether it will be audiotaped or videotaped.

For most victims, the primary concern when selecting a location for the interview should be their comfort level. Victims will typically feel most comfortable in a setting that is safe and familiar, such as their own home. This is therefore the type of location where they will be able to participate most effectively during the detailed, follow-up interview. If home is the site of their abuse, however, a better choice might be the home of another family member or loved one. Another option is an agency or facility that has a room where victims will feel comfortable and secure.

When the interview is conducted in such a setting, it should be audiotaped to preserve the best record. As the victim and investigator are getting to know each other and settling into the interview, the investigator can let the victim know this is happening and explain why. For example, the investigator could say something like:

“I am going to tape our conversation today, so I can give you my full attention and not worry about writing down everything you say. I want to be able to listen to you carefully and know the information you provide will be accurately recorded. Okay? Great. I’m going to start the tape now.”

When victims have a severe cognitive or communication disability, however, the entire scenario is quite different. In these cases, a forensic interviewing specialist will typically be needed, and the interview will be conducted in a facility specifically designed for this

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<sup>30</sup> In fact, this is an argument against the controversial notion that forensic interviewing specialists should be used for *all* interviews with sexual assault victims, including adolescents and adults without disabilities. This is not possible in most cases, because responding officers make a number of critical determinations during their initial response, and these determinations guide what happens next in the process. For example, the responding officer must determine what, if any, crimes are being reported or suspected as soon as possible. Urgent needs will also be addressed, including emergency medical care, protective custody for the victim, or warrants issued for the suspect’s arrest or a search for evidence. Perhaps most important, it often isn’t until responding officers begin to interview the victim that they have a sense of how severe the victim’s disability is. There is often no way to know whether a forensic interviewing specialist might be needed until after the preliminary interview has already been conducted.



purpose. This type of facility will be designed to be accessible for people with a variety of physical disabilities and be equipped for one-way observation and videotaping of the interview.<sup>31</sup> In fact, observation and videotaping will likely be part of the standard operating procedure for conducting such an interview:

*It provides documentation of the victim's responses, demeanor, characteristics, and other important data on the date of the interview. The trial may come many months or even years later, so the video captures the victim's statement and ability to participate in the interview (Office for Victims of Crime, 2011, p. 14).*

The recording will also document the fact that leading questions were not asked, so it can protect against any later claim that the victim was unduly influenced at the time.<sup>32</sup> Victims may or may not be able to provide consent for videotaping, depending on the level of their cognitive impairment. Remember that the reason this type of interview protocol is being followed is typically because the victim has a severe or profound cognitive disability. However, every effort should be made to advise victims of this fact and explain it using the same general strategy outlined above. The language will likely be different, but the goal is the same – to help victims understand what is happening and why, and to allow them the opportunity to provide consent to the extent possible.

## Conducting the Detailed Victim Interview

After conducting your background research and evaluating the need for possible accommodations, it is time to meet with the victim to establish rapport, observe communication patterns, practice using any communication aids, and gain comfort in the situation. Investigators should begin by recognizing that more time may be needed to interview a person with a disability than might be needed for other victims. However, with sufficient patience, time and investigative skill, victims with a disability can have equal access to the criminal justice system when they are victims of crime.

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<sup>31</sup> As described by the Office for Victims of Crime (2011), this type of facility will likely be accessible for people in wheelchairs, including “a table with enough height that the arms of the wheelchair can fit under the top, so the individual can use the table for writing or drawing” (p. 14). There is also likely to be ample room for all of the people who will be present during the interview. Of course, the people in the room must know how to be “positioned appropriately for the cameras and individuals who will be observing the interview through the one-way mirror” (Office for Victims of Crime, 2011, p. 14).

<sup>32</sup> The videotape of a victim's interview may become crucial if the victim is no longer able to testify at the time of trial, due to changes in the disability or other factors (Office for Victims of Crime, 2007). If a videotaped interview is going to be used instead of in court testimony by the victim, this raises a host of issues stemming from *Crawford v. Washington* and related cases. For more information on this complex topic, please see [Williams v. Illinois and Forensic Evidence: The Bleeding Edge of Crawford](#), published by [AEquitas: The Prosecutors' Resource on Violence Against Women](#).





## **Introduce Yourself and Address Concerns**

When you begin talking with a victim who has a disability, start by introducing yourself, explaining who you are, and emphasizing that you are there to help. If the initial report was made by a third party, the next step will be to find out whether the victim actually wants to talk to you. This can help to establish rapport, because it demonstrates that you are treating the victim with respect and not assuming that the third party speaks on his or her behalf. When victims do not want to talk with the investigator, they can be asked why. The resulting discussion may reveal some misunderstanding that can be clarified or other concerns that can be addressed. If their fears can be alleviated with respect and compassion, victims may decide they are willing to talk with you. However, victims should never be forced to talk with you if they do not want to.

## **Acknowledge the Victim's Ordeal**

Acknowledge the ordeal that the victim has endured, with statements like: "I'm sorry that this happened to you." This helps establish empathy and creates an open and nonjudgmental demeanor. This is also an appropriate time to address any fears or self-blame expressed by the victim. For victims who appear to blame themselves for the assault, you can stress the seriousness of the incident and emphasize that it is not their fault:

"Sexual assault is never the victim's fault. We take these issues very seriously, and I will do everything I can to get you the help you need."

## **Determine Who Will be Present**

For victims who have a disability, it is important that they are allowed to decide whether they want a support person with them during the interview, to provide support and encouragement. In fact, this is recommended for any victim of sexual assault, not just those with disabilities; they should be offered the option of having a victim advocate or other support person present during the law enforcement interview. Sometimes having a support person can help a victim provide better information. For victims with a disability, however, this may be a necessity. A family member, caregiver, or other staff person may be needed to assist with communication and generally facilitate the victim's cooperation. As long as the victim expresses a wish to have the person present, and the person is not disruptive, the benefit of having them included is usually well worth the presence of an additional person in the room.

On the other hand, there will be situations where sexual assault victims do not want a particular person present, but they do not feel comfortable saying so in front of that person. This can be especially challenging when the victim has a disability, because family members and caregivers will often expect to be in the room with them. They may even be accustomed to "speaking for" the victim. Therefore, investigators must be very careful to avoid asking the victim whether or not to include a support person while that





person is present. You will need to find a way to ask victims privately whether or not they want a particular person present in the room with them during the interview.

Of course, support people should not be included in the interview if there is reason to believe they might be a suspect in the case or otherwise motivated to cover up for the suspect or the organization where the assault was committed. Unfortunately, this is easier said than done because it is not always clear during the early stages of an investigation. However, it should be one of the highest priorities to try and make this determination.

In other words, there are no absolutes for who should or should not be present as a support person for the victim during law enforcement interviews. A family member, caregiver, or disability organization staff person might be the very best person to include, in order to increase the victim's comfort level and improve communication – or they could be the very worst person, if they have a conflict or motivation to interfere. Investigators must simply do their best to make a decision based on the information available, with the utmost consideration given to the wishes expressed by the victim.

### **Explain the Role of Support People**

Whoever is going to be in the room as a support person, it is critical that their role is clearly explained – both to the support person as well as the victim. For example, it must be clear that they are there to provide emotional support to the victim and to facilitate the victim's communication and cooperation, but not to provide responses to questions that are directed toward the victim. They should also be advised not to take notes or write reports to document any part of the interview.

Family members and other support people will usually want to know what happens during the interview process and how long it will take (Office for Victims of Crime, 2011). After explaining these issues, investigators should ask whether they have any questions. As previously noted, these support people are critical for the victim's well-being and their ability to continue participating in the criminal justice process. Their questions and concerns can therefore be as important to address as those of the victim.

### **Help the Victim Feel Comfortable**

Beyond determining who will be present, other steps can be taken to ensure that the victim is comfortable during the detailed, follow-up interview. For example, you can offer victims water or another beverage, indicate where the restroom is, and ask for their consent to conduct the interview. Let victims know you will be taking breaks from time to time and explain that they can ask for a break whenever they want one.



Another thing you can do to help victims feel comfortable is to increase your own comfort level:

*If you have had little interaction with individuals with disabilities, the person's physical appearance may initially cause you some difficulty or discomfort. This is normal and only requires for you to adjust. Soon, you will find that after greater exposure to people with differences these feelings will subside and disappear (Office for Victims of Crime, 2011, pp. 9-10).*

Some have even recommended that you can increase the victim's comfort level by having materials available in the interview room they can handle and touch, "such as drawing paper, pencils, and stress balls" (Office for Victims of Crime, 2011, p. 18).

### **Ask Victims What They Want and Need**

Another basic strategy is to ask victims what they want and need in a particular situation. This includes how the person would like you to refer to their disability, what assistance they need, and how you can most effectively communicate with each other:

*Most victims would prefer to answer these few questions upfront rather than endure your uneasiness or be uncomfortable themselves throughout an entire interview. Your respectful and sensitive questions will ensure that the language you use and the accommodations you make are appropriate, not detrimental (Office for Victims of Crime, 2008, p. 15).*

However, do not ask questions merely to satisfy your own curiosity. For example, if a crime victim was blinded in an accident as a child, it would not be necessary or appropriate to ask detailed questions about the event or its impact on the person's life – unless it was relevant to the assault. Your questions should focus on the victim's needs and specific accommodations needed to address the issues at hand.

### **Evaluate the Victim's Ability to Participate**

While observing the victim's communication patterns, keep in mind that any medications they are taking may have side effects that could affect their ability to participate in the interview. This could include memory loss, decreased concentration and a loss in cognitive functioning. Sometimes they may resemble the effects of drug or alcohol use (e.g., staggering gait or slurred speech). While this might be misperceived as the result of drinking or drug use it may actually be the effect of a neurological disability, a mental or emotional disturbance, or hypoglycemia (US Department of Justice, 2006).

Other problems may also be observed in the victim's communication patterns. For example, the victim may have trouble following your conversation or producing coherent thoughts. Victims may also slur their words or even fall asleep during the interview. In this situation, it will be critical to determine whether the problem is the result of the



victim's disability or any medications they have been given. Check with the caregiver or treatment facility to find out what medications the victim was given and what time they were administered.

If the problem is the result of medications, there may be another day or time that would be better for the interview. Investigators should be flexible about scheduling, so victims can provide the most accurate and reliable information possible.

However, it is also possible that medications were deliberately administered with the goal of inhibiting the victim's ability to participate in the interview. In fact, this may be the same medication that was given to the victim to facilitate the assault or impair the victim's memory. If there is reason to suspect that the victim is being deliberately medicated to impede the investigation, law enforcement may need to take a number of measures: taking the victim into protective custody, obtaining a blood sample for toxicological analysis, and expanding the investigation to look into this question as well as other forms of possible abuse.

### **Assess for Abuse or Coercion**

You should also be looking for signs to indicate whether the victim is able to communicate openly. As in cases involving domestic violence, elder abuse, and child abuse, investigators must carefully consider whether the victim can provide information without pressure, coercion, or undue influence by caregivers or others. This requires watching for signs that the victim is being abused or coerced into not disclosing information to authorities.

These signs could include the caregiver:

- Isolating the victim from the outside world, family or friends.
- Speaking for the victim.
- Ignoring or not speaking to the victim, or emotionally isolating the victim.
- Not touching or comforting the victim.
- Threatening or intimidating the victim.
- Acting defensively.
- Behaving intrusively, or not allowing the victim to have any privacy.
- Displaying a negative attitude toward people with disabilities.
- Handling the victim roughly.
- Showing hostility, agitation, and/or volatility.
- Cursing, screaming, insulting and/or calling the victim names.



- Resisting outside help, refusing to apply for aid or services (adapted from the New Mexico Coalition, n.d.).

When such behaviors are observed, law enforcement will need to expand the investigation to determine whether the victim is in fact being abused or coerced.

### **Allow Additional Time When Needed**

Especially for victims who have disabilities affecting cognition and/or communication, it will be important to allow plenty of time for the detailed, follow-up interview.

*In most cases, you will be able to complete the interview in one sitting. However, due to either cognitive or communication disabilities, there may not be enough time in one interview to gather all the information you need. Be prepared to schedule several shorter interviews to accommodate the needs of victims who have disabilities. They may tire, become too upset, or for other reasons be unable to answer all of your questions in one session (Office for Victims of Crime, 2011, p. 15).*

Keep these factors in mind as you schedule and plan to interview the victim.

#### **Resource: Victim Interviewing**

For detailed information on how to conduct a successful interview with a sexual assault victim, see the OLT module entitled, [Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault](#). The information presented in this module is designed to supplement the more general strategies described in that module.

For guidance specifically focused on interviews conducted by forensic interviewing specialists with sexual assault victims who have a disability, there is a DVD and guidebook published by the [Office for Victims of Crime](#) (2011).

### **Techniques for Effective Communication**

In the previous section, we offered general guidance for conducting the detailed, follow-up interview with a victim of sexual assault who has a disability. In this section, we provide more specific techniques for effective communication. However, we want to begin this discussion with an illustration of what can be at stake if we fail.

### Resource: Expert Interview

In this [video interview](#), Shirley Paceley offers tips for effectively communicating with sexual assault survivors with disabilities.

### What's at Stake: The Cost of Failure

In 1997, there was a high profile case in a Midwestern community involving a home invasion and sexual assault of a woman determined to be legally blind because of [macular degeneration](#). With this particular condition, it can be difficult if not impossible to read or recognize faces. However, even with this condition, the person may have enough peripheral vision to successfully perform other activities of daily life.<sup>33</sup> This was true for the victim in this particular case.

From the outset, the detective assigned to the case was skeptical of the report and he eventually offered 41 reasons why he felt the victim had filed a false report.<sup>34</sup> Although there are critical concerns regarding all 41 of the detective's conclusions, the one listed 38<sup>th</sup> is especially disturbing and relevant to this module, because it questions whether the woman had a visual impairment at all. A section of this argument is excerpted here:

*Vision: I did not observe impairment. I witnessed her to pick up a grill in the virtually pitch dark that her boyfriend's dog knocked over. I had difficulty in seeing the grill but [the victim] appeared not to. Daughter and Boyfriend say she can see, and her vision is not that bad except for small print when reading. Nurse told me she did not notice [the victim] to be impaired until signing paper work.*

*She said it was dark but described the suspect as "light skinned" or "Mexican looking" HOW? If it is too dark for her to see and describe a face at all than how can she see skin tint or color?*

*She described the color of the suspect's head hair and pubic hair.*

The detective goes on in a similar vein, but this is sufficient to illustrate his point.

The victim in this tragic case was ultimately arrested and charged with obstruction of justice. Yet her defense attorney had the victim's bedding tested for DNA at the state crime laboratory and a foreign profile was obtained. As a result, the charges against her

<sup>33</sup> For more information, please see the website for the [National Eye Institute](#). Also helpful is the information provided by the [Macular Degeneration Foundation](#).

<sup>34</sup> To obtain the entire report, see the website for [Cry Rape](#), the book written by Bill Leuders detailing the history of this case. It is available from the University of Wisconsin press / Terrace Books. On the website, Leuders provides a copy of the [41 reasons](#) typewritten by the detective that led him "to believe that the victim was making a false allegation prior to her confession."



were dropped, but she had to wait five years for a CODIS hit in 2001 that revealed the identity of her assailant. This man matched the victim's description and was serving an 18-year sentence for robbery at the time he was identified.

In 2004, the perpetrator was finally convicted of the sexual assault and home invasion, but it was not until 2006 that the City Council finally offered the victim an apology following years of years of doubt, blame, harassment, and financial ruin.

### **Resource: Gender Bias**

EVAWI also offers a resource that addresses how gender bias (both explicit and implicit) can affect responses that profoundly influence how survivors cope with the impact of sexual assault victimization. The [Gender Bias in Sexual Assault Response and Investigation Training Bulletin](#) series is designed to explore the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and the resulting stereotypes and attitudes that can influence the professional response to, and investigation of, sexual assault. In this series, we begin by introducing the concept of implicit bias and briefly review the decades of neurobiological and social scientific research that document its existence and impact. Then, we review the concept of gender, and define gender bias, both implicit and explicit. We will also explore strategies that can be used to identify the presence of implicit gender bias and mitigate its influence. Finally, we address key questions about how implicit gender bias can disadvantage (or advantage) either the victim and/or suspect.

While this case may offer an extreme example of particularly egregious failure – on multiple levels – it is important to keep in mind because the same issues can arise in smaller, more insidious ways during the investigation of any crime against a person with a disability. All too often, the indicators and effects of a person's disability are misidentified, misunderstood, and misinterpreted – and when this is combined with the shroud of skepticism that already surrounds the topic of sexual assault, it can mean that victims' disclosures are not believed, and their statements are not treated with the seriousness they deserve. If we allow such factors to get in the way of successfully investigating and prosecuting sexual assault, we will give perpetrators a "free pass" to continue committing their crimes with impunity, often against some of the most vulnerable members of our community.

In this section of the module, we provide more specific recommendations for communicating effectively with people, regardless of any disability they may have. In a later section, we offer more detailed information about a number of specific disabilities, with a particular focus on intellectual disabilities. Our goal is to better prepare criminal justice and community professionals to avoid devastating consequences as those seen in this particular case.



## Establish an Appropriate Tone

For example, some recommendations pertain to the general tone of the interview. These are adapted from Baladerian (1998a) and the Office for Victims of Crime (2008):

- Show the same respect that you would show to other victims of sexual assault.
- Create a safe atmosphere, limit distractions and establish a trusting rapport.
- Relax, and do not be embarrassed when you use common expressions that seem related to a victim's disability, such as saying "Do you see my point?" to a person with a vision impairment; "I'm waiting to hear back from her," to a person with a hearing loss; or "I need to run over there," to someone who uses a wheelchair. Victims know what you mean and will not typically take offense.
- Do not express admiration for the abilities or accomplishments of victims in light of their disability.
- On the other hand, do not express more anger, frustration, or outrage than you normally would, simply because the victim is a person with a disability. For example, avoid comments such as: "I can't believe they did this to someone like you;" "She's disabled, and he raped her anyway;" or "To steal from a blind man, that's got to be the lowest." Such phrases can send the wrong message – that you consider people who have disabilities as "less than" complete human beings.
- Never assume that people with disabilities suffer less emotional trauma and psychological injury than any other crime victim.

In general, interviewers should view the victim as an individual first and establish rapport just as you would with any other crime victim. In other words, start from the assumption that the victim is competent and capable and proceed from that assumption.

## Start from the Assumption That You Can Communicate Effectively

Similarly, you should start from the assumption that you can have a normal conversation with the victim. Unless the victim has a severe cognitive or communication disability, you should be able to communicate effectively, even if it takes a while to become accustomed to the victim's "speech patterns, inflections, and accent" (Office for Victims of Crime, 2011, p. 21).

Allow sufficient time for this natural process, but monitor the length of the interview, because this can become burdensome for victims (Office for Victims of Crime, 2011). Also try to "focus on what the person is saying, rather than how she/he is saying it" and "do not try to finish the individual's sentences or thoughts (SafePlace, 2007).



## If You Cannot Understand the Victim

If you find that you cannot understand the victim, no matter how hard you try, do not pretend that you do. Seek clarification using the strategies offered by SafePlace (2007):

**Wait:** Listen to the whole sentence or phrase. Wait for a second and try to relax. Let the conversational context help you.

**Repeat:** Simply repeating the sentence or thought may be enough. There are times, though, when repeating will not help because the speaker is not going to be able to change the way a specific word is pronounced. If repeating does not work, move on to another strategy.

**Rephrase:** Ask the individual to try and express the same thought using various words. Often, the misunderstanding hinges on one or two words in a sentence.

**Identify** which part of the sentence or thought was misunderstood. If you know most of the phrase and can identify which part(s) are unclear, you might try repeating what you know, and ask him/her to focus on finding a way to communicate just the part you did not get.

**Spelling:** Once you have located the word you do not understand, ask the individual to spell for you. It usually just takes the first few letters of the word to clear up the confusion.

**Writing:** You can ask the person to write it down, or you can write down what you heard.

**Getting help:** if nothing else is working, you may want to ask the person if there is someone who might assist in communications (SafePlace, 2007, pp. 63-64).

If you do have someone assist with communications, however:

*Carefully consider whether this other party is safe or will have opinions that influence her/his interpretations. Do not allow this person to add to or critique the crime victim's comments, or comment about the crime itself. The crime victim must know that you believe her/his own statements (SafePlace, 2007, p. 64).*

When none of these strategies work, then it may be time to switch interviewers. Guidance for this difficult situation is offered by the Office for Victims of Crime (2008):



*You may need to call in someone as an interpreter who knows the individual and is not invested in any way in the outcome of the interview, such as a teacher or speech therapist. If this is necessary, the interpreter must be briefed on what is expected of him or her during and after the interview. The interpreter may require debriefing following the interview, both for the person's psychological well-being and for issues of confidentiality that may concern the victim. In the best circumstances, the new interviewer would have been observing the interview (Office for Victims of Crime, 2011, pp. 21-22).*

More detailed information on interpreters will be provided later in the module.

### **Specific Techniques for the Interview**

Assuming the interview will continue, some additional recommendations are adapted from Dr. Nora Baladerian's (1998a) work and the Office for Victims of Crime (2008):

- Except for very brief interactions, try to position yourself at eye level with the person you are talking with. You may need to squat or sit down to communicate with someone who is sitting.
- Begin the conversation with general information to establish rapport and observe communication patterns. Keep in mind that all human beings are more difficult to understand when they are distressed. By starting an interview with topics that are general or not directly related to the sexual assault, this can allow time for both parties to feel more comfortable.
- However, discussion relating to general information or shared interests should be kept relatively limited, so it does not seem like you are focusing on trivial matters at such a traumatic moment in their lives.
- Make regular eye contact with – and speak directly to – the person from whom you are obtaining the information, not the support person or interpreter. This can be hard to do, because we are accustomed to making eye contact with the person we are actually speaking to. However, it is important to remember that the interpreter or support person is not the person you are actually speaking to.
- Proceed with rapport building. Ask general questions, use active listening, and get to know the person as an individual. Active listening requires the listener to pay attention to not only what is said, but how it is said. Reflecting back to the victim what you think is being said – and finding out how the person feels – can be helpful for understanding the communication and establishing rapport.



- If the person is an adult, communicate with the person like an adult and use a normal tone of voice. Do not speak like you might to a child, using a condescending tone or terms of endearment.
- Do not touch the victim or exhibit affectionate behaviors normally reserved for friends and family such as hugging, hand holding, or patting.
- Make sure to allow sufficient time for the person to respond to you, both for questions and other prompts. For example, if you extend your hand for a handshake, give the person time to respond by extending her or his hand in return. If you ask a question, allow ample time for the person to respond before speaking again.
- Explain that most sexual assault victims do not report to police or participate in a criminal prosecution, so you realize it took courage for them to do so. Let victims know you are honored that they trusted you enough to talk to you.
- Before terminating an interview, thank the victim for the information and assistance that she/he provided, and let the victim know what will happen next. This sets the tone for future interactions.
- Give the victim the case/incident number and your own contact information or the contact information for the investigative unit so he or she can follow-up if needed.
- Make sure victims and support people have received written information on resources and referrals for community agencies.

Many of these same steps were also described in the conclusion of the initial response earlier. Other final steps should also be repeated, such as advising victims that they may very well remember additional details at some point in the future. Let them know they should contact you if this happens, even if the information seems unimportant.

### **Ensure the Victim's Safety**

Investigators will also need to return to the question of whether the victim is safe in their current living situation, if new information is obtained during the follow-up interview. If the suspect is a family member, caregiver, or even friend of the victim, investigators will need to determine what this means for the victim's ongoing safety and support.

If the situation is critical, the victim may need to be taken into protective custody or placed in alternative housing pending the results of a thorough investigation. However, the victim may have concerns that do not rise to the level of an emergency that can still be addressed by talking them through with the investigator. In other words, find out what concerns the victim has, and do what you can to help address them. There may be community resources that can also be called upon to assist, such as the Center for



Independent Living, disability service agency, sexual assault advocacy organization, or mental health center.

### Keep Victims and Caregivers Updated

After the interview is conducted, it is essential that investigators stay in touch with victims and their caregivers throughout the course of the investigation, to keep them apprised of the status of their case. Even though investigators often withhold information to protect a victim from unpleasant news, victims and their loved ones typically want to be kept informed of what, if anything, is happening with their case. Even if nothing is happening, or the case is being closed, they need to be advised of this, to help achieve some closure in their own lives.

One of the most frustrating dynamics that victims and their loved ones describe is a lack of contact from the law enforcement investigator and lack of response to their requests for information and updates on the status of their case. Therefore, one of the best ways to develop rapport and trust with victims is to keep them apprised of what is happening. This is good not only for their emotional recovery, but also facilitates their active participation in the investigative process. Research documents that victims who are provided with more information are more likely to participate in the criminal justice process and to be satisfied with both the outcomes of their case and the professionals who assisted them (Kilpatrick, Beatty, & Smith Howley, 1998).

Because it can be difficult for law enforcement to keep in contact with victims as often as they would like, advocates can play an important role in the process. However, this will require having a release waiver signed by victims or their representatives, indicating that the advocate can contact law enforcement to discuss the status of the case.

#### Resource: Victim Statements

A final step in the process is to carefully document the victim's statement. This is a complex task that is beyond the scope of this training module to address. Fortunately, the OLT module [Effective Report Writing: Using the Language of Non-Consensual Sex](#) provides detailed guidance on how to document the findings of a sexual assault investigation and write the report.

Suggestions are also provided in tools developed by the [Police Response to Violence Against Women Project](#) at the International Association of Chiefs of Police (IACP).

### Identify Additional Evidence and Witnesses

For some victims with disabilities, especially those affecting cognition or communication, trial testimony may be difficult if not impossible. It is therefore essential that investigators look for other types of evidence to corroborate the victim's account.



Corroboration could be found in the evidence collected and documented during the victim's medical forensic examination, if one was conducted; this could include biological evidence as well as the documented history, and photographs of genital or non-genital injury. Corroboration could also come from physical evidence such as clothing, bedding, and condoms, as well as medical records from a time period prior to the suspected assault. In addition, corroborative information can be gathered from interviews with people who are familiar with the victim's history, experiences, and behaviors before and after the assault. To illustrate:

*[A] special education teacher can provide information about the level of the victim's sex education. If the issue in the case is whether or not the victim fabricated assault charges, then the teacher can testify that the victim has not progressed in sex education class beyond basic hygiene (how and when to wash yourself) and has never received any training about sexual intercourse, pregnancy, or birth control. If the victim is in a residential facility, care providers can testify about the victim's changed attitudes and behavior near the time of the assault, or her sudden fear of, and reluctance to be alone with a previously favorite employee (Aguilar, n.d., p. 13).*

Many cases involving people with disabilities (especially severe cognitive disabilities) will come to the attention of law enforcement through mandated reporters such as state licensing investigators, social workers, and counselors. Investigators will need to interview these witnesses because they can often provide the type of corroboration that is necessary to support a successful investigation and prosecution. State licensing investigators or social workers can also testify regarding any prior complaints involving the suspect and/or the victim, as well as the condition of the home or care facility where the victim lives.

Do not overlook other types of witnesses, however. For example, neighbors can be interviewed to find out whether victims are ever allowed outside on their own, if they are dressed appropriately for the weather, and whether supervision was required for such an outing. All of these factors may be relevant to the question of determining what the victim's general capabilities are, and thus, their capacity to consent to sexual activity.

## Anticipate a Defense Strategy

As with any other sexual assault, an investigation must be planned in anticipation of the most likely defense. In most sexual assault cases there are three primary defenses:

- **Denial** (the sexual act did not take place)
- **Misidentification** (the sexual act took place, but some person other than the suspect committed it)





- **Consent** (the sexual act took place, but the victim consented to it)

In sexual assault cases, the most common defense is consent, where the suspect acknowledges that the sexual activity took place but claims the victim agreed to it. Prosecutors overcome this defense at trial by presenting evidence and testimony, gathered during a thorough investigation, to establish that the victim did not consent.<sup>35</sup>

However, when the investigation establishes that the victim was incapable of consent due to a severe cognitive disability, the consent defense unfolds somewhat differently, because the suspect must be aware of the victim's disability in order to be held responsible. In other words, he must argue that he was *not aware of the victim's cognitive limitations* – and that the victim *seemed capable of consenting*. In this way, the defense strategy is similar to a drug- or alcohol-facilitated sexual assault case, where the suspect typically argues that the victim was sober enough to consent to sex.

There is one key difference, however. In a drug- or alcohol-facilitated sexual assault, the victim will later testify while sober and coherent, so the jury will not be able to see what the victim's mental capacity was at the time of the assault (unless there was a video recording made during the initial response and victim interview). In contrast, when the victim has a severe cognitive disability, the jury will have the opportunity to personally observe the cognitive abilities of the victim, and these abilities will be the same as what would have been observed by the suspect at the time of the assault.

What is important to document is what the suspect would have *had* to perceive during his interaction with the victim. Would the suspect have been aware of the victim's living situation, if the victim lives in a group home? How long had the suspect known the victim prior to the assault? Would the victim's limited cognitive ability have been obvious? Note that this is not unlike how an investigator would prove a suspect's knowledge of the age of the victim in a case of statutory rape or child molestation. For example, suspects will find it difficult to argue that they didn't know the victim's age if they picked up the victim from middle school. Similarly, suspects will have a challenge supporting any claim that they did not know the victim's level of impairment if they met the victim at a program specifically offered for people with severe cognitive disabilities.

During an interview with the suspect, investigators will also need to elicit specific details about the communication patterns and interactions between the suspect and victim, as well as the suspect's description of the victim's behavior. If the behavior described by the suspect is incongruent with the victim's presentation in court, or the testimony provided by the victim's family and caregivers, he will lose credibility when claiming that the victim seemed capable of consenting to sexual activity.

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<sup>35</sup> While we typically avoid gendered pronouns, the vast majority of sexual assault perpetrators are male, so the gendered pronoun "he" will be used on occasion to refer to the suspect/perpetrator of sexual assault. However, we will not use gendered pronouns to refer to victims, except to describe a victim in a sample illustration.



## Prepare for Courtroom Testimony

Increasingly, sexual assault victims with disabilities are speaking out in whatever ways they can, to have meaningful access to the criminal justice and community response systems. In many cases, it is an accommodation that makes that possible.

To illustrate, one victim in Massachusetts was able to testify at trial by answering "yes" and "no" questions and being given more time than usual to answer questions. In that case, a 62-year old woman with severe expressive aphasia reported that she had been repeatedly sexually assaulted by a 49-year old aide at the nursing home where she had lived for ten years following a stroke. Although the victim was unable to provide a narrative account of the events for family members, facility staff, or law enforcement, she could respond to "yes" or "no" questions and was able to communicate through gestures. Occasionally, she was able to speak a complete sentence.

The victim had to fight for her right to testify with accommodations giving her the ability to tell the court what happened. The case therefore highlights some of the legal challenges faced by people with communication disabilities who want to participate in the investigation and prosecution of a crime committed against them. It also has far-reaching implications for people with aphasia and other disabilities affecting communication, because they are often misunderstood as an indication of limited intelligence when they are simply disorders impairing speech and language.<sup>36</sup>

In fact, there are many accommodations that are used with children that could be used with adolescent and adult victims who have communication disabilities. One example is live video technology; this is often used to help child victims testify at trial, as well as those who have cognitive disabilities. However, the argument can be made that it has similar benefits for other victims of sexual assault, including those with other types of disabilities – or no disabilities at all (National Crime Victim Law Institute, 2011).

Other examples of special measures that could be used in sexual assault trials include temporary screens, live video testimony, and video-recorded testimony. Research has been conducted in Australia and England to explore the impact of such special measures on mock juror decision making. In the U.K., a study was conducted in the wake of a 1999 law granting adult victims of sex offenses access to such special measures to reduce the trauma of testifying in court. Findings demonstrated some effects on specific judgments, but no coherent pattern was found benefitting one party or the other (Ellison & Munro, 2013). An Australian team similarly concluded in their study that “no consistent pattern was observed on any of the key measures to indicate that juror perceptions were being systematically affected by whether the complainant presented her testimony face-to-face, by CCTV, or by pre-recorded videotape” (Taylor & Joudo, 2005, p. x). Taken together, these findings offer a strong basis for arguing that such measures should be used to reduce victim distress when testifying at trial. While

<sup>36</sup> For more information, see: [Massachusetts Court Sets Rules on Testimony by Disabled](#).



they do not appear to have any prejudicial effect on the parties in the legal proceedings, they are likely to have a substantial benefit in terms of victim well-being.

### Resource: Expert Interview

In this [video interview](#), Shirley Paceley offers suggestions on how investigators can accommodate people with disabilities.

## Special Considerations for Residential and Care Facilities

Most people with disabilities live independently and work in the community but some – especially those with severe cognitive impairments – require extensive supervision. This can include 24-hour care provided in their own home or in a residential group facility. Others participate in structured day programs. Unfortunately, when someone is assaulted in such a setting, some care providers and program administrators may be more interested in protecting their own liability than assisting with an investigation.

When a sexual assault is reported in such a setting, investigators must therefore work quickly to obtain witness statements and any records that may be available. Subpoenas and warrants may be needed, in which case investigators will need to work with a county attorney. In some cases, victims may even need to be taken into protective custody or temporarily removed from their current living situation, in order to ensure their safety.

### SARRT Tip:

Offer to provide training for staff members in group homes and other care facilities on the topic of sexual abuse and assault, as well as other crimes. SARRT members can also assist in the development of policies and procedures regarding reports of sexual assault committed by or against group home residents.

The following recommendations may be helpful when investigating a sexual assault involving a residential or care facility:

**Know the location of group homes.** One recommendation is for law enforcement agencies to identify in advance the location of all group homes in the area they patrol. That way, officers will know when they are going to a certain address that people with disabilities live there; they can then plan their time and approach accordingly.

**Notify Adult or Child Protective Services.** Officers will also need to ensure that Adult Protective Services is notified when they respond to a report regarding offenses against a vulnerable or dependent adult (when this is required by law).<sup>37</sup> Every state has such

<sup>37</sup> A variety of terms are used in different jurisdictions to refer to adults who are subject to mandated reporting in cases of suspected abuse. These terms include vulnerable adult, dependent adult, endangered adult, impaired adult, and others (Office for Victims of Crime, 2007).



an entity, which is the state-operated agency responsible for investigations of abuse and neglect, as well as exploitation of older adults and people with significant disabilities. Child Protective Services must also be notified when there is suspected abuse of anyone under the age of 18 (again, in accordance with relevant laws). These entities are bound by state laws, and as a result of mandated reporting, they will often be notified of a sexual assault at the same time as law enforcement. If not, however, this notification will be the responsibility of responding officers.

**Ask about sign-in and sign-out procedures.** It is important to ask agency staff about any sign-in and sign-out procedures, because they can often provide extremely valuable information. For example, investigators may be able to determine who was in the facility at the time of the assault, how long the victim was signed out from the facility, or how much time the victim spent with a particular staff member. These records might be used to prove that a suspect made an untruthful statement or that the suspect had private access to the victim and tried to cover up that fact. They can also be helpful in identifying who might be able to provide valuable information as a witness.

**Obtain staff logs.** Investigators should also ask about any staff logs or communication logs that might be used. These records are often used for staff members to communicate between shifts and with supervisors who cannot be on-site at all times. They can therefore contain valuable information about the victim as well as staff activity.

**Review surveillance video.** Once a location and timeframe for the sexual assault is established, it is critical to determine if there is any surveillance video available. It is becoming increasingly common for residential facilities and other programs to utilize surveillance video to monitor activities, and this can be extremely helpful for an investigation.

**Request progress notes.** It is also a good idea to ask about any progress notes that might have been written about the victim. In most settings, staff members are required to write notes on each person served; the frequency varies with the setting and agency policy. These records can be very helpful during investigations. For example, a note might say: "Gabby returned from her home visit, went to her room and cried all evening. She refused to eat dinner. When asked what was wrong, she stated. 'I can't tell. It's a secret.'" Depending on state confidentiality laws, the release of progress notes may require written consent of the victim or a legal guardian, or a court order. However, in many states, information directly related to a criminal investigation can be released without the victim's consent by the disability organization.

**Find out about bed checks.** Many group homes, institutions, hospitals and residential settings have procedures to document that all individuals have been accounted for. Sometimes, bed checks are done every hour between 10:00 PM and 8:00 AM and the results might be clearly documented. These records have been used to verify a person's location as well as their activities. Some agencies may even require hourly checks 24 hours per day. In one investigation, for example, a bed check indicated that a

victim had been asleep for a few hours and was then found awake from 2:00 to 6:00 AM lying on a couch in a common area of the facility. This helped to narrow the time frame for the assault, because the victim did not know what time the assault took place, but she did know it was committed while she was in her bed. The bed check data indicated the assault most likely occurred between 1:00 and 2:00 AM.

**Examine injury report forms.** Most organizations will document any known injuries to an individual using an Injury Report Form. These forms typically ask for a description of what happened and might include front and back body diagrams to document the location of any physical injuries or complaints. This is another critical document to ask for during the course of an investigation.

**Review staff schedules.** In addition, it may be helpful to see work schedules and/or time sheets for staff members. This documentation can identify who was working (or not working) when a victim was assaulted. It may even provide evidence of a person changing schedules to have increased access to the victim.

**Identify additional victims and/or suspects.** Once a report of sexual assault is received involving a residential group home or other care facility, it is critical to examine the question of whether there are additional victims. When a suspect is named or otherwise identified, investigators must find out who else they might have had access to within the organization (e.g., other residents or people involved in the same program as the victim). On the other hand, it will also be important to find out who else might have had access to the victim. This information could ultimately lead to the exoneration of the suspect, or the identification of additional suspects.

**Obtain training records.** If the suspect is a staff member, investigators should ask about training standards and records. Many disability organizations are required to train their staff members about abuse and neglect, and this training will inevitably address the fact that staff members are prohibited from having sexual contact or relationships with any individuals served. When suspects claim that a victim gave consent to sexual activity but argue they didn't know it was illegal or wrong, such training records can document that they were advised and trained to understand that such behavior is prohibited by policy and law if appropriate.

**Conduct follow-up interviews.** It is essential to follow up with individual staff members who have been interviewed during the course of an investigation. It is not unusual for someone to be caught off guard during the first interview and not recall details they considered mundane or unimportant at the time. After the initial interview, a witness may recall something that could be very useful to the investigation, but the person may not contact the investigator because of their uncertainty or reluctance. By contacting people to see if they have remembered anything else that might be helpful, they may be able to provide additional valuable information.





## When Staff Members “Don’t Believe” the Victim

When staff members tell the investigator, they don’t believe the victim or that the victim is a habitual liar, this should be noted in their statement. There are a number of reasons for this. First, people with a reputation for telling lies may have an increased risk of being victimized, because of the perceived challenges to their credibility. It is also possible they are acting out as a direct result of their history of repeated abuse.

Staff members might even make the statement because they committed the assault or because they are more interested in protecting their job or the institution than the victim. In either case, they are counting on other people not believing the victim’s disclosure. It is our responsibility to ensure that they aren’t proven right.

### Resource: Start by Believing

[Start by Believing](#) is a public awareness campaign uniquely focused on the public response to sexual assault. Because a friend, family member, or caregiver is typically the first person a victim confides in after an assault, each individual’s personal reaction is the first step in a long path toward justice and healing. Knowing how to respond is critical – a negative response can worsen the trauma and foster an environment where perpetrators face zero consequences for their crimes.

Because rapists attack an average of six times, one failed response can equal five more victims. Start by Believing is designed to lead the way toward stopping this cycle, by creating a positive community response, informing the public, uniting allies and supporters, and improving our personal reactions. The goal is to change the world, and outcomes for victims, one response at a time. For more information on how to launch a campaign in your community, visit the Start by Believing [website](#).

## Evaluating Capacity to Consent: Victims with Cognitive Disabilities

While any disability the victim has can affect a sexual assault investigation, only cognitive disabilities have the potential to constitute a legal element of the crime. The question is whether the impairment is severe enough to prevent the person from being able to legally consent to sexual activity. If so, the investigation must establish three legal elements:

- Sexual contact or penetration was committed by the suspect against the victim.
- The victim lacked the capacity to consent to the sexual activity, based on a severe cognitive impairment.





- The suspect knew, or should have known, the severity of the victim's cognitive impairment.

In theory, a consent defense cannot be raised in such a case. However, there is no "bright line" for establishing how severe a cognitive impairment must be to render an individual incapable of consent. It must be determined based on the evidence gathered during a thorough law enforcement investigation, including a current assessment of the victim's disability and a formal evaluation of the victim's capacity to consent.

## Conducting a Formal Evaluation of Capacity to Consent

There are a number of characteristics that influence an individual's ability to consent to sexual activity, including their IQ, adaptive behavior, and current sexual behavior, as well as any sex education they may have received (Kennedy & Niederbuhl, 2001). Various tests are used around the country to evaluate such characteristics and make a determination. Knowing what test is used in your jurisdiction will guide the questions that will need to be addressed during the law enforcement investigation.

In this section, we provide a summary of the various tests for capacity to consent used in each state. The material is adapted from Morano (2001), but it has been updated with new information as of December 2013. For more detailed information about the law in each state, please see Appendix F.

### Tests for Capacity to Consent

**Nature of conduct.** First, a number of states follow some version of the "nature of conduct" test. These states include: California, Delaware, Florida, Kentucky, Louisiana, Maine, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Texas, and Utah. This test requires that a person have an understanding of the sexual nature of any sexual conduct as well as the voluntary aspect of such activity, in order to be considered capable of consent.

If your jurisdiction uses a "nature of conduct" test, the investigation will need to focus on factors such as the following:

- Does the victim know what sexual intercourse is?
- Does the victim know what oral intercourse is, or what anal intercourse is?
- Does the victim understand the concept of private body parts?
- Can the victim express consent, or lack of consent?
- Does the victim know that she or he can refuse sexual activity?



**Nature and consequences.** Other states adhere to a “nature and consequences” test (including Alabama, Alaska, Arizona, Arkansas, Indiana, Iowa, Kansas, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and Wyoming). This test requires that a person understand both the nature and consequences of a sexual act in order for consent to be valid. Additionally, the individual must understand the potential risks of sexual behavior, including negative outcomes such as unwanted pregnancy or sexually transmitted infections.

In states with this type of test, the factors to address in an investigation will include all of those from the previous section (pertaining to the nature of conduct), as well as the following (addressing the consequences):

- Can the victim explain where babies come from?
- Can the victim explain what condoms are used for?
- Does the victim know about sexually transmitted infections?

**Morality test.** A “morality test” is used in Colorado, Hawaii, Idaho, Illinois, New York, and Washington. This test necessitates that a person have a moral understanding of sexual activity in addition to understanding its nature and consequences for consent to be valid.

An investigation in one of these states will need to focus on all of the factors listed in the two previous sections (for nature and consequences), as well as the following (pertaining specifically to morality):

- Can the victim explain whether sexual contact is okay (i.e., acceptable)?
- Can the victim explain what happens when someone is forced to have sexual contact without his or her agreement?

Note that there is no “right answer” to the first question of whether or not sexual contact is acceptable. Rather, the inquiry is focused on determining whether the victim attaches any moral import to sexual behavior.

**Totality of circumstances.** The “totality of circumstances” test is unique to Illinois, requiring the fact finder to examine all of the relevant circumstances to determine whether the victim was capable of consenting to the sexual acts in question. For this test, all of the previously listed factors will be important to consider. In addition, the investigation will need to examine factors such as the relationship between the victim and suspect, and the location of the crime (including the potential for the victim to escape, protest, or call for help). It will also be important to consider the victim’s educational background, level of independence, etc.



**Evidence of mental disability.** Another method used to test for the victim's capacity is to consider "evidence of mental disability." These states use this method: Connecticut, Maryland, Massachusetts, Michigan, Mississippi, Missouri, South Dakota, West Virginia, and Wisconsin.

With this type of test, all of the factors listed above will be relevant to include in an investigation. However, the investigation should also address any diagnoses of disability and/or services the victim receives to assist with daily living activities.

**Judgment test.** Finally, a "judgment test" is used in Georgia and Minnesota to determine whether the individual can give knowing and intelligent consent to sexual activity. To investigate a sexual assault case in one of these jurisdictions, all of the previously listed factors will be relevant. Additional factors to consider will also include:

- Does the victim make decisions about his or her finances?
- Does the victim make independent decisions at a job?
- Does someone besides the victim have power of attorney for the victim?

As previously stated, law enforcement professionals are not required to become experts in determining a victim's capacity to consent to sexual activity. However, understanding the test used in a particular jurisdiction can help guide officers and investigators in the type of information that should be gathered to help others make that determination.

### Specific Questions That Can Be Asked

While the specific questions asked during an assessment will vary based on the test used in a particular jurisdiction, it will be important to begin by establishing what terms the victim uses for male and female genitalia. Once these terms are established, the interviewer should use the same words the victim does and proceed by asking questions such as the following:

- What do boys/girls do with that part of their body [using the victim's terms]?
- Do you have a \_\_\_\_\_?
- What do you call it when a man puts his \_\_\_\_\_ inside a woman's \_\_\_\_\_? Do you know a name for that?
- What is sex?
- Why do people have sex?
- Where do babies come from?
- If a woman wants to have a baby, what does she do?



- If a woman wants to stop from having a baby, what does she do?
- Do boys have babies?
- When a man does that, does he like it? Does a woman?

Other questions can address whether the victim understands that people can contract a disease from sexual activity, differentiates between appropriate and inappropriate times and places to have sex, and recognizes situations or people that may pose a threat (Kennedy & Niederbuhl, 2001).

### **Not the Time to Focus on the Victim's Competency to Testify**

It is important to emphasize that competency to give consent for sexual activity involves very different issues than competency to testify in court. A perfect example of the difference can be seen in the context of child molestation. It is against the law in all US states for an adult to have sex with an 11-year old based on their lack of capacity to consent to sex. However, it is also clearly understood that a typical 11-year old is capable of testifying in court. As a result, law enforcement professionals do not need to focus explicitly on the question of whether or not the victim will be deemed competent to testify in court during the course of their investigation. This determination will ultimately be made by a judge following evidence procedures. The general guideline is as follows:

*Except as otherwise provided by statute, every person is qualified to be a witness and no person is disqualified to testify to any matter.<sup>38</sup>*

This example is drawn from Section 700 of the California Evidence Code, although it is similar to the codes in many other states. Section 701 of the same Evidence Code states that people will be disqualified as potential witnesses if they are incapable of expressing themselves in a way that can be understood (either directly or through an interpreter) – or if they are incapable of understanding their duty to tell the truth.

In most states, neither age nor mental defect or disease are automatic disqualifications for someone to serve as a witness. Even a determination that a witness is insane is not necessarily conclusive as to the question of competency. In fact, courts have repeatedly affirmed that a witness is presumed competent to testify in the absence of any showing to the contrary.<sup>39</sup>

*Once a victim with mental retardation, dementia or a traumatic brain injury is determined to be able to perceive, recollect, and communicate their accuracy of perception, it then becomes a question of credibility just as with any witness without a disability (Aguilar, n.d., p. 11).*

<sup>38</sup> Section 700 of the California Evidence Code

<sup>39</sup> See, e.g., *People v. Craig* 111 Cal. 460 (1896)



Clearly, victims and witnesses must understand their duty to tell the truth. However, this typically requires demonstrating only that the witness recognizes the difference between the truth and a lie as well as understanding what might happen when a person lies. Qualifying a victim with a cognitive impairment to testify is therefore much the same as qualifying a young child.

### **Resource: Children's Competency to Testify**

For more information on how to evaluate children's competency to testify, including sample questions and a prototype for conducting voir dire, please see the excellent *Handbook on Questioning Children* written by Dr. Anne Graffam Walker (2005). Many of the same techniques can be used for victims who have cognitive disabilities.

## **Medical Forensic Examinations**

When victims have a cognitive disability, we have repeatedly stated that the key question is whether they are capable of consenting to sexual activity. A fundamentally similar question is also raised with respect to medical forensic examinations.

### **Capacity to Consent for the Exam**

If a person is unable to consent to sexual activity because of a cognitive impairment, he or she will typically be unable to provide informed consent for a medical forensic examination as well. There may be some exceptions, because people can take the time they need to access support and consult with others before consenting to the exam. After talking with trusted advisors, social workers, or family members, a person with a disability may be perfectly capable of weighing their options and making an informed decision about the medical forensic examination. Sexual activity, on the other hand, typically occurs spontaneously and in private. There is therefore little or no time to consult with others or seek assistance to decide whether to participate.

Even if there is time, people are less likely to talk openly with others about sexual activity than they are about medical care. Honest discussion of sexual matters is unfortunately rare in our society. Thus, all of these factors combine to mean that the same person might be capable of consenting to medical care but not sexual activity.

In most cases, however, the logic will be applied consistently across the two situations. If the person is viewed as unable to legally consent to sexual activity, they will most likely be considered incapable of consenting to medical treatment or the medical forensic examination. Law enforcement is therefore faced with the question of how to obtain consent for a medical forensic exam when a sexual assault is suspected.

## General Principles of Informed Consent

When evaluating the question of whether or not someone can consent to a medical forensic examination, it is important to keep in mind that the doctrine of informed consent is based on two principles. First, any individual has a right to determine what happens to his or her own body. Second, it is the duty of the clinician performing any procedure to provide the patient with enough information to choose between the procedure versus any alternate treatment options, and to evaluate the risks, benefits, and likelihood of success or failure for each option (Pierce-Weeks & Campbell, 2008).

To understand how this applies to victims with a cognitive disability, it is helpful to think of other situations where the victim's ability to consent to the exam may be in question. For example, there are many times when a person is unconscious or severely incapacitated due to alcohol or drugs (either prescribed or recreational), but a sexual assault is suspected, and a medical forensic exam is warranted. The typical response in such a situation is simply to wait to conduct the exam until the person has sobered up and regained their capacity to consent. The determination of when the victim is capable of consenting to the exam will be made by the health care provider, not law enforcement.

### **SARRT Tip:**

Medical forensic examination protocols should provide guidance for situations where the victim is unable to provide informed consent. Such guidance is needed for law enforcement, health care providers, advocates, and other members of the SARRT.

However, in cases involving victims with severe cognitive disabilities, the situation will not change; waiting will not affect the victim's capacity to consent to a medical forensic exam. Other options must therefore be explored.

Generally speaking, there are three approaches. First, law enforcement may be able to obtain the consent of a legal guardian. Second, the health care professional may be able to conduct certain components of the examination and treatment in response to a medical emergency. Third, there are certain situations where the victim must be taken into protective custody, typically when the suspect is a legal guardian or caregiver for the victim. In this situation, the protection agency (e.g., Adult Protective Services, Child Protective Services) and/or the investigator might have the legal authority to authorize a medical forensic examination. Each of these scenarios is discussed below.

## Obtaining Consent from Others

In cases where a person with a disability is unable to provide informed consent to a medical forensic examination, the most straightforward response is to obtain consent from the person's legal guardian. However, if there is no guardian, or if the victim's legal guardian is the suspect in the case, law enforcement can obtain a court order or warrant to have a medical forensic examination conducted in a non-emergency situation.





Investigators are encouraged to consult with their prosecuting attorney's office as early as possible when faced with such a situation.

### **Resource: Sample Affidavit**

King County, Washington has a [sample affidavit](#) for a search warrant that can be used as a template for situations where there is no legal guardian for the victim or the victim's legal guardian is a suspect in the case.

A health care provider may also determine, in her/his professional opinion, that evidence collection is in the patient's best interest. This determination is typically made in a situation where the victim is incapable of providing informed consent due to a longer-term medical condition or permanent disability – and evidence may be lost if it is not collected right away (e.g., the patient is going in for surgery, or getting a Foley catheter). In this scenario, it is widely considered to be permissible for the health care provider to collect and document forensic evidence, including clothing, hair, and swabs from skin and orifices. The Indiana Senate even introduced a bill to codify this presumption of implied consent in such a situation. On January 7, 2014 they introduced [Senate Bill 255](#) to clarify that health care providers can conduct a medical forensic examination without the consent of the patient, if the patient is unconscious, the provider has a reasonable suspicion that the patient may be the victim of a sex crime, and a person authorized to give consent on behalf of the patient is unavailable or suspected of being the perpetrator of the crime.

When evidence is collected because it is believed to be in the patient's best interest or based on concerns that emergency medical treatment will potentially destroy biological evidence, it should be stored at the medical facility until consent can be obtained from the patient or the legally authorized guardian, or until a power of attorney or a court order can be provided. At that point, the evidence can be transferred to law enforcement

### **Emergency Medical Care**

Most forensic examinations are not considered medical emergencies. However, some situations do require emergency medical care, and treatment will generally be provided by a health care professional any time the potential harm from the failure to treat is greater than the treatment. Consent for medical treatment is inferred, for example, when a person is found unconscious, or when an emergency necessitates immediate treatment to prevent serious harm or death (Pierce-Weeks & Campbell, 2008).

It is important to keep in mind, however, that this is not an evidentiary issue. Rather, it is an ethical and moral responsibility that health care providers have toward their patients. While any evidence obtained without the patient's consent in such a situation will most likely be admissible in court, the purpose of an examination conducted in such a situation is to provide *medical treatment*, not to collect evidence. In the absence of a

state law stating otherwise, hospitals and health care providers (including forensic examiners) do not have a legal duty or obligation to collect forensic evidence.

### **No Forced Examinations**

Unfortunately, there are times when family members or other authorities might want to force a medical forensic examination when the victim is not consenting or is clearly uncomfortable with the procedure. This is never an acceptable practice, as clearly stated in the *National Protocol for Sexual Assault Medical Forensic Examinations*:

*In all cases, the medical forensic examination should never be done against the will of patients. Responders should not touch patients or otherwise perform exam procedures without their permission (Office on Violence Against Women, 2013, p. 44).*

Health care providers also cannot be forced to conduct an exam or be required to collect certain types of evidence. Although a warrant might authorize the collection of certain evidence, it does not mandate that this will happen or identify that a certain person will do it. In at least one high profile case, however, an emergency room charge nurse was arrested by the Chicago Police Department when she refused to collect forensic evidence.<sup>40</sup> Again, this is never an acceptable practice as the health care provider is under no legal obligation to collect evidence in any type of scenario.

### **Develop Policies and Protocols in Advance**

While many professionals have expressed concern about these issues, and a few programs have developed policies to address them, most forensic examiners struggle with the question of what to do when a patient is unable to consent to a medical forensic exam and a surrogate is not available to provide consent on the patient's behalf (see, for example, Eiselein, Hunt, Peth & Sellas, 2008). Scenarios such as those outlined above should be considered and discussed in advance, so written policies and practices can be developed before the need for them arises. It is critical to take multidisciplinary perspectives into account during this process, so this task is best undertaken within the context of a Sexual Assault Response and Resource Teams (SARRTs). Policies must also ensure that victims with disabilities have the same rights as other victims to have an advocate or other support present to accompany them during the examination.

## **Victims with an Intellectual Disability**

While other cognitive impairments may render someone incapable of consenting to sexual activity, law enforcement agencies often receive reports of sexual assault committed against people with an intellectual disability. This includes people with other

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<sup>40</sup> See [Justice Served](#), by Robin Hocevar, posted June 2, 2010 on the Advance Healthcare Network for Nurses.

forms of developmental disability, such as Down syndrome, which often has associated features of an intellectual disability. The evidence suggests that this population is disproportionately targeted by sexual assault perpetrators. In one study, for example, 83% of the women and 32% of the men with developmental disabilities said they had been sexually assaulted (Johnson & Sigler, 2000). This contrasts with the estimated 3% of American men and 18% of American women in the general population who are sexually assaulted during their lifetimes (Tjaden & Thoennes, 2000).

The dynamics of these cases are similar in many ways to other sexual assaults, but there are some dynamics that are especially pronounced when the victim has an intellectual disability. For example, we know that the majority of sexual assault victims (with or without disabilities) are sexually assaulted by people known to them and that very low levels of physical force are used – typically only enough force to complete the act. This may be especially true for victims with an intellectual disability, because perpetrators take advantage of their vulnerabilities and/or dependence. In addition, people with intellectual disabilities are often particularly “eager to please,” and thus easily influenced by perpetrators. Such factors increase the vulnerability of people with intellectual disabilities and reduce the odds that they will disclose the abuse to anyone.

For all of these reasons, we provide more detailed information about this particular disability than others discussed in this module. However, much of the information provided in this section on intellectual disabilities will also be applicable for other victims with disabilities affecting their ability to think, feel, communicate, and relate to others.

## Understanding Intellectual Disabilities

We begin by describing some of the characteristics of an intellectual disability and then go on to explore some implications for a sexual assault investigation and prosecution.

### Definition of Intellectual Disability

There are a variety of definitions available for intellectual disability. However, we believe this one from the [National Dissemination Center for Children with Disabilities](#) captures the essential characteristics, in common sense language:

*Intellectual disability is a term used to describe people who have certain limitations in mental functioning and in other areas of life, such as communicating with others, taking care of themselves, and social skills. These limitations will cause a child to learn and develop more slowly than a typical child.*

*Children with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating. They are likely to have trouble learning in school. They will learn, but it will take them longer. There may be some things they cannot learn.*



Because of the impairments that someone with an intellectual disability is likely to have, they will often require a level of support and care that is quite different from others.

## Evolving Perceptions and Language

Understanding and defining intellectual disability, as well as its impact on a person and society, has changed significantly over the years. For many years, criminal justice professionals talked about victims with intellectual disabilities as having “the mental age of a 7-year-old,” or “the abilities of a 6<sup>th</sup> grader.” Similarly, many professionals have been trained to focus on a person’s IQ when referring to cognitive functioning. However, in addition to IQ, it is extremely important to remember that each person ages chronologically and socially regardless of their IQ level, so a 30-year-old man with an intellectual disability should never be referred to as “a person who functions like a six-year-old.” Every adult has life experiences, and most people with intellectual disabilities can learn behaviors – with and without support – that permit them to function in the everyday world. Thus, someone with an intellectual disability does not function “like a six-year-old,” but as an adult living with a disability.

Similarly, our terminology has evolved from the old language of “mental retardation” to the current preferred term of “intellectual disability.” This change was officially made by the American Psychiatric Association (APA) in the May 2013 version of the *Diagnostic and Statistical Manual (DSM-5)*, where the term “mental retardation” was replaced with “intellectual disability” (APA, 2013). The change was made to reflect the more common usage of the newer term among professionals, and also to comply with a federal law that replaces the term “mental retardation” with “intellectual disability.”<sup>41</sup>

## Diagnostic Criteria and Levels of Severity

According to the *DSM-5*, intellectual disabilities have three diagnostic criteria. To receive the diagnosis, a person must have deficits in intellectual functions as well as adaptive functions that limit major life activities, “such as communication, social participation, and independent living” (APA, 2013, p. 33). These deficits must also have been first observed during the developmental period of childhood (APA, 2013).

The *DSM-5* also identifies four levels of severity for intellectual disabilities: *mild*, *moderate*, *severe*, and *profound* (see Appendix C for more information). Severity is defined on the basis of adaptive function, and not solely on IQ scores, because this is what determines the level of supports required for a person. In addition, IQ measures are considered to be less valid at the lower end of the range, so they are not as useful for conveying a person’s level of actual functioning in the world (APA, 2013).

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<sup>41</sup> See Public Law 111-256, as cited in the [Highlights of Changes from DSM IV-TR to DSM-V](#) published by the American Psychiatric Association.



Approximately 1 in 100 Americans live with an intellectual disability (APA, 2013). A much smaller percentage of the population (about 1 in 2,000) have an intellectual disability that can be characterized as *severe* or *profound* (although rates vary by age).

### Not a Mental Illness

Keep in mind that intellectual disability is not the same as mental illness – although some people live with a dual diagnosis of both an intellectual disability and mental illness. In fact, individuals with a dual diagnosis may be especially likely to be known to law enforcement, because people with mental illness account for a disproportionate number of police calls for service (Bryen, Feinstein, & Sonneborn, 2002).

When mental illness and intellectual disability appear in the same person, the difficulties encountered by the individual are significantly compounded – as are the challenges facing law enforcement professionals seeking to respond appropriately.

### Balancing Rights and Safety

Disability rights advocates, people with disabilities, and their families and allies have fought hard to promote rights and empowerment for people with disabilities. This includes social activism designed to ensure that their right to engage in consensual intimate relationships is properly understood and respected.

Sexuality is a “basic, fundamental aspect of human development, personality, and behavior” (Medlar & Medlar, 1990, p 46). It is therefore an important factor to consider when evaluating someone's overall quality of life. With expanded vocational programs, community-based group homes, alternative living units (ALU's), and competitive work experience, it is now easier than ever for people with intellectual disabilities to develop friendships and intimate relationships (Sgroi, 1989; Sundram & Stavis, 1994).

In fact, most adults with mild and moderate intellectual disability *are* capable of legally consenting to sexual activity, so it is wrong to automatically assume that they cannot. Similarly, it is inappropriate to hold them to a higher standard than the general population in terms of determining their capacity to consent. For example, one sample question on a tool designed to assess capacity asked: “What is love?” This question has obviously remained unanswered by philosophers and poets throughout the ages, so it would be unfair to require a “correct” answer from someone who has an intellectual disability, before determining that the person can legally consent to sexual acts.

#### **SARRT Tip:**

For family members, caregivers and others who want to reduce the risk of victimization for a person with an intellectual disability, a workbook is available to help design a realistic and workable plan. This and other resources are available from the [Disability and Abuse Project](#).



Yet gullibility is often a feature of intellectual disability, which can result in exploitation and victimization. The challenge is therefore to balance the urge to protect these individuals from exploitation and harm – while still respecting their autonomy and capacity to engage in voluntary and freely chosen relationships. Unfortunately, adults with intellectual disabilities are often regarded in the law much as children are, so care must be taken to respond appropriately and to investigate these cases without infantilizing adults who may be targeted for victimization on the basis of their disability.

## Culture of Intellectual Disability

In her work, Dr. Nora Baladerian (1998a) eloquently describes how the experience of having an intellectual disability can affect the nature and quality of someone's life. She also examines how assumptions and cultural norms can influence how a person with an intellectual disability will experience and respond to sexual victimization.

For example, many people with intellectual disabilities live relatively segregated lives and interact with a smaller number of people than others who do not have such a disability. While some people with intellectual disabilities live on their own, others have caregivers who make most of the decisions for them. They may have little or no privacy, low expectations, and few positive role models. They may even experience demeaning remarks and behaviors on a regular basis. Obedience and passivity are often consistently rewarded, both for the ease of caregivers and others (Baladerian, 1998a).

These dynamics can lead to a number of informal rules for behavior, such as:

- Don't get anyone else in trouble
- Obey the rules
- Don't be a troublemaker
- Obey those around in charge
- Act nice
- Don't get angry
- Don't want very much
- Agree with people
- Other's opinions are important, yours are not
- It is bad to be assertive (Baladerian, 1998a, pp. 12-13)

It is not difficult to see how cultural rules such as these can render someone particularly vulnerable to abuse and decrease the likelihood that they will disclose abuse when they experience it.





## Interviewing Victims with Intellectual Disabilities

When investigators are preparing for an interview with someone who has an intellectual disability or other cognitive impairment – even limited English – they are often given only the most general guidance. For example, a common suggestion is to use simple language, “not above a 6<sup>th</sup> grade level.” Yet it is not at all clear how to put this type of recommendation in practice, because it is not specific or concrete enough to translate into actual behavior. At the very least, one has to wonder which 6<sup>th</sup> grader people are talking about, since cognitive abilities develop at different rates and there is as much variation in the intellectual capability of 6<sup>th</sup> graders as there is among adults.

Other factors will also significantly impact a person’s ability to understand and respond to interview questions, including cultural factors, family dynamics, and whether or not English is a person’s first language:

*Each child has his or her own unique growth pattern, and his or her own family experience which shaped the learning of language. That is markedly true in the case of children (or adults, for that matter) who have a developmental disability, come from a culture different from your own, or who have been maltreated (Graffam Walker, 2005, p. 9).<sup>42</sup>*

The bottom line is that investigators and attorneys need more concrete guidance to conduct a successful interview than simply being advised to “use simple language.” As with children, people with various cognitive disabilities or limited English can serve as competent witnesses if they are questioned in appropriate ways. However, this depends more on the language of the questions than the answers. In other words, the responsibility lies with the interviewer, not the victim, to ensure that questions are asked in a way that makes it possible to get at what the victim knows (Graffam Walker, 2005).

### Lessons Learned from Interviewing Children

In this section, we hope to provide concrete guidance for interviewing people who have cognitive or linguistic challenges, drawing from the work of Dr. Anne Graffam Walker. The significance of this material is described by Sgt. Joanne Archambault:

*As a child abuse investigator in the early 1980’s, I attended an annual conference hosted each year by Children’s Hospital in San Diego. One of the workshops I attended was given by Dr. Anne Graffam Walker, and I found it extremely helpful because it offered simple, concrete guidelines that could be applied in my day-to-day work as an investigator. It was a*

<sup>42</sup> The author provides a number of examples for differences based on culture or family environment that can potentially affect the way children communicate. This discussion is beyond the scope of this training module, but it would be helpful for anyone conducting interviews with adolescents and adults who have disabilities – and even those who do not – because such factors can often be misinterpreted as evading or lying and thus needlessly undermine the credibility of victims (Graffam Walker, 2005).



*breath of fresh air. So much so, in fact, that I remembered the presenter's name 30 years later while developing this training module.*

*I obtained a copy of Dr. Graffam Walker's "Handbook On Questioning Children, A Linguistic Perspective" (2<sup>nd</sup> Edition). It was published by the ABA Center on Children and the Law in 2005, but the [3<sup>rd</sup> Edition](#) appeared as this module was being completed in 2013. I highly recommend obtaining your own copy of this Handbook if possible, but we will summarize some of the key points made by the author in this section of the module, with the goal of bringing you the same "breath of fresh air."*

Much of Graffam Walker's (2005) work is based on empirical research examining aspects of children's memory, suggestibility, and language development. However, she also credits the valuable contributions of practitioners who shared strategies for addressing problems they faced on the job; some of these strategies are highlighted in helpful anecdotes in the *Handbook*. In addition, the author has studied court transcripts throughout her career, to evaluate the way children are typically questioned at trial. These various perspectives are brought together to inform the *Handbook*.

One of the most helpful aspects of the *Handbook* is the detailed descriptions offered for the cognitive and linguistic abilities of children in three specific age groups: preschoolers (below age 7), school age (7-10), and adolescents (age 11-18). With an understanding of these characteristics, investigators and prosecutors can develop specific interviewing strategies that are more likely to be successful with children.

Yet many of the same characteristics apply to adults who have intellectual disabilities or other cognitive impairments, as well as people who do not speak English as their first language. This does not mean these people are being perceived or treated "like children." In fact, an understanding of such characteristics can guide the development of strategies designed to ensure that people with cognitive or linguistic challenges have the same rights of equal access to the criminal justice system as any other adult. This requires offering all crime victims the opportunity to *understand* the process of a law enforcement investigation and any criminal proceedings, as well as the chance to *be understood* by those tasked with evaluating their credibility. In other words, it is only by adapting our strategies for interviewing crime victims that we can offer the same opportunities for equal access.

Graffam Walker (2005) expresses this sentiment eloquently:

*Anything you can learn that will help you level the playing field for children in our courts will eventually help level the playing field for all of us (p. 1).*

In that spirit, we provide three lists developed by the Dr. Graffam Walker, offering detailed descriptions of the cognitive and linguistic abilities of children in various age



groups. These characteristics can be seen as applying, in varying degrees, to adolescents and adults who have either cognitive impairments or limited English.

## Preschoolers

This age group generally includes children below age 7, who are likely to exhibit a number of limitations in their cognitive and linguistic abilities. This will of course vary dramatically, based on their specific age, abilities, and other factors. Generally, however, Dr. Graffam Walker explains that preschoolers:

- *Use and interpret language very literally. A typical example: Asked if she could 'read' an eye chart, the child responded, 'No! It doesn't make words.'*
- *Do not handle abstractions well. Preschoolers are particularly ill-equipped to discuss with you the difference between truth and lies. They do better with concrete examples that ask them to demonstrate rather than articulate their awareness of these two very abstract concepts.*
- *Aren't good at collecting things into adult-like categories. This can make it hard for them to respond to questions that ask them if 'anything like this' happened before.*
- *Use words for time, distance, kinship, size and so on, long before they understand their meaning.*
- *Define words only in the simplest, action-oriented way. A 'mother' may be, 'She takes care of me.'*
- *Have difficulty with pronoun reference. Keeping track of your 'he's,' 'we's,' 'they's,' 'that's' and whatever it is that these pronouns refer to is not something they are very good at.*
- *Have difficulty with negatives. Even simple negatives like 'Didn't you see the car?' may confuse them. 'Did you not see the car?' is sure to.*
- *Tend to supply a response to questions even if they have no knowledge. One reason for that is that in English, questions and answers form an indivisible pair. Answers don't happen without a question first. And if a question is left unanswered, something is perceived to be wrong. Most children learn that very early. The answer children supply is often (but not always) 'Yes' for a number of reasons. One, in this society, it is a valued answer which indicates cooperation. Two, it is often perceived to be the one that the adults want, particularly in response to a tag question in which the tag is negative (e.g., 'You like it, don't you?'). And three,*



*presented with a short-restricted choice question ('Was it red or blue?'), children may respond to the form of the question, and simply reply 'Yes,' rather than explicitly picking one option or rejecting both.*

- *Do best with simple sentences, of Subject, Verb, Object. No frills.*
- *Tend to focus on only one aspect of a situation or question at a time. Asking complicated questions that contain numbers of ideas is fruitless.*
- *Don't organize events in their minds in an adult way. They often leave out settings, descriptions, chronology, motivations, and emotions in the telling of some past event.*
- *Are still in the process of acquiring language. Don't be fooled by a child who sounds mature. But don't dismiss as incompetent one who doesn't seem to follow your questions. Chances are, it's the language of the question that's the problem.*
- *Usually don't know that they don't understand something. So, asking them, 'Do you understand?' is probably a waste of breath.*
- *Believe in general that adults speak the truth, are sincere, and would not trick them (Graffam Walker, 2005, pp. 2-4).*

In other words, preschoolers tend to supply a response to a question even when they do not understand the question or know what the answer is. The same is true for adolescents and adults who have intellectual disabilities, and even for those who do not. Many of the same pressures exist for any victim of crime who is experiencing trauma and undergoing the stress of being interviewed by law enforcement or testifying in court.

### **School Age Children**

This group includes children who are approximately 7-10 years old. Yet as Dr. Graffam Walker (2005) describes, they may continue to display many of the same cognitive and linguistic characteristics as preschoolers. For example, school age children may:

- *Still may have difficulty in handling abstract concepts.*
- *Still have problems processing complex questions and complex verb phrases that express, for instance, the future as seen from a perspective in the past (e.g., 'Were you to have been taken to school that day?')*
- *Still make errors with passives, [such as] the difference between 'ask' and 'tell,' and with pronoun reference.*



- *Are still easily confused by complex negation. Multiple negatives such as ‘You don’t deny you did it, do you?’ will probably go right over their heads*
- *Are still not mature at organizing in an adult-satisfactory way the details of narratives.*
- *Are still unequipped to deal with adult insincerity such as sarcasm, irony, and so on.*
- *May still believe that adults in general speak the truth (p. 4).*

### **Adolescents**

Once children reach adolescence (roughly ages 11-18), they have many of the abilities of an adult. However, Dr. Graffam Walker emphasizes that they are clearly not adults yet, and they may continue to exhibit some of the same limitations in some of their cognitive and linguistic capabilities. For example, adolescents:

- *May or may not have acquired adult narrative skills.*
- *Don’t understand time as both a historical concept (one that goes on and on without them) and a day-to-day concept that affects their lives. For most adolescents, what concerns them is the here-and-now.*
- *Still have difficulty with complex negation. Questions that are packed with negatives, such as ‘It’s not untrue that you forgot, is it?’ are hard to decipher. This problem continues on into adulthood for most of us.*
- *Are often confused by linguistic ambiguity such as is found in newspaper headlines, some ads, metaphors, idioms, proverbs, and jokes.*
- *Are likely to lose track of long, complex questions.*
- *Are reluctant to ask for clarification of a question or acknowledge that they don’t understand (Graffam Walker, 2005, pp. 4-5).*

In fact, for many teenagers, their cognitive and linguistic abilities may remain at the previous level described for school age children. This is true not only for those with intellectual disabilities or other cognitive impairments, but also for those who are under-educated, under-parented, or who have little to no attachment with adult role models (Graffam Walker, 2005). Unfortunately, adults often have high expectations for how well adolescents will understand and express themselves. Too often, they are treated as if they were simply “short adults.” As a result, adolescents are, “in some ways at greater risk than young children of misjudgment” (Graffam Walker, 2005, p. 5).



## Not Just for Children

Dr. Graffam Walker (2005) reminds us that the communication skills required to give a complete and coherent account of a past event may still be developing in the late teens. Yet this is only one of many critical skills required to perform successfully in a courtroom trial:

*Other skills which are necessary for a fully competent performance in court, such as learning how to detect and defend against reasoning flaws in other people's statements, may never be acquired, even by adults*  
(Graffam Walker, 2005, p. 9).

Any law enforcement officer who has testified in court understands exactly what this statement means in practice. Most have been on the witness stand when a prosecutor or defense attorney asks a question that is impossible to understand. Officers will usually try to answer even the most convoluted of questions, but this usually only results in an inappropriate response. In fact, research with preschoolers through college age students has demonstrated that we are generally quite poor at responding to the type of questions typically asked in court, especially when they are in "lawyerese" (Perry, et al., 1993, Peters & Nunez, 1999; cited in Graffam Walker, 2005, p. 25).

## Translating Research into Practice

So how do we communicate with people who have limited cognitive and linguistic abilities? Very carefully.

If we believe that all people use, process and understand language in the same way, we will make critical mistakes that will impact our ability to conduct thorough investigations and successfully prosecute crime. Instead, investigators and prosecutors must strive to formulate questions that are appropriate for the victim's linguistic and cognitive abilities – and then accurately interpret the victim's responses, without missing important information or misinterpreting the victim's response and creating *misinformation*. This is particularly critical, because we as human beings tend to make assumptions or fill in the gaps with our own interpretations when we are unable to obtain the information we need.

## Specific Interviewing Techniques

With this in mind, we turn our attention to specific techniques you can use for interviewing a victim who has an intellectual disability. Throughout this section, we will remind you that these same techniques will often be helpful for interviewing any victim of crime, regardless of whether or not they have a disability. They will also frequently help for victims who have limited English, and anyone experiencing trauma.





## **Introduce Yourself and Create a Safe, Trusting Environment**

Begin the interview process by introducing yourself as a law enforcement officer and provide both your agency's name and your own name. Keep in mind that people with intellectual disabilities are often taught "that officers are their friends and can be trusted to keep them safe" (Office for Victims of Crime, 2008, p. 26). However, victims are also frequently "told lies by their abusers about law enforcement or other service providers" (Office for Victims of Crime, 2008, p. 26). It can thus be helpful to let victims know they are not in trouble and try to address any fears they may have about what will happen. It is also important to evaluate any policies or practices used when transporting these victims. For example, when patrolling in a two-officer unit, the only available seat is the back seat, which is behind a cage. Yet it can be very distressing for victims to ride in the back seat behind the cage, especially if they are afraid they might be arrested. This fear may be particularly pronounced if the perpetrator has fueled their worry by saying that terrible things will happen if they tell anyone – particularly police – about the abuse.

For many victims, it will be sufficient to address this fear by explaining that they are not in trouble and that everyone has to sit in the back seat when they ride in the car with a police officer. Even reporters and the mayor sit in the back seat when they go on a police ride-along. However, if it is obvious that this will cause a great deal of distress for the victim, you can make every attempt to have a supervisor or a detective transport the person, because they will typically have an unmarked car without a cage.

## **Avoid Leading Questions**

Keep in mind that people with intellectual disabilities may be "eager to please" and thus easily influenced. In other words, "they may say what they think you want to hear (Office for Victims of Crime, 2008, p. 27). It is thus particularly important to avoid asking leading questions. A better strategy is to ask open-ended questions, so victims can "lead the interview" with information they disclose (Office for Victims of Crime, 2008).

If open-ended questions fail to generate meaningful responses, you can switch to "yes or no" questions (Office for Victims of Crime, 2008). However, it will still be important to follow the recommendations offered in this section regarding language use, because even questions that appear to be simple and straightforward may be anything but.

## **Take Plenty of Breaks**

During the interview, watch for signs of stress on victims and consider changing the subject or taking a break if they are seen. You can announce something like: "I'd like a break. Would you also like to take a break?" (Office for Victims of Crime, 2011). When the investigator takes responsibility for the decision, victims do not feel pressured to decline the offer. However, you should also let victims know they can ask for a break whenever they want one. For victims who have an intellectual disability, breaks may need to be rather frequent (Office for Victims of Crime, 2008).



## Avoid Using the “R” Word

Avoid using the words “retardation” or “retarded” when referring to people who have an intellectual disability. This word has historically been used to degrade, demean, and humiliate people with disabilities, so it can be very offensive for victims to hear. It may even trigger feelings of anger, shame, sadness, or outrage in the victim – feelings that are hurtful for victims and damaging for the rapport you are seeking to establish. If you need to refer to their impairment, you can describe them as a “person with a disability” (Office for Victims of Crime, 2002). This is an example of People First language; for more recommendations on how to effectively use this preferred form of language to discuss issues relating to disability, please see Appendix E.

## Use Simple Language

We began this section by saying it is insufficient to recommend that interviewers use “simple language, not above a 6<sup>th</sup> grade level.” This does not necessarily mean the suggestion is wrong – just that it fails to provide meaningful guidance for interviewers to implement in actual practice. In fact, using simple language is one of the most basic recommendations we can offer to improve interviewing success, not only with children or people with cognitive and linguistic challenges, but any victim of crime or other person experiencing trauma. So, how do you translate this into practice? “Choose easy words over hard ones,” (Graffam Walker, 2005, p. 91). To illustrate, the author advises that you can use a word like “show” instead of “depict,” or “tell me about” rather than “describe,” and “said” rather than “indicated.” Also try to avoid phrases like these:

- ‘What, if anything...?’
- ‘Did there come a time when...?’ (Graffam Walker, 2005, p. 91).

Such phrases increase complexity without adding substance to a communication.

In general, anything you can do to reduce the processing load for victims during an interview will increase the chances that they will be able to understand your questions and provide accurate responses (Graffam Walker, 2005).

## Address One Concept at a Time

Another fundamental recommendation is to keep your questions short and not address more than one concept at a time.

*Just as with an adult, the fewer the number of ideas there are in a question, the greater the chances are of recall, processing, and thus an accurate question/answer exchange (Graffam Walker, 2005, pp. 13-14).*



In other words, do not ask multi-part or multi-idea questions. The author provides an example of a question that would be complicated for almost anyone to answer:

*“Do you recall talking to her on the Sunday after they found – discovered something had happened to Doug and asking her, ‘do you know Mark,?’ and then saying, ‘That is who did it?’ Do you remember telling her that?”*  
(Graffam Walker, 2005, p. 13).

This question was asked of a 5-year old witness during a murder trial. When questions are unclear or contain more than one idea, it makes it difficult for any victim of crime to provide a clear and consistent response. For children and victims with cognitive or linguistic challenges, it may become virtually impossible.

Rather than asking such a convoluted question and overloading victims, complex information can be separated into smaller parts. A long sentence or question can be broken into shorter ones that address one main idea. Gestures and props can even be used to increase understanding (Office for Victims of Crime, 2008).

Other strategies include using support materials for the interview:

*These could include items such as photographs from the person’s home, school, work, or social activities. Standard dolls and drawings may also be used* (Office for Victims of Crime, 2011, p. 18).

### **Avoid Tag Questions**

It is also best to avoid “tag questions,” which make a sentence more complicated than it needs to be:

*‘You did it, didn’t you?’* (Graffam Walker, 2005, p. 93).

The author notes that tag questions are also “one of the most powerfully suggestive forms of speech that we have in the English language (Danet, Hoffman, Kermish, Rafn, & Staymen, 1980; Woodbury, 1984; cited in Graffam Walker, 2005, pp. 48-49). This is an even more important reason to avoid them when interviewing any victim of crime.

### **Avoid Legal Jargon or “Cop Talk”**

Equally important is to avoid technical language and professional jargon, such as “cop talk” or “legalese” (Graffam Walker, 2005). For example, a police officer might say:

“I exited my vehicle and made contact with the suspect.”

This may be fine for a police report, but in an interview with a crime victim, it is far better to use common language:



“I got out of my car and started talking with John.”

This is one of many suggestions that will benefit communication with any victim of crime, not just sexual assault victims and not just those with cognitive or linguistic challenges. Clear and direct communication is usually better for all of us.

### **Pause After Asking Each Question**

It is critical to pause after asking each question, allowing victims time to respond. This is the exact opposite of how many law enforcement investigators are taught to interview and interrogate suspects, which is to not allow any breaks in questions or speech. because they could use the time to formulate an evasion or a lie. When interviewing victims of crime, the strategy is very different. They should be provided plenty of time to process questions and respond, so their brains can do the difficult work being asked of them (Graffam Walker, 2005).

Some have suggested that victims with an intellectual disability should be given at least 30 seconds to respond to an instruction or question (Office for Victims of Crime, 2008). These pauses actually serve two different functions; they allow speakers time to produce a thought and they allow listeners time to process what they heard (Graffam Walker, 2005). If the victim does not respond after a sufficient pause, or responds inappropriately, the question can be patiently repeated using different words (Office for Victims of Crime, 2008).

### **Reduce Pressure to Answer Questions**

In her *Handbook*, Dr. Graffam Walker (2005) describes how children often provide an answer to a question, even if they do not understand the question or have no actual knowledge of the answer. Yet even for adolescents and adults, there is a considerable amount of pressure when questions are being asked by a law enforcement officer.

Regardless of their age or abilities, many victims are afraid they are making a mistake or will be judged negatively if they say they don't know the answer to a question. The sad truth is they are right; victims *are* often judged negatively for failing to answer a question or not knowing certain information. This may be particularly true for victims of sexual assault, who are often concerned that they will not be believed or will be blamed for the assault. In addition, people who are dependent on others may not feel they have a right to say they don't understand something or to ask questions, if they have any.

Investigators should therefore work to diminish this pressure and address such fears, both to protect the victim's well-being and also to increase the likelihood of gathering accurate information. For example, you can begin by informing victims that they may be asked some questions that they don't know how to answer. Victims should be clearly advised that it is appropriate for them to say, "I don't know" or "I don't remember."

At the same time, victims must be cautioned against guessing. Investigators can reassure victims that they might not know the answers to all of the questions but remind them that the purpose of the law enforcement interview is to obtain as much accurate information as possible. Guessing can interfere with that goal.

During the course of the interview, investigators can also strive to avoid asking several questions in a row that the victim doesn't know how to answer. If the victim doesn't know the answer to two consecutive questions, for example, you can ask a third question that you suspect the victim will know how to answer.

### **Clarify How the Victim is Using Specific Terms**

The specific words used during an interview can create serious misunderstandings, if investigators and victims believe they are using a word to mean the same thing when they are not. This is often seen in child abuse investigations, where victims and their families frequently use very unique terms to describe private parts of the body and private acts such as going to the bathroom or engaging in sexual activity.

Fortunately, the solution is relatively straightforward; investigators should ask victims what they mean when they use specific terms. Often, it will become very clear, quite quickly, when the victim's understanding of a term is not the same as the interviewers.

Dr. Nora Baladerian, an expert in the field of disability and sexual victimization, provides several examples where such strategies were critical to gathering accurate information:

*One of my clients, when describing the sexual assault, he experienced, identified a [transportation provider] and abuser as his 'advocate.' When specifically questioned about his definition of 'advocate' he stated: 'An advocate is the person who prays and has sex with you.' In fact, the abuser was not his official advocate, but an individual who had learned the language of the disability world and self-selected a role identification unlikely to be uncovered. In another case, the victim reported that the abuser 'took her picture.' When questioned more fully, the victim described the man's penis as the camera which he used to take a picture inside the victim (Baladerian, 1998a, p. 25).*

As these examples illustrate, it can be a very serious mistake for interviewers to assume that we all use and understand terms in the same way. Graffam Walker (2005) offers specific recommendations for exploring how victims use and understand certain terms:

- 'Tell me what you think a \_\_\_\_\_ is?'
- 'What do you do with a \_\_\_\_\_?'
- 'What does a \_\_\_\_\_ do?' (p. 92)



However, the author also cautions not to expect an “adult-like answer” even from children who know what a particular word means:

*The inability to define, for example, ‘wind’ does not mean that the person does not know what the wind is. Definitions require a linguistic skill*  
(Graffam Walker, 2005, p. 92).

She goes on to describe similar problems for words that often arise in sexual abuse cases but are difficult for children to understand or express in a consistent way. To illustrate, the word “touch” may be defined solely to being touched by a hand, leading to examples such as the following:

*One 5-year-old, when asked if she had been touched in the shower said, No, she had just been ‘washed’ – on her ‘private, everywhere’* (Graffam Walker, 2005, p. 11).

Another example provided by the author is the word “move,” which has a number of different meanings. This can pose challenges if children do not recognize that it includes more specific lower-order words such as “wiggle,” “poke,” or “push/pull” (Graffam Walker, 2005, p. 33). Such concepts are likely to require clarification among child victims, just as they are among adolescents and adults who have cognitive or linguistic challenges. Once the victim’s meaning and use for certain words have been established, they should then be used by the interviewer to increase the likelihood of consistent understanding.

### **Watch for Misinterpretation**

Graffam Walker (2005) describes a general strategy to avoid problems with misinterpretation among children, but we believe it will work equally well for all victims of crime:

*Be alert for possible miscommunication. If a child’s answer “seems inconsistent with prior answers, or doesn’t make sense to you, check out the possibility that there is some problem (1) with the way the question was phrased or ordered, (2) with a literal interpretation on the part of the [victim], or (3) with assumptions the question makes about the child’s linguistic / cognitive development or knowledge of the adult world* (p. 91).

The author also provides an example that illustrates this point. For example, a preschooler might say “No” to the question: “Did you have your clothes on?” As a result, the interviewer will likely assume the child was wearing nothing at the time. However, the child may have answered “Yes” if the question was asked: “Did you have your pajamas on?” (Graffam Walker, 2005, p. 93). For children and others who interpret language quite literally, it is always worth considering how the language of the question might be altering their understanding and response in ways that are not self-evident.





## Prevent and Clarify “Inconsistencies”

Any of the issues summarized here could potentially lead to perceived inconsistencies in the statements given by children. Yet such perceived inconsistencies are often due to the *language* of a child’s statement, rather than a fundamental inconsistency in the child’s understanding or recollection of events (Graffam Walker, 2005). The same is likely to be true for adolescents and adults, particularly those who have cognitive or linguistic impairments.

Unfortunately, any perceived inconsistency can be extremely damaging to the credibility of victims, regardless of their age or cognitive and linguistic abilities. The strategies summarized here, and presented in Graffam Walker’s (2005) *Handbook*, can therefore be used to prevent such problems or deal with them proactively when they arise.

For example, one potential source of trouble can be the difference in how children understand categories. This was illustrated with the sample of “clothes” versus “pajamas” in the previous section. Another example was also provided by the author:

*The child who denies going to a man’s house, but later says she went to his apartment (Graffam Walker, 2005, p. 11).*

Similar problems can be seen with children’s use of the words “same” and “different,” because “same” can be interpreted as either “identical” or “similar” (Graffam Walker, 2005). Often such perceived inconsistencies can be clarified by evaluating the victim’s understanding of the questions being asked and seeking clarification with follow-up.

## Assess the Victim’s Understanding

Because the goal is to obtain accurate information from crime victims, an essential task for investigators is to ensure they understand the questions being asked. All too often, this is done by telling victims to speak up if they do not understand something or asking victims: “Do you understand?” Yet this is not a good way to evaluate actual understanding (Graffam Walker, 2005).

Like children, most adults typically assume we have understood something if we can generate an interpretation of what has been said (Graffam Walker, 2005). However, the problem is “we don’t know what we don’t know.” Just because we can generate an interpretation of something that was said doesn’t mean this is what was actually meant by it. We may have misinterpreted what was said, and we frequently fail to recognize when a question or statement is actually missing information or is structured in a way that does not make sense (Graffam Walker, 2005). For example:

*Even college-age students have been fooled into thinking that typical lawyers’ questions were easy to understand when in fact they were not*



(Perry, Claycomb, Tam, MacAuliff, Dostal & Flanagan, 1993; cited in Graffam Walker, 2005, p. 15).

Perhaps even more important, we do not generally like to admit that we don't understand something, "particularly if the atmosphere is forbidding and formal, as courts and other forensic environments are apt to be" (Graffam Walker, 2005, p. 60).

The author goes on to describe a number of better strategies, including a direct assessment of the child's understanding:

*'I want to be sure I said that question the right way. So, what do you think I asked you?'*

*'There was a hard word in that question. What do you think [X] means?'*  
(Graffam Walker, 2005, p. 60).

Then, to make sure the child is not simply repeating a response from memory, you can follow up with an additional prompt:

*'Can you say that in different words?'* (Graffam Walker, 2005, p. 61).

This type of strategy will give you a far better sense of what the victim actually understood from the question you asked and explore how the question was interpreted.

### **Frame Topics and Indicate Transitions**

Another helpful strategy is to "frame" the questions being asked, and the information being addressed. This is similar to what we do in this training module with section titles, headers, paragraph breaks, and transitions. Our goal is to help you understand what subject is currently being addressed and notify you when the topic shifts.

Unfortunately, we often fail to provide such framing during interviews, which can leave victims confused about what topic is being addressed or why the focus has shifted.

Q. *'Do you like school?'*

A. *'Yeah.'*

Q. *'You do. Well, that's good. Um, do you know the difference between the truth and a lie?'* (Graffam Walker, 2005, p. 16).

When you first ask about a topic, it is best to begin by grounding victims, so they understand what you will be asking about. For example, if you are asking about an event in the past, the author provides some sample phrases you can use:

*'I want you to think back to...'*



*'Make a picture in your mind...'*

*'I'm going to ask you some questions about...'* (Graffam Walker, 2005, p. 93).

Then if your questions are going to shift to the present, or to address another subject, you can help the victim change their focus by making that transition clear. For example:

*'All right. We just talked about X. Now I want to ask you about something different'* (Graffam Walker, 2005, p. 51).

If you are unclear about a response, you can prompt the victim to help clarify:

*'I know you told me about X, but I'm a little mixed up. Would you tell me about that some more?'* (Graffam Walker, 2005, p. 16).

Alternatively, if you want to keep victims focused and avoid a detour to another topic, you can use another framing question suggested by the author:

*'O.K. We'll talk about that in a minute. Right now, let's just talk about...'* (Graffam Walker, 2005, p. 16).

This type of framing helps victims orient themselves to the questions being asked and change their focus as needed. It can also prepare them to return to a subject that has already been discussed (Graffam Walker, 2005).

Many investigators learn the hard way that you can eventually get an answer from victims if you keep asking the same question over and over again; it just may not be the right one. In this scenario, some victims will provide an answer just to get you to stop asking. Others will assume the question is especially critical, since you keep asking it, so they will do their best to give you an answer, even if they have to guess. As with children, adolescents and adults may be afraid that their initial answer was "wrong" or that you didn't believe them (Graffam Walker, 2005). Fortunately, this problem can be avoided rather easily. If you are going repeat a question, acknowledge this fact and explain the reason why. The explanation does not have to be complicated:

"I know I asked you this before, but I want to make sure I got it right.  
Where were you sitting?"

### **Provide a Frame of Reference**

A related purpose of framing is to help victims provide information that is relevant to the investigation, by narrowing the range of possible topics to focus on pertinent details. This problem is seen with overly broad questions, such as "Did anything happen?" or "What happened?" (Graffam Walker, 2005, p. 63). The author illustrates this point:



*Adults would have the same problem if they were led to a window, shown a scene outside and asked, 'What's there?' Knowing how to answer would depend on knowing what was important to tell, which in turn would depend on understanding the context of the question and the needs of the hearer (Graffam Walker, 2005, p. 63).*

As an example, rather than asking a general question ("What did the man look like?"), a better option might be to ask: "What color was the man's hair?" (Office for Victims of Crime, 2011, p. 27).

### **Avoid Asking About Abstract Concepts**

In general, Graffam Walker (2005) recommends not asking children questions about abstract concepts such as what constitutes love, or the truth, or the difference between the truth and a lie. "What if" scenarios should also be avoided.

Instead, ask simple, concrete questions that apply to the victim's own experience. For example, the author offers the following example for assessing a child's ability to distinguish between truth and a lie:

*'I forgot. How old are you?' (Pause) So if someone said you are \_\_\_\_\_, is that the truth, or a lie?' (Graffam Walker, 2005, p. 92).*

This is a better way of evaluating the question than asking it directly to victims.

### **Distinguishing the Truth from a Lie**

In fact, this concept of determining whether children can tell the truth from a lie is such a critical one, Dr. Graffam Walker (2005) dedicates a specific section of her book to addressing it. The bottom line is this: Children should not be asked whether they can articulate the difference between the truth and a lie, but whether they can demonstrate it. If they are provided age-appropriate questions or tasks designed to elicit such a demonstration, the research suggests that "children even younger than 5 could be expected to qualify as competent" (Graffam Walker, 2005, p. 59).

### **Do Not Evaluate Capacity Using Rote Memory**

During the course of the law enforcement investigation, the more central determination is whether the victim has the cognitive ability to legally consent to sexual activity. The first step in this process is to evaluate the victim's general capabilities and functioning.

For many years, officers have been trained to evaluate a person's cognitive ability by asking questions such as whether they know the letters of the alphabet or the days of the week. Yet Graffam Walker (2005) cautions that people can often answer this



question using rote memory. For example, if we are asked what letter follows “O,” we can think or say “L,M,N,O,P...” to help ourselves recall the answer.

The author explains that this is because things like the alphabet or days of the week are stored as rote memory; they are learned through repetition and do not require any understanding of their meaning. This means they are an ineffective way to judge a person’s intellectual capability:

*Knowing the alphabet has little relationship to the ability to spell; counting from 1 to 10 has even less relationship to the ability to gauge the frequency of an event (Graffam Walker, 2005, p. 18).*

To illustrate, a 21-year old victim with Down’s Syndrome might be able to recite the days of the week, or the months of the year. However, the concepts might have no relation to her everyday life; anything that is scheduled to take place in the future might be referred to as happening on “Wednesday.”<sup>43</sup>

Graffam Walker (2005) reminds us that memorization of such cultural lists only indicates that we have acquired the vocabulary to do so; no other significance may be attached to it. Additional recommendations for evaluating a victim’s capacity appear in other sections of the module, both in terms of the initial response as well as the formal evaluation of capacity to consent.

### **Establish a Timeframe for the Crime**

When interviewing a victim who has a cognitive disability, it can be a challenge to establish a chronology and time frame for when the crime was committed. Graffam Walker (2005) reminds us that this task requires one of the most significant advances we make when acquiring language – differentiating linguistically between what is happening in the present and what happened in the past (citing Brown, 1973).

To illustrate, the author describes how many children only have a real conceptual understanding for the present (“today”). “Yesterday” may refer to anything that happened in the past, and “tomorrow” may be anything in the future (Graffam Walker, 2005). Yet this is not the only conceptual and linguistic advance required to establish a timeframe. Other skills required to accomplish this task include the ability to monitor one’s own speech for mistakes, evaluate whether the other person understands what is said, and use pronouns and other linguistic means to indicate chronological order, the passage of time, and even cause-and-effect (Graffam Walker, 2005).

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<sup>43</sup> This example is taken from the novel, *Just Like Other Daughters*, by Colleen Faulkner (2013). Available from Kensington Books, New York, NY.



*Until all of these abilities are acquired – sometime in the teen years (Labov, 1972; Whitehurst, 1976) – children’s narratives tend to be incomplete and disorganized by adult standards (Graffam Walker, 2005, p. 19).*

The author notes that this is a particular problem within the criminal justice system, because “incomplete and disorganized” narratives are harder to evaluate in terms of believability – and believability is the crucial test victims face during an investigation and prosecution (Graffam Walker, 2005). The same dynamics may operate when the victim is an adolescent or adult who has cognitive or linguistic challenges.

A better strategy for helping victims to establish a timeframe (and other details, such as location) is to ask about familiar knowledge or concrete events that can be related to the missing information. Graffam Walker (2005) provides some examples that could be used, including “breakfast time, if school was out, what was on T.V., where it happened, what the child had on, where mom was, and so on (p. 56).

### **Do Not Expect Reliable Estimates**

Similar strategies can be used for eliciting estimates for time, speed, distance, size, height, weight, and color. Graffam Walker (2005) cautions that young children cannot be expected to give reliable estimates in such domains, and indeed, that the ability of adults to do so has been “vastly overrated” (p. 94).

We couldn’t agree more. There is a wealth of psychological research demonstrating the lack of reliability in people’s abilities to make such estimations. It is therefore not only unwise but unfair to ask victims to provide such information and expect it to be accurate. When their estimates are called into question, this will undermine their credibility.

A better strategy is to help victims base their estimate on concrete events or objects, as well as other shared, objective reference points, whenever possible. Follow-up questions are also important, to ensure accurate understanding.

### **Establishing Penetration**

Another significant challenge often faced when investigating a sexual assault is trying to establish whether sexual penetration occurred. As with children, many victims who have cognitive impairments or limited English do not have the ability to provide an accurate response to this question. This can be true for a number of reasons. On a linguistic level, victims may not have an accurate understanding of the preposition “inside” and/or they may not understand how the concept is being used in relation to the incident being discussed (Graffam Walker, 2005).

Another question that is impossible for most victims to answer, regardless of their cognitive or linguistic abilities, is “how far” something went inside them. Most victims simply do not know the answer to that question, and it is legally irrelevant because “no



jurisdiction requires more than slight penetration” (Tracy, Fromson, Long, & Whitman, 2012, p. 16).<sup>44</sup>

It is therefore important for law enforcement investigators to talk with local prosecutors and forensic examiners to determine how best to establish “penetration, no matter how slight.” This is important for prosecutors, because the determination is critical for charging decisions. Forensic examiners also need to know, because it informs their examination and helps them to provide appropriate medical care and follow-up.

However, keep in mind that a medical forensic examination may not be the only way to gather evidence of sexual penetration. Depending on case facts, there might be probative evidence that can be collected from the victim’s clothing or crime scene, as well as the suspect’s body or clothing that can corroborate penetration or other sexual acts. In other cases, there may be no evidence other than the victim’s statement to corroborate sexual acts. This is not uncommon. Yet investigators can sometimes become so focused on establishing the elements of the crime they forget that some questions are impossible for any victim to answer, regardless of how they are asked.

Also, depending on the jurisdiction, some charges may not require establishing penetration. This can include charges of child molestation as well as sexual abuse perpetrated by a caregiver. In these cases, sexual contact may be sufficient to form the basis of the charge, regardless of whether penetration was committed or proven.

#### **Resource: DNA**

The OLTJ training module entitled: [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#) explores the complex role of DNA and other biological evidence in a sexual assault investigation. A number of resources and tools are provided, along with a series of complex and interactive case examples.

The OLTJ training module entitled: [Crime Scene Processing and Recovery of Physical Evidence from Sexual Assault Scenes](#) provides guidance on crime scene processing, a systematic, meticulous, and scientific process that law enforcement investigators should employ in every major criminal investigation.

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<sup>44</sup> The authors go on to provide additional guidance on the legal definition of sexual penetration: “Slight penetration is achieved when the penis or other body part/object enters either the anterior of the female genital organ known as the labia majora or vulva, the lips of a victim’s mouth, or the anal opening. Penetration has also been established by the act of licking a penis. Significantly, penetration through clothing has also been held sufficient under federal law. At least one court, however, has determined that penetration of the buttocks is insufficient to establish sexual intercourse. There is also persistent confusion among individuals (e.g., victims) over what constitutes penetration of the vagina, anus, or mouth. No jurisdictions require emission” (Tracy et al., 2012, p. 16).



## Use Clear Descriptive Terms

Prepositions may seem like simple words, but a person must have full command of their use in order to talk about where things are or when events took place (Graffam Walker, 2005). As a reminder, prepositions are words or phrases that link nouns, pronouns, and phrases to other words in a sentence. They can be used to indicate a temporal, spatial, or logical relationship of an object to the rest of the sentence. For example:

- The book is on the table.
- The book is beside the table.
- He read the book during class.
- She threw the book without concern.
- Books were found throughout the house.
- This book is about science.<sup>45</sup>

Graffam Walker (2005) describes a number of problems that children have with understanding and using prepositions, and many of the same concerns could be seen among people with cognitive disabilities or limited English. For example, the author describes confusion between words with related concepts, such as “above” versus “on,” or “in” versus “between.” Also confusing can be phrases like “at the bottom of,” “in front of,” “ahead of,” and “behind,” when talking about space (“Was she walking behind you?”). This type of spatial confusion can even carry over to action verbs, such as “come” versus “go,” and “bring” versus “take” (Graffam Walker, 2005, p. 28).

While they are not prepositions, other words can pose similar problems if they only have meaning relative to some reference. Examples include “big” and “small,” “tall” and “short,” “fast” and “slow,” etc. Such words also frequently have more than one meaning, making them even more likely to cause confusion. For example, “big” could mean “broad, tall, fat, heavy, older, [or] grown-up” (Graffam Walker, 2005, p. 30). Relative concepts of time can be equally confusing: “before” versus “after,” “recent” versus “later,” etc. (Graffam Walker, 2005). The author thus concludes with this suggestion:

*The fewer the pronouns, the better* (Graffam Walker, 2005, p. 68).

Whenever possible, we recommend that concrete descriptive terms should be used instead. For example, instead of asking a victim, “Did you go with John?” you could ask, “Did you ride in the car with John?” or even, “Who was in the car?” Concepts can also be clarified by using some shared reference point: “Was John taller than me?”

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<sup>45</sup> Information on prepositions was drawn from two websites: the [University of Ottawa](http://www.uottawa.ca) and [Wikipedia](http://en.wikipedia.org).



Gestures, body movements, and props can also be used in some situations to communicate the orientation or relative size of objects, and even the sequence of events. When appropriate, you can even ask victims to “show you” what they are trying to say, using their own hand gestures, body movements, or props.

### Use Concrete and Proper Nouns

As with prepositions described above, children also frequently have trouble with pronouns and other words that have nothing close by to refer to (Graffam Walker, 2005). Examples include: “I,” “him,” “that,” “here,” “there.”

*The problem with these words is that they are ambiguous, and their meaning depends on who is using them (Graffam Walker, 2005, p. 26).*

The author cites this example: “When he got to school, was John late?” (p. 27) To understand this question, victims would have to recognize that the pronoun (“he”) and the following noun (“John”) both refer to the same person. For children, this type of recognition is not typically demonstrated until the middle school years. It may therefore be seen among individual victims – or not – depending on their specific cognitive and linguistic abilities (Graffam Walker, 2005). To prevent such problems, it is best to use concrete nouns and proper names whenever possible and avoid the use of pronouns. Another example is even more confusing: “He showed you on his head where he was hurt, didn’t he?” (Graffam Walker, 2005, p. 27). In this example, the author explains that the pronoun “he” is used to refer to two different people, and this can be difficult for even highly functioning adults.

Again, this problem can be avoided by using concrete nouns and proper names, even if it requires using them more than once in a sentence: “Did you and John walk to John’s house?” When talking about places, you can avoid “here” and “there,” and instead name the specific place (“the living room,” “the car”). If you use words like “that,” Graffam Walker (2005) cautions that you should:

*Be sure they refer either to something you can physically point at, or to something in the very immediate (spoken) past, such as in the same sentence, or in the last few seconds (p. 92).*

Then check in frequently with victims to see if the two of you are talking about the same thing when you use a pronoun or other term with a reference that could be unclear:

- Q. “Where was John?”
- A. “He was still there.”
- Q. “John was in the living room?”
- A. “Yeah, in the living room.”



While this type of repetition might feel awkward in regular conversation, it can help a great deal during interviews to ensure accurate communication with victims. Again, this is true not just for children and people with cognitive disabilities but also those with limited English, and any victim of crime or person experiencing trauma.

### **Avoid Both “How” and Why”**

Graffam Walker (2005) explains that “why” questions are inappropriate for children, both because children typically lack the skills needed to answer them correctly and also because they put children on the defensive. Similarly, “how” questions may require skills most children do not possess in order to answer accurately. Other questions may use different words but pose the same sort of problems for many victims. For example:

*‘Do you have any idea what was going on?’*

*‘What made you do that?’* (Office for Victims of Crime, 2008, p. 28).

Such questions can confuse victims and cause distress for people whose thinking is primarily concrete. Graffam Walker (2005) suggests that a better strategy is to:

*Shift from the abstract ‘how’ to a concrete, action-oriented ‘Show me what he did,’ when appropriate* (p. 62).

Similar guidance should be followed for adolescents and adults as well, and not just those with cognitive or linguistic challenges.

### **Never Say “Never” ... or “Always” ...**

When seeking to evaluate their competency as witnesses, Dr. Graffam Walker (2005) describes how it is not uncommon for children to be asked questions like the following:

*‘Do you always tell the truth? And you never tell a lie?’* (p. 28).

Such questions practically beg an incorrect answer, even from adults (Graffam Walker, 2005). For people who have cognitive or linguistic challenges, they are likely to be particularly unhelpful.

*Research has shown that young children make no distinction between ‘always’ and ‘never’ as well as the words ‘any’ and ‘ever.’ This includes compounds such as ‘anything,’ ‘anyone,’ and ‘anywhere’ because questions with these words require the person asked to search through all past experiences before they can honestly and accurately respond* (Graffam Walker, 2005, p. 28).



Similar problems are seen with words such as “some” and “all” (Graffam Walker, 2005). A better strategy is to use concrete nouns and other techniques summarized here.

### **Don’t “Think” or “Guess,” ... Even “Believe”**

The words “think”, and “guess” are both commonly used to evaluate children’s competency and understanding. For example: “Do you know that, or do you just think that?” (Graffam Walker, 2005, p. 32). Yet both words can be problematic and might lead to inaccurate and or inconsistent statements. The same is true about questions about belief, such as: “Do you believe that to be true?” (Graffam Walker, 2005, p. 92).

Such terms can be avoided by remaining focused on questions that are asked in a concrete way and allow victims to respond based on their own personal experiences and observations. To illustrate, instead of asking, “Do you *think* her dress was blue?” or “Do you *believe* her dress was blue?” you can ask, “What color was her dress?”

### **Clarify “Let” Versus “Make”**

The word “let” implies permission, whereas “make” implies coercion. Yet the two words can be easily confused: “She let me do it,” versus “She made me do it” (Graffam Walker, 2005, p. 33). When victims use such words, you may need to follow up with additional questions to clarify what they mean and/or have them demonstrate in some way, to ensure that you accurately understand what they are trying to tell you.

### **“Neither,” “Either,” “Another,” or “Each”**

Similarly, words such as “neither,” “either,” “another,” and “each” can be described as “quantifiers,” which we use to talk about sets of things:

*‘Did either/neither of you get hurt?’*

*‘Did she give each of you a present?’*

*‘Was there another person there?’* (Graffam Walker, 2005, pp. 33-34).

Again, such words can be confusing and are best replaced with more concrete terms, even if it means taking the question apart and asking the components separately:

*‘Did you get hurt? Did Sarah get hurt?’*

*‘Who got a present?’*

This problem can show up in a common courtroom scenario described by the author, when judges or attorneys ask children questions like this:



*'Has anyone promised you anything for coming here today?' (Graffam Walker, 2005, p. 35).*

If such a question is necessary to clarify whether anyone offered the victim inducements for testifying, a better way to ask the question is more like this:

*'Did someone tell you that you'd get (a treat / something special / to do something fun) for coming here today?' (Graffam Walker, 2005, p. 35).*

### **Be Careful With “Promises”**

The word “promise” has been described as “a tricky verb” (Graffam Walker, 2005, p. 34). The author explains that, linguistically, it changes the conventional order of subject, verb, and object in a way that is difficult for children to follow until about age 10. For example, it is not uncommon for attorneys to ask a child: “Will you promise me to tell the truth?” However, children may easily be confused by who is promising to tell the truth, “you” or “me” (Graffam Walker, 2005). The author provides an example of this:

Q. *'Promise me to tell the truth.'*

A. *'I'm sure you will!' (Richardson, 1989; cited in Graffam Walker, 2005, p. 35).*

According to Graffam Walker (2005), it is better to ask a question like this:

*'Will you promise to tell the truth?' (p. 35).*

In addition, the use of the word “will” before “promise” has been found to inspire a stronger sense of responsibility to tell the truth among some children (Lyon, Kaplan, Dorado, & Saywitz, 1999; cited in Graffam Walker, 2005, p. 35). It is possible that the same general principle will hold true for other victims as well.

### **Avoid the Word “Story”**

Avoiding the word “story” is a recommendation we offer for all sexual assault victims, not just those with cognitive or linguistic limitations. Graffam Walker (2005) notes that this word has two meanings – both a narrative account of an event as well as a fiction. Adults can consider both meanings, but when children use the word “story” adults are likely to hear only that they are referring to a fictional account (Graffam Walker, 2005). The same connotation may carry over for any victim of sexual assault.

Depending on the context, this word can simply be avoided if victims are asked in more concrete terms to describe an event. For example, rather than asking victims to “tell their story,” you can provide a prompt: “Tell me what happened.” Alternative terms that can be used include the victim’s “account,” “statement,” “experience” or “description” of events.





## To Remember ... or Forget

Another word or phrase used frequently in interviews is: "Do you remember...?" Yet Graffam Walker (2005) cautions that children do not understand this word in the way adults do until they are about 8 or 9 years old (Abbeduto & Rosenberg, 1985, Johnson & Wellman, 1980; Saywitz, Jaenicke, & Camparo, 1990; cited in Graffam Walker, 2005, p. 36). As with children, adolescents and adults with cognitive disabilities may not understand that one can "remember" something without having first "forgotten" it. As a preschooler explained, when he was asked why he didn't remember a particular event:

*'Because I didn't forget yet, so I still know it'* (Graffam Walker, 2005, p. 36).

It can also be confusing to interpret responses to questions that begin with the phrase, "Do you remember?" Graffam Walker (2005) illustrates this with an example:

Q. *'Do you remember telling T.J. that Harv pulled Doug's shirt up and dug at his eyes with a spoon?'*

A. *'No'* (p. 47).

In this example, the child's answer could have indicated that she did not recall the event, or that any component of the narrative description was untrue. However, in this instance, it meant, "I don't remember what you said" (Graffam Walker, 2005, p. 48).

Once again, the solution is rather straightforward. Questions should ask victims directly about their own experiences and observations, not indirectly on what they "remember." To illustrate, instead of asking, "Do you remember what color his hair was?" you can ask, "What color was his hair?"

## Preparing for Courtroom Testimony

As we conclude this section, we want to say a few things about helping victims prepare for the daunting prospect of testifying in court. When a case is headed for trial, it is difficult to overstate the stress and anxiety this can create for any victim of sexual assault. Programs have been developed to help children to prepare for it, but we would like to see similar programs for adults and adolescents with cognitive disabilities.

*A growing body of research suggests that children are more accurate and complete in their responses to evidentiary questions when they have been familiarized with the questioner, the setting, the language, and the customs of the legal world they are about to enter (Saywitz & Snyder, 1993; Saywitz, et.al. 1993) (cited in Graffam Walker, 2005, p. 22).*

The same is likely to be true for adolescents and adults who have cognitive disabilities or limited English. This population of victims could therefore be helped considerably with



an initiative such as the “Kids in Court” programs offered by many child advocacy centers. The objectives for such a program are to teach victims relaxation skills, provide education about the court process and their rights, and familiarize them with the courtroom. Ultimately, the goal is to increase their ability to participate effectively in court proceedings by reducing anxiety and expanding their toolbox of personal skills.<sup>46</sup>

## Obtain a Current Assessment of the Victim

After completing the detailed, follow-up interview(s) with a victim who has a cognitive disability, it will often be necessary to obtain a clinical assessment before the case is presented to a prosecuting attorney for charging. This will require working with disability experts and other community professionals, because family members will often be unable to provide a current assessment. Often, adolescents and adults who have a cognitive disability, especially an intellectual disability, have never been formally evaluated or if they have, the assessment occurred years earlier, so their families do not have current medical information or a current evaluation.

To identify an expert to perform this service, try contacting disability organizations such as the [ARC of the United States](#) (formerly known as the Association for Retarded Citizens of the United States). Child or Adult Protective Services may also be able to provide assistance. In addition, many university psychology and special education programs have faculty who are experts in cognitive disabilities such as intellectual disabilities. Because they are often expected to provide some form of public service, they may be able to offer their services for little or no cost to law enforcement agencies. You can also contact the local United Way for information on any local resources that may exist.

Finally, each state has [University Center for Excellence in Developmental Disabilities \(UCEDD\)](#). These centers, which were authorized by the Developmental Disabilities Assistance and Bill of Rights Act of 2000, have mandated functions that include training, technical assistance, information dissemination and research. Many UCEDD’s across the nation are also involved in research as well as providing community supports and services (McAfee, 2002).

Professionals from organizations such as these may even serve as expert witnesses to help enhance the effectiveness of a victim’s testimony. For example, they may be able to help judges and juries understand how a victim with an intellectual disability might perceive events, perceive and answer questions, react to trauma and stress, and communicate. They may even be able to testify about the habits or routines of individuals commonly seen among persons with a particular disability – to support evidence of a particular habit or routine or show that a victim has personal knowledge of the events about which he/she will testify (Roper & Ace, 2002).

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<sup>46</sup> For one example, see the [Kids and Teens in Court Program](#) offered by the Chadwick Center for Children & Families in San Diego, California. The description here is adapted from their website.



## Information on Specific Disability Types

In this section, we explore other specific disabilities victims may have. We begin with a brief description of Alzheimer's Disease. Like victims who have an intellectual disability or other cognitive disability, Alzheimer's Disease could impact a person's capacity to consent to sexual activity. Many of the same principles we have already described will thus apply to the investigative strategy and interviewing techniques for these victims.

We will then describe several physical, sensory, and communication disabilities, all of which could affect the way professionals interact with the victim during a sexual assault investigation. However, they will not typically affect a person's capacity to consent to sexual activity or determine the legal elements that must be proven. We then conclude this section with some brief information on the topic of mental illness and other disability issues, such as the use of service animals.

Our goal in this section is to help investigators and others interact effectively with a range of crime victims. However, always keep in mind that some people have more than one disability. In fact, you will often be aware of one type of disability when you meet a person – perhaps because the disability is visible or more apparent – but then as you get to know them, you may suspect they have additional disabilities as well. Recommendations from the various sections may therefore need to be adapted, to remain as flexible as possible while seeking to meet the needs of individual victims.

### Victims Who Have Alzheimer's Disease

Like people who have other types of cognitive disabilities, those with Alzheimer's Disease may be disproportionately targeted by sexual assault perpetrators. This is true for many of the same reasons we have previously discussed, including the heightened vulnerability of anyone who is dependent on others for care, the decreased likelihood that someone with a cognitive impairment will disclose any abuse, and the real or perceived challenges these individuals face when providing information and testimony.

The Office for Victims of Crime (2008) does an excellent job describing the basic nature of this disease, and the implications for law enforcement and other professionals:

*Alzheimer's disease is a brain disorder that breaks down the connections between nerve cells in the brain. Among older people, Alzheimer's is the most common form of dementia, a progressive, irreversible condition that is characterized by a loss of mental and cognitive abilities as well as changes in personality and behavior. Outward signs of Alzheimer's disease may not be apparent in a person until the disease reaches its advanced stages. Initially, Alzheimer's causes people to forget recent events and familiar tasks. Gradually, the disease destroys a person's memory and ability to reason, think abstractly, use language to*



*communicate, and perform daily activities. Alzheimer's may also cause mood disturbances, including anxiety, suspiciousness, agitation, delusions, and hallucinations. Eventually, people with the disease are no longer able to care for themselves (p. 18).*

Alzheimer's disease can be seen among people as young as their 30s and 40s, but it more commonly afflicts those who are 65 or older. Most people with Alzheimer's and dementia live at home, although almost one-third live in a caregiving facility and 60% "will eventually wander and become lost" (Office for Victims of Crime, 2008, p. 19). This lack of memory and disorientation often pose particular challenges for law enforcement and other professionals who respond to the needs of people who have Alzheimer's.

### Strategies for Communicating Effectively

Because the dynamics of Alzheimer's Disease can be similar to those of other cognitive disabilities, many of the same recommendations apply for communicating effectively. For example, you should be prepared for victims to have trouble understanding you and making themselves understood. Be patient and repeat yourself as often as needed. Do not challenge their logic or reasoning (Office for Victims of Crime, 2008).

You can also implement many of the specific interviewing techniques described for victims who have intellectual disabilities. For example, nonverbal communication such as pointing, and gesturing can be helpful when verbal communication is not working effectively. As always, treat victims with dignity and respect, because the impairments in their cognitive abilities do not mean that they are without feelings (Office for Victims of Crime, 2008).

### Identifying Victims and Locating Caregivers

However, some recommendations are unique for people with Alzheimer's, because they are so often found "wandering," lost, and/or without identification. The Office for Victims of Crime (2008) provides guidance for this situation:

*Request to see identification if you suspect that victims have Alzheimer's Disease. In addition, notice if victims have a Safe Return® bracelet, necklace, lapel pin, key chain, or label inside their clothing collar. Safe Return identification provide the first name of a person wearing this ID, indicates that he or she has a memory impairment, and gives the 24-hour, toll free number for the Alzheimer's Association Safe Return program. This program is a nationwide participant registry that contains the full name of the registrant, a photograph, identifying characteristics, medical information, and emergency contact*

#### **SARRT Tip:**

Promote the use of the Safe Return program among family members and caregivers for people who have Alzheimer's Disease. Advise loved ones that wandering is a life threatening behavior, and their loved one can be registered with the program using the nonemergency number for the program: 1-888-572-8566.



*information. When you call the program's incident line at 1-800-572-1122, a Safe Return clinician will contact the registrant's caregivers (p. 19).*

If this does not work, and family members or caregivers cannot be located, emergency shelter will be needed. Contact your area's Agency on Aging, the local chapter of the Alzheimer's Association, or other social service providers that can provide assistance.

For more information, or to locate the closest chapter of the Alzheimer's Association in your community, visit the website or call the national office at 1-800-272-3900.

## When the Victim has a Physical Disability

There are many types of physical disabilities; some are life-long, some are acquired, some are temporary, and some are age-related. There are also a wide range of disabilities that may impact a person's physical functioning. For example, a person with a physical disability may have difficulty with mobility, eye-hand coordination, stamina, speech, body functions, and/or executing specific tasks. Some examples of physical disabilities include cerebral palsy, spina bifida, advanced osteoporosis, severe stroke, and multiple sclerosis. As described above, physical disabilities typically have no effect on a person's capacity to consent to sexual activity. However, they can render a person more vulnerable to exploitation and abuse, as reflected in the higher rates of victimization presented at the beginning of this module. They may even leave the person completely immobile.

Physical disabilities can also influence a person's ability to meaningfully participate in the law enforcement investigation and criminal prosecution of a sexual assault. For example, people who have a physical disability may require certain accommodations to access government buildings such as the police department, courthouse, etc.

### Accessibility and Assistance

Some people with physical disabilities use assistive devices to help them with basic needs (such as dressing or clasping items). Such devices may not generally be seen by anyone outside of the home. However, other people use mobility devices to get around, and these are more likely to be visible to others – so they may seem more familiar to many of us. Common devices include wheelchairs (whether manual or power), canes, braces, crutches, and walkers. Some people even use electric scooters or Segways®, and more advanced technologies will likely be invented in the future to improve the mobility of people who have physical disabilities (US Department of Justice, 2014b).

#### **SARRT Tip:**

Identify locations in your community that are accessible to people with physical disabilities that can be used for meetings or interviews.

Under the ADA, people with physical disabilities who use such mobility devices must be allowed in any public area of a governmental agency (as well as businesses and





nonprofit organizations that serve the public). The exception would be if there were legitimate safety requirements that could not be met. In that case, the agency is obligated to provide their services to the person in another way, if possible (US Department of Justice, 2014b).

For victims of sexual assault who have a physical disability, it is critically important to ensure that the location of any meetings or interviews will be accessible. This includes not only the building itself, but also the room where the meeting will take place, the restroom, water fountain, hallways and parking lot. In addition, make sure you know the location of any wheelchair ramps, accessible restrooms, and elevators in advance, so you can direct the person to these facilities if necessary (New Mexico Coalition, n.d.). It is also important to consider any possible obstacles in the environment, such as shrubs or accumulated snow that can block sidewalks, keeping a person with a physical disability from getting in the front door.

As mentioned previously, the best way to know if victims need any assistance – and what specific kind of assistance they might need – is to simply ask them. People with disabilities usually know what they need help with, and what they can accomplish without any assistance. Therefore, it is best not to assume that someone needs help. Typically, none of us want to be the focus of unwanted attention and we all want to have control over our bodies and our lives to the extent possible.

Also, in terms of etiquette, a person's wheelchair or other assistive device is considered an extension of the person and should not be touched without permission. If you accidentally bump into someone's wheelchair, you should excuse yourself the same way you would if you bumped into a person's body.

### Resource: Expert Interview

In this [video interview](#), Shirley Pacey explains how important accessibility is when investigating sexual assault against people with disabilities.

### Items with Evidentiary Value

In most crimes perpetrated against a person with a disability, the victim's mobility device or communication aid will not constitute crucial evidence. For example, latent fingerprints discovered on such an item would only be used to identify an unknown perpetrator, but the vast majority of sexual assaults are committed by someone known to the victim. Therefore, the fact that the suspect touched the victim's mobility device or communication aid is not likely to have any significant impact on the case.

In some instances, however, these items *could* have critical evidentiary value. For example, if the case involves a home invasion and sexual assault by a stranger, latent fingerprints could prove crucial in identifying the perpetrator. Blood or semen will likely





be important evidence in any sexual assault case, either to corroborate the use of force and/or to establish the sexual act(s). Thus, in the (relatively uncommon) scenario where the victim's mobility device or communication aid has crucial evidentiary value, law enforcement may need to take possession of it to successfully investigate the case.

When this happens, officers should obviously take every possible step to work with the victim and any support people (including caregivers and loved ones), as well as social service agencies, to ensure that the victim's needs for comfort, mobility, and communication are met. This will include replacing the item immediately, whenever possible, or finding a temporary alternative. Sometimes, this will be a straightforward matter. For example, a victim who uses a cane is likely to have more than one. A wheelchair or walker might be borrowed from a hospital, nursing home, or other health care facility. For victims who use a cell phone or tablet to help with communication, a replacement might be loaned by a friend or family member for a short period of time. However, in some situations, officers will need to work with community-based services to find a solution to meet the victim's needs. During regular weekday hours this is likely to be easier than at night or on weekends. Law enforcement agencies should therefore develop a list of contacts that can be accessed 24 hours a day, 7 days a week. This is a critical task that can be undertaken within the context of a multidisciplinary SARRT.

**SARRT Tip:**

Develop a list of contacts that can be accessed 24 hours a day, 7 days a week, to help meet emergency needs for mobility devices or communication aids.

Another possibility is to process the item in the field, so it can be returned as soon as possible. This could include photographing the item, examining it for latent prints, or collecting biological evidence at the scene. For large agencies, this may not be difficult, but smaller agencies may need to ask for assistance from a larger agency that could perhaps send out a criminalist to examine the item with a high-quality alternate light source or collect potential biological evidence such as blood, saliva, or semen. Again, the goal is to minimize the negative impact on the victim to every extent possible, so critical evidence can be collected while ensuring that the victim is comfortable and retains functional abilities such as mobility and communication. In other words, the goal is the same, but the specific solution may be different in every case, based on the victim's needs and the resources available at the time of the preliminary investigation.

### **Effectively Communicating with People who Have Physical Disabilities**

A number of recommendations are offered by the Office for Victims of Crime (2008), for communicating effectively with people who have physical disabilities. For example:

- When interacting with someone who uses a wheelchair, it is generally best to sit or kneel, so you can speak with the person at eye level. This is especially important when the person has been sexually assaulted, because it avoids the overt display of power suggested when standing over a person. Whatever the



situation, make sure you are not towering over victims or requiring them to strain their necks in order to look directly at you (Office for Victims of Crime, 2008).

- In addition, be considerate when walking with victims who may need extra time. Allow the victim to set the pace. For victims who are in a wheelchair or wheeled cot, be sure to remove any obstacles and open/close doors so they can navigate safely. Ask victims which direction they prefer to face when you are assisting them (Office for Victims of Crime, 2008).

If the interview will be lengthy, victims can be asked if they would like to transfer to a chair, because some people need the change in pressure on their bodies. The person may be more comfortable in a chair, or they may not; offering the choice is ideal. You might say something like: "This could take a while; would you like to transfer to one of these chairs?" If the person prefers to transfer, ask if any assistance is needed. Do not provide assistance unless the person asks for help.

If you normally extend your hand to someone when you meet them, do the same with a person who has a physical disability. If someone only has a left hand (or only the left hand is functional), it is perfectly appropriate to shake the person's left hand. If someone extends a prosthesis, shake the prosthesis. Let people decide whether they want to shake hands but allow a few seconds for a response, so you know what they want to do.

Many investigators offer victims something to drink during an interview. Yet some people with limited mobility in their hands or upper extremities may need to use a straw or require other assistance. Once again, it is best to ask whether assistance is needed before providing it. It might also be a good idea to have a package of straws on hand.

Always keep in mind that most people with physical disabilities (without a co-occurring cognitive disability) will have intelligence levels that vary across the normal range. Unless they have a co-occurring cognitive disability, you should speak with them as you would anyone else in a similar situation and do your best to avoid sounding patronizing or condescending.

## **When the Victim has a Communication Disability**

A communication disability is one that interferes with a person's ability to understand and/or express speech or language. This is often due to a problem with speech production, which does not necessarily mean that the person has any intellectual impairment. For these victims, their disability has no impact on their capacity to consent to sexual activity. Therefore, the fundamental strategy of investigating a sexual assault will take the same course as it would with any other adolescent or adult victim; evidence will be required to establish that force, threat, or fear was present during the assault or that the victim was incapacitated to the point where legal consent could not be given.



There may be unique challenges to the investigation, however, if it is difficult for victims to communicate effectively with the investigator and the prosecutor. This may mean that the investigation will take longer and require additional patience to successfully complete. Specific accommodations may also be needed to facilitate the victim's communication during the investigation and any subsequent court proceedings.

As professionals involved in the criminal justice and community response to sexual assault, communication is at the center of our work. For law enforcement professionals, a critical aspect of any sexual assault investigation is to interview victims and listen carefully to their report of what happened. Investigators need to ask appropriate questions to help understand the details and build a case with supporting evidence.

Professionals who are new to working with victims with disabilities often state that the biggest barrier is communication. To better understand this process, and offer effective recommendations, it is therefore helpful to break communication into its two constituent parts: Expressive language and receptive language.

### **Expressive Language**

As the name implies, expressive language refers to the way in which people express their ideas. Expressive language includes the spoken word, as well as sign language. Other examples of expressive language include the following:

- Written words
- Pointing to letters, words, or pictures using a communication board or book
- Speaking through an electronic communication device
- Texts
- Emails
- Pictures that are drawn
- Gestures
- Acting out ideas

When listening or otherwise receiving expressive language from people who have impairments limiting their ability to convey ideas, the critical question is this:

*Can I understand what the person is trying to tell me?*

### **Receptive Language**

Receptive language, on the other hand, refers to how well people understand what others are communicating to them. Expressive language and receptive language thus



require two different sets of abilities, and disabilities may affect one or both functions. In other words, some people may communicate in a way that is difficult for others to understand (i.e., the challenge is in their expressive language), while they understand everything that is said to them (i.e., their receptive language is unaffected).

When communicating with people who have disabilities limiting their ability to understand traditional communication, the critical question is a different one:

*Can the person understand what I am trying to communicate?*

### **Methods of Processing Information**

Further complicating the issue, people process information in different ways. For example, some people are *auditory* in their orientation and prefer to communicate using spoken language. It is easier for them to understand what is spoken out loud. Others are more *visual* and use their eyes to take in the information that is being communicated. Still others have a *kinesthetic* orientation, meaning that they process information through their body. This can include movement (such as walking or gesturing) as well as tactile contact (touch). Similarly, some people prefer to learn things when presented in a logical, step-by-step manner – whereas others like to skip to the “bottom line” and view things holistically rather than as the sum of their parts.

Clearly, there are a variety of ways to process information, and people typically use a combination of methods. However, most people have one method that is dominant or preferred. This can be helpful to keep in mind when communicating with any victim of sexual assault, not just someone who has a disability. If there are communication barriers using one method of information processing, it might be possible to shift some aspect of the communication to an alternative mode (e.g., asking someone to act out rather than describe a particular act, or asking about the sounds that were heard, or the sights that were seen during the sexual assault).

It is also important to note that there is an interpersonal component to both receptive and expressive communication. In general, people tend to communicate better with someone they like and trust – and someone they believe likes and trusts them in return. This highlights the importance of creating a positive and supportive environment when interviewing or otherwise working with any crime victim, not just those with disabilities. This is needed to build the level of rapport that can facilitate successful communication.

#### **Resource: Processing Information**

An interesting exercise is to learn more about your own method for processing information. An online tool is available to assist; it is offered on the website for the [Institute for Learning Styles Research \(ILSR\)](http://www.evawintl.org).



## Communication Aids and Services

As mentioned throughout this module, some people with a communication disability will use aids or services; these can help with both expressive and receptive language. There are many different kinds of communication aids and services. Some are rather simple, such as handwritten notes or picture books. There are also communication boards, which typically fit on a person's wheelchair. Some people even use specialized electronic devices to help them communicate, including those that allow the person to type in abbreviated commands using a keyboard. These devices can be activated using eye movements, air puffs, or other methods. The device then "speaks" for the person, based on the commands entered. For people who use sign language, the services of an interpreter can also be thought of as a communication aid or support.

However, it is becoming increasingly common for people with communication disabilities to use a mobile device such as a smart phone or tablet, to type or text what they want to say. The message can then be read by the other person or spoken aloud by the device. Given advances in technologies and their widespread use in society, we can expect the future to bring new electronic communication devices and applications specifically designed for people who need help communicating. Keep in mind that any aid or support the victim uses on a regular basis may be new to you, but it is very familiar and normal for the person who uses it every day (Office for Victims of Crime, 2011).

When a sexual assault victim is using assistive technology to communicate, it may be tempting for the investigator to ask only "yes" and "no" questions to speed up the process. However, just as with any other victim, it is best to ask open-ended questions and allow sufficient time for the victim to use their preferred communication aid (New Mexico Coalition, n.d.). This will provide investigators with the most accurate information, and it helps to create an environment where victims feel they are valued as a critical component of the investigation and they believe their communication is viewed as critically important.

### Resource: Communication Aids

For detailed information on a variety of communication aids and services, please see the 2014 publication by the US Department of Justice, Civil Rights Division, Disability Rights Section, on the revised ADA requirements for [Effective Communication](#).

## Facilitated Communication

Facilitated Communication is another communication support that law enforcement investigators and other professionals need to be aware of. Facilitated Communication refers to a process in which a trained facilitator supports the hand or arm of a

### SARRT Tip:

Compile information about where communication aids and Facilitated Communicators can be found in your community.



person with a disability while the person uses a keyboard or points to pictures, objects, written letters, or words. Most common is the use of Facilitated Communication to support someone as they type words. Facilitators are trained to never guide the person's hand or arm – only to provide backward resistance. However, there is considerable controversy surrounding this communication method because of the possibility that the facilitator could abuse the process and influence communication.

On the one hand, many people believe that Facilitated Communication should be used when interviewing crime victims if it is their primary method of communication. Others believe it is never appropriate in this context. Ultimately, it will be the court's decision regarding whether to allow testimony using Facilitated Communication, so it is a good idea to consult with a prosecutor whenever possible, before proceeding.

If Facilitated Communication is used to interview a victim during a sexual assault investigation, it is advisable to validate the content of the interview at some point, using a second trained facilitator who does not have access to any of the information from the first interview. In this way, the investigator can determine whether the same content is typed by the victim or otherwise communicated with the assistance of the second facilitator.

#### **Resource: Facilitated Communication**

For more information on Facilitated Communication, including [standards for facilitators](#), a number of resources are available from the Institute on Communication and Inclusion at Syracuse University.<sup>47</sup>

#### **Communication Disabilities May Be Hidden**

As with other types of disabilities, it may not be immediately obvious when someone has an impairment affecting communication. This issue is addressed in the *PERF Model Policy*:

*Officers may confuse the behavior of individuals with hearing and speech disabilities with those of people who intentionally refuse to cooperate or those who abuse illegal substances. Officers should be aware that an individual's failure to comply with or respond to verbal orders does not always constitute defiance but may be the result of that individual's inability to hear the officer or respond verbally. Before committing themselves to a course of action, officers should attempt to identify whether or not they are dealing with a person who has a communication-related disability (PERF, 1992, p. 8).*

<sup>47</sup> Information is also available in a variety of articles cited in the Reference section, including: Baladerian (1998a), Beukelman and Mirenda (1998), and Bikle, Saba and Kliewer (1995).





This *Model Policy* also highlights the importance of ensuring that police facilities have clearly visible signs to provide essential information for anyone with a communication disability; this includes room identification signs and elevator information. These signs and other printed information should also be in large print for those with visual impairments (PERF, 1992).

## People who are Deaf or Hard of Hearing

A person is generally described as “deaf” if they are unable to hear or understand oral communications even with the aid of an amplification device. Someone who is “hard of hearing,” however, has a hearing loss severe enough to necessitate the use of such a device to effectively hear oral communications (Office for Victims of Crime, 2008).

People who have been deaf all or most of their lives often have very different communication needs than people who become deaf or hard of hearing later in life. For example, depending on the age of the person when they became deaf, they could have a very clear speaking voice. They will therefore only need assistance from an interpreter to “hear” what someone else is saying to them; they will be perfectly capable of responding verbally without assistance. This will be determined in large part by whether the person ever learned sign language. Communication will also be affected by whether the person considers themselves to be a part of Deaf culture.

### Resource: Serving Deaf Survivors of Domestic and Sexual Violence

The Vera Institute of Justice offers a policy and practice brief with suggestions for increasing Deaf survivors’ access to victim services and other supports, including those offered by the criminal justice and medical systems. The guide provides a framework for meeting the needs of Deaf survivors that is grounded in the realities of this overlooked community, as well as their unique cultural and linguistic needs.

## Deaf Culture

As a matter of definition, culture results from a group of people coming together to form a community around shared experiences, common interests, shared norms of behavior, and shared survival techniques. Culture thus results from the natural process of people seeking each other out for social interaction and emotional support. It is therefore important for investigators to understand that Deaf culture exists, although not everyone who is deaf considers themselves as belonging to Deaf culture.

Members of Deaf culture share a common manner of communication, which provides the basis for group cohesion and identity. Their primary means of relating to the world is visual, and they share a language that is visually received and produced with gestures.



Yet even beyond language, the culture also has its own common experiences, beliefs, and practices. Thus, Deaf culture is separate from the culture of the larger hearing society, and members may be more isolated from and less comfortable with hearing people. Within Deaf culture, people who are Deaf are viewed as a cultural group, not as people with a disability. As a result, members of Deaf culture use a capital “D” to refer to the cultural group.<sup>48</sup>

### Resource: Through Your Eyes

Gallaudet University created an 2 hour documentary on Deaf life in America called, [Through Deaf Eyes](#). This [7-minute clip](#) provides an introduction to deaf culture with personal accounts and a little bit of humor.

### Figuring Out How to Communicate

When law enforcement responds to a crime involving a person who is deaf or hard of hearing, the first task will be to determine how the person prefers to communicate. Often, this process begins by exchanging notes. Make sure to keep these notes brief and convey only one concept or question at a time.

Also keep in mind that people who typically communicate with sign language may compose a narrative that is very different than people who use traditional English. The words may not be in the usual order and/or the format that is typically used to construct a sentence. All too often this is seen as a sign of a cognitive impairment or intellectual disability, when in fact it is the result of a different language structure.

American Sign Language (ASL) is actually based on the French language, so its grammar structure will be unrelated to English.<sup>49</sup> To illustrate, if a victim who uses ASL is trying to explain that the perpetrator was wearing a red shirt, she/he might write “Man shirt red. As another example, the person might write: “Yesterday work man walk fast no see before.” This sentence would generally mean: “Yesterday at work a stranger (some man I’ve never seen before) rushed past me.”<sup>50</sup> In such a situation, it will be important to verify that you have understood the written communication correctly. While most people who are deaf can write in at least basic English, keep in mind that this is a second language for them and they will not be as fluent as a native speaker:

<sup>48</sup> Because not everyone who is deaf considers themselves to be a part of Deaf culture, we will only use the capital “D” when specifically referring to aspects or members of Deaf culture. For more information on Deaf culture, please see the website for the Vera Institute’s [Accessing Safety Initiative](#).

<sup>49</sup> For more information, see [Wikipedia](#).

<sup>50</sup> When one language is written down in another, it is referred to as “[glossing](#).” This can be challenging when attempting to transcribe sign language into written English, because there are not words in English to represent all of the signs used.



*The crime victim may not have the vocabulary or overall language to fully express and explain what happened. These situations require detailed information and responses, and without an American Sign Language (ASL) interpreter or other service/equipment, a victim who is deaf may be able to provide only limited information (SafePlace, 2007, p. 69).*

## Using Sign Language

For more information on sign language, the following information is adapted from [Omniglot](#), described as “the online encyclopedia of writing systems and languages.” Sign language is a form of communication that uses combinations of hand shapes, the orientation and movement of the hands, arms or body, and facial expressions to convey everything that spoken languages can convey. Manual alphabets or fingerspelling are also used to spell out words and names for which there are no signs. Sign languages are used mainly by people who are deaf or hard of hearing, and also by their families, friends and others who have regular contact with them. However, not all deaf people use sign languages - some rely on lip reading or other communication aids or services.

There are hundreds of sign languages around the world, and many of them are so different from one another that a person who is fluent in one language will not be able to understand another. Some deaf people also develop a system of “home signs” (also referred to as “kitchen signs”) to communicate with family members or other caregivers. This is especially common among the deaf children of hearing parents who are isolated from any sign language community; these children and their families often develop their own system for communicating. Home signs will thus be unique to each family.<sup>51</sup>

The most widely used sign language is American Sign Language (ASL), which is used in the USA, Canada, parts of Mexico and, with modifications, in quite a few other countries in Central America, Asia and Africa. ASL was developed from Old French Sign Language and, as a result, it has little in common with British Sign Language (BSL), which is also commonly used. Yet the two languages are mutually unintelligible.

Another sign language is referred to as International Sign (although it was originally called Gestuno). It was developed for use mainly at international Deaf events such as the Deaflympics and meetings of the World Federation of the Deaf. International Sign enables people from different deaf communities to communicate with one another.

A number of systems have also been developed to represent sign languages in written form. These include HamNoSys (the Hamburg Notational System) and SignWriting. Both of these can be used for any sign language. Another system, known as Stokoe Notation, was created by William Stokoe in the 1960s specifically to represent ASL. Keep in mind, however, that these writing systems will not be recorded in written

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<sup>51</sup> Definition adapted from [Wikipedia](#).



English. Rather, they use symbols and representations of facial expressions, body position, and hand movements to transcribe what is being conveyed in sign language.

### **Resource: Omniglot**

For more information and examples of what it looks like when sign language is translated or transcribed in written form, please visit the website for [Omniglot](#).

## **Interpreting Sign Language During the Initial Response**

For any victim who requires or requests the use of a sign language interpreter, these services should be secured as soon as possible. It is best to use a qualified and/or certified interpreter for the purpose of a criminal investigation, to ensure accurate communication and information gathering. However, this will not typically be possible during the initial response or when an emergency situation exists.

When they first respond to a call for service, police officers must evaluate what type of crime they are responding to and identify any potential crime scene(s), suspects and witnesses. To assist in this process, the *PERF Model Policy* recommends that:

*All employees should be able to apply emergency signs to people who are deaf to obtain basic information on matters such as nature of the incident, location and extent of injury, name and address, and family member or other person to be contacted (PERF, 1992, pp. 11-12).*

At this point, responding officers may need to ask family members, caregivers, or other support people to interpret for the victim who uses sign language.

*In an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available (US Department of Justice, 2014a, p. 5).*

In this scenario, officers should take any precautions they can to avoid harm to the victim, the person doing the interpreting, and the case (Office for Victims of Crime, 2011).<sup>52</sup> For example, family members and other support people are likely to be emotionally involved with the victim, which can have a significant influence on what the victim says or does. Victims also frequently want to spare these people from hearing intimate details of the crime. In addition, support people might fail to interpret the

<sup>52</sup> Children should not be asked to interpret or assist with communication, unless the situation is an emergency and their short-term assistance can be used to locate an appropriate adult (Office for Victims of Crime, 2008).

victim's exact statement, based on information they have, or believe they have, about the incident. The family member or caregiver could even be trying to influence the outcome of the investigation to serve their own interests, or to cover up their role as a perpetrator.

For all of these reasons, it is usually best to transition to a neutral interpreter as soon as possible. However, there are situations where officers cannot avoid relying on a family member or other household member to interpret for the victim, and in fact, there may be times when this turns out to be the best choice. According to the US Department of Justice (2014a), this can be done as long as the situation does not involve an emergency or an imminent threat. It also requires three conditions that must be met:

- The person with the disability must request that the accompanying adult interpret or otherwise facilitate communication.
- The accompanying adult must agree to it.
- This must be an appropriate role under the circumstances.

We want to emphasize that this is not a role that minor children can be asked to play, unless there is an emergency or imminent threat. It should also go without saying that a spouse or intimate partner also cannot interpret if they are suspected of committing abuse. While it is always crucial to separate the victim and suspect when they are both present at the scene during a preliminary response, officers will need to make sure that the suspect cannot see the victim while she/he is communicating with sign language.

### **Interpreters for the Detailed, Follow-Up Interview**

Following the initial response, investigators will need to schedule a detailed, follow-up interview with the victim. At this point, it will be necessary to use the services of a professional and objective interpreter – both to ensure accurate information during the follow-up interview and also to verify the information obtained during the initial response. Law enforcement agencies should therefore identify local certified sign language interpreters in advance, so contracts for services are in place when needed.

#### **Resource: Interpreter**

To locate a qualified interpreter for American Sign Language, you can begin by contacting the national [Registry of Interpreters for the Deaf \(RID\)](#). For victims who use another sign language or home signs, a Certified Deaf Interpreter can be used. More information is available from the [National Consortium of Interpreter Education Centers](#).



Because the Deaf community is often very small and close knit, it can sometimes be challenging to find an interpreter who does not know the victim and/or suspect. Clearly, it is best to use the services of an interpreter who does not know any of the people who might be involved, including witnesses. However, if this is not possible, other options need to be explored. A first step is to ask victims if they are comfortable using a particular interpreter, even if they know the person. Some victims will feel comfortable using an interpreter they know, but others will not. If not, it may be possible to access interpretive services remotely, using Video Remote Interpreting (VRI).

*VRI is a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss....VRI can be especially useful in rural areas where on-site interpreters may be difficult to obtain. Additionally, there may be some cost advantages in using VRI in certain circumstances. However, VRI will not be effective in all circumstances. For example, it will not be effective if the person who needs the interpreter has difficulty seeing the screen (2014a, p. 3).*

If VRI is used, there are a number of specific performance standards that must be met. For more information, see the revised ADA requirements on [Effective Communication](#) published by the US Department of Justice (2014a).

It will also be critical for any interpreters to be familiar with the vocabulary and terminology used by law enforcement, so they can ensure effective communication during the interview. Whenever possible, investigators should provide sign language interpreters with a glossary or other resources that define frequently used terms in the criminal justice system (e.g., DNA, drug facilitated sexual assault, medical forensic examination, alternate light source). This will help the interpreter prepare for the interview.

### **Tips for Working with Sign Language Interpreters**

Other tips are also available for working with sign language interpreters because there are several things to keep in mind. Many of the following recommendations are adapted from the Office for Victims of Crime (2008).

- Interpreters should be certified through the Registry for the Interpreters for the Deaf (RID). In court situations, it is best to use an interpreter who has a “Specialist Certificate: Legal,” but these are sometimes difficult to find.
- Interpreters have a code of ethics and their job is to translate communication between the victim and the investigator. Their job is not to state their own opinions or to filter the information being communicated.





- When using an interpreter, always remember to look at the victim and not the interpreter. However, victims will need to look at the interpreter to understand what you have said, so do not expect constant eye contact in return.
- Make sure there is visual privacy when interviewing someone using sign language, so others cannot “oversee” the conversation.
- Speak at a normal volume and pace. Address your questions to the victim, not the interpreter. In other words, you should not ask, “How is he feeling?” Instead, you should address your question directly to the victim: “How are you feeling?”
- If you do not understand an answer, ask the victim (not the interpreter) to repeat or clarify the response.
- Typically, the interpreter will sit next to the interviewer, so the victim can look back and forth between the investigator and the interpreter. The victim and the interpreter will decide where the interpreter sits. Make sure there is ample lighting to see each other clearly, and there is no glare, or shadow that will interfere with the victim’s or the interpreter’s vision.
- If they will be working for more than an hour or two, ASL interpreters typically work in teams of two and rotate every 15-20 minutes to avoid fatigue. The determination of when to switch is up to the discretion of the interpreters.
- During the interview, observe the victim closely, because gestures and facial expressions are an important aspect of communication for people who are deaf.
- If you are distracted by a noise or other disturbance, or if you turn away from the victim to talk to someone else, explain what is happening to the victim.
- Take breaks to allow the victim and the interpreter to rest. The process is tiring for both.
- If the suspect also needs a sign language interpreter, use a different interpreter than is used with the victim.

Another critical recommendation is offered by SafePlace (2007):

*Do not take the interpreter aside to discuss background information or other case-related information. This is not only inappropriate but may cause the deaf individual to question the interpreter’s ethics. The interpreter is there to interpret, not to take or provide any information about the case itself. Issues related to payment or other professional matters should be addressed outside of the interview time (p. 69).*



SafePlace (2007) also cautions against scheduling another appointment with the interpreter at the conclusion of the interview. The victim may prefer to use another interpreter, so any future arrangements should be made with the interpreter services.

### **Other Communication Aids and Services for Hearing Loss**

Beyond sign language interpreters, there are also a variety of other communication aids and services that can often be used with people who are deaf or hard of hearing. Different tools will be appropriate in different situations, depending on the needs of the individual, the environment and the length, complexity, and importance of the information being communicated.

We have already described how handwritten notes can be used for simple communication and to determine what additional aids and services may be needed. It is important not to overlook the importance of written materials. These can be extremely helpful for all victims of crime, not just those who are deaf or hard of hearing, because it is difficult to process all of the information victims need while they are experiencing trauma. Written materials can be brought home and reviewed by victims and their loved ones, when they are better able to process the information.

### **People Who Use a Hearing Aid**

We have also mentioned several technological devices that can be used to assist with communication. However, a frequent yet commonly overlooked tool is a hearing aid.

When people use a hearing aid, they might be hearing everything you say when you speak at a regular volume level, but they might not. Some hearing aids increase volume but not clarity. You should therefore begin by speaking slightly louder than usual, but not shouting. Then if you are in doubt as to whether someone is hearing you properly, check with the person to make sure. If they cannot hear you clearly, you can work together to figure out what you can do to make sure the communication is clear.

### **Captioning Technology**

Other technologies can also be used to assist when communicating with people who are deaf or hard of hearing. However, these are generally more effective for people who are hard of hearing or those who became deaf later in life, because the captioning will be in English and sign language is a different language, as previously described.

One of these technologies is real-time captioning, which is technology, also referred to as Computer-Assisted Real-Time Transcription (CART). Like a court reporter, this technology requires a transcriber to type in everything that is said so the words can be projected onto a screen. The captioning can be presented on a small screen, so the spoken words can be read by the victim, or it can be transmitted onto a larger screen for



others to follow along (e.g., jurors). Real-time captioning services can be provided either on-site or remotely (US Department of Justice, 2014a).

CART is typically used for meetings and events, rather than individual interactions, and it is also more common with people who are hard of hearing or become deaf later in life (rather than at birth) because they are less likely to use sign language. The technology is also rather resource-intensive, because it requires special equipment and a person who is trained to quickly type everything the victim is saying into a stenotype machine. CART might therefore be particularly helpful when a case goes to trial, because the process is so fast that there is hardly any lag time between what is said and what another person is able to read. CART transcripts can also be recorded.

### **Avoid Lip-Reading**

Despite what many people believe, lip reading is *not* an effective form of communication for those who are deaf or hard of hearing. In fact, it is estimated that less than half of verbal communication is decipherable when lip-reading, and this is likely to be particularly problematic for someone who is experiencing trauma.

However, lip-reading is a key part of the Deaf culture when communicating with someone who is not speaking in sign. Therefore, if you are going to use lip-reading, a few recommendations are offered by the Office for Victims of Crime (2008), to increase the likelihood of successful communication:

- Make sure you are facing the person and your mouth is clearly visible.
- Stand or sit between 3-6 feet from the victim, in a well-lit and glare- and shadow-free area.
- Do not block your mouth with your hands or speak while you are looking away from victims or down at your notes.
- Do not shout or speak slowly because this distorts your speech, lip movements, and facial expressions. It can even make you appear as if you are upset.
- Begin speaking only after you have the victim's attention and have established eye contact.
- Keep your questions, instructions, answers, and comments short and simple.
- Speak clearly, distinctly, and slightly slower than usual but not unnaturally slow; do not exaggerate your pronunciation of words.



- Limit your body movements, including gesturing, because it is more difficult to lip-read if you do not remain still.

If the victim has difficulty understanding what you are saying, patiently repeat yourself using different words. Sometimes a particular group of lip movements is difficult to read, or the victim may have missed only a word or two initially and your restatement will clarify what was missed.

### Facial Expressions and Gestures

Keep in mind that people who are deaf or hard of hearing will be visually oriented. Additional recommendations are thus offered by the Office for Victims of Crime (2008):

- Whenever you are communicating with people who are deaf or hard of hearing, remember to use facial expressions and physical gestures – even mime or props – to help you communicate. For example, you could motion toward a chair to offer victims a seat, mimic drinking from a glass to ask victims if they are thirsty, and touch your clothing, face, or hair when interviewing victims for a description of the offender. All of these are similar to the way you might initially try to communicate with a person who speaks a language other than English.
- Good lighting is essential. The victim needs to be able to clearly see the gestures and facial expressions of both the investigator as well as any interpreters, to understand the communication.
- To get someone's attention, you can wave your hand gently. You can also touch the person on the arm or shoulder, to alert them to your presence and avoid startling them.

### Using the Telephone System

To have meaningful access to criminal justice services, people who are deaf or hard of hearing must be able to communicate by telephone. When people who use sign language call someone who does not, this requires communicating either by using written text or translating sign language to English through the use of an interpreter.

In the recent past, people who are deaf or hard of hearing primarily accessed the telephone using a telecommunications device for the deaf (TDD). These are also

#### **SARRT Tip:**

Identify the closest Deaf organization or Center for Independent Living in your community. Invite staff to present at your SARRT meeting about resources and services available. If possible, have them bring assistive technology devices so you can see how they work. If that is not possible, pictures or vendor websites might be useful. Every state has an Assistive Technology program that can provide information and support. For a list and other information, see the [National Assistive Technology Technical Assistance Partnership](#).



referred to as teletypewriters (TTY). However, this requires a separate phone number and equipment, because the person using the system communicates by typing and reading text. Today, other options are increasingly being used.

One such option is the free national Telecommunications Relay Service, often referred to as “TRS.” This service can be accessed by dialing 7-1-1, at which point, the caller is connected with a communications assistant (CA), also known as a relay operator. This communications assistant serves as an intermediary by receiving written text from the caller, who is either using a text telephone (TTY) or text messaging and reading it aloud for the person receiving the call. As the recipient of the call responds verbally, the assistant types it in for the caller (US Department of Justice, 2014a).

TRS can also be used for “speech-to-speech transliteration,” which is used for people who can be difficult to understand. A transliterator is “a person trained to recognize unclear speech and repeat it clearly” (US Department of Justice, 2014a, p. 2).

Many people also use a specific form of TRS known as Video Relay Service (VRS). VRS enables people who use sign language to communicate via phone with people who do not. The process begins when the VRS user initiates a call, using specialized VRS equipment or a videophone, smart phone, tablet device, or computer with video communication capabilities. The caller uses VRS to reach a trained interpreter, who then places the call to the recipient who has a voice telephone and does not use sign language. For VRS users who have a speaking voice (because they became deaf later in life), they will simply speak to the person receiving the call. If they do not, they will use sign language to communicate with the interpreter, who will speak on their behalf. Either way, the interpreter will use sign language to convey what is being said to the VRS user. In this way, information can be relayed back and forth between the two parties – in sign language to the VRS user and by voice to the person called.

Some Centers for Independent Living have VRS technology available in their offices, so they can help people who are deaf to use this service in their homes at no charge. Some hospitals also have VRS technology. One benefit of VRS is that the person receiving the call does not need any specialized equipment; all they need is their regular telephone (whether a mobile phone or landline).

If you speak on the phone with a victim who uses VRS, you will once again need to direct your communications to the victim and not the interpreter. This may seem a little awkward at first. For example, you should not ask: “Can *she* come to the station and meet with me?” Instead, you should say: “Can *you* come to the station and meet with me?” While the voice you hear is a translator, the person you are actually communicating with is always the victim.



### **Resource: Communicating with People Who are Deaf or Hard of Hearing**

There are several [resources](#) available online that can provide helpful guidance for communicating with people who are deaf or hard of hearing. One is the 2-page tip sheet, published by the US Department of Justice, Civil Rights Division, Disability Rights Section, entitled, [Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers](#).

A 4-page document is also available to serve as a model for law enforcement agencies when adopting a policy on effective communication with people who are deaf or hard of hearing. Agencies are encouraged to download and adapt this [Model Policy for Law Enforcement on Communicating with People Who Are Deaf or Hard of Hearing](#).

Information and resources are also available from the [National Association for the Deaf](#).

VAWnet offers a special collection on [Violence in the Lives of the Deaf or Hard of Hearing](#). Materials address Deaf culture, language and communication, etiquette, Deaf survivors of domestic and sexual violence, and organizations for Deaf survivors.

## **People Who are Blind or Have Low Vision**

Some people may wonder how much information can be provided by a crime victim who is blind. However, victims can gather quite a bit of information about the offender and crime even without the sense of sight. For example, a person who is blind may use other senses to provide as much information as a sighted victim. Through the sense of touch, a person might be able to tell if the offender has facial hair and determine the offender's hair length, body weight, type of clothing, etc. Through the sense of hearing, the victim could notice features of the offender's voice and accent in addition to the specific words that were said and other environmental sounds. Through the sense of smell and taste, the victim could describe specific characteristics such as tobacco, garlic, alcohol, or cologne.

Rather than focusing on questions about what the victim might have seen, an effective interview with a person who is blind or has low vision will document what the person heard, felt, smelled and tasted. This can include a substantial amount of information that can be combined with physical evidence and statements of other witnesses to build a solid investigation and potential prosecution.

### **Communicating Effectively with Someone Who is Blind or has Low Vision**

It is important to understand that some people who are "legally blind" may have some vision, whereas others are completely blind. When working with a victim who is blind or





has low vision, spoken words become the primary way of communicating what the person needs to know about the environment. Therefore, it is best to begin by introducing yourself and others and allowing each person to speak so the victim knows where each voice is coming from in the room and what the individual sounds like.

However, you do not need to speak any louder than usual.

It is especially important for police officers to identify themselves:

*One of the most difficult issues facing people in need who are blind or vision impaired is identifying police officials. Employees should offer detailed information in identifying themselves as members of the Department. Whenever possible, if the presence of a visual disability is known, officers may have dispatch contact the victim or complainant to verify to him or her that a member of the Department has arrived. If needed, badges may be offered to the individual to verify the officer's identity (PERF, 1992, p. 5).*

Other recommendations are offered by the Office for Victims of Crime (2008):

- Describe the layout of the room and ask the person if any assistance is needed.
- If there are multiple people in the room, each person should state their name and the agency they represent when they begin talking, until the person recognizes everyone's voice. It is also helpful to have each person explain their role.
- Do not grab their arm or try to lead them, unless they request such assistance. If the person does ask to be led, offer your elbow (not your hand) as you walk. When the person takes your arm from behind, they can follow the motion of your body. Walk in a relaxed manner and remember that the person will follow at a half-step behind you, so they can anticipate steps, curbs, or other changes in the physical environment.
- When walking, describe the area including any steps, ramps, narrow halls, floor surface changes, elevators, doorways etc. Also make sure to tell the person about any obstacles in the way, such as garbage cans or plants.
- When approaching a chair, verbally tell victims what you are doing and guide their hand to the back or arm of the chair. Describe the seating arrangements.
- Be sure to tell the person what you are doing throughout your time together, especially if there are any lapses during the conversation. For example, you might let the victim know when you are writing notes or explain that you are tape recording the interview, so you don't miss anything important and can document exactly what is said by anyone present, including the interviewer. If the victim will be using sign language during the interview, it will need to be videotaped.



- Let victims know if anyone steps away from the conversation, and when they return.
- Remember that the victim cannot see your facial expressions or body language, so you must use words or sounds to indicate that you are listening attentively.

### Offering Written Materials in Alternative Formats

The ADA requires that any written resources must be available in alternate formats, such as large print, Braille, audio CD, or electronic format. It is therefore a good idea to have some Large Print documents available and to be able to have a document printed in Braille fairly quickly if the need arises. Alternatively, you can read the document aloud, if the person prefers. Some additional recommendations include the following:

- Centers for Independent Living provide support, advocacy and assistance to people with sensory disabilities and are a useful referral source for victims with low vision or no vision. They are often excellent resources for Braille materials.
- Large Print materials should be at least 18- point size with either a Tahoma or Arial font. For people who have low vision, it is also best to use contrasting colors (such as black and white) and to avoid printing words on top of pictures.
- At the law enforcement agency, signs should be printed in large font and room identification signs and elevator information should be in Braille.
- In some situations, it may be appropriate to use a qualified reader, which is “someone who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary” (US Department of Justice, 2014a, p. 2).

If victims will be notified of a court hearing or provided any other information normally sent by mail or in written format, it is best to ask them how they would like to receive the information. For example, many people who are blind or have low vision use computer programs with “screen-reader” capacity. This means they have a program on their computer that will read aloud any email document or attachment they receive. Some older programs require documents to be in Microsoft Word format, but some of the newer ones accept PDF formats as well. If the victim asks to receive information electronically (e.g., via email), ask what format the information needs to be in.

#### **SARRT Tip:**

Invite presentations from experts in specific disabilities to present to your SARRT. This will help SARRT members become familiar with the characteristics of certain disabilities, specific accommodations that may be needed, and strategies for communicating effectively. An increased comfort level among professionals can help improve the comfort level of victims, and promote a sense of respect and empowerment.



If the victim is required to sign a document, they may have a tool to help them with this task. Others may ask you to help them know where to sign. You can use a ruler, piece of cardboard, or ridge to guide their signature (New Mexico Coalition, n.d.). However, it is always best to ask permission before touching anyone, even if they have asked for assistance.

### **For People Who Are Deaf and Blind**

The challenges for communicating effectively compound when someone is both deaf and blind. However, these individuals often have their own service providers:

*Many deaf-blind individuals use support service providers (SSPs) to assist them in accessing the world around them.... They provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large (US Department of Justice, 2014a, p.4).*

If someone is deaf-blind and does not have an SSP, extra care and effort will be needed to identify and access resources that might be available to assist.

### **Making Online Resources Accessible**

Here at EVAWI, we have learned firsthand about the process of making written materials and online resources more accessible for people with disabilities. As of January 2014, we started these efforts to increase accessibility with the OLT, but we are committed to improving accessibility for our entire website as we move forward, including the many other training materials, resources, and tools we provide online.

For example, all of our OLT modules are now available in an 18-point Arial font. This makes them accessible for users with low vision, but they are also available to anyone who prefers to print and read the documents in a larger print size.

We have also converted all of our OnLine Training Institute modules, so users who are blind or have low vision can use a screen reader application; the document can then be read aloud, using computer speakers. This means that our website and online resources will be accessible for everyone – not just those with disabilities, but anyone who wants to listen to the modules (e.g., while driving). In addition, we are currently in the process of adding alternate text to describe pictures that are posted on our website.

Many people may be surprised by how easy it is to make documents more accessible using a screen reader and these other features. Generally speaking, both Microsoft Word and Adobe PDF documents are universally accessible (with some exceptions). Both programs also have built-in accessibility “checkers” that can scan a document and let you know if the conversion has been successful or advise what needs to be changed so the document can be successfully read aloud by a screen reader.



For pictures, all that is required is to add a line of hidden computer code, referred to as a “tag,” to documents and websites. The text is then typed in to describe what the image portrays, so users can click on the image and have the description read aloud.

There are a number of resources designed to support you in your efforts to improve the accessibility of documents and websites. Please see Appendix H for a few you might find particularly helpful. It is worth noting, however, that an organization with documents or web pages that are not accessible for people with disabilities may choose to provide an alternative way to access the information, programs, and services that they offer. As long as these methods are accessible to people with disabilities, this can be an alternative way to meet the legal obligations spelled out in the ADA. For example, this could be as simple as providing contact information on your agency website that allows a person with a disability to request an accommodation that has not been explicitly offered. As stated throughout this module, people with disabilities are the experts on their own needs so they can often tell us how we can best assist them.

## People with Epilepsy

Criminal justice and community professionals frequently come into contact with people who have epilepsy, a condition in the brain that causes a person to have seizures. However, seizures can also be the result of other causes as well.

According to the Centers for Disease Control (CDC), about 2.3 million adults in the United States have epilepsy, and most people with the condition control it with medication or other treatment to lead active lives. As many as 1 in 10 people have had a seizure. The [CDC](#) provides a great deal of information on their website, much of which was used to develop this section of the module, along with a document specifically written for law enforcement by Simmons and McCarrier (2008).

Epilepsy is not contagious, and it is not a mental illness; it is simply a temporary change in the electrical functions of an otherwise normal brain. In fact, seizures are caused by temporary, abnormal electrical discharges in the brain. They can be triggered by alcohol, drugs, head trauma, stress, or poisoning. Epilepsy can co-occur with cognitive or developmental disabilities, but in most cases it does not.

There are several different kinds of seizures, but most of them either cause convulsions or altered states of consciousness. Because stress can trigger a seizure, it is important for law enforcement personnel and others to be aware of the common symptoms and know how to respond effectively.

## Indicators that Someone is Having a Seizure

Seizures have a sudden beginning, and are characterized by a lack of responsiveness, followed by a gradual recovery. Indicators might include the following:



- Slurred or very slow speech
- Unsteady gait
- Blank staring
- Sleepiness
- Confusing or dazed behavior
- Combative response to restraint
- Body stiffens and begins to jerk as muscles contract and relax

Seizures may cause “repetitive, purposeless movements (such as picking at clothes, writing hands, or fumbling with an object”... as well as “smacking lips, chewing, excessive blinking, mumbling and wandering” (Simmons & McCarrier, 2008, p. 2). People with epilepsy may occasionally have seizures that make them appear to be intoxicated or under the effects of controlled substances. This can cause problems for law enforcement if the real cause is not identified.

### **Calling an Ambulance**

When someone is having a seizure, the first question many people have is whether to call for emergency medical services. The answer depends on a number of factors, including how long the seizure lasts, whether the person is injured, and other special circumstances:

- If an individual has a seizure for less than 5 minutes and otherwise does not have injuries, it is not typically considered a medical emergency and an ambulance is not needed.
- If the person asks for emergency medical attention, however, it is best to call an ambulance regardless of how long the seizure lasted. People who have seizures will typically know if they need medical attention.
- An ambulance should be called in any of the following situations: if a seizure lasts longer than 5 minutes, if another seizure begins shortly after the first one, if the person having the seizure appears to be injured, diabetic, pregnant, or if the seizure occurs in water.

### **Responding Appropriately**

A person seen shaking and falling, followed by a confused or dazed state, is likely to be having a seizure and should be treated accordingly. Recommendations include the following:



- Begin by determining how much time has elapsed since the seizure began. Often times, there are witnesses who can provide this information during an emergency response. Following the recommendations above, you should call for medical assistance if 5 minutes has elapsed without recovery and/or if the person wants an ambulance.
- It is also good to look for a medical ID or alert bracelet for emergency information.
- When someone is convulsing, turn them on their side to clear the airway and reduce the possibility of choking.
- If they are banging their head, put something soft under it for protection, like a blanket, pillow or coat.
- Eliminate nearby hazards and have bystanders clear the area.
- When someone is having a seizure, never put anything into their mouth, hold their tongue, attempt to force their mouth open, or restrain them to try to prevent jerking.
- Wait until the individual is clearly conscious before you allow them to take medication or fluids and before following up with additional questions.

Once the seizure has stopped, you can help reorient individuals with simple questions such as asking their name, the day or the week, or their current location.

### **Medications for Epilepsy**

Many medications people take to control epilepsy have possible side effects, including memory loss, decreased concentration and a loss of cognitive functioning. When conducting an interview, it is important to watch for changes in behavior or demeanor. If a change is observed, you might evaluate whether there is another day or time that would be better to conduct the interview, based on the person's medication schedule:

“You seem to be having trouble concentrating. Is there something going on?”

“I notice you seem to be a bit dazed. Is this an okay time for us to talk?”

In fact, some people with epilepsy have regular seizures and know which time of day is best for an interview. Investigators should be flexible about setting up a time and location that will allow them to provide the most accurate and reliable information. This is a reasonable accommodation that is often overlooked, but it can make a significant difference in the outcome of the interview, investigation and possible prosecution.





### Resource: Epilepsy Training Programs

For more information, the [Epilepsy Foundation](#) has developed training for Law Enforcement and EMS on the types of seizures and their features as well as keys steps in first aid. In addition, the Epilepsy Foundation partnered with CentreLearn to launch an online law enforcement training program called “Epilepsy and Seizure Management for Law Enforcement.”

## People with Autism

The phrase “Autism Spectrum Disorders” is used to refer to a range of diagnoses that impact people in a variety of ways but share some similar features. The most common include Autism, Asperger’s Syndrome and Pervasive Developmental Disability. The observable signs of Autism Spectrum Disorders usually appear before the age of 3. It is important to understand that Autism is not a mental illness. Rather, Autism is a neurological disorder that affects the brain. Once again, a great deal of helpful information is available on the website for the [Centers for Disease Control \(CDC\)](#); this information was used to develop this section of the module.

The effects of Autism vary greatly from person to person and may impact an individual’s communication, social skills, information processing and repetitiveness.

- For example, a person with Autism may be socially awkward, may not routinely make eye contact, and may not notice or understand nonverbal communication, such as gestures, facial expression and tone of voice.
- They may not be able to speak and might even appear to be deaf because of their lack of response. In fact, many people with Autism communicate in ways other than speaking.
- Someone with Autism may repeat words or actions, and they can be obsessive about following a specific routine or schedule.
- They may also be acutely sensitive to touch, sounds, smells, lights, or color.
- Autism can lead to difficulties with attention, motor coordination, and even sleep.

Yet each person with Autism is unique, and people with an Autism Spectrum Disorder diagnosis may have symptoms from mild to serious. Some even have unique and exceptional talents, excelling in visual skills, music, math or art.



## Communicating Effectively with People Who Have Autism

It can be difficult to understand someone with Autism who cannot express what their life is like. To illustrate, a woman with Autism told author Shirley Pacey that she doesn't look at people directly in their faces, because the experience is like seeing a thousand different pictures of their face. She went on to say that she moves her body repetitively to stop the sensations she experiences, such as hundreds of ants crawling up her arms. In fact, some people with Autism experience physical pain because of sensory overload. Understanding that people with Autism may flap their arms or rock to stop physical pain provides a new perspective that can lead to understanding and compassion.

The following tips are helpful when communicating with someone who has Autism:

- When preparing for an interview, identify a quiet location with few distractions that is also convenient and comfortable for the victim.
- Approach the person in a calm manner. Introduce yourself and extend your hand as you would when greeting any other person. However, do not be concerned if the person does not extend their hand in return.
- Speak calmly, using direct, concrete terms.
- Offer only one question or instruction per communication.
- Explain your actions before you do anything. For example, you might say, "I am going to stand up now and walk to the door."
- People with Autism may prefer communicating in writing or using a keyboard on a computer, tablet, or smart phone, at least until they feel more comfortable with you. You may want to ask if this would be helpful.
- The person may not respond to verbal questions or requests. Be reassuring. Try again.
- Allow plenty of time for the person to respond. Be patient.
- Because many people with Autism are very literal, avoid using sarcasm, clichés, acronyms, or words with multiple meanings. For example, if you ask a person with Autism, "Can you tell me what happened?" the person may answer, "Yes."
- A person with Autism might repeat what you say or repeat the same word or phrase over and over again or change the subject entirely. This is common and actually represents the person's attempt to communicate with you; it is not indicative of disrespect or poor manners.



- The person may have an unusual tone of voice and/or look at you from an odd angle. This is also common and not meant to be disrespectful or challenging.
- People with Autism might not understand social rules or appreciate the seriousness of the situation when an investigation is being conducted. To the extent possible, try not to focus on the behavior that is unusual; it is best to let them know that you want them to be safe and to understand how best to communicate with them.
- Because people with Autism are often acutely sensitive to touch, it is best to not touch them. In fact, touch may actually cause physical pain. If you need to guide them to do something, it is best to use gestures combined with verbal instructions.
- People with Autism may also be sensitive to light and sound. If possible, reduce any excessive noise and bright lights.
- When people with Autism display repetitive behaviors, it may reflect their effort to calm themselves down. Do not try to stop them, and do not take objects away from them, unless there is a danger to themselves or others.
- Be prepared for sudden outbursts or impulsive behavior. If no one is at risk of harm, you can simply wait for the behavior to subside and then calmly continue.
- Some people with Autism do not express physical pain; therefore, they may need to be evaluated for injuries. Seek support from the victim's family, caregiver or support person in this situation.

When considering these possible characteristics, it may seem like a person with Autism cannot be a credible witness. However, as previously stated it is always best to assume competence when beginning an investigation. It is also critical to keep in mind that some of these behaviors may be more pronounced when the person is under stress. It is easy for anyone to feel overwhelmed when there are too many questions that seem to be coming too fast. Therefore, it is best to give the victim some time to relax, so the best and most reliable information can be obtained. When interviewing people with Autism, you need to find a pace that feels safe to them and then pay close attention to any changes in behavior that might indicate that additional modifications are needed.

### **Resource: Survivors with Autism Spectrum Disorders**

The National Sexual Violence Resource Center created a [guide](#) for sexual assault advocates to respond to survivors with autism spectrum disorders. Although this guide is intended for advocates, professionals from other disciplines can benefit from the information included on the characteristics of autism, communication techniques, connecting with caregivers, accommodations, and safety planning.



A series of fact sheets and brochures have been created by the Autism Society to promote a better response to crime victims with disabilities. One was specifically created for law enforcement. These materials are offered free on their [website](#), but users must register for access.

## People with Mental Illness

Mental illness refers to a group of conditions that may disrupt how a person thinks, feels, and relates to others. There are several different categories of conditions that include anxiety, depression, mood changes, and loss of contact with reality. At times, a mental illness can impact a person's ability to cope with the everyday demands of life.

Many people with mental illness learn how to effectively manage their symptoms and successfully navigate their lives. Others require ongoing medications and/or therapies to manage. Unfortunately, there is a great deal of stigma associated with mental illnesses, and this can be one of the most painful aspects for people living with them. In this section, we hope to provide some basic suggestions for responding effectively to this population; much of this information comes from the Office for Victims of Crime (2008).

### Responding to People with Mental Illness

The symptoms of mental illness vary from one individual to another depending on the type and severity of the disorder. For example, the Office for Victims of Crime (2008) lists the following as potential indicators that someone has a mental illness:

- *Accelerated speaking or hyperactivity.*
- *Delusions and paranoia. For example, victims may believe, falsely, that they are a famous person or that others are trying to harm them.*
- *Hallucinations, such as hearing voices or seeing, feeling, or smelling imaginary things.*
- *Depression.*
- *Inappropriate emotional response. For example, silliness or laughter at a serious moment.*
- *Unintelligible conversation.*
- *Loss of memory. not ordinary forgetfulness, but rather an inability to remember the day, year, or where the person is.*



- *Catatonia, which is characterized by a lack of movement, activity, or expression.*
- *Unfounded, anxiety, panic, or fright.*
- *Confusion (p. 22).*

Some symptoms are not readily observable from outward appearances but are noticeable in conversation (Office for Victims of Crime, 2008).

First responders are not expected to recognize all of the specific types of mental illness. However, it is best to start from the assumption that people with a mental illness do not also have an intellectual disability, because these are two separate and distinct disabilities. While the two disabilities may co-occur in some individuals, most people with mental illness fall along the normal range of intellectual ability.

When people with mental illnesses are victimized, the added stress may seem unbearable for them. It is therefore especially important for first responders and others to encourage victims to utilize their support systems at this time, perhaps by increasing the frequency of their sessions with a psychiatrist or counselor, or by contacting a peer in a recovery group for support. Victims with a mental illness may even need to have their medications monitored more closely in the aftermath of a sexual assault.

Most communities have a mental health center or behavioral health agency that provides services and supports to people with mental illnesses. Most states also have an Alliance for the Mentally Ill (AMI) with community chapters that can provide support to people with mental illness and their family members. Law enforcement agencies need to establish partnerships with these resources, so investigators know in advance who they can contact 24 hours per day, seven days a week, if they need assistance.

### **Communicating Effectively with People Who Have a Mental Illness**

When preparing for an interview with someone who is believed to have a mental illness, choose a location free from distractions and allow plenty of time. Extra time and patience may be needed to “reassure the individual, sort facts, interact with family members and others, and bring the call to successful resolution” (PERF, 1992, p. 4).

As with other victims of sexual assault, people with mental illness should be offered the opportunity to have a support person with them during the interview to increase their sense of safety and comfort. Family members and friends are often “of great value in calming an individual exhibiting unusual behavior as a result of mental or emotional impairment” (PERF, 1992, p. 6). With the support of a loved one, victims may be better able to participate in an interview and provide valuable information for the investigation. Depending on the type and severity of their mental illness, victims may require only general assistance to meaningfully participate in the criminal justice system. However, some victims may benefit from specific accommodations to help make participation



easier. For example, some people with mental illness may feel more comfortable when seated near a door, so they know they can leave if they feel threatened in any way.

If you pay attention to the victim's eye movements, facial expressions, and body language, you might be able to notice what makes them feel threatened and what helps them to feel calm. To illustrate, if you close the door to an interview room, and the victim's eyes dart toward the door with a frightened look, you can ask if they would prefer to have the door cracked or left open. This also allows the victim to feel like they have some control in the situation.

Additional tips are offered by the Office for Victims of Crime (2008):

- Speak slowly in a calm, normal tone of voice.
- Show interest and concern.
- When victims seem agitated, offer a quiet space away from any confusion or chaos, and/or shift the conversation to a safer topic.
- Treat the person with dignity and respect.
- Avoid multiple instructions and give one piece of information at a time.
- Be empathetic. Let people know you have heard them and are there to help.
- If the person is talking non-stop, gently interrupt with a simple question.
- Do not engage in physical behaviors that could fuel the person's anxiety. For example, do not touch the person or stand too close. Do not circle, surround, or close in on them. Do not conceal your hands. Avoid making sudden movements.
- Do not talk down to the person, raise your voice, or express signs of impatience.
- Avoid extreme emotions in your facial expression and avoid continuous eye contact.
- Do not take the person's words or actions personally.

Finally, be honest about what you can and cannot do for the person:

*Getting caught by victims in your well-intentioned untruth will only increase their fear and suspicion of you (Office for Victims of Crime, 2008, p. 25).*





Many of these recommendations are also valid for people without mental illness. If a victim begins to express anxiety or agitation, back off and allow the victim to calm down. However, if the victim becomes extremely agitated, distracted, uncommunicative, or displays threatening behavior toward themselves or others, they may need immediate mental health services (Office for Victims of Crime, 2008).

### **If the Victim is Experiencing Hallucinations or Delusions**

While many people who are experiencing delusions, paranoia, or hallucinations can still provide accurate information about their victimization, investigators will need to evaluate whether they seem too disorganized to participate in the interview. If so, the victim may need to be stabilized and interviewed at a later time.

When you do interview someone who experiences delusions or hallucinations, you should be especially careful to avoid whispering, joking, and laughing in the interview. Such behaviors may be misinterpreted by the person and unnecessarily fuel their anxiety. Keep in mind that hallucinations and delusions are frighteningly real to the person experiencing them. Therefore, it does not help to agree or disagree with them. A better strategy is to empathize with the person's feelings and try to reassure them that the hallucinations or delusions will not harm them and will likely disappear as their stress decreases. You can also ask what has helped them in the past when they felt this way. For example, you can say "I can see you are feeling frightened. What can I do to make you feel safer?"

### **Community Response and Crisis Intervention Teams**

A common concern people often have is whether individuals with a mental illness are more likely to be violent than others (Modell & Mak, 2008). While this can be the case with certain diagnoses, most people with mental illness are no more violent than the rest of the general population. On the other hand, recent victimization is a risk factor for violent behavior in people with mental illness (Elbogen & Johnson, 2009). It is therefore a possibility that should be kept in mind, just as it should during any other law enforcement contact. The general considerations should be the following:

- First, it is critical to determine whether the situation is a mental health emergency. Is the person a potential danger to themselves or others?
- If so, the next question is whether the person will accept treatment voluntarily.

When people are seen as a danger to themselves or others, it will often be necessary to have them transported to a facility with a 72-hour hold for psychiatric evaluation. For people who have insurance and are willing to admit themselves voluntarily, it may be possible to transport them to a private facility. For those who will not accept treatment voluntarily, they will most likely need to be taken to the county mental health facility or other facility used for this purpose in your jurisdiction (e.g., a hospital-based psychiatric



lockdown facility). The specific procedures will depend on a variety of factors, including the victim's own resources and support, state laws, agency policies, and inter-agency protocols in the community.

To prepare for these situations, law enforcement personnel should be provided with information about the "appropriate government agencies, nonprofit agencies, volunteer organizations, and emergency medical services available to provide assistance to people with mental, emotional, and psychological disabilities" (PERF, 1992, p. 6).

Some communities have even established specialized response teams. In San Diego County, for example, law enforcement officers who have undergone special training are paired with mental health clinicians to form Psychiatric Emergency Response Teams (PERTs). Their goal is to refer people with mental illness to the most appropriate, and least restrictive, community services. Similarly, Crisis Intervention Teams (CITs), such as those in the Memphis Police Department in Tennessee, use trained officers to de-escalate situations involving people with mental illnesses, and to connect the person to community resources (Council of State Governments Justice Center, 2012). This is yet another example of an initiative that is best undertaken by a multidisciplinary SARRT.

#### **Resource: People with Mental Illness**

For more information, please see the guide published by the Police Executive Research Forum (PERF) entitled [Enhancing Success of Police-Based Diversion Programs for People with Mental Illness](#).

A comprehensive document is available from the Council of State Governments, entitled the [Criminal Justice / Mental Health Consensus Project](#). It offers strategies for professionals to help meet the needs of people with mental illness during the various phases of the criminal justice process.

## **People who Use Service Animals**

Service animals are specifically trained to perform tasks for the benefit of a person with a disability. There are many kinds of service animals in use today, and their use is constantly expanding.<sup>53</sup>

- For example, some people who are legally blind use guide dogs to help them get around.

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<sup>53</sup> According to the Americans with Disabilities Act (ADA), a service animal is defined as a dog but the law allows for reasonable accommodations to permit the use of miniature horses (as long as the horse performs tasks for an individual with a disability).



- Others with seizure disorders use service animals to alert them when a seizure is starting so they can request help or get to safety.
- For some people with chemical sensitivities, service animals are used to alert them to environments that may be dangerous.
- Still others who have a mental illness use service animals to calm down.
- For those who are deaf or hard of hearing, service animals may be used to alert the person to people or sounds.
- Finally, some service animals retrieve things for people.

Under the ADA, service animals must generally be allowed to accompany people with disabilities in any public area of a governmental agency or a business or non-profit organization that serves the public. However, the animal must be “harnessed, leashed, or tethered, unless these devices interfere with the service animal’s work or the individual’s disability prevents using these devices” (US Department of Justice, 2011, p. 2).

When someone with a disability is accompanied by a service animal, it must be seen as a working animal and not a pet. This means that – no matter how much you love animals – it is best not to touch or communicate with the animal unless the owner gives permission. Similarly, you should not whistle, click or otherwise distract the animal.

When victims of crime are accompanied by a service animal, they should not be asked to separate from them for any reason.

#### **Resource: Service Animals**

For more information, see the revised ADA requirements on [Service Animals](#) published by the US Department of Justice (2011).

## **People with Hidden Disabilities**

Keep in mind that officers will often be dispatched to investigate a crime and not realize the person has a disability. Hidden disabilities can include being hard of hearing or having traumatic brain injury, mental illness, learning disabilities, Autism, mild multiple sclerosis, chemical sensitivity, chronic fatigue, epilepsy, and many other disabilities that might not be visibly apparent. Even if the disability cannot be seen by others, it may still impact the victim’s ability to function – either physically, intellectually, or emotionally. In fact, this is not just an issue for victims of crime; witnesses and even suspects can also have “invisible disabilities” that will affect the law enforcement response. These issues are thus addressed in the *PERF Model Policy*:



*Many disabilities are difficult to notice. A law enforcement officer's failure to recognize characteristics associated with certain invisible disabilities could have serious consequences for the person with the disability. For example, outward signs of a disability such as epilepsy generally do not exist unless the person with the disability experiences a seizure. People with diabetes may have reactions from either too little insulin or too much insulin. Low blood sugar reactions are common and are usually treated by ingesting sugar. Detaining someone and preventing them from getting sugar could have serious health implications for the individual and liability consequences for the officer and department.*

*Officers should realize that involuntary behavior associated with some invisible disabilities may resemble behavior characteristically exhibited by intoxicated or, less frequently, combative individuals. For example, a person experiencing a mild seizure may appear incoherent and physically imbalanced. The response is temporary.*

*An officer's patience and understanding of the characteristics commonly associated with invisible disabilities will lead to a successful outcome. An inaccurate assessment may lead to unnecessary confrontation, injury, and denial of needed medication and/or medical treatment (PERF, 1992, p. 8).*

This returns to the point where we began, which is to focus on doing what is right for victims – and indeed, anyone accessing the criminal justice system.

## Conclusion

Law enforcement professionals will never be experts in all the specific disabilities that exist, nor will they become familiar with all the possible accommodations available. That is not the goal.

The goal is to help victims and their loved ones meaningfully participate in the criminal justice process. So, whenever someone is having trouble participating in the process, we can begin by asking: "What can I do to help?" The answers are not always easy, but the purpose is clear. All citizens are entitled to equal access to public services that provide safety and justice, and we all have a role to play in ensuring this is a reality.



## References

- Aguilar, S. (no date). Prosecuting Cases of Physical and Sexual Assault of the Mentally Retarded. Prosecutor's Notebook, Volume III. Sacramento, CA: California District Attorneys Association (NCJ 110305).
- American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*. Arlington, VA, American Psychiatric Association.
- Baladerian, N.J. (1998a). *Interviewing Skills to Use With Abuse Victims Who Have Developmental Disabilities*. Los Angeles, CA: Spectrum Institute. Available at: <https://norabaladerian.com/guidebooks/>
- Baladerian, N.J. (1998b). *Interviewing and Treatment of Elder Abuse Victims with Cognitive and/or Communication Impairments*. Los Angeles, CA: Spectrum Institute. Available at: <https://norabaladerian.com/guidebooks/>.
- Beukelman, D.R. & Mirenda, P. (1998). *Augmentative and Alternative Communication: Management of Severe Communication Disorders in Children and Adults*. Baltimore, MD: Paul H. Brookes Publishing Co.
- Biklen, D., Saha, N. & Kliewer, C. (1995). How teachers confirm authorship of facilitated communication. *Journal of the Association for Persons with Severe Handicaps*, 20, 45-56.
- Brault, M.W. (2012). [Americans with Disabilities: 2010](#). Washington, DC: US Census Bureau. Household Economic Studies: Current Population Reports.
- Council of State Governments Justice Center (2012). [Statewide Law Enforcement/Mental Health Efforts: Strategies to Support and Sustain Local Initiatives](#). Washington, DC: Bureau of Justice Assistance.
- Eiselein, E.M., Hunt, B., Peth, H.A. & Sellas, M.I. (2008). Forensic evidence collection: What are your legal obligations? *ED Legal Letter*, March, 33-35.
- Elbogen, E.B. & Johnson, S.C. (2009). The intricate link between violence and mental disorder: Results from the National Epidemiologic Survey on Alcohol and Related Conditions. *Archives of General Psychiatry*, 66(2), 152-161.
- Ellison, L. & Munro, V. (2013). [Special Measures in Rape Trials: Exploring the Impact of Screens, Live Links and Video-Recorded Evidence on Mock Juror Deliberation](#). Briefing report published by the Economic and Social Research Council.



- Harrell, E. (2011). [Crime Against Persons with Disabilities, 2008-2010 - Statistical Tables](#). Washington, DC: Bureau of Justice Statistics, US Department of Justice (NCJ 235777).
- Johnson, I. & Sigler, R. (2000). Forced sexual intercourse among intimates. *Journal of Family Violence, 15* (1), 95-108.
- Kennedy, C.H. & Niederbuhl, J. (2001). Establishing criteria for sexual consent capacity. *American Journal on Mental Retardation, 106* (6), 503-510.
- Martin, S.L., Ray, N., Sotres-Alvarez, D., Kupper, L.L., Moracco, K.E., Dickens, P.A., Scandlin, D. & Gizlice, Z. (2006). Physical and sexual assault of women with disabilities. *Violence Against Women, 12* (9), 823-837.
- Medlar, T. & Medlar, J. (1990). Nursing management of sexuality issues. *Journal of Head Trauma Rehabilitation, 5*, 46-51.
- Modell, S. & Mak, S. (2008). A preliminary assessment of police officers' knowledge and perceptions of persons with disabilities. *Intellectual and Developmental Disabilities, 46*(3),183-189.
- Morano, J.P. (2001). Sexual abuse of the mentally retarded patient: Medical and legal analysis for the primary care physician. *Primary Care Companion to the Journal of Clinical Psychiatry, 3*(3), 26–135.
- New Mexico Coalition of Sexual Assault Programs (no date). *Accessibility to the Judicial Process for Crime Victims with Disabilities: A Law Enforcement Guide to Ensuring Equal Justice Involving Domestic Violence, Sexual Assault and Stalking*. Albuquerque, NM: New Mexico Coalition of Sexual Assault Programs, Inc.
- Office for Victims of Crime (2002). [First Response to Victims of Crime Who Have a Disability](#). Washington, DC: Office for Victims of Crime, Office of Justice Programs, US Department of Justice (NCJ 195500).
- Office for Victims of Crime (2008). [First Response to Victims of Crime: A Guidebook for Law Enforcement Officers](#). Washington, DC: Office for Victims of Crime, Office of Justice Programs, US Department of Justice (NCJ 217272).
- Office on Violence Against Women (2013). [A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents \(Second Edition\)](#). Washington, DC: Office on Violence Against Women, US Department of Justice (NCJ 206554).
- Pierce Weeks, J. & Campbell, P. (2008). The challenges forensic nurses face when their patient is comatose: Addressing the needs of our most vulnerable patient population. *Journal of Forensic Nursing, 4*, 104-110.





SafePlace (2007). *In My Jurisdiction; Responding to Crimes Against People with Disabilities, Deaf Individuals, and Older Adults*. Austin, TX: Disability Services ASAP (A Safety Awareness Program) of SafePlace with Deaf Abused Women and Children Advocacy Services (DAWCAS) and Family Eldercare.

Sgroi, S.M. (1989). *Sexual Abuse Treatment for Children, Adult Survivors, Offenders, and Persons with Mental Retardation (Vol. 2)*. New York, NY: Lexington Books.

Simmons, T. & McCarrier, T. (2008). Responding to epilepsy and seizure incidents: A guide for law enforcement. *CALEA Update Magazine*, 105. Gainesville, VA: Commission on Accreditation for Law Enforcement Agencies. Published in conjunction with the Epilepsy Foundation.

Sobsey, D. (1994). *Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance?* Baltimore, MD: Paul H. Brookes Publishing Co.

Sobsey, D. & Doe, T. (1991). Patterns of sexual abuse and assault. *Sexuality and Disability*, 9 (3), 243-259.

Stonebrook, M.S. (2006, September). [Title II of the Americans with Disabilities Act: The potential for police liability and ways to avoid it](#). *Police Chief*, 73 (9), 10-11.

Sundram, C. & Stavis, P. (1994). Sexuality and mental retardation: Unmet challenges. *Mental Retardation*, 32 (4), 255-264.

Taylor, N. & Joudo, J. (2005). [The Impact of Pre-Recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainants on Jury Decision-Making: An Experimental Study](#). Australian Institute of Criminology.

Tjaden, P. & Thoennes, N. (2000). [Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey](#). Washington, DC: National Institute of Justice, Office of Justice Programs, US Department of Justice and the Centers for Disease Control and Prevention (NCJ 183781).

Tracy, C.E., Fromson, T.L., Long, J.G., & Whitman, C. (2012, June 5). [Rape and Sexual Assault in the Legal System](#). Paper presented to the National Research Council of the national Academies Panel on Measuring Rape and Sexual Assault in the Bureau of Justice Statistics Household Surveys Committee on National Statistics.

US Department of Justice (2006). [Commonly Asked Questions \(FAQ's\) About the Americans with Disabilities Act and Law Enforcement](#). Washington, DC: Civil Rights Division, Disability Rights Section (last revised April 4, 2006).



US Department of Justice (2011). [ADA Requirements: Service Animals](#). Washington, DC: Civil rights Division, Disability Rights Section.

US Department of Justice (2012). [Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDS](#). Washington, DC: Civil Rights Division, Disability Rights Section (last revised June 2012).

US Department of Justice (2014a). [ADA Requirements: Effective Communication](#). Washington, DC: Civil rights Division, Disability Rights Section.

US Department of Justice (2014b). [ADA Requirements: Wheelchairs, Mobility Aids, and Other power-Driven Mobility Devices](#). Washington, DC: Civil rights Division, Disability Rights Section.

*Victims with Disabilities: The Forensic Interview – Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities* (First Edition April 2007, Revised July 2011). [57-minute video and 72-page guide]



## Appendix A: Federal Laws for Victims with Disabilities

There are two federal laws that specifically address discrimination against persons with disabilities: The [Americans with Disabilities Act \(ADA\)](#) of 1990 and the [Rehabilitation Act](#) of 1973. These acts provide broad protections for people with disabilities and offer guidelines for ensuring access to programs, services, facilities, and activities, including those within the criminal justice system. Because the Rehabilitation Act contains provisions that are largely similar to the ADA, it is not discussed in this module.

Individual states may also have additional laws that pertain to accessibility, such as those governing new construction and remodeling for buildings to be physically accessible.

### Americans with Disabilities Act

As described in the module, the Americans with Disabilities Act (ADA) offers civil rights protections to people with disabilities that are similar to the protections provided to people based on race, gender, color, national origin, age and religion. These protections are provided in the areas of employment, state and local government activities, public transportation, public accommodations, and telephone communications.

### Definition of Disability

The ADA covers over 900 different disabilities and defines a person with a disability as:

*Any person with a physical or mental impairment that substantially limits one or more of an individual's major life activities, including people with a record of impairment or who are regarded as having an impairment.*

These protections even extend to people who are *associated with* someone who has a disability (e.g., a caregiver or relative).

### Covered Disabilities

Disabilities covered by the ADA include, but are not limited to:

- Developmental disabilities (including intellectual disabilities, Autism, cerebral palsy, epilepsy)
- Traumatic brain injury
- Severe physical disabilities (spinal cord injury, polio, spina bifida, etc.).
- Psychiatric disabilities



- Degenerative brain disorders
- Deaf or hard of hearing
- Blind or low vision

## General Protections

Title II of the ADA states that:

*No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.*

Title II explicitly requires the following for equal access of people with disabilities:

- *Effective communication through the use of auxiliary services, when necessary.*
- *Reasonable modifications to policies, practices, and procedures.*

When someone with a disability requests an accommodation for equal access, it is therefore generally incumbent upon public entities to provide it. Exceptions can be granted if the public entity can prove that it would cause undue financial or administrative hardship or that it would fundamentally alter the nature of the service provided. However, the burden of proof in such a situation is substantial, and even if the exception is granted, the public entity still has to take some action to ensure that the person with a disability receives the services they provide.

## Enforcement

The ADA and the Rehabilitation Act are both enforced on a federal level by the US Department of Justice. Any relevant state laws are enforced on the state level.

In addition, there is case law indicating that state Attorney Generals' offices have the power to enforce these federal laws on behalf of their citizens, and some state Attorney Generals' offices have thus taken the opportunity to enforce ADA compliance.<sup>54</sup>

People can file complaints with these entities, which have responsibility for investigating the complaint and issuing findings. In cases of noncompliance, the enforcement entity will first seek a voluntary agreement to rectify the situation. Only when a voluntary

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<sup>54</sup> For example, see the publication entitled [Opening the Bench and Bar to People with Disabilities by the Illinois Attorney General](#).



agreement cannot be reached will the US Department of Justice or the state Attorney General's office initiate litigation. It is also possible for a complainant to file a civil suit.

## For More Information

The government's [website](#) offers more information and technical assistance on a variety of topics related to the ADA.

Two additional publications discuss the ADA requirements for [Effective Communication](#) as well as [Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices](#). Both documents were published by the US Department of Justice in 2014.

The US Department of Justice also operates a toll-free [ADA Information Line](#) to provide information and materials to the public about the requirements of the ADA.

The US Department of Justice has also helped many cities and counties to become compliant with the ADA under the auspices of their [Project Civic Access](#).

Additional resources include the [Commonly Asked Questions about the ADA and Law Enforcement](#) published by the US Department of Justice and the [Model Policy on the ADA](#) developed by the Police Executive Research Forum (PERF).

The Vera Institute of Justice offers a [website](#) that provides information to help criminal justice professionals and others understand disabilities and Deaf culture, address issues of accessibility, and respond effectively to violence.

Other resources on the law enforcement response to people with disabilities are included in the online directory created by the [National Center for Victims of Crime](#).



# **Appendix B: Police Executive Research Forum (PERF) Model Policy on the American with Disabilities Act**

(reprinted here with permission)

## **MODEL POLICY**

## **AMERICANS WITH DISABILITIES ACT**

US Department of Justice  
National Institute of Justice  
149001

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A model policy statement prepared by the Police Executive Research Forum as a guide to law enforcement agencies.

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September, 1992



**Model Policy  
Americans With Disabilities Act  
General Commitment**

## **Introduction**

For many years, police and public safety agencies have expressed a commitment to providing quality response and service to all people in a fair, impartial manner. Traditionally, agencies have addressed fairness and impartiality on the basis of race, color, sex, sexual preference, national origin, religion, and, more recently, age.

People with disabilities represent the largest minority group in the nation. With the passage of the Americans with Disabilities Act in 1990, it has become imperative that departments restate their commitment, ensuring accessibility to services and employment opportunities by people with disabilities.

Every department should recognize the needs of people with disabilities in their mission statement and agency values. Departments must develop policies and procedures that address specific accommodations to be afforded to people with disabilities. Through enforcement of these policies, agencies must ensure equal provision of law enforcement services.

Beyond adapting policies and procedures, it will be necessary for agencies to train police and public safety employees and physically modify facilities to make them accessible to and usable by people with disabilities. Agencies must eliminate physical and communication barriers that interfere with equality of employment. Agencies must ensure that workers with a disability are provided with the same benefits and privileges of employment as those enjoyed by employees without disabilities.

## **Purpose**

The purpose of the following policy is to provide guidance to the agency in committing itself and its employees to providing quality services to people with disabilities and complying with provisions of the Americans with Disabilities Act.

## **Policy**

### A. Introduction

It has been estimated that there are approximately 43 million people with disabilities in the United States. The Americans with Disabilities Act of 1990 (Title II) provides that departments of any state or local government may not exclude qualified individuals with disabilities from participation in any program, service, or activity or deny qualified individuals with disabilities the benefits of programs, services, or activities, or otherwise subject them to discrimination on the basis of disability.

## B. Policy Statement

It shall be the policy of the \_\_\_\_\_ Department to ensure that a consistently high level of police service is provided to all members of the community including people who may require special consideration in order to access these services.

It is the policy of this Department to afford people with disabilities the same access to programs, services, and employment provided to all citizens. This includes, but is not limited to, services such as first responder recognition of the nature and characteristics of various disabilities and appropriate physical and emotional support to people with disabilities who seek to access police services or who come into contact with the police.

Examples include, but are not limited to:

1. Recognition of symptoms and appropriate medical and emotional support for people experiencing seizures;
2. Sensitivity to and appropriate physical support in aiding people who are mobility challenged;
3. Rapid access to interpreters for people with hearing and/or speech disabilities who have a need to communicate with police personnel;
4. 24-hour access to professional support systems for people with mental disabilities;
5. Access to police information, programs, and publications for people who have impaired vision or hearing;
6. Recognition of the difference between characteristics common to certain disabilities (such as epilepsy, diabetes, and deafness) and those associated with antisocial or criminal behavior or reaction to alcohol and drug abuse; and,
7. Other accommodations to ensure service and access to all people with visual, mental, emotional and medical disabilities including "invisible" disabilities such as diabetes, epilepsy, multiple sclerosis, loss of hearing and others.

## C. Definitions

1. The term "qualified individual with a disability" means an individual who, with or without reasonable modifications to rules; policies or practices; the removal of architectural, communication, or transportation barriers; or, the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.
2. The term "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.

3. The term "reasonable accommodation" includes the modification of existing facilities to facilities that are readily accessible to and usable by individuals with disabilities; job restructuring, part-time, or modified work schedules; reassignment of an employee with a disability to a vacant position; acquisition or modification of equipment; and appropriate alteration of examinations, training materials, or policies.

## **Procedural Overview**

No single policy or procedure can address police response to all people with disabilities. It is the intent of this policy and procedure to guide employees in responding to and assisting those people with disabilities with whom they will have the most contact in the performance of their duties and responsibilities. This policy and procedure addresses common police interaction with people with disabilities including those who are complainants, victims, witnesses, arrestees, members of the community who desire to participate in department-sponsored programs, people seeking information, and uninvolved bystanders.

In all cases, employees must take all steps necessary to assist people with disabilities in accessing the full range of immediate and follow-up services provided by this Department. Consideration must be given to those steps that will lead to a positive outcome while, at all times, maintaining employee safety.

## **Overview Of Specific Disabilities**

### A. Introduction

It is not the intent of this policy to provide detailed information on all disabilities.

It is incumbent on this Department to make information available to employees, through training and other sources, on various disabilities.

It is incumbent on all employees to become aware of the characteristics of various disabilities and the needs of people who have them.

Employees should be aware that many people have multiple disabilities.

The following section provides a brief overview of several disabilities and how the Department and its employees should respond to the needs of people with these disabilities.

### B. Visual Disabilities

One of the most difficult issues facing people in need who are blind or vision impaired is identifying police officials. Employees should offer detailed information in identifying themselves as members of the Department. Whenever possible, if the presence of a visual disability is known, officers may have dispatch contact the victim or complainant to verify to

him or her that a member of the Department has arrived. If needed, badges may be offered to the individual to verify the officer's identity.

Knowing what not to do is as important as knowing what to do to assist a person who is vision impaired. Employees do not need to raise their voice when speaking. Employees should not grab the person's arm to lead him or her in a particular direction. If needed, the individual will take the officer's arm for guidance.

Signs and printed information at police facilities should be in large print in order to assist people with vision impairments. Room identification signs and elevator information in those facilities where people may proceed unaccompanied should be in Braille for blind people.

### C. Mental, Emotional and Psychological Disabilities

The terms "mental illness," "emotional illness," and "psychological illness," describe varying levels of a group of disabilities causing disturbances in thinking, feeling, and relating. It has been estimated that ten percent of the population of the United States has some type of mental illness.

Providing accessibility to police services for people with mental, emotional, and psychological disabilities usually involves providing only general assistance. At times, exceptional police service and safe custodial care may be required.

Employees must ensure that people with mental, emotional, and psychological disabilities are assisted in accessing agency services, which may require time and patience beyond that usually provided. For example, time spent on a call for service may have to be extended in order to reassure the individual, sort facts, interact with family members and others, and bring the call to successful resolution.

If an individual with a mental, emotional, or psychological disability is taken into custody, employees must make reasonable efforts, while taking precautions, to use the least restraint possible and protect the arrestee from self-injury.

Frequently, a family member or friend is of great value in calming an individual exhibiting unusual behavior as a result of mental or emotional impairment. If needed, steps should be taken to gain placement for the individual in an appropriate emergency medical, health care, or shelter facility.

Officers must become familiar with appropriate government agencies, nonprofit agencies, volunteer organizations, and emergency medical services available to provide assistance to people with mental, emotional, and psychological disabilities.

Officers must remain familiar with appropriate emergency commitment/detention procedures to be used when providing shelter care and related support to people with mental, emotional or psychological disabilities.

## D. Mental Retardation

Mental retardation encompasses a broad range of developmental disabilities from mild to profound. Mental retardation and mental illness are distinct conditions, with no similarity. The largest percentage of people with mental retardation are in the ranges termed "mild" or "moderate."

Employees should recognize that people who have mental retardation have varied degrees of limited intellectual functioning. In all situations, employees should ask short questions, be patient when waiting for answers, repeat questions and answers if necessary, have individuals repeat the question in their own words, and provide reassurance. In many situations, and particularly when dealing with someone who is lost or has run away, the employee may gain improved response by accompanying the person through a building or neighborhood to seek visual clues.

In responding to the needs of people with severe or profound mental retardation, the aid of family, friends, and neighbors is invaluable.

## E. Mobility Impairments

Among the disabilities that are the most visibly identifiable are mobility impairments.

People with mobility-related impairments include those who have difficulty walking, those who use a wheelchair or other mobility aid, and those who are immobile.

In a critical or emergency situation, employees should be aware of the safest and most rapid methods for assisting people with mobility impairments to avoid causing them unnecessary strain or injury.

In an arrest encounter, once an arrestee with mobility impairment is secure in a cell and safety concerns are resolved, an effort should be made to return use of any mobility aids (wheel chair, cane, etc.).

Department facilities should be accessible to people with mobility impairments. Entrances, interior routes, stairs, drinking fountains, rest rooms, and telephones should accommodate people with mobility impairments including those who use wheelchairs.

## F. Invisible Disabilities

Many disabilities are difficult to notice. A law enforcement officer's failure to recognize characteristics associated with certain invisible disabilities could have serious consequences for the person with the disability. For example, outward signs of a disability such as epilepsy generally do not exist unless the person with the disability experiences a seizure. People with diabetes may have reactions from either too little insulin or too much insulin. Low blood sugar reactions are common and are usually treated by ingesting sugar. Detaining someone and preventing them from getting sugar could have serious health implications for the individual and liability consequences for the officer and department.

Officers should realize that involuntary behavior associated with some invisible disabilities may resemble behavior characteristically exhibited by intoxicated or, less frequently, combative individuals. For example, a person experiencing a mild seizure may appear incoherent and physically imbalanced. The response is temporary.

An officer's patience and understanding of the characteristics commonly associated with invisible disabilities will lead to a successful outcome. An inaccurate assessment may lead to unnecessary confrontation, injury, and denial of needed medication and/or medical treatment.

As with all types of disabilities, an employee's first obligation is to protect the individual from unnecessary harm. When aiding a person experiencing a seizure, protection from obstacles, a calm reassuring manner, and patience are important responses. Family members and friends should be sought to provide information and assistance. Their presence may prove invaluable in understanding the needs of the person with the disability and guiding the officer's actions.

### G. Speech and Hearing & Disabilities

Like other invisible disabilities, officers may confuse the behavior of individuals with hearing and speech disabilities with those of people who intentionally refuse to cooperate or those who abuse illegal substances. Officers should be aware that an individual's failure to comply with or respond to verbal orders does not always constitute defiance, but may be the result of that individual's inability to hear the officer or respond verbally. Before committing themselves to a course of action, officers should attempt to identify whether or not they are dealing with a person who has a communication-related disability.

It is essential that officers take extra measures to protect the rights of suspects who are deaf and hard of hearing, as well as others who may not have educational or communications comprehension levels sufficient to fully understand the basic Miranda rights. Simply reading the rights to someone with a hearing disability and having the individual acknowledge that they are understood is insufficient.

All police facilities should be appropriately posted with clearly visible signs that provide essential information to people with hearing and impairments.

Each facility should be equipped with a variable volume public telephone and a TDD in order to provide telephone access to people who are deaf or hard of hearing who desire to call the police facility from an external location and those at the facility who desire to make a call to another.

## **Responsibility Of Officers**

In the performance of their duties, police officers and civilian staff will encounter people with disabilities in every possible situation. In providing police service to the public, it is incumbent on every employee to ensure that people with disabilities are afforded all rights,



privileges, and access to the Department provided to those without disabilities.

People with disabilities may also be suspects or arrestees and require detention, transport, and processing. Employees must familiarize themselves with the proper methods of transport, arrest, and detention to ensure officer safety while providing all reasonable support to an arrestee with a disability.

Employees must develop the ability to recognize the characteristics of various disabilities, including symptoms, and physical reactions.

Employees must recognize that responses of people with certain disabilities may resemble those of people who have abused substances such as alcohol or drugs. At times, such traits may be exhibited by people with diabetes, epilepsy, multiple sclerosis, hearing impairments, and other disabilities.

Employees should be able to identify and apply appropriate responses, such as emergency medical aid, protecting and/or calming the individual, using basic sign language, securing professional medical attention, locating and enlisting support of family and friends, and rendering proper physical support.

The Department will maintain a roster of support agencies and individuals who may be contacted on a 24-hour-per-day basis to provide support in situations involving people with disabilities. The Department will provide reasonable accommodation to all qualified individuals who have disabilities.

Officers should be able to identify and apply appropriate restraint to a person with a disability, if needed to facilitate an arrest. When affecting an arrest of a person with a disability, officers should be able to access the support systems necessary to secure the rights of the individual. This may include use of interpreters, attorneys, and legal guardians.

In all cases, officer safety must prevail. No employee should jeopardize his or her safety or that of others in an attempt to accommodate a person with a disability.

## **Department Responsibilities**

The Department will provide training and information to all employees on recognition of various disabilities and the provision of appropriate police services to people with disabilities. The Department will provide training to all officers on appropriate response to both non-arrest and arrest situations involving people with disabilities.

In order for employees to provide the highest level of service or safe custodial care to people with disabilities, the Department will develop and regularly update a list of agencies available to provide guidance, support, and direct assistance.

## A. Routine and Emergency Interaction

In providing routine and emergency services, equality in response, support and protection will be provided to all people including those with disabilities. Officers will make every effort to access appropriate support organizations when needed. (Successful liaison between law enforcement and support services agencies has led to improved service to people with disabilities in major cities and counties throughout the United States.). All Department services will be made available to people with disabilities. This includes:

### **1. Communications accessibility for both emergency and routine situations**

All dispatchers will be trained to recognize characteristics of people whose disabilities may require special communications techniques and methods for providing service. The Department will maintain TDD services for deaf and hard of hearing people and provide direct access to telephone emergency systems for individuals who use TDD's.

### **2. Access to Department programs**

Crime prevention programs such as target hardening and neighborhood watch, youth programs, in-school programs, and other programs will be made available to people with disabilities through outreach, modified program schedules, use of interpreters or other auxiliary aids and services, and other efforts to accommodate special needs.

### **3. Response to routine calls for service**

Department employees should be aware that people with disabilities have special needs that may have to be met in order to provide the best possible police response to calls for service. Officers should be able to identify specific needs of people with disabilities.

Employees should be sensitive to the fact that some people with disabilities may be targeted as crime victims as a direct result of their disability.

Employees should be familiar with techniques they may employ at a scene (during the initial call for service and follow-up) to provide support to people with disabilities. All reasonable steps should be taken to aid people with disabilities in bringing calls for police service to successful completion.

### **4. Response to emergency calls for service**

Employees should be able to identify characteristics common to specific disabilities in a crisis or emergency so that appropriate action may be taken to render aid and assistance. If the person with the disability is unable to communicate, employees should seek a medical alert bracelet or similar form of ID and input from family,

witnesses, and others to aid in identifying the nature of the disability.

As first responders, all employees should be aware of emergency medical techniques applicable to various disabilities. All employees should be able to apply emergency signs to people who are deaf to obtain basic information on matters such as nature of the incident, location and extent of injury, name and address, and family member of other person to be contacted.

## **5. Response to criminal and disruptive behavior**

Some people with disabilities commit crimes. Some people with disabilities also exhibit disruptive behavior.

Generally, people with disabilities who commit crimes or engage in disorderly conduct should receive no preferential treatment. However, disorderly conduct should not be treated as a criminal activity when it is the manifestation of a disability. For example, when such conduct is the result of a seizure or mental disability, the call for service should be handled as a medical call rather than an arrest situation.

Officers should be aware that, in such situations, it is common for people with disabilities to seek sympathy as a way to lessen the outcome of the police response.

In all such situations, officers should take reasonable precaution to protect themselves and others.

### **B. Arrest and Incarceration**

Employees should employ appropriate precautions and safety techniques in arresting and incarcerating all people, whether or not they have a disability. Officers should follow all policies and standard techniques for arrest and incarceration when taking a person with disabilities into custody.

Consideration should be given to the special needs of some people with disabilities in an arrest situation. Response in these situations requires discretion and will be based, in great part, on the officer's knowledge of characteristics and severity of the disability, the level of resistance exhibited by the suspect, and immediacy of the situation. In arrest and incarceration situations, employees may encounter the following:

1. A person whose disability affects the muscular and/or skeletal system may not be able to be restrained using handcuffs or other standard techniques. Alternative methods (transport vans, seat belts) should be sought.

2. Some people with disabilities require physical aids (canes, wheel chairs, leg braces) to maintain their mobility. Once the immediate presence of danger has diminished and the suspect is safely incarcerated, every effort should be made to return the device. If mobility aids must be withheld, the prisoner must be closely monitored to ensure that his or her needs are met.
3. Prescribed medication may be required at regular intervals by people with disabilities (diabetes, epilepsy). Medical personnel (the suspect's physician, on call medical staff, emergency room medical staff) should be contacted immediately to determine the importance of administering the medication, potential for overdose, etc.
4. Some people with disabilities may not have achieved communications comprehension levels sufficient to understand their individual rights in an arrest situation. (For people who are deaf, there is no sign language for the term "waive" in regard to the Miranda rights. Yet, in an effort to be cooperative, a suspect who is deaf may acknowledge that he or she is willing to give up his or her rights.). Officers must take extra care to ensure that the rights of the accused are protected.
5. Lack of speech or other speech impairment may make it difficult for a suspect to notify the arresting officer or jailer of an urgent need. Frequent cell checks should be conducted.

## **Employment Issues**

It is not the intent of this section of the policy to set forth all directives dealing with employment. Rather, it is designed to reinforce the Department's commitment to all components of the Americans with Disabilities Act. Recruitment, screening, hiring, and promotions are addressed in detail in other policies and procedures of this Department and policies and laws of this City and State.

### A. Policy Statement

It is the policy of this Department, as required by Titles I and II of the ADA, that qualified individuals with a disability are not discriminated against because of their disability in regard to job application procedures, hiring, advancement, compensation, training, and other terms of employment. To ensure fairness and that discrimination does occur in the employment process, employees of the Department are prohibited from engaging in the following practices:

1. Limiting, segregating, or classifying a job applicant in a way that adversely affects the opportunities of the applicant because of the disability;
2. Using standards, criteria or methods of administration that discriminate; or that perpetuate the discrimination of others who are subject to common administrative control;

3. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of a known disability of an individual with whom the applicant is known to have a relationship or association;
4. Failing to provide reasonable accommodation to the known disability of an otherwise qualified individual (applicant or employee), unless the accommodation imposes an undue hardship;
5. Using qualification standards, employment tests, or other selection criteria that tend to screen out individuals with disabilities unless such tests have been shown to be job-related and consistent with business necessity for the position in question; and,
6. Selecting and administering tests that measure an individual's impaired sensory, manual, or speaking skills resultant to a disability rather than the knowledge, skills, and abilities required by a specific position.

**B. Medical Screening**

While engaged in pre-employment inquiries of any applicant, prior to an offer of employment, the Department may make inquiries about the ability of an applicant or employee to perform job-related functions. The Department will not conduct a medical examination prior to making an offer of employment or make any specific inquiries regarding any disability or disabilities the applicant may have.

After a conditional offer of employment has been made, the applicant may be required to undergo a medical examination and related inquiry, if such examination and inquiry is required for all entering employees in the same job category. This inquiry may include questions about the ability of an applicant or employee to perform job-related functions.

**Information On ADA**

Any employee having questions regarding the Americans with Disabilities Act, providing services to people with disabilities, or employment of people with disabilities, should direct his or her inquiry to the following members of the Department or to the Office of the Chief of Police/Sheriff.

<u>Employee or Unit</u>	<u>Extension</u>
a. _____	_____
b. _____	_____
c. _____	_____
d. _____	_____
e. _____	_____





## Appendix C: Severity Levels for Intellectual Disability

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Severity Level	Conceptual domain	Social domain	Practical domain
<b>Mild</b>	<p>For preschool children, there may be no obvious conceptual differences. For school-age children and adults, there are difficulties in learning academic skills involving reading, writing, arithmetic, time, or money, with support needed in one or more areas to meet age-related expectations. In adults, abstract thinking, executive function (i.e., planning, strategizing, priority setting, and cognitive flexibility), and short-term memory, as well as functional use of academic skills (e.g., reading, money management), are impaired. There is a somewhat concrete approach to problems and solutions compared with age-mates.</p>	<p>Compared with typically developing age-mates, the individual is immature in social interactions. For example, there may be difficulty in accurately perceiving peers' social cues. Communication, conversation, and language are more concrete or immature than expected for age. There may be difficulties regulating emotion and behavior in age-appropriate fashion; these difficulties are noticed by peers in social situations. There is limited understanding of risk in social situations; social judgment is immature for age, and the person is at risk of being manipulated by others (gullibility).</p>	<p>The individual may function age-appropriately in personal care. Individuals need some support with complex daily living tasks in comparison to peers. In adulthood, supports typically involve grocery shopping, transportation, home and child-care organizing, nutritious food preparation, and banking and money management. Recreational skills resemble those of age-mates, although judgment related to well-being and organization around recreation requires support. In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to make health care decisions and legal decisions, and to learn to perform a skilled vocation competently. Support is typically needed to raise a family.</p>

<p><b>Moderate</b></p>	<p>All through development, the individual's conceptual skills lag markedly behind those of peers. For preschoolers, language and pre-academic skills develop slowly. For school-age children, progress in reading, mathematics, and understanding of time and money occurs slowly across the school years and is markedly limited compared with that of peers. For adults, academic skill development is typically at an elementary level, and support is required for all use of academic skills in work and personal life. Ongoing assistance on a daily basis is needed to complete conceptual tasks of day-to-day life, and others may take over these responsibilities fully for the individual.</p>	<p>The individual shows marked differences from peers in social and communicative behavior across development. Spoken language is typically a primary tool for social communication but is much less complex than that of peers. Capacity for relationships is evident in ties to family and friends, and the individual may have successful friendships across life and sometimes romantic relations in adulthood. However, individuals may not perceive or interpret social cues accurately. Social judgment and decision-making abilities are limited, and caretakers must assist the person with life decisions. Friendships with typically developing peers are often affected by communication or social limitations. Significant social and communicative support is needed in work settings for success.</p>	<p>The individual can care for personal needs involving eating, dressing, elimination, and hygiene as an adult, although an extended period of teaching and time is needed for the individual to become independent in these areas, and reminders may be needed. Similarly, participation in all household tasks can be achieved by adulthood, although an extended period of teaching is needed, and ongoing supports will typically occur for adult-level performance. Independent employment in jobs that require limited conceptual and communication skills can be achieved, but considerable support from co-workers, supervisors, and others is needed to manage social expectations, job complexities, and ancillary responsibilities such as scheduling, transportation, health benefits, and money management. A variety of recreational skills can be developed. These typically require additional supports and learning objectives over an extended period of</p>
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			time. Maladaptive behavior is present in a significant minority and causes social problems.
<b>Severe</b>	<p>Attainment of conceptual skills is limited. The individual generally has little understanding of written language or concepts involving numbers, quantity, time, and money. Caretakers provide extensive supports for problem solving throughout life.</p>	<p>Spoken language is quite limited in terms of vocabulary and grammar. Speech may be single words or phrases and may be supplemented through augmentative means. Speech and communication are focused on the here and now within everyday events. Language is used for social communication more than for explication. Individuals understand simple speech and gestural communication. Relationships with family members and familiar others are a source of pleasure and help.</p>	<p>The individual requires support for all activities of daily living, including meals, dressing, bathing, and elimination. The individual requires supervision at all times. The individual cannot make responsible decisions regarding well-being of self or others. In adulthood, participation in tasks at home, recreation, and work requires ongoing support and assistance. Skill acquisition in all domains involves long-term teaching and ongoing support. Maladaptive behavior, including self-injury, is present in a significant minority.</p>
<b>Profound</b>	<p>Conceptual skills generally involve the physical world rather than the symbolic processes. The individual may use objects in goal-directed fashion for self-care, work, and recreation. Certain visuospatial skills, such as matching and sorting based on physical characteristics, may be acquired. However co-</p>	<p>The individual has very limited understanding of symbolic communication in speech or gesture. He or she may understand some simple instructions or gestures. The individual expresses her or his desires and emotions largely through nonverbal, nonsymbolic communication. The individual enjoys relationships with well-known family members,</p>	<p>The individual is dependent on others for all aspects of daily physical care, health, and safety, although he or she may be able to participate in some of these activities as well. Individuals without severe physical impairments may assist with some daily work tasks at home, like carrying dishes to the table. Simple actions</p>

	<p>occurring motor and sensory impairments may prevent functional use of objects.</p>	<p>caretakers, and familiar others, and initiates and responds to social interactions through gestural and emotional cues. Co-occurring sensory and physical impairments may prevent many social activities.</p>	<p>with objects may be the basis of participation in some vocational activities with high levels of ongoing support. Recreational activities may involve, for example, enjoyment in listening to music, watching movies, going out for walks, or participating in water activities, all with the support of others. Co-occurring physical and sensory impairments are frequent barriers to participation (beyond watching) in home, recreational, and vocational activities. Maladaptive behavior is present in a significant minority.</p>
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## Appendix D: Gathering Victim-Specific Information

When preparing to interview a victim who has a disability, it can be very helpful for investigators, advocates, and others to have person-specific information about the victim's disability and any potential impact on communication, mobility, and adaptive functioning. This information can be organized in several different ways. One way is for people with disabilities, family members, or service providers to complete an Emergency Information Form that can be given to public services personnel when a critical situation arises. Another approach is for law enforcement agencies to collect information from people who have disabilities and live within their jurisdiction. For example, the police department in one Illinois community worked collaboratively with the Autism Network to create a form documenting information that would be essential for emergency responders in the event of a crisis. The form was completed by each person or family, and it was then kept on file in a secure area of the police department.

The following table describes specific information that could be used in either type of scenario. Such information is critical for law enforcement investigators, prosecutors, and others, and it can most effectively be gathered before an interview takes place. The information can then be kept in an easily accessible location of the person's home (e.g., on the refrigerator), for any professional responding in an emergency situation.

## Emergency Information Form

Name:	Date:
Address:	Phone:
Emergency contact/relationship:	Phone:
Guardian: Yes No Name:	Date of birth:
Support staff:	Phone:
Medications: Yes No	Mobility help? Yes No
Method of communication:	
Favorite objects or discussion topics:	
Any behavior or characteristics that might attract attention:	
Sensory, medical or dietary issues:	
Approach and de-escalation techniques:	
Actions or subjects to avoid:	
Individual/Guardian Signature: _____	
Date: _____ Reviewed: _____	

Another tool that is often used by people with disabilities and their support people is a Personal Information Card that describes their disability and explains how to best respond to them. The card is usually the size of a business card and is often laminated. Of course, not everyone with a disability has one of these cards, but it is an idea that is becoming increasingly popular. For instance, some Deaf people carry such an information card, which can be very helpful when someone unfamiliar is trying to engage them in a conversation. Some people who do not communicate in a manner that is easy for others to understand may also have such a card. For example, one woman with a disability who was interviewed during the development of this module said, "If I am pulled over by a police officer, I don't want them to think I have been drinking. I want them to know I have a speaking disability, so I hand them my card."

A Personal Information Card should be individualized with information for a specific person. We have provided a sample card below, showing both the front and back.

### **SARRT Tip:**

Collaborate with disability organizations, mental health services, and advocacy agencies in your community to encourage people with disabilities to compile information that would be essential in an emergency and leave it posted in a conspicuous place (e.g., the front of the refrigerator).

## Personal Information Card

Information about my disability	Emergency Contact Information:
My name is _____	Husband:
I have a speech disability.	Home phone:
<ul style="list-style-type: none"><li>• Please talk slowly in a normal voice</li><li>• Sometimes it is hard for people to understand me</li><li>• If you don't understand me, I can write down my answer</li></ul>	Work phone:
	Cell phone:
	Sister:
	Home phone:
	Work phone:
	Cell phone:
I also have mild cerebral palsy and walk with a limp.	
Date completed: _____	

## Appendix E: People First Language

“People-First Language” is the preferred way to write and speak about people with disabilities. There are three important components to using People-First Language.

- People-First Language uses respectful terms such as “intellectual disability” instead of “mental retardation.” To be truly respectful of people with disabilities, it is best to avoid such terms as “retarded,” “crazy,” or “crippled,” even in everyday language.
- It is also preferable to use language that refers to the person first and the disability second (hence the name). For example, it is preferable to refer to “a person with an intellectual disability” or “a person who has a mental illness,” rather than “a disabled person” or “a mentally ill person.”
- People-First Language refers to the person as *having* a disability, not as *being* a disability. It thus refers to “a person with Autism” and not “an Autistic person.” The premise of People-First language is that “we are people first,” rather than a disability.

### Examples of People-First Language

The following examples illustrate various types of appropriate and inappropriate language. They are drawn from [People First, A Language Guide](#), published by the [Institute on Disabilities, Temple University](#):



**Don't say:** *Dr. Lee is a crippled professor and is confined to a wheelchair. All of his students are normal.*

**Instead, say:** *Dr. Lee is a professor with a disability. He uses a wheelchair, which enables him to be mobile and independent. None of his students have disabilities.*

**Don't say:** *The community is sponsoring a class for the retarded and the mentally ill.*

**Instead, say:** *The community is sponsoring a class for people with intellectual disabilities and people with mental illness.*

**Don't say:** *We just hired a deaf mute to work in our office. He talks with his hands.*

**Instead say:** *We just hired a man to work in our office who is deaf and uses sign language.*

## **Exception: Deaf Community**

An exception to the general principles of People-First Language is seen in the Deaf Community, where many people prefer to be called Deaf and not “a person who is deaf.” The reasoning for this distinction is because there is a distinct Deaf culture, and the structure for American Sign Language is very different than spoken English.

## **Uncertain? Just Ask!**

For professionals and others who are uncertain about how to refer to particular people and any disabilities they may have, it is usually a good idea just to ask. For example, an investigator could say:

*I want to use respectful language in my report – is there a certain way you would like me to refer to your disability?*

The language suggested by the person can then be used in the report.

## **Other Recommendations**

Another recommendation for respectful language is to avoid describing people as “suffering” from a disability or being a “victim” of a disability. Given the negative historical connotations of the word “victim” for many people who have disabilities, it can even be helpful to clarify when you use the word that you are referring to the fact that the person is a victim of a crime and not the victim of a disability (SafePlace, 2007).

It is also best to steer clear of statements such as: “I can’t believe someone would sexually assault someone with a disability.” These types of statements may reflect societal misconceptions that people with disabilities are “asexual” and are typically designed to express or elicit pity.

A final word that is worth mentioning is “special.” Many people with disabilities have been called “special” throughout their lives: They may have participated in Special Education, the Special Olympics, used Special Transportation, and accessed Special Services. Yet people with disabilities often say that “special means separate” and also that “separate does not mean equal.” Typically, people with disabilities don’t want “special” treatment – they want equality.

Remember that the words we use are important. Choose words when speaking and writing that are respectful of all people.

## Appendix F: Individual State Laws

This material is adapted with permission from the *University of Illinois Law Review*,<sup>55</sup> and updated with information to be current as of December, 2013.

State and Test	Statutory/Case Authority
<p><b>Alabama</b></p> <p><i>Morality</i></p> <p><i>Nature and Consequences</i></p>	<p><u>Brooks v. State</u>, 555 So. 2d 1134, 1138 (Ala. Crim. App. 1989) ("It cannot be seriously argued that this young man [victim] had the mental capacity to appreciate how the acts would be regarded in his social environment and to appreciate the taboos of his society, or the stigma and ostracism to which he would be exposed.").</p> <p><u>Metzger v. State</u>, 565 So. 2d 291, 292 (Ala. Crim. App. 1990) (affirming rape conviction based on victim's lack of consent due to her "difficulty assessing the nature and consequences of her behavior"); <i>see also</i> ALA. CODE ANN. §13A-2-7(c)(2) (1994) (consent is ineffective if given by person unable "to make a reasonable judgment as to the nature or harmfulness of the conduct").</p>
<p><b>Alaska</b></p> <p><i>Nature and Consequences</i></p>	<p><u>Jackson v. State</u>, 890 P.2d 587, 591 (Alaska Ct. App. 1995) ("A person is 'mentally incapable' of consenting to an act of sexual penetration when the victim suffers from 'a mental disease or defect' that renders the person incapable of understanding the nature or consequences of the person's conduct, including the</p>

<sup>55</sup> Original source: Denno, D.W. (1997). [Sexuality, rape, and mental retardation](#). *University of Illinois Law Review*, 315, 315-434.

	potential for harm to that person."); <i>see also</i> ALASKA STAT. §11.41.470(4) (Michie 1996) (defining mentally incapable).
<b>Arizona</b>  <i>Nature and Consequences</i>	<u>State v. Johnson</u> , 745 P.2d 81, 84 (Ariz. 1987) (en banc) ("[W]hen the state asserts that the victim was incapable of consenting due to a mental disorder, it must prove that the mental disorder was an impairment of such a degree that it precluded the victim from understanding the act of intercourse and its possible consequences.").
<b>Arkansas</b>  <i>Nature and Consequences</i>	ARK. CODE ANN. §5-14-101(3)(A) (Michie 1993 & Supp. 1995): "Mentally defective' means that a person suffers from a mental disease or defect which renders him incapable of understanding the nature and consequences of sexual acts." <i>Id.</i> §5-14-101(3)(8): "A determination that a person is mentally defective shall not be based solely on his intelligence quotient."
<b>California</b>  <i>Nature of the Conduct</i>	<u>State v. Howard</u> , 172 Cal. Rptr. 539, 540-41 (Cal. Ct. App. 1981) ("Both Penal Code §§288a(f) and 286(f) provide that it is a crime to commit the proscribed acts when 'the victim is at the time unconscious of the nature of the act and this is known to the person committing the act.' . . . This section is aimed precisely at this situation-an adult engaging in this type of sexual activity with a mentally retarded person who simply does not understand the nature of the act in which he participates.").
<b>Colorado</b>  <i>Morality</i>	<u>People v. Gross</u> , 670 P.2d 799, 800 (Colo. 1983) ("The actor knows that the victim is incapable of appraising the nature of the victim's conduct...") (citing COLO. REV. STAT. §18-3-403(1) (1973)). According to the <i>Gross</i> court, "[I]f a victim is incapable of understanding how her sexual conduct will be regarded within the framework of the societal environment of which she is a part, or is not capable of understanding the physiological implications of sexual conduct, then she is incapable of 'appraising the nature of [her] conduct' under the language of the statute." 670 P.2d at 801.
<b>Connecticut</b>  <i>Evidence of Mental Disability</i>	<u>State v. Wyman</u> , 173 A. 155, 156 (Conn. 1934) ("The history of the statute ... [providing that "any man who shall carnally know any female under the age of forty-five years who is epileptic, imbecile, feeble-minded or a pauper shall be imprisoned"] shows the classification to be sound, its moving purpose being to check the increase of mental defectives and abnormal persons in the community which results by inheritance from defective parents .... In view of the purpose of the statute in question (section 6277), it is of less importance whether the woman has sufficient mental capacity to know the distinction between right and wrong. She may be able to draw these distinctions and yet be 'epileptic, imbecile [or] feeble-minded,' and so within the prohibited class, for either marriage or carnal intercourse.").
<b>Delaware</b>	<u>State v. Tunis</u> , No. 94-03-0582, 1994 WL 710948 at *1 (Del.

<p><i>Nature of the Conduct</i></p>	<p>Super. Ct. Nov. 18, 1994) ("Without consent means the defendant knew that the victim suffered from a mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct .... "); see also DEL. CODE ANN. tit. 11, §761(g)(3) (1995) (same language).</p>
<p><b>Florida</b> <i>Nature of the Conduct</i></p>	<p><u>Shimele v. State</u>, 784 So. 2d 591 (Fla. App. 2001) ("[T]here is substantial competent evidence in the record from which the trial judge could find that the victim had "a mental disease or defect render[ing][him] incapable of appraising the nature of his... conduct" at the time of the incident— and thus that his consent could not have been "intelligent, knowing, and voluntary consent and does not include coerced submission."); FLA. STAT. ANN. §794.011(l)(b) (West 1992 &amp; Supp. 1997): "'Mentally defective' means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct."</p>
<p><b>Georgia</b> <i>Judgment</i></p>	<p><u>Ely v. State</u>, 384 S.E.2d 268, 271-72 (Ga. Ct. App. 1989) (stating that a female victim is incapable of consenting to sexual activity if she, "due to the degree of mental retardation suffered, is incapable of giving an intelligent assent or dissent and to exercise judgment."); see also <u>Payne v. State</u>, 428 S.E.2d 103, 108 (Ga. Ct. App. 1993) (citing <u>Whitaker v. State</u>, 34 S.E.2d 499, 502 (Ga. 1945)).</p>
<p><b>Hawaii</b> <i>Morality</i></p>	<p><u>In re Doe</u>, 918 P.2d 254, 262 (Haw. Ct. App. 1996) ("[A] person is mentally defective if he or she is 'suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct.'" (citing HAW. REV. STAT. §707-700 (1994))); <u>State v. Gonsalves</u>, 706 P.2d 1333, 1337-38 (Haw. Ct. App. 1985) <i>rev'd on other grounds</i> by <u>State v. Kelekolio</u>, 849 P.2d 58 (Haw. 1993); ("People v. Easley, <i>supra</i>, points out that appraisal of conduct cannot mean just an understanding of the physiological elements of the sex act. Rather, it must include an understanding of the moral and societal elements of the act .... Additionally, the woman must have the ability to appraise the possible medical consequences of the act. ... Without the ability to comprehend these factors, the victim cannot be said to be capable of appraising the nature of the act. She would see only the shiny wrappings on Pandora's box, and none of the contents. She would be truly, in the old-fashioned phrase, taken advantage of.").</p>
<p><b>Idaho</b> <i>Morality</i></p>	<p><u>State v. Soura</u>, 796 P.2d 109, 114 (Idaho 1990) (stating that a victim's resistance and lack of resistance to defendant's sexual advances "does not conclusively establish that she understood and appreciated the physical, emotional and moral consequences of sexual intercourse with the defendant. ... The purpose of ... [IDAHO CODE§18-6101 (1987)] is to protect</p>

	women with mental disabilities, such as the woman involved in this case, from the many potential difficulties resulting from non-marital sexual relations.").
<b>Illinois</b>  <i>Totality of the Circumstances</i>	<u>People v. Whitten</u> , 647 N.E.2d 1062, 1067 (Ill. App. Ct. 1995) ("The ability to give knowing consent should involve more than measuring complainant's IQ or ability to physically resist defendant. Knowing consent requires us to examine all of the circumstances to see if defendant knowingly exercised such control over complainant that a trier of fact could find that complainant did not submit to the sexual advances of defendant voluntarily, intelligently, and by an active concurrence.").
<i>Morality</i>	<u>People v. McMullen</u> , 414 N.E.2d 214, 217 (Ill. App. Ct. 1980) ("In this case, the evidence showed that although the victim seemed to understand the physical nature of sexual activity, she did not understand how such activity can affect a person's life and how illicit sexual activity is regarded by other people. Thus, she was unable to understand the social and personal costs of the act. Her inability to understand this important facet of the consequences and nature of sexual activity, combined with other testimony concerning her mental deficiencies, is sufficient to support a guilty verdict based upon her incapacity to consent to intercourse.").
<b>Indiana</b>  <i>Nature and Consequences</i>	<u>Stafford v. State</u> , 455 N.E.2d 402, 405 (Ind. Ct. App. 1983) ("[C]apacity to consent presupposes an intelligence capable of understanding the act, its nature and possible consequences.") ( <i>following</i> <u>People v. McMullen</u> , 414 N.E.2d 214, 217 (Ill. App. Ct. 1980)); <i>see also</i> <u>Bozarth v. State</u> , 520 N.E.2d 460, 463 (Ind. Ct. App. 1988) (citing <u>Stafford</u> ); <u>Hall v. State</u> , 504 N.E.2d 298, 300 (Ind. Ct. App. 1987) (citing <u>Stafford</u> ).
<b>Iowa</b>  <i>Nature and Consequences</i>	<u>State v. Chancy</u> , 391 N.W.2d 231, 235 (Iowa 1986) ("Persons who are so mentally incompetent or incapacitated as to be unable to understand the nature and consequences of the sex act are incapable of giving consent.") (relying on <u>State v. Sullivan</u> , 298 N.W.2d 267, 273 (Iowa 1980) (holding that "the standard imposed by subsection 709.4(2) is clear: To avoid the proscribed conduct one must refrain from performing a sex act with a person who is mentally incapable of understanding the nature and possible consequences of sexual activity.")).
<b>Kansas</b>  <i>Nature and Consequences</i>	<u>State v. Juarez</u> , 861 P.2d 1382, 1385 (Kan. Ct. App. 1993) ("[W]hen the capacity of a mentally deficient individual to consent to a sexual act is at issue, the jury is capable of determining whether that individual is able to understand the nature and consequences of engaging in such an act."); <i>see also</i> <u>Keirn v. State</u> , 777 P.2d 278, 280 (Kan. Ct. App. 1989).
<b>Kentucky</b>	<u>Salsman v. Commonwealth</u> , 565 S.W.2d 638, 640 (Ky. Ct. App.

<p><i>Nature of the Conduct</i></p>	<p>1978) (upholding conviction for sexual assault in the first degree based on the finding of "forcible compulsion." Victim's mental retardation and deafness were considered in finding forcible compulsion. "In determining whether a woman is incapable of granting consent because she is mentally defective, the sole question is whether she is capable of appraising the nature of the sexual act being performed.").</p>
<p><b>Louisiana</b> <i>Nature of the Conduct</i></p>	<p><u>State v. Peters</u>, 441 So. 2d 403, 409 (La. Ct. App. 1983), <i>writ denied</i>, 530 So. 2d 560 (La. 1988) ("[LA. REV. STAT. ANN. §14:43 (West 1986)] ... defines simple rape and reads in pertinent part: Simple rape is a rape committed where the anal or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under one or more of the following circumstances: ... (2) Where the victim is incapable, through unsoundness of mind, whether temporary or permanent, of understanding the nature of the act; and the offender knew or should have known of the victim's incapacity ...."); <i>see also</i> <u>State v. Watley</u>, 301 So. 2d 332, 333 (La. 1974)." right after (La. Ct. App. 1983)</p>
<p><b>Maine</b> <i>Nature of the Conduct</i></p>	<p><u>State v. Ricci</u>, 507 A.2d 587, 588 (Me. 1986) ("There is no evidence that the victim was substantially incapable of appraising the nature of the Defendant's contact with her.") (citing ME. REV. STAT. ANN. tit. 17-A, §253(2)(C) (West 1983)).</p>
<p><b>Maryland</b> <i>Evidence of Mental Disability</i></p>	<p><u>Edmondson v. State</u>, 185 A.2d 497, 497 (Md. 1962), cert. denied, 372 US 949, 83 S.Ct. 946, 9 L.Ed.2d 974 (1963) ("The specific offense [charged] was carnal knowledge of an imbecile woman ..., the girl having been chronologically eighteen years of age, but of a mental age of about four years.") (citing MO. ANN. CODE art. 27, §462 (1957)).</p>
<p><b>Massachusetts</b> <i>Evidence of Mental Disability</i></p>	<p><u>Commonwealth v. Roderick</u>, 586 N.E. 2d 967, 969 (Mass. 1992) ("The [severely retarded] victim's presence and conduct in the courtroom were relevant to the issue whether the defendant would have known that the victim was mentally retarded, an element of one of the crimes of which the defendant was found not guilty."); <u>Commonwealth v. Thomas</u>, 514 N.E.2d 1309, 1315 (Mass. 1987) (jury instructions included two elements for conviction of the offense of indecent assault and battery on a retarded person: "if they found there was a nonpermissive touching, and if they also found the victim was retarded, the defendant was guilty").</p>
<p><b>Michigan</b> <i>Evidence of Mental Disability</i></p>	<p><u>People v. Baker</u>, 403 N.W.2d 479, 480 (Mich. Ct. App. 1986) ("A person is criminally responsible under [Michigan law] ... if he engages in sexual penetration with another which causes personal injury to the victim and he 'knows or has reason to know' that the victim is mentally incapable, mentally incapacitated, or physically helpless.") (citing MICH. COMP.</p>



	LAWS §750.520b(l)(g) (1983)).
<b>Minnesota</b>  <i>Judgment</i>	<u>State v. Underhill</u> , No. C9-92-2058, 1993 WL 165682 at *1 (Minn. Ct. App. May 18, 1993) ("A person is 'mentally impaired' when 'as a result of inadequately developed or impaired intelligence, or a substantial psychiatric disorder of thought or mood, [the person] lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.' MINN. STAT. §609.341 subd. 6 (1990)."); <u>State v. Willenbring</u> , 454 N.W.2d 268, 270 (Minn. Ct. App. 1990) ("'Mentally impaired' is defined as meaning that 'a person, as a result of inadequately developed or impaired intelligence ... lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.'") (citing MINN. STAT. §609.341 subd. 6 (1988)); see also <u>In re Welfare of R.L.A.</u> , No. CX-88-1884, 1989 WL 41771 at *1 (Minn. Ct. App. May 2, 1989).
<b>Mississippi</b>  <i>Evidence of Mental Disability</i>	<u>Martin v. State</u> , 415 So. 2d 706, 707 (Miss. 1982) (noting testimony of a clinical psychologist indicating that the victim "was incapable of giving informed consent to the act of sexual intercourse. Moreover, ... a stressful situation which could include a sexual encounter, would further reduce the likelihood that a person within [the victim's] range of intelligence could make a good decision in consenting to sexual relations with appellant."); <u>Anderson v. State</u> , 381 So. 2d 1019, 1021-22 (Miss. 1980) ("Here, the proof shows without contradiction that the victim was mentally incapable of consenting to sexual intercourse."); <u>Wilson v. State</u> , 221 So. 2d 100, 103 (Miss. 1969) ("Under the common law proof of sexual intercourse with a woman mentally incapable of consent because of imbecility, idiocy or insanity, establishes the crime of rape. Where the victim in a rape case was mentally incapable of consent, it was not necessary to prove 'actual force' beyond the mere force of penetration so that the actual resistance was not necessary to constitute the offense.").
<b>Missouri</b>  <i>Evidence of Mental Disability</i>	<u>State v. Robinson</u> , 136 S.W.2d 1008, 1009 (Mo. 1940) ("Where the woman in point of fact yields an apparent assent to the act, the burden is on the state to prove that at the time of the act she was incapable, because of mental disease, of assenting to or dissenting from the act, and that the defendant knew of such incapacity. And further: it would not be enough to show merely that she was weak-minded, and that the defendant knew that she was so. The mere fact that a woman is weak-minded does not disable her from consenting to the act.").
<b>Montana</b>  <i>Nature of the Conduct</i>	MONT. CODE ANN. §45-5-501(l)(b)(i) (1995): "(l) As used in 45-5-503, the term 'without consent' means: ... (b) the victim is incapable of consent because he is ... (i) mentally defective or incapacitated." <i>Id.</i> §45-2-101(39): "'Mentally defective' means that a person suffers from a mental disease or defect that

	renders the person incapable of appreciating the nature of the person's own conduct."
<b>Nebraska</b>  <i>Nature of the Conduct</i>	<u>State v. Doremus</u> , 514 N.W.2d 649, 652 (Neb. Ct. App. 1994) ("The purpose of the proposed examination in the present case was to rebut the State's expert testimony that the victim was incapable of understanding the concept of sexuality, i.e., whether he was mentally capable of appraising the nature of defendant's conduct. See [NEB. REV. STAT.] §28-320(1)(b) [(1989)].").
<b>Nevada</b>  <i>Nature of the Conduct</i>	NEV. REV. STAT. ANN. §200.366(1) (Michie 1988 and Supp. 1995): "A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault."
<b>New Hampshire</b>  <i>Nature and Consequences</i>	<u>State v. Frost</u> , 686 A.2d 1172 (N.H. 1996) ("We hold that a complainant is "mentally defective" within the meaning of RSA 632-A:2, I(h) only if he or she (1) suffers from a "mental disease or defect" and (2) is incapable of freely arriving at an independent choice whether or not to engage in sexual conduct. The second prong addresses a person's capacity to appraise in a meaningful way the physical nature and consequences of his or her sexual conduct, including its potential to cause pregnancy or disease. The emphasis is on the individual's capacity--capacity to learn about physical consequences and to make a decision based on whatever evaluative process the person chooses to employ, as long as the decision is legitimately the person's own. ... The complainant's ability to "appraise the nature of his or her conduct," in order to be found legally capable of consenting, is limited to whether the complainant had the capacity to understand the immediate physical consequences of the charged sexual conduct, including the sexual nature of that conduct and its potential for causing pregnancy or disease.")
<b>New Jersey</b>  <i>Nature of the Conduct</i>	<u>State v. Olivio</u> , 589 A.2d 597, 605 (N.J. 1990) (explaining that a person is mentally defective "if, at the time of the sexual activity, the mental defect rendered him or her unable to comprehend the distinctively sexual nature of the conduct, or incapable of understanding or exercising the right to refuse to engage in such conduct with another").
<b>New Mexico</b>  <i>Nature and Consequences</i>	N.M. STAT. ANN. §30-9-10A(4) (Michie 1994): "(A) Force or coercion means . . . (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim ... suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act .... "

<p><b>New York</b></p> <p><i>Morality</i></p>	<p><u>People v. Cratsley</u>, 653 N.E.2d 1162, 1165 (N.Y. 1995) ("In <u>Easley</u>, we discussed what it meant to be incapable of appraising the nature of one's own sexual conduct. Understanding the 'nature' of one's sexual conduct implicates a range of human responses, only a part of which is intellectual. We noted that care must be taken not to restrict the freedom of persons with mental retardation who are capable of knowing consent to a sexual relationship by confusing deliberate failure to adhere to a particular set of values with lack of understanding that values exist. Only the latter—a lack of understanding—is an appropriate consideration in assessing legal capacity."); <u>People v. Easley</u>, 364 N.E.2d 1328, 1332-33 (N.Y. 1977) ("An understanding of coitus encompasses more than a knowledge of its physiological nature. An appreciation of how it will be regarded in the framework of the societal environment and taboos to which a person will be exposed may be far more important. In that sense, the moral quality of the act is not to be ignored .... Therefore, there also needs to be inquiry as to whether there is a capacity to appraise the nature of the stigma, the ostracism or other noncriminal sanctions which society levies for conduct it labels only as immoral even while it yet 'struggles to make itself articulate in law.'"); see also <u>People v. Jenkins</u>, 633 N.Y.S.2d 996 (N.Y. App. Div. 1995); <u>People v. Novak</u>, 622 N.Y.S.2d 783 (N.Y. App. Div. 1995); <u>People v. Patterson</u>, 560 N.Y.S.2d 357 (N.Y. App. Div. 1990); <u>People v. Dixon</u>, 412 N.Y.S.2d 42 (N.Y. App. Div. 1978).</p>
<p><b>North Carolina</b></p> <p><i>Nature of the Conduct</i></p>	<p><u>State v. Oliver</u>, 354 S.E.2d 527, 537 (N.C. Ct. App. 1987), <i>cert. denied</i>, 358 S.E.2d 64 (N.C. 1987) ("We find the State's evidence was not sufficient to show the victim was substantially incapable of 'appraising the nature of ... her conduct' or 'communicating unwillingness to submit to the act of vaginal intercourse or sexual act.' However, we find the State did present sufficient evidence to support a finding that the victim was substantially incapable of 'resisting the act of vaginal intercourse or sexual act.'").</p>
<p><b>North Dakota</b></p> <p><i>Nature of the Conduct</i></p>	<p><u>State v. Kingsley</u>, 383 N.W.2d 828, 830 (N.D. 1986) (stating that the victim must, "by reason of mental disease or defect, be incapable of understanding the nature of the conduct involved").</p>
<p><b>Ohio</b></p> <p><i>Nature of the Conduct</i></p>	<p><u>State v. Zeh</u>, 509 N.E.2d 414, 418 (Ohio 1987) ("[S]ubstantial impairment must be established by demonstrating a present reduction, diminution or decrease in the victim's ability, either to appraise the nature of his conduct or to control his conduct."); see also <u>State v. Bennett</u>, Nos. 4033, 4034, 1986 WL 13702 at *4 (Ohio Ct. App. Dec. 3, 1986).</p>
<p><b>Oklahoma</b></p>	<p><u>Slaughterback v. State</u>, 594 P.2d 780, 781 (Okla. Crim. App. 1979) ("Legal consent presupposes an intelligence capable of</p>

<i>Nature and Consequences</i>	understanding the act, its nature, and possible consequences. This degree of intelligence may exist with an impaired and feeble intellect, or it may not.").
<b>Oregon</b> <i>Nature of the Conduct</i>	<u>State v. Anderson</u> , 902 P.2d 1206, 1207 n.1 (Or. Ct. App. 1995), <i>rev. den.</i> , 907 P.2d 249 (Or. 1995) ("'[M]entally defective' means that person suffers from a mental disease or defect that renders that person incapable of appraising the nature of the conduct of the person.") (citing OR. REV. STAT. §163.305(3) (1990)).
<b>Pennsylvania</b> <i>Nature and Consequences</i>	<u>Commonwealth v. Thomson</u> , 673 A.2d 357, 359-60 (Pa. Super. Ct. 1996) (considering victim's mental deficiency, "the expert concluded that the victim did not have good judgment, was highly influenced by people and was unable to understand the consequences of her actions").
<b>Rhode Island</b> <i>Nature of the Conduct</i>	<u>State v. Gardner</u> , 895 A.2d 703 (R.I. 2006) ("To fall within this definition, a person must have "a mental impairment which renders that person incapable of appraising the nature of the act." Section 11-37-1(4).")
<b>South Carolina</b> <i>Nature of the Conduct</i>	S.C. CODE ANN. §16-3-651(e) (Law. Co-op. 1995): "'Mentally defective' means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct."
<b>South Dakota</b> <i>Evidence of Mental Disability</i>	<u>State v. Schuster</u> , 502 N.W.2d 565, 569 (S.D. 1993) ("Rape of a person incapable of giving consent, [S.D. CODIFIED LAWS ANN. §22-22-1(2) (Michie 1990)], ... is analogous to the statutory rape of a person less than sixteen years old, ... ( <i>id.</i> §§22-22-1(4), -1(5))."); <i>see also</i> <u>State v. Willis</u> , 370 N.W.2d 193, 199 (S.D. 1985) (stating that appellant "admitted having sexual intercourse with the victim on the night in question and the evidence reflects S.R.'s mental incapacity to give consent. These latter facts support a jury verdict in themselves."); <u>State v. Fox</u> , 31 N.W.2d 451, 454 (S.D. 1948) ("Upon proof of carnal intercourse where the female is incapable, through lunacy or unsoundness of mind, of giving legal consent, the law conclusively presumes that the carnal intercourse was by force and violence.").
<b>Tennessee</b> <i>Nature and Consequences</i>	<u>State v. Green</u> , CCA No. 01-C-01-9002-CC-00045, 1990 WL 143777 at *3 (Tenn. Crim. App. Oct. 3, 1990) ("Numerous cases support the broad proposition that the capacity to consent, that is, to give consent which the law will recognize as sufficient to relieve the perpetrator of the illicit act from criminal liability for rape or a similar offense, presupposes the mental capability to form an intelligent opinion on the subject, with an understanding of the act, its nature, and its possible consequences.").
<b>Texas</b> <i>Nature of the</i>	<u>Wootton v. State</u> , 799 S.W.2d 499, 501 (Tex. Ct. App. 1990) ("[T]he actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable

<p><i>Conduct</i></p>	<p>either of appraising the nature of the act or resisting it .... "); see also TEX. PENAL CODE ANN. §22.011(b)(4) (West 1994 and Supp. 1997); <u>Rider v. State</u>, 735 S.W.2d 291, 292 (Tex. Ct. App. 1987); <u>Garcia v. State</u>, 659 S.W.2d 843, 846 (Tex. Ct. App. 1982), <i>rev'd</i>, 661 S.W.2d 96, 98 (Tex. Crim. App. 1983); <u>Martinez v. State</u>, 634 S.W.2d 929, 934 (Tex. Ct. App. 1982); <u>Smith v. State</u>, 555 S.W.2d 747, 749 (Tex. Crim. App. 1977).</p>
<p><b>Utah</b>  <i>Nature of the Conduct</i></p>	<p><u>State v. Archuleta</u>, 747 P.2d 1019, 1022 (Utah 1987) (explaining that although defendant was convicted under the general rape statute, the court refers to the standard set forth in UTAH CODE ANN. § 76-5-406(6) (Supp. 1987) charging that a person commits rape under this provision when "[t]he actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it").</p>
<p><b>Vermont</b>  <i>Nature and Consequences</i></p>	<p><u>State v. Jewett</u>, 192 A. 7, 8 (Vt. 1937) (holding that conviction of rape is impossible "under the circumstances of this case unless the woman was incapable of understanding the act, its motive and possible consequences").</p>
<p><b>Virginia</b>  <i>Nature and Consequences</i></p>	<p><u>Adkins v. Commonwealth</u>, 457 S.E.2d 382, 388 (Va. Ct. App. 1995) ("Manifestly, the legislature did not intend to include as part of the protected class of people under (VA. CODE ANN. §18.2-61(A)(ii) (Michie 1994)] ... those whose mental impairment or handicap may prevent them from comprehending the more complex aspects of the nature or consequences of sexual intercourse, but who, nevertheless, have the mental capacity to have a basic understanding of the elementary and rudimentary nature and consequences of sexual intercourse.").</p>
<p><b>Washington</b>  <i>Morality</i></p>	<p><u>State v. Ortega-Martinez</u>, 881 P.2d 231, 236-37 (Wash. 1994) ("Evidence showing that a victim has a superficial understanding of the act of sexual intercourse does not by itself render [WASH. REV. CODE §9A.44.010(4) (1988)] ... inapplicable. A finding that a person is mentally incapacitated for the purposes of ... [this statute] is appropriate where the jury finds the victim had a condition which prevented him or her from meaningfully understanding the nature or consequences of sexual intercourse .... For example, the nature and consequences of sexual intercourse often include the <i>development of emotional intimacy between sexual partners</i>; it may under some circumstances result in a <i>disruption in one's established relationships</i>; and, it is associated with the possibility of pregnancy with its accompanying decisions and consequences as well as the specter of disease and even death." (<i>emphasis added</i>)); see also <u>State v. vanVlack</u>, 765 P.2d 349, 352 (Wash. Ct. App. 1988) (victim "did not, as a result of mental defect, understand the nature and consequences of sexual contact").</p>

<b>West Virginia</b> <i>Evidence of Mental Disability</i>	<u>State v. Burks</u> , 267 S.E.2d 752, 753 (W. Va. 1980) (stating that a conviction requires that a person engages "in sexual intercourse with another person who is incapable of consent because he is mentally defective or mentally incapacitated").
<b>Wisconsin</b> <i>Evidence of Mental Disability</i>	<u>State v. Richardson</u> , 541 N.W.2d 837 (Wisc. App. 1995) (noting that evidence was sufficient to find that defendant had intercourse with a victim who was "suffering from a mental deficiency which rendered her incapable of consenting to sexual intercourse").
<b>Wyoming</b> <i>Nature and Consequences</i>	<u>Righter v. State</u> , 752 P.2d 416, 420 (Wyo. 1988) ("[O]ne must refrain from performing a sex act with a person who the actor knows, or should know, is mentally incapable of understanding the nature and possible consequences of sexual activity.").

## Appendix G: Training Resources

### National Criminal Justice Reference Service

***Crime Against Persons with Disabilities, 2008-2010 – Statistical Tables*** Harrell, E. (2011). Washington, DC: Bureau of Justice Statistics (BJS), Office of Justice Programs, US Department of Justice. [NCJ 235777](#).

***Crime Against People with Disabilities, 2008 – Statistical Tables*** Harrell, E. & Rand, M. (2010). Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice. [NCJ 231328](#).

***Crime Victims with Developmental Disabilities: A Review Essay*** Petersilia, J. (2001). *Criminal Justice and Behavior*, 28 (6), 655-694. [NCJ 192421](#).

***Multidisciplinary Response to Crime Victims with Disabilities: Community-Level Replication Guide*** Office for Victims of Crime (2012). Washington, DC: Office of Justice Programs, US Department of Justice. [NCJ 239108](#).

***Multidisciplinary Response to Crime Victims with Disabilities: State-Level Replication Guide*** Office for Victims of Crime (2012). Washington, DC: Office of Justice Programs, US Department of Justice. [State Replication Guide](#). [NCJ 239107](#). [OVC Overview](#).

***Police Response to People With Hearing and Speech Disabilities: Trainers Guide*** Police Executive Research Forum (1998). Washington, DC. [NCJ 196658](#).

***Prosecuting Cases of Physical and Sexual Assault of the Mentally Retarded*** Aguilar, S. (no date). *Prosecutors Notebook, Volume III*. Sacramento, CA: California District Attorneys Association, [NCJ 110305](#).



***Supporting Crime Victims with Disabilities Curriculum (English)*** Training and Technical Assistance Center (2012). Washington, DC: Office for Victims of Crime, Office of Justice Programs, US Department of Justice. [NCJ 239037](#).

***Supporting Crime Victims With Disabilities Curriculum (Spanish) - Apoyo para las víctimas de delitos con discapacidades*** Training and Technical Assistance Center (2012). Washington, DC: Office for Victims of Crime, Office of Justice Programs, US Department of Justice. [NCJ 239038](#).

***Study Reveals Unique Issues Faced by Deaf Victims of Sexual Assault*** Taylor, L. & Gaskin-Laniyan, N. (2007). *National Institute of Justice Journal*, 257, 24-26. [NCJ218262](#). *This article includes suggestions for improving the relationship between law enforcement and the deaf community.*

***Victims with Disabilities: Collaborative, Multidisciplinary First Response: Techniques for First Responders Called to Help Crime Victims Who Have Disabilities (Second Edition)*** Baladerian, N.J. (2011). Washington, DC: Office for Victims of Crime, Office of Justice Programs, US Department of Justice. [NCJ 231932](#).

***Victims with Disabilities: The Forensic Interview – Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities (DVD and Guidebook)*** ARC Riverside (2011). Office for Victims of Crime, Office of Justice Programs, US Department of Justice. [NCJ 234678](#).

***Victims with Disabilities: The Forensic Interview – Training Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities*** Baladerian, N.J. (2007). Office for Victims of Crime, Office of Justice Programs, US Department of Justice. [NCJ 212894](#)

***Witnesses with Intellectual Disabilities in Court: What Questions Are Asked and What Influence Do They Have?*** Kebbell, M., Hatton, C. & Johnson, S. (2004). *Legal and Criminological Psychology*, 9 (1), 23-35. [NCJ 204948](#).

***Working with Victims of Crime with Disabilities*** Tyiska, C.(1998). Office for Victims of Crime, Office of Justice Programs, US Department of Justice. [NCJ 172838](#).

## **Temple University, The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities**

***Assisting Victims and Witnesses with Disabilities in the Criminal Justice System: A Curriculum for Law Enforcement Personnel*** McAfee, J. (2003). Produced by End the Silence. Philadelphia, PA: The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities, Temple University. [Available for order](#).

***Assisting Victims and Witnesses with Disabilities in the Criminal Justice System: Train the Trainers Guide – Law Enforcement*** McAfee, J. (2003). Produced by End the

Silence. Philadelphia, PA: The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities, Temple University. [Available for order](#).

***Assisting Victims and Witnesses with Disabilities in the Criminal Justice System: A Curriculum for Lawyers*** Roper, M. & Ace, K.J. (2003). Produced by End the Silence. Philadelphia, PA: The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities, Temple University. [Available for order](#).

***Assisting Victims and Witnesses with Disabilities in the Criminal Justice System: Train the Trainers Guide – Lawyers*** Roper, M. & Ace, K.J. (2003). Produced by End the Silence. Philadelphia, PA: The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities, Temple University. [Available for order](#).

***Persons With Disabilities Can Speak Out: Supporting Victims Who Want To Tell Their Stories*** Ace, K.J. (2003). Produced by End the Silence. Philadelphia, PA: The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities, Temple University [Available for order](#).

***Individuals with Mental Retardation and the Criminal Justice System: A Training Guide for Allies*** Bryen, D., Feinstein, C. & Sonneborn, L. (2003). The Institute on Disabilities, Temple University [Available for order](#).

## **Information and Technical Assistance on the Americans with Disabilities Act, Civil Rights Division, US Department of Justice**

**[Commonly Asked Questions \(FAQ's\) About the Americans with Disabilities Act and Law Enforcement](#)** US Department of Justice, Civil Rights Division, Disability Rights Section (2006).

***Communicating with People Who Are Deaf or Hard of Hearing*** US Department of Justice, Civil Rights Division, Disability Rights Section (2006). [PDF](#).

**[Model Policy for Law Enforcement on Communicating with People Who Are Deaf or Hard of Hearing](#)**. US Department of Justice, Civil Rights Division, Disability Rights Section (2006).

## **Other Resources**

***Forensic Assessment of Consent to Sex*** Baladerian, N.J. (1998). [Available for order](#).

***Interviewing and Investigating: A Law Enforcement Guide to Ensuring Equal Justice Involving Domestic Violence, Sexual Assault, and Stalking*** New Mexico Coalition of Sexual Assault Programs, Inc. (no date). Albuquerque, NM: *Pocket Investigation Guide*. [Available for order](#), or call (505) 883-8020.

***Interviewing Skills to Use with Abuse Victims Who Have Developmental Disabilities***  
Baladerian, N.J. (1998). Orange, CA: National Center on Elder Abuse, Department of Health and Human Services (c/o University of California, Irvine). [Available for order](#).

***Keys to the Future – A Resource Book for Parents of Children with Disabilities*** Idaho Council on Developmental Disabilities (2002). To order, call (208) 334-2178. *This booklet provides a roadmap to families of children with disabilities to learn more about various disabilities and developmental stages and how to navigate the service system.*

**[Model Policy Americans with Disabilities Act](#)** Police Executive Research Forum (1992). Washington, DC.

**[Infogrip](#)** An online catalog of assistive technology for people with disabilities.

**[On the Scene and Informed: First Response and Autism](#)** New York State Office for People with Developmental Disabilities (no date).

**[Police Interactions with Deaf Persons](#)** Americans for Effective Law Enforcement (2009). *AELE Monthly Law Journal*, Civil Liability Law Section.

**[Victims and Witnesses with Developmental Disabilities and the Prosecution of Sexual Assault](#)** Deal, W. & Kristiansson, V. (2007). *The Voice*, 1 (12), 1-8. Alexandria, VA: The National Center for the Prosecution of Violence Against Women, American Prosecutors Research Institute, National District Attorneys Association.

## **Appendix H: Improving the Accessibility of Documents and Websites**

The Americans with Disabilities Act (ADA) requires government agencies and entities that receive Federal funding to provide qualified individuals with disabilities equal access to their programs, services, or activities, unless doing so would fundamentally alter the nature of their programs, services, or activities, or would impose an undue burden. This will therefore apply to information and services that are provided online.

In addition, Section 508 of the Rehabilitation Act requires that all electronic products such as websites and videos produced by state and federal agencies are accessible for users who have physical, sensory, or cognitive disabilities. More information on this section is available from the [United States Access Board](#).

### **Files and Documents**

When it comes to improving the accessibility of files, step-by-step guidance is offered by the [US Department of Health and Human Services](#).

A [9-page document](#) is also available to provide guidance on converting Microsoft Word files into ADA-compliant PDFs with Adobe Acrobat Professional software, Version 7.

The Adobe software company similarly offers a [2-page guide](#) to preparing Microsoft Word documents and converting them to accessible PDF files using Adobe Acrobat.

## **Making Websites Accessible**

To help agencies make their websites more accessible, a [5 page-guide](#) was published by the US Department of Justice, Civil Rights Division, Disability Rights Section.

The [Web Accessibility Initiative](#) also offers guidance, strategies, and resources to make websites more accessible to people with disabilities.