

# Missouri Association of Prosecuting Attorneys

## Special Victims Best Practices Subcommittee (General Sexual Assault Recommendations) (Adopted 8.31.21)

Note: A best practices recommendation of the Missouri Association of Prosecuting Attorneys is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

**Best Practices Statement:** One in four women and one in six men will be victims of sexual assault during their lifetime. Sexual assault strikes at the very essence of its' victims' soul, leaving far more psychological wounds than physical. Prosecutors have a duty to lead a multi-disciplinary process-oriented approach that encompasses physical and emotional well-being for victims and accountability for offenders. These best practices are intended to compliment the Initial General Recommendations adopted by the Missouri Association of Prosecuting Attorneys, originally in 2015 and updated in 2020.

**RECOMMENDATION #1:** Sexual Assault Response Teams (SARTs) are essential tools in responding to sexual assault. SARTs utilize a multi-disciplinary, victim sensitive approach to investigating and prosecuting sexual assault cases. The core members of the SART include law enforcement, victim advocates, forensic medical/laboratory personnel (i.e. SANE's and DNA experts), forensic interviewers, and prosecutors. If a SART does not already exist in the prosecutor's jurisdiction, the prosecutors should convene a SART as soon as practically possible after taking office. Prosecutors should actively participate in the SART. Prosecutors should assist in the development of protocols and procedures if they do not already exist (for example sexual assault kit processing, investigations and case review).

*Comment: The Sexual Assault Response Team does not replace the prosecutor's obligation to make early and frequent contact with the victim. See Initial General Recommendations # 2,4,6 & 7.*

*The End Violence Against Women International website has many publications and resources to assist local teams in developing their protocols and procedures. See <https://www.evawintl.org/Resources.aspx> . See also, <https://ndaa.org/ndaa-wps-releases-sexual-assault-investigation-and-prosecution-best-practices-guide/>.*

*In many jurisdictions, the members of the SART may include many of the same members of an existing multi-disciplinary team used for child physical and sexual assault cases and would function in much the same way.*

**RECOMMENDATION #2:** Prosecutors should seek specialized training in the dynamics of sexual assault, investigation of sexual assault, and prosecution of sexual assault cases.

In offices with more than one prosecutor, a specific prosecutor (or prosecutors, depending on the size of the jurisdiction) should be assigned to handle sexual assault cases.

*See Domestic Violence Recommendation #2, Commentary for additional considerations.*

**RECOMMENDATION #3:** Prosecutors should facilitate training for law enforcement on a number of sexual assault related topics, in order to develop the skills necessary for effective investigation and prosecution. These topics should include but are not limited to:

1. Trauma informed interviewing, including (but not limited to):
  - a. Initial cursory interviews, allowing victims additional time to process the traumatic experience prior to a detailed interview
2. The neurobiology of trauma. Victims of sexual violence experience significant trauma, which impacts their behavior following an assault as well as their interaction with responders. In order to effectively investigate cases of sexual violence, investigative and response strategies must be informed by an understanding of the neurobiological, emotional, and physical impacts of trauma on victims.
3. Employing a victim-centered approach that recognizes and prioritizes the needs and rights of victims.
4. Awareness that a particular victim's needs and interests may evolve and change over time and the investigative approach should take this into consideration.
5. The importance of correctly collecting physical and corroborating evidence as early as possible in an investigation.
6. How to investigate drug and alcohol facilitated sexual assault
7. The correlation between sexual assault and other types of crimes, including (but not limited to):
  - a. Domestic violence
  - b. Child abuse
  - c. Human trafficking, including the common red flags associated with trafficking
  - d. Strangulation
8. Offender accountability is the responsibility of the inter-agency system, not the victim. Investigations should be focused on gathering information from and about suspects, rather than focusing on proving credibility of victims before pursuing leads.
9. The dynamics of consent, or lack thereof, including coercion and impairment as a tactic to eliminate consent. *See e.g. Consent, It's as Simple as Tea, <https://www.youtube.com/watch?v=oQbei5JGiT8&vl=en>.*
10. Best practices for the processing of sexual assault kits.
11. The local SART's protocols and procedures.

*Commentary: There are a number of good state and national resources for law enforcement training, including the Missouri State Highway Patrol Interdiction for the Protection of Children, the Missouri Office of Prosecution Services, End Violence Against Women International and the Attorney General's Office Human Trafficking Task Force.*

**RECOMMENDATION #4:** Prosecutors should ensure that victims have been provided the resources and support needed to assist the victim in participating in the criminal justice process. Prosecutors should meet with victims in person, or by video, as soon as possible, in order to explain the process (the good, the bad and the ugly), to establish rapport and to build trust with the victim.

*Commentary: Prior to any interview or any pre-hearing meeting, prosecutors should notify victims of their rights pursuant to §595.201, the Sexual Assault Survivors' Bill of Rights.*

**RECOMMENDATION #5:** Prosecutors should inform victims of the protections of the Rape Shield Statute (§491.015) and utilize them to their fullest.

*Commentary: Prosecutors should consider the use of motions in limine prior to victim testimony at preliminary hearing, deposition and trial in cases where the defense has not filed a 491.015 motion in order to preempt inappropriate use of this type of evidence.*

**RECOMMENDATION #6:** If a victim indicates that they do not wish to proceed with the criminal case, prosecutors should first consider why the victim is reluctant to participate. Prosecutors should attempt to address the victim's concerns by implementing or facilitating remedies that would make the victim comfortable with proceeding.

Once these concerns have been addressed, prosecutors should consider whether the case can or should proceed without the victim's testimony or cooperation. As part of the decision to proceed with an uncooperative victim in a sexual assault case, prosecutors should consider the following:

- 1) The ability to prove the case without the victim's testimony
- 2) The resources and support which have been available and provided to the victim to ease their reluctance. Prosecutors should consider:
  - a. Facilitating enhanced victim advocate support
  - b. Engaging in protective motion practice, including, for example, motions to protect victim privacy, to avoid invasive discovery, to impose specific bond conditions or requesting the court make other protective orders as appropriate
  - c. Support items, animals or people
  - d. Courtroom layout
  - e. Education on preventing or reporting victim or witness tampering or intimidation
  - f. Responding quickly and decisively to a violation of any court orders, bond conditions or other harassment or intimidation of the victim.

- g. Leveraging local resources to assist the victim in the obstacles the victim faces in participating in the process
- 3) The danger to the community, including the victim or the victim's family
- 4) The applicable statute of limitations
- 5) The emotional or mental health risks to the victim if the case proceeds against the victim's wishes
- 6) The availability of non-sexual assault charges for prosecution

**RECOMMENDATION #7:** When charging sexual assault cases, prosecutors should seek out evidence and charges to paint the complete and coherent picture of events that transpired surrounding the sexual assault.

*Commentary: For example, prosecutors should consider charging both Statutory Rape and Rape. Prosecutors should also consider charging related offenses such as Possession, Driving While Intoxicated, Kidnapping, Burglary, Harassment, Assault or Stalking.*

Prosecutors should be aware of sentencing options and requirements, including 558.026, §589.400 and §589.414.

**RECOMMENDATION #8:** Prosecutors should seek out and utilize all available pieces of contextual and corroborative evidence.

*Commentary: Many sexual assault cases turn on the credibility of the victim. Prosecutors should seek to underscore the victim's credibility with micro-corroborations. Even small pieces of evidence that show the victim to be accurate in their recollection of events, such as the description of the scene or the clothing worn by the persons involved or the calendar showing the surrounding events.*

*Prosecutors should be aware of the powerful evidence that may be available from the victim in terms of the sensory memories as well as post-assault impact information. Prosecutors should seek training and expertise in the current trends in trauma informed interview techniques and ensure that said techniques are utilized to seek out information and evidence in their cases.*

**RECOMMENDATION #9:** Prosecutors should cultivate sexual case specific voir dire questions. Prosecutors should include such topics as the awkwardness of talking about sex and body parts, delayed disclosure, the culture of binge drinking, #metoo, rape myths or traditional victim responses, nervous victim laughter or other counter-intuitive victim behaviors and lack of physical injury or lack of physical evidence and any personal opinions or requirements that the venire panel may have for some sort of physical evidence, beyond just victim testimony. *See attached examples.*

*Commentary: Prosecutors should be mindful of the ideal juror, based on the fact pattern of their particular case.*

*Additional training on voir dire is available through the Missouri Office of Prosecution Services, including a recently recorded webinar presented by Annie Gibson and Steve Sokoloff.*

**RECOMMENDATION #10:** Prosecutors should consider the use of an expert witness to explain what may be seen by the average fact-finder as counter-intuitive victim behavior.

**RECOMMENDATION #11:** Prosecutors should carefully consider all available and applicable jury instructions.

*Commentary: For example, prosecutors should consider offering such instructions as MAI 410.50 (voluntary intoxication is not a defense) and an instruction requiring juror unanimity (see MAI 404.02, Note on Use #7). Prosecutors should also consider instructing the jury on lesser included charges that may be more appropriate after the evidence is presented.*

**RECOMMENDATION #12:** Rapists cause rape, not victims. Prosecutors should focus on the offender's actions in their approach to the presentation of the case. Prosecutors should distinguish a sexual assault charge from a small misunderstanding. Sexual assault is a serious crime for which the defendant should be held accountable.

*Commentary: Prosecutors should consider using the jury instructions to structure closing argument, emphasizing the law that makes sexual assault a serious crime, and the elements as proven by the evidence in the case at hand.*