



Kimberly A. Lonsway, Ph.D.  
Sgt. Joanne Archambault (Retired, San Diego Police Department)

This training bulletin is the sixth in a series designed to explore alternative reporting methods. In earlier installments we introduced the key terms and concepts, as well as two communities who have successfully implemented alternative reporting methods. We also examined the importance of developing a multidisciplinary response protocol. Now we discuss the practice of requiring victims to sign a release waiver when they are unable or unwilling to participate in the process of a law enforcement investigation.

### **“Pressing Charges”**

As we discussed with the concept of non-investigative reporting, many professionals raise the question of prosecution too soon with sexual assault victims, by asking in their very first contact whether the victim ‘wants to prosecute’ the suspect. Investigators may even pressure victims into signing a release waiver if they either say or imply that they do not want to ‘press charges,’ or if they are unsure about what to do. Unfortunately, this practice is common because there is a perception that the waiver will limit the law enforcement agency’s liability for not investigating the report any further.

Some of these waivers have rather extreme wording that goes well beyond suspending an investigation to actually preventing victims from making any further inquiries or cooperating with any future investigation and/or prosecution. Here is one such example:

*I affirm that I will not pursue this matter further, nor will I initiate any criminal prosecution against any persons involved in or responsible for this offense. I will make no further inquiries as to any subsequent investigation conducted by the [law enforcement agency], nor will I voluntarily appear as a witness in any potential criminal prosecution resulting from this complaint.*

### **Underlying Message of Release Waivers**

This type of practice is patently unjust. Law enforcement does not have the legal authority to tell anyone that -- simply because they signed a particular document -- they can never make additional inquiries or testify in any potential prosecution. Whether intended or not, this type of waiver does exactly the opposite of what is considered best practice. It clearly discourages victims from participating in the investigation by forcing them to make a decision that is ‘all or nothing’ and ‘now or never.’ In fact, the tone of the waiver – and the conversation that almost certainly precedes its presentation – can feel downright threatening to victims. The underlying message is: *Tell me everything, right this minute, or never call us again.*



### Comparison with Child Victims

To see how damaging this can be, it is helpful to contrast it with the typical practice in cases of suspected child abuse. When a mandated report of suspected child abuse comes into a law enforcement agency, it is not at all uncommon for the child to deny the allegation when contacted by an investigator. Very few investigators are surprised by such a denial, and it is difficult to imagine them responding by threatening the child with a statement that it is now or never: *Disclose the abuse now, or you will never have another opportunity*. Instead, most investigators would respond by expressing concern for the child and making sure he/she knows how to contact the investigator whenever he/she feels able to talk. This is because the goal is to encourage the disclosure, whenever the child is ready. The same should be true for all victims.

### What if the Victim Requests to Terminate the Investigation?

We recognize that some law enforcement agencies use a form that victims can sign, to document the fact that the investigation is being terminated at the victim's request. We do not believe there is any need for such a form, given that they do not accomplish their perceived purpose of protecting a law enforcement agency from liability – and because they have such a detrimental effect on victim participation.

Therefore, if an agency uses a waiver of some kind (or an affidavit of suspension), it should only be used when victims proactively *ask* to have the investigation of their case terminated – *and* the law enforcement agency has reason to believe that they might be faced with a claim that they failed to pursue the case for questionable reasons. This might include situations such as the following:

- Cases where there is a perceived conflict of interest. For example, when a university student reports a sexual assault to campus police, and there is concern that the university might later be seen as trying to 'cover it up' by not pursuing an investigation and prosecution.
- Cases where the suspect is a high profile person, such as a celebrity, politician, well-known athlete, or even a police officer.

### Better to Support Victim Engagement

Even in situations such as these, agencies should recognize that the form does not carry any legal weight – *and the same purpose is likely to be better served by simply documenting what was done to help support the victim in order to remain engaged*. In other words, officers and investigators should document the steps they took to address the victim's barriers to reporting, by explaining the process of an investigation, helping to meet any immediate needs, ensuring they have the support of an advocate (if they want one). Law enforcement can even sometimes talk with loved ones to help address their questions, concerns, and direct them to available services.

This is another example of an issue that can be addressed by a multidisciplinary SARRT, to ensure that such forms are either not used or are used in limited circumstances as described above. It also highlights the need for supervisory review in sexual assault cases. Supervisors need to make sure decisions are not being made by officers and investigators based on frustration with victims who do not want to participate in the investigation, do not return calls, or those who may even respond with an attitude of hostility. These victims should not be presented with a release waiver as an excuse for not conducting a thorough investigation. After efforts have been made to address their concerns and offer them support, victims should be reassured that they can re-engage the system at any time, and the case would then be investigated to the best of their ability.

### **Not An Excuse to Avoid Investigation**

If a form is used by a law enforcement agency, it certainly should *not* be used because responding officers simply decide not to investigate a sexual assault report, either because they do not believe the victim or because they do not think the case is worth pursuing. In fact, this type of form has no place whatsoever in the preliminary investigation. It should not be presented at the time of the initial contact or during a preliminary interview with a victim.

### **Up Next**

As you can see, the use of release waivers is another important issue for multidisciplinary groups to discuss and incorporate into their coordinated response protocol. In the next bulletin, we discuss evidence storage and retention for victims who access alternative reporting options other than the standard reporting procedure.

*This project is supported by Grant No. 2013-TA-AX-K045 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed on this website and all posted materials are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*