

2011

Statewide SART Advisory Committee

2011 Final Report



SART Advisory Committee Membership, 2010-2011

Laura Adams, Esq., Chief of the Sexual Battery/Child Abuse Unit
Office of the State Attorney, 11th Judicial Circuit

Meg Baldwin, Esq., Executive Director
Refuge House, Inc.

Judith A. Barrett, Executive Director
Ability 1st

Judge John L. Burns
Charlotte County Judge

Assistant Chief Chris Butler, Commanding Officer Sex Crimes
Jacksonville Sheriff's Office

Gretchen Casey, Director of Victim Services, Witness Management and Project Payback
Office of the State Attorney, 8th Judicial Circuit

Gina Costa, Executive Director
Victim Service Center of Orange County

Catherine Cothran, Senior Forensic Scientist
Palm Beach County Sheriff's Office Forensic Biology Unit

Jan Davis, Program Administrator, Sexual Violence Prevention Program
Florida Department of Health

Micheala Denny, SANE/SART Projects Manager
Florida Council Against Sexual Violence

Jennifer Dritt, LCSW (LA), Executive Director
Florida Council Against Sexual Violence

Grace Frances, Director of Programs
Florida Council Against Sexual Violence

Vickie Gardner, Forensic Services Director
Florida Department of Law Enforcement

Ed Hardy, Director of Criminal Justice Services
Florida Department of Children and Families

Christina F. Harris, Bureau Chief of Advocacy and Grants Management
Office of the Attorney General

Investigator Roberta Holloway
Okaloosa County Sheriff's Office

Hap Hopkins, Crime Lab Analyst Supervisor
Florida Department of Law Enforcement

Roy P. Hudson Jr., Director of Law Enforcement Services
Florida Sheriffs Association

Senator Arthenia Joyner
Florida Senate

Pamela Kelly, CNM, ARNP, SANE-A

Lt. Angela Kirkland, Lieutenant for Criminal Investigations Unit
Department of Public Safety, Florida A&M University

Terrence Martin, Esq., Assistant State Attorney
Office of the State Attorney, 4th Judicial Circuit

Christine Anne Minardi, Research & Training Specialist, Curriculum Section
Florida Department of Law Enforcement

Christine Mouton, Coordinator
UCF Victim Services Program

Terri Poore, MSW, Director of Public Affairs
Florida Council Against Sexual Violence

Katrina P. Reid, Toxicology Supervisor
Florida Department of Law Enforcement

Silvia Rodriguez, RN, BSN, MBA-HA, Director of Patient Care Services
Jackson Memorial Hospital

Judge George A. Sarduy, Circuit Court Judge
11th Judicial Circuit

Andrew Ta, MD, MBA, FACEP, Chief and Medical Director of Emergency Medicine
Jackson Memorial Hospital

Sandra Vazquez, M.S., Crisis Unit Supervisor
Broward County Sexual Assault Treatment Center

Chief Raymond Velboom, Chief of Police
Dade City Police Department
Yvonne Viel, Sexual Assault Response Coordinator
Eglin Air Force Base

Kimberly Womack, DHSc, ACNP-BC, MS, CEN, SANE-A
Lead Trainer, SANE, Florida Council Against Sexual Violence
Baptist Hospital Emergency Trauma Center SANE Coordinator/Trainer

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Executive Summary

The SART Advisory Committee took up a number of issues during the 2010-2011 fiscal year that impact the lives of sexual assault survivors and the range of professionals that work with them. The committee specifically examined five distinct areas where improvements could be made to the response to sexual assault victims or where assistance could be provided to communities around sexual violence. The members divided into five subcommittees that worked on the items outlined below.

The subcommittees met several times by teleconference and webinar over the course of the year, and the full SART Advisory Committee met four times—twice in person and twice by conference call. This report encompasses the results of the committee’s work, ranging from training and resource materials designed and distributed to local SARTs and allied organizations, to recommendations for improvements in system response, to analyses of current practices.

Interjurisdictional Subcommittee

Members of this subcommittee outlined the difficulties victims encounter who are assaulted in one county and live in or move to another county. The report offers recommendations for how rape crisis victim advocates, state attorneys’ offices, law enforcement agencies and hospitals can collaborate to provide the best response to victims regardless of where the attack occurred and in which jurisdiction the victim currently resides.

Evidence Storage for Non-reporting Victims Subcommittee

In this section, subcommittee members address the issue of storing sexual assault evidence kits for non-reporting victims. They recommend law enforcement agencies, particularly sheriffs’ offices, maintain custody of non-reporting evidence kits. The report lays out guidelines for storing the kits in a way that avoids impacting local and/or national crime reporting mandates while preserving the victim’s identity.

Elements of a Prosecutable Case Subcommittee

The subcommittee formed to examine how prosecutors across the state of Florida determine whether or not to prosecute non-stranger sexual battery cases involving victims 12 years of age and older. The report provides the responses of 14 of Florida’s 20 state attorneys offices as to what evidence they require to file a sexual battery case and which factors mitigate for or against prosecuting these cases.

Grant Writing Subcommittee

In order to increase the number of sexual assault specific projects Florida communities engage it, the subcommittee decided to develop a template for completing the federal Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program solicitation. The subcommittee also will provide grant writing tips and tools on the Florida Council Against Sexual Violence website.

Public Awareness Campaign for Non-Reporting Forensic Exams Subcommittee

This subcommittee examined what it would take to develop a statewide media campaign to raise awareness among the general population about the availability of forensic exams for non-reporting victims.

Interjurisdictional Subcommittee

Introduction

When a victim is raped, the consequences span many chapters. The victim's response to the attack is the first chapter. She or he may ask for help immediately, may suffer in silence for days or years, or may be attacked again by the same assailant or another. The victim may seek medical attention, a forensic exam, and the support of a rape crisis agency. Her family and significant other may also reach out for support, insight, and reassurance. Law enforcement may be contacted for evidence collection and investigation. The victim may request a protective injunction from the court, and negotiate the cooperation and understanding of schools, employers, and landlords. Criminal prosecution of the attacker may come still later, and progress slowly. Healing for the victim may be a lifelong process of rebuilding a sense of security, regaining trust in other people, and learning to live in a world where such an attack was possible in the first place.

This is a complex, extended, and sometimes tangled experience for everyone, especially for the victim of the crime. The victim and her/his allies face difficult challenges of communication and mutual support even when the initial attack, and all the individuals and agencies involved, are located in a single community. More likely, in a state like Florida, with a large transient population, a large student population, and many out-of-state visitors, these many chapters will unfold in various places, and across agency "jurisdictions." This is especially likely when the crime is sexual battery. Many victims feel frightened and insecure remaining in the area where they were raped, and may move out of the area as quickly as possible after the attack. One healing professional has noted that after moving away from the location of the attack, "the great majority [of victims] feel relieved."¹

The recommendations offered here are intended to assist victims, and victim services agencies, medical providers, law enforcement, and prosecutors' staffs who may be in contact with a victim, to provide the best possible continuity of support, when a victim needs the assistance of providers in different locales.

What kinds of issues are we addressing here?

For many victims and providers, these scenarios are not uncommon:

A college student is raped in Tampa, and leaves that night to go home to her mom in Jacksonville. She tells her mom what happened three days later, and they arrive at the Shands emergency room, but then are told that the forensic exam must be performed at the Sexual Assault Response Center, at another location. The victim isn't sure she wants to report to law enforcement, but the advocate from the Women's Center who meets them at the SARC says she doesn't have to. Two months later, the victim decides she would like to go forward with a prosecution, after returning to school in Tampa. Who does she call? Where is her forensic

¹ Linda E. Ledray, R.N., Ph.D., *Recovering From Rape* 129 (1994).

exam kit? Is she eligible for advocacy assistance from the local rape crisis center? Who can help her find out?

A woman is vacationing from Orlando at the beach on St. George Island in Franklin County. Her husband beats and rapes her. She goes to Weems Memorial Hospital for a forensic exam, and gives a report to the Franklin County Sheriff's Office deputy. After she returns to Orlando, she wants to cooperate in prosecuting her husband but will risk further assaults if she does so. What assistance can she find in Orlando and back in Franklin County? Who will help her through this process?

A homeless woman who was raped by a "john" gets a forensic exam at Roxcy Bolton Rape Treatment Center at Jackson Memorial Hospital in Miami. She reports to law enforcement, but wants to get as far away as she can and tells the rape crisis advocate that she intends to leave the next morning. How can the advocate assist her?

Reconciling a victim-centered philosophy with "site specific" systems

These recommendations begin from two core commitments:

- Victims should be empowered and supported to make their own decisions about where, and how, to live after an attack. Victims should not be coerced to remain in the communities where they were assaulted, for any reason.
- Services, legal remedies, and criminal justice response to the attack should be provided to victims on an equal, non-discriminatory manner regardless of whether the victim is a resident of, or remains in, the community where she/he was attacked.

While these principles can be stated simply enough, implementing them can present more challenges than we might expect. In large part, this is because our victim services, medical, and law enforcement systems have powers and responsibilities that tend to be geographically defined, and may tend to favor local residents who remain in the community. Transient individuals, new residents, or residents who move out of the community, either permanently or temporarily, may, by rule or in practice, receive lesser services, follow-up assistance, or accommodation. Some of those rules or practices may include:

- Victim services agencies that limit access to services to residents of the communities or counties served by the agency.
- Victim services agencies that do not provide adequate "out of area" contact information to allow victims to seek services in another community.
- Hospitals/sexual assault centers that limit access to forensic exams to only those victims who are assaulted within the local community, or whose cases are investigated by local law enforcement.
- Law enforcement agencies that decline to store sexual assault forensic evidence kits for assaults under the jurisdiction of an out-of-area law enforcement agency.
- Differential treatment of domestic violence and sexual violence victims seeking protective orders regarding the scope of circuit court jurisdiction over injunction petitions.

With regard to the site of a criminal prosecution, state laws regarding venue strictly limit the options of where a criminal matter may be tried. Typically, prosecution of a criminal offense must be conducted in the county where the offense was committed.

These “site based” rules and practices are often based on sensible rationales, but may have unintended or overly prejudicial impacts on sexual battery survivors. How can these effects be identified and mitigated?

Rape Crisis Centers:

As a victim travels from one location to another, the services of several rape crisis centers may be useful to her at different times. The 30 certified rape crisis programs in Florida are responsible for providing services in specific geographic areas, so a victim may, as she moves, be directed to several different programs for services. She may contact the hotline of one center, receive forensic and medical assistance through another center, law enforcement and state attorney advocacy from yet another, and ongoing counseling from one more. In addition, the services of other advocacy organizations, including campus-based advocacy programs, military advocacy services, and statewide governmental or private non-profit agencies, may offer resources useful to victims in certain areas and under certain conditions.

Desired Outcomes:

1. Victims should be consistently, accurately informed of all services available to her in other program jurisdictions where she may need assistance.
2. As consistent with the documented consent of the victim, victims who wish to be contacted by a rape crisis program or other advocacy agency after she leaves the program’s jurisdiction should be offered the option of that ongoing communication.
3. While coordination of services, on behalf of a victim, among rape crisis programs and other advocacy agencies may seem desirable, releases of confidentiality must be appropriately executed for any confidential information regarding a client to be shared with another program.
4. Eligibility for services should not depend on the legal residence of the victim, or length of time a victim has been present in a program location.

Hospitals and Forensic Exam Centers

While a victim may have many rape crisis program and advocacy services available to her in the aftermath of an attack, her options among forensic examination providers may be very limited and critically time-sensitive. The victim may, at the same time, have a strong preference for one provider over another when she does have options among providers. A victim in a rural community, for example, may prefer to travel a long distance from her home community for a forensic exam out of concern that her privacy may not be effectively protected in her local hospital. On the other hand, a victim who is assaulted while she is away from home, on a trip or in school, may return to her home community and decide to go to her home community hospital for help. For many victims, in any event, the closest exam site can be far away and not in the jurisdiction where the offense occurred. If she chooses not to report to law

enforcement, she needs to know where her kit will be stored and how law enforcement will be able to identify and retrieve her kit if she initiates with a report at a later time.

Desired Outcomes:

1. Eligibility for forensic exam services should not depend on the legal residence of the victim, length of time the victim has been present in the location of the hospital or SANE center, the location of the assault, or the decision of any victim to report to or cooperate with law enforcement.
2. If the forensic evidence kit would be stored on-site at the hospital or SANE center if the victim had been raped in the local community or is a resident of the local community, the same conditions of storage should apply for a victim who was raped in another jurisdiction or who is not a resident of the local community.
3. Victims should be provided with full and complete information regarding the date, time, and location/facility of the forensic exam, by whom the exam was performed, where the kit will be stored and for how long, and contact information for the custodian of the kit.
4. Victims should be given the opportunity to provide their own contact information and asked if they would like to be contacted prior to the destruction of the kit at the conclusion of the relevant storage period. The victim's consent to be contacted should be appropriately documented.

Law Enforcement Agencies:

Law enforcement agencies play a crucial role for victims in the immediate aftermath of an attack, in effective investigation of the assault, and in the victim's long term healing. Victims are sorting out strong and often conflicting feelings about challenging the attacker through the criminal justice system. If victims experience ambivalence, lack of interest, or lack of access from law enforcement personnel, they may feel further discouraged from exercising their rights to justice. Our experience shows that when law enforcement agencies communicate an adaptive and consistent welcome to victims—and other collaborating agencies—the whole system benefits. This is especially true for victims who are working with several law enforcement agencies at a time: making a report to one, having the case assigned to another, having evidence stored by a third, while the perpetrator is held by a fourth, as may be the case for a transient victim or multijurisdictional case. Developing coordinated response protocols among all agencies can mitigate the stress of this process, and improve the quality of justice for all victims.

Desired Outcomes:

1. Law enforcement agencies should develop consistent protocols for storing forensic kits under the jurisdiction of a sister agency, on the same basis as kits stored for cases under their own jurisdiction. Kits should be collected by the investigating jurisdiction from any out of area storage site on the same basis as any other physical evidence.

2. Procedures for securing witness statements outside of the jurisdiction of the investigating law enforcement agency should be clearly communicated between agencies.
3. Victims should be provided consistent contact information informing them how to contact the investigating law enforcement agency. This is especially important for victims who may leave the law enforcement jurisdiction and whose victim contact card information may not be useful in sustaining communication between the victim and law enforcement.

State Attorneys' Offices:

While a victim may live far away from the site of the initial attack, may move away, or become homeless after an attack, prosecutors have little discretion, if any, to choose the site of a criminal trial. Venue for a criminal matter is ordinarily proper only in the county where the offense occurred. This means that the victim will ordinarily have to communicate and cooperate with the prosecution team in that county, regardless of the location of her own choice of residence. In addition, her presence for depositions and trial may be compelled, adding to the victim's needs for supportive counseling and advocacy, especially if she is required to travel to comply with subpoenas ordering her appearance.

Desired Outcomes:

1. Consistent, supportive communication between the victim and the prosecutor's office is critical in all sexual battery cases. State attorney staff should anticipate that the victim may live far from the prosecuting jurisdiction, and/or change her place of residence, or become homeless within the timeframe of the prosecution. On any occasion when the prosecutor has contact with the victim, complete updated state attorney's office contact information should be provided to the victim. The victim's contact information should also be updated, with her consent.
2. In the event that the victim is required to travel to appear as a witness at trial, especially if her participation is compelled and involuntary, the state attorney victim advocate should again provide referral information to the victim regarding services that may be available to her from the certified rape crisis program where she resides and in the prosecuting jurisdiction.

Protective injunctions:

State law regarding sexual violence injunctions contains no specific jurisdictional or venue provisions, suggesting that the general jurisdictional provisions of Chapter 47 apply to such petitions. FS 47.011 specifies that:

“Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. This section shall not apply to actions against nonresidents.”

This language suggests in turn that a victim who resides in another county than the site of the battery or residence of the defendant, or moves away, must return to the county where the attack occurred to file an injunction petition. This is not the case with regard to domestic violence petitions. FS 741.30 states that:

“Notwithstanding any provision of chapter 47, a petition for an injunction for protection against domestic violence may be filed in the circuit court **where the petitioner currently or temporarily resides**, where the respondent resides, or where the domestic violence occurred. **There is no minimum requirement of residency to petition for an injunction for protection.**”

(Emphasis added.) This represents a significant disparity in the access that sexual battery victims have to the courts compared to domestic violence victims seeking similar relief. Both sexual violence and domestic violence petitioners are required to include an address of residence in the body of the petition. This requirement has sometimes proven fatal for homeless victims seeking relief.

Desired Outcomes:

1. The jurisdictional provisions of 784.046 (Action by victim of . . . sexual violence . . .for protective injunction) should be amended to conform with the broader jurisdictional provisions of 741.30 (Domestic violence; injunctions).
2. The requirement of a fixed residence address for sexual violence protective injunction petitions should be modified to preserve the legal rights of homeless sexual violence victims.

Victim Advocacy Resources

Victims, their families and professionals working with them can find the rape crisis center in their local community or elsewhere in Florida online at www.fcasv.org or by calling 888-956-7273. Rape crisis center advocates can help connect victims with criminal justice system resources and advocates in other jurisdictions.

To locate the victim advocate program at any of the 20 state attorneys’ offices, visit <http://myfloridalegal.com/directory> or contact the Division of Victim Services, Office of the Attorney General at (850) 414-3300.

Evidence Storage for Non-Reporting Victims Subcommittee

Goals:

The evidence storage for non-reporting victims subcommittee was formed with three goals in mind, namely:

1. Revisit the non-reporting guidelines issued in 2008 regarding timelines for evidence storage and responsible parties for holding evidence.
2. Create an education piece about evidence storage for non-reporting victims that could be shared with law enforcement. This includes best practice recommendations for how to take reports that do not impact the Uniform Crime Report (UCR) and clarification and storage time recommendations based on the non-reporting guidelines previously published.
3. Seek out support from Statewide SART members on these recommendations and effectively communicate this education piece to relevant stakeholders.

Recommendations:

- The subcommittee recommends continued adherence to the Guidelines for Forensic Examinations for Sexual Assault Victims Not Reporting to Law Enforcement.
- The subcommittee recommends that law enforcement agencies, particularly sheriffs' offices, maintain custody of non-reporting evidence kits.
- The subcommittee recommends that law enforcement agencies use the following guidelines for storing evidence of non-reporting victim evidence kits in order to avoid impacting local and/or national crime reporting mandates while preserving the victim's identity.

Recommended Instructions for Completing a Non-Reporting Victim Police Report

In the state of Florida, adult sexual battery victims are not required to report the incident to police in order to receive a forensic examination. A concern for law enforcement is how to collect, preserve and dispose of a sexual assault kit post examination while maintaining the victim's anonymity. The intent of this article is to provide a framework for completing a law enforcement report that will not impact local or national crime reporting mandates while preserving the victim's identity.

A non-reporting victim is not likely to come into contact with law enforcement. Law enforcement is usually first made aware of a non-reporter when another responding professional, such as a sexual assault nurse examiner or rape crisis program victim advocate, informs them. The responder will notify law enforcement that a sexual assault kit is ready for pick up. Law enforcement will then need to respond to the location where the completed sexual assault kit is currently being held. If not already doing so, it is recommended that local sexual assault response team (SART) establish and assign a confidential number to non-reporting victim sexual assault kits. This will ensure the victims' anonymity. If a non-reporting

victim decides to report, the confidential number can then be used to match the sexual assault kit to the victim.

Once law enforcement collects the sexual assault evidence kit, it must be preserved in evidence until either the victim reports or time constraints have elapsed. The sexual assault evidence kit should be stored and disposed of according to recommended guidelines. At this point law enforcement must document their actions in a police report; listed below are some recommended guidelines.

At a minimum, a law enforcement report should contain the following:

- An assigned report number to include year; for example, 2011-000001;
- Date and time law enforcement received the kit
- Name of person who surrendered/turned over kit to law enforcement
- Date and time of offense (if known);
- Location of incident; should be the location where the sexual assault kit is collected by law enforcement.

Provide a name for the incident and/or offense. It is recommended to entitle the report as “information” using an appropriate statute number such as 999 as well as an appropriate UCR Code such as 9999. This will ensure that a criminal offense is not being reported.

The witness or complainant of the incident will be the law enforcement officer that is collecting the sexual assault kit.

The narrative section of the report should be brief. An example of how to write a narrative could be, “I responded to XYZ Hospital and collected an unreported sexual assault evidence kit, confidential number 12345. The sexual assault evidence kit was placed into evidence.”

All other information in the police report should be listed as not applicable. This reference is being made for any other information collected from the law enforcement agency.

Further Actions:

In support of the recommended instructions for completing a non-reporting victim police reports, the subcommittee hosted a webinar covering these guidelines on Thursday, July 21, 2011. Invited attendees were interested parties from law enforcement and rape crisis center staff.

Elements of a Prosecutable Case Subcommittee

Purpose of Subcommittee

The subcommittee formed to examine how prosecutors across the state of Florida determine whether or not to prosecute non-stranger sexual battery cases involving victims 12 years of age and older. The members of the subcommittee wanted to see if there were commonalities in how state attorneys' offices made their selections of which cases to prosecute and what could be learned from the criteria they use.

The subcommittee developed a survey that asked about what evidence state attorneys' offices require to prosecute a case, which factors mitigate for or against prosecuting a case, what type of interaction prosecutors and law enforcement officers have prior to arrest, what the role victim advocates play in the local criminal justice system, and about specific information regarding the state attorney's office itself (how many prosecutors in the circuit, how many handle sexual battery cases, and whether they have a specialized unit for sexual battery).

Subcommittee members divided up the list and disseminated the surveys to 3-4 circuits each, following up with them to answer questions about the purpose of the project. Fourteen (14) of Florida's 20 state attorneys' offices provided survey responses; the participating circuits were the 2nd, 3rd, 4th, 5th, 7th, 8th, 9th, 11th, 12th, 15th, 17th, 18th, 19th and 20th.

Trends

Of the answers provided, trends did emerge, specifically in the areas of what types of evidence state attorneys' offices generally require to prosecute a case and what factors mitigate for and against filing a case for prosecution. For instance, 12 of the 14 circuits look for significant physical evidence, seven of the circuits stated that the credibility of the victim plays a vital role in their decision, and five of the 14 wrote that they look at possible motives for the disclosure, and that the more immediate the disclosure, the more likely they are to prosecute.

The tables below show the most common answers given for each of these three questions. It seems prosecutors across the state are relatively uniform in how they decide which cases to file. However, two circuits stated that protecting victims and the importance of not tolerating rape mitigated *for* filing a case. One circuit responded that there are *no* determining mitigating factors *against* prosecuting a sexual battery.

What evidence is required to prosecute a non-stranger rape case?	Responses
Nature/Time of Disclosure	35.7%
Physical/Biological Evidence	92.9%
Defendant confession/statement	64.2%
Witness Corroboration	71.4%
Toxicology results	35.7%

Factors which mitigate in favor of filing sexual battery cases	Responses
Timely disclosure	35.7%
Physical findings/DNA	64.3%
Defendant's past criminal history/priors	35.7%
Witness Corroboration	57.1%
Defendant statement/admission	42.9%
Preventing crime/danger to community	21.4%

Factors which mitigate against filing a case	Responses
Untimely/late disclosure	46.2%
Impact/stress on victim	15.4%
Lack of physical evidence/DNA	53.8%
Motive to lie/make false allegations	30.8%

Complete answers to these three topics listed by identifiers A-N can be found in *Appendix A*. A full description of the entire survey response can be found at <http://www.fcasv.org/new-statewide-sart-advisory-committee>

Grant Writing Subcommittee

Goals:

The goals of the Grant Writing Subcommittee were to:

1. Develop a list of public and private grants that fund sexual assault projects
2. Create a template for completing the federal Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program solicitation
3. Compile grant writing tools including a list of common grant writing Do's and Don'ts
4. Encourage local communities to use the tools and template to write for public and private grants, provide technical assistance to these communities, and ultimately realize an increase in the number of grants awarded for sexual assault specific projects in Florida.

Overview of Subcommittee's Work:

Subcommittee members compiled several resources for writing grants and identified public and private grant opportunities. Members distributed grant announcements, directly encouraged specific communities to apply for them and provided technical assistance as they wrote the grants.

The subcommittee also collected successful applications from around the country of sexual assault projects funded through the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program to help members in writing the template.

Future Work

The subcommittee plans to release the template for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program in November 2011 in conjunction with instruction guide for completing the application. This timeframe will allow communities to begin planning their project lining up partners well in advance of the solicitation's posting and deadline in early 2012.

In November the subcommittee will also distribute a list of private grants in Florida that includes information on the types of sexual assault related projects they will fund, the dollar range of the award, and the deadlines for submitting the applications.

Lastly, the Florida Council Against Sexual Violence staff will create a grant writing tab on its website that will feature grant opportunities and grant writing tips and resources, including the template and instruction sheet for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program solicitation.

Public Awareness Campaign for Non-Reporting Forensic Exams Subcommittee

Goals:

The goals of the subcommittee were to:

1. Investigate strategies for funding a campaign to raise awareness among the general public of the availability of forensic medical exams for rape victims, regardless of whether they choose to report the crime to police.
2. Determine how other states have spread the word about the exams among the public
3. Develop a campaign including PSAs and billboards to relay the message

Overview of Subcommittee's Work:

The subcommittee contacted other states and hosted a conference call with representatives from the Kentucky Association of Sexual Assault Programs (KASAP) and the Texas Alliance Against Sexual Assault (TAASA) who spoke about their states' PR campaigns on the topic.

KASAP filmed a [PSA](#) with the first lady of Kentucky to raise public awareness about the availability of forensic exams for non-reporting victims. They also conducted 14 trainings on forensic exams that were attended by 110 hospitals. They distributed toolkits and [compliance guides](#) as an incentive for hospitals to attend the trainings. Additionally, they partnered with the state police (troopers) to give trainings to update them on forensic exams for non-reporting victims. The main focus of their campaign was educating professionals.

TAASA created a media campaign targeting the general population to raise awareness about forensic exams for non-reporting victims. They distributed [PSAs](#), [brochures](#), posters and radio commercials to rape crisis centers and posted the PSA on Youtube. The main drawback to the campaign is that they did not have funds for media buys, which are very expensive in Texas. They hoped to raise money for it or have the centers purchase it or get airtime donated.

Both the KASAP and TAASA campaigns were in the \$100,000 range and had been funded through the federal American Recovery and Reinvestment Act, a grant that is no longer available.

The subcommittee began investigating pro bono options for funding the campaign.

Subcommittee Conclusions:

The subcommittee concluded that a PR campaign is needed in Florida to raise awareness about forensic exams for non-reporting victims geared toward the general public like the Texas project. However, the subcommittee also determined that a successful campaign would require a significant amount of funding, which is difficult to procure, and/or a substantial time commitment by a staff person to seek out a PR firm or other entity that would develop the campaign pro bono and to obtain donations of billboard space and PSA time slots. The subcommittee recommends the members of the SART Advisory Committee and the Florida Council Against Sexual Violence continue to look for grant or other funding opportunities to pursue the project in the future.

Appendix A: What Makes a Prosecutable Case? Survey Detailed Results

Topic 1: What evidence is required to prosecute a non-stranger rape?

A

Evidence proving a lack of consent is the key on this type of case. Generally, the nature of the disclosure is essential. If there is a delay, then an explanation for this delay is important. Also, a good interview with the defendant to lock him in to either nothing happening, or whatever happened was consensual. This can then be juxtaposed with the independent evidence such as physical findings refuting their claim, other witnesses seeing the victim acting inconsistent with consent (too drunk to consent, upset as if victimized, etc.)

B

Much the same as what is required in any case. Evidence to prove an allegation beyond and to the exclusion of a reasonable doubt. First and foremost, a cooperative and honest victim (honest as to all surrounding circumstances and history). Second: corroborative evidence in the form of physical findings of sexual abuse, witnesses (which of course rarely exist), biological samples, etc. Something to establish it took place, something to implicate the defendant, and something to negate consent.

C

In all three circumstances, we look to the timing of the initial disclosure, any scientific evidence such as toxicology screen results or any medical/forensic/DNA evidence of an actual sexual encounter, and criminal sexual prior arrests or convictions of the suspect. Obviously, a more immediate disclosure tends to yield additional witnesses for excited utterances that can be utilized at trial. The medical/forensic/DNA evidence is critical as a date rape or drug facilitated rape victim is often unable to even recall the specifics of the assault. A formal post-Miranda statement is also key particularly if the suspect denies that a sexual encounter even occurred and we have DNA.

D

There isn't really a separate standard for these cases. Is there physical evidence, independent witnesses, prompt report, defendant statements are typically what we'd look for. Like any case, the victim's cooperation also factors in.

E

Although no particular piece of evidence is "necessary" to any given case the following are ideal: timely disclosure, DFSA Kit (Drug Facilitated Sexual Assault Kit), START Kit, clothing victim was wearing, pictures of defendant, statement from all potential witnesses and contact information, statement from defendant (although confession is preferable, locking defendant in to some story is very important because the story he comes up with for the jury with the help of his attorney is always better than what he gives law enforcement on the night of the incident), and written statement from all law enforcement officers involved regardless of how minor they think their involvement was.

F

Generally, but not exclusively, some independent evidence. For example: testimony from the victim, testimony from witnesses to the rape or witnesses that can at least place the victim and the defendant at the scene of the incident, photos of any injuries; physical evidence – such as clothes; DNA evidence; testimony from doctors or nurses who can testify as to the victim’s injuries or who can testify as to why a rape victim may not have any visible injuries; any statements or admissions from the defendant; any video statements from witnesses or the defendant; 911 calls that victim may have made to report rape, or evidence of incapacitation on the part of the victim and DNA (or admission to sex).

G

We will prosecute cases based on the victim’s testimony alone, evaluating each case on a case-by-case basis. Evidence of injury or DNA to prove sex occurred is extremely helpful but not required.

H

Generally we require some corroboration of the victim’s statement that she was sexually battered by a person he/she knows. Some examples might be: toxicology results or witnesses who can confirm that the victim was heavily intoxicated at the time of the drug/alcohol-facilitated rape; a documented history of domestic violence, a victim who had sought an injunction against domestic violence, and/or injuries and immediate report for a DV rape; untruthful statements by a suspect (i.e., denial of having had sex with a victim) in cases of a date rape when DNA evidence or subsequent admissions by suspect indicate that he did in fact have sex with the victim.

I

Credible victim testimony and some other corroborating evidence. We don’t prosecute on “he said/she said” cases (generally).

J

We need corroboration to get us past the “he said, she said” aspect of these cases. While the statute does not require corroboration, we know that juries want to see “plus one” evidence. That may come in the form of a confession, an eye witness, one-party consent call, ripped clothing, physical injury, DNA, etc.

K

It is quite difficult to answer this question in a general way because such decisions are case-specific, i.e., analyzing the evidence that has been gathered in the specific case. Generally, we look for a consistent and credible account by the victim, corroborating testimony of a witness or witnesses, medical evidence, DNA evidence, an admission or confession by the defendant to the police or to another individual, or an admission or confession during a controlled call. We also assess whether the victim has a motive to fabricate the allegation. If the allegation

involves a drug-facilitated rape, we look for toxicological evidence of the ingestion of such a drug, or testimony by other witnesses that the victim was acting as if she was under the influence of such a drug at the time of the sexual assault. Another form of evidence that we strongly consider is whether there is evidence that the defendant committed a similar offense against another victim, and the likely admissibility of such evidence. We are very loathe to prosecute a case based solely on the uncorroborated account of the victim.

L

1. DNA of defendant from sexual assault exam;
2. Photos of victim's injury and/or photos of crime scene;
3. Drug/alcohol in victim;
4. Credibility of victim/witness statement and/or
5. Statements of defendant (through controlled phone or statement to law enforcement)
6. It depends – we have to review what we have (or don't have), and look at the totality of the circumstances.

M

Credible Evidence. There is no set standard. It could be as "little" as the victim's word or as much as the scientific evidence and law enforcement investigation can obtain.

N

Physical evidence of sexual activity; credibility of the victim; corroborating evidence; if victim believes she has been drugged then either a drug test or independent proof impairment; if rape is regarding a person she has previously been intimate with or is someone she has voluntarily spent time with, then proof that the sexual activity was non-consensual.

Topic 2: What would you describe as the top 5 factors which mitigate *in favor of* filing this type of case in criminal court?

A

Immediate disclosure or explanation for any delay that jury would understand, defendant lying, physical findings supporting assault, independent witnesses to support lack of consent, defendant's prior criminal history.

B

1) Punishment of rapists, 2) Protection of potential future victims, 3) Providing the victim with a support network to reinforce that he/she is in fact the victim, 4) Providing future victims with an example of how the crimes which they suffer can be handled, 5) Potential preventive effect of illustrating situations to avoid/get out of and demonstration of what happens to sex offenders

C

Physical and/or DNA evidence
Victim credibility (timing of disclosure/prior record)
Suspect's statement

Independent witnesses
Sexual criminal history of suspect

D

I don't think you can list 5 factors [which mitigate in favor of filing], it's really a totality of the circumstances standard. Obviously the victim's wishes are considered, as is the defendant's history, age etc.

E

Every case is unique. Some factors are:

1. Victim cooperation
2. Defendant's criminal history
3. Prior victims
4. Corroborative evidence
5. The danger to community

F

Cooperation from the victim; credibility of victim and witnesses; amount of corroboration from witnesses; physical evidence; DNA evidence

G

1. Evidence of physical injury
2. Early reporting
3. DNA
4. Other witness corroboration
5. Consistent witness/victim statement

H

1. Report of sexual battery with credible, consistent victim
2. Admission by the offender
3. DNA evidence
4. Corroboration of victim's testimony about circumstances surrounding rape by witnesses
5. Lack of motive to fabricate on the part of the victim

I

1. Injury
2. Prior acts by defendant
3. Admissions of some kind
4. Defendant caught in lies
5. Physical evidence

J

The safety of the victim, punishment—juries recognize the need to hear these types of cases. The community needs to see a zero tolerance of rape.

K

Confession by the defendant; medical evidence of genital or other trauma; eyewitness testimony; DNA evidence, especially if the defendant denies having engaged in sexual contact with the victim; corroboration of much of the victim's account of the pertinent events by a credible witness(es).

L

1. Immediate report/disclosure
2. DNA of defendant and
 - a) Statement of defendant that nothing (no sex) happened
 - b) Objectively, the victim did not consent
3. Victim is cooperative and credible
4. Physical evidence that supports/correlates victim
5. Witness statements that support/corroborate victim

M

1. A credible victim
2. Scientific evidence
3. A confession
4. Independent witnesses

N

1. Victim calls 911 immediately after the rape
2. Victim fully cooperates with law enforcement and prosecution
3. Victim has a rape exam and submits to drug screen so that state attorney's office can prove intoxication
4. Perhaps a witness who can testify that victim did not intend to or want to have sexual activity with suspect
5. Admissions on part of suspect

Topic 3: What would be the top 5 factors which mitigate *against* filing such a case?

A

1. Intervening problems between parties eliciting disclosure, lack of memory specifics concerning events and lack of consent
2. Subsequent consensual sexual activity between parties
3. Lack of independent evidence (all riding on victim's account)
4. Defendant's complete and voluntary plausible explanation for event

B

1. Impact on the victim
2. Potential of false accusations

C

Lack of:

1. Physical and/or DNA evidence
2. Victim credibility (timing of disclosure/prior record)
3. Suspect's statement
4. Independent witnesses
5. Sexual criminal history of suspect

D

I don't think you can list 5 factors [which mitigate against filing], it's really a totality of the circumstances standard. Obviously the victim's wishes are considered, as is the defendant's history, age etc.

E

Every case is unique. Some factors are:

1. Victim cooperation
2. No corroborative evidence collected
3. Late disclosure
4. Inconsistent statements by victim and/or victim's criminal history.
5. Stress of process/trial on victim

F

Lack of credibility from victim and witnesses; inconsistency in victim's statement; lack of corroboration from witnesses; lack of physical evidence; lack of DNA evidence

G

1. Late disclosure
2. No physical injury
3. No proof sex occurred
4. Inconsistent statements by victim
5. Motive for victim to lie

H

1. Delayed report of sexual battery
2. No physical evidence (ie, DNA, injuries, toxicology results)
3. No admissions by offender
4. Inconsistent statements by victim
5. Motive to fabricate on the part of the victim

I

1. Lack of injury
2. Inconsistent victim
3. Lack of memory of victim
4. No corroboration
5. No similar fact evidence

J

None.

K

Uncorroborated account of the victim; significant contradictions in the various accounts of the victim; credible motive to fabricate the allegation; emotional or psychological disabilities of the victim which cause him/her to fantasize or fabricate events; lack of medical evidence or DNA when the factual scenario asserted by the victim would cause one to believe such would exist.

L

1. Indication of consent, i.e. it appears victim may have consented
2. Victim can't remember facts due to voluntary intoxication
3. Inconsistencies (too many)
4. Physical evidence and/or witness statements inconsistent w/victim's version or supports defendant's statements (if defendant gives statement)
5. Delay in reporting w/o reasonable explanation

M

1. Lack of credible victim
2. Lack of scientific evidence
3. Lack of a confession
4. Lack of independent witnesses

N

1. No evidence of sexual activity other than victim's statement
2. Refusal of victim to go and have a physical exam near to the time of the incident and/or be drug screened
3. Reluctance of victim to participate in the prosecution
4. No evidence of lack of consent if a spouse or intimate partner
5. Failure to report rape within 24hrs.