

RESOLUTION NO. 2016-04-18


**RESOLUTION ADOPTING TENNESSEE MODEL LAW
ENFORCEMENT POLICY ON SEXUALLY ORIENTED CRIMES**

WHEREAS, the City of Clarksburg is required by State of Tennessee Public Chapter 253, Section 2 to develop a policy for handling, maintenance, testing of sexual assault kits and retention. All law enforcement agencies likely to encounter sexually oriented crimes are to establish policies and procedures for responding to those reports on or before July 1, 2016; and

WHEREAS, the City of Clarksburg wishes to provide for the safety and protection of its citizens and provide a protocol for coordinated, preliminary and continued investigations of sexually oriented crimes and other related offenses.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Aldermen of the City of Clarksburg that the Tennessee Model Law Enforcement Policy on Sexually Oriented Crimes attached hereto and incorporated herein be adopted.

DATED, this 18 day of April, 2016.

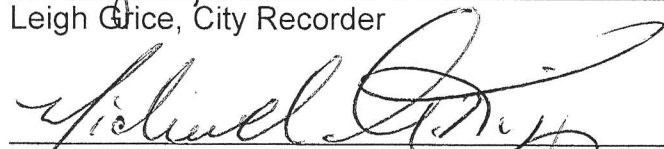


Jamie Peterson, Mayor

ATTEST:



Leigh Grice, City Recorder



Michael U. King, Town Attorney (As to Form)

TENNESSEE MODEL LAW ENFORCEMENT POLICY ON SEXUALLY ORIENTED CRIMES

Created by the Domestic Violence State Coordinating Council

Subject: Investigations of Sexually Oriented Crimes Effective

Date:

Review Date:

CALEA /TLEA Standard:

Cross Reference: Tennessee Public Chapter 253 Chief of

Police/Sheriff Approval:

I. Purpose: To outline a protocol for coordinated preliminary and continued investigations of sexually oriented crimes and other related offenses.

II. Policy: Sexually oriented crimes (see Section III: Definitions) are personal violent crimes that have great psychological or physical effects on the victims. It is the policy of this department to assist victims of sexually oriented crimes in a supportive manner, using appropriate crisis intervention skills. Because of the special considerations involved in investigations of sexually oriented crimes, this policy encourages a multidisciplinary, coordinated community response. Public confidence in the reporting and investigative process will encourage all victims of sexually oriented crimes to report the crime. Reducing recidivism through the apprehension and prosecution of the assailants is a department priority.

III. Definitions:

Forensic medical examination: An examination by any healthcare provider who provides medical care and gathers evidence of a sexually oriented crime in a manner suitable for use in a court of law, provided to a victim reporting a sexually oriented crime to a healthcare provider, as defined in T. C. A. § 39-13-519(a)(1), P.C. 253 (2015).

Hold kit: A sexual assault evidence collection kit of an adult victim that is coded with a number rather than a name pending the victim's decision to report the crime to law enforcement authorities, and has not been submitted to the state crime lab or similar qualified laboratory, as defined in T.C.A. § 39-13-519(a)(2), P.C. 253 (2015).

Law enforcement agency: An established state or local agency that is responsible and has the duty to prevent and detect crime and enforce laws or local ordinances; and has employees who are authorized to make arrests for crimes while acting within the scope of their authority; and a campus security force created by an institution of higher education pursuant to § 49-7-118, as defined in T.C.A. § 39-13-519(a)(3), P.C 253 (2015).

Sexual assault evidence collection kit: Evidence collected from the victim of a sexually oriented crime with a sexual assault evidence collection kit provided by the state of Tennessee, as defined in T.C.A. § 39-13-519(a)(4), P.C. 253 (2015).

Sexually oriented crime: Crimes listed in T.C.A. § 29-13-118(b) and as referenced in T.C.A. § 39-13-519(a)(5), P.C. 253 (2015).

Victim: A victim of a sexually oriented crime as defined in § 29-13-118(b) and as defined in T.C.A. § 39-13-519(a) (6), P.C. 253 (2015).

Victim Advocate: This term applies to service providers trained to assess and address the needs of the victim as well as provide counseling, advocacy, resources and information, and ongoing support. Depending on the primary functions of the advocate, the level of confidentiality and privilege they have will vary and should be communicated to those involved.

IV. Procedures:

A Training and Personnel Selection: Training is necessary for all personnel who have contact with victims of sexually oriented crimes, including dispatch/communications and initial responders, as well as those who investigate these crimes. All officers should receive ongoing training that specifically addresses the realities, dynamics and investigations of these crimes, and legal developments pertaining to sexually oriented crimes. Responders at every level need to recognize that they are accountable to the victim.

When an agency has a dedicated unit for sexually oriented crimes, careful consideration should be taken when selecting personnel to staff it.

B General Responsibilities:

1. Department personnel shall be aware of community services available to victims of sexually oriented crimes.
2. Department personnel shall be trained and knowledgeable about investigation of sexually oriented crimes and its impact on victims.
3. Department personnel shall use appropriate communication skills when interacting with victims of sexually oriented crimes.

C Communications Officer (Communications Center) Responsibilities: Communication officers or dispatch personnel may be the first to whom the victim will speak following a sexually oriented crime. In general, communications personnel should address two primary goals: collecting information and dispatching assistance.

D Patrol Officer/Deputy Responsibilities: Officers/deputies should be mindful of the impact of trauma on memory, especially when contact with the victim is within a short time after the sexually oriented crime occurred. Victims of any trauma, including but not limited to sexually

oriented crimes, may experience difficulty with memory storage and recall. As a result, victims may be inconsistent or unclear in their descriptions. These symptoms may be indications of a traumatic experience rather than fabrication. This fact should be considered by the investigator to assure a more accurate follow-up interview after appropriate time has passed from the traumatic event.

1. The patrol officer/deputy has certain immediate responsibilities, as follows:

D.1.a. The first priority is the victim's physical well-being. Give attention to the victim's emergency medical needs. Ensure safety.

D.1.b. Preserve the crime scene. Call an investigator, additional officers/deputies, or a supervisor when necessary.

D.1.c. Be alert to any suspect in the vicinity. If applicable, give crime broadcast.

D.1.d. Contact a victim advocate as soon as possible to provide assistance throughout the reporting and investigative process.

D.1.e. Explain to the victim the officer/deputy role and what will be done at the scene and through follow-up.

2. The patrol officer/deputy shall obtain detailed information essential to determine what occurred.

3. The patrol officer/deputy shall obtain preliminary statements from victim and witnesses to obtain information in an effort to identify and locate the suspect.

4. The patrol officer/deputy shall inform the victim of the sexual assault center and other community-coordinated response agencies and resources available to support the victim. The patrol officer/deputy should ask if the victim would prefer to have a support person present and offer to contact the person if necessary.

5. The patrol officer/deputy shall arrange transportation or transport the victim to the hospital for a forensic medical examination. The officer/deputy should explain the medical and investigative purposes of this exam and advise the victim to bring a change of clothing.

E. Investigator Responsibilities:

1. The investigator shall obtain a complete report from the patrol officer assigned to the case.

2. The initial contact with the victim may happen in different ways:

E2a. At the crime scene: The officer/deputy shall protect the crime scene and begin the preliminary investigation. The investigator should establish rapport with the victim and offer to transport the victim to the hospital.

E2.b. At the hospital: The investigator should collaborate with medical staff to arrange for the collection of evidence needed for prosecution. Ensure the victim understands the exam procedures and establish rapport for further interviews. Assist in arranging for clothing the victim may need after the examination. The investigator should never be in the examination room during the sexual assault exam but shall have the victim sign a consent form in order to obtain a copy of the medical report. The sexual assault evidence collection kit shall be received from medical staff after it has been properly sealed and labeled. The sexual assault evidence collection kit will be stored and/or submitted for testing in accordance with state law. See, Section G: Collection and Storage of Evidence.

E2.c At the department: Before interviewing the victim, the investigator should review the officer/deputy's report and establish rapport with the victim by allowing the victim to ask preliminary questions and voice initial concerns.

3. The investigator shall be trained in sexual assault procedures:

E3.a The investigator shall allow the victim advocate to be with the victim for support during the interview(s), if the victim desires.

E3.b If the victim prefers a gender specific investigator, every attempt to provide one should be made. If one is not available, the investigator shall nevertheless encourage the victim's cooperation.

E3.c The investigator shall prepare the victim for each phase of the investigation. The investigator will encourage the victim's cooperation by explaining investigative procedures.

4. Victim interviews:

a. Privacy is a necessity for follow-up interviews. Choose a quiet room at the department or go to the victim's home. Recording is encouraged. A victim advocate may be helpful to the investigation. Ask the advocate not to interfere with questioning. The patrol officer/deputy shall obtain detailed information essential to determine what occurred.

b. Polygraph test: T.C.A. § 38-3-123.

1. No law enforcement officer shall require any victim of a sexual offense, as defined in T.C.A. § 40-39-202, or violent sexual offense, as defined in T.C.A. § 40-39-202, to submit to a polygraph examination or any other test designed to detect deception or verify the truth of statements through instrumentation or by means of a mechanical device, as a condition of the officer proceeding with the investigation of the offense.

2. A violation of this section shall subject the officer to appropriate departmental disciplinary action.

- c. The investigators should determine if there were any witnesses and interview them. Investigators should also determine if the incident was reported to someone else.
- d. Questions that must be addressed include, but are not limited to, the following:
 - 1. Assault circumstances: Where approached? How? Where occurred? When?
 - 2. Suspect information: Name, if known? Age? Race? Hair color? Clothing? Height? Weight? Identifying marks? Relationship to victim, if any?
 - 3. Multiple crimes: Did multiple assaults occur? Were other crimes committed?
 - 4. Assault details: What happened during the assault? Were weapons used? Describe them. Were threats made? What were they? Was there a fight or struggle? Were injuries sustained by the victim and/or suspect? Were drugs/alcohol involved? Was the victim incapacitated in any way?
 - 5. Details of sexual acts: What did the suspect do? If a male suspect, did he ejaculate? If so, where? Was a condom used? Was a lubricant used, and if so, what type?
 - 6. Duration: How long was the suspect with the victim?
 - 7. After the assault: What did the victim or suspect do immediately after the assault?
 - 8. Prosecution: Does the victim have concerns about prosecuting?
- e. At the conclusion of the interview, the investigator should ask about any additional assistance needed by the victim and refer the victim to appropriate services.
- f. Inform the victim that it is common to remember additional details later. Encourage the victim to contact the investigator with additional details or to ask questions. Provide contact information to the victim.
- g. Interviewing child sexual assault victims under the age of 18 requires special guidelines set forth by established statutory child sexual abuse investigative protocols, as described in Tenn. Code Ann. § 37-1-601 *et seq.* (2015).

F. Supervisor Responsibilities: Effective supervision plays a key role in ensuring comprehensive responses to and investigation of sexually oriented crimes. Though this is important for victims, it is also important for ensuring compliance with department policy and accountability. Supervisors shall demonstrate a thorough understanding of victim issues and proper response by subordinates.

G. Collection and Storage of Evidence:

The Sexual Assault Evidence Collection Kit or hold kit shall be received from the medical staff after it has been properly sealed and labeled. A chain of custody for the Sexual Assault Evidence Kit or hold kit shall be established and the kit will be prepared for DNA testing or storage in accordance with established protocols. See, T.C.A. § 39-13-519 (b), P.C. 253 (2015).

Collection and storage procedures for sexual assault evidence kits and hold kits are stated below.

1. Sexual Assault Evidence Kit, explained in T.C.A. § 39-13-519 (c)(2) and (d)(1), P.C. 253 (2015).
 - a. If an adult victim reports the alleged offense to the police, or if the victim is a minor, the health care provider shall attach the victim's name to the sexual assault evidence collection kit, and it shall be released to the appropriate law enforcement agency.
 - b. The law enforcement agency shall, within sixty (60) days of taking possession of the sexual assault evidence collection kit with the victim's name affixed to it, submit the kit to the Tennessee bureau of investigation or similar qualified laboratory for either serology or deoxyribonucleic (DNA) testing.
2. Hold Kit, explained in T.C.A. § 39-13- 519 (c)(1) and (d)(2), P.C. 253 (2015).
 - a. If an adult victim elects not to report the alleged offense to police at the time of the forensic medical examination, the sexual assault evidence collection kit becomes a hold kit, and the healthcare provider shall assign a number to identify the kit rather than use the victim's name. The healthcare provider shall provide the victim with the identifying number placed on the victim's hold kit, information about where and how long the kit will be stored, and the procedures for making a police report.
 - b. Upon receipt of a hold kit with only an identification number attached to it, the law enforcement agency shall store the hold kit for a minimum of three (3) years or until the victim makes a police report, whichever event occurs first. Once the victim makes a police report, the law enforcement agency shall have sixty (60) days from the date of the police report to send the sexual assault evidence collection kit to the state crime lab or other similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing. However, no hold kit shall be submitted to the state crime lab or similar laboratory for testing until the victim has made a police report.

V. Compliance: Violations of this policy, or portions thereof, may result in disciplinary action. All members shall comply with this policy.

VI. Application: This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this

policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting.