

# **Law Enforcement Response to Domestic Violence and Sexual Assault**

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# Table of Contents

## Domestic Violence Section

<b>Domestic Violence Introduction</b>	5
<b>Chapter 1</b> Arrest & Establishing Probable Cause	7
<b>Chapter 2</b> Writing Reports and Collecting Evidence	13
<b>Chapter 3</b> Enforcement of Protection Orders	16
<b>Chapter 4</b> Officer Liability	26
<b>Chapter 5</b> Officers' Attitudes Influence Their Actions	28
<b>Chapter 6</b> Abuser Profiles	29
<b>Chapter 7</b> Victim Responses/Dynamics of Battering	34
<b>Chapter 8</b> Victim Rights	43
<b>Chapter 9</b> SD Codified Laws Regarding Domestic Violence	50
<b>Chapter 10</b> Domestic Violence Investigation Checklist	81

# **Sexual Assault Section**

## **Sexual Assault Introduction**

The Truth about Sexual Assault	102
<b>Chapter 11</b>	
Sexual Assault Response Team	104
<b>Chapter 12</b>	
Building Your Case	109
<b>Chapter 13</b>	
Report Writing	120
<b>Chapter 14</b>	
Victim Initial Response and Post-Assault Response	124
<b>Chapter 15</b>	
Victim Rights and Support Services	128
<b>Chapter 16</b>	
Delayed Reporting	135
<b>Chapter 17</b>	
Drug Facilitated Sexual Assault	137
<b>Chapter 18</b>	
SD Codified Laws Regarding Sexual Assault	142
<b>Chapter 19</b>	
Sexual Assault Glossary of Terms	148
<b>Chapter 20</b>	
Sexual Assault Investigation Checklist	151
<b>Appendix: Shelters and Service Programs</b>	154

## Domestic Violence Introduction

“Domestic violence (DV) is not a law enforcement problem.” That’s what one veteran officer once said during a training session. “I am not a family counselor. I can’t solve their problems. I am a cop; I put people in jail. That is what I do.”

This one mistaken belief and the unwillingness to learn the truth about domestic violence has long provided a stumbling block to officers in enforcing domestic violence laws and properly protecting victims.

This handbook is not an effort to make family counselors out of law enforcement officers, but rather to educate and increase the level of understanding of South Dakota officers. By so doing, we not only serve the interest of law enforcement, but more importantly the interests of those whom we are sworn to serve – the public. An educated, professional approach to the problem of domestic violence is the only possible solution. By learning and accepting our role in that process, we put behind the myths of domestic violence and move forward to deal with the facts.

**Fact:** Domestic violence is the leading cause of death of women between the ages 14 and 40 – more than car accidents, breast cancer or any other means.

**Fact:** Domestic violence is the leading cause of injury to women, outnumbering car accidents, rapes and muggings combined.

**Fact:** According to the U.S. Department of Justice, 85 percent of the victims of domestic violence are female. Men can also be victims of domestic violence.

**Fact:** More than 60 percent of abused children come from homes in which spousal abuse is also occurring. Ninety percent of children exposed to domestic violence show signs of post-traumatic stress disorder.

**Fact:** 80 percent of violent juvenile offenders and adult prisoners come from homes where they experienced domestic violence.

**Fact:** Children from violent homes are 74 percent more likely to commit crimes against persons.

**Fact:** Only by addressing the problem of domestic violence in our communities can we then make significant progress in these and other areas.

# Chapter One

## Arrest & Establishing Probable Cause

In official Opinion No. 90-18, the Attorney General stated that “it is my opinion that the mandatory arrest provisions of SDCL 23A-3-2.1 require arrest if a determination of probable cause has been made within 24 hours of the assault, **regardless of when the arrest is actually made.**”

**\*Note – As of July 2, 2006, the time period referred to in the above Attorney General’s opinion has been expanded to 48 hours.** This means that when an officer is able to establish probable cause within 48 hours of the assault, the officer may execute a warrantless, mandatory arrest at any time.

### **SDCL 22-18-1 Simple assault**

Any person who:

- (1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;
- (2) Recklessly causes bodily injury to another;
- (3) Negligently causes bodily injury to another with a dangerous weapon;
- (4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or
- (5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

**SDCL 22-18-1.1            Aggravated Assault**

Any person who:

- (1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- (3) Deleted by SL 2005, ch 120, § 2;
- (4) Assaults another with intent to commit bodily injury which results in serious bodily injury;
- (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm;  
or
- (6) Deleted by SL 2005, ch 120, § 2;
- (7) Deleted by SL 2012, ch 123, § 4;
- (8) Attempts to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth; is guilty of aggravated assault. Aggravated assault is a Class 3 felony. SL 2012, ch 122, § 1; SL 2012, ch 123, § 4.



### **SDCL 23A-3-2.1**

#### **Circumstances permitting warrantless arrests –Protection Orders – Domestic Violence**

Unless the provisions of § 22-18-5 (reasonable force used by parent, guardian, or teacher in correcting child, pupil, or ward) apply, a law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, any person, without a warrant, at any time that the opportunity presents itself, if the officer has probable cause to believe that:

- (1) An order has been issued under chapter 25-10 protecting the victim and terms of the order prohibiting acts or threats of abuse or excluding the person from a residence have been violated; or
- (2) An order has been issued under chapter 22-19A protecting the victim and the terms of the order prohibiting acts of stalking or physical injury have been violated; or
- (3) The person is eighteen years or older and within the preceding forty-eight hours has assaulted:
  - (1) That person's spouse;
  - (2) That person's former spouse;
  - (3) The mother or father of that person's child; or
  - (4) Any person eighteen years of age or older with whom that person resides or has formerly resided;And the officer believes
  - (1) An aggravated assault has occurred;
  - (2) An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or

- (3) An attempt by physical menace has been made to put another in fear of imminent serious bodily harm.

*“Some officers do not realize that a violation of a protection order is a warrantless arrest under 23A-3-2.1. Time will be wasted waiting for a warrant while the perpetrator continues to harass the victim. The victim then feels we have all let her down.” – Prosecutor*

### **SDCL 25-10-35**

#### **Arrest of spouse for abuse – Considerations**

If the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the predominant physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:

- (1) The intent to protect victims of domestic abuse under this chapter;
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (3) The history of domestic abuse between the persons involved.

#### **Avoid Dual Arrests**

When confronted with a situation in which people have assaulted each other, the officer is not required to arrest

both persons based on SDCL 25-10-35, but rather the predominant physical aggressor.

### **Determine Predominant Physical Aggressor**

Making a dual arrest for domestic violence suggests the officer is not properly determining the predominant aggressor as the statute requires. If the officer has probable cause to believe a crime was committed, the officer shall arrest the person suspected of committing the crime who is the predominant aggressor when the crime involves domestic assault. Use the following questions in determining the predominant physical aggressor:

1. **FEAR:** Who talks and acts scared? Who has the most dominance?
2. **BODY LANGUAGE:** Who has the aggressive stance? Physical size of parties?
3. **HISTORY OF ABUSE:** Paper Trail? (i.e. medical records, 911 tapes, police reports, shelter stays, protection order).
4. **NEIGHBORS & WITNESSES:** Prior and typical behavior?
5. **EXCITED UTTERANCES:** Adult and child statements blurted at the scene while upset?
6. **INURIES:** Who has the injuries? Are the injuries from self-defense or inflicted? Are stories consistent with injuries?
7. **CRIME SCENE:** Smashed furniture? Empty liquor bottles?
8. **TYPE AND USE OF WEAPONS**
9. **WHO OBJECTS TO SEPERATION OF PARTIES?**
10. **CHILDREN'S STATEMENTS**

In making this determination, the officer shall make every reasonable effort to consider the intent to protect victims of abuse under 25-10; the comparative extent of injury inflicted; serious threats creating fear of physical injury; and the history of domestic abuse between the persons involved.

## Chapter Two

### Writing Reports and Collecting Evidence

Collect evidence and prepare the case assuming the victim may be unwilling to testify or cooperate. These 10 points should be incorporated into an officer's investigative or arrest report on all domestic-related calls:

- 1. Record a detailed verbal statement from the victim.**  
Use the victim's exact words whenever possible.  
*"Officers need to take the time to get a statement from the victim. Sometimes they will leave a statement form and come back to pick it up. In the meantime, the perpetrator has called (calling from the jail can be a separate crime) and has worked on her feelings. The victim is then hesitant to provide any information against her partner."* – Prosecutor
- 2. Note the victim's emotional state.** Be specific about the victim's emotional state (crying, shouting, fearful).
- 3. Describe and document injuries.** Describe observable injuries in detail (e.g. a two-inch cut over right eye). Ask the victim whether she/he sustained other injuries that may not be visible (pain or soreness). Document injuries in writing and with photographs.
- 4. Obtain information about past abuse.** History of abuse or violence is used by the prosecutor in determining the best course of legal action. Documented past abuse can be used as evidence. This information is helpful to other agencies in determining an appropriate level of intervention.

5. **Obtain a detailed statement from the alleged perpetrator.** Whenever possible use exact words. Document his/her emotional state and any threatening comments made to the victim or officers.  
*“Often when I arrest the male suspect on a domestic, he will mention that he did assault her. I then have him fill out a statement. The prosecutor appreciates this information and it puts a lot less pressure on the victim to be the only witness.” --Deputy Sheriff.*
6. **Describe the scene.** The report should describe any evidence of the altercation (i.e., broken items, furniture tipped over).
7. **Interview other witness.** In addition to taking statements, record the full name, address and telephone number of each witness.
8. **Note other information.** Record information necessary to charge other offenses such as criminal damage to property, trespassing, terrorist threats.
9. **State the decision and conclusions of the officers.** An arrest report should indicate how the officer concluded that he/she had probable cause to make an arrest. If an arrest was not made, a detailed report should still be filed. It is important to document the officer’s conclusions about any injuries. Injury is not in itself sufficient evidence to establish probable cause that an assault has occurred. The officer must conclude from all of the evidence that the injury was intentionally inflicted in an act other than self-defense.
10. **Multiple arrests.** If an officer makes a multiple arrest, the report should separately document how probable cause was established for each arrest.

**Collect Evidence**

The officer should preserve evidence that the prosecutor may be able to use at the trial. Examples of such evidence include bloody clothing, weapons, broken furniture or telephone, ripped out phone cord, photographs of the scene, and photographs of the victim or suspect.

### Enforcement of Protection Orders

#### PETITIONS FOR PROTECTION UNDER SD LAW

##### OVERVIEW

There are 3 different types of protection orders legally defined that may be granted under SD law. See (1) SDCL 25-10 (Protection from Domestic Abuse); (2) SDCL 22-6-9 (Protection Order in Cases of Assault or Crimes of Violence); (3) SDCL 22-19A (Stalking)

An application can be filed for relief and can be filed in any jurisdiction in which any party to the proceeding resides. All forms relating to Protection Orders can be found at the UJS website ([www.sdjudicial.com](http://www.sdjudicial.com)) and can be filled out pro-se without an attorney. They are also available at every Clerk of Court's office across the state. Victim advocates and clerks of court often assist victims in filling out the forms.

The 3 different scenarios in which a person may qualify for an order of protection are:

1. Domestic Abuse – (SDCL 25-10-3) - Situations involving any person who is involved in one of the following relationships with any other party:
  - a) Spouse or former spouse;
  - b) Is in a significant romantic relationship;
  - c) Has a child or is expecting a child with the abusing party;



d) Parent and child, including a relationship by adoption, guardianship, or marriage; or  
e) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage.

2. Physical Assault – (SDCL 22-6-9) - any person who has suffered physical injury as a result of an assault or crime of violence (as defined in 22-1-2(9)). The petition is governed by the procedures and penalties under the stalking statute (22-19A-(8-16)).
3. Stalking-(22-19A-(8-17))

## **PROCESS**

### **Ex Parte Orders**

The 3 different types of protection orders can all be obtained ex parte (without notice or opportunity to be heard by the named defendant). If an ex parte order is desired / ordered, it will be personally served on the defendant by a law enforcement officer. It is good for 30 days during which time the court will order a hearing, however, it can be extended beyond 30 days for good cause shown to the court or by agreement of the parties. The defendant will also be served with notice of time/date of the hearing and the pending allegations. The purpose of the hearing is to determine if the order should be extended/modified/ or dropped. The judge will listen to the evidence and decide which course of action is appropriate. It takes a preponderance of the evidence to allow the court to extend the protection order past 30

days. The order may be extended up to a maximum of 5 years. While the defendant is not personally present and does not have a right to attend any action involving an ex parte order, the defendant does have a right to personally appear at the next hearing to defend against the extension of the order beyond the 30 day period. If the hearing is continued, the 30 day order is automatically extended to that time by operation of state statute.

### **FILLING OUT THE PETITION**

The petitions come with instructions and it is very important to fill them out correctly the first time.

Regardless of the type of protection order sought, the Petitioner must allege facts that will allow the court to find that the elements of type of protection order sought are met by a preponderance of the evidence. Here a few reminders/suggestions regarding the petition process:

- Write clearly! Victims may become emotional and/or stressed when writing out an order. Visiting sensitive details may be very painful and trigger stress reactions. It is difficult to write and express ones-self when under extreme stress and trying to relate sometimes sensitive details to a stranger, but remember, the judge can't offer relief if there isn't a clear request to do so.
- Victims often minimize the facts as the defendant has coerced them to do, so make sure the details are clear and really describe the behaviors of the defendant toward the victim.

- Have someone proof-read the document that will be submitted to the judge. Proof-reading can enhance readability by correcting obvious mistakes that might otherwise defeat the petition.
- Make sure all the elements are met. Danger/threat must be real and, most of the time, imminent.
- The facts must be specific in detail and clearly comprehended.
- It may be helpful to provide examples of what the elements in the petition mean, when applicable.
- Clerks and victim advocates may assist in filling out the petition.
- Victim should keep a copy of the certified protection order with her at all times.
- Violation of a protection order is a crime and should be reported.
- Time of service on the defendant can be a risky time for violence to escalate.
- Make sure the box(es) checked match the type of violence or threat of violence alleged in the petition.
- It is best that someone accompanies a victim through the petition process when possible.
- Work with the victim or refer the victim to an advocate that can assist with safety planning.
- Refer victim to appropriate resources that may include day care, assistance to move (in some severe cases), child support, restitution, mortgage payments, etc.
- Do not engage in victim blaming behaviors.
- Advise victims about gathering evidence such as photographs, emails, letters, answering machine

recordings of threats, telephone records, medical reports and police reports, defendant's prior criminal history, protection order history including any violations of protection orders.

- Keep the victim away from the defendant at any courthouse setting.

## **OTHER**

### **Protection Orders – SDCL 25-10**

South Dakota Codified Law 23A-28C-1(4) (Crime Victims' Act) provides that all victims of domestic violence and sexual assault crimes have the right to be protected from intimidation by the defendant, including during the time of enforcement of protection orders. Enforcement of protection orders is essential to the effectiveness of such court orders. Immediate arrest on protection order violations provides safety for the victim and demonstrates that the abuser (defendant) is being held accountable for violating a court order.

### **Make sure the victim understands:**

- There are no filing fees for protection orders
- Protection orders can be obtained without an attorney
- Protection order forms are available at all courthouses
- Victims should bring as much information and documentation to attach to the application (petition) for the protection order as possible
- Victim must be able to identify a current address for service of the order on the abuser

- Victim should keep a copy of the order handy at all times.
- Ex parte orders are good for 30 days and can be continued until a hearing can be held
- Post-hearing orders can be issued for up to 5 years

### **SDCL 25-10-13**

#### **Violation of order as misdemeanor or felony**

If a temporary protection order or a protection order is granted pursuant to this chapter or a foreign protection order recognized pursuant to § 25-10-25 or § 25-10-12.1, or if a no contact order is issued pursuant to § 25-10-23 or 25-10-25, and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1 or 22-19A-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section, the factual basis for which occurred after the date of the second conviction, and occurred within ten years of committing the current offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition to other civil or criminal remedies.

The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 USC 2265 requires states and Indian tribes to enforce "valid" orders issued by foreign

states and Indian tribes as if the orders had been issued by the non-issuing, enforcing state or tribe.

18 USC 2265 charges law enforcement officers with enforcing out-of-state protection orders that are presented to them if the orders appear valid on their face. If a victim shows the officer her foreign order, the officer should enforce it as long as it contains both parties' names and has not yet expired. Even if the out-of-state order is unverified, it should be enforced if it meets the requirements of facial validity.

A protection order issued by a South Dakota court or any other jurisdiction should be enforced if it appears valid on its face.

### **Valid Protection Orders**

An order that meets the following criteria should be presumed valid and enforceable:

- The names of the parties
- The date issued
- An expiration date in the future or a notation that the order is operative until rescinded or modified by the court
- Specific prohibitions and mandates directed toward the subject of the order
- The name of the issuing court and the signature of a judicial officer or clerk (the signature of the issuing authority need not be raised seal or stamp of the issuing court for an order to be valid)

If the order appears valid on its face and the responding officer has probable cause to believe that the terms of the order have been violated, the suspect should be arrested.

An officer may run Triple I for domestic violence history or call the sheriff's office in the jurisdiction issuing the protection order. State Radio may also verify protection orders that have been issued in South Dakota.

The dispatcher can contact the NCIC National Protection Order Registry to verify out-of-state protection orders. NCIC may be accessed through your local dispatcher via computer link. \*Not all states are linked to NCIC. The officer may try calling the sheriff's office in the issuing state or the tribal court of the issuing reservation.

### **SDCL 25-10-12.3 Reliance on foreign order-Immunity from liability**

A law enforcement officer may rely upon any foreign domestic violence protection order that has been provided to the officer by any source. The officer may make an arrest for any violation of the foreign order in the same manner as for violation of a protection order issued in this state. A law enforcement officer may rely on the statement of the person protected by the foreign order that the order is in effect and that the respondent was personally served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing a foreign order under this section is

immune from civil or criminal liability for any action arising in connection with the enforcement of the foreign domestic violence protection order.

### **Child Custody Issues**

Under SD law, as between never-married parents who have had no other custody hearings, mother retains sole legal/physical custody of the child. Any time father refuses to return child to mother in this scenario, it is not just a civil matter--it is parental kidnapping both under SD law found at 22-19-9 and federal law (Parental Kidnapping Prevention Act). Officers should advise the person who retains unlawful custody of a child that failure to return the child to the proper parent/guardian is a crime for which he can and should be arrested and the child returned to mother or other lawful guardian.

### **SDCL 22-19-9 Taking, enticing away, or keeping of unmarried minor child by parent – Misdemeanor-Subsequent violation felony**

Any parent who takes, entices away, or keeps his or her unmarried minor child from the custody or visitation of the other parent, or any other person having lawful custody or right of visitation, in violation of a custody or visitation determination entitled to enforcement by the courts of this state, without prior consent is guilty of a Class 1 misdemeanor. Any subsequent violation of this section is a Class 6 felony.



**Note:**

- A petitioner cannot be arrested for a respondent's violation of a protection order issued to protect the petitioner.
- The petitioner should not be required to leave the home. In a standoff between petitioner and respondent who claims the dwelling is his because he pays the bills, petitioner is allowed to stay and respondent must vacate the premises.

## Chapter Four

### Officer Liability

While officers may be concerned about the liability of a false arrest, the reality is that there is a much greater liability for failure to enforce laws in domestic violence situations than there is when an officer makes an arrest in good faith.

Various state and federal courts have held police departments and individual officers liable for the failure to enforce criminal laws in domestic violence situations. These actions are based on the premise that police action is subject to the equal protection clause and Section 1983, USC, whether in the form of the commission of volatile acts or omission to perform required acts pursuant to the police officer's duty to protect, *Smith v. Ross* 482 F. 2d. 3 (6th Cir. 1973).

Perhaps the most celebrated case of this type is *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D.C. Conn. 1984). In that decision, the court upheld an equal protection claim where a wife and her son alleged that the police failed to provide the same protection to abused spouses and children as was afforded to the victims of similar abuse outside a domestic relationship. Law enforcement

ignored signs of domestic violence and causally ignored enforcement of protection orders. That case ultimately resulted in a jury verdict for the plaintiffs in the sum of \$2.3 million dollars.

Many police officers express concern about liability for false arrest if they enforce a foreign order (any order not issued by a South Dakota Court) which has not been reviewed by a court in the enforcing state. Officers too often are unaware that they are exposed to liability for failure to arrest if they refuse to enforce a valid out-of-state order. Laws, both federal and state, require officers to honor foreign protection orders.

More importantly, police officers should recognize the danger that victims face when abusers follow them to another state or tribal land in violation of protection orders. This stalking behavior may evidence acute desperation and a settled intent to use whatever force necessary to compel the victim back into a relationship with the assailant. The sharply escalated dangers posed by assailants in interjurisdictional pursuit are best met with vigorous enforcement by law enforcement in any jurisdiction where a violation occurs.

## Chapter Five

### **Officers' Attitudes Influence Their Actions**

Officers' attitudes will impact their actions in domestic violence cases. It is important that officers investigate domestic violence disputes in an unbiased and professional manner regardless of the officer's personal opinions about the lifestyle or personal background of the individuals involved. Inaction or temporarily quieting a dangerous situation does not help. Recognition of the importance of following through on cases and on changes that are occurring locally and around the country is essential for effective enforcement procedures and policies.

As before mentioned, some police officers express concern about liability for false arrest if they enforce a foreign protection order which has not been reviewed by a court in the enforcing state. Officers too often are unaware that they are exposed to liability for failure to arrest if they refuse to enforce a valid out-of-state protection order. More importantly, police officers should recognize the dangers victims face when abusers follow them to another state or tribal land in violation of protection orders.

## Chapter Six

### Abuser Profiles

There is no typical batterer, victim or survivor. While many abusers who batter say they love their partners and do not want to use violence, others do not love their partners, feel comfortable using violence, and do not care whether their partners stay or leave.

Batterers are all ages, religions and socioeconomic backgrounds. Batterers may hold white-collar or blue-collar jobs or be unemployed. Alcohol or other drug abuse is known to be a contributing factor in at least 50 percent of reported family violence cases. In short, there isn't any typical profile of an abuser. But, there are some common behaviors. Domestic violence is not an anger problem; it is a power and control problem. Anger is a tool that the abuser uses to maintain power and control over the victim.

#### Common Behaviors of the Batterer

1. Batterers may deny having a problem and minimize the effect their violence has on their partners.
2. Batterers have low self-esteem.
3. Batterers refuse to take responsibility for their actions. They blame others for their actions.
  - a. "She provoked me; she made me hit her."
  - b. "I am under a lot of stress and I just lost control."

- c. "I was drunk or high and the alcohol/drugs made me do it."
4. Batterers are EXTREMELY jealous. The abuser often continues to be suspicious of their partner's possible relationships with others even when there is no basis for such suspicion. Victims describe battering incidents that have occurred just for looking at the supermarket checker, because they wore certain clothes or they smiled back to a courteous pedestrian. The batterer may constantly monitor the victim's use of time, including their use of electronic communication of any kind such as cell phone use or use of the internet.
5. Batterers isolate their partners from family, friends and support systems. The batterer blocks the victim from making friends or continuing relationships with family by frequently recounting past slights or hurt feelings the victim has discussed with the batterer and using them to support the batterer's position that these people don't have the victim's best interests at heart, only the batterer does.
6. Men who batter tend to hold rigid, traditional views of gender roles and parenting. He also has a negative attitude toward women. In his view, the male role is to be strong, in control and in charge. The female role is to be weak and submissive. To prove to his partner that he really is strong and in control, he will batter her which displays his power over her.
8. Batterers may have grown up in homes where they or a sibling were physically abused or where the mother was abused by the father.

9. Batterers have a low tolerance for stress.
10. Batterers often make unrealistic demands of their partners.
11. Some batterers may appear depressed or even make suicidal gestures. Threatening suicide should be taken as a very serious sign and probable escalation of violence to the victim.
12. Batterers may appear charming and caring, especially in their relationship outside of the marriage. Within the relationship they are controlling and manipulative.
13. Batterers are not mentally ill. Batterers usually score normal on psychological tests, showing only a greater tendency towards violence. Labeling them mentally ill only serves the purpose of setting them apart from society, and gives us an excuse to not be concerned about the problem or demand they take responsibility for it.
14. Batterers often exhibit extreme behaviors. When a batterer is trying to be nice or affectionate, the batterer may lavish their partner with large quantities of the biggest and the best, even if they cannot afford it. The batterer uses violence to get their point across. Often, the batterers intention when they hit their partner is to “teach them a lesson.” What the batterer may describe as “a good smack or two,” finishes as slapping with punches and kicks, and may continue until the victim is badly injured.

## **Why Do People Batter?**

This discussion of why people batter is not a list of excuses, reasons, causes, justifications, denials of abusive behavior, or the basis for forgiveness. It is a presentation of issues surrounding domestic violence. The reasons people batter are instructive of why their partners stay.

Violence is a learned behavior. This behavior can be modified or changed. Batterers use physical force to maintain power and control over their relationships with their partners. Most batterers are not out of control when they abuse. Batterers use violence against their partners and their children because, in the short term, it works.

## **Why Do Batterers Stay?**

If a batterer feels so hostile to their chosen mate that they regularly hit them, why don't they leave?

If pressed for an explanation, the batterer might say that it's love that has them locked helplessly in its grip, though they're more likely to mask their feelings with indignant complaints about the victim. The batterer is unlikely to confess that they feel the need for a partner, or acknowledge that life without an intimate partner would be intolerable for them.

In a relationship where the male is the batterer, the man is often as dependent on his mate as she is on him, though he may rarely admit it. In their mutual condition, they tend to shut out the rest of the world -- she because she's



ashamed of her bruises and he, because he doesn't know how to form relationships and is jealous and fearful of her involvement with others. The more isolated they become the more co-dependent they grow.

Many batterers are immature and emotionally dependent, though some successfully hide it in their work and social lives outside the home. They are often addicted to the victims they abuse, and they batter in hopes of frightening the victim so much that they will not leave. For them it is about maintaining power and control in the relationship. They will often attempt to manipulate and control law enforcement officers, often appearing calm and controlled when interviewed by an authority figure.

### **Programs for Batterers**

Programs for batterers focus on helping them understand that violence is an inappropriate way to solve their problems. These programs try to:

1. Teach batterers how to end their violent, controlling and abusive behavior.
  2. Hold batterers accountable for their behavior.
  3. Provide education in a group format when possible and individual sessions when this is not possible.
- Couples counseling should never be used as a treatment method for solving violence issues.

Contact your nearest domestic violence agency for information regarding batterer treatment programs in your area.

### Victim Responses Dynamics of Battering

*"It got worse each time he hit me. Afterwards, he would drive off or go to work, and the next day he'd be sorry. I was ready to make up because I was so scared. I didn't have any place to go. I didn't want to live with my parents, and I was so scared to be out in the cold."*  
-- Victim

#### **Abuse**

Abuse means mistreating another person. Abuse may be physical, emotional or sexual. The word "abuse" can mean any one of these things or all three.

#### **Physical**

Battering is physical abuse. Battering is not just one hit. It's a pattern of physical assaults, threats or restraints. It is violence, or a threat of violence that is used to control another person. Batterers will scare victims into doing what they want them to do.

Physical violence includes:

1. Being slapped, pushed, shoved, bitten, hit with a fist, held against the victim's will, grabbed with force, strangled.
2. Bruises from being hit, held or squeezed.
3. Given a black eye(s), cut lip or broken teeth from being attacked.

4. In need of a medical attention as a result of injuries.
5. Hospitalized as a result of a partner's violence.
6. Threatened with razors, knives, guns, broken bottles, harm to children, harm to pets, by a display of anger such as punching a wall.

A person who uses physical abuse almost always uses emotional abuse, too.

## **Emotional**

Emotional abuse is mistreating and controlling another person. The emotional abuser makes the person feel afraid, helpless or worthless. Emotional abuse always accompanies physical abuse, but physical abuse does not always accompany emotional or psychological abuse.

Forms of emotional abuse:

1. **Insult:** Constant and/or extreme criticisms that emotionally injure a person. If used successfully, insults can greatly undermine self-confidence and eventually emotionally cripple a victim.
2. **Rejection:** Direct or indirect statements that create feelings of unworthiness. Constant insults and rejections teach the victim they are not worthy of receiving love. Rejections can be used as punishment for not cooperating with an abusive partner. Abusers may also deliver a rejection in an attempt to justify their anger with the victim. In the abuser's distorted reverse logic, if someone is not worthy of love, then the abuser is not obligated to act lovingly toward that person.

3. **Emotional Threats and Accusations:** Direct or indirect statements indicating intent to cause emotional or physical harm, or creating emotional loss to the victim or those the victim loves, depends upon, or for whom the victim is responsible. The abuser may lie about behavior, attitudes or emotional state to anyone else in such a way that the victim cannot defend themselves.
4. **Emotional Blackmail:** A statement or behavior that uses fear, coercion, guilt, insecurity, confusion, or intimidation to trap the victim into giving the abuser power. To an already terrorized person, emotional blackmail can force them to give the abuser a blank check on their lives.
5. **“Crazy-Making” Statements and Behavior:** Distortion of reality and destruction of the possibility of honest communication. These are also very effective devices for increasing confusion and insecurity. Examples include:
  1. Saying one thing and meaning or doing another.
  2. Acting as if the victim is ignorant about something they really do know all about.
  3. Stating a lie as if it were a known truth.
  4. Making statements of good intentions or regrets that are never followed through.
  5. Minimizing the abuser’s bad behavior toward the victim and minimizing the victim’s suffering.
6. **Not Taken Seriously, Being Ignored and Neglected:** Another way to undermine the victim’s self-esteem is to ignore the victim’s requests and needs. This

can be emotionally painful enough to make the victim doubt her own knowledge and judgment. It is another way of saying the victim is unimportant and does not deserve fair treatment.

### **Sexual Abuse**

Sexual abuse is mistreatment by means of sexual acts, demands or insults. It can be partly physical and partly emotional.

#### **Examples:**

1. Scaring the victim so much they had sex when they didn't want to.
2. Making someone have sex when it was painful or they were sick.
3. Not disclosing a sexually transmitted disease.
4. Not allowing the victim use of birth control.
5. Refusing to use a condom as protection from pregnancy, a venereal disease or AIDS.

### **Why She Stays**

*"I tried to leave the relationship many times. Each time, I was persuaded that everything was my fault. Each time, I swore that I would do better. Each time, I knew I had less and less to give and felt more and more trapped."*      -- A Survivor

Some victims stay in violent relationships while many others leave. Typically, a battered victim will leave and return to the relationship **five to seven times** before they perceive they are safe enough and have established

enough resources to make the break. Because a batterer is most violent when they perceive that their partner is leaving, battered victims know they must be very cautious in their preparations and in their leaving.

Increasingly, victims do not stay. Even in cases where it appears they stay -- or leave only to return time and time again -- they are usually preparing to leave. Because of the nature and intensity of the batterer's violence and threats, the battered victim leaves in stages, testing the environment to see if they and their children can safely escape and survive together. Considering the dynamics of domestic violence and the social barriers to leaving, along with physical, emotional and psychological consequences to the battered victim, the fact that so many victims do leave is remarkable.

The one big question everyone has is **“Why does the victim stay?”** That answer varies.

## **Reasons for Staying**

### **1. Frequency and Severity of the Battering**

- a. Each battering incident may occur over a relatively short period of time. The cycle of violence often includes a period of tension building, a physical assault or threat followed by a make-up or honeymoon period.
- b. The batterer may tell the survivor that this battering incident is the last, and victim may believe it -- even

if this promise was made after previous battering episodes.

- c. The less severe and less frequent the incidents, the more likely the victim will stay.
- d. The victim may have a disability resulting from previous battering. If so, the victim may not be able to leave under their own power. The abuser may be over or under medicating the victim to restrain them.

## **2. Childhood Victimization**

The victim may have lived in a home where domestic violence occurred and was accepted.

## **3. Economic Dependence**

- a. To maintain economic security for the victim and the children.
- b. Having no job skills or low-level job skills.  
Government assistance is very limited, and many victims know that welfare is an option with little hope for the future. Batterers rarely pay child support. In addition, the batterer may use every opportunity to bring the victim back into court over and over again.
- c. The batterer usually controls the money.
- d. If elderly, the victim may rely on the batterers pension and other retirement funds.

## **4. Fears**

- a. Having experienced the cycle of violence many times (especially if police have been called and did not arrest the batterer), the victim tends to believe

the abuser is above the law. The victim sees no way to protect themselves and believes no one else will or can protect them.

- b. The victim is likely to believe that if they, or someone else calls the police, the abuser will take revenge upon them and everything that is important to them. The victim may believe if they stay, they batterer will only hurt them. The victim believes they are sacrificing themselves so others may live.
- c. Some victims are afraid that if they report the abuse, their partner might lose their job.
- d. The victim is afraid no one will believe them if they report the violence.
- e. The victim is afraid everyone will blame them for the batterer's violence.
- f. The victim is afraid of losing their children.
- g. The victim may fear of deportation if they are not an American citizen.
- h. If the victim is of color or a gay/lesbian, they may fear that the system will treat them unfairly.
- i. If the batterer is a person of color, non-American, or from a lower socio-economic group, the victim may fear the police will treat the batterer unfairly. While the victim wants the battering stopped, she usually does not want the batterer to suffer.
- j. In some cultures, police and social services are seen as the enemy.
- k. The victim is afraid if they leave, the batterer will commit suicide or kill the victim and the children.



- I. Often an elderly abuse survivor may not reach out to services based on pride or ignorance of the system and how to use it.

## **5. Isolation**

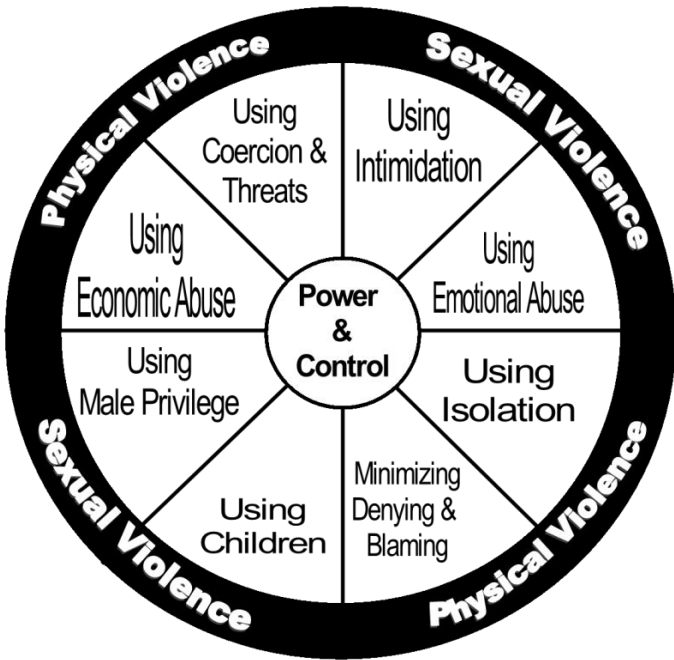
- a. Often the victim has been isolated from their family, friends or support systems that can help them.
- b. The isolation supports the victim's belief that the abuser can do anything without being held responsible.
- c. Neither the victim nor the batterer may know there are domestic violence services to help them.
- d. Service providers often do not seek accurate information about injuries.
- e. Having no one to talk to, victims rarely see themselves as victims. Often they identify the problem as the abuser's drinking, stress or something else the victim has done to aggravate the abuser.
- f. The victim believes outsiders should not be involved in family affairs.

## **6. Religious Beliefs**

While more members of the clergy are gaining an awareness and understanding of domestic violence, there are those who still believe and perpetuate all myths of domestic violence. They may counsel the victim to be a better spouse, mother/father or nurturer, to forgive the abuser and always reconcile for the sake

of the family. The more a victim internalizes this advice, the more likely they are to stay.

Anyone can be the victim of domestic violence, just as anyone can be the victim of any other crime. There is not a profile of a person who is likely to be abused.



## Chapter Eight

### Victim Rights

Victims of crime have specific rights under South Dakota statutes including those in the Crime Victims' Act found in 23A-28C.

#### **An Example of the Intervention Process:**

A typical intervention process begins when law enforcement is called to the home of the victim and assailant. An assault occurred, and the victim (or sometimes neighbor or even the assailant) calls law enforcement. Upon arrival, the officers separate the assailant and victim and take a statement from the assailant and the victim. The officers observe the victim's emotional and physical condition, ask appropriate questions and make a record of the information, noting on the arrest report and fingerprint document if the arrest is for a crime between persons in a relationship described in § 25-10-1. The officers make a determination of probable cause and make a mandatory arrest (can be warrantless arrest if probable cause was established within 48 hours of the assault) of the predominant aggressor as SD law requires. The report must then be forwarded to the appropriate prosecutor within 10 days of making the report.

The assailant is informed that he is being arrested for domestic violence. The victim is told an advocate from the

local domestic violence program will be contacting her or is given an offer to call an advocate for the victim. The assailant is then transported by law enforcement to the county jail. The assailant is informed that they may not contact the victim or the family or household members of the victim either directly or through third parties until the assailant's first appearance before the court or specific authorization of the court.

At the jail, an officer calls the local domestic violence program to inform them of the arrest and provide information on the assailant and victim. Advocates will then contact the victim at the victim's residence.

Intervention by law enforcement and local domestic violence programs is essential to the prosecution of domestic violence crimes. Agencies need to utilize their institutional strengths to hold an assailant accountable for abusive behavior.

Refer to the appendix at the end of the Handbook for a listing of local domestic violence agencies.

### **South Dakota Crime Victims' Act: Right of a Crime Victim<sup>1</sup>**

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<sup>1</sup> For the purpose of this section, the term victim, shall be construed to mean the actual victim or the parent, spouse, next of kin, legal or physical custodian, guardian, foster parent, case worker, victim advocate, or mental health counselor of any actual victim who is incompetent by reason of age or physical condition, who is deceased, or whom the court finds otherwise unable to comment.

South Dakota Codified Law 23A-28C-1 provides that a victim of crime, as defined in the Crime Victim's Act, SDCL 23A-28C-4 (direct victims of a crime of violence, victims of simple assault (domestic), victims of stalking under SDCL 22-19A, sexual assault victims under SDCL 22-22, and victims of driving under the influence vehicle accidents), have the following rights (if the primary victim of the crime does not survive the act or is unable to comment, then the primary victim's immediate family qualify as the victim under this act):

- Notification of scheduled bail hearings and release from custody, notification by the prosecutor's office when the case is received and to whom the case is assigned, and notification in advance of the date of preliminary hearing and trial;
- To be informed of what the charges mean and the elements necessary for conviction;
- To testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released;
- Protection from intimidation by the defendant, including enforcement of orders of protection;
- To offer written input into whether plea bargaining or sentencing agreements should be entered into;
- To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case or by contrary policy of the presiding circuit judge;

- To be prepared as a witness, including information about basic rules of evidence, cross-examination, objections and hearsay;
- To provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and victim's family as well as recommendations for restitution and sentencing and § 23A-28-8 notwithstanding, the right to appear at any hearing during which a change in the plan of restitution is to be considered;
- Restitution, if the victim requests it, whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it;
- To provide written input at parole hearings or with respect to commutations of sentences by the Governor, should those options be considered;
- In a case in which the death penalty may be authorized, to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family;
- Notification of the defendant's release from custody, which notice includes: Notice of the defendant's escape from custody and return to custody following escape, notice of any other release from custody, including placement in an intensive supervision program or other alternative disposition and any associated conditions of release; notice of parole and

notice of pending release of an inmate due to expiration of sentence;

- Notification of the victim's right to request testing for infection by blood-borne pathogens pursuant to § 23A-35B-2;
- To be provided a copy of any report of law enforcement that is related to the crime, at the discretion of the state's attorney, or upon motion and order of the court. However, no victim may be given the criminal history of any defendant or any witness; and
- To be notified of a petition by the sex offender for removal from the sex offender registry and to provide written input with respect to the removal request.

Furthermore, SDCL 23A-28C-2, provides that at the commencement of a criminal proceeding subject to the provisions of 23A-28C, the prosecutor, by first class mail or electronic mail notification, shall advise the victim of the rights set forth in 23A-28C. The victim shall advise the prosecutor of the desire to participate. A victim may choose to participate in only certain phases of the proceedings. A victim wishing to participate shall inform the prosecutor or Department of Corrections (DOC) of the place where notifications, including electronic notification, are to be made, and of any changes in the place of notification. The prosecutor must keep record of the request for notification and the most recent place of notification if the victim wishes to participate or be notified, until the defendant's final discharge from the

criminal justice system. The DOC shall keep record of the request for notification and the most recent place of notification until the defendant's final discharge from prison and parole. The request for notification and place of notification is confidential and may not be disclosed to the defendant.

Additionally, under SDCL 23A-28C-5, any institution under the control of the DOC or the Department of Human Services or the Department of Social Services, or any jail or other facility where a person is incarcerated due to the commission of a crime, shall provide notice as soon as possible, if any of the following occur:

- (1) Defendant's escape from custody and return to custody following escape;
- (2) Any release from custody including placement in an intensive supervision program or other alternative disposition – notice shall include associated conditions of release;
- (3) A granting of parole or revocation of parole;
- (4) Notice prior to the release from custody due to expiration of sentence;
- (5) Any removal from an intensive supervision program or other alternative disposition;
- (6) Of any furlough; and
- (7) Of the offender's death



**SDCL 23A-27-1.1**

**Address of court by victim before sentence imposed --**

**Response of defendant -- "Victim" defined**

Upon request to the court by a victim and before imposing sentence on a defendant, the victim, in the discretion of the court, may address the court concerning the emotional, physical, and monetary impact of the defendant's crime upon the victim and the victim's family, and may comment upon the sentence which may be imposed upon the defendant.

## Chapter Nine

### SD Codified Laws Regarding Domestic Violence

- I. Charging Options
- II. Protection Orders
- III. Mandatory Arrests
- IV. Indian Country Jurisdiction
- V. Training
- VI. Miscellaneous

Refer to your local state's or district attorney's office for changes in these laws.

SDCL 25-10 contains the laws on Domestic Violence and is entitled PROTECTION FROM DOMESTIC ABUSE. The related topic of stalking and the laws that deal with stalking can be found in SDCL 22-19A.

**SDCL 25-10-1 Definitions.** Terms used in this chapter mean:

- (1) "**Domestic abuse,**" physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § 25-10-3.1. Any violation of § 25-10-13 or chapter 22-19A or any crime of

violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship.

- (2) **"Protection order,"** an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A protection order has a duration of five years or less; and
- (3) **"Temporary protection order,"** an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A temporary protection order has a duration of thirty days except as provided in § 25-10-7.1.

## I. Charging Options

### **SDCL 22-35-5 Trespassing**

Any person who, knowing that he or she is not privileged to do so, enters or remains in any building or structure surreptitiously, is guilty of criminal trespass. Criminal trespass is a Class 1 misdemeanor.

**SDCL 22-35-6 Entering or refusing to leave property after notice as misdemeanor**

Any person who, knowing that he is not privileged to do so, enters or remains in any place where notice against trespass is given by:

- 1) Actual communication to the person who subsequently commits the trespass;
- 2) Posting in a manner reasonably likely to come to the attention of trespassers; or
- 3) Fencing or other enclosure which a reasonable person would recognize as being designed to exclude trespassers;

is guilty of a Class 2 misdemeanor. However, if such trespasser defies an order to leave, personally communicated to him or her by the owner of the premises or by any other authorized person, the trespasser is guilty of criminal trespass, which is a Class 1 misdemeanor.

**SDCL 22-18-35 Disorderly conduct—Misdemeanor**

Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

- 1) Engaging in fighting or in violent or threatening behavior;
- 2) Making unreasonable noise;
- 3) Disturbing any lawful assembly or meeting of persons without lawful authority; or
- 4) Obstructing vehicular or pedestrian traffic;

is guilty of disorderly conduct. Disorderly conduct is a Class 2 misdemeanor. However, if the defendant has been

convicted of, or entered a plea of guilty to, three or more violations of this section, within the preceding ten years, the defendant is guilty of a Class 1 misdemeanor for any fourth or subsequent offense.

**SDCL 22-18-1 Simple assault--Misdemeanor--Felony for subsequent offenses**

Any person who:

- 1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;
- 2) Recklessly causes bodily injury to another;
- 3) Negligently causes bodily injury to another with a dangerous weapon;
- 4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or
- 5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

### **SDCL 22-18-1.1 Aggravated assault--Felony**

Any person who:

- 1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;
- 2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- 3) Deleted by SL 2005, ch 120, § 2;
- 4) Assaults another with intent to commit bodily injury which results in serious bodily injury;
- 5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm; or
- 6) Deleted by SL 2005, ch 120, § 2;
- 7) Deleted by SL 2012, ch 123, § 4;
- 8) Attempts to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth;

is guilty of aggravated assault. Aggravated assault is a Class 3 felony.

### **SDCL 25-10-23 Conditional bond--Violation as misdemeanor**

If bond for the defendant in any domestic abuse action is authorized, a condition of no contact with the victim shall be stated and incorporated into the terms of the bond.

Willful violation of any such no contact provision is a Class 1 misdemeanor.

**SDCL 22-19A-1 Stalking as a misdemeanor - Second offense a felony**

No person may:

- 1) Willfully, maliciously, and repeatedly follow or harass another person;
- 2) Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or
- 3) Willfully, maliciously, and repeatedly harass another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

A violation of this section constitutes the crime of stalking. Stalking is a Class 1 misdemeanor. However, any second or subsequent conviction occurring within ten years of a prior conviction under this section is a Class 6 felony.

**SDCL 22-19A-2 Violation of restraining order, injunction, protection order, or no contact order as felony.**

Any person who violates § 22-19A-1 when there is a temporary restraining order, or an injunction, or a protection order, or a no contact order issued pursuant to § 25-10-23 or 25-10-25 in effect prohibiting the behavior described in § 22-19A-1 against the same party, is guilty of a Class 6 felony.

**SDCL 49-31-29.1 "Communication device" and "emergency" defined. Terms used in §§ 49-31-29.1 and 49-31-29.2 mean:**

- 1) "Communication device," any device, including a telephone, cellular telephone, computer, or radio which may be used in an attempt to summon law enforcement, fire department, medical, or other emergency personnel;
- 2) "Emergency," any situation in which human health or safety is in imminent danger.

**SDCL 49-31-29.2 Interference with emergency communication - Violation a misdemeanor**

If a person is attempting to summon aid to an emergency or has communicated a desire to summon aid to an emergency, no person may prohibit or interrupt, or attempt to prohibit or interrupt, another person's use of a communication device by either of the following:

- 1) Using or threatening to use physical force, intimidation, interference, or any other form of violence; or
- 2) Destroying, disabling, or damaging a communication device.

A violation of this section is a Class 1 misdemeanor.

**Violations of Protection Orders (domestic, stalking, or physical violence orders):**

**SDCL 22-19A-16 Violation of protection order—Penalties**

If a temporary protection order or a protection order is granted pursuant to §§ 22-19A-8 to 22-19A-16, inclusive,



and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1.1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section, the factual basis for which occurred after the date of the second conviction, and occurred within five years of committing the current offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under §§ 22-19A-8 to 22-19A-16, inclusive, is in addition to other civil or criminal remedies.

**SDCL 22-19A-17 Defendant prohibited from contacting victim prior to court appearance –Misdemeanor**

While in custody after arrest for assault or stalking, no defendant may have or be permitted any contact or communications, either directly or by means of a third party, with the victim or the family or household members of the victim, until the defendant's initial court appearance or until such contact or communication is specifically authorized by the court. Willful violation of this section is a Class 1 misdemeanor.

**SDCL 22-19A-18 Bond--No contact terms -- Misdemeanor**

If bond for the defendant in any assault or stalking action is authorized, a condition of no contact with the victim shall be stated and incorporated into the terms of the

bond. Willful violation of any such no contact provision is a Class 1 misdemeanor.

**Other Charging Options, depending on the facts and evidence include:**

**SDCL 22-34-1 Intentional damage to property--Degree of offense according to value—Application**

Any person who, with specific intent to do so, injures, damages, or destroys:

- (1) Public property without the lawful consent of the appropriate governing body having jurisdiction thereof; or
- (2) Private property in which any other person has an interest, without the consent of the other person;

is guilty of intentional damage to property. Intentional damage to property is a Class 2 misdemeanor if the damage to property is four hundred dollars or less.

Intentional damage to property is a Class 1 misdemeanor if the damage to property is one thousand dollars or less, but more than four hundred dollars. Intentional damage to property is a Class 6 felony if the damage to property is two thousand five hundred dollars or less, but more than one thousand dollars. Intentional damage to property is a Class 5 felony if the damage to property is five thousand dollars or less, but more than two thousand five hundred dollars. Intentional damage to property is a Class 4 felony if the damage to property is one hundred thousand dollars or less, but more than five thousand dollars. Intentional damage to property is a Class 3 felony if the damage to

property is five hundred thousand dollars or less, but more than one hundred thousand dollars. Intentional damage to property is aggravated intentional damage to property if the damage to property is more than five hundred thousand dollars. Aggravated intentional damage to property is a Class 2 felony.

**The provisions of this section do not apply if the intentional damage to property was accomplished by arson or reckless burning or exploding pursuant to chapter 22-33.**

**SDCL 22-21-4 Use or dissemination of visual recording or photographic device without consent and with intent to self-gratify, harass, or embarrass--Misdemeanor or Felony**

No person may use or disseminate any visual recording or photographic device to photograph or visually record any other person without clothing or under or through the clothing, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to self-gratify, to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

A violation of this section is a Class 1 misdemeanor.

However, a violation of this section is a Class 6 felony if the victim is seventeen years of age or younger and the perpetrator is at least twenty-one years old.

### **SDCL 22-33-9.1 First degree arson—Felony**

Any person who starts a fire or causes an explosion with the intent to destroy any occupied structure of another is guilty of first degree arson. First degree arson is a Class 2 felony.

#### **Others charging options could include:**

- SDCL 22-22 Rape
- SDCL 22-16 Homicide or attempted homicide
- SDCL 22-4A Solicitation
- SDCL 22-19 Kidnapping
- SDCL 22-49 Human Trafficking

## **II. Protection Orders**

**SDCL 25-10** (Domestic violence) \*Note: If the petitioner is a victim of stalking or physical injury, a protection order may be obtained under SDCL-22-19A-8.

### **SDCL 25-10-2 and 3 Petition for a protection order**

may be filed in circuit court or in a magistrate court with a magistrate judge presiding. Venue lies where any party to the proceeding resides. Procedures for the action:

1. A petition under this section may be made by any person in a relationship described in § 25-10-3.1 against any other person in such a relationship
2. A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse; and

3. A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties. However, if there is any other lawsuit, complaint, petition, or other action pending between the parties, any new petition made pursuant to this section shall be made to the judge previously assigned to the pending lawsuit, petition, or other action, unless good cause is shown for the assignment of a different judge.

The clerk of the circuit court shall make available standard petition forms with instructions for the completion to be used by the petitioner. (Protection Order forms are available through your local domestic violence program.)

**SDCL 25-10-4 Hearing--Time--Service on respondent**

Upon receipt of the petition, if sufficient grounds are alleged for relief, the court shall order a hearing which shall be held not later than thirty days from the date of the order unless for good cause the court grants a continuance. Personal service of the petition, affidavit, and notice for hearing shall be made on the respondent not less than five days prior to the hearing.

**SDCL 25-10-5 Relief Authorized on finding abuse—Time**

**limitation.** Upon notice and hearing, if the court finds by a preponderance of the evidence that domestic abuse has taken place, the court may provide relief as follows:

- (1) Restrain any party from committing acts of domestic abuse;

- (2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) Award temporary custody or establish temporary visitation with regards to minor children of the parties;
- (4) Establish temporary support for minor children of the parties or a spouse;
- (5) Order that the abusing party obtain counseling;
- (6) Order other relief as the court deems necessary for the protection of the person to whom relief is being granted, including orders or directions to a sheriff or constable.

Any relief granted by the order for protection shall be for a fixed period and may not exceed five years. If any minor child resides with either party, the court shall order that the restrained person receive instruction on parenting approved or provided by the Department of Social Services as part of any relief granted.

**SDCL 25-10-5.1 Counseling required for domestic abuse defendant placed on probation**

If a court places a defendant on probation upon receiving a verdict or plea of guilty for a crime involving domestic abuse, the court shall order that a condition of the defendant's probation is that he attend family violence counseling. Failure to attend family violence counseling is a violation of the defendant's probation.

**SDCL 25-10-5.2 Restrictions on issuance of mutual orders for protection against abuse**

No court may, pursuant to the provision of SDCL 25-10-5, issue a mutual order enjoining both petitioner and respondent from committing acts of domestic abuse unless:

- (1) Both the petitioner and the respondent personally appear;
- (2) The respondent alleges, under oath, the existence of domestic abuse by stating the specific facts and circumstances of the domestic abuse;
- (3) The court finds, by a preponderance of the evidence, that domestic abuse has taken place.

**SDCL 25-10-6 Ex parte temporary protection order**

If an affidavit filed with an application under this chapter alleges that immediate and irreparable injury, loss, or damage will result before an adverse party or his attorney can be heard in opposition, the court may grant an ex parte temporary protection order pending a full hearing and granting relief as the court deems proper, including an order:

- (1) Restraining person in a relationship described in § 25-10-3.1 from committing acts of domestic abuse;
- (2) Excluding any person in a relationship described in § 25-10-3.1 from the dwelling or the residence of the petitioner.

**SDCL 25-10-7 Limited duration of temporary order --  
Service on respondent--Notification of service to  
petitioner--Liability**

An ex parte temporary protection order is effective for a period of thirty days except as provided in § 25-10-7.1 unless for good cause the court grants a continuance. No continuance may exceed thirty days. If a continuance is granted the court by order shall extend the ex parte temporary protection order until the rescheduled hearing date. The respondent shall be personally served forthwith with a copy of the ex parte order along with a copy of the petition, affidavit, and notice of the date set for the hearing. The ex parte order shall be served without delay under the circumstances of the case including service of the ex parte order on a Sunday or holiday. The law enforcement agency serving the order shall notify the petitioner by telephone or written correspondence when the order is served if the petitioner has provided to the law enforcement agency either a telephone number or address, or both, where the petitioner may be contacted. The law enforcement agency and any officer of the law enforcement agency is immune from civil and criminal liability if the agency or any such officer makes a good faith attempt to notify the petitioner in a manner consistent with the provisions of this section.



**SDCL 25-10-7.1 Temporary order effective until order under § 25-10-5 served**

If an ex parte temporary protection order is in effect and a judge issues a protection order pursuant to § 25-10-5, the ex parte temporary protection order remains effective until the order issued pursuant to § 25-10-5 is served on the respondent.

**SDCL 25-10-12 Delivery of order to law enforcement agencies**

The petitioner may deliver an order for protection granted pursuant to this chapter within twenty- four hours to the local law enforcement agency having jurisdiction over the residence of the petitioner. Each appropriate law enforcement agency shall make available to other law enforcement officers information as to the existence and status of any order for protection issued pursuant to this chapter.

**SDCL 25-10-12.1 Enforcement of foreign protective orders-Requirements**

Any domestic violence protection order, or any stalking or physical violence protection order, issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United State is enforceable as if the order was issued by a court in this state if all of the following requirements are satisfied (see list in 25-10-12.1)

**SDCL 25-10-22 Effect of divorce or other civil proceedings prior to criminal proceedings**

In any action involving domestic abuse, the court may not:

- (1) Dismiss any charge or delay disposition of the domestic abuse action because of the pendency of a divorce or any other civil proceeding, unless agreed to by all parties, including the victim;
- (2) Require proof that either party is seeking dissolution of marriage prior to the instigation of criminal proceeding.

**SDCL 25-10-24 Surrender of weapon by defendant**

The court may require the defendant to surrender any dangerous weapon in his possession to local law enforcement.

**SDCL 25-10-25 Convicted defendant prohibited from contacting victim**

The court may order that any defendant convicted of a crime involving domestic abuse be prohibited from contact with the victim and the Sheriff shall give the victim a copy of any such order.

**III. Mandatory Arrest**

**SDCL 23A-3-2 Law enforcement officer's power to arrest without warrant**

A law enforcement officer may, without a warrant, arrest a person:

- (1) For a public offense, other than a petty offense, committed or attempted in his presence,
- (2) Upon probable cause that a felony or Class 1 misdemeanor has been committed and the person committed it, although not in the officer's presence.

**SDCL 23A-3-2.1 Circumstances permitting warrantless arrests**

Unless the provisions of 22-18-5 apply, a law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, any person, without a warrant, at any time the opportunity presents itself, if the officer has probable cause to believe that:

- (1) An order has been issued under Chapter 25-10 protecting the victim and the terms of the order prohibiting acts or threats of abuse or excluding the person from a residence have been violated, or
- (2) An order has been issued under chapter 22-19A protecting the victim and the terms of the order prohibiting acts of stalking or physical injury have been violated; or
- (3) The person is eighteen years or older and within the proceeding forty-eight hours has assaulted:
  - a. That person's spouse,
  - b. That person's former spouse,
  - c. The mother or father of that person's child; or
  - d. Any person eighteen years or older with whom the person resides or has formerly resided; and the officer believes:
    - i. An aggravated assault has occurred;

- ii. An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or
- iii. An attempt by physical menace has been made to put another in fear of imminent serious bodily harm.

**SDCL 25-10-35 Arrest of spouse for abuse – considerations (Discouraging Dual Arrests/Requirement of Determination of Predominant Aggressor)**

If the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the predominant physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:

- (1) The intent to protect victims of domestic abuse under Chapter 25-10,
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (3) The history of domestic abuse between those involved.

**SDCL 25-10-36 Arrest of criminal suspect when responding to domestic abuse call (Tagging report requirement for Domestic Abuse)**

If any law enforcement officer who is responding to a domestic abuse call has probable cause to believe a crime has been committed, the law enforcement officer shall arrest the person who is suspected of committing the crime and make a complete report of any action taken. The officer shall indicate on the arrest report and the fingerprint document if the arrest is for a crime against a person in a relationship described in § 25-10-3.1.

**SDCL 25-10-38 Report of domestic abuse arrest forwarded to prosecutor - victim to be notified of status of case**

Any report made pursuant to Chapter 25-10-36 shall be forwarded to appropriate prosecutor within ten days of making report. The prosecutor shall, within five days of receipt of the report, notify the victim either orally or in writing of the status of the case. If the State's Attorney decides not to prosecute, he shall inform the victim of the reasons.

**SDCL 25-10-39 Records of Domestic Abuse - Disclosure of victim's location during pendency of action**

Each law enforcement agency shall maintain records for at least five years of all reported incidents of domestic abuse. However, during the pendency of any action instituted pursuant to 25-10-36, records which identify the location

of the victim may not be disclosed to the defendant without a court order, except to the defendant's attorney.

**SDCL 25-10-40 Restrictions on release of person charged with domestic abuse**

No police officer or sheriff may release a person charged with assaulting a person in a relationship described in § 25-10-3.1, or violating a protection order, as provided for in chapter 25-10, without providing notice to a committing law trained magistrate judge or circuit court. A committing magistrate judge or circuit court shall determine if bond or other conditions of release are necessary for the protection of the alleged victim.

**SDCL 25-10-41 Conditions of release of person charged with domestic abuse**

In determining the conditions of release under SDCL 25-10-40, the court shall consider the following conditions and may impose any condition it considers reasonably necessary to protect the alleged victim of domestic abuse, including order the defendant:

- (1) Not to subject the victim to further domestic abuse;
- (2) To vacate the home of the victim;
- (3) Not to contact the victim other than through counsel;
- (4) To engage in counseling;
- (5) To refrain from the consumption of alcohol or the use of drugs.
- (6) To post bond pursuant to § 25-10-23.

As used in this section, the term “domestic abuse” means a violation of 22-18-1 or 22-18-1.1 if the victim is a person in a relationship described in § 25-10-3.1.

**SDCL 25-10-43 Defendant prohibited from contacting victim prior to court appearance-Violation as misdemeanor**

While in custody after arrest for a crime involving domestic abuse, no defendant may have or be permitted any contact or communications, either directly or by means of a third party, with the victim or the family or household members of the victim, until the defendant’s initial court appearance or until such contact or communication is specifically authorized by the court. Willful violation of this section is a Class 1 misdemeanor.

**IV. INDIAN COUNTRY JURISDICTION**

Collaboration among state, tribal, and federal law enforcement can greatly improve outcomes for victims. Working together between jurisdictions is essential for efficient enforcement of the law and the protection of victims.

For clarity, the following information is presented for both Indian and non-Indian offenders and victims for crimes committed within Indian Country as defined by 18 U.S.C. S1151 (a) reservations including tribal trust lands, rights-of-way/ roads; (b) dependent Indian communities; and (c)

Indian allotments held in trust including rights-of-way/roads.

### **INDIAN OFFENDER/INDIAN VICTIM**

Federal: Major Crimes Act crimes including murder, manslaughter, kidnapping, maiming, sexual abuse under Chapter 109-A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 years-of-age, felony child abuse or neglect, arson, burglary, robbery, theft under 18 U.S.C. S 661. (Authority: 18 U.S.C. S 1153).

Tribal: All remaining crimes contained in tribal code. (Authority: Tribal code or 25 CFR Pt. 11, if no tribal code).

### **INDIAN OFFENDER/NON-INDIAN VICTIM**

Federal: Major Crimes Act crimes including murder, manslaughter, kidnapping, maiming, sexual abuse under Chapter 109-A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 years-of-age, felony child abuse or neglect, arson, burglary, robbery, theft under 18 U.S.C. S 661. (Authority: 18 U.S.C. S 1153).

Also: all remaining crimes contained in the state code (where there is no federal statute for the offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. SS 1152 and 13).



Tribal: All remaining crimes contained in tribal code.  
(Authority: tribal code or 25 CFR Pt. 11, if no tribal code).

State: All crimes contained in state code. (Authority:  
United States v. McBratney, 104 U.S. 621 (1881).

### **Title 18 and Domestic Violence**

Title 18 in the Federal law allows for prosecutions of domestic violence under the following criteria: Aggravated Assault; Assault with a Dangerous Weapon; Assault Resulting in Serious Bodily Injury; Maiming; and Female Genital Mutilation. Additionally, Federal law adds Domestic Assault by a Habitual Offender. This is defined as a domestic assault by someone who has 2 prior convictions (federal, state, or tribal) that are for serious violence against a spouse or intimate partner, by a person with whom the victim shares a child in common; or, by a person cohabitating (or has cohabitated) with the victim as spouse, parent, child, or guardian; or, by a person similarly situated to a spouse, parent, child, or guardian of the victim.

### **Interstate Domestic Violence**

Federal law also defines the crime of Interstate Domestic Violence if the offender has traveled inter-state or inter-tribal and caused the victim to travel with the intent to kill, injure, harass or intimidate the victim if the victim is a spouse, intimate partner, or dating partner and the offender commits or attempts to commit a crime of

violence while causing the victim to travel inter-state or inter-tribe through force, coercion, duress, or fraud. (18 U.S.C. S 2261).

### **Stalking**

There are 2 forms of stalking under Federal law:

- (1) Travel inter-state or inter-tribal with the intent to kill, injure, harass, or place under surveillance with the same intent, or to intimidate another person; in the course of or as a result of such travel the victim is placed in reasonable fear of death, serious bodily injury, or is caused substantial emotional distress. (18 U.S.C. S 2261A (1)).
- (2) Use of mail, interactive computer service, or any facility of IC to engage in course of conduct that causes emotional distress or places victim in reasonable fear of death, or serious bodily injury. Defendant has intent to kill, injure, harass, or place under surveillance with same intent, or to intimidate another person.(18 U.S.C. S 2261A (2)).

### **Interstate Violation of Protection Orders**

Offender travels or causes victim to travel with the intent to engage in conduct that violates a protection order. (18 U.S.C. S 2262)

### **Full Faith and Credit**

Federal law acknowledges Full Faith and Credit for protection orders of all other states, tribes, or territories in which (1) the court had jurisdiction over the parties when

the order was made and (2) the defendant was given reasonable notice/opportunity to be heard (due process).

## **V. TRAINING**

### **SDCL 23-3-39.4 Domestic abuse training for law enforcement officers**

A law enforcement officer shall attend training on the following issues pertaining to domestic abuse: enforcement of criminal laws in domestic abuse situations; availability of community resources; and protection of the victim. After initial training, an officer shall attend further training at least once every four years.

### **SDCL 23-3-39.6 Domestic abuse training for state's attorney or deputy state's attorney**

Any state's attorney or deputy state's attorney shall attend training on the following issues pertaining to domestic abuse: enforcement of criminal laws in domestic abuse situations; availability of community resources; and protection of the victim. After initial training, each state's attorney or deputy state's attorney shall attend further training at least once every four years.

### **SDCL 23-3-42.1 Training in domestic abuse issues required**

The minimum training required of each law enforcement officer for certification shall include a minimum total of four hours on the following domestic abuse issues:

- (1) Enforcement of criminal laws in domestic abuse situations;
- (2) Availability of community resources; and
- (3) Protection of the victim.

## **V. MISCELLANEOUS**

### **Battered Woman Syndrome**

Battered Woman Syndrome is a series of common characteristics that may appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives. *State v. Burtzlaff* N.W. 2d (SD 1992).

As a defense, the court in *Burtzlaff* gave the following instruction: "In the case wherein the "Battered Woman Syndrome" is raised, and if you in fact find that Defendant is a battered woman, you are to look at the evidence presented through the eyes of a reasonable and prudent battered woman. If a reasonable and prudent battered woman would have believed serious bodily injury or death was imminent, then the killing was lawful. But if you find that a reasonable and prudent battered woman would have not believed serious bodily injury or death imminent, then the killing was unlawful."

As a prosecution tool, expert testimony on the syndrome can help explain why a victim has recanted her testimony.

### **SDCL 23-3-39.8 Domestic Violence Policies**

Each law enforcement agency shall adopt and implement written policies on its response to domestic abuse situations. The policies shall include standards of a felony, misdemeanor, and citizen's arrest; verification and enforcement of restraining and stay away orders; cite and release policies; emergency assistance to victims including medical care, transportation to shelter, and police standbys for removing personal property; assistance to victims in pursuing criminal prosecution; notification to victims of their rights; and incident report writing.

### **SDCL 22-19A-16 Violation of protection order--Penalties**

If a temporary protection order or a protection order is granted pursuant to §§ 22-19A-8 to 22-19A-16, inclusive, and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1.1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section, the factual basis for which occurred after the date of the second conviction, and occurred within five years of committing the current offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under §§ 22- 19A-8 to 22-19A-16, inclusive, is in addition to other civil or criminal remedies.

**SDCL 22-19A-17 Defendant prohibited from contacting victim prior to court appearance-Misdemeanor**

While in custody after arrest for assault or stalking, no defendant may have or be permitted any contact or communications, either directly or by means of a third party with the victim or the family or household members of the victim, until the defendant's initial court appearance or until such contact or communication is specifically authorized by the court. Willful violation of this section is a Class 1 misdemeanor.

**SDCL 25-10-34 Domestic abuse charge to be indicated on summons, warrant, or judgment of conviction**

The state's attorney of the county where a crime is believed to have been committed shall indicate on the summons, complaint, information, indictment, arrest warrant, and judgment of conviction whether the charge involves domestic abuse.

**HUMAN TRAFFICKING**

As of July 1, 2011, South Dakota has the new crime of Human Trafficking. The crime of Human Trafficking includes both labor and sex trafficking.

Human Trafficking is now estimated to be a 32 Billion dollar industry in the United States. Over 70% of its victims are women and 50% are minors.

**SDCL 22-49-1 Human trafficking prohibited** No person may recruit, harbor, transport, provide, or obtain, by any means, another person knowing that force, fraud, or

coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. Nor may any person benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking.

**SDCL 22-49-2 First Degree Human Trafficking—Felony** If the acts or the venture set forth in 22-49-1:

1. Involve committing or attempting to commit kidnapping
2. Involve a victim under the age of sixteen years
3. Involve prostitution of procurement for prostitution; or
4. Result in the death of a victim;

any person guilty has committed human trafficking in the first degree, which is a Class 2 felony.

**SDCL 22-49-3 Second degree human trafficking—Felony**

A person is guilty of human trafficking in the second degree if that person:

1. Recruits, harbors, transports, provides, or obtains, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude; or
2. Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section.

Human trafficking in the second degree is a Class 4 felony.

To date, South Dakota has had several prosecutions for Human Trafficking under Federal statutes. State statutes will now allow for prosecutions under state law. Prior prosecutions have involved both labor and sex trafficking. Sex trafficking differs from traditional notions of prostitution in which a prostitute is believed to be “willingly” engaging in a commercial sex act. Research and arrests across the country show that many vulnerable persons such as those with addictions, who are homeless, or very young are being forced into prostitution and other types of labor against their will. This law is intended to deal with those situations. South Dakota is ideally situated as a route between major metropolitan areas such as Minneapolis, where victims have reported being trafficked through South Dakota.



# Chapter Ten

## Domestic Violence Investigation Checklist

Agency: \_\_\_\_\_ Crime Case Number: \_\_\_\_\_

### I. VICTIM

- Describe the victim's location upon arrival.
- Administer first aid to the victim.
- Note time dispatched, arrived and when victim spoke.
- Physically separate the victim and suspect in different rooms and interview.
- Record any spontaneous statements the victim made.
- Describe the victim's emotional condition .
- Describe the victim's physical condition, including height and weight.
- Document the victim's injuries in detail, (size, location and colorization) and if medical treatment sought.
- Note victim's relationship with suspect.
- Record history of abuse.
- Note any restraining/court orders.
- Give victim notice of rights & services information card.
- Record any temporary address/phone of victim.

### II. SUSPECT

- Describe the suspect's location upon arrival.
- Administer first aid to the suspect.
- Record any spontaneous statements made by the suspect.

- Describe the suspect's emotional condition.
- Describe the suspect's physical condition (height and weight).
- Describe the suspect's injuries in detail.
- Document evidence of substance/chemical abuse by suspect.
- Follow Miranda, ask suspect if he or she wants to make a statement, knows of restraining or protection order and/or understands order.

### **III. Child Interview Checklist**

- Interview each child alone.
- List names, ages, school, teacher for each child present.
- Every report must note if children live in the home, whether or not they are present.
- Record any spontaneous statements made by the children.
- Describe each child's emotional state.
- Describe each child's injuries, if any.
- Take photo of every child.
- Keep child comfortable.
- Ask open-ended questions that are age-appropriate.
- Start out with easy things, build rapport.
- Stop or minimize distractions.
- Be willing to allow child's account to "unfold".
- Use memory jogging questions that involve child's senses such as smell, hearing.
- Be reassuring.

- Assess child's linguistic skills and remember that they decline under stress.
- Get on child's level—eye-to-eye if possible.
- Be careful of asking the same question multiple times as this can be interpreted by the child as looking for a different answer than the one he/she has given.
- Make obvious transitions when switching topics/time.
- Take breaks before child becomes tired.
- Avoid using legalese.
- Understand cultural differences.
- Use one main idea per question/sentence.
- Evaluate inconsistencies: were child's responses to the present question or was child answering a different question; had child been asked the same question multiple times/ways?
- Always close by allowing child to add anything else he/she needs or would like to tell.

#### **IV. WITNESSES**

- Interview the reporting party.
- Identify all witnesses and interview them separately.
- Record all witnesses' addresses and phone numbers.
- Record names & addresses of emergency personnel.
- Identify treating physician and hospital.
- Record the "911" number and incident number.

#### **V. EVIDENCE**

- Photograph the crime scene.
- Take "full body" photographs of suspect.
- PHOTOGRAPH THE VICTIM'S INJURIES.

- Photograph the suspect's injuries.
- Impound and take into evidence all weapons used.
- Impound weapons for safe keeping.
- Take into evidence any objects thrown or used in incident.
- Attach related reports, photos and evidence tags.

Reporting Officer: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Time: \_\_\_\_\_

# Domestic Violence Investigation

## Special Circumstances

### STRANGULATION

Strangulation has recently been identified as one of the most lethal forms of domestic violence. Strangulation should be considered a felonious assault and may be an attempted homicide. Unconsciousness may occur within seconds and death within minutes. Strangulation has a profound impact on the victim both physically and psychologically and is an ultimate form of power and control over the victim. Estimates are that 23%-68% of women domestic violence victims have experienced at least one strangulation assault during their lifetime.<sup>2</sup>

Strangulation is a form of asphyxia as a result of external pressure on the neck. **If there is evidence that the victim was strangled and her life was threatened, the case should be considered and investigated as an aggravated assault or attempted homicide.** To strangle means to seriously obstruct or fatally obstruct the normal breathing of a person. In contrast, to choke means a partial or complete blockage of the windpipe by some foreign object like food. Start by changing the vocabulary used to

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<sup>2</sup> Berrios, S.C., & Gacy D. (1991). Domestic violence: Risk factors and outcomes. *Western Journal of Medicine*, 155, 133-135.

describe this type of assault as a strangulation, attempted strangulation, or near-fatal strangulation when a victim reports being “choked”.

There are 3 forms of strangulation:

- (1) Hanging
- (2) Ligature strangulation: Also known as garroting. Includes use of a cord-like object and may include anything from a telephone cord to articles of clothing.
- (3) Manual strangulation: Also known as throttling. Usually done with hands but sometimes use of forearms or standing or kneeling on the victim’s throat.

Strangulation accounts for 10% of violent deaths in the U.S. Though serious and sometimes deadly, one study indicates that as many as 50% of the strangulation cases had, at first observation, either no visible injury or their injuries were too minor to photograph. Accordingly, the study showed that investigators failed to interview the victim regarding the event and police reports often neglected to clearly document symptoms the victim may have been experiencing.

When they were documented, the victims often reported pain in the throat and hoarseness. When the focus has been only on the visible signs of strangulation, the lack of visual physical evidence at the time of reporting has led to minimization of strangulation as a minor event and

characterization of strangulation attempts akin to a slap in the face instead of the serious event that it is.<sup>3</sup> A 2008 study in the *Journal of Emergency Medicine* indicates strangulation as a leading indicator that the abuser will escalate attacks and eventually kill the victim -- 43% of women who were murdered and 45% of attempted murder were also strangled within the past year by the abuser.

## **SIGNS AND SYMPTOMS**

Because signs and symptoms of strangulation are often not as immediately apparent visually, the trained officer will ask appropriate follow up questions in order to help discern and document the level of injury to the victim. Photos that are taken sequentially over a period of days after the assault can be very helpful in establishing physical evidence. Victims of strangulations should be encouraged to seek medical care and evaluation, as internal injuries can become life threatening even 36 hours after the injury.<sup>4</sup>

## **SIGNS**

The victim may be embarrassed or minimize what has happened. Look for redness, scratches, red marks, swelling, bruising, or petechiae that can appear from the pressure exerted on the throat. Look for injuries to the

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<sup>3</sup> Strack, Gael B., and McClane, Dr. George. (2007). How to Improve Your Investigation and Prosecution of Strangulation Cases. National Family Justice Center Alliance.

<sup>4</sup> Strack, Gael B., and McClane, Dr. George. (2007). How to Improve Your Investigation and Prosecution of Strangulation Cases. National Family Justice Center Alliance.

eyes, under the eyelids, nose, ears, mouth, neck, shoulders, and upper chest. The suspect may claim that they were mutual combatants or that the victim's injuries are self-inflicted. Be sure to identify the predominant aggressor, as it is a natural reaction to the restriction of the airway to push, bite, scratch or pull hair to try to breathe. In up to 50% of the victims, the visual evidence may be slight and thus the suspect may have more visually discernable physical injuries than the victim. For example, if the victim is being strangled from behind in a chokehold, the victim may bite the suspect's arm. If the victim is being strangled from the front, she may scratch, pull his hair or push him.

It only takes 11 lbs. of pressure on carotid arteries for 10 seconds to cause unconsciousness. If the trachea is completely closed off (33 lbs. of pressure), brain death can occur in 4-5 minutes of continued strangulation.

The victim may have trouble swallowing. Swallowing may become difficult or painful accompanied by hoarseness, raspy voice, coughing, and inability to speak or complete loss of voice. Changes in breathing including difficulty breathing may indicate an underlying neck injury that, even mild appearing can cause death due to the decomposition of the injured internal structures even 36 hours or more after the attack.<sup>5</sup>

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<sup>5</sup> FJC Legal Network. San Diego Family Justice Center, [www.familyjusticecenter.org](http://www.familyjusticecenter.org). Facts victims of choking (strangulation) need to know!



## **SIGNS CHECKLIST**

- Face- flushed or red, petechiae, scratch marks
- Eyes and eyelids – petechiae, blood shot
- Nose – bloody nose, broken nose, petechiae
- Finger tips – bruises may be faint, circular and oval shaped
- Ear – petechiae may be present in the ear canal or outer ear; bleeding from the ear canal
- Mouth – bruising, swollen tongue, swollen lips, cuts and abrasions
- Under the chin –scratch marks, bruises, redness, abrasions
- Chest – scratch marks, redness, bruises, abrasions
- Shoulder – redness, scratch marks, bruises, abrasions
- Neck – redness, fingernail impressions, bruises, swelling, ligature marks, scratch marks
- Head – petechiae (be sure to check the scalp)
- Other – pulled hair, bumps, skull fracture or concussion

## **SYMPTOMS**

- Voice changes – raspy voice, hoarseness, coughing, unable to speak or complete loss of voice
- Swallowing - troubled or painful swallowing, neck pain, nausea, vomiting, drooling
- Breathing - difficulty in breathing, hyperventilation, unable to breathe

- Behavioral - Restlessness or combativeness (due to oxygen deprivation of the brain), problems concentrating, amnesia, agitation, Post-traumatic Stress Syndrome
- Memory loss/Unconsciousness
- Dizziness and headaches
- Involuntary urination or defecation
- Miscarriage of pregnancy (have been known to occur hours to days later)

## **CONDUCTING A THOROUGH INTERVIEW AND INVESTIGATION**

Good follow-up questions can help establish the symptoms and severity of the attack when visual physical evidence is not immediately apparent.<sup>6</sup>

- How was victim strangled – one or two hands? Forearm? Object? Straddled? Pinned or banged against wall? (Reenactment can be helpful, but better done with a mannequin head with wigs so as to not put any additional pressure on victim’s neck or re-traumatize the victim)
- Location where strangulation occurred? (Look for corroborating evidence)
- Approximately how long did the strangulation last?

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<sup>6</sup> Strack, Gael B., and McClane, Dr. George. (2007). How to Improve Your Investigation and Prosecution of Strangulation Cases. National Family Justice Center Alliance.

- How many different times or methods were used to attempt to strangle the victim during this incident?
- How long did the entire incident last?
- On a scale of 1-10 with 10 being the most pressure, how hard was the suspect's grip?
- On a scale of 1-10 with 10 being the most painful, how much pain did the victim experience?

## **CHILDREN**

### **UNDERSTANDING COGNITIVE AND LINGUISTIC CHILD DEVELOPMENT**

Being able to properly interview a child witness is extremely important in a domestic violence investigation. Children are also often being battered when domestic violence is occurring in the household. According to several studies, being a bystander to violence may be as psychologically traumatizing for a child as being the direct victim; and, there is no age at which a child is immune from trauma as a result of exposure to violence.<sup>7</sup>

The following provides a few guide posts for properly interviewing a witness who is a minor based on children's age-appropriate communication styles.<sup>8</sup> By using age-

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<sup>7</sup> McAlister Groves, Betsy. *The Impact of Domestic Violence on Children: What Research Tells Us and How it is Relevant*. Child Witness to Violence Project. Presented in Providence, RI. 2010.

<sup>8</sup> Drake, Teresa. *Interviewing & Preparing the Child Witness*. University of Florida, Levin College of Law. Presented in Providence, RI. 2010.

appropriate communication, the child will be able to tell what it is he or she may know.

### **Preschoolers**

- Have very concrete thinking and use language very literally. For example, a preschooler may answer “no” if asked if he/she can read an eye chart because it (the eye chart) “doesn’t make words”.
- Preschoolers do not organize things in “adult” categories. They would have a difficult time with a question such as, “Has anything like this happened before?” because the category is “anything like this” is an unknown category for them and “before” is an obscure time frame for them.
- It is better to stay away from abstractions like asking if they know the difference between the truth and a lie and instead use a concrete example in which the child can demonstrate his/her awareness. An example might be, “If I said there was an elephant in the room, would that be a truth or a lie?”.
- Preschoolers can use words before they really understand their meaning, so be sure to clarify.
- Preschoolers do not have developed concepts of day, time, and space. This skill is not usually developed until around age 9-10, but they may be able to relate experiences to a specific holiday, television show, etc.
- Preschoolers have difficulty with pronoun references (he, she), with statements made in the negative

(“didn’t you see the gun?”), and compound or complex statements/questions.

- Avoid using passive voice as it is a more complex form of language – example: “Was mommy hurt by daddy?” is passive voice; instead, use active voice: “Did daddy hurt mommy?”.
- Preschoolers will have difficulty with prepositions such as before/after, above/below. They will do best with simple sentences: subject, verb, object.
- Preschoolers will tend to respond even if they don’t know the answer because they will want to please the adult and “yes” is an easier answer than “no”.
- Preschoolers organize thoughts differently than adults. It may be difficult for them to recount events in chronological order and they will have a tendency to leave things out like settings, emotions and descriptions. They usually don’t know if how to answer a question like, “Do you understand?”.

### **School Ages 7-10**

- School-aged children may still not have narrative skills by which they can describe events in a time sequential manner as an adult would do. They may still have difficulties with abstract concepts, complex or compound questions, pronouns and statements made in the negative. They may still believe that all adults in general speak the truth.

## **Adolescents 11-18**

- Often may not have adult narrative skills in which they can relate an event in a detailed and sequential manner. This is usually not developed to an adult level until late teens.
- Legal words are commonly misunderstood. Example: “Defendant” is sometimes interpreted as someone who defends people.
- Be sure to recognize cultural differences.
- Define terms for clarity such as kin, body parts and do not use complex words.
- May still be locked into the here-and-now without being able to understand time as a historical concept (it goes on without them) or as a day-to-day concept affecting their lives.
- May want to clarify with teen by asking if they understand why being able to understand time as a historical concept (it goes on without them) or as a day-to-day concept affecting their lives.

## **ELDER ABUSE**

Ninety percent of elder abuse and neglect incidents are by known perpetrators, usually family members; two-thirds are adult children or spouses; 42% of murder victims over 60 were killed by their own offspring. Spouses were the perpetrators in 24% of family murders of persons over 60. <sup>9</sup>

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<sup>9</sup> *Statistics from National Center on Elder Abuse, 1998 The National Elder Abuse Incidence Study: Final Report Washington, DC:*

Terms used in this chapter mean:

- (1)"Abuse," physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on an elder or a disabled adult;
- (2)"Adult with a disability," a person eighteen years of age or older who suffers from a condition of intellectual disability, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care;
- (3)"Elder," a person sixty-five years of age or older;
- (4)"Exploitation," the wrongful taking or exercising of control over property of an elder or a disabled adult with intent to defraud the elder or disabled adult; and
- (5)"Neglect," harm to an elder's or a disabled adult's health or welfare, without reasonable medical justification, caused by the conduct of a person responsible for the elder's or disabled adult's health or welfare, within the means available for the elder or disabled adult, including the failure to provide adequate food, clothing, shelter, or medical care.

**SDCL 22-46-1.1 Neglect—Exclusions from definition.**

For the purposes of this chapter, the term, neglect, does not include a decision that is made to not seek medical care for an elder or disabled adult upon the expressed desire of the elder or disabled adult; a decision to not seek medical care for an elder or disabled adult based upon a previously executed declaration, do-not-

resuscitate order, or a power of attorney for health care; a decision to not seek medical care for an elder or disabled adult if otherwise authorized by law; or the failure to provide goods and services outside the means available for the elder or disabled adult

**SDCL 22-46-2 Abuse or neglect of elder or adult with a disability--Felony**

Any person who abuses or neglects an elder or a disabled adult in a manner which does not constitute aggravated assault is guilty of a Class 6 felony.

**SDCL 22-46-3 Theft by exploitation--Penalty.**

Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elder or a disabled adult, and having been entrusted with the property of that elder or disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to chapter 22-30A.

**SDCL 22-46-7 Report of abuse, neglect or exploitation**

A report of abuse, neglect, or exploitation under this chapter may be made orally or in writing to the state's attorney of the county in which the elder or disabled adult resides or is present, to the Department of Social Services, or to the law enforcement officer. The state's attorney or law enforcement officer, upon receiving a report, shall immediately notify the Department of Social Services



## **THE TYPES OF ABUSES AND THEIR PERCENTAGE OF FREQUENCY:**

- Neglect 58.5%
- Physical abuse 15.7%
- Financial exploitation 12.3%
- Emotional abuse 7.3%
- All other types 5.1%
- Unknown .06%
- Sexual abuse .04%<sup>10</sup>

**Physical Abuse**: some forms of physical abuse include causing the infliction of physical pain or injury to an elderly person, reckless use of physical force, confinement, or restraint, repeated and unnecessary sleep deprivation and/or reckless conduct which creates an immediate risk of physical harm.

**Sexual Abuse**: some forms of sexual abuse include touching, fondling, sexual threats, sexually inappropriate remarks, or any other sexual activity with an older person when the older person is unable to understand, unwilling to consent, is threatened with or physically forced to engage in sexual behavior.

**Emotional Abuse**: some forms of emotional abuse are verbal assaults, threats of maltreatment, harassment, or intimidation intended to compel the older person to engage in conduct from which she or he wishes and has a

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<sup>10</sup> *Statistics from National Center on Elder Abuse, 1998 The National Elder Abuse Incidence Study: Final Report Washington, DC: Administration for Children and Families & Administration on Aging, US Department of Health and Human Services*

right to abstain, or to refrain from conduct in which the older person wishes and has a right to engage.

**Passive Neglect:** some forms of passive neglect are another individual's failure to provide an older person with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or medical care.

**Willful Deprivation:** some forms of willful deprivation include willfully denying an older person medication, medical care, shelter, food, a therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental, or emotional harm – except when the older person has expressed intent to forego such care.

**Confinement:** some forms of confinement include restraining or isolating, without legal authority, an older person for reasons other than medical reasons, as ordered by a physician.

**Financial Exploitation:** some forms of financial exploitation include the misuse or withholding of an older person's resources by another, to the disadvantage of the elderly person and/or the profit or advantage of someone else.

**Financial Fraud/Scams/Cons:** when someone causes intentional deception of an elderly person for the profit or advantage of someone else.

## **INTERVIEWING TECHNIQUES**

Interviewing older victims requires special care and patience. An officer can take some simple measures to

help the victim by treating the person with respect, asking permission to enter the home and/or to be seated.

Other interview strategies include:

- Speak slowly and clearly and patiently await their response – give them time to process your questions.
- Keep your weapon out of sight--a weapon can be frightening.
- Address the victim by name, but do not use first names as this is considered disrespectful by many elderly persons.
- Indicate immediately that you are there to help.
- Conduct a structured interview using predetermined questions. This is a way to obtain the facts needed to proceed with the case without losing ground to any confusion the victim may be feeling.
- If the person is having difficulty remembering when an event occurred, offer memory cues like “What television program were you watching?”.
- For hearing impaired persons, eliminate as much background noise as possible and use visual cues. Ask if the person is having difficulty hearing you, and whether he or she has a hearing aid that would help.
- Written communication can be used.
- Some visually impaired people may not look directly at you because they see better in their peripheral zones. Also, make sure that there is adequate lighting.

## **VICTIMS WITH DEMENTIA**

When interviewed patiently, persons with dementia or Alzheimer’s disease can often provide useful information. Be calm and reassuring as people with dementia are very sensitive to feelings. Pay close attention to their reactions;

emotional responses may reveal what they cannot express in words.

A sensitive approach to interviewing the person with dementia may yield valuable results. Following are some strategies that may make the interview more productive:

- Keep the interview area quiet and as free as possible from environmental distractions (e.g., TV or open window with traffic noise).
- Begin the interview with orienting information, such as the purpose of the interview and what you would like to accomplish.
- Offer a few words of reassurance.
- Relax and be yourself. Your degree of calmness is quickly sensed, just as any anxiety will be sensed.
- Acknowledge the person's feelings. It shows your concern and that you are trying to understand his or her point of view.
- Speak slowly and in a soothing tone, without infantilizing the individual.
- Give the person with dementia ample time to respond.
- Repeat questions as needed, using simple and concrete words.
- Remember that what has been asked may take longer to be understood.
- Give simple directions, one step at a time.
- Distraction or redirection may help to calm and refocus an individual who is upset.
- Document non-verbal reactions. For example, if the individual becomes agitated, frightened, or mute when asked about a certain person or situation, there may be a reason.

Make sure you ask the victim about any medication that they are taking. Also, some times are better to interview the victim depending on the side effects of the medication and when they take the medication

# Sexual Assault Introduction

## The Truth about Rape

Rape is an act of sexual penetration and violence in which force is used or threatened and committed by one person against another without consent. Today rape still remains a widely misunderstood crime. Myths die hard. Victim-blaming is still prevalent. Fortunately, research into investigations of rape cases has provided us with some important facts that can help dispel some of the common myths.

Here are some of the important facts about rape:

- It can happen anywhere, any time, and to anyone. There is no boundary for who may be raped.
- Victims include children, teens, elderly, dating partners, married partners, immigrants, gay men, lesbians, transgender people, homeless people, heterosexuals, persons with disabilities, and individuals from different races, cultures, ethnicities and social classes.
- Rape is one of the most under-reported crimes-as many as 60% are unreported.
- Only 14% of rapes are committed by strangers yet 6 out of 10 people believe that women are more likely to be raped by a stranger. Acquaintance rape and date rape are more common than left-handedness, heart attacks, or alcoholism.
- Assailants choose victims based on vulnerability, not on what they wear.

- False reports of rape are rare—only 2-5%.
- A victim may submit without a struggle because of fear. Cooperation is not consent.
- Those who rape do so to exert power and control.
- Rapists come from all races, cultures and social classes.
- Rapists have a demeaning attitude toward their victims that enables them to justify their violent behavior.
- Rape is not a compulsive act. Rapists usually plan and calculate whom, when and where they will commit the rape. The rapists use forethought to maneuver their victims into a position of vulnerability, accessibility and opportunity.
- Predators often use technology and social networks to groom their victims.
- Thirty-six percent of victims go to the ER because they fear STD's.
- Fifty percent of rape survivors did not expect to live through the rape—for them it was as traumatic as an attempted murder.
- Rape victims should NOT be given a polygraph test.

### **Sexual Assault Response Team**

#### **Coordinated Team Response**

Sexual assault cases are extremely difficult and no one expects you to handle them alone. Communicating with other support agencies is the first step in building a strong Coordinated Community Team that will be there to assist in a sexual assault case.

Members of the Coordinated Community Team include but are not limited to: law enforcement, prosecutors, victim advocates, medical professionals, social workers, court services workers, judges, mental health counselors, educators and the victim.

The goals of the Coordinated Team Response are:

1. Victim empowerment
2. Perpetrator accountability
3. Community safety

Have a plan of action in place before it is needed, rely on the response team members to network, support and collaborate on sexual assault issues and, most importantly, never forget that the victim's best interest has priority.

#### **Effective Law Enforcement Response**

##### **A. Mental Preparation**

The response of law enforcement influences the outcome of the case. Rape is never the victim's fault. The rape is not



about how the victim was dressed, where the victim was or decisions the victim made prior to the rape.

Your beliefs, biases and likely discomfort with sexual assault cases will be reflected in the outcome of the investigation. If you buy into the myths of rape, they become dangerous and destructive obstacles that prevent you from seeing what you need to see when building your case.

A full and proper investigation must be conducted for every sexual assault report. This means you will have to ask questions that may be uncomfortable. Start by becoming familiar with the terminology used in the laws as well as the terminology used by the victim and/or offender. Approach each case believing what the victim is telling you, maintain a broad perspective, recognize the unique qualities of each case, clarify facts and listen to all sides. As a law enforcement officer, you are the impartial seeker of the truth.

The consequences of an inadequate response include:

- The cycle of not reporting is kept alive.
- The case is more difficult to solve.
- Victims become less cooperative.
- Fewer indictments and convictions are obtained.
- The cycle of abuse continues.
- The perpetrator is given freedom to strike again.
- The community tolerates victimization.

## **B. Establishing Victim Rapport**

A good partner is the best asset when investigating any case. From the initial response to the end of the investigation, treat the victim as your partner. Assure the victim that you believe her/him and that the rape was not her/his fault.

### **Best Practices for Responding to Victims of Sexual Assault**

Use the Golden Rule: Treat the victim the way you would want your loved one treated under the circumstances.

- Insensitive remarks can devastate a victim but an officer's strength and reassurance can help stabilize the victim.
- Ensure the victim is safe. Tell the victim you will help him or her be safe and that his or her physical and emotional well-being is a top priority. Do not focus on locating the suspect until the victim's safety is assured—do not disregard your own safety.
- Introduce yourself by name and title. Give information in writing on how to reach you.
- Ask the victim to tell you in just a sentence or two what happened.
- Ask if there are any physical injuries.
- Take care of medical needs first.
- Offer to contact a family member or support person, including a crisis victim advocate.
- Explain the process. Let the victim know what will happen next.

- Explain simply the role and purpose of the law enforcement, victim advocate, medical personnel and prosecutor.
- Ensure privacy during the interview.
- Equalize the setting (for example, sit at their level, take off your hat, ask how they are feeling, etc.).
- Acknowledge that you realize this is a difficult time.
- Affirm that they are doing the right thing by reporting.
- Inform them that you will go slow and take it one step at a time.
- Assure that you will work together with the victim to solve the case.
- Allow the victim time to talk or vent. Victims need to have their emotions aired and their story heard by a nonjudgmental listener. Emotions the victim may feel include fear, self-blame, anger, shame, sadness, denial and rage.
- Empathize with the victim by making attending comments:
  - You've been through something very frightening.
  - I'm sorry
  - What you're feeling is completely normal
  - This was a terrible crime
  - I'm sorry this happened to you
  - You didn't do anything wrong
  - This is not your fault
- Assure the information the victim gives you is kept confidential. (Remember, the only exception is to assist the prosecution).
- Remain calm yourself.

- Be prepared for the victim to react in a variety of ways. The victim may be crying, angry, screaming or even laughing. The victim may be calm and composed, or may be in shock or show very little emotion.
- Remember it is normal for victims to actually forget and to want to forget the details of the assault.
- Give the victim choices. Ask permission to talk to the victim.
- Listen to the victim. Give him/her time to finish sentences and to answer your questions. Make comments like:
  - “Take your time, I’m listening.”
  - “We can take a break if you like. I’m in no hurry.”
- Be non-confrontational.
- Be mindful that the victim may feel humiliated and embarrassed.
- Encourage privacy throughout the preliminary assessment, including while at the hospital.

**Things to Avoid:**

- Do not make promises you cannot keep.
- Do not polygraph the victim.
- Do not touch or hug the victim.
- Do not imply or discuss false reporting.
- Do not ask victims if they want to prosecute.
- Do not prejudge victims and cases.
- Do not appear overprotective or patronizing.

# Chapter Twelve

## Building Your Case

### PRELIMINARY ASSESSMENT

Remember, a sexual assault always has a minimum of three crime scenes: the victim, the suspect and the physical location of the assault.

When responding to a call, the primary focus should be on officer and victim safety. As you approach the scene, evaluate the area for possible threats including suspect(s) that may be present, weapons, suspicious vehicles, even hostile witnesses that could be a danger.

Your secondary focus on approach is to look carefully at the scene and identify any item that you think may be evidence for the case.

Your responsibility is to ensure that you get the most accurate information possible with the least amount of trauma to the victim. Ask the victim specific questions about the crime scene and the assailant at the outset.

An important element of the preliminary assessment is to evaluate the need for emergency medical care. If emergency medical care is needed and they are not already on the scene, notify EMS and then update them regularly until they arrive. Even if the victim does not have any visible injuries, encourage medical attention,

especially to check for internal injuries. Remember, the reaction of first responders such as law enforcement, advocates, and emergency staff has an impact on how well the victim is able to cope with trauma and recovery.

Most often the suspect will not be at the scene during the time you are assessing medical needs for the victim, if possible, start gathering the basic information about the suspect including name, physical characteristics and vehicle description. Use that information to construct a preliminary A.T.L. (Attempt to Locate) and then make sure it is disseminated to your cover officers and other law enforcement agencies. Stay with the victim and make sure the victim knows she/he is safe.

As the law enforcement officer on the scene, you have several goals: protect the victim, start the search for the assailant and gather the most accurate information possible with the least amount of trauma to the victim.

The Victim Advocate is extremely helpful during this process. Among other things, the Advocate provides emotional and mental health support for the victim and can begin working on a safety plan.

Often the victim will be reluctant to go through a full medical examination, including the Sexual Assault Kit. Explain the importance of having the examination to make sure the victim is okay and to gather evidence to be used in the apprehension and prosecution of the assailant.

Whether or not they choose to cooperate with the law enforcement investigation, there is no cost to the victim for the Sexual Assault Kit. An anonymous Sexual Assault Kit that is not tested until the victim gives consent is called a Jane Doe Kit.

Prior to arrival, notify the hospital of an incoming victim of rape and arrange for a private examination and waiting room. If there is not a Victim Advocate available, it is strongly recommended that you wait at the hospital until the examination is complete, then escort the victim to the destination of her/his choice. Make sure the victim knows that she/he is safe.

## **INTERVIEWS**

### **1. Interviewing the Adult Victim**

There may be many (at least more than one) interview. After completion of the preliminary assessment, consider delaying the in-depth interview if any of the following situations exist:

- a) high level of intoxication;
- b) sleep deprivation;
- c) physical injury;
- d) confused state of mind; and
- e) victim's needs and best interest.

Remember that the victim is likely to have valuable evidence on her/his person. The victim is, in a sense, considered part of the "crime scene". Treat the victim with great care.

Ensure privacy and safety during the interview by isolating the victim from negative influences, such as the suspect and/or angry witnesses. Remove the suspect from the premises before conducting an interview. Interview the victim alone unless she/he wants an advocate, friend or family member present.

### **BEST PRACTICES FOR INTERVIEWING AN ADULT VICTIM**

- Throughout the entire interview, validate, listen, reassure, support and believe.
- Watch for and document all nonverbal responses. Notice body language, posture, facial expressions, tone of voice, gestures, eye contact and general appearance.
- Ask open-ended questions that require a narrative (rather than a yes or no) response, such as "Tell me what happened".
- Ask clarifying and non-leading questions, such as "Let's see if I understand you correctly. Did you say...?".
- Use a body diagram to show where bruises, etc. are and attach to the report.
- Do not make assumptions about what the victim is saying; rather clarify by summarizing your understanding of what the victim is saying.
- Let the victim tell the story. You listen and at the end go back and summarize to clarify the details.
- At the closure, ask the victim "Is there anything else I should know? Are there any special concerns or needs that you have?".



- Tell the victim what comes next, such as law enforcement procedures for filing the report, the investigation, arrest of the suspect, prosecution, what part of the crime report may be available to media, etc.
- Give the victim a pamphlet or list of resources available for help and information, which includes local crisis intervention centers, prosecutor's office, victim-witness assistant, victim compensation, etc.
- Ask victims if they have any questions. Encourage victims to contact you if you can be of further assistance. Give the phone number where you can be reached.

## **2. Interviewing the Child Victim**

Ensure privacy and safety during the interview by isolating the victim from negative influences, such as the perpetrator. In the initial interview, obtain only the essential information unless you are trained in child interviewing regarding sexual assault. For the in-depth interview, use a child advocacy center such as Child's Voice in Sioux Falls, Black Hills Child Advocacy Center in Rapid City, St. Mary's Child Assessment Center in Pierre or The Children's Safe Place in Ft. Thompson.

Refer the situation to the SD Department of Social Services, Child Protective Services.

### **Best Practices for Interviewing Child Victims**

- Choose a secure, comfortable and private setting.

- Take time to build rapport and a relationship with the child.
- Get on the child's level, such as sitting on the floor.
- Do not ask leading questions.
- Do not introduce terminology. Have the child use his or her own terminology.
- Use language appropriate to the child's age.

### **3. Interviewing the Suspect**

At the time of the interview, determine if a custodial or a noncustodial interview is needed. If it is a custodial interview, read the Miranda rights to the suspect. Videotape the interview with quality equipment that has good audio and a new tape.

#### **BEST PRACTICES FOR INTERVIEWING THE SUSPECT**

- Treat the suspect as a crime scene.
- Detain and isolate the suspect while completing the preliminary assessment.
- Based on the preliminary assessment, determine if an interview is needed immediately or if it can wait.
- Do not allow the suspect to clean himself or herself, including hands, genital area, or any areas that may hold evidence.
- Ask for consent to take the suspect's clothing, underwear, etc.
- Ask for consent to take the suspect's sexual assault evidence collection kit.

- Determine if a search warrant is needed to search the suspect's home, vehicle, or the suspect himself or herself, etc.
- Take photos of the suspect and any physical injuries.
- Allow the suspect to talk, and document any and all statements the suspect gives.
- Develop rapport with the suspect. Offer emotional alibis, support and acceptance.
- Watch for and document all nonverbal responses. Notice body language, posture, facial expression, tone of voice, gestures, eye contact and general appearance
- Ask open-ended questions that require a narrative, rather than a yes or no response.
- Establish opportunity.
- Do not rush for a confession.

#### **4. Interviewing Witnesses/ Obtaining Corroborating Evidence**

It is important to interview witnesses who have seen or been with either the victim or the suspect prior to the rape. Prior events may provide important information and enhance credibility to the case. Interview witnesses as soon as possible. Consider everything important.

Canvas the neighborhood for possible witnesses. Find out who was present at the scene of the assault, or the events leading to the assault such as at the party, at the bar, in the house, passers-by on the street, etc.

Determine who the victim first told about the assault, and interview that person(s). Interview all first responders, such as emergency medical personnel, hospital personnel, etc. Keep detailed information of each person interviewed: name, complete address, home, work, and cell phone numbers, etc.

### **CRIME SCENE EVIDENCE/INVESTIGATION**

Determine the location and the extent of the crime scene(s) and secure the scene(s). Apply for a search warrant, if necessary.

Conduct a thorough search, including "unique" places, such as the garbage, washing machine, dryer, computer, etc. Gather all evidence. Always use paper containers. Always wear plastic gloves.

When in doubt, collect the evidence. Think long term to the prosecution. If you do not gather the evidence now, you may not be able to get it in the future.

Maintain the proper chain of custody for all the evidence.

Take photographs to corroborate the victim's recall of the scene. Photograph the full scene. Photograph each piece of evidence you take as an exhibit, such as weapon, bedding, towels, condoms, carpet, drinking glasses, etc.

The investigating officer should walk through the scene and document all information, including written documents, computer files, pornographic materials, etc.

When there is more than one officer conducting the investigation, maintain good communication between the officer doing the interviews and the officer processing the scene.

## **PHYSICAL EVIDENCE**

### **SDCL 22-22-26 Payment for rape or sexual offense examinations—Reimbursement by convicted defendant**

If a physician, hospital, or clinic examines the victim of an alleged rape or sexual offense the examination shall be provided without cost to the victim. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted.

### **Physical Evidence**

Review and evaluate all the evidence to determine what needs to be submitted for tests. It is law enforcement's responsibility to determine what tests need to be completed.

Hospital personnel provide patient medical care and will conduct a rape exam for the victim, utilizing a victim sexual assault evidence collection kit (rape kit). Sexual Assault Nurse Examiners (SANE) should be utilized when

available as they have specific training for use of the kit, the legal issues, and working with the victim. It is also very important that blood samples and urine samples be taken for toxicology.

In addition to the victim sexual assault evidence collection kit, there is also a separate rape drug kit, which should be used if the circumstances are warranted. If a rape drug is suspected to have been used and the specific rape drug kit is not available, a urine specimen container from the hospital supply will work to collect a urine sample. This should be done as soon as possible because many of the drugs dissipate rapidly.

For blood alcohol testing, a BAC (Blood Alcohol Concentration) tube, which is not included in the rape kit, should be used. Preserve the samples and evaluate the need for testing.

The kits are available from the SD Health Lab.

A suspect exam must be conducted. There are separate suspect sexual assault evidence collection kits that can be utilized by authorized law enforcement personnel. These kits are available from the SD State Forensic Lab. If blood alcohol testing or drug testing is warranted for the suspect, a separate BAC tube should be used and a urine sample taken.

Determine what other evidence that was gathered needs to be tested (furniture, bedding, clothing from the victim and the suspect, rug pieces, drink glasses, etc.).

Be sure to maintain the proper chain of custody for all evidence.

Evidence including the victim and suspect sexual assault evidence collection kits, DNA evidence such as semen, saliva, hair roots, hair shafts, skin, blood, buccal swabs and other foreign materials should be sent to the SD State Forensic Lab for testing at:

**SD Forensic Laboratory**  
**1302 E. Hwy 14**  
**Pierre, SD 57501-5070**  
**Phone Number: (605) 773-3673**

BAC tubes, urine samples and rape drug kits should be sent to the SD State Health Laboratory at:

**SD State Health Laboratory**  
**615 E. 4th St.**  
**Pierre, SD 57501-5070**  
**Phone Number: (605) 773-3368**

It is a mandatory chain of possession protocol that all evidence delivered to the forensic lab or the health lab is delivered by transportation that can be documented. This includes hand delivery by authorized personnel or certified carrier such as Federal Express, UPS or registered mail.

## Chapter Thirteen

### Report Writing

Reports are important in obtaining a conviction for sexual assault. No matter how good the investigation is, how thoroughly the preliminary assessment was processed, how effectively the victim was interviewed or what kind of statement was given by the suspect, the case may be lost at trial if the reports summarizing the investigation are poorly written.

Always keep in mind how many people will be reviewing the report and for what purposes. Police reports might be used:

- By prosecutors to determine which charges to file
- By defense attorneys to strategize a defense
- By victims, defendants or other parties in civil proceeding
- By attorneys handling an appeal, perhaps as far as the Supreme Court

In order to be successful at trial, an investigator's report needs to be more than just an accurate summary of the investigation. The report needs to be carefully written to prepare for the issues likely to be raised at trial.

Key purposes for writing a good report include:

- Providing necessary information to undermine possible potential defense strategies



- Recording and transmitting information regarding the case
- Providing a written narrative of the facts and findings from the investigation
- Becoming the official memory of the department for use in trials, appeals and civil suits

Make sure your reports include all of the facts and evidence that are required to prove the elements and to refute the likely defense strategies. Remember, your opinions do not belong in the report. Listen carefully during all the interviews and accurately record the statements of any witnesses.

Document what you hear and what you see, using detailed descriptive language and direct quotes. Documentation of excited utterances is vital with a description of the person's demeanor. Clearly state what factors were considered that led you to believe the defendant committed the crime. Use active rather than passive voice in your writing.

Report if you used a warrant for the arrest, and if not, answer questions such as "Was the arrest made to prevent flight?" "Was the arrest made to prevent further violence?" Whatever factors used to make the decision to arrest should be carefully detailed in the report.

In the report, address the Miranda warning in the following manner:

- State who gave the warning to the defendant.
- State the date and time the warning was given.
- State whether they were read aloud or dictated from memory.
- State the location of the interview.
- State how you knew that the defendant understood the Miranda warning.

If the interview was non-custodial and the Miranda warning was not administered, document where the interview occurred, the defendant's consent to be interviewed, what the defendant was told prior to beginning the interview, e.g. "You are free to leave," "the door is open," "you don't have to answer," etc., and any other circumstances surrounding the interview that support a finding that it was voluntary and noncustodial, e.g. were there breaks, was there food brought in, etc.

Be sure the report also includes:

- Record of victim's physical and emotional condition
- Detailed information of anyone who had contact with the victim after the assault, including full name, complete address, home, work, and cell phone numbers, etc.
- A complete description of the suspect and vehicle
- Documentation of suspect's alcohol or drug use
- Documentation of who has been in the area lately that witnesses did not recognize
- Documentation of what medical treatment and/or tests were conducted both for the victim and the

suspect, including; what, when and where the medical procedures were administered

Proper documentation is extremely important, especially in the legal arena. Documentation or lack of documentation, of even seemingly small or insignificant facts can make or break a case.

### Victim Initial Response and Post-Assault Response

#### Victim Response: Initial Trauma

Numerous factors affect the victim's response to the assault. Just a few of these factors include the relationship between the victim to the perpetrator, whether weapons were used or not, type and amount of support for the victim from family and friends, type and amount of support for the perpetrator from family and friends, and whether or not this was the first assault for the victim.

Since rape is a violent act of domination and humiliation, the victim has felt a loss of power and free will. The victim may believe that she/he was going to be killed. The victim may feel that she/he has lost control over her/his life and may be in a state of shock and disbelief.

Memory of the assault may come in stages, and the victim may not recall all the details immediately after it occurs. The victim may feel a wide range of emotions and may flow in and out of these emotional states:

- Lack of concentration
- Depression
- Intense Fear
- Guilt or shame
- Numbness or denial
- Irritation or anger
- Anxiousness
- Helplessness
- Overwhelmed
- Detachment
- Physically ill
- Exhausted

These feelings may or may not express themselves in a rational manner. The victim may not cry or show any emotion after the assault. On the other hand, the victim may be hysterical and agitated. The victim may be trying to figure out how the assault could have been stopped or prevented. Common reactions to trauma are known as fight, flight or freeze.

The victim may be very reluctant to report or cooperate in the investigation. Some reasons for this include:

- Difficulty in talking about sex
- Intense trauma by the humiliation of the physical violation
- Fear of retaliation by the perpetrator
- Fear of not being believed

### **Victim Response: Long Term Trauma**

People who have been victimized as children may be more likely to be re-victimized, as they may not have learned appropriate boundaries or self-protection behaviors that can decrease their vulnerability and accessibility.

When you interview the victim, be sensitive to the fact that just repeating the story of the assault may trigger the same feelings that occurred at the time of the assault.

When you conduct your supplemental interviews, it is important for you to know the long-term effects of sexual

assault trauma to corroborate other evidence of the crime and to document these effects. Keeping in regular contact with the victim and using the victim as your partner in the investigation gives you the opportunity to know what long-term effects the victim is experiencing.

**Some long-term effects may include:**

- Denial/Repression-trying to forget and live life as if the assault never happened
- Minimizing
- Recanting
- Guilt
- Shame
- Flashbacks
- Rollercoaster moods
- Angry outbursts
- Sleep disorders
- Eating disorders
- Difficulty concentrating
- Suicidal
- Change in appearance
- Self-mutilation
- Difficulty handling everyday stress
- Difficulty being alone
- Wanting to move, change jobs, schools, etc.
- Fear
- Increased use of drugs or alcohol
- Feeling isolated and different from everyone else
- Grief
- Depression
- Anxiety
- Overwhelming sadness
- Lack of normal sexual function

### **Post Assault Response: Victim Safety**

It is essential to ensure the victim's safety. If the home is not safe, give information about local shelter resources or take the victim into protective custody, if she/he is in imminent danger.

### **Other safety information and precautions include:**

- How to obtain a protection or stalking order
- Where to obtain medical services
- Offer extra patrol, if the whereabouts of the suspect is unknown or if the suspect is not incarcerated
- Offer to call family and/or friends for victim support
- Give local crisis counseling phone number
- Offer to call a victim advocate for victim support
- Tell the victim to contact law enforcement if the suspect comes in contact with her/him at any time
- Keep the information confidential
- Report to DSS, Child Protection Services, if the victim is under the age of 18 years and the perpetrator is a family member
- Encourage victims to contact you, if you can be of further assistance

### **Post-Assault Response: Victim Support**

The victim's family and friends may experience similar emotions and reactions as the victim.

## Chapter Fifteen

### Victim Rights and Support Services

#### Victims' Rights

South Dakota state law provides for specific rights for victims in SDCL 23A-28C-1.

#### **23A-28C-1 Rights of crime victim--Crime of violence--Driving under the influence vehicle accidents.**

Consistent with § 23A-28C-4, victims of the crime, including victims of driving under the influence vehicle accidents, have the following rights:

- (1) To be notified of scheduled bail hearings and release from custody, to be notified by the prosecutor's office when the case is received and to whom the case is assigned, and to be notified in advance of the date of preliminary hearing and trial;
- (2) To be informed of what the charges mean and the elements necessary for conviction;
- (3) To testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released;
- (4) To be protected from intimidation by the defendant, including enforcement of orders of protection;



- (5) To offer written input into whether plea bargaining or sentencing bargaining agreements should be entered into;
- (6) To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case or by contrary policy of the presiding circuit judge;
- (7) To be prepared as a witness, including information about basic rules of evidence, cross-examination, objections, and hearsay;
- (8) To provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and his or her family as well as recommendations for restitution and sentencing and § 23A-28-8 notwithstanding, the right to appear at any hearing during which a change in the plan of restitution is to be considered;
- (9) To receive restitution, whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it;
- (10) To provide written input at parole hearings or with respect to clemency by the Governor, should those options be considered;

- (11) In a case in which the death penalty may be authorized, to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family;
- (12) To be notified of the defendant's release from custody, which notice includes:
  - a. Notice of the defendant's escape from custody and return to custody following escape;
  - b. Notice of any other release from custody, including placement in an intensive supervision program or other alternative disposition, and any associated conditions of release;
  - c. Notice of parole; and
  - d. Notice of pending release of an inmate due to expiration of sentence;
- (13) To be notified of the victim's right to request testing for infection by blood-borne pathogens pursuant to § 23A-35B-2;
- (14) To be provided a copy of any report of law enforcement that is related to the crime, at the discretion of the state's attorney, or upon motion and order of the court. However, no victim may be given the criminal history of any defendant or any witness.
- (15) To be notified of a petition by the sex offender for removal from the sex offender registry and to

provide written input with respect to the removal request.

### **CRIME VICTIMS' COMPENSATION**

South Dakota provides for crime victims' compensation through an established fund. A claim for victims' compensation may be filed for personal injuries including bodily harm or emotional distress, medical expenses, economic losses and some personal property losses in the following circumstances:

- Victim of a criminal attack
- Person who received personal injury while trying to stop a person committing a crime
- Person who received personal injury while trying to help a law enforcement officer
- Person who received a personal injury while trying to help a victim of a crime
- Person who received a personal injury as a result of witnessing a violent crime

Law enforcement should provide information to victims regarding the availability of Crime Victims' Compensation and a phone number. Cards and brochures are available to hand out to victims through the Department of Social Services. Local Victim Assistance shelters and service programs are able to assist victims in filling out the Crime Victims' Compensation application.

# **Victim's Services**

## **Shelters and Service Programs**

See Appendix for list of shelters and Service Programs

### **County Victim Assistance Programs**

Beadle County Victim Assistance Program

Beadle County State's Attorney's Office

PO Box 116

Huron, SD 57350-0116

(605)-353-8430

Brown County Victim Assistance Program

Brown County State's Attorney's Office

Brown County Courthouse

22 Court Street

Aberdeen, SD 57401-4212

(605) 626-7130

Brookings County Victim Assistance Program

Brookings County States Attorney's Office

601 4<sup>th</sup> St. Ste. 101

Brookings, SD 57006-2065

605-692-8606

Codington County Victim Assistance Program

Codington County State's Attorney's Office

PO Box 1384

Watertown, SD 57201-1384

(605) 882-6276

Hughes County Victim Assistance Program

Hughes County State's Attorney's Office

104 E. Capital Ave.  
Pierre, SD 57501-2563  
(605) 773-7462

Minnehaha County Victim Assistance Program  
Minnehaha County State's Attorney's Office  
415 North Dakota Ave.  
Sioux Falls, SD 57104-0188  
Telephone: (605) 367-4226

Pennington County Victim Assistance Program  
Pennington County State's Attorney's Office  
300 Kansas City St. Ste. 400  
Rapid City, SD 57701-2887  
Telephone: (605) 394-5846

**State Victim Assistance Program**

SD Crime Victims' Compensation Program  
SD Department of Social Services  
700 Governors Drive  
Pierre, SD 57501-3216  
Telephone: (605) 773-5884 or 1-800-696-9476 (instate only)

**Federal Victim Assistance Program**

United States Attorney's Office  
225 S. Pierre St., Room 337  
Pierre, SD 57501-2489  
Telephone: (605) 224-5402 or 1-800-603-8157

515 - 9th Street, Room 226  
Rapid City, SD 57701  
Telephone: (605) 342-7822 or 1-800-603-3750

230 S. Phillips Ave., Suite 600  
PO Box 5073  
Sioux Falls, SD 57117-5073  
Telephone: (605) 330-4400 or 1-800-804-6790

**Attorney General's Office**  
**Division of Criminal Investigation- Victim Witness Specialists**

PO Box 731 Plankinton, SD 57368-0731  
605-770-5693

1302 E Highway 14, Ste 5 Pierre, SD 57501-8505  
605-773-6878

PO Box 212 Volga, SD 57017-0212  
605-627-9993

**Other Support Services**

Dakota Plains Legal Services .....800-658-2297  
East River Legal Services .....800-952-3015  
Sioux Falls Child Voice.....605-333-2226  
Black Hills Children Advocacy Center .....605-343-2811  
The Children's Safe Place, Ft. Thompson .....800-723-3039  
Suicide Hotline .....800-784-2433  
Help!Line Center .....605-339-4357  
RAINN National Rape Hotline .....800-656-4673  
SD Domestic Abuse Hotline .....800-430-7233  
National Domestic Abuse Hotline.....800-799-7233  
SD Department of Health Crime Lab .....605-773-3673  
SD Department of Health Forensic Lab .....605-773-3368

## Chapter Sixteen

### Delayed Reporting

Many victims delay the report of the assault to the police, if they report at all. Delayed reporting is very common, and could be delayed many years. South Dakota's statute of limitations for sex offenses allows for delayed reporting. Refer to SDCL 22-22-1, 22-22-7, and 23A-42-1 (No statute of limitations for a Class A, B or C felony (rape in the first degree); for all other rape under 22-22-1 and sexual contact with a child under 16, the statute of limitations is the victim's age up to 25 or within 7 years of the commission of the crime, whichever is longer).

#### **Some reasons why victims delay reporting are:**

- Victims do not think they will be believed
- Victims blame themselves
- Shame/embarrassment
- Fear of retaliation by the perpetrator

#### **REPORTS**

At the time of the report, document all information. A delayed report should not deter a thorough investigation. Assess what evidence is available. Have a rape or medical exam completed, if warranted (Preferred within 72 hours, but should be assessed case-by-case).

Determine who the victim first told about the sexual assault and interview them. Witnesses, spontaneous statements or excited utterances can be critical to corroborating the victim's allegations. Ask the witness what the victim actually said, as well as the victim's appearance and demeanor at the time of the disclosure. Obtain the clothing the victim was wearing at the time of the assault, if available. Evaluate the need for a search warrant for the location of the assault. Question the victim to determine if she/he has knowledge of any photographs or videotape that might have been taken during the assault. Question the victim about anything that might corroborate the victim's report.



## Chapter Seventeen

### Drug Facilitated Sexual Assaults

Many perpetrators use drugs and alcohol to incapacitate the victim. South Dakota law makes it a crime to have sexual penetration with someone incapable of giving consent because of any intoxicating, narcotic or anesthetic agent or hypnosis. See SDCL 22-22-1, (4). If you suspect a drug has been used on a victim, have a urine and blood sample taken immediately. Blood has a shorter detection time; urine longer. Common reactions from rape drugs include: dizziness, confusion, disorientation, amnesia, drowsiness, stomach upset, temporary paralysis, clumsiness, sweating, agitation, loss of willful movement, insensitivity to pain, seizure-like behavior, muscle rigidity, sensory distortion, difficulty speaking, loss of consciousness, sudden onset of sleep, dry mouth, itchy skin, nausea, coma.

Victims who were drugged may show impaired judgment, inability to recall, unwillingness to report the assault, and may blame themselves for being assaulted. If you suspect the victim was drugged, do not ask the victim if their symptoms are from drugs, rather, ask how the victim felt, how they acted, and use the information to determine if these are known symptoms from drugs. Let the victim use

her/his own words. If the victim's tests come back positive for an illegal drug and she/he did not initially report the use don't assume the victim is lying as the suspect may have given it to the victim unknowingly or the victim may have been afraid to admit any voluntary use of drugs (such as cocaine, etc.) for fear of being arrested.

### **VICTIM INTERVIEW**

As in any interview with a victim of sexual assault, it is important to build trust and cooperation with the victim and to conduct the interview in private without distraction. Multiple interviews may be necessary. A victim may not consider it a rape if a friend did it. In any interview of a victim of sexual assault, it is important **not** to ask if the victim tried to fight the suspect, why the victim didn't try to run or escape, or if the victim tried to scream for help.

**The following list includes some of the common rape drugs and their effects:**

#### **Fry Cigarette (Water-Water, Drank and Wetdaddy)**

This is a tobacco or marijuana cigarette coated with embalming fluid. These cigarettes create psychosis, hallucinations, delusions and loss of consciousness. They taste like rubbing alcohol and smell like gasoline when lit.

## **Marijuana**

This drug is a green or gray mixture of dried shredded flowers and leaves of the hemp plant. It can be mixed with food or used to brew in tea. It contains THC (delta 9 tetrahydrocannabinol) which affects the brain the most. All forms are mind altering.

## **Benzodiazepines** (traquilizers)

This is most commonly a prescribed drug. Some examples are Ativan, Xanax, Flurazepam, Klonopin and Librium. (These are only a few of the many that are prescribed.) They are used to treat anxiety, relieve tension and to help promote sleep. Effects include clumsiness, drowsiness, dizziness, confusion, nausea, vomiting and diarrhea. Mixed with alcohol or other drugs increases the sedative affect.

## **Barbiturates**

Barbiturates can come in the form of pills, capsules or syrups. Barbiturates are used mainly as a sedative and to relax people. Effects include drowsiness, dizziness, confusion, a drunken state, nausea and vomiting. Mixed with alcohol or other drugs can intensify the effects and can be fatal.

## **Propoxphene**

This is a narcotic analgesic drug mainly used to treat mild to moderate pain. Effects include drowsiness, dizziness,

nausea, lightheadedness, vomiting or headaches. Mixing with alcohol or other drugs increases the effects of drowsiness or dizziness.

### **Gamma Hydroxybutyric Acid (GHB)**

This started out being used by body builders to stimulate muscle growth. (Remains in the urine for approximately 12 hours) It is now being used among people as a recreational drug. It is odorless and tasteless so it can easily be slipped into a drink. It produces a state of relaxation and the feeling of being drunk. Mixed with alcohol or other drugs intensifies the effects.

### **Amphetamines**

This term refers to a large class of stimulants such as amphetamines, dextroamphetamines and methamphetamines. They can be taken orally, injected, smoked or snorted. These drugs have a bitter taste. They produce a high feeling of euphoria, high energy and a sense of wellbeing.

### **Opiates**

This takes the form of brown chunks or powder. It produces a surge of pleasure. Effects include body feels warm and heavy, dry mouth, nausea, vomiting, insensitivity to pain, sweating, itchy skin and slowed breathing.

### **Cocaine**

This is a brain stimulant and is one of the most highly addictive drugs. It is a white crystalline powder which can be dissolved in water and injected, smoked or snorted. It will produce feelings of pleasure, confidence and a surge of energy. Effects include elevated blood pressure, dilated pupils, increased heart rate, respiratory rate and body temperature. The effects are short lived.

### **Ketamine**

This is for use as a veterinary anesthetic. It can be snorted, smoked or mixed with water. It produces a dissociative effect similar to PCP. Effects include; nightmares, confusion, nausea, hallucinations, irrational behavior, vomiting, dizziness, headache, delirium, psychosis and induces euphoria.

### **Burundanga**

This is one of the most obscure rape drugs. It is highly soluble and tasteless. Effects include disorientation, trance- like state, retrograde and amnesia.

## Chapter Eighteen

### SD Codified Laws Regarding Sexual Assault

\* For other important laws, refer to SDCL Chapter 22-22.

#### **SDCL 22-22-1 Rape defined -- Degrees -- Penalty**

Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than thirteen years of age; or
- (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
- (5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is a Class 1 felony. A violation of subdivision (3) or

(4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3 felony. Notwithstanding § 23A-42-2 a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

**SDCL 22-22-2 Sexual penetration defined -- Acts constituting sodomy -- Medical practitioners excepted**

Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause.

**SDCL 22-22-7 Sexual contact with child under sixteen --  
Felony or misdemeanor**

Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than that person's spouse if the other person is under the age of sixteen years is guilty of a Class 3 felony. If the victim is at least thirteen years of age and the actor is less than five years older than the victim, the actor is guilty of a Class 1 misdemeanor. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

**SDCL 22-22-7.1 Sexual contact defined - Exception when  
within the scope of medical practice**

As used in this chapter, the term, sexual contact, means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party. Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this



section, the prosecution has the burden of establishing probable cause.

**SDCL 22-22-7.2 Sexual contact with person incapable of consenting -- Felony**

Any person, fifteen years of age or older, who knowingly engages in sexual contact with another person if the other person is sixteen years of age or older and the other person is incapable, because of physical or mental incapacity, of consenting to sexual contact, is guilty of a Class 4 felony.

**SDCL 22-22-7.3 Sexual contact with child under sixteen years of age -- Violation as misdemeanor**

Any person, younger than sixteen years of age, who knowingly engages in sexual contact with another person, other than his or her spouse, when such other person is younger than sixteen years of age, is guilty of a Class 1 misdemeanor.

**SDCL 22-22-7.4 Sexual contact without consent with person capable of consenting –Violation as misdemeanor**

No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.

**SDCL 22-22-26 Payment for rape or sexual offense examinations--Reimbursement by convicted defendant**

If a physician, hospital, or clinic examines the victim of an alleged rape or sexual offense the examination shall be provided without cost to the victim. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted.

**SDCL 22-22A-3 Aggravated incest—Relate child-- Felony**

Any person who knowingly engages in an act of sexual penetration with a person who is less than eighteen years of age and is either:

- (1) The child of the perpetrator or the child of a spouse or former spouse of the perpetrator; or
- (2) Related to the perpetrator within degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6;

is guilty of aggravated incest. Aggravated incest is a Class 3 felony.

**SDCL 22-21-4 Use or dissemination of visual recording or photographic device without consent and with intent to self-gratify, harass, or embarrass--Misdemeanor or felony**

No person may use or disseminate any visual recording or photographic device to photograph or visually record any other person without clothing or under or through the clothing, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to self-gratify, to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. A violation of this section is a Class 1 misdemeanor. However, a violation of this section is a Class 6 felony if the victim is seventeen years of age or younger and the perpetrator is at least twenty-one years old.

## Chapter Nineteen

### Sexual Assault Glossary of Terms

Sexual Assault/Sexual Violence is used as a catch all term, which may have a variety of meanings. Usually, sexual assault refers to a specific act of sexual violence. It may mean rape, incest, molestation or other acts of sexual intrusion. The term can also refer to an act of sexual violence perpetrated against an adult or a child by a loved one, acquaintance or stranger.

**Acquaintance Rape:** When a person known to the victim sexually penetrates the victim without consent. Legally, acquaintance rape carries the same penalties as sexual assault committed by a stranger. Also referred to as *date rape*.

**Anal Intercourse:** When a person inserts the penis into the anus of another person.

**Consent:** A person gives approval and agrees by free will to be penetrated sexually or to have sexual contact. Giving in because of fear is not consent.

**Cunnilingus:** Oral sex, mouth stimulation of the female genitals. (Slang terms: going down, eating out)

**Custodial interview:** Questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of his/her freedom of action in any significant way, such as restraint on freedom of movement of the degree associated with a formal arrest.

**Drug Induced Sexual Assault:** When a person is drugged against her/his will or unknowingly for the purpose of sexually assaulting a victim.

**Excited Utterance:** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

**False Report:** When a rape or sexual assault is reported, but evidence indicates that a rape did not occur and the person reporting is intentionally making a false statement. This is not to be confused with fear of reporting, other rape trauma symptoms, or lack of evidence that an assault occurred.

**Fellatio:** Oral sex, one person's mouth to another person's penis. (Slang terms: going down, blow job).

**Noncustodial Interview:** Questioning by law enforcement in a situation, which does not meet the definition of custodial.

**Pedophilia (criminal definition):** Any act of sexual penetration accomplished with a victim less than 13 years of age by any person 26 years of age or older under any circumstances not constituting incest.

**Suspect Sexual Assault Evidence Collection Kit:** The kit used by authorized personnel to collect evidence on the suspect of a sexual assault or rape crime.

**Victim Sexual Assault Evidence Collection Kit (Rape Kit):** The kit used by medical personnel to collect evidence that has been left on the victim of a rape or sexual assault crime.

## Chapter Twenty

### Sexual Assault Investigation Checklist

#### Sexual Assault Investigation Checklist

Case Number \_\_\_\_\_ Date/Time \_\_\_\_\_

Reporting Officer \_\_\_\_\_

#### I. VICTIM:

- Record the victim's emotional and physical condition.
- Treat the victim with **dignity and respect** and ensure the victim is safe.
- Complete an initial interview with the victim.
- Document any drug or alcohol use by the victim or symptoms or behaviors that may indicate the victim was drugged.
- Arrange for a Victim Advocate to assist the victim.
- Advise the victim of victims' rights; explain follow-up interviews; confirm that support services information has been given to the victim.
- Assess victim's safety and discuss it with the victim.
- Evaluate the need for protection order or stalking order.
- Obtain victim's signature on medical release, tag and place into evidence.

- Have Victim Advocate and/or Police Officer transport the victim to the hospital, if not an emergency.
- Ensure proper medical examination is completed.
- Collect and protect the evidence.
- Photograph injuries and make appointment with the victim for follow-up photos in 2 to 3 days.
- Submit physical evidence to appropriate agency (lab) for analysis.

## **II. WITNESSES:**

- Interview all possible witnesses. Include any witnesses who could speak to victim's state of mind, emotional state or spontaneous statements made.
- Conduct canvass in area or location of the assault. Find out what the witnesses saw or heard, who has been in the area, and whether there was anyone they did not recognize.
- Interview anyone who had contact with the victim after the assault and after the reporting of the assault.
- Interview all witnesses that can either corroborate or negate suspect's statements.

## **III. SUSPECT:**

- Obtain a complete description of suspect and vehicle.
- Document suspect's alcohol or drug use.



- Detain suspect, if possible. Do not rush to interview. Take time to obtain victim and witnesses information first.
- Let the suspect tell what he/she thinks happened. Do not stop suspect from talking.
- If you have probable cause, arrest the suspect.
- Obtain evidence from suspect, using the Sexual Assault Evidence Collection Kit, with a court order if needed.
- Collect all of suspect's clothing and everything on the body. Take photos of the suspect and any injuries. Obtain a court order when necessary.

#### **IV. CRIME SCENE:**

- Examine crime scenes: victim, suspect, location of reported assault, transportation, suspect's residence, etc. Record evidence collected and take photographs of the scenes.
- Secure the crime scene to avoid contamination.
- Create a drawing of the scene in detail along with photographs.
- Gather, protect, and package all evidence, using paper as much as possible.
- When in doubt, collect it.

# Shelters and Service Programs

## Appendix

**\*Please make victim referrals to the nearest listed shelter program. The shelter will be able to determine if there is a satellite office or other service provider closer to the victim's location.**

### **Aberdeen**

Safe Harbor ..... 226-1212 or 1-888-290-2935

### **Brookings**

Domestic Abuse Shelter ..... 692-7233 or 1-888-643-5400

### **Buffalo**

Buffalo Outreach Services..... 1-800-755-8432

### **Burke**

Gregory Co. Domestic Violence...775-2220 or 1-800-658-3486

### **Chamberlain**

Missouri Valley Crisis Center.....234-5155 or 1-866-513-2361

### **Custer**

Women Escaping a Violent Environment (W.E.A.V.E.)

..... 1-800-424-3574

### **Eagle Butte**

Sacred Heart Women's Shelter ..... 964-7233 or 1-800-390-9298

### **Faith**

Faith Outreach Services..... 1-800-755-8432

### **Flandreau**

Wholeness Center.....997-3535 or 1-866-643-3379

### **Ft. Thompson**

Project Safe ..... 245-2471 or 1-800-723-3039

**Gregory**

Mitan Kala oyanke (Little Sister’s Place)... 835-8010

**Huron**

YWCA Family Violence Program ..... 605-461-9087

Jan Manolis Family Safe Center ..... 605-554-0398

**Kyle**

Oglala Sioux Tribe Victims Assistance ..... 454-2099

**Lake Andes**

Native American Women's Health Ed. Resource Center  
..... 487-7072

Women’s Lodge ..... 487-7130

**Lemmon**

Communities Against Violence and Abuse(CAVA)  
..... 605-374-5823

**Madison**

DV Network of the Lakes Region ..... 480-2721

**Martin**

Bennett County Stop Domestic Violence..... 685-6516

**McLaughlin**

Pretty Bird Women House ..... 823-7233

**Mission**

White Buffalo Calf Woman Society..... 856-2317

**Mitchell**

Mitchell Area Safehouse .....996-4440 or 1-800-996-8909

**Mobridge**

Bridges Against Domestic Violence..... 845-2110

**Pierre**

Missouri Shores Domestic Violence Center  
..... 224-0256 or 800-696-7187

**Rapid City**

Working Against Violence Inc. (WAVI).....1-888-716-9284

**Redfield**

Family Crisis Center..... 605-472-0508

**Sioux Falls**

The Compass Center ..... 339-0116 or 877-462-7474

Children's Inn ..... 338-4880 or 1-888-378-7398

"Mita Maske Ti Ki" ..... 731-1950 or 1-877-977-2130

**Sisseton**

Women's Circle.....698-4129 or 1-800-200-4492

**Spearfish**

Artemis House..... 642-7825 or 1-800-999-2348

**Sturgis**

Crisis Intervention Shelter Service ..... 347-0050

**Vermillion**

Domestic Violence Safe Options Services..... 624-5311

**Watertown**

Beacon Center..... 886-4300

**Winner**

Resource Center for Families.....842-2736 or 1-877-695-0558

**Yankton**

River City Domestic Violence Center ..... 665-4811

Yankton Sioux Tribe Advocacy Program.....384-5712

**For More Information Call:**

South Dakota Domestic Abuse Hotline... 1-800-430-SAFE

National Domestic Violence Hotline ..... 1-800-799-SAFE

Hearing Impaired ..... 1-800-787-3224