End Violence Against Women International (EVAWI)

Investigating Sexual Assault Against People with Disabilities

Part 2: Evaluate the Victim’s General Capabilities

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December 2015
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Recommended Citation

Authors

**Dr. Kimberly A. Lonsway** has served as the Director of Research for EVAWI since 2004. Her research focuses on sexual violence and the criminal justice and community response system. She has written over 60 published articles, book chapters, technical reports, government reports, and commissioned documents – in addition to numerous training modules, bulletins, and other resources. She has volunteered for over fifteen years as a victim advocate and in 2012, she was awarded the first – ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, CA. She earned her PhD in the Department of Psychology at the University of Illinois, Urbana – Champaign.

**Sgt. Joanne Archambault** (Retired, San Diego Police Department) is the Chief Executive Officer for EVAWI. In 2003 prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for almost 23 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which had 13 detectives and was responsible for investigating approximately 1,000 felony sexual assaults each year. Sgt. Archambault has provided training for tens of thousands of practitioners, policymakers and others – both across the country and around the world. She has been instrumental in creating system – level change through individual contacts, as well as policy initiatives and recommendations for best practice.

**Shirley Paceley** is the founder and director of Blue Tower Training in Decatur, Il. Blue Tower has resources in 48 states and 15 countries; she has spoken in over 30 states as well as in Iceland and Guam. Ms. Paceley has worked with people with disabilities for 40 years and has a Master’s degree in Clinical Psychology. She is on the Editorial Board of Sexual Assault Report. Ms. Paceley is a Project Advisor to the National Center for Criminal Justice and Disabilities. She also served on a national roundtable to develop a national strategy to end sexual abuse of children with disabilities.

Ms. Paceley developed the WE CAN Stop Abuse Curriculum for people with developmental disabilities and authored My Body My Choice as well as numerous book chapters and articles, music CDs, and DVDs. Ms. Paceley serves on the Illinois Imagines Team that facilitates systems change to enhance the response to survivors of sexual assault who have disabilities. Ms. Paceley also serves on the Illinois Family Violence Coordinating Council Responding to Survivors with Disabilities Committee which developed the first and only model statewide protocols for law enforcement and prosecutors in responding to victims with disabilities. Ms. Paceley also serves as Project Coordinator of Ensision Illinois, which addresses domestic violence in the lives of
people with all kinds of disabilities. Ms. Paceley also provides inspirational trainings and coaching. She also published the book, Living Joy-Fully.

**Christine Herrman** has over two decades of working to end violence against women. She started her career as a victim advocate and community services coordinator at a domestic and sexual violence program in her hometown of Ketchikan, Alaska. In that role, she provided prevention education and victim services to communities in the area, including towns, logging camps, Native villages, and settlements. Christine attended law school at Duke University, where she established a collaboration between the local rape crisis center and law students to provide advocacy services to sexual assault victims. After graduating from law school in 1999, Christine returned to the Pacific Northwest, where she served as a prosecutor in King County, Washington, focusing on sex crimes and crimes against children. In 2008, Christine assumed leadership of the Oregon Attorney General’s Sexual Assault Task Force, a statewide nonprofit organization that provided training and technical assistance to professionals in Oregon and nationwide on prevention of and response to sexual violence. Christine recently joined the Vera Institute of Justice in New York City as Project Director in the Center on Sentencing and Corrections. In this role, she is working on national technical assistance and research projects related to the conditions of confinement of vulnerable individuals, including one addressing the overreliance on segregation and one providing assistance to facilities implementing the Prison Rape Elimination Act. Christine is a member of the board of directors of the Oregon Crime Victim’s Law Center, and a member of CounterQuo.
This is the second installment in our series of training bulletins on the investigation of sexual assault committed against people with disabilities. In the first installment, we provided an overview on how to develop an investigative strategy when the victim has a disability, including information on establishing the legal elements of a sexual assault offense. We also discussed how cognitive impairments (such as intellectual disabilities, traumatic brain injury, and dementia) may be an element of the offense, because they can temporarily or permanently prevent a person from being able to legally consent to sexual activity.

In this installment, we discuss how to conduct a preliminary evaluation of the victim’s general capabilities, when the victim has some type of intellectual or developmental disability. While any disability the victim has can affect a sexual assault investigation, only those affecting cognition and communication have the potential to constitute a legal element of the crime. The question is whether the impairment is severe enough to prevent the person from being able to legally consent to sexual activity.

This initial evaluation will not serve as the final determination regarding the victim’s capacity, to be argued in court by prosecutors, defense attorneys, and expert witnesses. It will not even address the specific question of whether the victim has the legal capacity to consent to sexual acts. This determination will take place later, during the more formal assessment of victim capacity during a detailed, follow-up interview as well as an assessment performed by a clinician.

Rather, this initial evaluation should focus more generally on the victim’s capabilities and functioning in daily life – because this will guide what happens next in terms of what crime is being investigated, what information and evidence should be sought, and what steps need to be taken to protect the victim’s safety.

Information for Responding Officers

Clearly, law enforcement officers have numerous responsibilities and training requirements that prevent them from becoming experts at everything they are required to respond to on a daily basis. For example, an officer may be responding to a radio call involving a person with a disability at 11:00 at night or 3:00 in the morning, long after most people have left their offices for the day. In that situation, an initial decision regarding the victim’s capabilities will need to be made without the professional support that might be available from 9:00 to 5:00, Monday through Friday. Fortunately, this type of initial evaluation can be successfully conducted by responding officers, as long as they have training to prepare them for the situation and tools they can use to help.

SARRT Tip:
One helpful project that can be undertaken by a community SARRT is to produce an “investigation guide” that can be accessed by law enforcement officers on their mobile data terminals (MDTs), so it is available when responding to a call and conducting a preliminary investigation of a suspected sexual assault committed against a person with a disability.
For responding officers, the best place to start is by recognizing that there is some fact or observation causing them to suspect that the victim has a severe cognitive impairment. Otherwise, they would not even be considering it as relevant to the case. In other words, as a responding officer you can begin by asking yourself what leads you to believe that the victim has a cognitive impairment of some kind – and then document those facts.

The next question is whether there are trusted people who can assist with this initial evaluation of the victim’s general capabilities. Because so many people with a cognitive disability depend on others for daily assistance, caregivers can often provide basic information about a victim’s capabilities. Does the victim live with her/his parents? In a group home? If so, those caregivers may be a good place to start for gathering information.

Care must be taken, however, to respect the victim’s privacy as much as possible. For instance, it may be possible to explain the nature of the crime you are investigating to caregivers or others, while still withholding certain details to protect the victim’s privacy. It is also critical to avoid unwittingly using a possible suspect in this role of gathering information about the victim. This can be challenging during the initial stages of an investigation when it is not yet clear what crime has been committed, let alone who might be a suspect. In these early stages, it may also remain unclear what motivations might exist for other people to assist – or interfere – with the investigation.

Questions to Evaluate General Capabilities

Responding officers can then proceed by asking victims a number of questions to assess their general capabilities. These questions will also solicit information about the victim’s relationship with the suspect as well as family members and other caregivers. For example, victims can be asked questions such as the following:

- Who decides what you are going to eat for dinner?
- Do you ever make dinner reservations?
- Who decides when it’s time for you to go to bed?
- If you wanted to go to the store, how would you get there?
- If you wanted to buy something at the store, how would you do that?
- Do you have money of your own?
- Do you go to school?
- What do you learn at school?
- Can you read?
- Can you write your name?
For victims who have a cognitive disability, it is important to get a sense of whether they can make informed choices when presented with options. Also critical is whether they can say “no” to unwanted activity of any kind, particularly if it involves someone in a position of authority (Kennedy & Niederbuhl, 2001).

**Up Next**

Assessing the victim’s general capabilities is the first aspect of evaluating a person’s capacity during the course of a sexual assault investigation. In the next installment, we will discuss how to formally evaluate the victim’s ability to consent to sexual acts.

**For More Information**

This training bulletin is an adapted excerpt from the OnLine Training Institute (OLTI) module entitled: Successfully Investigating Sexual Assault Against People with Disabilities by Sgt. Joanne Archambault (Retired, San Diego Police Department), Kimberly A. Lonsway, PhD., Shirley Paceley, MA, and Christine Herrman, JD.

For more information, you can register for the interactive training module in the OLTI, or you can print out the document in our Resource Library. Please note, however, that the document version does not include the review exercises or test questions that are included in the OLTI. After successfully completing the module in the OLTI and passing the end-of-course test, you can also download a personalized certificate of completion.

**References**