



Identifying and Preventing Gender Bias in
Law Enforcement Response to Sexual Assault
and Domestic Violence



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Statement of Purpose

The Department of Justice (department) is committed to assisting law enforcement agencies in their efforts to reduce sexual assault and domestic violence, and to administer justice when these crimes occur. Through the department's many partnerships with state, local, tribal and territory law enforcement agencies (collectively, law enforcement agencies or LEAs), the department has recognized that many agencies are striving to improve their response to allegations of sexual assault and domestic violence, and are seeking assistance and support for these efforts.

This guidance document is intended to reflect and further the department's partnership with the police leaders, line officers and detectives who work tirelessly to ensure that policing is free from bias and to uphold the civil and human rights of the communities they serve.¹ The department extends its appreciation to the many police leaders and experts on law enforcement responses to sexual assault and domestic violence who worked with us to develop this guidance and provided us with helpful comments and suggestions.

One critical part of improving LEAs' response to allegations of sexual assault and domestic violence is identifying and preventing gender bias in policing practices.² Gender bias in policing practices is a form of discrimination that may result in LEAs providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender or offering reduced or less robust services due to a reliance on gender stereotypes. Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; interrogating rather than interviewing victims and witnesses; treating domestic violence as a family matter rather than a crime; failing to enforce protection orders; or failing to treat same-sex domestic violence as a crime. In the sexual assault and domestic violence context, if gender bias influences the initial response to or investigation of the alleged crime, it may compromise law enforcement's ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable.

¹ This guidance, however, is not intended to, and does not, create any right, benefit, trust or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees or agents, or any person.

² The focus of this document is reducing gender bias in *policing*. Addressing gender bias in policing is critical because police officers frequently have the initial contact with victims of sexual assault and domestic violence and LEAs generally conduct the investigations of sexual assault and domestic violence incidents. It is important to note, however, that gender bias—both explicit and implicit—exists throughout society, and as a result, it can arise in various aspects of the criminal justice system. Explicit and implicit gender bias can undermine the effective handling of sexual assault and domestic violence cases at any point from report to adjudication or closure. While not the subject of this document, addressing gender bias on the part of prosecutors, judges and juries in their consideration of sexual assault and domestic violence cases is critical to ensuring that justice is served. In addition, it is important for LEAs to be mindful that gender bias can occur alongside other types of unlawful discrimination, including racial bias, exacerbating any deficiencies in the criminal justice system's response to reports of sexual assault and domestic violence and further undermining access to safety for those victims.

The Purpose of This Guidance is to:

- examine how gender bias can undermine LEAs' response to sexual assault and domestic violence; and
- provide a set of basic principles that—if integrated into LEAs' policies, trainings and practices—will help ensure that agencies' efforts to keep victims safe and hold offenders accountable are not undermined, either intentionally or unintentionally, by gender bias.

The Department Encourages Law Enforcement Agencies to Consider These Principles and Integrate Them into:

- clear, unequivocal policies about the proper handling of sexual assault and domestic violence crimes;
- training for officers about these policies and about effective responses to sexual assault and domestic violence crimes more generally; and
- supervision protocols and systems of accountability to ensure that officers responding to sexual assault and domestic violence crimes act in accordance with these policies and trainings.

This document, alongside the department's other work in this area—including the provision of funding and technical assistance to LEAs—is meant to provide guidance to agencies as they develop more effective policies, practices and trainings. This document is not intended to provide a comprehensive list of best practices, or act as an operational handbook for responding to and investigating allegations of sexual assault or domestic violence. The department has additional resources to further assist LEAs in improving their response to sexual assault and domestic violence. These resources are discussed at the end of this document and listed in the attached appendix.

I. Background

Sexual assault and domestic violence are crimes that disproportionately impact women, girls, and lesbian, gay, bisexual, and transgender (LGBT) individuals in the United States. According to surveys conducted by the Bureau of Justice Statistics and the Centers for Disease Control and Prevention (CDC):

- 90 percent of all cases of rape involve female victims.³
- Nearly one in five women in the United States (18.3 percent) have been raped.⁴
- About one in four women (24.3 percent) and one in seven men (13.8 percent) in the United States have experienced severe physical violence at the hands of an intimate partner.⁵
- 44 percent of lesbian women and 61 percent of bisexual women have experienced rape, physical violence, and/or stalking by an intimate partner.⁶
- 26 percent of gay men and 37 percent of bisexual men have experienced rape, physical violence, and/or stalking by an intimate partner.⁷

While there is a lack of data on the violence experienced by transgender individuals, community-based studies indicate high levels of victimization.⁸

Since the passage of the Violence against Women Act in 1994 (VAWA),⁹ annual rates of domestic violence reports have dropped by 64 percent.¹⁰ This progress is significant and due in no small part to the work

³ U.S. Dep't of Justice, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994-2010*, at 3 (2013), available at <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

⁴ Ctrs. for Disease Control and Prevention, Nat'l Ctr. for Injury Prevention and Control, *National Intimate Partner and Sexual Violence Survey 1* (2010), available at http://www.cdc.gov/ViolencePrevention/pdf/NIS-VS_Executive_Summary-a.pdf.

⁵ *Id.* at 2.

⁶ Ctrs. for Disease Control and Prevention, Nat'l Ctr. for Injury Prevention and Control, *National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation 2* (2013), available at http://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf.

⁷ *Id.*

⁸ See, e.g., Nat'l Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2013*, at 10 (2014 release edition), available at http://www.avp.org/storage/documents/ncavp2013ipvreport_webfinal.pdf; see also Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 *Aggression and Violent Behavior* 170, 171-172 (May-June 2009).

⁹ Although VAWA refers to women in its title, the statute makes clear that the protections are for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. 42 U.S.C. § 13925(b)(13).

that LEAs have done, in partnership with the department, to improve their response to allegations of domestic violence. Yet, despite this progress, domestic violence still occurs at alarming rates and too often becomes lethal. On average, three women die per day as a result of domestic violence in the United States and, for every woman killed in a domestic violence homicide, nine more are critically injured.¹¹

The persistence of these high rates of crimes involving sexual assault and domestic violence underscores the critical importance of the role of law enforcement agencies in investigating these crimes thoroughly and with the same vigor and skill as they do other crimes of a similar significance that occur in their jurisdictions. By using thorough and effective investigative techniques, LEAs will continue to improve their efforts to ensure that the perpetrators of these crimes are held accountable and that the victims receive meaningful access to justice.

Over the past 20 years, VAWA funding has transformed how criminal justice systems in many communities respond to sexual assault and domestic violence. Some of the innovations funded through VAWA include law enforcement collaboration with victim service providers; use of evidence-based lethality assessments to curb domestic violence-related homicides; improved forensic medical examinations for sexual assault victims; investigation and prosecution policies and practices that focus on the offender and account for the effects of trauma on victims; specialized law enforcement and prosecution units; enhanced offender monitoring; and improved training for law enforcement, prosecutors and judges. LEAs are a critical component of a coordinated community response to sexual assault and domestic violence. By dedicating additional attention and resources to improving law enforcement's response to such crimes—including making efforts to eliminate gender bias—agencies will be better able to meet the needs of victims and the communities they serve.

¹⁰ U.S. Dep't of Justice, Bureau of Justice Statistics, *Intimate Partner Violence, 1993-2010*, at 1 (rev. 2015), available at <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

¹¹ U.S. White House, Office of the Vice President, *Fact Sheet: The Obama Administration's Commitment to Reducing Domestic Violence Homicides (2014)*, available at https://www.whitehouse.gov/sites/default/files/docs/dv_homicide_reduction_fact_sheet.pdf; see also U.S. Dep't of Justice, Bureau of Justice Statistics, *Intimate Partner Violence: Attributes of Victimization, 1993-2011*, (2013), available at <http://www.bjs.gov/content/pub/pdf/ipvav9311.pdf>; Jacquelyn C. Campbell et al., *Intimate Partner Homicide: Review and implications of research and policy*, 8 *Trauma, Violence, & Abuse* 246 (July 2007).

II. Improving the Response to Domestic Violence and Sexual Assault by Preventing Gender Bias in Policing Practices

A. Identifying the Impact of Gender Bias on Policing

Explicit and implicit biases, including stereotypes about gender roles, sexual assault, and domestic violence, are embedded in our culture and can affect people in all different professions.¹² With respect to policing, these biases may affect law enforcement officers' perceptions of sexual assault and domestic violence incidents and prevent them from effectively handling allegations of these crimes.¹³ The intersection of racial and gender stereotypes and biases can also pose unique difficulties for women and LGBT individuals of color seeking police services to address sexual assault and domestic violence incidents.¹⁴

In some cases, a police officer may discriminate against victims of sexual assault or domestic violence because of a general bias against women or LGBT individuals. More commonly, discrimination may be based on explicit stereotypes about women or LGBT individuals. Acting on stereotypes about why women or LGBT individuals are sexually assaulted, or about how a victim of domestic violence or sexual assault should look or behave, can constitute unlawful discrimination and profoundly undermine an effective response to these crimes. For example, if an officer believes a sexual assault to be less severe because the victim was assaulted by an acquaintance or was intoxicated when the assault occurred, or based on stereotypical assumptions about a victim who is a gay man or lesbian woman assaulted by his or her partner, that is gender bias and may constitute unlawful discrimination.

Even where law enforcement officers harbor no explicit biases or stereotypes about women or LGBT individuals, an officer's unconscious bias towards these groups can undermine an effective response to sexual assault and domestic violence incidents. In recent years, the criminal justice community has begun to examine

¹² See e.g., *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing Before the Subcomm. on Crime and Drugs of the Senate Comm. on the Judiciary* 111th Cong. 6-7 (Sept. 14, 2010) (statement of Carol E. Tracy, Executive Director, Women's Law Project) [hereinafter *2010 Senate Committee Testimony*], available at <http://www.judiciary.senate.gov/imo/media/doc/09-14-10%20Tracy%20Testimony.pdf> (citing research); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 Colum. J. Gender & L. 1, 27 (1998).

¹³ See *2010 Senate Committee Testimony*, *supra* note 12, at 6-7.

¹⁴ See generally, Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 Wis. L. Rev. 1003, 1069-74 (1995). See also Fenton, *supra* note 12, at 53-54 (discussing how stereotypes can lead police to take the claims of African-American victims less seriously than others); *Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture* (Natalie J. Sokoloff and Christina Pratt, eds., 2005); Natalie J. Sokoloff and Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 Violence Against Women 38, 43 (Jan. 2005).

compelling social science research that suggests “implicit biases are predilections held by all [people] that operate largely outside of one’s awareness.”¹⁵ A collaboration of researchers at several major universities has found that implicit biases are pervasive, people are often unaware of their implicit biases and implicit biases can predict behavior. Scholars have examined the implications of this research for law enforcement agencies. It is important for law enforcement to recognize the prevalence¹⁷ of implicit bias and to consider how both explicit and implicit bias might impact the law enforcement response to crimes involving sexual assault and domestic violence.

Eliminating gender bias in policing practices is an integral component of combating sexual assault and domestic violence, and can have a real and immediate effect on the safety of individual victims. A swift and meaningful criminal justice response to violence against women and LGBT individuals is critical for preventing future victimization¹⁸ and arresting offenders can deter repeat abuses.¹⁹ Further, an appropriate law enforcement response not only fosters victim confidence, it also makes victims more likely to report future incidents. By²⁰ contrast, if law enforcement agencies do not respond effectively to an incident of sexual assault or domestic violence, victims are less likely to participate in the investigation and prosecution of their case or seek police assistance in the future.²¹

¹⁵ Tracey G. Gove, *Implicit Bias and Law Enforcement*, 78 *The Police Chief* 44, 44 (Oct. 2011), available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2499&issue_id=102011 (last visited Oct. 2, 2015); see also Tami Abdollah, *Police Agencies Line Up to Learn About Unconscious Bias*, Associated Press, Mar. 9, 2015, available at <http://www.dailynews.com/government-and-politics/20150315/police-agencies-line-up-to-learn-about-unconscious-bias>.

¹⁶ Gove, *supra* note 15.

¹⁷ See e.g., L. Song Richardson and Phillip Atiba Goff, *Interrogating Racial Violence*, 12 *Ohio St. J. Crim. L.* 115, 120-24 (2014) (discussing studies regarding the impact of implicit bias on police use of force).

¹⁸ See André Rosey et al., *Investigation and Prosecution of Sexual Assault, Domestic Violence, and Stalking* 17-18 (2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/236429.pdf>; Jill Messing et al., *Police Departments’ Use of the Lethality Assessment Program: A Quasi-Experimental Evaluation* 86-87 (2014), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/247456.pdf>.

¹⁹ Christopher D. Maxwell et al., U.S. Dep’t of Justice, Nat’l Institute of Justice, *The Effects of Arrest on Intimate Partner Violence: New Evidence From the Spouse Assault Replication Program* 1 (2001), available at <https://www.ncjrs.gov/pdffiles1/nij/188199.pdf>; Laura Dugan et al., *Exposure Reduction or Retaliation? The Effects of Domestic Violence Resources on Intimate-Partner Homicide*, 37 *Law & Society Review* 169, 178 (2003) available at http://www.ccjs.umd.edu/sites/ccjs.umd.edu/files/pubs/lasr_03701005.pdf.

²⁰ Robert C. Davis & Christopher Maxwell, Vera Institute of Justice, *Preventing Repeat Incidents of Family Violence: A Reanalysis of Data from Three Field Tests* 5-6 (2002), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/200608.pdf>; Paul C. Friday, *Evaluating the Impact of a Specialized Domestic Violence Police Unit* 5-8 (2006), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/215916.pdf>.

²¹ Eve S. Buzawa & Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* 127 (2003).

Moreover, an effective police response to domestic violence and sexual assault can improve the safety of our communities as a whole. Reducing female intimate partner homicides also reduces collateral homicides of children, other family members, and responding law enforcement officers, while also reducing abuser suicides.²² Because some individuals suffer multiple victimizations before reporting to police, a full investigation of a particular domestic violence incident may reveal additional, even more serious incidents of abuse.²³ Studies also indicate that many abusers are likely to commit new domestic and nondomestic violence crimes; thus, vigilant police investigation of sexual assault and domestic violence may help prevent other violent crimes.²⁴

The experience of Detroit illustrates the vital importance of fully investigating every reported sexual assault, regardless of an individual officer's assessment of a particular victim's credibility.²⁵ In 2009, the City of Detroit discovered over 11,000 untested sexual assault kits. When just 1,595 of those kits were tested, they yielded 785 Combined DNA Index System (CODIS) eligible profiles. And, in turn, over half of those profiles belonged to individuals already in CODIS and 28 percent yielded serial sexual assault hits (i.e., a DNA match across two or more sexual assault kits).²⁶ In short, the DNA from these untested kits belonged to offenders who had committed other crimes, including multiple other sexual assaults.²⁷

²² Andrew R. Klein, U.S. Dep't of Justice, Nat'l Institute of Justice, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors, and Judges* 4 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf> (citing Federal Bureau of Investigations data and multiple state and local fatality reviews).

²³ *Id.* at 4, 6.

²⁴ *Id.* at 19-21.

²⁵ “An analysis of 1,268 sexual assault police reports associated with [sexual assault kits] that had not been submitted for testing revealed that most cases were closed after minimal investigational effort. In both the stakeholder interviews and in the actual police reports, law enforcement personnel expressed negative, victim-blaming beliefs about sexual assault victims.” Rebecca Campbell et al., *The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report* iv (2015) (emphasis in original), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf>.

²⁶ *Id.* at iii-vi.

²⁷ As of August 2015, Detroit has tested approximately 10,000 kits, resulting in 2,478 DNA matches and the identification of 469 potential serial rapists. The Wayne County Prosecutor's Office has obtained 21 convictions, and the DNA from the tested kits has been linked to crimes committed in 39 states. *Detroit, EndtheBacklog*, <http://www.endthebacklog.org/detroit-0> (last visited Aug. 27, 2015).

B. Principles to Prevent Gender Bias in Policing

Certain aspects of the law enforcement response to sexual assault and domestic violence appear particularly susceptible to explicit and implicit bias based on gender. Set forth below are a set of basic principles that will help reduce the potential for discrimination. The department encourages LEAs to consider these principles and integrate them into: (1) clear, unequivocal policies about the proper handling of sexual assault and domestic violence crimes; (2) training for officers about these policies and about effective responses to sexual assault and domestic violence crimes more generally; and (3) supervision protocols and systems of accountability to ensure that officers responding to sexual assault and domestic violence crimes act in accordance with these policies and trainings.

In identifying these principles, the department is not presenting an exhaustive list of ways that LEAs can reduce gender bias in its policing activities. Rather, adherence to these basic principles in developing policies, practices and trainings related to sexual assault and domestic violence cases will help law enforcement agencies provide police services free from discrimination on the basis of gender and handle these cases more effectively. The Department encourages LEAs to develop practices that build on and go beyond the basic principles described here. As set forth in the conclusion of this document, the department stands ready to assist and support these efforts.

Principle 1

*Recognize and Address Biases, Assumptions and Stereotypes about Victims*²⁸

In responding to a report of sexual assault or domestic violence, law enforcement officers should not base their judgments as to the credibility of a victim's account on assumptions or stereotypes about the "types" of people that can be victims of sexual assault, or about how victims of sexual assault and domestic violence "should" respond or behave. The following examples illustrate the application of assumptions or stereotypes to victims to gauge a victim's credibility, which undermines an effective investigation:

Example: A young woman enters a police station and reports that, two weeks earlier, she was raped at a house party by a colleague from work. The woman reports that she had been drinking that evening. The police officer on duty asks how often the woman drinks excessively at house parties and asks her what she was wearing that night. The officer then tells her that she should really watch how much she consumes when she goes out at night, especially if she is getting dressed up.

Example: A tall man, in good physical condition and with no visible injuries, goes to the local police precinct and reports that his boyfriend, with whom he lives, has been sending him threatening text and voice messages over the past several weeks, and that, the night before, his boyfriend had assaulted him. The responding officer looks at the man skeptically and tells him that he's not sure that he can take a report based on this situation. The officer tells the man to think carefully about whether he has a crime to report and to come back another day if he still believes he needs assistance.

²⁸ Letter from Thomas Perez, Ass't Att'y Gen. of the United States, to Hon. John Engen, Mayor of Missoula, Montana, 8, 13 (May 15, 2013) [hereinafter *Missoula FL*], available at http://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind_5-15-13.pdf; Investigation of the New Orleans Police Dep't, U.S. Dep't of Justice, Civil Rights Division 43, 46 (Mar. 16, 2011) [hereinafter *NOPD FL*], available at http://www.justice.gov/crt/about/spl/nopd_report.pdf; Int'l Ass'n of Chiefs of Police, Nat'l Law Enforcement Policy Ctr., *Investigating Sexual Assaults: Concepts and Issues Paper* 4 (2005) [hereinafter *IACP Investigating Sexual Assaults Issues Paper*], available at http://www.ncdsv.org/images/IACP_InvestigatingSAConceptsIssuesPaper_7-2005.pdf.

Example: A woman who has been known to engage in prostitution flags down a police officer who frequently patrols her neighborhood. She reports to the officer that she was just raped. The police officer on duty writes down her statement, but, when he returns to the police station, he immediately classifies the complaint as “unfounded,” and takes no further action, because of the woman’s sexual and criminal history.

Principle in Practice

Law enforcement agencies should review and revise their policies and procedures as necessary and provide training to officers to ensure that responding officers and investigators gather all pertinent evidence in an unbiased manner. A victim’s nonconformance with behavioral stereotypes should not impact the way law enforcement officers evaluate the complaint.²⁹ Biases should also not prevent officers from taking a report or detectives from conducting a full investigation of all complaints received.³⁰ Thus, the following factors, standing alone, are not dispositive in determining a victim’s credibility: delayed reporting; the victim’s history of making similar reports; the victim’s sexual history; the victim’s emotional state (*e.g.*, whether a victim appears calm versus emotional or visibly upset); the victim’s lack of resistance; the victim’s criminal history or history of prostitution; evidence that the victim has a mental illness; evidence that the victim has a history of abusing alcohol or drugs; what the victim was wearing at the time the victimization occurred; whether the victim is of comparable size/strength to the assailant; the lack of any obvious signs of physical harm to the victim; the victim’s sexual orientation or gender identity; and whether the victim was attacked by a person of the same sex.³¹

²⁹ See Memorandum of Understanding between the U.S. Dep’t of Justice and City of Missoula Regarding the Missoula Police Department’s Response to Sexual Assault 5 (May 15, 2013) [hereinafter *Missoula MOU*], available at http://www.justice.gov/sites/default/files/crt/legacy/2013/05/15/missoulapdsettle_5-15-13.pdf ; Int’l Ass’n of Chiefs of Police, *Sexual Assault Incident Reports Investigative Strategies* 5 (2005) [hereinafter *IACP Sexual Assault Incident Reports*], available at <http://www.theiacp.org/portals/0/pdfs/SexualAssaultGuidelines.pdf>; Int’l Ass’n of Chiefs of Police, *Model Policy on Investigating Sexual Assaults* 1, 4 (2005) [hereinafter *IACP Model Policy on Investigating Sexual Assaults*], available at <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=93>; *IACP Investigating Sexual Assaults Issues Paper*, *supra* note 29, at 4; End Violence Against Women Int’l, *Training Bulletin: When to Conduct an Exam or Interview* 3 (2013) [hereinafter *EVAWI Training Bulletin*], available at http://www.ncdsv.org/images/EVAW_When-to-conduct-an-exam-or-interview_6-2013.pdf.

³⁰ Before making final credibility determinations, investigators should gather and assess objective evidence (statements; medical evidence; camera footage) as available and appropriate. See *infra*, Principle 3, notes 42-45 for guidelines on conducting a full investigation.

³¹ See generally *IACP Sexual Assault Incident Reports*, *supra* note 29, at 5; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 4.

Principle 2

*Treat All Victims with Respect and Employ Interviewing Tactics That Encourage a Victim to Participate and Provide Facts About the Incident*³²

A victim who is treated with respect is more likely to continue participating in an investigation and prosecution than one who feels judged or blamed for a sexual assault or domestic violence incident. Law enforcement agencies should take affirmative steps to ensure that, throughout their investigations, officers treat victims with respect and dignity, and use appropriate trauma-informed interviewing techniques to establish a rapport with the victim. The following example illustrates the use of inappropriate interviewing tactics that may cause a victim to be less willing to participate in an investigation or proffer facts about the incident:

Example: A woman reports to the police that she was raped several months ago while attending a party. The law enforcement officer on duty takes a cursory report and gives the file to an investigator, who says to the woman:

- “I’m sorry but you are reporting an incident that occurred several months ago. There is nothing we can do at this point.”
- “Is the reason you waited so long to report this rape because you now regret having sex?”
- “How can you remember any details given how much you had to drink?”
- “What did you think was going to happen after you went to his room alone?”
- “Why didn’t you push him off you and leave?”

Principle in Practice

Although law enforcement agencies will often need to ask difficult questions on the above topics to get information necessary to fully investigate a complaint or prepare a case for successful prosecution, *how* and *when* difficult questions are asked is an important consideration. By taking affirmative steps to respect the dignity of all complainants, law enforcement officers may be able to increase the quality and quantity of the information they receive. In addition, there are also some questions that are inappropriate to ask at any point during the investigation, no matter how they are phrased. These types of questions ignore the trauma that victims experience and, whether intentionally or not, suggest that blame should be placed on the victim or that the victim should not have reported the incident to the police at all. Examples of these questions include:

- “Have you considered talking to the man and letting him know that you are upset?”
- “Have you thought about how this is going to affect the alleged assailant’s scholarship/career/reputation/etc.?”
- “Wasn’t this just a trick gone bad?”

³² *Missoula FL*, *supra* note 28, at 8-9, 13; *NOPD FL*, *supra* note 28, at 43-44, 46-48.

Understanding the impact of trauma on the victim may help to explain many of the challenges that officers face in interviewing victims (*e.g.*, memory gaps, inconsistent accounts, or delayed reporting) and prevent inappropriate questioning. Law enforcement agencies should review and revise their policies and procedures, as necessary, and provide training to assist officers in being cognizant of the emotional impact that participating in interviews and evidence-gathering may have on a victim who has undergone a traumatic event, such as a rape or sexual assault.³³ For example, a victim may experience flashbacks or intense psychological distress when asked to recall details about the incident or event. It is important that officers convey to a victim that the purpose of the interview is to understand and determine the facts, not to blame the victim.³⁴ Accordingly, officers should be trained to ask neutral, open-ended questions that elicit a narrative of the events from the victim, rather than leading questions or questions that may be perceived as assigning blame.³⁵ Examples of neutral and open-ended questions include:

- “Can you tell me what happened?”
- “What can you tell me about the person who did this to you?”
- “What can you tell me about anything the person said before, during, or after the incident?”
- “Can you tell me about any witnesses or people who might have seen the incident?”
- “Did anything in particular cause you to come tell us about this incident today?”
- “Have you received medical treatment? Would you like to go to the hospital?”

³³ Consent Decree Regarding the New Orleans Police Department, *U.S. v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW, at 54 (Jan. 11, 2013) [hereinafter *NOPD CD*], available at http://www.justice.gov/sites/default/files/crt/legacy/2013/01/11/nopd_agreement_1-11-13.pdf; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 4-5; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 4; *EVAWI Training Bulletin*, *supra* note 29, at 3-4.

³⁴ *Missoula MOU*, *supra* note 29, at 5, 7; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 4; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 1.

³⁵ *Missoula MOU*, *supra* note 29, at 5, 7; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 3; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 4. See also The Nat’l Ctr. for Women and Policing, *Successfully Investigating Acquaintance Sexual Assault: A National Training Manual for Law Enforcement, Drug-Facilitated Sexual Assault Module 9-10* (2001) [hereinafter *Nat’l Ctr. For Women and Policing Training Manual*], available at <http://www.mincava.umn.edu/documents/acquaintsa/participant/drugfacilitated.pdf>.

A trauma-informed approach to asking questions during a victim interview also can help the investigator establish trust, which in turn can help the victim feel more comfortable disclosing aspects of the assault that could be difficult or embarrassing to talk about, or which the victim might worry will damage her/his credibility. For example, a victim might be more willing to disclose any voluntary or involuntary alcohol or drug use around the time of the assault if the officer has established a non-judgmental environment and demonstrated genuine empathy for the victim. Although an investigator has to ask questions necessary to corroborate the victim's account, many victims may become upset and frustrated by questions regarding their actions or behavior around the time of the incident, including alcohol or drug use. These questions, depending on how they are phrased, can come across as victim-blaming and can dissuade a victim from assisting with the investigation.³⁶ An example of how an officer could converse with a victim who might have been drinking or using drugs before s/he was assaulted might be:

- “I know that this question is difficult to answer and I want you to know I am only asking you this question to get a clear picture of what you’ve experienced. I am very sorry about what has happened to you and I do not think that you are responsible for what happened. Any questions I may ask about alcohol or drug use by you or the offender I’m only asking to understand what happened.”

Similarly, officers should not make statements or engage in acts that indicate to the victim that they doubt the victim’s credibility, or that otherwise exhibit any bias towards the victim based on gender.³⁷ Such statements and judgments could include: stereotyped assumptions about the truth of a reported assault (*e.g.*, that women are likely to report “regretted sex” as rape, that transgender women and men are unlikely to be raped, that people engaged in prostitution cannot be raped, or that certain ethnicities or races are more “promiscuous”); automatically believing the alleged assailant’s claim that the sex was consensual; or subtly, or even blatantly, coercing the victim to recant the allegation of sexual assault by blaming the victim for being assaulted or for making unwise or dangerous choices.

Further, law enforcement agencies should train officers to write reports of interviews or statements incorporating the victim’s words, spontaneous statements, and narrative as much as possible, as opposed to providing the officer’s summary. Such an approach will further the goal of presenting the victim’s version of the events from the victim’s perspective.³⁸ To ensure privacy and encourage candor, investigations of domestic violence or sexual assault complaints should not be conducted in public waiting areas.

³⁶ See *Nat’l Ctr. For Women and Policing Training Manual*, *supra* 35, at 9-10.

³⁷ *Missoula MOU*, *supra* note 29, at 5; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 3, 7.

³⁸ *Missoula MOU*, *supra* note 29, at 7; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 3; Int’l Ass’n of Chiefs of Police, Nat’l Law Enforcement Policy Ctr., *Domestic Violence Concepts and Issues Paper* 3 (2006) [hereinafter *IACP Domestic Violence Issues Paper*], available at http://www.ncdsv.org/images/IACP_DVConceptsIssuesPaper_rev6-2006.pdf; Joanne Archambault et al., End Violence Against Women Int’l, *Effective Report Writing: Using the Language of Non-Consensual Sex* 5-13 (2012) [hereinafter *EVAWI Effective Report Writing*], available at <http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=43>.

Additionally, allowing the victim, if he or she so desires, to have the support of a victim advocate during a criminal investigation has been shown to have a positive impact on the victim's experience with law enforcement.³⁹ A victim advocate can provide support in several ways, including preparing a victim for law enforcement interviews by helping the victim understand what to expect. This preparation may help the victim to feel at ease during the interview, as well as promote the development of a relationship of trust between the victim and the law enforcement officer. This simple step of encouraging victims to seek support during the criminal investigation process may be critical to an effective victim interview, which in turn could prove important to the investigation, to the prosecution of any crime, and to the victim's continued cooperation with law enforcement.

Finally, to ensure that all individuals are able to communicate the relevant facts clearly, it is important to ensure meaningful language access for individuals with limited English proficiency.⁴⁰ Absent exigent circumstances, law enforcement agencies should always use an independent interpreter for interviews, such as someone who works for the agency or a language services interpreter.⁴¹ To ensure independence and accuracy in law enforcement investigations, law enforcement agencies should not use victims' family members and friends as interpreters. Moreover, it is critical that children never be used as interpreters: this undermines effective language access for victims, can traumatize children exposed to these situations and may inhibit a victim from fully revealing important details about the assault.

³⁹ Rebecca Campbell, *Rape Survivors' Experiences with the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?*, 12 *Violence Against Women* 30, 30 (2006); *Missoula MOU*, *supra* note 29, at 7; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 4.

⁴⁰ See Title VI of the Civil Rights Act of 1964, 42 U.S.C §§ 2000d et seq.; Exec. Order No. 13166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

⁴¹ See *Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs* 8 & n.1 (August 2011), available at http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf (citing Dep't of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,461 (June 18, 2002)).

Principle 3

*Investigate Sexual Assault or Domestic Violence Complaints Thoroughly and Effectively*⁴²

Unlike many other crimes, incidents of sexual assault and domestic violence frequently occur in more private settings, with few, if any, witnesses present. As a result, it is crucial that LEAs undertake a thorough investigation of these crimes by gathering, preserving and analyzing as much evidence, particularly corroborative evidence, as quickly as they can. The following examples illustrate failures to thoroughly and effectively investigate complaints involving sexual assault and domestic violence:

Example: A 25-year-old woman reports to the police that the previous day, her ex-boyfriend physically and sexually assaulted her. After disclosing to her roommate what had happened, the woman goes to the hospital for a forensic exam and the patrol officer who interviews her takes the kit to an evidence storage facility. A detective calls her a few days later, but, when he does not immediately hear back, he closes the case, noting that the victim cannot be located, is not cooperating and there were no witnesses. The kit is never submitted to the lab for testing and an arrest is never made.

Example: Officers respond to a call for service based on a domestic dispute. When they arrive, they find a man and a woman at the scene. The man is clearly distressed and angry. The woman says the man hit her several times, but says she was not seriously injured. The man says that he and the woman had been on several dates, and he learned tonight that the woman is transgender. The man says that the woman is “crazy” and deceived him by “pretending” to be a woman. The officers leave the apartment without taking a report from the woman because there were no serious injuries; they have some sympathy for the man who feels deceived; and they believe their efforts are better spent on more serious crimes.

Principle in Practice

To ensure that investigations are thorough, law enforcement agencies should implement clear policies and training about how to conduct domestic and sexual violence investigations that are complete and bias-free.⁴³ At a minimum, law enforcement agencies should have guidelines that address the following for possible crimes involving sexual or domestic violence:⁴⁴ collecting and preserving all relevant and corroborative evidence; ensuring that forensic medical exams, including “rape kits,” are completed and analyzed in a timely manner; identifying and documenting victim injuries, both at the time of the incident and during subsequent interactions; identifying and documenting all psychological and sensory evidence; and interviewing all possible witnesses and suspects and conducting each interview separately.⁴⁵

⁴² *Missoula FL*, *supra* note 28, at 7; *NOPD FL*, *supra* note 28, at 47-50; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 2-3.

⁴³ *Missoula MOU*, *supra* note 29, at 4; *NOPD CD*, *supra* note 33, at 54; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 7; *see generally IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29; Police Executive Research Forum, *Improving the Police Response to Sexual Assault 1-2* (2012) [hereinafter *PERF Improving the Police Response*], available at http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf.

⁴⁴ *Missoula MOU*, *supra* note 29, at 5; *NOPD CD*, *supra* note 33, at 54-55; Int’l Ass’n of Chiefs of Police, *Model Policy on Domestic Violence* 4 (2006) [hereinafter *IACP Model Policy on Domestic Violence*], available at <http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/DomesticViolencePolicy.pdf>.

⁴⁵ *NOPD CD*, *supra* note 33, at 54; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 7; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 3.

Principle 4

*Appropriately Classify Reports of Sexual Assault or Domestic Violence*⁴⁶

Complaints of sexual assault and domestic violence should be classified in a manner that will allow them to be fully investigated. If a sexual assault or domestic violence complaint is given an improper or non-criminal classification, the case may be closed before an investigation has been conducted. Like any other allegation of a crime, the determination that a sexual assault or domestic violence complaint is unsubstantiated should be made only after a thorough and full investigation, as discussed in Principle 3, and not presumptively at the classification stage. In order to encourage accurate classification of reports of sexual offenses, officers must be knowledgeable not only about their agency's procedures for documenting such reports, but also about the elements of sexual assault and domestic violence offenses, so that they can better identify incidents that meet those criteria. The following example illustrates how a misclassification of a sexual assault complaint can lead to the failure to properly investigate (and secure a successful prosecution of) the complaint:

Example: A friend brings a woman to a police station and tells the police that her friend was raped while on a date the night before. While still sitting in the public waiting area, an officer asks the woman what happened, and the woman says she does not remember and does not know if she was raped. The law enforcement officer on duty fills out a report, but immediately classifies the incident as “unfounded.”

Principle in Practice

Law enforcement agencies should review and revise their policies and procedures as necessary, and provide training to officers to ensure that sexual assault and domestic violence complaints are properly documented and only classified as non-criminal or unfounded after a thorough, full investigation is conducted.⁴⁷ All sexual assault or domestic violence complaints should be investigated, regardless of any of the following circumstances: the victim has gaps in memory; there are potential conflicts in the victim's statements; the victim is reluctant to share his or her story; the victim expresses concern over having the alleged assailant charged with a crime; the victim expresses self-blame (*e.g.*, suggests that she/he didn't fight hard enough to stop the assault); the victim is emotionally distraught and unable to discuss the incident; or the victim was under the influence of alcohol or drugs at the time of the incident.^{48 49}

⁴⁶ *Missoula FL*, *supra* note 28, at 8; *NOPD FL*, *supra* note 28, at 45-47.

⁴⁷ *NOPD CD*, *supra* note 33, at 54-56; End Violence Against Women Int'l, *Reporting Methods for Sexual Assault Cases* 8, 18 (2007) [hereinafter *EVAWI Sexual Assault Cases*], available at <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=35>; *EVAWI Training Bulletin*, *supra* note 29, at 4-5.

⁴⁸ *Missoula MOU*, *supra* note 29, at 7; *IACP Sexual Assault Incident Reports*, *supra* note 29, at 2, 5; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 2, 4; *EVAWI Sexual Assault Cases*, *supra* note 47, at 7; *EVAWI Training Bulletin*, *supra* note 29, at 3.

⁴⁹ In conducting a full and thorough investigation, law enforcement officers should engage victims in a trauma-informed manner: officers should be careful to avoid pursuing victims (some of whom may be reluctant to speak to law enforcement) in a way that might “re-traumatize” them. *See supra* note 33.

Additionally, law enforcement should be aware that victims of domestic violence and sexual assault may also be victims of sex trafficking, and officers should receive training on identifying and responding to victims of trafficking. The department offers training and grants to assist law enforcement and community partners in detecting trafficking and providing services to trafficking victims.⁵⁰ Law enforcement agencies should also develop policies and procedures regarding U visas, which are available for immigrant victims of certain crimes—including sexual assault and domestic violence—if they assist law enforcement in the investigation or prosecution of criminal activity and meet other eligibility criteria.⁵¹

⁵⁰ For example, the Department's Bureau of Justice Assistance works collaboratively with the Department's Office for Victims of Crime ("OVC") to develop training for law enforcement and communities to identify trafficking victims and to support anti-trafficking task forces involving collaboration among state and local law enforcement, trafficking victim services providers, federal law enforcement, and U.S. Attorney's Offices. More information about OVC anti-human trafficking efforts is available here: <http://ovc.ncjrs.gov/humantrafficking/lawenforcement.html>. Information about OVC training and grant opportunities is available at: https://www.ovcttac.gov/views/Resources/dspResources_Org.cfm. The Department's Civil Rights Division Human Trafficking Prosecution Unit (HTPU) also provides advanced capacity-building and training programs on trauma-informed, victim-centered best practices in the investigation and prosecution of human trafficking cases and the stabilization of human trafficking victims. These programs include intensive, week-long, interdisciplinary trainings for law enforcement agents, prosecutors, law enforcement victim-witness coordinators, and non-governmental victim advocates on stabilizing traumatized victims, earning the trust of traumatized victims of labor trafficking and sex trafficking, and overcoming challenges to securing the cooperation of reluctant victims and empowering them to become active participants in the criminal justice process. These programs continue to enhance law enforcement capacity to empower victims of human trafficking—many of whom are women and girls with histories of poverty, dislocation, physical and sexual abuse, and cultural isolation—to report their victimization and play an active role in bringing human traffickers to justice. More information about HTPU is available at: <http://www.justice.gov/crt/human-trafficking-prosecution-unit-htpu>.

⁵¹ Additional information about the U non-immigrant status (also known as the "U visa") is available at: <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>. Victims of human trafficking also may be eligible for T non-immigrant status. See <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

Principle 5

*Refer Victims to Appropriate Services*⁵²

Officers should take steps to address the medical, emotional, safety and other needs of victims of sexual assault and domestic violence at the time they report an incident or make a complaint.

Principle in Practice

Law enforcement officials should make timely and appropriate referrals to medical professionals for victims of sexual assault or domestic violence.⁵³ Law enforcement policies and trainings should direct officers to, at the earliest point possible, offer to contact a victim advocate and refer victims of sexual assault or domestic violence to resources, such as rape crisis centers, domestic violence shelters or legal services organizations. At a minimum, officers should ensure that victims are aware of these services.⁵⁴ It is important for law enforcement to know and have relationships with community-based victim advocacy organizations, including any local culturally-specific organizations or other organizations that focus on underserved or marginalized populations. Law enforcement agencies seeking to identify victim service providers in their jurisdictions should contact their state domestic violence and sexual assault coalitions. Contact information for these organizations is available on the website of the department's office on violence against women at <http://www.Justice.Gov/ovw/local-resources>.

Principle 6

*Properly Identify the Assailant in Domestic Violence Incidents*⁵⁵

It is essential that officers are trained to identify the predominant aggressor when responding to domestic violence incidents, and make arrests accordingly. Law enforcement officials should be aware of the potential for abusers to report domestic violence complaints preemptively, claiming that they themselves are the victims of domestic violence. The following example illustrates a failure to pursue information that would help identify the predominant aggressor:

Example: An adult male calls 911 to report that his girlfriend assaulted him. When a police officer arrives, he sees the male caller with a deep scratch on his face. The female, while visibly shaken, appears to be physically unharmed, although she claims that her boyfriend tried to strangle her. Without further inquiry, the police officer files a report, citing the female as the predominant aggressor, and arrests her.

⁵² *Missoula FL*, *supra* note 28, at 10-11; *NOPD FL*, *supra* note 28, at 43, 50-51.

⁵³ *IACP Sexual Assault Incident Reports*, *supra* note 29, at 4-5; *IACP Model Policy on Investigating Sexual Assaults*, *supra* note 29, at 2-3.

⁵⁴ *NOPD CD*, *supra* note 33, at 55.

⁵⁵ *NOPD FL*, *supra* note 28, at 48.

Principle in Practice

Law enforcement agencies should review and revise their policies and procedures as necessary, and provide specialized training to ensure that officers are capable of properly identifying the predominant aggressor.⁵⁶ Specifically, officers should be trained to consider and balance the following factors, among others, to determine whose account is corroborated by the evidence, but without relying on any one of these factors alone as determinative:⁵⁷

- A documented or undocumented history of domestic violence;
- Whether a party to the incident may have a motivation to be untruthful;
- Whether someone may have been injured as a result of the other person engaging in self-defense;
- The existence of past or present protective orders; and
- Criminal histories involving violence to others.

There may be instances where law enforcement officers respond to reports of sexual assault or domestic violence and find that they are unable to communicate with both parties. This may be because one party does not speak or understand English proficiently, or because one party has a hearing or speech disability. In these circumstances, officers should ensure that they are able to adequately communicate with both parties before determining the predominant aggressor.

Law enforcement agencies also should discourage dual arrests in domestic violence cases, wherever feasible as well as issue policies that delineate the limited circumstances under which dual arrests are permissible.⁵⁸ Arresting the wrong party or both parties increases the likelihood that the offender will act again, and discourages the victim from reporting future incidents. Further, dual arrests often result in children being taken into the custody of child protective services and may diminish children's trust in law enforcement.

⁵⁶ *NOPD CD*, *supra* note 33, at 58.

⁵⁷ *IACP Domestic Violence Issues Paper*, *supra* note 38, at 4-5.

⁵⁸ *NOPD CD*, *supra* note 33, at 58; *IACP Domestic Violence Issues Paper*, *supra* note 38, at 4; *IACP Model Policy on Domestic Violence*, *supra* note 29 at 5; Barbara J. Hart, *Arrest: What's the Big Deal*, 3 Wm. & Mary J. Women & L. 207, 207-210 (1997) (noting the importance of first responders being cognizant of the goals of domestic violence intervention because their perspective will influence all major decisions, including whether to arrest one or both parties).

Principle 7

*Hold Officers Who Commit Sexual Assault or Domestic Violence Accountable*⁵⁹

Law enforcement agencies strive to be seen by their communities as credible and legitimate authorities in enforcing the law and protecting public safety. If a law enforcement agency does not fully investigate reports of sexual assault, sexual misconduct and domestic violence perpetrated by its own officers, or fails to appropriately discipline officers when those allegations are substantiated, the legitimacy of that law enforcement agency may be called into question. This, in turn, may make victims more reluctant to report crimes of sexual assault and domestic violence, which undermines public safety by increasing the risk of future harm from offenders who are not held accountable by the criminal justice system.

Principle in Practice

To maintain public confidence, law enforcement agencies should develop policies and practices aimed at preventing and addressing on-duty sexual harassment and assault of members of the public by law enforcement officers. These policies should provide that, at a minimum, the agency will open an internal investigation whenever an allegation is made that an officer has engaged in sexual abuse, sexual misconduct or domestic violence, irrespective of whether the officer was acting in his or her official capacity at the time.⁶⁰ In addition to opening an internal investigation, law enforcement agencies should refer allegations of officer misconduct involving potential criminal activity to the local prosecutor's office.⁶¹

⁵⁹ *NOPD FL*, *supra* note 28, at 92; Int'l Ass'n of Chiefs of Police, *Model Policy on Domestic Violence by Police Officers* 1 (2003) [hereinafter *IACP Model Policy on Domestic Violence by Police Officers*], available at <http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/DomesticViolencebyPolicePolicy.pdf>.

⁶⁰ *IACP Model Policy on Domestic Violence by Police Officers*, *supra* note 59, at 2-3; Int'l Ass'n of Chiefs of Police, Nat'l Law Enforcement Policy Ctr., *Domestic Violence by Police Officers Concepts and Issues Paper* 2, 6-7 (2003) [hereinafter *IACP Domestic Violence by Police Officers Issues Paper*], available at <http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/DomesticViolencebyPolicePaper.pdf>.

⁶¹ *NOPD CD*, *supra* note 33, at 101-102; *IACP Model Policy on Domestic Violence by Police Officers*, *supra* note 59, at 3, 7; *IACP Domestic Violence by Police Officers Issues Paper*, *supra* note 60, at 5, 9.

Principle 8

Main, Review and Act Upon Data Regarding Sexual Assault and Domestic Violence

Some law enforcement agencies may be under-investigating sexual assault or domestic violence reports without being aware of the pattern. For instance, in most jurisdictions, the reported rate of sexual assaults typically exceeds the homicide rate.⁶² If homicides exceed sexual assaults in a particular jurisdiction, this may be an indication that the agency is misclassifying or under-investigating incidents of sexual assault. Similarly, studies indicate that almost two-thirds to three-quarters of domestic violence incidents would be properly classified as “assaults” in law enforcement incident reports.⁶³ Therefore, if the ratio of arrest reports for lesser offenses (e.g., disorderly conduct) is significantly greater than that for assaults, this may indicate that law enforcement officers are not correctly identifying the underlying behavior – i.e., they are classifying serious domestic violence incidents as less serious infractions, such as disorderly conduct.⁶⁴

Principle in Practice

Law enforcement agencies should assess whether their jurisdictions are under-investigating sexual assault and domestic violence reports by examining their own jurisdiction’s crime statistics, including statistics on other violent crimes in that jurisdiction.⁶⁵ Law enforcement agencies should gather and maintain accurate data on sexual assault and domestic violence reports in order to conduct such diagnostic reviews.⁶⁶ Law enforcement agencies also should analyze such data in order to identify trends in the rates of sexual assault and domestic violence in their communities, to assess the effectiveness of their response to these crimes, and to make decisions about their response to and investigation of these crimes. For example, a law enforcement agency might rely on data on sexual assault and domestic violence reports to determine whether it has an appropriate number of officers assigned to handle crimes of sexual assault and domestic violence and to determine the appropriate level of specialized training about sexual assault and domestic violence for its officers. Collecting, analyzing and acting upon data is key to ensuring that law enforcement agencies are operating lawfully and effectively.

⁶² FBI Crime in the United States 2013, Uniform Crime Reports online Table 7, available at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/7tabledatadecpdf/table_7_offense_analysis_united_states_2009-2013.xls (last visited Oct. 2, 2015) (showing that for 2013, there were 14,196 murders nationwide; by comparison, there were 108,612 rapes); FBI, Crime in the United States 2013, Uniform Crime Reports online Table 16, available at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-16/table_16_rate_by_population_group_2013.xls (showing that in 2013, the rate of murder and nonnegligent manslaughter per 100,000 inhabitants was 4.6, while the rate of rape per 100,000 inhabitants was 39.8).

⁶³ Klein, *supra* note 22, at 9 (citing multiple studies).

⁶⁴ *Id.*

⁶⁵ *NOPD CD*, *supra* note 33, at 54-60.

⁶⁶ *Missoula MOU*, *supra* note 29, at 10-11; *NOPD CD*, *supra* note 33, at 57; *IACP Model Policy on Domestic Violence*, *supra* note 44, at 2-3.

III. Relevant Federal Law

Gender bias in the law enforcement response to sexual assault and domestic violence can make it more difficult to determine whether a crime occurred and more difficult to hold perpetrators accountable. While many in law enforcement are effectively conducting such investigations, by identifying practices that may reflect or contribute to gender bias in policing, and describing a set of basic principles that can help to prevent such bias, this guidance is intended to help LEAs improve their ability to effectively address sexual assault and domestic violence. Moreover, as laid out below, the U.S. Constitution and various federal laws prohibit law enforcement agencies from discriminating – including on the basis of gender – in the discharge of their duties. The department outlines these legal principles to help LEAs further understand the source of their duty to eliminate policing practices that may be biased. LEAs that integrate the basic principles described in this guidance into their policies, trainings and practices will be able to respond to allegations of sexual assault and domestic violence more effectively and will more readily fulfill their own legal obligations.

U.S. Constitution

The Equal Protection Clause of the U.S. Constitution prohibits discriminatory enforcement of the law.⁶⁷ Discriminatory policing occurs when police officers and departments selectively enforce the law—or fail to enforce the law—based on characteristics such as race, color, national origin, sex or religion.⁶⁸ Denying police services to some persons or communities due to bias or stereotypes related to these characteristics is a form of discriminatory policing. According to the Supreme Court, the 14 Amendment “prohibits the states from denying to all persons within its jurisdiction the equal protection of the laws. Denying includes inaction as well as action, and denying the equal protection of the laws includes the omission to protect.”⁶⁹ Many courts have extended this principle to a law enforcement agency’s under-enforcement of crimes that disproportionately affect women, where it is established that the agency has a policy, practice or custom of intentionally providing

Whren v. United States, 517 U.S. 806, 813 (1996) (noting that the Equal Protection Clause is the constitutional basis for objecting to intentionally discriminatory applications of the law); *DeShaney v. Winnebago County Dep’t of Social Servs.*, 489 U.S. 189, 197 n. 3 (1989) (noting that, pursuant to the Equal Protection Clause, state executive and law enforcement officials may not “selectively deny . . . protective services to certain disfavored minorities.”); *Elliot-Park v. Manglona*, 592 F.3d 1003, 1007 (9th Cir. 2010) (Equal Protection Clause prohibits law enforcement from intentionally discriminating in the provision of any services to any degree) (9th Cir. 2010); *Estate of Macias v. Ihde*, 219 F.3d 1018, 1019, 1028 (9th Cir. 2000) (in case alleging “inferior police protection on account of status as a woman, a Latina, and a victim of domestic violence,” holding that there is an equal protection right to have law enforcement services administered in a nondiscriminatory manner); *Pariseau v. City of Brockton*, 135 F. Supp. 2d 257, 262 (D. Mass. 2001) (“[A]lthough there is no constitutional right to police protection, law enforcement officials may not selectively deny protective services based on such invidious classifications as race, gender and religion.”) (citing *Hayden v. Grayson*, 134 F.3d 449, 452, 453 n. 3 (1st Cir.1998)).

Id.

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Bell v. Maryland, 378 U.S. 266, 310 n. 31 (1964) (Goldberg, J., concurring) (internal citation omitted).

⁶⁹

unequal protection to community members on the basis of sex, in the form of failing to respond with equal effort to victims of those crimes than to victims of other comparable crimes.⁷⁰

The Due Process Clause of the U.S. Constitution also prohibits discriminatory policing. Due Process violations occur when law enforcements' affirmative conduct creates or increases the risk of private violence, which increases the danger to the victim.⁷¹

Safe Streets Act – 42 U.S.C. § 3789d

Discriminatory policing also is prohibited under the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), which provides that “[n]o person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in

⁷⁰ In evaluating equal protection claims regarding under-enforcement of crimes that disproportionately affect women, courts consider whether: (1) the jurisdiction has a policy or custom of providing less protection to victims of those crimes than they do to other crimes; (2) whether gender discrimination was a motivating factor in providing less protection; and (3) whether the policy or practice caused the plaintiff injury. *See, e.g., Soto v. Flores*, 103 F.3d 1056, 1066 (1st Cir. 1997); *Watson v. City of Kansas City*, 857 F.2d 690 (10th Cir. 1988); *Hynson v. City of Chester*, 864 F.2d 1026, 1031 (3rd Cir. 1988). Importantly, a discriminatory purpose need not be the only motivation for an agency's policy or practice. *Vill. Of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977). Courts will consider the totality of the circumstances and consider factors that indirectly indicate an intent to discriminate, including discriminatory impact. *Id.* Certain contemporaneous actions or statements by police officers may be sufficient to establish discriminatory intent. *See, e.g., Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 701 (9th Cir. 1990) (finding officer's alleged statement, that he did not blame plaintiff's husband for hitting her because she was “carrying on,” strongly suggested discriminatory intent and an animus towards abused women).

⁷¹ *See, e.g., Okin v. Vill. of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 429-430 (2d Cir. 2009) (finding that a reasonable fact-finder could infer that the police affirmatively encouraged a man's domestic violence when police engaged in casual, friendly conversation with the alleged abuser during their response to the victim's complaint, and otherwise communicated that the alleged abuser's conduct would go punished); *Phillips v. County of Allegheny*, 515 F.3d 224, 236-237 (3d Cir. 2008) (police providing individual with confidential information that permits that individual to harm another may give rise to a due process violation under the “state-harm” doctrine); *Freeman v. Ferguson*, 911 F.2d 52, 54-55 (8th Cir. 1990) (noting that there is a “possibility that a constitutional duty to protect an individual against private violence may exist[s] in a non-custodial setting if the state has taken affirmative action which increases the individual's danger of, or vulnerability to, such violence beyond the level it would have been at absent state action”); *Smith v. City of Elyria*, 857 F. Supp. 1203, 1210 (N.D. Ohio 1994) (finding facts sufficient to support a due process claim, where, among other things, police officers responding to domestic abuse call told the alleged abuser to throw his clothing back inside the house if the alleged victim threw it out).

part with funds made available under this chapter.”⁷² The implementing regulation of the Safe Streets Act prohibits program recipients from “utiliz[ing] criteria or methods of administration which *have the effect* of subjecting individuals to discrimination.”⁷³ When a law enforcement agency’s handling of sexual assault or domestic violence cases has an unnecessary disparate impact on women, it violates the Safe Streets Act and its implementing regulations, even where the discrimination is not intentional, unless the agency can show that the discriminatory impact is necessitated by some legitimate law enforcement or other purpose.

Violent Crime Control and Law Enforcement Act of 1994 - 42 U.S.C. § 14141

The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 prohibits law enforcement officers from engaging in a pattern or practice of policing that violates either the Constitution or federal laws. Under Section 14141, it is unlawful for law enforcement agencies, including prosecutorial offices, to violate the Constitution or any other federal statute, including, for example, the Civil Rights Act of 1964 and the Americans with Disabilities Act.

Violence Against Women Reauthorization Act of 2013 – Pub. L. No. 113-4

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) expanded prior federal law addressing domestic violence, dating violence, sexual assault and stalking. VAWA 2013 reauthorizes critical grant programs created by the original Violence Against Women Act and subsequent legislation, establishes new programs and strengthens civil rights protections. As a result of VAWA 2013, VAWA grants now contain a condition that prohibits discrimination in any program or activity funded in whole or in part with funds made available under VAWA, or other funds administered by the Office on Violence Against Women, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation or disability. 42 U.S.C. § 13925(b)(13).

⁷² 42 U.S.C. § 3789d(c)(1) (2006).

⁷³ 28 C.F.R. § 42.203(e) (2012) (emphasis added). *See also United States v. Virginia*, 620 F.2d 1018, 1024 (4th Cir. 1980) (Safe Streets Act requires showing that defendants' discriminatory employment practices had an adverse impact on female job applicants, not proof of intentional discrimination, before defendants must demonstrate the challenged practices have a necessary relationship to the job).

IV. Additional Resources

The department has additional resources to further guide law enforcement agencies' responses to reports of sexual assault and domestic violence in the attached appendix, as well as on its website at www.justice.gov/ovw/identifying-and-preventing-gender-bias. These materials include: guidance setting forth best practices on law enforcement responses to sexual assault and domestic violence from national law enforcement and prosecutors' associations; technical assistance documents developed by the department and its grantees about sexual assault, domestic violence, and trafficking in persons; letters of findings that the department has issued after conducting civil rights investigations of law enforcement agencies, whose policing practices were affected by gender bias; negotiated agreements that have resulted from these civil rights investigations; and a sample memorandum of understanding from the White House Task Force to Protect Students from Sexual Assault, aimed at preventing and responding effectively to sexual assaults at colleges and universities. These resources also contain sources for training opportunities for local law enforcement staff. Law enforcement agencies who desire additional technical assistance on how to eradicate gender bias in law enforcement should contact the Office on Violence Against Women by phone at (202) 307-6026 or email at ovw.info@usdoj.gov.

For ease of further dissemination, this guidance is available at the following website link: www.justice.gov/ovw/identifying-and-preventing-gender-bias