

DATE: February 27, 2007

TO: Members of the Common Council

FROM: Noble Wray Chief of Police

RE: Sensitive Crimes Interview Report

Last year, with input from the Madison Police Department Management Team, we created “Values of Trust-Based Policing.” The first value identified was that of “Trust Challenges.” We recognize that trust gaps do at times exist and that it is our responsibility to participate in dialogue that promotes collaborative relationship building to close those trust-gaps. This report allows us an opportunity to do just that. One of our goals is to build community trust in the Madison Police Department. Having said that, we recognize that victims of domestic and sensitive crimes are often hesitant to report incidents to the police. We understand that there are many reasons why victims hesitate to come forward to law enforcement, and we are committed to fostering a community atmosphere that encourages reporting. At its core, trust-based policing is cultivated through communication and experiences that demonstrate the value we place in providing quality, compassionate service.

In keeping with our philosophy of trust-based policing, we begin with the essential foundation of recruiting and hiring the best potential candidates available. Relevant to the discussion of internal practices in place specific to interview techniques, are the efforts our department undertakes to train and prepare our employees for the difficult situations and investigations they will encounter during their careers. We emphasize the importance of communication skills throughout the hiring process as well as the Recruit Academy training. Before new officers “hit the street” and begin to investigate crimes and interview victims, they must successfully complete the Madison Police Recruit Academy wherein officers receive extensive training in such areas as law, crisis intervention, firearms, and use of community resources. This initial training lasts seven months, and is one of the most comprehensive in the country. It is conducted in Madison under the direct supervision of the Madison Police Department Training Staff. It is not unusual for our newly hired officers to have widely varying technical and non-technical skills as it relates to law enforcement experience and expertise. Our goal is to provide a base of training which builds on each individual's unique body of knowledge and expertise. Throughout this process officers are tested and evaluated on their performance.

Upon completion of the Academy and the Field Training Program, which involves months of training and assessment in the field under the supervision of a veteran police officer, probationary officers are assigned into Patrol. All commissioned officers continue to receive a minimum of twenty-four hours of state certified in-service training annually. This training, like the Pre-service Academy focuses on a number of topics that may include legal updates, tactical training, and updates on specific MPD protocol and procedure. Included with this report is an attachment that details the sensitive crime curriculum taught to new MPD recruit officers. (See APPENDIX A.)

Later in their career, some officers with a minimum of five years of experience elect to pursue promotion to a detective position. Obviously, the rank of detective is a more specialized position responsible for in depth investigation of certain crimes. Officers who complete the promotional process and are promoted to detective must first attend and successfully complete the Investigative Academy. Within a 40-hour block of instruction is a four-hour session devoted to the investigation of sexual assault investigation. Veteran detectives present subject matter that includes victim dynamics, medical and forensic issues, as well as techniques for interviewing. (See APPENDIX B)

In addition to technical aspects trained in the Investigative Academy, new detectives participate in the Detective Field Training Program. Investigative techniques, protocols, and procedures are shared by veteran detectives in regards to practical situations and experiences.

Detectives are assigned by specialty to investigate the following types of crimes: general crime, property crimes, financial crimes, person's crimes, and sensitive crime. Although budget constraints may limit training opportunities, there are specialized training opportunities that detectives can attend allowing them to gain further knowledge and expertise in their specific area of investigation. In addition to the mandated training, a great deal of resources are spent to assure that those detectives assigned sensitive cases receive further training in the most up to date information in their field. A number of MAPD Detectives travel throughout the State and train personnel from other agencies in regards to their specialty. Detectives are supervised by Lieutenants who assign cases for investigation, deal with personnel issues, manage a particular specialty as described above, represent MPD in various committees and projects, and act as a resource for detectives within their district. At times detectives will discuss various investigative strategies with their assigned lieutenants on specific cases. The lieutenants also review all case reports submitted by their detectives.

This report is focused upon the interview of crime victims, and not suspects. The interview of crime suspects is governed by the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. Any police interview must be analyzed under all three amendments – each of which is separate and distinct. The Fifth Amendment protects citizens from compelled self-incrimination. This has resulted in the most familiar restriction on police interviews- Miranda. The Fourteenth Amendment requires that confessions be voluntary. The Sixth Amendment provides for the right to counsel for criminal defendants. The amendments encompass separate and specific requirements, and every confession must be analyzed under each. In some cases there exists circumstances in which the line between suspect and victims can become grey, and this can present a significant challenge to any investigator. Although trickery and ruses are constitutionally allowed, the Madison Police Department does **not** regularly employ these tactics with crime victims.

Statements obtained in violation of the Fifth, Sixth or Fourteenth Amendment will typically not be admissible in a criminal prosecution against the individual from whom the statement was obtained. There are, however, other remedies available to individuals who believe they have been treated inappropriately. These individuals might pursue civil actions against the City or individual officers.

There is also internal MPD review which is the responsibility of the Professional Standards Lieutenant assigned to that position. He or she either investigates or designates review of misconduct regarding MPD employees. Completed reports are subsequently turned over to the Chief for review and action. Wisconsin State Statute Chapter 950 also recognizes the "Rights of Victims and Witnesses of Crime," and has established a Crime Victims Right's Board which may investigate violation of rights to victims as outlined in the statute.

The job of the investigating officer or detective is to determine truth. Truth is described by Webster's dictionary as, "a fact that has been verified." Madison Police Officers are taught to be constitutional officers of the court, and their role is that of fact finder, during any investigation. There are many obligations in sexual assault investigations; the responsibility to victim(s) of the assault, the safety of the community, and preserving the rights of the accused.

There are no hard and fast rules which will guide an investigator to the truth, but the experienced investigator will generally find it by questioning all parties involved and closely scrutinizing the circumstantial and physical evidence related to the offense. Investigators have an obligation to discover the truth, protect the community, and reduce the possibility of wrongful accusation that can impugn the reputation of a wrongfully accused person.

Investigation of sensitive crimes and domestic crimes are inherently difficult, often volatile, and can be politically charged. Some cases are very complex, and the police role must balance the rights of the victims, rights of the accused, and a community expectation of safety. Sensitive Crimes Detectives meet monthly with Rape Crisis Center Advocates to discuss cases and develop best practices for future collaboration. An investigation can be rewarding for officers when suspects are brought to justice. However, dealing with these types of cases on a daily basis and the trauma experienced by victims of sensitive crimes can also be frustrating, exhausting, and demoralizing to officers and detectives alike. One of the challenges investigators often confront in the course of their investigations is the reality that people interviewed (victims, witnesses, and suspects) are often untruthful or not completely forthcoming with information. False statements made may occur in any type of police investigation and present impediments to our stated goal of ascertaining the truth to the best of our ability. We understand that there are a number of reasons why people lie or withhold information in sensitive crimes cases and investigators are sensitive to the dynamics as well as physical and emotional responses that can be experienced by a victim of a domestic or sensitive crime. When false reports or even false statements by victims occur, it may create a significant drain on police resources, take personnel away from the investigation of other incidents **and** of greatest concern, may identify an innocent person as a potential sex offender or implicate an innocent person for a crime he/she may not have committed.

We recognize that no crime, incident, victim, witness, or investigator is the same. Further, we believe the Department policies in place that deal with sensitive crime investigation are progressive and fair. We also recognize the importance of conducting thorough, compassionate and impartial interviews when dealing with all victims.

It is important to remind investigators that just because a case cannot be prosecuted it does not mean an incident did not occur. We teach our personnel to be sensitive,

respectful, and mindful of this issue when dealing with all complainants who come forward to report incidents.

A set of guidelines has been created as a philosophical and operational framework to all commissioned personnel to provide direction when conducting interviews with crime victims. In the majority of cases these guidelines are followed daily, yet we believe it is important to codify these practices within MPD policy. These guidelines will be added to the MPD Policy Manual under section 8-1400, "Investigations." (See APPENDIX C)

In 2005, the Wisconsin Supreme Court ruled that all custodial interrogations of juveniles must be recorded. Specifically, the court stated: "All custodial interrogation of juveniles in future cases shall be electronically recorded where feasible, and without exception when questioning occurs at a place of detention." Act 60 incorporated this rule into statute. This rule is not limited to felonies and custodial interrogations related to misdemeanors must also be recorded. In addition, Statute 968.073(2) states that it is the policy of the State that all custodial interrogations of adults suspected of committing a felony be recorded. The recording can be audio, or both audio and video. Although the statute was not created and written to address the interview of crime victims, there is nothing within the MAPD draft policy that prohibits its use for that purpose. Depending upon circumstances and the case being investigated, it may be appropriate to utilize electronic recording for conducting interviews with crime victims and/or witnesses. Its use shall be determined on a case-by-case basis. (See APPENDIX D for electronic recording policy information)

Madison Police personnel investigate thousands of domestic and sensitive crimes annually. Many of these cases require hundreds of hours of investigative work, others require much less. We believe the community recognizes the importance of allowing investigator's some latitude in conducting difficult investigations. We also believe there is a public expectation that the police should confront false reporting and false statements when necessary. The utilization of deception or ruses during any investigation is a high-risk proposition. Although the topic is addressed within the Investigative Academy to our potential new detectives, the use of ruses and deception is **not** taught by trainers in this agency. It must be stated, that during these thousands of investigations, it is extremely rare for MPD personnel to utilize these techniques when investigating potential false reporting by alleged victims of sensitive crimes.

Although the use of ruse or deception techniques are seldom employed when conducting interviews of any crime victims, there may be situations in which their use is justified, reasonable and "expected" by the community. These situations might include the following scenarios:

- Independent witnesses contradict victim statements
- Forensic evidence contradicts victim statements
- There exists a threat to the community which must be resolved
- The "accused" is able to provide solid information that absolves himself/herself of the crime

This list is not exhaustive and suggests a limited number of reasons that investigators might ultimately opt to utilize a ruse. Obviously the goal of the investigator is to determine the truth. Most MAPD detectives will agree that confronting false statements or accusations with truthful facts is the most effective way to elicit honest statements. Yet investigations are fluid, often changing, and sometimes investigative latitude is necessary to determine the truth.

The last of the Guiding Principles created within this report states, “when dealing with crime victims, investigative techniques involving trickery and/or deception may only be utilized as a last resort when the integrity of the allegations is in serious doubt. That doubt may stem from investigative information provided from varied sources including victim statements, witness statements, suspect statements and forensic evidence.” This statement does not imply that these techniques will be used.

Many citizens and alders may not realize the level of cooperation and collaboration that takes place, often daily between the Madison Police Department and other agencies that deal with victims of crime and other individuals who may be facing life challenges. These other agencies include but are not limited to: Dane County Human Services, Rape Crisis, WCASA (Wisconsin Coalition Against Sexual Assault,) Safe Harbor, Project Respect, Joining Forces for Families, Unidos, Centro Hispano, Elder Abuse, Dane County DA Victim Witness Program, Dane County Mental Health, the SANE Program, and others. These continued relationships are critical for the success of our agencies as well as the individuals we serve.

I hope that this report will show our continuing commitment to improving upon our existing policies and procedures while providing quality service to the community. Although any agency must recognize there is room for improvement, I believe in our employees and training and am confident in the belief the Madison Police Department is fair and just with the daily interaction of our citizens. We believe this agency has developed a long history of recognizing the importance of treating all whom we contact professionally while respecting and maintaining their rights.

APPENDIX A

Madison Police Department Pre-Service Academy Sexual Assault Curriculum & Interview Curriculum

The MAPD Pre-Service Academy Curriculum is taught by a multi-disciplinary team of professionals including experts from The Rape Crisis Center (RCC), the Meriter Hospital Sexual Assault Nursing Program and veteran sensitive crimes detectives and police officers from the Madison Police Department. This team approach to training new recruits reflects the manner in which the above listed professionals work together in the community to serve victims/survivors of sex crimes and domestic violence. The multi-disciplinary approach to training officers and serving the community aides to insure a holistic approach to meeting the needs of the victim/survivors, while understanding the dynamics of victim/survivor's responses to trauma and the implications of victim/survivor's responses to gathering information and investigating a reported crime. This approach to training MPD officers also insures that all the professionals involved, including the advocates, health care and law enforcement are kept abreast of the most current methods, thus allowing for the best practices as they relate to the art and science of investigating sensitive crimes. Ultimately this allows for law enforcement to insure that we are meeting the needs of victim/survivors, protecting the rights of the accused and ferreting out the truth.

The MAPD Pre-Service Academy Curriculum begins with an overview of the 12 hours of Sexual Assault Crimes training they will receive over a two-day period. The curriculum is broken down as follows:

TOPIC	INSTRUCTOR	TIME
SEXUAL ASSAULT: MYTHS & STEREOTYPES	ADVOCATE: RCC (RAPE CRISIS CENTER)	1.5 HR
SEXUAL ASSAULT: STATISTICS	ADVOCATE: RCC	.5 HOUR
SEXUAL ASSAULT: VICTIM ISSUES: BARRIERS TO REPORTING	ADVOCATE: RCC	1 HOUR
SEXUAL ASSAULT: VICTIM TRAUMA RESPONSE	ADVOCATE: RCC	1 HOUR
FIRST RESPONDER: VICTIM CONTACT	DETECTIVE	1.5 HOURS
FIRST RESPONDER: INITIAL VICTIM STATEMENT TECHNIQUES	DETECTIVE, VETERAN OFFICERS, RCC	1.5 HOURS
FIRST RESPONDER: VICTIM INTERVIEW SCENARIO	DETECTIVE, RCC, VETERAN OFFICERS	2 HOURS
MEDICAL FORENSIC EXAMINATION & EVIDENCE COLLECTION	SEXUAL ASSAULT NURSE EXAMINER, DETECTIVE	2 HOURS
SUSPECT INTERVIEW & EVIDENCE COLLECTION	DETECTIVE, SEXUAL ASSAULT NURSE EXAMINER	1 HOUR

APPENDIX B

Madison Police Department Investigative Academy Sexual Assault & Interview Training Curriculum

The Madison Police Department Investigative Academy is open to Police officers who have had over five years of street experience. Officers attend the 40 Hour Investigative Academy for different reasons. Some attend in preparation for promotion to Detective, Investigator or Sergeant. Some attend to increase their knowledge base in the area of investigations.

The Investigative Academy is taught by professionals from many different areas in the criminal justice field such as; Forensic Scientist from the Wisconsin State Crime Lab, Prosecutors from the Dane County District Attorney's Office, Forensic Nurses and Veteran Detectives to list some. The Academy is lecture and scenario based and also includes hands on practical exercises. The information presented in the Academy goes beyond the First Responder training received at the Pre-Service Academy and provides attendees with advanced investigative skills and methods.

TOPIC	INSTRUCTOR	TIME
VICTIM DYNAMICS/ INTEVIEWING	DETECTIVE	1 HOUR
VICTIM INTERVIEW ISSUES: BARRIERS TO REPORTING	DETECTIVE	1 HOUR
MEDICAL/FORENSIC EVIDENCE INTERPRETATION	SEXUAL ASSAULT NURSE EXAMINER	1 HOUR
SUSPECT ISSUES & INTERVIEW	DETECTIVE	.5 HOUR
CASE MANAGEMENT	DETECTIVE	.5 HOUR

- We understand the value of including advocates to participate in this training and will seek further collaboration in future training.
- This APPENDIX represents only the minimal training received by new detectives in regards to interviewing and sensitive crime investigation. There is an expectation that detectives assigned to a sensitive crime specialty will receive further internal/external training as appropriate.

APPENDIX C

Guiding Principles for Conducting Interviews of Crime Victims

(To be included as MPD Policy 8-1400, under "Investigations")

The Madison Police Department believes that the rights of victims should be protected. Wisconsin State Statute 950.02 (a) 1. in part, defines a victim as " a person against whom a crime has been committed." Madison Police employees should exercise the following principles in regard to victims.

- Respond equally, respectfully, and compassionately to all victims/witnesses.
- Protect victims/witnesses from further victimization to the extent possible.
- Recognize the importance of referring complainants to other service representatives or advocates at the earliest appropriate point after victimization.
- Complete interviews in an ethical and fair manner while following legal and constitutional guidelines.
- Treat all those interviewed with respect and dignity while recognizing that developing trust can be an important component to the welfare of the complainant and successful outcome of the investigation.
- Remain patient and open minded while listening to victim/witness account.
- Utilize simple terminology appropriate to victim/witnesses age, sophistication, and intelligence level.
- Protect the confidentiality of the victim/witness information in as much as possible by law and policy.
- The duration of interviews will be generally dictated by the needs of the investigation. In reference to the duration, consideration should be given to such things as victim/witness fatigue, psychological trauma, medical needs, and victim advocacy rights.
- When dealing with crime victims, investigative techniques involving trickery and/or deception may only be utilized as a last resort when the integrity of the allegations is in serious doubt. That doubt may stem from investigative information provided from varied sources including victim statements, witness statements, suspect statements and forensic evidence.

APPENDIX D

12-600 RECORDING SUSPECT INTERVIEWS

OVERVIEW

The purpose of this policy is to establish guidelines for recording interviews of suspects. It is the policy of the Madison Police Department to use electronic data capture systems to provide accurate documentation of events, actions, conditions, and statements made during law enforcement interviews. The use of the electronic data capture system shall be limited to trained employees and be in accordance with applicable laws and Department policy.

WHEN RECORDING IS REQUIRED

All custodial interviews of adults suspected of committing a felony shall be recorded. All custodial interviews of juveniles shall be recorded when feasible, and without exception when questioning occurs at a place of detention. Any police facility, including Madison Police District Stations, the Juvenile Reception Center and any in-patient treatment facility, will be considered a “place of detention.” The Madison Police Department recognizes that in some circumstances, victim/witness statements may be electronically recorded. If electing to do so, officers shall adhere to the current policy and practices.

The recording may be audio, or both audio and video. Interviews requiring recording may occur in the field or in Madison Police Department facilities.

If a custodial interview of a juvenile occurs in the field and is not recorded, the officer shall document in a report the reason the interview was not recorded.

The law does not require that officers recording a custodial interview inform the subject that the questioning is being recorded. If asked, officers should ordinarily disclose whether recording is occurring.

Once a recording of an interview begins the recording should not be stopped. If a break in the interview occurs, record the time the break starts and the time the interview resumes. Any stopping or resuming of recordings shall be articulated in the officer’s report.

Exceptions:

The following are exceptions to the recording requirements listed above:

1. The suspect refuses to provide a statement if it is recorded. The officer must record or obtain written documentation of the refusal.

2. The statement was part of routine prisoner processing.
3. The recording equipment did not function properly.
4. The statement was made spontaneously and not in response to questioning.
5. Exigent circumstances prevented recording or made recording not feasible.
6. The officer, at the outset of the interview, reasonably believed that the offense being investigated was not a felony.

Custodial interviews taking place in an MPD facility can be recorded using the Dictaphone system (with either a handheld walkabout or a landline speakerphone) or using the electronic video and audio data capture systems available in the interview rooms. Custodial interviews conducted within a squad car can be recorded using the in-car data capture system. Officers shall refer to MPD Policy 12-100 In-Car Data Capture System.

IMPLEMENTATION AND CARE OF DATA CAPTURE EQUIPMENT

1. The Chief of Police or his/her designee shall authorize MPD designated interview rooms to be equipped with electronic data capture systems. An electronic data capture system shall consist of a camera, control panel and monitor unit, audio transmitter and microphone, digital recorder/CPU, and data transfer components.
2. The proper care of electronic data capture equipment installed in an interview room is the responsibility of the employee operating the equipment.
 - a. Employees shall operate the equipment according to MPD training.
 - b. Employees shall not remove, dismantle or tamper with electronic data capture equipment.
 - c. Prior to each interview, employees shall ensure that the electronic data capture equipment is functioning correctly by completing the following procedures:
 - i. Confirm system power-up.
 - ii. Confirm the correct date and time on the monitor.
 - iii. Confirm video and audio recording.
 - d. Employees shall report any problems with the electronic data capture system by:

- i. Sending an e-mail to the Information Systems helpdesk, helpdesk@cityofmadison.com AND;
- ii. Completing an Electronic Maintenance Request form and distributing appropriate copies.

DATA TRANSFER AND DOCUMENTATION

1. Recordings must be transferred when the interview is completed.
2. If the data transfer process requires the employee to be on overtime, the employee shall contact a supervisor or the OIC to obtain approval for overtime.
3. Employees shall document within their official reports that electronic data recordings were made. This documentation shall include:
 - a. Date, time, and location of recording.
 - b. Whether the recording was of an adult or juvenile or of a sensitive nature.
 - c. Officers and Detectives shall complete a typed report summarizing the important points of the interview.
 - d. Officers and Detectives shall use the following procedures when completing their typed or dictated reports.
 - i. When utilizing the Dictaphone system: Recorded interviews shall be listed as "Report Type 5" and should be routed to "Basket 7".
 - ii. When utilizing the video and audio data capture system in the interview rooms: For video and audio recordings to be saved as evidence, the following paragraph shall be inserted into the officers/detectives official typed report:

"On (date and time) I was utilizing (location) interview room which is equipped with a video and audio data capture system, interviewing (name of subject). The data captured should be saved as a(n) (adult/juvenile/sensitive crime) interview.
4. Supervisory personnel who manage employees using electronic data capture systems shall ensure that:
 - a. Employees follow established procedures for the use and operation of electronic data capture systems, handling of video/audio recordings, and the completion of data transfer and documentation.

- b. Repairs and replacement of damaged or nonfunctional in-car video equipment is reported to the City of Madison IS helpdesk, and a Vehicle Maintenance Report form is completed.

DATA MANAGEMENT

1. The electronic data capture system video and audio recordings shall be safeguarded similar to other forms of evidence.
 - a. Evidentiary video and audio recordings submitted by officers will be maintained on a secure computer server, within City of Madison Information Services Operations Center, until the case has been adjudicated, or otherwise disposed of. Designated members of the Forensic Services Unit will be responsible for system administration of all captured and stored video and audio recordings. Disposition of evidentiary video and audio recordings will be completed in accordance with existing department policy for the handling and disposition of evidence.
 - b. Non-evidentiary video and audio recordings will be maintained for 180 days after the date of their creation.
 - c. Data recordings that are the subject of a denied open records request must be maintained until the dispute between the department and those requesting the recordings are resolved.
 - d. Data recordings may be placed on an administrative hold, preventing their disposal, by the Chief of Police or his/her designee, the Professional Standards Lieutenant or a commanding officer. This administrative hold may be discontinued by written request from the Chief of Police, his/her designee or the Commanding Officer responsible for the employees or activity involved in the recording.
 - e. If upon receipt of a complaint concerning the conduct of an employee, the supervisor taking the complaint determines the event has been recorded, that information shall be forwarded to the District Commanding Officer, and the Professional Standards Lieutenant with the details of the complaint.
2. Only designated members of the Forensic Services Unit shall have access to the original electronic data capture system digital file. All requests for digital copies shall be submitted on an Internal MPD “on line” Lab Request Form.

Digital copies for purposes not associated with the investigation or prosecution of a violation of law will only be made and or created subject to one of the following:

- a. Permission from the Chief of Police or his/her designee;
 - b. Request by a Commanding Officer;
 - c. Request by the Professional Standards Lieutenant or his/her designee;
 - d. Required by court order;
 - e. An approved Open Records request.
3. All electronic data capture system digital video and audio recordings are subject to Wisconsin Open Records Law.