

Enhancing Law Enforcement-Prosecutor Communication: Establishing a Statement of Understanding for Case Submittal

Law enforcement and prosecutors work together to build criminal cases that bring violent offenders to justice. A well-established, collaborative relationship between detectives and prosecutors benefits both parties, as well as cases and victims. Building upon that relationship to enhance professional effectiveness and maximize the potential for success requires regular communication and a clear understanding of expectations.

Detectives and prosecutors should communicate on a regular basis to discuss cases and when critical issues arise. Formal mechanisms should be in place to facilitate communication. When law enforcement submits cases for review, it is important that expectations of both law enforcement and prosecution be clearly understood and mutually accepted. This resource provides law enforcement and prosecutors with an example of a memorandum of understanding to establish shared standards about the case submittal process and avoid misunderstanding or conflict when cases are submitted for review and prosecution.

It is important for detectives and prosecutors to have direct and open conversations about expectations as well as legal and professional requirements. Law enforcement, for example, should consult with the prosecutor about issues of the statute of limitations and issues of pre-accusatorial delay. Some investigative requirements may vary among cases; however, it is essential to have a mutual understanding of the fundamental prerequisites, investigative steps that need to take place before cases are submitted, review timeline, and criteria used to evaluate cases. Cold case sexual assaults are unique in many ways and present challenges caused by the passage of time, availability of witnesses for interview, and evidentiary issues. Detectives and prosecutors' work are interdependent as well as professionally independent; therefore, establishing clear expectations is critical.

Prosecutors rely on detectives to conduct thorough investigations and collect probative evidence that establishes the elements of the crime to create a strong court case. In turn, detectives expect prosecutors to bring their investigative efforts to fruition, file charges, and try cases. Not all cases will go to trial; however, these cases should still be resolved to the satisfaction of the victim, prosecutor, and law enforcement.

Sexual assault is a complex crime to investigate and prosecute, and both the detectives and prosecutors face challenges in their work. Detectives' challenges include working with victims in crisis; locating suspects, witnesses, and evidence; managing large caseloads and short investigative timeframes; and intimate exposure to stories of sexual violence. If there are fewer arrests than anticipated and comparatively lower prosecution rates for sexual assault, detectives who invest their time on cases can be discouraged. Prosecutors equally face challenges, including working with victims who are impacted by trauma, responding to evidentiary issues and large caseloads, and advancing the case in litigation. Prosecutors also have a duty, consistent with ethical standards, to proceed with cases that can be proven beyond a reasonable doubt. Although detectives must have probable cause for arrest, building a case to prove the elements of the crime beyond a reasonable doubt is a much higher bar. Positive communication between detectives and prosecutors about key legal requirements is fundamental to the advancement of a case.

Enhancing Understanding

Prosecutors and detectives understanding one another's roles, responsibilities, and expectations is important; a shared understanding can help strengthen professional relationships. Opportunities for candid and open conversation between individuals and agencies may help break down perceived and often incorrect assumptions. Depending upon jurisdictional size and needs, it may also be important for leadership within both agencies to develop mutually agreed-upon protocols and processes for how cases should be submitted for review; what could be appropriate for charging; and mechanisms for meeting and consulting with prosecutors

on a case or, in some circumstances, before a case is unfounded. Following are some procedures that can be discussed and reviewed between agencies:

- ◆ How and when are cases submitted for prosecutor review, including cases submitted for charging and cases that may be unfounded?
- ◆ What investigative work or evidence is expected before a case is presented for review?
- ◆ How will prosecution decisions be communicated to victims?
- ◆ How will requests for further investigation be communicated to detectives?
- ◆ What is the expected timeframe for review after a case is submitted to the prosecutor?
- ◆ How will the prosecutor and detective and/or law enforcement agency and prosecutor's office resolve any issues with decisions?

Once these discussions take place and procedures are mutually agreed upon, a memorandum or statement of understanding can be the next step. A statement of understanding can solidify expectations and ensure agreements are sustained during any periods of personnel transition. The following pages provide an example statement of understanding. After meetings between the police department's sex crimes unit and county attorney's office on a cold case sexual assault project, the statement of understanding was established to provide guidance to detectives and prosecutors, and to address and resolve conflicts as cases are submitted for review.

Memoranda of understanding, if pursued, should ensure that all information from case files is presented for review, including but not limited to police reports; statements (written, recorded and transcribed); 911 call recordings and transcripts; photographs; diagrams; medical records; and crime laboratory submissions and reports. The agreement should outline any concerns or questions regarding the sufficiency of evidence, testing or retesting of evidence, applicable statute of limitations, and pre-indictment or pre-accusatorial delay issues. It is also imperative that all contact with the victim—including considerations for notification, a re-interview, and case updates—be discussed by the investigator and prosecutor in consultation with all members of the multidisciplinary team.

Statement of Understanding

County Attorney's Office

Police Department Sex Crime Cold Case Team

[This document is an example created from a memorandum of understanding developed by a police department and county attorney's office. It is not meant to be replicated exactly; portions of the memorandum reflect local criminal justice procedures and statutes. If replicated, this document should be updated based on an agreement between law enforcement and prosecutors and also should reflect local criminal justice proceedings. Sections can be added as agreed upon by the partnering agencies.]

The [police department name] Police Department has established a Sex Crimes Cold Case Team consisting of [number] detectives and [number] crime analyst(s). These detectives have been assigned the task of identifying, re-investigating and attempting to resolve the current—and any future—cold case sex crimes within the [police department name] Police Department.

The [county name] County Attorney's Office is the prosecutorial body for these cold cases. Their office has identified and designated specialized prosecutors (dependent on continued resources) in the Sex Crimes Unit that have been tasked with prosecuting these cases.

Detectives from the police department Sex Crime Cold Case Unit met with representatives from the county attorney's office. The purpose of this meeting was to discuss cold case sex crime investigations, including strategies, guidelines, and directions for the prosecution of these cases. The following listed categories and related items were discussed. These items were seen, at a minimum, as standard operating procedure for the investigation and successful prosecution of these cases.

STATUTE OF LIMITATIONS:

[In the bulleted list of this section, insert relevant guidelines for statute of limitations related to the types of offenses that will be brought to the county attorney. The example language draws from example state statutes.]

This section helps establish and/or clarify the application of the various statutes involving the prosecution of sex crimes. Detectives should ensure that they are familiar with the statute of limitations on these cases. Each case may have independent issues that could affect the application of a statute. The general rule that can be followed is if the crime occurred

- ◆ **Prior to October 1978:** The statute in effect was 5 years. Generally, without any other circumstances, the time has expired on these cases and no prosecution will occur. The exception may be if the suspect was out of state.
- ◆ **Beginning October 1978:** The statute in effect was 7 years. Generally, without any other circumstances, the time has expired on these cases and no prosecution will occur. The exception may be if the suspect was out of state.
- ◆ **Beginning July 21, 1997:** The statute in effect was 7 years. If the suspect's identity was unknown, the statute did not begin to run until the suspect was identified.
- ◆ **Beginning August 1, 2001:** No statute of limitations.
- ◆ Detectives and prosecutors should refer to the training outline provided by the county attorney's office or contact the county attorney directly for clarification.

[Consider providing training and/or guidance materials if detectives in the police department's Sex Crimes Unit have not received training on statutes of limitations.]

SUBMITTAL OF COLD CASES TO THE COUNTY ATTORNEY:

This section identifies some standards for submitting cases for review and prosecution. Submittal of the following items should be considered:

- ◆ All written police reports related to the investigation to include the following:
 - Original report
 - Supplemental reports
 - Laboratory reports
 - Diagrams
- ◆ All medical records related to the victim's sexual assault exam and any additional hospital records regarding treatment of any related injuries.
- ◆ All photographs of the original scene.
- ◆ Any tape recordings to include 911 and victim and/or suspect interviews.
- ◆ Any documentation to help establish the chain of custody and how that relates to any forensic evidence in the case. This may include forensic laboratory reports and/or documentation from the property management bureau.
- ◆ Individual photographs of the suspect and the victim as they appeared at the time of the crime.
- ◆ All cold cases submitted to county attorney will be stamped "COLD CASE" by the detective prior to submitting. This will ensure the case is reviewed by the designated cold case prosecutor.

Detectives may refer to the submittal form at the end of this memorandum for additional assistance.

Contact and case reviews should be made with the designated prosecutor at the time of submittal. After submittal:

- ◆ Initial review of these cases by the prosecutor should be completed within 30 days of submittal.
- ◆ Prior to any "further investigation" being returned to the detective, the reviewing prosecutor should directly contact the case detective to discuss any strategy for addressing the further.
- ◆ **Note:** If appropriate, consideration should be given to the examination of any additional evidence in the case. This decision to examine additional items should be made in coordination between the detective, the assigned prosecutor, and the crime laboratory.

For Cases in Which a Suspect Is in Jail:

- ◆ All of the above items should be submitted within the appropriate time restraints when there is a suspect in jail or this is an arrest case.
- ◆ Detectives may refer to the submittal form at the end of this memorandum for additional assistance.

Grand Jury Arrest Warrants:

Once a DNA match has been received by a sex crime detective, he/she may request that the prosecutor present this case to the grand jury prior to contacting the named suspect. Following are several issues that may be involved in this process:

- ◆ Detectives should consult with the designated prosecutor prior to submitting the case and requesting a grand jury warrant.
- ◆ Detectives should complete the above outlined checklist for "submittal of a case."
- ◆ Detectives should attempt to exhaust all resources in attempting to locate the named suspect.
- ◆ Prior to requesting a grand jury warrant, detectives should articulate in their investigation all supporting evidence, documentation and circumstances that point to the suspect identified by DNA as being the actual

suspect. The documentation should include physical description, geographical opportunity, prior crimes to establish modus operandi (e.g., verbiage, sex acts), and any accessibility to weapons, vehicles, clothing, and so on (if appropriate).

- ◆ If the suspect cannot be located to obtain a confirmation sample and conduct an interview, the detective can request that the case be submitted to a grand jury in order to obtain an arrest warrant.

SUSPECT:

This section identifies standards that should be followed when dealing with the identified suspect in these cases.

- ◆ Attempts should be made to obtain a confirmation DNA sample from the suspect. These samples will need to be obtained at some point during the investigation or prosecution.
- ◆ Detectives should utilize a search warrant to obtain this sample and follow the proper forensic methods for collection and preservation.
- ◆ Detectives should attempt to interview the suspect in this case or this “DNA match.”
- ◆ Prior to interviewing a suspect who is in custody, detectives need to determine the suspect’s prior police statement(s) and whether the individual invoked silence or requested an attorney.
- ◆ Detectives, after determining that the suspect can legally be interviewed, will ensure that the suspect is provided his/her Miranda warnings when they are in custody and being questioned.
- ◆ Detectives should be familiar with both the 5th- and 6th-amendment issues that may affect these interviews.
- ◆ Detectives will ensure that, if the suspect has been indicted by a grand jury prior to questioning, the suspect is in understands both his/her 5th- and 6th-amendment rights.
- ◆ If detectives have questions or concerns about any of these issues, they should consult with the designated prosecutor prior to interviewing.

VICTIM:

This section identifies many of the issues and concerns when dealing with the victims in these cold cases.

- ◆ All victims will be contacted again prior to submitting the case to the prosecutor.
- ◆ Detectives will determine the victim’s availability for court and willingness to testify.
- ◆ Detectives should obtain current updated personal information for future contact. This information should include current name, address, phone numbers, work contact, and relatives by which they may be located.
- ◆ Detectives should assess the need to comprehensively re-interview the victim. This interview should be based on the details provided, or not provided, in the original report.
- ◆ Detectives should address any consensual sex partner issues at this time. Detectives may want to provide the suspect’s name to the victim to assist in eliminating the possibility that this suspect may have been a consensual partner during the time of the crime.
- ◆ Any interviews, phone calls, or contact with the victim should be audio recorded and, if appropriate, video recorded.
- ◆ Victims may need to be contacted at multiple stages during the investigation. If the victim has not been contacted for 3 months prior to the case going to trial, prosecutors will coordinate with the county attorney investigators to help locate her/him. Sex Crime Unit detectives may assist with this effort.

COUNTY ATTORNEY'S OFFICE

LAW ENFORCEMENT STATEMENT OF INVESTIGATION STATUS

THIS FORM MUST BE COMPLETED AND ATTACHED TO EACH DEPARTMENTAL REPORT AND SUBMITTAL GIVEN TO THE COUNTY ATTORNEY'S OFFICE.

Agency: _____

Suspect: _____

In order to comply with the rules of criminal procedure, the [county name] County Attorney's Office must disclose discoverable information to a criminal defendant within strict time limits. Therefore, before a case will be filed, assurances are required that ALL investigations into a crime have been completed, and that ALL evidence has been processed. In very limited situations, a case may be accepted for review by the [county name] County Attorney's Office before all investigation has been completed and all evidence processed, but only when the submitting law enforcement agency indicates that the investigation will be completed within 30 days of request for review. All supplemental departmental reports must be forwarded to the [county name] County Attorney's Office within 5 days of completion. All other materials related to the case must be delivered to the [county name] County Attorney's Office within 5 business days of a request.

(Check all categories that apply to this case.)

<u>Evidence</u>	<u>Completed</u>	<u>Incomplete</u>	<u>Not Applicable</u>
All supplemental reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transcripts of interviews	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CAD records and fire department ems reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Written estimates of damage or property value	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Laboratory Analysis Results			
Drugs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DNA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fingerprints	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ballistics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Document examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tool markings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toxicology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<u>Evidence</u>	<u>Completed</u>	<u>Incomplete</u>	<u>Not Applicable</u>
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Autopsy report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Expert reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copies of forged documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim’s medical records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CPS Records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of all search warrants, affidavits, and search warrant returns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
911 tape (e.g., family violence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Photographs of

Crime scene(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Injuries to victim/suspect	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stolen property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drugs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Weapon used in offense	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photographic lineup	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Aggravated DUI (certified copies of prior convictions and/or motor vehicle records)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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The criminal investigation in this matter **has** been completed. All evidence listed above has been processed and is available to the [county name] County Attorney’s Office at this time.

Submitted this ____ day of _____, 20__.

Agency Name _____

The criminal investigation in this matter **has not** yet been completed or not all evidence collected in the investigation has been processed. The investigation will be completed and all evidence will be processed and available to the [county name] County Attorneys’ Office within 30 days of this date—except for drug analysis laboratory reports, which will be available within 20 days of arraignment.

Submitted this ____ day of _____, 20__.

Agency Name _____

This form provides the prosecutor with an overview of the available evidence for the case. This sample form is reflective of sample criminal proceedings and in accordance with the rule of criminal procedure in that state. If used, it should be updated to reflect local agreements and procedures.