

By Senator Saunders

25-735-01

1                                   A bill to be entitled  
2           An act relating to sexual violence; providing  
3           requirements for law enforcement agencies in  
4           investigating sexual battery or attempted  
5           sexual battery; requiring that an agency  
6           actively pursue investigations of sexual  
7           violence; providing requirements for  
8           communications personnel with respect to  
9           responding to a report of sexual violence;  
10          requiring law enforcement agencies to provide  
11          the Sexual Violence Reference Card to officers;  
12          providing requirements for the investigating  
13          officer; providing requirements for the written  
14          police report; prohibiting an officer from  
15          disregarding a complaint of sexual violence  
16          under specified circumstances; prohibiting an  
17          officer from reporting a personal opinion as to  
18          the credibility of the victim; providing  
19          requirements for a follow-up investigation;  
20          providing requirements for interviews;  
21          requiring documentation of the investigation;  
22          requiring a review of any case in which an  
23          arrest is not made; providing requirements for  
24          designating an officer as a sexual-violence  
25          investigator; providing requirements when a law  
26          enforcement officer is alleged to be a  
27          sexual-violence offender; providing  
28          requirements for training and competency;  
29          requiring the dissemination of a law  
30          enforcement agency's policies; providing an  
31          effective date.

1 Be It Enacted by the Legislature of the State of Florida:

2  
3 Section 1. Sexual violence.--

4 (1) The purpose of this section is to establish  
5 guidelines for law enforcement agencies in responding to  
6 allegations of sexual violence.

7 (2) This section applies to any offense of sexual  
8 battery or attempted sexual battery committed against a person  
9 16 years of age or older.

10 (3)(a) The purpose of this section is to reduce the  
11 incidence and severity of sexual violence by building strong  
12 cases against suspects, protect victims of sexual violence,  
13 and provide victims with support through a combination of  
14 services from law enforcement agencies and community-service  
15 agencies.

16 (b) Each law enforcement agency shall actively pursue  
17 any investigation of sexual violence and the response of the  
18 agency must not vary based on the characteristics, status, or  
19 profession of the victim or perpetrator, including the status  
20 of the victim or perpetrator as an employee of the law  
21 enforcement agency, or based on the nature of the relationship  
22 between the victim and the perpetrator. The law enforcement  
23 agency shall ensure the safety of the victim and refer the  
24 victim to appropriate services.

25 (4)(a) Regardless of whether the sexual violence being  
26 reported is no longer in progress, the law enforcement agency  
27 shall assign the report high priority and respond according to  
28 the criteria prescribed by generally applicable departmental  
29 procedures to assist the victim and preserve evidence.

30 (b) Communications personnel shall ascertain the  
31 medical condition, physical safety, needs, and location of the

1 victim; the location and time of the incident; the description  
2 of the suspect; and whether the suspect is still present, or  
3 the direction and mode of the suspect's travel.

4 (c) Communications personnel shall encourage the  
5 victim to preserve evidence by not changing clothes, washing,  
6 using the bathroom, drinking anything, combing his or her  
7 hair, or disturbing the crime scene in any way.

8 (d) Communications personnel shall ascertain whether  
9 the victim has special needs, including, but not limited to,  
10 situations in which the victim is hearing impaired, does not  
11 speak English, or requests a female investigating officer.  
12 Communications personnel shall inform the investigating  
13 officer of any special need and attempt to make available to  
14 the officer the appropriate resources.

15 (e) Communications personnel may not ask the victim  
16 whether he or she plans to prosecute and may not make  
17 reference to any future court proceeding.

18 (f) Whenever possible and appropriate, communications  
19 personnel shall stay on the telephone with the victim to  
20 provide assistance and comfort until a patrol unit arrives on  
21 the scene.

22 (g) If a caller hangs up the telephone and the call  
23 location is known, communications personnel shall attempt to  
24 call back and shall dispatch a unit.

25 (h) Communications personnel may not cancel the  
26 agency's response to a complaint of sexual violence,  
27 regardless of whether the request is made during the initial  
28 call or a follow-up call. However, communications personnel  
29 shall advise the investigating officer of the request.

30 (i) Suspected substance use or impairment must not be  
31 a consideration when dispatching an officer.

1           (5) To guide law enforcement officers in responding to  
2 sexual violence, the law enforcement agency shall provide to  
3 each law enforcement officer the Sexual Violence Reference  
4 Card, which provides a summary of sexual-violence policy and  
5 other relevant information.

6           (a) Regardless of the relationship between the victim  
7 and suspect, the responding officer, investigating officer, or  
8 other appropriate law enforcement personnel shall:

9           1. Respond to the scene; administer necessary first  
10 aid; request necessary medical support; and protect the crime  
11 scene.

12           2. Determine the location of the actual crime scene if  
13 the victim reported the crime from a location other than the  
14 crime scene. The officer shall also determine whether the  
15 victim was in a vehicle with the suspect before or after the  
16 assault. The officer shall immediately attempt to locate and  
17 secure any other crime scene. A crime-scene specialist shall  
18 be called if necessary and if available.

19           3. Request that a rape-crisis counselor or advocate,  
20 if available, report to the scene, the medical facility to  
21 which the victim is being transported, the law enforcement  
22 agency, or other specified location.

23           4. Together with the rape-crisis counselor or  
24 advocate, attempt to gain the victim's trust and confidence by  
25 showing understanding, patience, and respect for personal  
26 dignity and using language that is appropriate to the age,  
27 educational level, and emotional condition of the victim.

28           5. Conduct a preliminary interview with the victim to  
29 establish the facts of the reported crime. The initial  
30 questioning must be limited to those matters necessary to  
31 identify the victim, the suspect, and any witnesses, and to

1 describe and locate the suspect, any witnesses, and any  
2 physical evidence. A request that the interview be conducted  
3 by an officer of specific gender must be honored if possible.  
4 A request for the presence during the interview of a  
5 rape-crisis counselor or advocate must be honored if  
6 practical.

7 6. Locate the suspect and conduct a preliminary  
8 interview.

9 7. Collect or ensure the collection of physical  
10 evidence, including, but not limited to, taking photographs of  
11 the scene and impounding the evidence. If the victim has  
12 changed his or her clothes since the assault, the officer  
13 shall impound the clothing as evidence.

14 8. Request, as appropriate, that the victim consent to  
15 an initial forensic physical examination, emphasizing its  
16 importance to his or her well-being and to the investigative  
17 and apprehension efforts. An officer or rape-crisis counselor  
18 or advocate shall transport or accompany the victim to the  
19 health care facility. Before being transported to the  
20 facility, the victim must be advised that it may be necessary  
21 for clothing to be taken as evidence.

22 9. If a physical examination is conducted, request  
23 that medical or other appropriate personnel take photographs  
24 and provide written documentation of the victim's injuries. If  
25 the officer suspects that the suspect may have administered a  
26 drug or the victim states that a drug was administered which  
27 caused the mental incapacitation of the victim, the officer  
28 must request that a vial of blood be drawn and a urine sample  
29 obtained for drug-testing purposes. The officer shall request  
30 that the victim authorize the release of his or her medical  
31 records that pertain to the sexual assault. Following the

1 Attorney General's protocol, the officer shall sign a  
2 sexual-battery claim form.

3 10. If a physical examination is conducted, impound as  
4 evidence the examination kit and process it in accordance with  
5 agency procedure.

6 11. Following the medical examination, transport the  
7 victim to the location of his or her choice within the local  
8 vicinity.

9 12. Provide the victim with a crime victim's brochure  
10 as required by section 960.001, Florida Statutes.

11 13. Not initiate discussion of or accept withdrawal of  
12 the complaint. The officer may not request that the victim  
13 sign a form waiving prosecution.

14 14. Follow the requirements of this paragraph  
15 regardless of the relationship between the victim and the  
16 suspect.

17 (6)(a) Any law enforcement officer who responds to a  
18 complaint of sexual violence shall prepare a written police  
19 report and forward it as required by policy of the law  
20 enforcement agency.

21 (b) A law enforcement officer may not disregard a  
22 complaint of sexual violence due to:

23 1. Assertion by the suspect that consensual sex  
24 occurred.

25 2. Chemical dependency or intoxication of the parties.

26 3. Marital status; sexual orientation; race; age;  
27 religion; profession; or cultural, social, or political  
28 position of the victim or suspect.

29 4. Disability status of the victim, including  
30 physical, sensory, cognitive, or emotional disability.

31 5. Status of the suspect as a law enforcement officer.

1           6. Current or previous relationship between the victim  
2 and suspect.

3           7. Belief that the victim will not cooperate with  
4 criminal prosecution or that the arrest may not lead to a  
5 conviction.

6           8. Occurrence of the crime in a private place.

7           9. Disposition of previous calls that involve the same  
8 victim or suspect.

9           10. Sexual or criminal history of the victim.

10          11. Lack of physical resistance.

11          12. Manner of the victim's dress or behavior.

12          13. A request by the victim that the suspect use a  
13 prophylactic device.

14          14. An assumption of the tolerance of violence by a  
15 particular cultural, ethnic, religious, racial, or  
16 occupational group.

17          (c) The law enforcement officer shall identify the  
18 crime as "sexual violence" and not as "alleged sexual  
19 violence."

20          (d) The law enforcement officer shall ensure that all  
21 elements of the crime are included in the report. The report  
22 must include:

23           1. Documentation of all verbal or written statements,  
24 including excited utterances.

25           2. Documentation of the names, addresses, phone  
26 numbers, and statements of all witnesses. Any information that  
27 can be used to identify the victim is confidential in  
28 accordance with chapters 119 and 794, Florida Statutes.

29           3. Documentation of any alternative address if the  
30 victim changes location.

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1           4. Information concerning the relationship between the  
2 victim and the suspect.

3           5. Documentation of all evidence, photography, and  
4 processing of the crime scene.

5           6. Documentation of all injuries.

6           7. Documentation of unusual or suspicious behavior and  
7 fetishes on the part of the suspect.

8           8. Reference to all related reports.

9           9. Documentation of the victim's emotional condition.

10          (e) The law enforcement officer may make objective  
11 observations as to the victim's behavior and conditions, if  
12 relevant. However, the officer may not include in the report  
13 any personal opinion as to the credibility of the victim.

14          (6) An investigative officer shall be assigned to  
15 conduct a follow-up investigation and shall adhere to all  
16 procedures set forth in this subsection. The investigative  
17 officer shall:

18           (a) Read and review the original report and all  
19 supporting documents, plan the follow-up investigation, confer  
20 with supervisors concerning the intended investigative plan,  
21 coordinate the execution of the plan with the necessary  
22 personnel and equipment needed to implement the plan, and  
23 maintain ongoing communication with the victim or the  
24 rape-crisis counselor or advocate, as appropriate.

25           (b) Determine the need for a second, more in-depth  
26 interview. The investigator shall determine the victim's  
27 emotional and physical ability to submit to a second interview  
28 and schedule it as soon after the incident as possible. If a  
29 second interview is conducted, the investigator shall:

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1           1. Employ a comfortable setting that affords privacy  
2 and freedom from distractions and attempt to obtain all  
3 necessary information at this time.

4           2. Explain the need for obtaining detailed information  
5 concerning the crime, including the details of the sex act;  
6 the suspect's modus operandi, clothing, means of restraining  
7 the victim, and the use or availability of weapons; any words  
8 used or instructions given to the victim, including any  
9 request made during the assault; dialect, marks, scars,  
10 tattoos, deformities, or other unusual physical features or  
11 body odors of the suspect; any body features noticeable only  
12 when the suspect was unclothed; any fetishes of the suspect;  
13 and any witnesses, participants, or accomplices.

14           3. Document the victim's actions and expressions in  
15 response to the attack, the physical condition of the victim,  
16 and the state of mind of the victim during the attack.

17           4. Determine the relationship of the suspect and  
18 victim.

19           5. Review the victim's account of the event in order  
20 to clarify any discrepancies with earlier accounts and to  
21 elaborate on issues of significance to the prosecution.

22           6. Encourage the victim to cooperate with the  
23 investigation and prosecution of the case, emphasizing the  
24 importance of prosecution in order to enhance public safety.  
25 The investigator shall apprise the victim of future  
26 investigative and prosecutorial activities that could require  
27 the victim's involvement and cooperation, but the investigator  
28 may not make other comments concerning the prosecution of the  
29 case.

30           7. Refer the victim to a rape-crisis counselor or  
31 advocate if one has not already become involved in the case.

1           8. Work with the state attorney's office to develop  
2 the case.

3           9. Assist the victim in obtaining an order of  
4 protection, if appropriate.

5           (c) The investigator should not subject a victim to a  
6 polygraph examination or a voice stress test.

7           (d) The investigator shall expeditiously interview  
8 witnesses or any other person having information concerning  
9 the case. The investigator may not reveal any personal  
10 information concerning the victim to such persons.

11           (e) If the suspect is known, the investigator shall:

12           1. Construct a photo line-up, if appropriate.

13           2. Review the suspect's criminal history.

14           3. Review open sex-crime cases.

15           4. Confirm the suspect's identify and address.

16           5. Consider an appropriate time, place, and setting  
17 for interviewing the suspect.

18           6. Interview the suspect.

19           (f) If the suspect is unknown, the investigator shall:

20           1. Follow leads to establish the identity of the  
21 suspect.

22           2. Construct a composite and alert other law  
23 enforcement agencies, if possible.

24           3. Confer with other agencies and intelligence sources  
25 for leads.

26           4. Submit information to the Violent Criminal  
27 Apprehension Program when program criteria are met.

28           (g) With respect to physical evidence, the  
29 investigator shall:

30           1. Determine whether the suspect's blood, hair, or  
31 saliva are needed to complete the laboratory analysis. If the

1 suspect's blood, hair, or saliva are needed, the investigator  
2 shall:

3 a. If probable cause exists to obtain blood, saliva,  
4 or hair from the suspect, or to obtain an item of physical  
5 evidence from a location in the control of the suspect, apply  
6 for a search warrant to obtain the necessary evidence before  
7 the case is filed.

8 b. Collect blood, hair, and saliva with the consent of  
9 the suspect before the suspect's first court appearance.

10 c. If the suspect does not consent, seek to obtain a  
11 court order for the collection of blood, hair, and saliva from  
12 the defendant after the case has been filed.

13 d. Collect blood, hair, and saliva in accordance with  
14 the guidelines published by the Department of Law Enforcement  
15 or the Federal Bureau of Investigation, or use the best  
16 available practices. Blood must be collected by authorized and  
17 licensed personnel. Hair and saliva samples from a defendant  
18 must be collected by trained personnel of the same gender as  
19 the defendant.

20 e. Limit the number of people in the chain of custody  
21 of physical evidence as much as possible, and keep accurate  
22 and thorough records of the chain of custody of the evidence.

23 2. Review the evidence to determine the need for other  
24 procedures, including, but not limited to:

25 a. DNA typing or serology typing.

26 b. Micro analysis.

27 c. Firearm and ballistic analysis.

28 d. Fingerprint analysis.

29 e. Analysis using laser technology.

30 f. Photography.

31 g. Handwriting analysis.

1           h. Chemical testing.

2           i. Forensic dentistry analysis.

3           (7)(a) In the supplemental follow-up report, the  
4 investigating officer shall document the steps of the  
5 investigation, including documentation of interviews and any  
6 other tasks performed which are pertinent to the  
7 investigation.

8           (b) The investigator shall complete the  
9 victim-notification form if there is a known suspect.

10           (c) The investigator shall share information related  
11 to the investigation with other law enforcement agencies, as  
12 warranted.

13           (9)(a) When the investigation is complete and if  
14 probable cause exists and a defendant is identified, the  
15 investigator shall:

16           1. Make an arrest based on probable cause;

17           2. Obtain a warrant; or

18           3. File for prosecution of the case with the state  
19 attorney.

20           (b) If there is doubt as to whether probable cause  
21 exists, the case shall be referred to the state attorney for  
22 review. If probable cause exists, but the investigation is  
23 incomplete and lengthy, the case must be referred to the state  
24 attorney for consideration with respect to provisions  
25 requiring a speedy trial.

26           (c) If the case is complete, but the suspect is not  
27 identified, the case shall be filed as "inactive." A case must  
28 remain on file and available to be reactivated within the time  
29 limitations set by law. An investigator shall periodically  
30 review all unsolved cases.

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1           (d) If an arrest is not made, the case shall be  
2 reviewed by a supervisor. The victim must be notified of the  
3 reason for not making an arrest.

4           (e) Each law enforcement agency shall establish  
5 written policies governing a decision not to make an arrest.  
6 The law enforcement agency may not discontinue an  
7 investigation of a case of sexual violence until the case is  
8 reviewed by the state attorney.

9           (10)(a) If possible, each law enforcement agency must  
10 designate at least one officer to investigate sexual violence  
11 cases. The officer must be specially trained to deal with the  
12 complexities of such cases.

13           (b) The sexual violence investigator shall:

14           1. Monitor the agency's compliance with its policies  
15 for investigating sexual violence.

16           2. Ensure that each victim of sexual violence is  
17 referred to a rape-crisis counselor or advocate, a rape-crisis  
18 center, or other appropriate follow-up support, and work with  
19 these resources to coordinate victim safety.

20           3. Ensure coordination with hospitals and the state  
21 attorney in order to successfully investigate all cases of  
22 sexual violence and to apprehend and prosecute perpetrators.

23           4. Coordinate the training of other law enforcement  
24 officers.

25           (11)(a) If communications personnel receive a call for  
26 assistance at a scene where a law enforcement officer is  
27 alleged to be a sexual-violence offender, the responding  
28 officer's supervisor must be notified and must respond to the  
29 scene. In addition, other department personnel must be  
30 notified in accordance with department policy. If the officer  
31 is arrested, applicable policies with respect to duty status,

1 assignment, and suspension must be followed. If a criminal  
2 investigation is required, applicable departmental policy must  
3 be followed. In the absence of departmental policy, the  
4 investigation must be completed before the officer is  
5 interviewed by departmental personnel for any administrative  
6 investigation associated with the event. If the relationship  
7 between the victim and suspect fits the criteria for domestic  
8 violence, appropriate departmental policy must be followed.

9 (b) Any law enforcement officer who witnesses or  
10 otherwise has firsthand or well-founded knowledge of a  
11 sexual-violence incident that involves another officer in the  
12 department must report that incident to a supervisor.

13 (c) Any law enforcement agency that makes an arrest of  
14 an officer from another agency which is related to sexual  
15 violence must notify the employing agency of the arrest, of  
16 the specific charge, and of the time of the arrest.

17 (12)(a) Each law enforcement officer who is designated  
18 to investigate sexual-violence crimes must receive training in  
19 and be competent in the following:

20 1. The nature, extent, and dynamics of sexual  
21 violence.

22 2. The application of state and federal laws to sexual  
23 violence.

24 3. The duties and responsibilities of law enforcement  
25 personnel in responding to sexual-violence reports, as set  
26 forth in departmental policy.

27 4. The concerns of victims with respect to the  
28 criminal justice system.

29 5. Techniques for working with and understanding  
30 reluctant victims.

31 6. Rules of evidence in sexual-battery cases.

- 1           7. Interview techniques.
- 2           8. Myths and statistics with respect to the occurrence  
3 of sexual violence.
- 4           9. Physical evidence that is unique to cases of sexual  
5 violence.
- 6           10. A victim's emotional needs and conditions.
- 7           11. A victim's rights and remedies.
- 8           12. The needs of special populations, including  
9 juveniles, the elderly, and disabled adults.
- 10           13. The interrelationship between sexual violence and  
11 domestic violence.
- 12           14. Law and rules governing protocols for medical  
13 examination.
- 14           15. Requirements for documenting, reporting, and  
15 collecting evidence.
- 16           16. Policies and procedures of the state attorney's  
17 office.
- 18           17. Requirements governing the liability of the law  
19 enforcement agency and law enforcement officers.
- 20           (b) In addition to the requirements of paragraph (a),  
21 an officer designated to investigate sexual-violence cases  
22 must receive additional competency-based training, including  
23 courses on investigating sex crimes and conducting interviews  
24 and interrogations.
- 25           (c) Law enforcement officers must receive training on  
26 the use of the Sexual Violence Reference Card.
- 27           (d) Law enforcement officers must receive updates and  
28 information on current legal and legislative trends and  
29 intelligence pertaining to sexual violence.
- 30           (13) Each law enforcement agency shall:
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