

Written Victim Statements for Law Enforcement

SART Listserv

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Background: A three part question regarding **written** victim statements: (1) Do law enforcement departments ask for or discourage written victim statements? (2) What do you think about LE giving victims a form to take with them to complete later if additional information is recalled? (3) What do you consider best practice regarding victim's **written** statements?

(1) Do law enforcement departments ask for or discourage written victim statements? (responses that follow are from healthcare, law enforcement, prosecutors and advocates)

Encourage Written Victim Statements

- Our law enforcement officers do request a written statement from the victim.
- Victims in our jurisdiction write the reports. Interestingly enough, several victims have commented that they could be more thorough if provided with a keyboard to type a response. It seems that many people today are unaccustomed to hand written essays once they leave their school blue books behind!
- Speaking as a prosecutor, I like to see victims' written statements. Police reports are often used by the defense to impeach victims, so if there is a written statement there is no question about interpretation or paraphrasing. For victims who are fairly literate, the written statement is a good memory refresher for trial and can be used as "past recollection recorded" if they forget something or block it out due to post traumatic stress.
- When a victim is upset following an assault, they can't remember everything that has taken place. I ask victims to write things down after they have had rest and remember exactly what has happened. I love written statements and so does the District Attorney's office. I can use that a lot of times instead of recordings.
- If there are specific names, places or confusing circumstances, an officer may ask for a written statement to help clarify. Most written statement requests would be from witnesses or "involved others", people who saw the victim and maybe the suspect that can help establish timelines or participants.

Neutral about Written Victim Statements

- Our law enforcement agencies do not have a standard policy regarding written statements from victims. In some investigations, we have written statements from victims and in other cases, we do not. I would prefer the officer not send the victim home with a statement form to return later. If the victim does not return it, the defense attorney is going to infer at a subsequent hearing that she did not fill out the statement because she does not care and/or his client is innocent. If the victim is going to make a written statement, it should be written in the presence of a law enforcement officer who is taking the time to sit there because the officer

cares. The statement can be written at the victim's home or at the police department.

- In our jurisdiction, I am not aware of any agencies, which have written policies that specifically describe the course of action an investigator/detective should take in investigating a sex crime. No departments discourage written victim statements; depending upon the availability and/or willingness of the victim
- The law enforcement departments neither encourage nor discourage written reports. They appreciate additional written statements. However, these might cause problems in some situations. Inupiat culture uses economy of words. Part of Inupiat Illutqusiak (traditional Inupiat values) is the avoidance of conflict. Both conditions encourage our victims to be exceedingly terse in written explanations. Relying on a form and a report rather than human interaction is culturally very Eurocentric and could be detrimental to really finding out what happened.

Discourage Written Victim Statements

- Clients may not have writing skills or may have trouble organizing and writing a narrative - sometimes caused simply by the trauma and crisis. Clients may also have poor penmanship that makes a statement illegible. Unless a victim knows the elements of the law, s/he may neglect to record necessary elements (threats, pressure, and fear). Clients may also be uncomfortable writing a description of the incident and could use phrases like, "He did it to me."
- We have had several victims who wrote statements for the reporting officer and then for a detective. Defense attorneys love it when the statements don't "match".
- We have 11 tribes in Wisconsin and the practice of writing statements could negatively impact cases involving native victims. I am also concerned that this practice would create additional barriers to other underserved populations including (but not limited to) Hmong victims, Latina victims, African American victims, elderly victims, victims for whom English is not their first language and victims with disabilities. I also think it could have a negative impact on folks that are illiterate or have poor writing skills. In my experience, some victims are ashamed to admit that they can't read or write or have a difficult time writing. Their reluctance or refusal to write out a statement could be misinterpreted. While it might be possible to only ask for statements from folks that fit a particular criterion, I wonder how a policy that is not consistently applied to all victims would be perceived by defense attorneys and the public.
- I am more partial to taking the statement by audio tape or by having the officer, SANE or detective asking for detail and recording it themselves and asking additional questions to get all the necessary information.
- We prefer video recorded statements.
- Are you asking if victims in the SART process are asked to make a written versus an oral statement prior to the medical exam? If this is the case -absolutely not. The law enforcement officer and the medical examiner conduct a thorough and sensitive joint oral interview, which is audio-taped. We would not like to see any written form used in a way that would encourage overworked or inexperienced officers to shortcut a good and sensitive interview.

- I'm a former prosecutor/police officer, now professional trainer/advocate. I would discourage written victim statements at the initial investigative interview. This would create a written record in the victim's own words that will be used to impeach the victim later. The impact of psychological trauma on providing a narrative history of the offense will be most evident in the early stages of investigation (for most victims) and often leads to inaccuracies in offense chronology and omissions of important details (a symptom of PTSD and of traumatic stress generally). The more vulnerable the victim psychologically, the worse this situation becomes. In addition, in the early stages of investigation the investigator can not usually establish sufficient repertoire for the victim to disclose negative facts about themselves or their actions, which are critical to manage the prosecution. There is a limit to the extent that experts can cure this.
- Inaccuracies are very, very distracting to juries who often need to view the evidence through a lens that makes the world safer than it is...
- Giving a victim a form to take with them is a poor idea. You may give them a form that asks for their basic info such as name, date of birth, and current address. Each case is very specific and asking questions without being there to provide an explanation of why the information is needed could be intimidating. I have seen forms that ask about the use of force, bondage, weapons, and the like. A victim may be further traumatized by these questions, especially if they do not apply. Further, if the form has questions like "what clothes were you wearing" the victim may feel they are not believed. People tend to communicate more thoroughly and effectively in person. I think this particular crime is worthy of human touch.
- We discourage asking for written statements. We consider it best practice to do a thorough interview(s) and not rely on written statements. Our Law Enforcement Training Consultant explains it this way: The purpose of getting a statement is: to determine if a crime was committed, where and by whom; to identify the details of the crime; to establish the elements of a crime(s), establish a timeline; to identify what evidence might exist and where to locate that evidence; to corroborate the victim's allegations and to identify if there are any witnesses that could corroborate the victim's statement. These reasons can come into conflict when you ask a person to write out a statement. Victims don't know what the elements of crimes are, there is a lack of knowledge of what law enforcement and prosecutors need, lack of consistency and clarity in the language that many folks use to describe sexual assault and specific acts, and the way a person writes a statement can add to the biases that victims already face when they are sexually assaulted. In addition, the impact of trauma can impact a written statement.
- Victims may not be clear about the specifics of their assault(s). The written statements of victims who remember additional details days, weeks, months or years later could be used to impeach the victim. Also, some victims are not completely truthful when they initially report an assault. These deceptions are not always done consciously and they don't mean the assault did not happen. Sometimes victims do not disclose specifics of an assault to protect themselves. While this will have to be addressed regardless of what kind of statement is taken, I think that it can be much more difficult to undo or explain an inaccuracy or inconsistency in a written statement compared to an oral statement. Lastly, we

have had experiences working with some officers who are either uncomfortable working on sexual assault cases and interviewing folks or they don't believe victims in general. (Note that this is by far not the majority of officers but enough to be a concern for us.) Some of these officers could use written statements to screen out cases and/or as a crutch so they don't have to interview victims or investigate the allegations.

- First, victims are not familiar with the elements we have to prove for rape. I'm afraid they would leave out crucial details or write something that could ruin the case. Often the victim will say things such as "he tried to put his penis in me" when in fact there actually was penetration, but she does not understand the "penetration however slight" part of our statute. I can see defense attorneys grilling the victim based on a written statement and any inconsistencies they can find. It is important for the detective to do the interview, so that the facts and elements can be brought out. Victims often minimize the events and take on guilt for the assault and that does not need to be memorialized in written form. The other concern I have is if this form is to be given by patrol officers. My concern is that it will just be an excuse for the officer to do an incomplete preliminary investigation. We already have problems with officers just giving a witness statement form to a witness and not interviewing the witness directly. If it is to be given by the detective, I don't see the point. We, as detectives, should be doing an in depth interview anyway. If the form is to be given by SANE/SART, they don't know the elements and legal issues that need to be addressed in the victim interview and it also takes away from them being an unbiased evidence collector and medical responder.
- From an advocacy standpoint, our concern is that defense attorneys will welcome this as a great tool to impeach victims. The written word carries great power in the mainstream culture. Victims may not write well. Even those who do may be very reluctant to write down everything... Sometimes investigators can't even get to villages for more than a day after being called. Asking for a written statement in advance, unless the person is very much more comfortable writing than speaking (rare) could cause issues for reasons stated above. During the interview, the need for an oral statement is clear. Producing something a while later might be helpful, but it also could produce apparent differences in story due to the difference in the interview process.
- During the "first" interview, the victim should not write their own statement without Law Enforcement and Advocate present because the victim may put information that would jeopardize the investigation or hurt them during the trial; the defense attorney could use that information against the victim

(2) What do you think about LE giving victims a form to take with them to complete at a later date if additional information is recalled?

Good Idea

- Good idea, I suggest the victim keep a journal and share it with the detective- if more information is remembered. [Question re: the victim keeping a journal and sharing with the detective – does this material become part of the statement, and subject to release to defense? There may be some concern if the journal, especially in its entirety, becomes open to defense counsel scrutiny].
- I also like the idea of a form to take home for things remembered later. Our victims get hammered about not telling everything at the time of the first interview.
- I think having a form with a list of things to describe could be helpful. Sometimes it takes weeks or months to recall things. I do request written statements so that the victims can jot down facts as soon as they can remember.
- Having a form that the victim takes home for later completion will be helpful for two reasons. The first one being it will help the victim heal & let him/her know it is not their fault and the second may be after some time has gone by, the victim might remember some small detail that will be helpful in the prosecution of the suspect.
- As a forensic examiner, I have often heard victims remembering small segments of their experience hours and days after the assault. Rare is the person who can recount every detail of her/his assault in chronological order! It's a wonderful idea to give the victim a form to take with her in case she does remember more details at a later time (which is very common!)
- I do think it is useful to ask victims to keep a "log" of things that they remember between interviews. The purpose of the log should be described both verbally and on the sheet of paper given to the victim. (We need to recognize that trauma swamps us cognitively, and we can't take in data or remember it in a "normative" way.) This is not a journal for feelings, thoughts, musings, anything related to recovery. This is the victim's shorthand list of details/events that are recalled that are directly related to the offense. The victim should know that it would be disclosed in discovery.

Not Good Idea

- No because we do follow-up interviews just for that purpose. In most cases, the victim will remember other facts after giving initial statement.
- I do not think that forms given to a victim to take home or complete at a later time is a good idea. In fact, I think it is a bad idea and could potentially create damaging Rosario material, which can be detrimental during trial. A victim's past experiences are banned from being explored by the defense in sexual assault trials and a form like this is an opportunity to open the door to questions, which could otherwise be avoided. It is also an opportunity for the victim to talk with other people and not contaminate the process with a statement with external thoughts or information.

- As a prosecutor, there could be problems if victims are not good at writing and expressing things on paper.
- I think that we already ask victims to do a lot. This is one more piece of paper for them to keep track of, fill out and send back. Victims in our state already receive a lot of information about their rights, what to do if they are intimidated, who to contact, information about safety etc. and it can be overwhelming. Additionally I think it lacks the personal connection that some victims feel helps them through the criminal justice process. I also don't think you need to create a specific form for this information. Victims should always be encouraged to contact law enforcement if they remember additional details.

(3) What do you consider best practice regarding victim's written statements?

- Asking victims to write a statement giving as much detail as possible.
- Best practice for statement writing is a huge discussion. But generally, a written statement should focus on the assault itself and not stray from the assault unless there are extenuating circumstances which: lead to the assault, are important to the identification of the defendant, explain confusing evidentiary findings, or otherwise clear up problems a reasonable person would have understanding the assault. Things such as time of day and what the victim was doing prior to or at the time of the assault are good, but thoughts and feelings other than fear and pain are generally not good, unless they explain actions taken by the victim which seem difficult to understand.
- Give the victim time to write - and explain precisely what is needed in the statement. Read the statement out loud to them so they can make any corrections or clarify their meaning.
- Because victims may suffer from PTSD, it is a good thing to have an expert witness to testify to the effect of trauma on a victim and to explain why they may not have remembered everything all at once.
- Best practice would be victims' written logs to support the process of a case, to analyze the offense in micro-detail and to scrutinize data available about the offender.
- Best practices include: (1) Handle with care. (2) Provide enough time and quiet for the victim to be reflective. (3) Have someone (an advocate) there for their support. (4) Possibly have some way they don't have to write it down themselves (transcription). (5) Use written forms on a case by case basis, -they must not replace a good interview.
- I think the best practice is to get a written statement a day or two after the crime has been reported. Written or comprehensive interviews should never occur when the victim is intoxicated. They should be taken after some of the shock has worn off and the victim can recall most of the details. The initial interview is important as far as demeanor, but victims generally do not recall all the details in their first contact with a law enforcement officer. I see a lot of errors in my

opinion in the interviews of sexual assault victims and more training and standards need to be adopted and taught.

- Best practice: anything taken will be added to the report as official record. It frequently takes victims time to process, so their first statement may not be very accurate. I would encourage them to give me their initial statement, and then ask them to keep a note pad and write down things as they are remembered. A supplement can be added to a report with the additional information, simply stating that the victim, after having a few days, was able to recall other statements, events, or people.