# SOUTH DAKOTA SEXUAL ASSAULT RESPONSE TEAM TOOLKIT AND PROTOCOL GUIDELINES

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South Dakota Network Against Family Violence and Sexual Assault

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# FOUNDATIONS

Sexual Assault Response Teams (SARTs) have been present in communities in South Dakota for over two decades. These teams continue to evolve and improve to enhance victim safety and the response to sexual assault. Currently, more than a dozen communities across the state have formalized SARTs with a variety of structures, formats and partners involved, including local partners, tribal entities, state and federal agencies, and more. Teams across South Dakota continue work to make SARTs a part of their efforts to improve offender accountability and victim safety.

This toolkit is meant to assist teams as they navigate the work of creating best practices and protocols for responding to sexual assault locally. Every community in South Dakota is unique, with different strengths and challenges. We hope this guide will help you to build and grow your team to meet the needs of your specific community.

## What is a SART?

Sexual assault, like many issues impacting our communities, requires a multidisciplinary response that requires ongoing coordination and partnerships. A multidisciplinary team (MDT) is made up of agencies partnering together to provide interagency, coordinated responses that make victims' needs a priority, hold offenders accountable, and promote public safety.[6]

Respecting community uniqueness means accepting that the development and function of the MDT may vary significantly from one community to another. While different communities use different names to refer to their multidisciplinary coordinated community efforts, they serve the same purpose—to improve the community response to sexual assault by bringing together multidisciplinary sexual assault stakeholders. Through cross-system coordination, these teams frequently aim to improve victims' experiences when seeking help, engage in prevention education, and achieve more desired legal outcomes. MDTs have been widely adopted across the United States, and MDT implementation is considered a best practice in the response to sexual assault.[6]

Sexual Assault Response Teams (SARTs) in South Dakota primarily address and respond to cases and situations involving victims averaging age 14 years and

older. Child protection teams and other pediatric response teams review cases involving child sexual abuse. *For additional information on South Dakota's recommended responses in pediatric cases, contact the Center for the Prevention of Childhood Maltreatment.*

Specific information on requirements for MDTs in South Dakota can be found in the **Additional Tools and Resources** section of this toolkit.

Sexual Assault Response Teams are universally understood to be comprised of individuals who respond to a victim in the emergency room/evidentiary exam setting; the larger criminal justice team that determines the best interagency protocol for community partners who respond to sexual assault; or the larger community team interested in a victim-centered response to sexual violence.

SARTs usually include victim advocates (community and systems based), law enforcement, medical forensic examiners or other trained Health Care Providers, corrections/probation, and state/county attorneys. They may include other professionals, such as dispatchers, emergency medical technicians, public health officials, disability-specific agencies/providers, or other system and community partners. Confidentiality is of the highest priority.

The primary objectives of a SART are to: 1) Collaborate and execute consistent, high-quality, victim-centered responses to sexual assault survivors and 2) Work to ensure ongoing and effective offender accountability. They create and share resources, connect victims and survivors with support services, and develop and maintain guidelines for the team's effective and consistent response.

It is important for the SART to recognize that victims of sexual assault and the criminal justice system may have different needs or expectations. While there may be inherent conflicts between the two, collaboration by members on the SART can help alleviate the division and ensure that victim safety is put first.[13]

# Sexual Assault and Response in South Dakota

According to McMahon, Walstrom & Kerkvliet in the Sexual Violence in South Dakota 2019 Data Report:

> *In 2019, South Dakota had the third highest rape rate in the nation at 72.6 per 100,000 inhabitants, an all-time high for the state and considerably higher than the national rate of 42.6 per 100,000. Nearly half of the 2019 rape victims in SD were under the age of 20 (49.8%), about 9 in ten were female (89.6%), and while over half were White (57.1%), Native Americans were markedly overrepresented among rape victims (32.5% of victims and 9% of population). Over half of the 2019 rape offenders in SD were under the age of 30 (53.7%), more than 9 out of ten were male (96%), and like rape victims, although over half were White (57.1%), Native Americans were overrepresented among rape offenders (32.5% of offenders and 9% of population).*[5]

It is difficult to measure the actual number of sexual assaults that occur in South Dakota because many victims of these crimes choose not to report them to law enforcement officials. Approximately only one-third of all rapes and sexual assaults are reported to law enforcement.[5] In part, embarrassment, fear and lack of confidence in the system explain this misunderstanding in the legal system. Victims who are raped by their spouse and partners commonly describe embarrassment and a belief that "it is a private matter." Victims are both fearful of reprisal from the offender and of entering the legal system with a report of rape. They are fearful of not being believed or not being supported in their allegations. Advocates, victim/witness specialists, prosecutors, law enforcement officials and health care professionals work together to increase the reporting of sex crimes in the state.

Victims who do not report the crime typically do not receive professional treatment or assistance with their trauma. Without immediate follow-up care, victims of these crimes may experience long-term health related impacts.

Prosecution of sex crimes is very difficult, as evidenced by the fact that only a small percentage of sexual offenders are apprehended and convicted. Victims of these crimes choose not to file a criminal complaint, not to participate in the

prosecution process or recant due to fear or embarrassment. Nevertheless, holding the perpetrators accountable is a goal for prosecutors throughout the State of South Dakota.

To encourage victims to report these crimes and to seek treatment and counseling, the State must implement changes in community education and encourage the development of Sexual Assault Response Teams.

# Systems Change

Systems change is an important part of a SART's work. Systems change is the process of working towards improving individual agency responses to sexual violence while also increasing collaboration between these systems.[9]

To do this, SARTs focus on:

- Enhancing the strengths of practice, policy, procedures, and collaboration
- Addressing the shortcomings of practice, policy, procedures, and collaboration
- Ensuring support and engagement for victims throughout all processes
- Continuously improving as time and communities change

Systems change can impact individual practices, agency policies, systems' procedures, and interagency collaboration. SARTs focused on systems change are making changes as they need or as challenges arise to both meet the needs of victims/survivors as well as stay current on promising practices and new legislation.[9]

Focusing your SART on systems change is a long-term, comprehensive way for a community to address all aspects of their response to sexual assault. In this way SARTs focus on the big picture – the entire network of response to sexual assault in their community. Big picture work involves reviewing existing protocols and procedures within and/or across disciplines to address gaps or barriers in service provision. The goal is to improve the overall response to sexual assault and improve the outcomes for all victims/survivors.[9]

One continuous improvement model for SARTs to follow is the Sexual Violence Justice Institutes' (SVJI) Phases of Systems Change. This includes three phases that can guide teams as they work together in improving the response to sexual violence. The three phases of this model include: 1) Assessing the status quo; 2) Making change; and 3) Measuring the change. *(See the diagram below. Also see the SVJI @MNCASA Phases of System Change handout for more information)*

### Measure the Change

- Monitor implementation of change
- Assess gaps and barriers
- Surveys, Focus Groups
- Case Review


### Assess the Status Quo

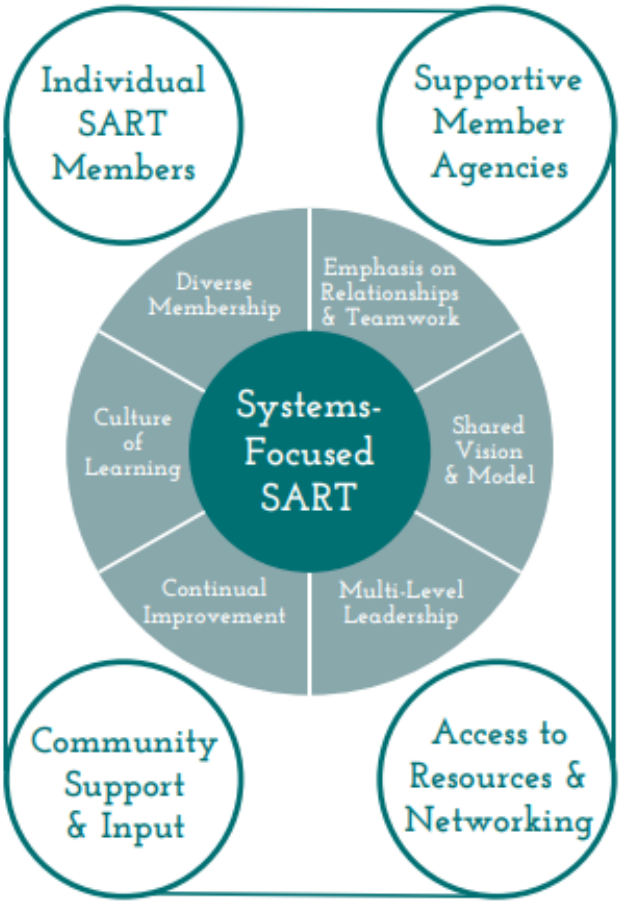
- Take inventory of existing service providers
- Bring in the voices of victims/survivors
- Community Needs Assessment

### Make Change

- Develop/revise interagency protocol
- Identify training needs (knowledge/skills)
- Create programs/tools/resources

This continuous improvement approach allows teams to build on previous work as they further strengthen the systems response to sexual violence.[1]

From the beginning, it is important to keep all stages in mind as you plan your SART work. Preparing for implementation and evaluation from the start will make the work easier and ensure that changes are long-lasting and effective. This preparation will also help your SART remain focused and stable through inevitable changes and turnover that come with teaming.[1] The ten-factor framework for SART effectiveness *(illustrated here)* breaks down ten factors that can help to facilitate the success of systems-change SARTs. Six internal team characteristics include; Shared Vision and Model, Multi-Level Leadership, Culture of Learning, Continual Evaluation and Improvement,



Diverse Membership and Emphasis on Relationships and Teamwork Four external supports include; Confident Individual Team Members; Supportive Member Agencies; Access to Resources and Networking; and Community Support and Involvement. *(See: A Ten-Factor Framework for Sexual Assault Response Team Effectiveness for additional information).*

# Victim-Centered and Trauma-Informed Practices and Approaches

Victim-centered and trauma-informed practices and approaches focus on what is best for the victim/survivor instead of what is best for the criminal justice process. Promoting support and autonomy for victims/survivors can improve outcomes for a victim/survivor and for the community at large. Victim-centered does not mean that the professional must do everything that the victim/survivor requests. Nor does it mean that the professional has to like the victim/survivor or agree with their choices. The purpose of victim-centered work is to recognize victims/survivors as the "experts" in their own lives, respecting their role in systems response, and providing them appropriate resources to meet their current needs.[1]

## EQUITABLE ACCESS TO SERVICES

Access to services in the aftermath of sexual violence is the most pressing issue facing many victims/survivors, responders, and communities. Many communities, identities, and specific populations experience differing levels of access to services. In responding to sexual violence, a one-size-fits-all approach is harmful to victims/survivors and results in negative case outcomes. Processes based on creating equitable access means that services are designed to respond to the needs of individuals as well as groups. Examples may include language access, accommodations for disabilities, materials that reflect diverse populations or cultural groups, and processes that have options for victims/survivors to get the tailored assistance they need after experiencing sexual violence. This includes service providers working to change issues of bias within their systems.[10]

Teams and communities must strengthen service models, outreach, and approaches to better meet the needs of individuals facing barriers to accessing services. It is not only best practice but necessary to offer adaptable services that are designed to be accessible so that all victims/ survivors feel comfortable and safe using services. Through developing more accessible services, the community can become safer for all who live here.[10]

## RESPONDING TO DISCLOSURES OF SEXUAL VIOLENCE

Research consistently demonstrates that the response to first disclosures of sexual violence determine a victim's healing and recovery path. Disclosure often happens in multiple stages, with victims providing limited information to determine what type of reaction they will get from the person to whom they disclose. This also determines whether it is effective to disclose more information about the violence. This is especially true of the way systems professionals, such as law enforcement, ask questions. If a victim experiences negative or judgmental reactions, they are more likely to never disclose again or alter what parts of their experiences they disclose. Negative experiences also deter the victim from seeking further help or engagement with systems, which increases experiences of negative mental and physical health outcomes and allows someone who has perpetrated to experience no consequences. If a victim experiences positive and supportive reactions to their disclosures, they are more likely to continue to seek services and will experience fewer mental and physical health impacts. This allows service providers the opportunity to hold someone who has perpetrated sexual violence accountable. Positive or supportive reactions include empathy, support, active listening, and asking non-judgmental questions. Each of these strategies can result in more victims/survivors disclosing and continuing with various services and processes.

Responders must handle sexual violence disclosures with understanding and compassion to facilitate better sexual assault case outcomes and increase public safety. All responders, regardless of the nature of their position, can offer positive and supportive reactions without compromising the integrity of their work. As such, our team commits to increasing our effectiveness in responding to disclosures of sexual violence.[10]

## INFORMED CONSENT, RELEASE OF INFORMATION, AND CONFIDENTIALITY

Many of the service providers who participate on a collaborative team make use of informed consent paperwork with victims/survivors. Due to how trauma affects memory and brain function, many victims/survivors have difficulty understanding or remembering information, especially complex information if

given during the first days after an assault. As a result, it is necessary that all service providers develop practices that gain informed consent only when a victim/survivor has the capacity to fully understand the implications of their signature on a consent form or through verbal consent. Procedures and policies should center around meeting the needs of the victim/survivor. Additionally, service providers should create follow-up procedures to ensure informed consent and releases of information (ROI). For releases of information, best practice and federal guidelines state they should have validity for no longer than 30 days and should specify to whom and what information will be shared. Additionally, ROIs should only be completed and utilized when it is in the best interest of the victim/survivor or improves their access to services or support.[10]

Confidentiality—protecting identifying information or case details about a victim/survivor— has been a consistent challenge for multi-disciplinary collaborations. It is essential that teams understand the limits of information sharing for each and every discipline. Any time where identifying information or case details are discussed, a victim/survivor must have previously provided a release of information that is time-bound and specified to a limited discussion or activity. Blanket confidentiality agreements—one agreement signed upon joining a team or for the duration of a meeting that states they will not share any information they gain during the meeting with others—puts any agency receiving funding from federal entities at risk as well as opens up the agency to liability for failure to protect information. Teams must develop and exercise stringent confidentiality boundaries. Many teams choose to focus on the elements of the response rather than case details to determine improvements in their sexual violence response.[10]

## VICTIM/SURVIVOR AUTONOMY AND CHOICE

Disclosing sexual violence and seeking services from any discipline represented on the team is difficult for many victims/survivors; fear of reprisal or agency bias are causes for a refusal to disclose, report, or seek further services. Delays in reporting or refusing to report are especially common if a victim/survivor thinks they may not be believed about aspects of the assault or that their assault does not fit the typical model of sexual assault—such as the use of force or presence of physical injury. For victims/survivors to move forward in any reporting or

service seeking, it is especially important that victims/survivors have their decisions and choices respected. This includes whether to report, the type of report, or seeking further services from other providers. Victims/survivors are more likely to continue to engage and sustain contact with service providers when they are given choices, explanations, and compassion.[10]

Service providers might feel frustration or confusion with the decisions a victim/survivor makes regarding their process. However, it is essential as a trust-building component that a victim/survivor have their choices respected and honored in all instances possible. This increases likelihood of sustained contact or re-engagement with agencies. In the event that a choice cannot be upheld, the service provider should explain the details of why that is the case. Centering the right to autonomy and choice is a pivotal element of developing a meaningful response to sexual violence and increasing community safety, because it increases the likelihood of reports and continued contact with processes.[10]

## VICTIM/SURVIVORS WITH DISABILITIES OR WHO ARE DEAF/HARD OF HEARING

People with disabilities or who are Deaf/Hard Of Hearing (HOH) are people first and foremost. A disability or hearing loss may be a part of a person's identity, but it is not entirely what makes them who they are, as is true of the entire population. It is important that we continually evaluate and improve our services and responses to be inclusive and accessible. We do not, however, make it a practice to focus on one part of a person's identity when working with a client or discriminate because of it. People with disabilities or who are Deaf/HOH are at a much higher risk of sexual assault than people without disabilities and are at a higher risk of re-victimization or sustaining multiple assaults by different perpetrators throughout their lifetime. Children with disabilities or who are Deaf/HOH are at considerable risk of sexual assault before adulthood.

It is important to remember that a victim/survivor may not have had a disability or was not Deaf/HOH prior to an assault but may sustain a disability or loss of hearing because of an attack. For example, traumatic brain injuries are common in interpersonal violence and sexual assault. Another example is a person who once was able to hear, is now Deaf/HOH because of an assault.
Additionally, not all disabilities are visible. Victims/survivors may disclose a

disability or that they are Deaf/HOH to a service provider at any time. General knowledge of disabilities and Deaf/HOH experiences will improve the response to individuals with disabilities or who are Deaf/HOH. As a provider becomes aware of a disability or a Deaf/HOH person when working with a client, services should be made as accessible as possible, such as attempting to complete clients' requests/needs for accommodations.

It is best practice to have an individual and agency plan on how to respond to accommodation requests. If a service provider and client are not understanding each other due to communication barriers, immediate action should be taken to navigate the best way to communicate properly before proceeding with services for the client. A few examples include lining up an American Sign Language or other spoken language interpreter, using visual resources to clarify, or taking advantage of technology for pictures/spelling/spoken language. Some clients may not disclose of a disability or of being Deaf/HOH. Other clients may not identify as having a disability, and that is a client's right.

A few ways to remain victim-centered in your response is to ask if there is anything the service provider can do to make the client more comfortable. To empower clients in their own autonomy and choice, the service provider may offer a client options on how the client wishes to proceed with services. This empowers the client to have control of their service experience, respects their personal autonomy, and opens the door to accessibility. It is important to consider that some people with disabilities or who are Deaf/HOH are part of a culture or community, an example is Deaf culture and community. Always remember that someone who is Deaf/HOH or has a disability may or may not associate with a culture or community related to their identity and again, that this is one piece of who they are as a survivor.

## VICTIM'S RIGHTS IN SOUTH DAKOTA

SDCL 23A-28C Crime Victims' Act – This includes SDCL 23A-28C-1, which lays out the rights of crime victims in South Dakota. The full statute is included in the Relevant Laws section of this Toolkit.

**Marsy's Law** – Marsy's Law ensures that victims of crime have equal, constitutional rights on the same level as those accused and convicted of crimes. Additional information can be found at **http://atg.sd.gov/victim/marsyslaw.aspx** or **www.marsyslawforsd.com**.

**SAVIN** – SAVIN stands for Statewide Automated Victim Information & Notification. The South Dakota SAVIN program is a free, automated service that provides crime victims with vital information and notification 24 hours a day, 365 days a year. This service allows victims to obtain offender information and to register for notification of a change in offender status, such as offender release. All registrations through South Dakota SAVIN are kept confidential. There are no costs for these services and citizens can register. Additional information can be found at **http://savin.sd.gov**.

## PROVIDING CULTURALLY CONGRUENT CARE

An essential part of a victim-centered and trauma-informed SART response involves providing competent, culturally congruent care. Culture does not simply refer to ethnicity or race, but rather to integrated patterns of human behavior. Behavior patterns can include thought, communication, language, beliefs, values, practices, customs, courtesies, rituals, roles, and relationships.[17]

Sexual assault affects every culture and race. As our state becomes more diverse so do the needs of sexual assault survivors. This presents additional challenges for sexual assault response teams. SART members all serve critical functions in supporting a victim from the trauma through prosecution and healing. To be culturally competent, SART members must be aware of the relationship of culture and its impact on sexual assault victims.

A victim-centered response to sexual assault recognizes that while anyone may be a victim of sexual assault, marginalized populations – people of color, low-income people, undocumented individuals, persons with disabilities, deaf/hard of hearing persons, and LGBTQ+ populations – are disproportionately impacted by sexual assault. Because of this, local communities must be steadfast in their commitment to increasing their multicultural competency.

Adopting the following principles of multicultural competence will move communities closer to being culturally competent in their response to sexual assault.

- **Multicultural competence includes multiple dimensions of diversity:** Culture should be defined broadly and extend well beyond race and ethnicity to include sensitivity to gender, age, disability, language, literacy, sexual orientation, and any set of beliefs that guide an individual.
- **Multicultural competence involves experience, knowledge, skills and commitment**: SART responders should place a strong emphasis on including women, persons of color and persons of disability. Member organizations should provide for ongoing staff education on cultural competency to increase their knowledge and skills.
- **Multicultural competence applies to individuals and organizations:** Commitment to cultural competence should be integrated into policies and procedures, written materials, and evaluation. Services should be adapted to use the language and vernacular of people of color. Assistance should be provided to victims with literacy difficulties and/or limited English proficiency. Responders should strictly enforce zero tolerance policies for harassment, discrimination, racist language or homophobia.
- **Multicultural competence is an on-going process of growth:** Professional development should address the need for ongoing growth. SART responders should continually evaluate the cultural needs of underserved victims by conducting regular focus groups and collecting victim feedback information. Underserved victims should be highly active in the development, implementation and evaluation of local services.

## BEST PRACTICE IN SART CULTURAL COMPETENCE AND HUMILITY

Cultural competence is the ability to interact effectively with people of various racial, ethnic, socioeconomic, religious and social groups. Working towards cultural competence is an ongoing process, one often tackled by learning about the patterns of behavior, beliefs, language, values, and customs of particular groups.

Cultural humility involves an ongoing process of self-exploration and self-critique combined with a willingness to learn from others. It means entering a

relationship with another person with the intention of honoring their beliefs, customs, and values. It means acknowledging differences and accepting that person for who they are.

The self-exploration part of this is critical. Our brains like patterns and putting things into groups, to the extent that we're not aware of it most of the time. This is why we need to ask ourselves questions about what and how we think in order to help disarm personal biases. By making a practice of self-reflection, open-minded listening, and a posture of humility, we will truly be in the best position to serve all people effectively, no matter their cultural background.

### Inclusive Representation

SART providers should strive to reflect the demographics of the local community – particularly underserved populations. A SART should not only include members groups that will come into contact with a victim, but also make sure that those individuals represent the communities being served. It is imperative to ensure that women of color – the most likely victims of a sexual assault – have a voice in shaping local response to sexual assault. The same is true for individuals with disabilities, as they are at higher risk of victimization than those without a disability.

### Reducing Access Barriers

Diverse populations underutilize services. There are many reasons for this, including fear of formal systems and/or retribution, lack of trust due to past experiences, concerns about not being understood or respected, concerns about accessibility, lack of familiarity with available services and discomfort from inadvertent and inappropriate comments or approaches from providers. SART members should acknowledge these barriers when working with underserved survivors.

### Addressing Language

SART disciplines should ensure that victims have access to multi-lingual services – either through multi-lingual staff or through interpreters. Remember to consider country of origin, acculturation level, and dialect issues. SART disciplines should also ensure they can provide services to the Deaf community and those who are hard of hearing – either through staff or through qualified

interpreters, trained on topics surrounding sexual violence as well as discussing and communicating sensitive and confidential information.[17]

Do not use family for interpreting, a professional is required. Victims should have the right to refuse use of a particular interpreter. Interpreters should be instructed to interpret verbatim. Any clarifying questions the interpreter may have should be addressed directly with the service provider, not the victim. You may want to ask to verify any existing relationship that may be present between the victim and the interpreter and gain permission from the victim before utilizing a particular individual, as conflicts of interest, privacy, etc. may be of concern. Ask deaf clients if they have a preference on which interpreter and/or agency they prefer and make attempts to connect them accordingly whenever possible.

## SEXUAL VIOLENCE IN INDIAN COUNTRY

The governmental status of tribal nations is at the heart of nearly every issue that touches Indian Country. The essence of tribal sovereignty is the ability to govern and to protect and enhance the health, safety, and welfare of tribal citizens within tribal territory. Tribal governments maintain the power to determine their own governance structures and enforce laws. However, the legal relationship between the federal government and tribal governments is complex and can result in sexual assault perpetrators going free. Four laws have had a particularly significant impact on tribal self-governance: The Major Crimes Act (1885), Public Law 280 (1953), the Indian Civil Rights Act (1968), and the case law of Oliphant v. Suquamish (1978).[5]

- In 1885, tribal jurisdiction over criminal cases was diminished through the passing of the **Major Crimes Act** (MCA), which granted federal courts concurrent (or joint) criminal jurisdiction in tribal communities over seven major crimes committed in Indian Country, including rape/sexual assault. For the next 100 years, most federal officials interpreted MCA as giving the federal government exclusive federal jurisdiction for rape/sexual assault cases. Consequently, the Department of Interior (through the Bureau of Indian Affairs) refused to approve tribal rape laws.

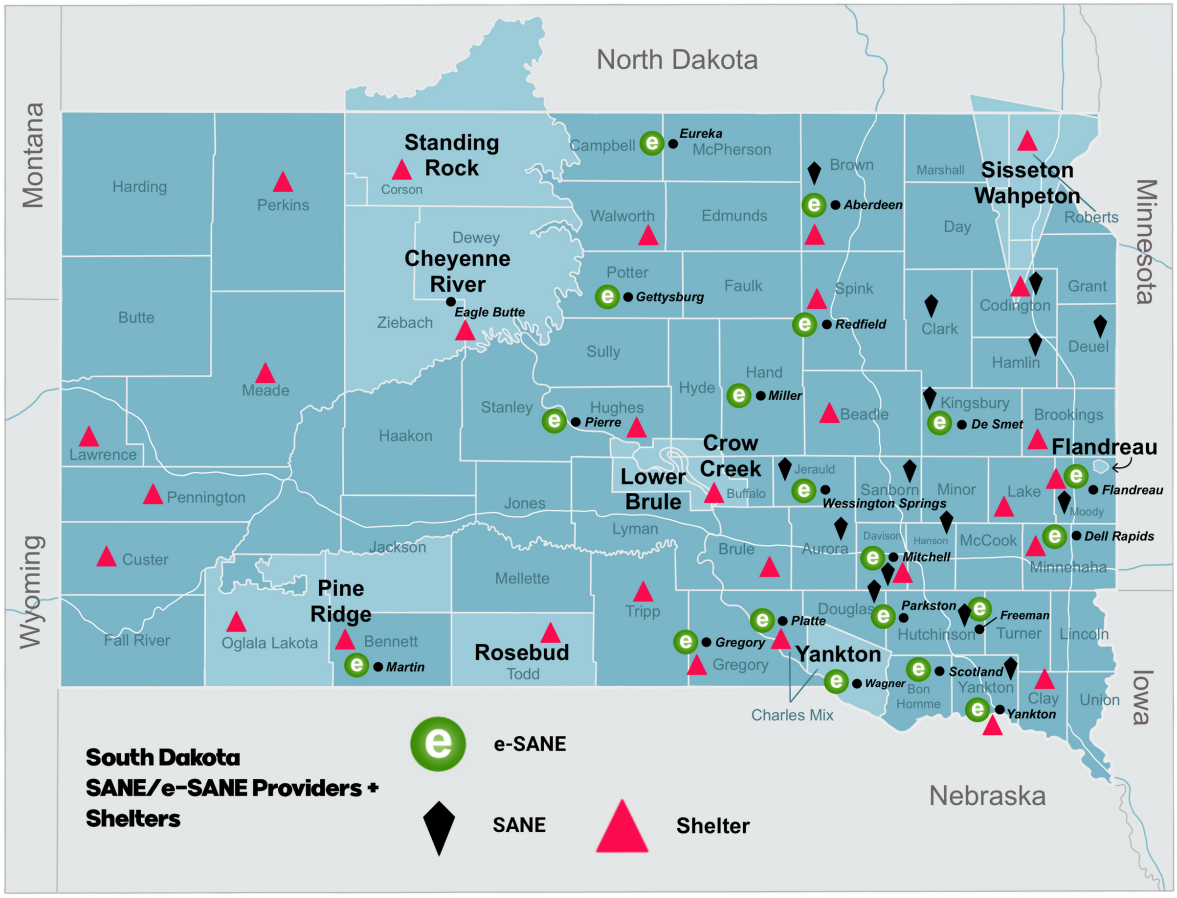
- Most state authorities do not exercise legal authority over Indian Country. However, with the passing of **Public Law 280** (1953), federal criminal and civil jurisdiction was transferred to some state governments over crimes committed in Indian Country (regardless of the race of the offender or victim). These states include California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska. Public Law 280 also permitted certain additional states to acquire jurisdiction if they wished (i.e., Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, *South Dakota*, Utah, and Washington). South Dakota has enacted Public Law 280 twice in the past (in 1957 and 1961), and in both cases the state acquired jurisdiction over civil and criminal actions on reservation highways only. Currently, only Florida has full Public Law 280 jurisdiction. Where Public Law 280 is applied, both tribal and state authorities have concurrent (running together) criminal jurisdiction on reservations. In many Public Law 280 states, this led to jurisdictional confusion, a decrease in litigation, sentencing disparities (with Native Americans receiving significantly longer sentences than non-Natives prosecuted for the same crime), and reduced federal funding for tribal law enforcement and tribal courts.
- The **Indian Civil Rights Act** (1968) limits the penalty that can be imposed by tribal courts for any offence, including murder and rape, to a maximum of one year's imprisonment and/or a $5,000 fine per offense. As a result of this limitation, tribal courts were less likely to prosecute serious crimes, such as sexual violence.
- In 1978, in the case of ***Oliphant v. Suquamish Tribe***, the Supreme Court ruled that tribal courts could not exercise criminal jurisdiction over non-Indians for conduct occurring on Indian lands. This federal ruling prohibits tribal authorities from prosecuting crimes committed by non-Indian perpetrators on tribal land.

Progress has been made in recent years to enhance sentencing and increase tribal court authority. The **Tribal Law and Order Act of 2010**, signed into effect by President Barack Obama, amended the Indian Civil Rights Act of 1968, increasing the maximum prison sentence to three years per offense and a fine of up to $15,000. On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) into law. For the first time since the U.S. Supreme Court stripped tribal governments of their criminal authority over non-Indians in Oliphant v. Suquamish Tribe (1978), VAWA 2013 recognized and reaffirmed the inherent sovereign authority of tribes to exercise criminal

jurisdiction over non-Indians who commit crimes in Indian Country.[5]

However, VAWA 2013 only applied to cases involving domestic violence, dating violence, and criminal violations of protection orders. On April 4, 2019, the House of Representatives passed the **Violence Against Women Reauthorization Act of 2019** (H.R. 1585). VAWA 2019 added child abuse, sexual assault, stalking, trafficking, obstruction of justice, and assaults against law enforcement officers to the crimes that tribes can prosecute against non-Indians and expanded tribal access to federal criminal databases.[5] VAWA 2022 expanded special criminal jurisdiction of Tribal courts to cover non-Native perpetrators of sexual assault, child abuse, stalking, sex trafficking, and assaults on tribal law enforcement officers on tribal lands.

The map below indicates South Dakota's tribal nations and includes indication of current victim services shelters and e-SANE telehealth sites available to assist victims of sexual violence across the state.

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# BUILDING YOUR RESPONSE AND CREATING PROTOCOL

# Building A Protocol Document

The next section of this toolkit is designed to be help you build and create your team's overall protocol document. Protocol documents are important because they guide both your agency and your team's response. You may use this as an outline or a step-by-step guide to help you adapt specific portions or protocol templates. Discipline-specific guidelines are included to serve as starting points for creating your own protocols. If you have questions or need assistance in developing your team's protocols, please reach out to The Network for technical assistance. Keep in mind that your team may not include all of the disciplines below and may have additional disciplines not included here. We encourage you to build your team based on the needs of your specific community.

## PURPOSE AND USE OF PROTOCOL

To begin, you will want to discuss the purpose, intent, and any instructions for using your protocol document(s) as a whole. This will assist your team in deciding what information to include, which agencies to include, and the best format for the information.

*Sample Language:* "This protocol serves as one tool used by a collaborative, multidisciplinary team to improve the experiences of victims/survivors of sexual assault. The protocol is designed to make critical changes to individual, agency, and systems efforts in the response to sexual assault. In our community, this protocol is designed to be used by individuals and the agencies working directly with victim/survivors of sexual assault averaging **age 14 and over**. This protocol focuses on the critical elements of response to improve outcomes for victims/survivors. Through adopting this protocol, each agency agrees to use this information to strengthen their practices, policies, and procedures. Compliance with this protocol will require changes, and each participating agency agrees to invest the appropriate time and resources to ensure change occurs. Community adoption of this document serves as a commitment to that work on behalf of all agencies." [2]

## HOW TO USE PROTOCOLS

Describe how your participating agencies will use the documents, including a commitment to training new team members and agency employees. Include an explanation of what format(s) your team will choose (ex. electronic reference, printed guidebook, etc.). You may wish to add disclaimer language as necessary (ex. *This protocol is applicable only to the (____ SART Team, within ____ County/Counties, etc).* [2]

### A Vision and Mission Statement

One of the first tasks during the initial stages of team formation is developing a mission statement and accompanying vision statement or set of statements. The mission statement serves as the anchor for the team for years to come. Additionally, the mission and vision statements define and guide the team's work, provide parameters of accountability, and communicate the direction and focus of the team.[1] *(See Vision and Mission Statement Resource Guide)*

### History of Your Team

Here you will have the opportunity to discuss your team's origin and history. This section aids new members in understanding the necessity of the team. It also helps to create a clear picture of your team's role in the community. You may want to include information about founding agencies, funding sources, geographic areas or other historical information here. [2]

### Participating Members

SART member agencies each have specific roles and responsibilities. Primarily, they serve as subject matter experts for their discipline, they represent their agency, and they provide a critical bridge for communication between the SART and their respective agency. In addition, SART members often play a significant role in implementing changes in their agency based on team decisions.

Ideally, SARTs include membership from at least the following key disciplines:

- Advocacy (Community-based, systems-based, specialized populations)
- Law Enforcement (Local, County, State, Federal, Tribal, Campus/University)
- Health Professionals (Local, Tribal)
- Prosecution (Local, State, Federal, Tribal)
- Corrections and Probation (as appropriate)

Many teams also include representatives from other key points of disclosure or places where victims/survivors access help. These additional representatives are often mental health professionals, colleges/universities, disability services, other non-profit agencies, and/or faith communities. The focus and purpose of the team should help guide the inclusion of additional agencies.[2] This also includes a commitment to creating an inclusive environment for communications, training and speakers that ensures all members are able to fully participate and understand the work and purpose of the team.

Membership should also reflect the make-up of the community, and teams should find ways to engage culturally-specific communities and agencies from the very beginning. This work starts with the team formation and should be present in every step of the work. The meaningful engagement of these critical partners will ensure that a community's response meets the needs of victims and survivors from the various and diverse populations within that community.[2]

## Team Coordination

It is important for teams to coordinate to support the effective functioning of the team toward its mission. This may happen in a variety of ways, including hiring or appointing one coordinator or sharing the responsibility between team members. When a coordinator is also the only representative of a member agency, it is important to discuss how the team will ensure that the duties associated with both roles can be done well. Discuss expectations team members have for the coordinator and for each other to ensure the effectiveness for the team.
You may also consider rotating the coordination responsibilities. For example, just because someone has time today and for the next six months, that does not mean they will always have that time. Plan periodic check-ins or service terms to ensure that the coordination arrangement chosen continues to work for everyone.

Examples of key coordinator activities include the following:

1. Hosting team meetings and working to ensure a welcoming space for all team members.
2. Promoting representation, participation, and engagement from member agencies.
3. Acting as a centralized hub of information and communication about and for the SART.
4. Keeping records for the SART, such as a list of members and contact information, meeting agendas, and meeting minutes.
5. Coordinating outreach and orientation for new member agencies and new team members.
6. Being a resource to team members on effective SART functioning, available local, state, and national resources for SARTs, etc.
7. Being a champion for the whole team regardless of what individual discipline the coordinator represents.
8. Promoting a victim-centered, trauma-informed approach that increases access for all victims.
9. Networking with local and community systems professionals to promote the SART and its work (e.g. community needs assessments, protocol, training).
10. Preparing SART meeting agendas and review with other team leaders or members as appropriate.

SART members, while bringing their individual expertise to the table, are there as representatives of their agencies. This means that participating agencies must grant the team member the authority to represent their agency's viewpoints and priorities. SARTs are most effective when there is a mix of frontline responders and administrators on the team. You will want to consider which representation makes the most sense from each agency involved. Each team will have to decide who they want/need on their team. Team members may vary based on location.[1]

### Team Agreements

A section should be included to list out any specific agreements or policies/practices that team members agree to follow. Some teams may prefer to do this in a separate Memorandum of Understanding (MOU) or similar document. *An example MOU is included in this Toolkit.*

# Responses and Considerations

While each case of sexual assault is unique, the purpose of creating protocols within your agency and SARTs is to help ensure a consistent response as much as possible. Utilizing tools like community or systems assessments or developing resources like flowcharts can assist your team in mapping out what an overall response might look like within your community. Surveys are another useful tool to consider when looking at how sexual assault cases are currently being handled that can greatly inform the creation and development of your team's coordinated response.

# Sexual Assault Forensic Examinations

Every person who experiences sexual assault or sexual violence should have access to medical care and a medical-forensic exam. Evidence collection can be offered if within the state-established timeframe. Currently SD state protocols state evidence can be collected on the adolescent/adult population up until 120 hours post-assault (some extenuating circumstances can extend that timeframe).[3,12]

Whenever possible, a sexual assault forensic exam (SAFE) should be completed by a Sexual Assault Nurse Examiner (SANE) or another trained provider. "SANEs are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of the patient who has experienced sexual assault or abuse."[4]

There is a difference between being SANE trained and SANE certified. There are also two different patient populations that a SANE may be trained to care for: pediatric/pre-pubescent and adolescent/adult. This toolkit focuses on the adolescent/adult examination and response to sexual assault.

### ESANE

Support for healthcare personnel is available via the ESANE program. Additional information can be accessed at: https://www.avelecare.com/ecare/what-we-do/emergency/sane-program.

### Informed Consent

The consenting process for conducting a medical-forensic exam, with and without evidence collection, is a very important part of the post-sexual assault care provided. For legal purposes, it is important to obtain consent for health care. The health care provider should be the one who obtains informed consent. The victim advocate can play an important role in assisting the patient during the consent process but should not be delegated the role of obtaining informed consent.[11]

To provide patient-centered care to the sexual assault patient, each patient should have all steps explained in a developmentally appropriate manner and have an opportunity to cooperate or decline any or all parts of the examination.

Even patients who do not have the legal ability to consent should give their assent to a medical forensic examination. It is also important to recognize that informed consent is a process—it is not just completed when the patient signs a formal consent form. Informed consent should be an ongoing process throughout the examination. Those responding to the patient should make patients aware that they are able to decline any procedure or any part of the examination at any time during the examination.[11]Patients can consent to each portion of an exam, including adults with disabilities. An informed patient is an empowered patient.

While informed consent and patient confidentiality are essential parts of the provision of all health care, in the sexual assault setting there are three special considerations:

1. Is the patient able to give informed consent, and is the patient entitled to confidential care (see state mandatory reporting laws and victims' rights)?
2. Does the patient understand the role of each member of the team and whether or not the information disclosed to a specific team member is protected from further disclosure?
3. How does trauma impact the ability of the patient to understand the long-term implications of consent given at the time of the examination?

# Sexual Assault Kits in South Dakota

A Sexual Assault Kit is a set of swabs, slides, envelopes, instructions, and forms specifically designed to collect and preserve physical evidence that can be used in a criminal sexual assault investigation. Below are some frequently asked questions regarding sexual assault kits, as well as appropriate answers which mirror South Dakota law.[8]

- Exam timing
  The sooner the victim/survivor has an exam, the better. A sexual assault kit is best completed within 6 hours of the assault but can be completed up to 7 days after.
- Exam payment
  The exam is required by law to be paid for by the County in which the crime was committed. The exam will be completed at no cost to the Victim. SDCL 22- 22-26. Other treated injuries may be billed accordingly.
- Reporting
  The victim/ survivor does not need to decide whether to release the kit to law enforcement at the time of the exam. The kit can be completed anonymously. However, it is important to encourage the victim/survivor to have the kit completed as soon as possible to ensure proper medical treatment and aid in any evidence collection. See SDCL 23-5C-2.
- Notifying Law Enforcement
  The health care facility is responsible for notifying law enforcement within 24 hours. Kits associated with a reporting party must be picked up and submitted to the crime lab by law enforcement within 14 days. The crime lab has 90 days to test them.
  Law enforcement shall retrieve any anonymous kit within 72 hours.
- Kit Coding/Storage
  The health care facility is required to assign each kit a code number which is provided to the victim as well as the name of the law enforcement agency where the kit was taken. SDCL 23-5C-3.
    § All procedures used by the health care facility shall ensure victim privacy.

Anonymous Kits

§ Kits are required to be stored for at least 7 years or until the victim reaches age 25, whichever is longer.

§ The health care facility is required to turn the kit over to law enforcement, but the identity of the victim is kept private. The health care facility may not affix any information of the victim's identity to the kit other than the code number.

§ Law Enforcement shall store the kit, with the assigned code number, for at least 7 years or until the victim turns 25, whichever is longer.

§ All procedures used by the health care facility shall ensure victim privacy.

§ If the victim decides to release the kit and proceed with the case, the victim should provide the code number to law enforcement.

§ Kits are not tested by a crime lab until or unless a victim decides to make a report to law enforcement.

- Kit Analysis

  Law enforcement has 14 days to obtain the kit and send for analysis per standard practices.

  The lab has 90 days to process the kit.

  Generally, the lab begins testing the kit within the first 20 days of submission. They begin by completing an inventory of the kit and logging the contents into their systems. The technician then prepares the samples for testing. Once testing is complete, the technician details the findings in a report. When all testing, reporting and reviews are complete, the kit and report are sent back to the originating agency.

# Discipline-Specific Responses and Considerations

The following will highlight information that is unique to each discipline. Each agency will need to tailor or adapt information in their protocol document based on their own unique practices, communities, available resources, guidelines, and administrative policies and procedures.

While each agency individually creates and maintains their individual response protocol, it must also fit into the team's overall response and philosophies as far as handling cases of sexual assault. All members of the team should be involved in helping to review and suggest updates, as well as familiarize themselves with each agency's response within the team. Each agency's protocol should lay out not only their response in cases of sexual assault, but also any related processes, limitations or requirements that the team needs to be aware of that may impact the overall SART response. [2]

This toolkit contains sample protocols that your team may use, however, we recommend that you ensure applicability to your specific community. Note that there are areas where you would replace identifiers (i.e. COMMUNITY BASED ADVOCACY ORGANIZATION or LAW ENFORCEMENT AGENCY for example) with the name of the actual local partner(s) within your community.

If your team needs assistance creating protocols, please reach out to The Network for technical assistance.

# Community-Based Advocacy

*Community-Based victim advocates provide free, confidential and non-judgmental emotional support, information, community program referrals and guidance following a sexual assault. The victim is usually more cooperative and better able to respond to procedures when feeling supported, believed and safe.*[8]

*Note which agency/agencies specifically this protocol applies to. If necessary, include each agency's specific response protocol.*

## Role of Advocacy

Advocates play a unique role in the community and systems response to sexual violence in that they are the only member of the response whose sole focus is to be a supportive person to the victim/survivor as well as secondary victims/survivors. Advocates offer information, options, and supportive assistance in navigating the healing and justice processes. Advocates can accompany a victim/survivor in nearly all parts of the response—providing support during medical forensic exams, law enforcement interviews, as well as going through the court processes, and providing aftercare. Advocates focus their efforts on validating and supporting a victim/survivor in all their choices.

There are two types of advocates—community-based and systems-based. The primary difference between the two is the nature of communications and confidentiality protections. Community-based advocates typically work in an independent, community-based advocacy or nonprofit organization. They provide comprehensive services to victims, regardless of whether they choose to report the crime and participate in the criminal justice process. Community-based advocates also provide services before, during and after a criminal case. Services are also available when there is no criminal case at all. Teams and communities must distinguish between the types of advocacies available and incorporate advocacy that has confidentiality protections to provide the best possible services for victims/survivors.

## Discipline-Specific Tools or Information

If the team would like to add additional tools or information, please add to this section. An example may be informed consent processes. Inter-agency cross training on advocacy-specific topics may be a consideration. This section may also be used to indicate which tools the team and community agencies will agree to use in strengthening and supporting the advocacy response.[2] Be sure to include information about how victims/survivors can access crime victims' rights, notification, and compensation information.

## Special Considerations

In this section, you may wish to include the state statutes for community advocacy confidentiality. Providing mandated reporting or data collection practices may also be of use in this section, depending on your team and community. You may wish to provide the names of community advocacy agencies as well as systems advocacy to increase systems professionals' knowledge.

## Intersections with Other Providers in the Response

You may wish to include information regarding key intersections between disciplines, as these intersections are often the source of breakdowns in the response and tensions within the multidisciplinary team.

## Best Practices for Community-Based Advocacy (CBA) to Consider

A. The LOCAL COMMUNITY-BASED ADVOCACY ORGANIZATION will provide a 24-hour, 7 day-a-week sexual assault crisis hotline.
B. When an individual presents at the LOCAL HOSPITAL for a sexual assault examination (SAE), the LOCAL HOSPITAL shall notify the LOCAL COMMUNITY-BASED ADVOCACY ORGANIZATION.
C. A CBA from the LOCAL COMMUNITY-BASED ADVOCACY ORGANIZATION will respond to the LOCAL HOSPITAL within 45-60 minutes from the time the shelter is contacted. If for any reason there will be a delay in response time (inclement weather, or other emergency issues) the LOCAL COMMUNITY-BASED ADVOCACY ORGANIZATION will give an estimated time of arrival.

D. Upon CBA arrival at hospital, advocacy services will be offered to victim/survivor and provided as desired by the victim/survivor.
E. If present prior to the SAE, CBA will inform the victim/survivor of their options to be examined by a health care professional, review the confidentiality and the limits of confidentiality, and explain the benefits of completing a release of information to law enforcement and the State's Attorney's Office, said release to be time, date, and agency specific.
F. CBA will accompany and provide support for the victim/survivor throughout the exam with the victim/survivor's consent.
G. CBA will remain with the victim/survivor after the exam is complete to talk with the victim/survivor about options and moving forward.
H. After the victim/survivor has completed the medical exam process, CBA will encourage the victim/survivor to engage their support system to ensure victim/survivor is not alone once they depart from the hospital.
I. CBA will assist in helping to meet any needs for accommodations (interpreter, transportation, etc.) needed or requested by victim/survivor and/or their support system.
J. CBA will provide support as requested by the victim/survivor during the forensic examination.
K. CBA will provide support as requested by the victim/survivor throughout law enforcement interview and investigation if incident is reported.
L. CBA will provide each sexual assault victim/survivor a personal care package (including clothing and personal care items for victims/survivors having to surrender their clothing into evidence at the hospital, etc.), in addition to any resources the SART has developed, complete with contact information, before leaving the hospital.
M. CBA will follow up with all sexual assault victims/survivors, if so desired by the victim/survivor, and provide additional services, if necessary, including but not limited to: law enforcement accompaniment, judicial accompaniment, referrals for STI and pregnancy testing, individual and group counseling provided by a licensed counselor for the victim of sexual assault, and any other relevant contact information or other local/appropriate resources.
N. CBA will support the victim/survivor by helping to advocate for, assisting in securing accommodations, and working to remove barriers as needed throughout the duration of the investigation process and any ongoing

criminal justice involvement or advocacy service provision.
O. CBA will receive at least 8 hours of training per year on sexual assault.
P. CBA will attend SART meetings on a regular basis and work cooperatively with SART members with a goal of focusing on what is in the best interest of the victim/survivor and the community. CBA will adhere to their agency policies regarding victim/client confidentiality.

To locate the Community Based Advocacy program nearest you, access the most up to date Victim Services Shelter Map found online via the **South Dakota Department of Public Safety website** at: **https://dps.sd.gov/victims-services/victims-services-shelter-map.**

# Victim-Witness Specialists/Systems-Based Advocacy

*Victim-Witness Specialists/Systems-Based Advocates serve victims and witnesses of crimes by providing support and resources to ensure the rights of the victims are not violated. Victim-Witness Specialists/Systems-Based Advocates also help to navigate a victim/witness through the criminal justice process so their interests are heard and upheld.*[8]

*Note which agency/agencies specifically this protocol applies to. If necessary, include each agency's specific response protocol.*

There are two types of advocates—community-based and systems-based. The primary difference between the two is the nature of communications and confidentiality protections. Systems-based advocates—such as those who are employed by law enforcement, federal agencies or courts— cannot provide confidential services. A systems-based advocate's records can be subpoenaed, or if a victim/survivor shares certain types of information—such as exculpatory information— they are compelled to share that information with other systems professionals. Because of this, systems-based advocates or victim-witness advocates may have limited flexibility in their ability to accompany a victim/survivor in all parts of the response process, or providing long-term aftercare. Each type of advocate provides an essential component of support for the victim/survivor. Teams and communities must distinguish between the types of advocacy services and providers available and incorporate advocacy that has confidentiality protections to provide the best possible services for victims/survivors.

## Discipline-Specific Tools or Information

If the team would like to add additional tools or information, please add to this section. An example may be informed consent processes. Inter-agency cross training on advocacy specific topics may be a consideration. This section may also be used to indicate which tools the team and community agencies will agree to use to strengthen and support the advocacy response. Be sure to include information about how victims/survivors can access crime victims' rights, notification, and compensation information.[2]

## Special Considerations

In this section, you may wish to provide mandated reporting or data collection practices as applicable, depending on your team and community. You may wish to provide the names of community-advocacy agencies as well as systems advocacy to increase systems professionals' knowledge.[2]

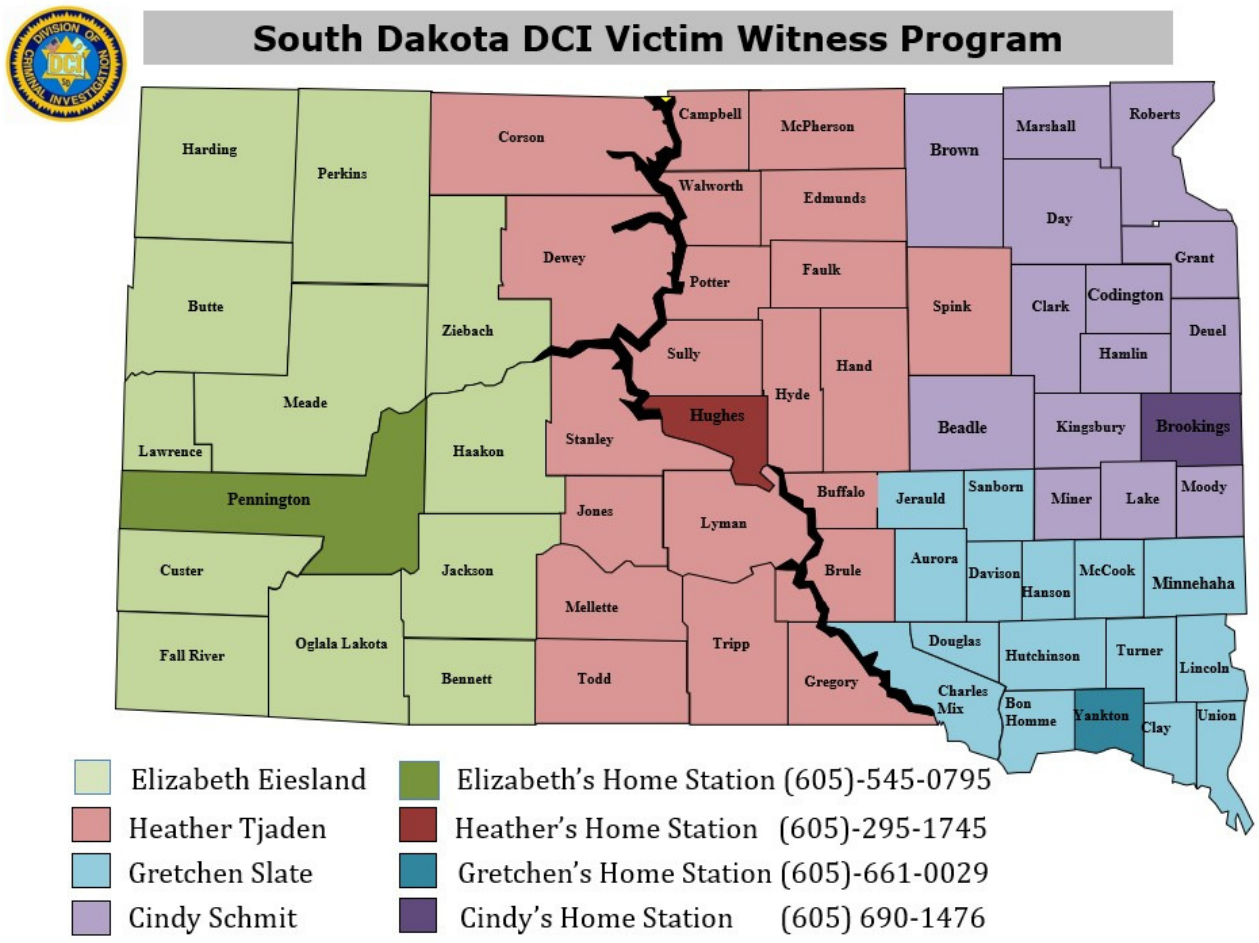
## Intersections with Other Providers in the Response

You may wish to include information regarding key intersections between disciplines, as these intersections are often the source of breakdowns in the response and tensions within the multidisciplinary team.[2]

## Best Practices for Victim-Witness/Systems-Based Advocates (VW/SBA) to Consider

A. VW/SBA will become involved with sexual assault cases and victims after being specifically requested to assist by community-based shelters, law enforcement or prosecutors.
B. Upon notification, VW/SBA will meet with and/or contact the victim as soon as practical and discuss upcoming court proceedings, court language, court documents, and educate them about the criminal justice process in general to ensure victims understand the Marsy's Constitutional Amendment and their Statutory Rights under SDCL 23A-28C-1.
C. VW/SBA will help the victim navigate through the criminal justice process as it relates to their case, contact the victim prior to upcoming hearings, and attend all court proceedings (with the victim or in the absence of the victim) keeping the victim apprised of all matters relating to their case.
D. VW/SBA will assist the victim in a trauma-informed way by both providing and helping to locate resources. VW/SBA will work to remove barriers as needed throughout the duration of their involvement with the criminal justice system.
E. VW/SBA will act as a liaison between victims and law enforcement, prosecutors, and other court staff.

F. VW/SBA will ensure the victim is aware of the Crime Victim's Compensation Program and collaborate with other area resources or support services as needed.
G. VW/SBA will assist with Victim Impact Statements, restitution figures, and notification of the South Dakota SAVIN (Statewide Automated Victim Information Notification) Program.
H. VW/SBA will receive at least 8 hours of training per year on sexual assault.
I. VW/SBA will attend the SART team meetings on a regular basis. VW/SBA involved with case-specific information to a particular crime victim will adhere to their agency policies on maintaining victim/client confidentiality.



# Law Enforcement

*Law enforcement and criminal investigators play a significant role in the victim's willingness to cooperate in the investigation, as well the victim's ability to cope with the emotional and psychological effects of the crime. Therefore, it is critical that law enforcement agencies treat a victim of sexual assault with compassion and consideration, and provide the necessary information and assistance to make the interaction with the criminal justice system as easy as possible.*[8]

*Note which agency/agencies specifically this protocol applies to. If necessary, include each agency's specific response protocol.*

## Role of Law Enforcement

Law Enforcement provides safety, investigation, and case follow-up for victims/survivors of sexual violence. While there are differing types of officers based upon agency sizes and resources, the key elements that carry across law enforcement types is the primary focus on investigating and establishing the elements of a crime. From taking the initial reports to filing, law enforcement focuses their efforts on increasing public safety.

Trauma-informed investigation techniques have significantly altered how law enforcement interacts with victims/survivors, and the results have been extremely positive. Other tools include the use of "soft rooms" that are designed to provide an atmosphere of comfort for victims/survivors. Additional tools and resources are available to train and assist Law Enforcement in increasing their effectiveness with sexual violence victims/survivors. Assisting victims/survivors with accessibility concerns can help them to feel safer and more comfortable. Finally, report writing can be a site of potential success in sexual violence cases; there are several tools available to increase the effectiveness of report writing.

## Discipline-Specific Tools or Information

If the team would like to add additional tools or information, please add to this section. Inter-agency cross training on law enforcement-specific topics may be a

consideration. This section may also be used to indicate which tools the team and community agencies will agree to use in strengthening and support the law enforcement response.[2]

## Special Considerations

In this section, you may wish to include the jurisdictions that participate in this response, or you may include best practices in sharing information across law enforcement jurisdictions. You may wish to provide the names of law enforcement agencies to increase systems professionals' knowledge.
You may also wish to outline your community's protocols regarding the participation in any regional or statewide enforcement efforts regarding sexual assault. Local law enforcement agencies may want to lay out processes for contacting other agencies as needed for assistance with investigations, consultation, and resources.[2]

## Intersections with Other Providers in the Response

You may wish to include information regarding key intersections between disciplines, as these intersections are often the source of breakdowns in the response and tensions within the multidisciplinary team.[2]

## Best Practices for Law Enforcement (LE) to Consider

A. When responding to the scene of a reported sexual assault, LE will protect the victim from further harm. Officers will encourage victims seek medical attention and make related contact as appropriate.
B. Whenever a sexual assault victim has been identified by LE, the law enforcement agency and/or responding officer will ensure that the LOCAL COMMUNITY-BASED ADVOCACY ORGANIZATION is contacted to offer support and services. This may include CBA being dispatched to a safe location, i.e., shelter or hospital, to meet with the victim, or response over the phone.
C. LE responding to the scene of a reported sexual assault will protect the integrity of the crime scene and chain of evidence.
D. When engaging sexual assault victims during the investigative process, LE will utilize interviewing skills rather than interrogation methods.

E. LE will ensure the victim has access to interpretation services as needed and/or requested. Interpreters may be present during any interviews completed with victims.
F. LE will conduct a trauma-informed interview with the victim to determine if a crime was committed.
G. In sexual assault cases occurring within 120 hours, in which a medical exam is warranted and with the victim/survivor's cooperation and consent, LE will recommend the victim/survivor proceed to the nearest medical facility to be examined by a health care professional and participate in a sexual assault forensic exam.
H. LE will have a procedure in place to store anonymous sexual assault kits.
I. LE will preserve information and evidence that will identify the offender and prove the allegations.
J. Law enforcement will work in partnership with prosecution and/or appropriate partners to determine jurisdiction.
K. LE will make every attempt to interview the suspect and obtain corroborating evidence which may include physical evidence from the suspect. A search warrant may be necessary in order to complete a suspect sexual assault evidence collection kit.
L. LE will make an arrest or make referrals to the appropriate State's Attorney's office when a sexual assault suspect has been identified and probable cause for arrest exists.
M. All requests from sexual assault victims, family members, or outside agencies in reference to the report submitted to law enforcement will go through the appropriate State's Attorney's Office to gain access to the report.
N. LE will work with the States Attorney, Deputy States Attorney, CBA, and VW/SBA to help ensure victims' rights are being met and information shared to assist in any prosecution.
O. LE agency will receive at least 8 hours of training per year on sexual assault.
P. LE representative will attend SART meetings on a regular basis and share information with other partner agencies involved with the SART meetings so that victims are protected, and perpetrators are held accountable.

# Sexual Assault Nurse Examiner

## (and other trained Health Care Providers)

*Health care agencies and health care providers are working to meet the needs of sexual assault patients, as well as fulfill the medical community's responsibilities for the collection and preservation of evidence. By having specially trained Nurse Examiners conduct the forensic medical exam, hospitals can provide comprehensive consistent care that respects the emotional and physical needs of the sexual assault patient while collecting the best possible forensic evidence to promote effective prosecution of the suspect.* [8]

*Note which agency/agencies specifically this protocol applies to. If necessary, include each agency's specific response protocol.*

### Role of Health Care Providers

Health care providers provide victims/survivors with critical access to health care and evidence collection. Regardless of the recency of an assault, all victims/survivors should be provided the opportunity to access medical care. Above all, the medical forensic exam provides, both, medical care and forensic examination. In some cases, Health Care Providers may be able to offer support to criminal proceedings. Throughout the response, the health professional focuses on the health and wellbeing of the victim/survivor and can uniquely give accurate health information and assistance.

The most important element of the medical response to sexual violence is the provision of informed and compassionate medical care providers. Many communities operate without a certified Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Exam (SAFE) program, because not all communities are a fit for these programs. Physicians and advanced practice providers with proper training (nurse practitioners and physician assistants) may conduct sexual assault evidence collection.

Healthcare includes all medical, psychological, and emotional concerns associated with sexual assault, including preventing STIs, HIV, pregnancy, and other long-term complications. It also includes ensuring safe discharge planning.

## Discipline-Specific Tools or Information

If the team would like to add additional tools or information, please add to this section. One additional consideration is the length of time after an assault for evidence collection. Inter-agency cross training on medical specific topics may be a consideration. This section may also be used to indicate which tools the team and community agencies will agree to use in strengthening and support the medical response.[2]

## Special Considerations

In this section, you may wish to include specific content about information sharing practices under HIPAA (Health Insurance Portability and Accountability Act). Providing mandated reporting or data collection practices may also be of use in this section, depending on your team and community. You may wish to provide the names of available medical agencies to increase systems professional's knowledge.[2]

## Best Practices for Health Care Providers to Consider

### Initial encounter:

When a person presents to a medical facility and reports they have been sexually assaulted, the patient should first be screened for any life or limb-threatening injuries, uncontrolled bleeding, severe pain, unstable vital signs, or any other signs and symptoms of a medical emergency. Emergent medical needs should be addressed, and the patient stabilized first before beginning the forensic medical exam.

All victims of sexual assault or sexual violence should be offered an advocate from a local advocacy or rape crisis center to have present during the complete medical visit. Be aware that there are two main types of advocates and depending on which type is present, confidentiality will be affected. It's important to determine the type of advocate that is present as that will affect other steps of the exam.

A. Health care provider will understand that the dual purpose for the forensic medical examination is to address both the patient's needs and the justice system's needs.
B. Health care provider will ensure that exams are conducted at sites served by specially-educated and clinically-prepared examiners. When a health care professional is unavailable, a trained RN and medical provider will conduct the forensic medical exam.
C. Health care provider will demonstrate an average response time of 45-60 minutes or less once they have been informed there is a patient to be seen. If for any reason there is going to be a delay in response time (inclement weather, or other emergency issues) the health care professional will give an estimated time of arrival.
D. Health care provider will notify LOCAL COMMUNITY-BASED ADVOCACY PROGRAM (if they have not already been notified) when a sexually assaulted patient presents at the ER Department seeking treatment.
E. Health care provider will offer and provide access to interpretation services and other accommodations as needed and/or requested by the patient.
F. If a victim/survivor chooses to report the assault, health care provider will notify law enforcement.
G. Health care provider will employ victim-centered care and perform the sexual assault forensic exam in a sensitive, dignified manner.
H. Health care provider will complete any releases of information needed prior to conducting the medical forensic examination.
I. Examinations may be conducted with the patient, health care provider (and possibly a health care provider trainee), and CBA (and possibly an advocate trainee) in the room. All family members and friends will be escorted to a separate waiting area unless specifically requested by patient to stay. LE will exit the exam room prior to the exam.
J. Health care provider will follow hospital protocol in the examination of sexual assault survivors and in the collection of forensic evidence.
K. Health care provider will utilize SAE kits that are provided by the South Dakota Department of Health.
L. Health care provider will maintain chain of custody for forensic evidence by releasing evidence to the appropriate law enforcement agency.

M. Health care provider will encourage all sexual assault victims to have follow-up STI examinations, testing, immunizations, and treatment.
N. Health care provider will meet with attorneys to review the case prior to any testimony in a case.
O. Health care provider will maintain communication and contact with the State's Attorney's office and give immediate notification of change of address or telephone numbers.
P. Health care provider will provide truthful, accurate, and complete testimony at all court proceedings as requested.
Q. Health care provider will adhere to the health care agency's policy on maintaining victim/client confidentiality.
R. Healthcare includes all medical, psychological, and emotional concerns associated with sexual assault, including preventing STIs, HIV, pregnancy and other long-term complications. It also includes ensuring safe discharge planning.
S. Health care provider will provide training to law enforcement and other community agencies as requested.
T. Health care provider will receive at least 8 hours of training per year on sexual assault.
U. A health care provider representing the LOCAL HEALTHCARE PROVIDER will attend SART meetings and work cooperatively with SART members with a goal of focusing on what is in the best interest of the victim/survivor and the community.

# Prosecution

*Prosecutors assume responsibility in making decisions to prosecute sexual assault matters, informing victims of the status of a case from the time of the initial charge to conclusion of said matter, recognizing the profound impact that crimes of sexual violence have on victims and their families, and holding offenders accountable for their actions.*[8]

*Note which agency/agencies specifically this protocol applies to. If necessary, include each agency's specific response protocol.*

## Role of Prosecution

Prosecutors or State's Attorneys provide the component of the sexual violence response of taking cases into the criminal justice system. Prosecutors or State's Attorneys offer explanations of case decisions, preparation for trial, as well as information about the legal system to victims/survivors as well as team members. Members of prosecution teams prioritize accountability to the public as well as seeing justice done.

One of the most challenging types of cases include when a victim/survivor has ingested alcohol or substances—whether voluntarily or involuntarily. Prosecuting cases with alcohol or other substances. There are several resources available to assist prosecutorial efforts when alcohol or other substances are present in the case.

## Discipline-Specific Tools or Information

If the team would like to add additional tools or information, please add to this section. One additional element to consider is including information about the civil legal process as some victims/survivors may wish to access that as a means of justice seeking. Inter-agency cross training on prosecution-specific topics may be a consideration. This section may also be used to indicate which tools the team and community agencies will agree to use in strengthening and support the prosecutorial response.[2]

## Special Considerations

In this section, you may wish to include specific content about information sharing practices. Providing information about case decision processes may be in this section, depending on your team and community. You may wish to provide the names of prosecutorial offices to increase systems professionals' knowledge.[2]

## Intersections with Other Providers in the Response

You may wish to include information regarding key intersections between disciplines, as these intersections are often the source of breakdowns in the response and tensions within the multidisciplinary team.[2]

## Best Practices for Prosecutors to Consider

A. Prosecutor will provide guidance to law enforcement during their investigation, evaluate the results of the investigations and prosecute the appropriate cases.
B. Prosecutor will work in partnership with law enforcement and/or appropriate partners to determine jurisdiction.
C. Prosecutor will respond to inquiries by the victim as soon as possible, keep victims apprised of the status of the case, advise victims as to the appropriate rights, and are prepared for Court, working directly with COMMUNITY-BASED Advocate and/or VW/SBA to ensure these are done in a timely and supportive way.
D. Prosecutor will adhere to their agency policies on maintaining victim/client confidentiality.
E. Prosecutor will second-chair at least one sexual assault case before handling one of their own.
F. Prosecutor will receive at least 8 hours of training per year on sexual assault.
G. Prosecutor will attend SART meetings on a regular basis.
H. Prosecutor will keep SART informed of the status of cases as they move through the legal system, as allowable, while maintaining integrity and confidentiality of the case to help ensure victims are protected, and perpetrators are held accountable.

# Other Allies

*Allied Members will assist in the collaborative work of SART, recognizing the impact crimes of sexual violence have on victims.* [8]

In this section, you may wish to add additional disciplines or represented team agencies. For example, your team may want to include colleges/universities or adult protections. However, not all agencies need to have their own sections, as the parts of response chapters apply to all agencies working on the team. Work with your team members to choose if and whom to add additional representative overviews.

### Allied Members who participate on/with the SART will:

A. Provide insight into the community's awareness of the sensitive issues of crimes of sexual violence.
B. Provide opportunities for SART to provide education when possible, in classroom or organizational settings.
C. Designate staff to attend SART meetings on a regular basis.
D. Share information with other partner agencies involved in the SART meetings so that victims are protected, and perpetrators are held accountable.
E. Adhere to their agency policies on maintaining victim/client confidentiality.

# Related South Dakota Laws and Statutes

### SDCL 22-22-1. Rape—Degrees—Felony—Statute of limitations.

Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

(1) If the victim is less than thirteen years of age; or

(2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or

(3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or

(4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or

(5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3 felony. Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to any charge brought pursuant to subdivisions (1) or (2) of this section. Otherwise a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes of age twenty-five or within seven years of the commission of the crime, whichever is longer.

### SDCL 22-22-1.2. Minimum sentences for rape or sexual contact with child.

If any adult is convicted of any of the following violations, the court shall impose the following minimum sentences:

(1) For a violation of subdivision 22-22-1(1), fifteen years for a first offense; and

(2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, ten years for a first offense.

### SDCL 22-22-2. Sexual penetration defined—Acts constituting sodomy—Medical practitioners excepted.

Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause.

### SDCL 22-22-7. Sexual contact with child under sixteen—Felony or misdemeanor.

Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than that person's spouse if the other person is under the age of sixteen years is guilty of a Class 3 felony. If the victim is at least thirteen years of age and the actor is less than five years older than the victim, the actor is guilty of a Class 1 misdemeanor. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

### SDCL 22-22-7.1. Sexual contact defined—Exception when within the scope of medical practice.

As used in this chapter, the term, sexual contact, means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party. Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause.

### SDCL 22-22-7.2. Sexual contact with person incapable of consenting—Felony.

Any person, fifteen years of age or older, who knowingly engages in sexual contact with another person if the other person is sixteen years of age or older and the other person is incapable, because of physical or mental incapacity, of consenting to sexual contact, is guilty of a Class 4 felony.

### SDCL 22-22-7.3. Sexual contact with child under sixteen years of age—Violation as misdemeanor.

Any person, younger than sixteen years of age, who knowingly engages in sexual contact with another person, other than his or her spouse, if such other person is younger than sixteen years of age, is guilty of a Class 1 misdemeanor.

### SDCL 22-22-7.4. Sexual contact without consent with person capable of consenting as misdemeanor.

No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.

### SDCL 22-22-7.5. Safety zone of child victim of sex crime.

The court, upon the conviction of any person of a violation of the provisions of chapter 22-22 in which the victim was a child or upon an adjudication of a juvenile as a delinquent child for a violation of the provisions of chapter 22-22 in which the victim was a child, may, as a part of the sentence or adjudication, order that the defendant or delinquent child not:

(1) Reside within one mile of the victim's residence unless the person is residing in a juvenile detention facility, jail, or state corrections facility;

(2) Knowingly or willfully come within one thousand feet of the victim;

(3) Attend the same school as the victim; or

(4) Have any contact with the victim, whether direct or indirect or through a third party.

No condition imposed pursuant to this section applies once the victim attains the age of majority. A violation of any condition imposed pursuant to this section is a Class 6 felony.

### SDCL 22-22-7.7. Subsequent conviction of rape of or sexual contact with a child under sixteen as felony.

If an adult has a previous conviction for violation of subdivision 22-22-1(5), or a previous conviction for a felony violation of § 22-22-7, or a previous misdemeanor conviction of § 22-22-7 for a violation committed as an adult, any subsequent conviction of subdivision 22-22-1(5) or § 22-22-7, is a Class 2 felony.

### SDCL 22-22-7.8. Sexual contact with child under eighteen--position of authority--penalty.

A person is guilty of a Class 6 felony if the person:

(1) (a) Is at least eighteen years of age; and
    (b) Is at least five years older than the victim;
(2) Is in a position of authority, as defined in this section; and
(3) Knowingly engages in sexual contact with another who is:
    (a) Less than eighteen years of age; and
    (b) Not the person's spouse.

For purposes of this section, a person is in a position of authority if the person, at the time of the sexual contact, or within the one-hundred-twenty-day period immediately preceding the sexual contact, interacts, no matter how briefly, with the victim as a coach, child care provider, disability services provider, guardian ad litem, health care provider, law enforcement officer, mental health counselor, probation officer, religious leader, school administrator, social worker, teacher, therapist, or youth leader.

Notwithstanding § 23A-42-2, a charge pursuant to this section may be brought at any time before the victim reaches the age of twenty-five or within seven years from the commission of the crime, whichever is longer.

### SDCL 22-22-24.3. Sexual exploitation of a minor--Felonies--Assessment.

A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity or the simulation of an activity that:

(1) Is harmful to minors;
(2) Involves nudity; or
(3) Is obscene.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a

charge of violating this section.
A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony. The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

### SDCL 22-22-26. County to pay for forensic medical examinations.

The county where an alleged rape or sexual offense occurred shall pay the cost of any forensic medical examination performed by a physician, hospital, or clinic on the victim of the alleged rape or sexual offense. For purposes of the provisions of §§ 22-22-26 to 22-22-26.2, inclusive, the term, forensic medical examination, includes:

(1) Examination of physical trauma;

(2) Patient interview, including medical history, triage, and consultation; and

(3) Collection and evaluation of evidence, including any photographic documentation; preservation and maintenance of the chain of custody of evidence; medical specimen collection; and any alcohol- or drug-facilitated sexual assault assessment and toxicology screening deemed necessary by the physician, hospital, or clinic.

### SDCL 22-22-26.1. Cost of forensic medical examination—Convicted defendant to reimburse county.

A person who is convicted of a rape or sexual offense shall be required as part of the sentence imposed by the court to reimburse the county for the cost of any forensic medical examination performed under § 22-22-26 resulting from the rape or sexual offense for which the defendant is convicted. The cost of a forensic medical examination to be paid by the county under § 22-22-26 and reimbursed to the county under this section shall include:

(1) Physician, hospital, or clinic services and fees directly related to the forensic medical examination, including integral forensic supplies;

(2) Scope procedures directly related to the forensic medical examination, including anoscopy and colposcopy;

(3) Laboratory testing directly related to the forensic medical examination, including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C, herpes culture, and any other sexually-transmitted disease

testing directly related to the examination;
(4) Any medication provided during the forensic medical examination; and
(5) Any radiology service directly related to the forensic medical examination.

### SDCL 22-22-26.2. Coordination of payment of cost of forensic medical examinations—Notice to victim—Victim not required to participate.

Each physician, hospital, and clinic conducting an examination under § 22-22-26 shall coordinate with the county to establish a payment process by which the county shall pay for the cost of any forensic medical examination performed under § 22-22-26 and to notify any victim of rape or sexual offense of the availability of a forensic medical examination at no cost to the victim. A victim of rape or sexual offense is not required to participate in the criminal justice system or to cooperate with law enforcement to be provided with a forensic medical examination without cost to the victim.

The amount paid to a physician, hospital, or clinic for a forensic medical exam performed under § 22-22-26 may not exceed the actual cost of the forensic medical examination or an amount established by the secretary of the Department of Social Services, whichever is less. The amount established by the secretary under this section shall be based on Medicaid payment methodology. A physician, hospital, or clinic may not maintain a claim against a county for any amount that exceeds the usual ordinary and reasonable charge for a forensic medical examination, including an amount that is less than the actual cost of the forensic medical examination. If the physician, hospital, or clinic performs forensic medical examinations, or any portion of a forensic medical examination, to persons who are medically indigent residing in the county in which the physician, hospital, or clinic is located at a cost less than the amount provided for in this section, the physician, hospital, or clinic shall furnish the forensic medical examination, or any applicable portion of the forensic medical examination, at the lower cost.

### SDCL 22-22-26.3 . Forensic medical examination—Minors age sixteen or older—Consent—Notification.

A minor age sixteen or older may consent to a forensic medical examination, as defined under § 22-22-26. The consent is not subject to disaffirmance because of minority, and consent of a parent or guardian is not required under this section. The physician, hospital, or clinic shall take reasonable steps to notify a minor's

parent or guardian that an examination has taken place, unless the parent or guardian is the suspected perpetrator.

### SDCL 22-22-26.4 . Forensic medical examination—Informed Consent—Liability or discipline.

A physician, hospital, or clinic may provide a forensic medical examination, as defined under § 22-22-26, without the consent of a guardian of a protected person, as defined under § 29A-5-102 , to any protected person who provides informed consent. If a patient has a guardian, the physician, hospital, or clinic shall make a good faith effort to notify the guardian before the forensic medical examination that the patient provided informed consent for the examination and the examination will take place, unless the guardian is the suspected perpetrator.

A physician, hospital, or clinic who in good faith believes that a patient is incapable of giving informed consent under this section may not be subject to criminal prosecution, civil liability, or professional discipline for failing to follow the patient's direction or for making the determination.

A physician, hospital, or clinic who in good faith believes that a patient is capable of giving informed consent under this section may not be subject to criminal prosecution, civil liability, or professional discipline for following a patient's direction or for making the determination.

For purposes of this section, the term, informed consent, means consent voluntarily, knowingly, and competently given without any element of force, fraud, deceit, duress, threat, or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding.

### SDCL 22-22-45. Threatening to commit a sexual offense—Felony.

Any person who has been convicted of a felony sex offense as defined in § 22-24B-1 who directly threatens or communicates specific intent to commit further felony sex offenses is guilty of threatening to commit a sexual offense. Threatening to commit a sexual offense is a Class 4 felony.

### SDCL 22-24A-5. Solicitation of a minor--Felony--Assessment.

A person is guilty of solicitation of a minor if the person eighteen years of age or older:

(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or

(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized or any other electronic means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony. The court shall order an assessment pursuant to §22-22-1.3 of any person convicted of violating this section.

Nothing contained in this section shall be construed to impose liability on a provider of an electronic communication service, an information service, a mobile service, including a commercial mobile service, a telecommunication service, an interactive computer service, or a cable service.

### SDCL 23-5C-2. Report of rape or sexual assault—Option of reporting—Requirement of reporting prohibited—Release of sexual assault kit—Preservation of sexual assault kit.

A health care facility examining or treating a victim of rape or sexual assault shall give the victim, or a victim or witness assistant, the option of reporting the rape or sexual assault to an appropriate law enforcement agency. A health care facility may not require the victim to report the rape or sexual assault in order to receive an examination or treatment for the rape or sexual assault. A health care facility that examines or treats a victim of rape or sexual assault with a sexual assault kit shall release the sexual assault kit to the investigating law enforcement agency,

if known, or the law enforcement agency of the jurisdiction where the examination or treatment occurs in accordance with § 23-5C-3. The health care facility shall inform the victim that the sexual assault kit will be preserved by law enforcement for a period of at least seven years from the date of the examination or treatment or until the victim reaches the age of twenty-five, whichever is later, before it is destroyed. Any examination or treatment under this section shall include the preservation of confidentiality of any test, procedure, or sample that may serve as evidence in the prosecution for the rape or sexual assault.

### SDCL 23-5C-3. Code number assigned—Period code number maintained—Retrieval and transfer of sexual assault kit—Preservation of kit.

A health care facility shall assign a code number to a sexual assault kit and provide the code number to the victim as well as information identifying the law enforcement agency where the kit will be stored. The health care facility shall maintain the code record for at least seven years from the date the health care facility examined or treated the victim or until the victim reaches the age of twenty-five, whichever is later. The health care facility may not affix to the sexual assault kit any information of the victim's identity other than the code number under this section. The law enforcement agency to which the health care facility releases the sexual assault kit under § 23-5C-2 shall retrieve the sexual assault kit, containing no identifying information of the victim other than the code number affixed by the health care facility, within seventy-two hours following the date on which the sexual assault kit is assigned a code number under this section. The health care facility shall coordinate the transfer of the sexual assault kit to the law enforcement agency in a manner designed to protect the victim's confidentiality and preserve the evidentiary integrity of the sexual assault kit. A law enforcement agency in possession of a sexual assault kit shall preserve the kit for at least seven years from the date of examination or treatment or until the victim reaches the age of twenty-five, whichever is later, before it is destroyed. If a victim, or a victim or witness assistant, exercises the option of reporting the rape or sexual assault to a law enforcement agency, the code number under this section shall be provided by the victim to the law enforcement agency where the kit is being stored and used to identify the appropriate sexual assault kit.

### SDCL 23-5C-4. Submission of kit evidence to Division of Criminal Investigation or other laboratory for analysis—Time limits—Record uploaded to database.

For any rape or sexual assault that is reported by a victim under § 23-5C-2, the law enforcement agency that receives a sexual assault kit from the health care facility in accordance with §§ 23-5C-2 and 23-5C-3 shall submit the evidence to the Division of Criminal Investigation or another accredited laboratory for analysis no more than fourteen days following the agency's receipt of the sexual assault kit. Any sexual assault kit that is submitted to the Division of Criminal Investigation or another accredited laboratory shall be analyzed within ninety days.

Any DNA record for a sexual assault kit analyzed under this section shall be uploaded into a database specified by the Division of Criminal Investigation. Any failure to comply with this chapter does not constitute grounds for challenging the validity of a DNA database match or of any database information in a criminal proceeding. A DNA record may not be excluded as evidence by a court solely on the grounds of failure to comply with this chapter.

### SDCL 23-5C-1. Definitions.

Terms used in this chapter mean:

(1) "Accredited laboratory," a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the FBI director's quality assurance standards, to perform specific tests;

(2) "DNA," deoxyribonucleic acid;

(3) "DNA record," the DNA identification information stored in the state DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual;

(4) "Health care facility," any institution, sanitarium, birth center, ambulatory surgery center, chemical dependency treatment facility, hospital, nursing facility, assisted living center, rural primary care hospital, adult foster care home, inpatient hospice, residential hospice, place, building, or agency in which any accommodation is maintained, furnished, or offered for the hospitalization, nursing care, or supervised care of the sick or injured; and

(5) “Sexual assault kit,” a set of swabs, slides, envelopes, instructions, and forms specifically designed to collect and preserve physical evidence that can be used in a criminal sexual assault investigation.

### SDCL 23A-5-11 (Rule 6(d)) Appearance by prosecuting attorneys before grand jury--Presence of other persons--Counsel advising witnesses.

Prosecuting attorneys may at all times appear before the grand jury for the purpose of giving information or advice or interrogating witnesses relative to any matter cognizable by it. Prosecuting attorneys, the witness under examination and his counsel, interpreters if needed, the victim under examination and the victim or witness assistant and, for the purpose of taking the evidence if authorized by the grand jury, a stenographer or operator of a recording device may be present when the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. The role of counsel appearing with a witness shall be limited to advising the witness. The prosecuting attorney may not be present during the consideration of any charge against himself, except that the grand jury may summon him as a witness.

### SDCL 23A-28C Crime Victims’ Act

*(Review in full for information related to victim’s rights in South Dakota)*

### 23A-28C-1. Rights of crime victim.

Consistent with § 23A-28C-4, victims of the crime, including victims of driving under the influence vehicle accidents and victims of any vehicle accident resulting in death, have the following rights:

(1) To be notified of scheduled bail hearings and release from custody, to be notified by the prosecutor's office when the case is received and to whom the case is assigned, and to be notified in advance of the date of preliminary hearing and trial;

(2) To be informed of what the charges mean and the elements necessary for conviction;

(3) To testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released;

(4) To be protected from intimidation by the defendant, including enforcement of orders of protection;

(5) To offer written input into whether plea bargaining or sentencing bargaining agreements should be entered into;
(6) To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case or by contrary policy of the presiding circuit judge;
(7) To be prepared as a witness, including information about basic rules of evidence, cross-examination, objections, and hearsay;
(8) To provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and his or her family as well as recommendations for restitution and sentencing and § 23A-28-8 notwithstanding, the right to appear at any hearing during which a change in the plan of restitution is to be considered;
(9) To receive restitution, whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it;
(10) To provide written input at parole and clemency hearings or with respect to clemency by the Governor, should those options be considered;
(11) In a case in which the death penalty may be authorized, to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family;
(12) To be notified of the defendant's release from custody, which notice includes:
(a) Notice of the defendant's escape from custody and return to custody following escape;
(b) Notice of any other release from custody, including placement in an intensive supervision program or other alternative disposition, and any associated conditions of release;
(c) Notice of parole; and
(d) Notice of pending release of an inmate due to expiration of sentence;
(13) To be notified of the victim's right to request testing for infection by blood-borne pathogens pursuant to § 23A-35B-2;
(14) To be provided a copy of any report of law enforcement that is related to the crime, at the discretion of the state's attorney, or upon motion and order of the court. However, no victim may be given the criminal history of any defendant or any witness; and
(15) To be notified of a petition by the sex offender for removal from the sex offender registry and to provide written input with respect to the removal request.

# ADDITIONAL TOOLS AND RESOURCES

# Vision and Mission Statement Resource Guide

One of the first tasks during the initial stages of team formation is developing a mission statement and accompanying vision statement or set of statements. The mission statement serves as the anchor for the team for years to come. Additionally, the mission and vision statements define and guide the team's work, provide parameters of accountability, and communicate the direction and focus of the team.[1]

## DEVELOPING A MISSION STATEMENT

Mission statements answer the following questions:

1. Who are you? This is often the easiest part of the mission statement. It is the name of the group or team and should probably describe the service area (for example, the "_____ County Sexual Assault Response Team).
2. What do you do? Focus in on the big picture view of the team's work. Try to concisely articulate the end goal the team is trying to achieve (for example, "increases access to specialized services and support, and improves the multidisciplinary response").
3. Who benefits? Knowing the populations you aim to serve will help keep the team centered. You will have the power to ask, "For whom do we do this work?" Keep this part focused on the main population (for example, "victims of sexual assault).

Putting the above examples together, a mission statement might read like this:

*"The _____ County Sexual Assault Response Team increases access to specialized services and support and improves the multidisciplinary response for victims of sexual assault."*

A mission statement typically changes very little over time. It is worthwhile to revisit the mission on occasion to ensure it is still relevant and meaningful. However, the overarching purpose of the team should always be to improve the systems response to sexual assault.[1]

# Guide to Holding Your Meetings

The time has come! You have set the date for the first meeting and have invited people to the table. Now, the team's work begins in a different way.[1]

The first meetings of a SART is a critical point – these are where you set the tone, establish team norms and values, and develop a cohesive understanding of the team's work. Sometimes, there may be team members who are not sure the SART will be a valuable use of their time or are unsure of being there. The first meetings can help you create buy-in and better establish why the team exists. With that, it is important to have a concrete plan for what you want to accomplish during the meeting and to share this agenda with your team.

Some of the first items on your agenda should include:

- Detailed introductions from all team members, giving an overview of their role in the systems response to sexual assault
  ◊ This is important even if you all think you know each other. The work of a team requires learning about community systems in a different way. Part of that is truly emphasizing the unique role of each discipline and working to highlight the connection points between systems.
- Initial agreement on the team's overall scope and mission
- Compile and share team member list and contact information
- Establish meeting processes and logistics – it is ideal to set a standing date/time/location for all future meetings if possible
- Planning for next steps and action items from the meeting

Depending on you and your team, this might seem like too much or too little for first meetings. To maximize your time together, you may want to have other topics or discussions prepared. You want to build momentum, get people in the routine of working within meetings, as well as set a strong foundation for the team's ongoing work.

Other important tasks to cover in the first few meetings are:

- Gain agreement on rules of conduct, processes for decision-making, shared norms and values
- Determine the knowledge base of team members regarding sexual violence issues and the response
- Explore current realities of sexual violence in your community
- Map the current systems response

# Sample Memorandum of Understanding (MOU)

The mission of _____ County Sexual Assault Response Team (__CSART) is to coordinate and implement an inter-agency response to sexual assault victims which promotes consistency, respect, and cultural responsiveness. The participating entities herein share certain community goals and purposes when providing victim-centered care through medical, advocacy, law enforcement, prosecution, corrections, institutions of higher education, county and community human services, and other agencies. The team has been meeting regularly since ***YEAR*** and has created and updated its interagency response protocol ***XX*** times since its inception.

In order for the CSART to fulfill this mission, participating agencies and organizations that respond to sexual assault victims must be active and engaged team members, and must make every effort to comply with the procedures set forth in the protocol as their resources allow.

Participating agencies signing this Memorandum of Understanding agree to fulfill the roles and responsibilities outlined here to the best of their abilities and as their resources allow.

<u>Role of participating agencies & organizations</u>

- Be committed to the victim-centered and offender accountability-focused CSART protocol
- Maintain leadership support for the development and implementation of the interagency protocol and other goals of the team
- Ensure that the team meetings are a priority for their agency or institution and their representative
- Provide regular updates to agency leadership about the work of the team
- Actively support training and other information-sharing within the agency to ensure implementation of protocol throughout the agency
- Actively support the use of case consultation or case reviews to identify strengths and weaknesses of protocol or of implementation within the agency

<u>Team member roles and responsibilities</u>

- Be committed to the victim-centered and offender-focused CSART protocol
- Revise and implement written protocol
- Be versed in their agency's role in sexual assault cases
- Be able to speak about the ability of their agency to fulfill obligations related to the multidisciplinary process

- Commit to regularly attend meetings and actively participate in discussions and subcommittees
- Identify and address relevant trends and gaps in services, with an emphasis on constructive problem-solving

## Authorized Signatures

Authorized person for: XX County Sexual Assault Response Team (XSART)

_____ _____
Name, Title Date

**Authorized person for:**

_____
(Agency/Organization)

_____ _____
Signature Date

_____ _____
Print Name Title

**Authorized person for:**

_____
(Agency/Organization)

_____ _____
Signature Date

_____ _____
Print Name Title

*Add additional persons as needed*

# Multidisciplinary Teams (MDTs) in South Dakota

Effective July 1, 2018, members of interagency multidisciplinary teams ("MDT's) are required to sign a memorandum of understanding acknowledging the written procedures and guidelines for the MDT. The memorandum of understanding must also include an information sharing and confidentiality agreement ("Confidentiality Agreement") approved by the Attorney General. A list of the team members and the memorandum of understanding must be filed with the Office of Attorney General and, ***if the MDT is formed to investigate a crime involving a child victim*** (as defined in SDCL 23A-28C-4), with the South Dakota Department of Social Services.

For more information as to the requirements for an MDT, see **SDCL 23A-28C-15.**

**http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=23A-28C-15** [7]

# Glossary of Terms

**Advocate:** A person who assists victim/survivor of sexual assault by providing emotional support, referrals, and explanation of services available to them.

**Community or community-based:** Pertaining to nonprofit or nongovernmental organizations that provide services or support to victims/survivors (unless otherwise noted).

**Cultural Competence:** The ability to understand, appreciate and interact with people from cultures or belief systems different from one's own without judgement.

**Disability:** A physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

**Gender:** The personal conception of oneself as male, female, a blend of both, or neither. People whose gender identity and biological sex align are referred to as cisgender.

**Gender Expression:** The way a person conveys their gender to others, which may or may not conform to societal expectations or characteristics typically associated with a person's biological sex.

**Protocol:** Procedures for each discipline to follow in response to a sexual assault.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration be a sex organ of another person, without the consent of the victim.

**Sex:** A person's anatomy, physical attributes such as external sex organs, sex chromosomes, and internal reproductive structures.

**Sexual Assault:** Sexual contact or behavior that occurs without explicit consent of the victim and includes attempted rape, fondling/unwanted sexual touching, forcing a victim to perform sexual acts, and rape.

**Sexual Assault Nurse Examiner (SANE):** Registered nurses who have completed specialized education and clinical preparation in the medical forensic care of the patient who has experienced sexual assault or abuse

**Sexual Orientation:** One's physical, emotional, and/or romantic attraction to others. Like gender identity, sexual orientation is internally held knowledge which may or may not overlap with a person's sex or gender identity.

**Sexual Violence:** A sexual act that is committed or attempted by another person without freely given consent of the victim or against someone who is unable to consent or refuse. The overarching term "sexual violence" is often used as an umbrella term for sexual abuse, sexual assault, sexual harassment, and any other sexual violations.

**System(s) or systems-based:** Pertaining to governmental or institutional responses to victims/survivors (unless otherwise noted).

**Trauma Response:** Emotional or physical response to a traumatic event. There is not uniform response to trauma.

**Trauma-Informed Care:** An approach to care that assumes that an individual is more likely than not to have a history of trauma. Recognizing the presence of trauma symptoms and acknowledging the role trauma may play in an individual's life is key to trauma-informed care.

**Victim:** A person who has suffered from destructive or injurious, acute or chronic, emotional, mental, and/or physical victimization, derived from real or perceived threats or actions.

# References


1. *Sexual Assault Response Team Starter Kit: A Guide for New Teams*. Engelking J., & Florman S., (2019). Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault. Retrieved from: https://www.mncasa.org/wp-content/uploads/2019/11/Sexual-Assault-Response-Team-Starter-Kit.pdf
2. *Safe Harbor Protocol Writing Guidebook*. Florman et al., (2019). Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault. Retrieved from: https://www.mncasa.org/wp-content/uploads/2019/08/SH-Protocol-Writing-Guidebook-MNCASA.pdf
3. *Sexual Assault Nurse Examiner Education Guidelines*. International Association of Forensic Nurses. (2018). Retrieved from: https://cdn.ymaws.com/www.forensicnurses.org/resource/resmgr/education/2018_sane_edguidelines.pdf
4. *How to Become a Sexual Assault Nurse Examiner*. International Association of Forensic Nurses. (n.d.) Retrieved from: https://cdn.ymaws.com/iafn.site-ym.com/resource/resmgr/education/How_to_become_a_SANE.pdf
5. *Sexual Violence in South Dakota 2019 Data Report*. McMahon, T., Walstrom, B., & Kerkvliet, J. South Dakota State University. Population Health Evaluation Center. (2021).
6. *SANE program development and operation guide*. OVC. Retrieved from: https://www.ovcttac.gov/saneguide/multidisciplinary-response-and-the-community/multidisciplinary-team-models/
7. *Requirements for interagency multidisciplinary teams ("MDT's")*. (2018). Retrieved from: https://atg.sd.gov/victim/MDT/default.aspx
8. *South Dakota Network Against Family Violence and Sexual Assault*. (2018). Retrieved from: https://sdnafvsa.com/home/
9. *Sexual Assault Response Teams and Systems Change*. Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault. (2019). Retrieved from: https://www.mncasa.org/wp-content/uploads/2019/11/SARTS-and-Systems-Change-Handout.pdf
10. *Sexual Assault Team Protocol Template*. Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault. (2019).

11. *Informed Consent and Patient Confidentiality. SANE Program Development and Operation Guide.* U.S. Department of Justice Office for Victims of Crime. (2016) Retrieved from: https://www.ovcttac.gov/saneguide/introduction/
12. *A National Protocol for Sexual Assault Forensic Examinations-Adults/Adolescents.* U.S. Department of Justice Office on Violence Against Women. (2013) Retrieved from: https://www.ojp.gov/pdffiles1/ovw/241903.pdf
13. *Sexual Assault Response Teams (SART): A Model Protocol for Virginia.* Virginia Department of Criminal Justice Services. (2011) Retrieved from: https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/law-enforcement/files/model-policy/sexual_assault_response_teams_model_protocol.pdf
14. *The Language of Collaboration.* Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault. (2008)
15. *A Ten-Factor Framework for Sexual Assault Response Team Effectiveness Ten Internal & External Factors That Facilitate Success for Systems-Change Sexual Assault Response Teams.* Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault.
16. *Wisconsin Adult Sexual Assault Response Team Protocol* (pp. 43-45) Wisconsin Coalition Against Sexual Assault. (2011). Retrieved from: https://www.wcasa.org/file_open.php?id=203
17. *OVC SART Toolkit: Resources for Sexual Assault Response Teams. Consider Culture and Diversity.* Retrieved from: https://www.ncjrs.gov/ovc_archives/sartkit/focus/culture-print.html