

# Model Response to Sexual Violence for Prosecutors (RSVP Model): Measuring the Impact

## Volume II: Performance Management



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# Foreword

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Prosecution of sexual violence is unlike prosecution of other crimes. These offenses pose distinct challenges for prosecutors and other professionals responding to sexual assault and often involve uniquely vulnerable victims. The crimes themselves — how they happen, who commits them, who is victimized — are widely misunderstood by those who have not been educated about sexual violence dynamics. Furthermore, the behavior of sexual assault victims in response to the trauma of sexual violence is often misconstrued.

In recent years, many criminal justice professionals have educated themselves about these dynamics and behaviors, and the public has become increasingly aware of the reality of sexual violence crimes. However, the general public (including jurors) continues to be influenced by myths and misconceptions. According to available research on the handling of sexual violence cases, law enforcement and prosecutors may “weed out” cases with more complex characteristics (*e.g.*, those involving a voluntarily intoxicated victim or an intimate partner relationship) based on a perception or experience with previous sexual violence cases that leads them to believe all such cases are “unwinnable” — that the legal and factual challenges are insurmountable. Disappointingly few cases make it to the courtroom, and even fewer result in conviction.<sup>1</sup> What’s more, the problem can be self-perpetuating: to the extent that police and prosecutors are not vigorously pursuing the more complex cases, they are not developing and honing the skills necessary to build sexual violence cases that will result in conviction.

Conviction rates tell only part of the story about whether a prosecutor’s office — or a prosecutor — is successful in handling cases involving sexual violence. If complex or challenging cases fall by the wayside early in the process, they are generally not factored into the rate of conviction. As such, this metric is a thin veneer of success because the reality is that serial perpetrators, or those who are clever in their choice of victims, escape justice while their victims, who have been violated in the most personal and devastating way are left to their own remedies, without the support of the criminal justice system.<sup>2</sup>

Effectively engaging with victims, conducting thorough investigations, and meticulously prosecuting sexual violence provides important benefits for everyone involved in the process, regardless of the rate of conviction. The quality of assistance provided by a fully coordinated network of responders — advocates, medical forensic examiners, law enforcement, and prosecutors — to victims facing traumatic experiences reflects critical measures of system success.

If the conviction rate is not by itself a satisfactory measure of justice and success, what is? A wide variety of meaningful outcomes can occur — those not directly related to the binary result of conviction or acquittal, but which nevertheless help ensure accountability for perpetrators and safety for victims and communities. Such outcomes include victim satisfaction with the criminal justice process itself (as opposed to the disposition), as well as with the prosecutor’s *use of every legitimate means* to bring about a just outcome. Conviction rates fail to take these measures into account, and therefore a more comprehensive performance management system is needed — one that tracks the use of promising practices in sexual violence prosecutions as well as victim

perspectives on how they were treated throughout the process, and incorporates measures of both into its definition of success. Ultimately, the implementation of such a system will help prosecutors achieve a more meaningful quality of justice.

The Sexual Assault Justice Initiative (SAJI) is a project developed in partnership among AEquitas, the Justice Management Institute (JMI), and the Urban Institute (Urban) through funding by the Department of Justice Office on Violence Against Women. The Initiative challenges prosecutors to look beyond conviction rates as the sole measure of effectiveness in sexual violence prosecutions and to implement, continually evaluate, and refine sustainable prosecution practices that will advance the goals of justice, victim health and safety, and offender accountability.

This document describes procedures aimed at addressing and tracking the full range of desired outcomes beyond conviction rates. But tracking the outcomes is not the ultimate goal. The primary purpose of performance management, as described in this volume, is to help prosecutor's offices and their partners to continually improve the effectiveness, efficiency, and equity of their response to sexual assault. The data will not by itself say why outcome values have changed, or what needs to be done to improve outcomes. However, basic analysis of performance data can provide useful clues. Each analytic procedure will help to identify patterns that suggest issues the prosecutors' offices and/or their partners need to address. The outcome measurement and analytic process also help identify potential training and technical assistance needs. This volume provides prosecutors with the basic steps to translate data collection and analysis into actionable goals for change.

This volume is a complement to RSVP Volume I, which focuses on the use of trauma-informed, offender-focused, and victim-centered strategies for prosecuting sexual violence. Volume I provides prosecutors with a roadmap to improve the quality of justice in sexual violence cases by identifying a series of office-level and case-level practices that are tangible, realistic, and data-driven. RSVP Volumes I and II are two parts of a whole: the first focused on strategies for improving prosecution practices, and the second focused on systematically tracking those strategies and analyzing their corresponding outcomes.

The suggestions contained within this volume are by no means definitive. They reflect the initial experiences of seven pilot sites over an approximately two-year period; the collective experience of AEquitas, JMI, and Urban in their work with prosecutors and allied professionals responding to sexual violence cases throughout the country and around the world; and the reported experience of sexual violence survivors.

We hope this work, which provides a starter set of tools for gauging efforts to improve the response to cases of sexual violence, will encourage considerably more experimentation in ongoing efforts to further refine the evaluation of prosecutorial success.

# Chapter 1. Introduction

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## 1.1. Who should read this volume?

This volume is primarily addressed to local, state, and federal prosecutors' offices in the United States. As gatekeepers to the criminal justice system, prosecutors have a unique impact on the administration of justice in sexual violence cases because of their actual and perceived decision-making. This resource and the accompanying Volume I promote research-informed prosecutorial decisions and practices, as well as a method for determining whether promising practices are being implemented and the outcomes associated with these practices; through such a performance management system, we can begin to reverse the documented attrition improperly occurring in these cases.

However, prosecutors are by no means the only actors responsible for seeking justice for victims of sexual violence; nor should they be. A comprehensive and successful response depends upon the work of all stakeholders throughout the system, including law enforcement, medical forensic examiners, and advocates. Strong collaboration among these professionals is essential: if one organization in the multidisciplinary team does not do its job well, successful prosecution of sexual violence can be compromised. Just as these partners are critical to prosecution, so too are they critical to a successful performance management system. The procedures discussed throughout this volume to develop and implement performance management procedures will benefit from the early and regular involvement of multidisciplinary stakeholders.<sup>3</sup>

## 1.2. Performance Management

In this volume, we provide an overview of how prosecutors can create and implement a performance management system to track the effectiveness of their response to sexual violence. Performance management systems are structures for categorizing and analyzing information to assess the effectiveness of a particular organization or process. The first goal of performance management is to gather information necessary to assess effectiveness over time and improve practices accordingly. In this context, it is a process for examining the criminal justice response to sexual violence cases to identify which cases are most successfully prosecuted – and the implemented practices to be emulated or expanded upon – and which cases need an improved response in order to secure justice for victims and hold offenders accountable.

A key characteristic of performance management is that performance is assessed on a recurring basis, providing regular and timely feedback and enabling continuous insight into what is working and what is not. Thus, performance management seeks to provide prosecutors a window into their own practice and enable them to continuously improve the effectiveness and efficiency of their sexual violence case practices.

Performance measurement encourages stakeholders responding to sexual violence (the prosecutor's office, law enforcement, health care providers, and victim advocates) to see themselves as partners – each an important component contributing to the success of the effort.

Outcome measurement and analytic processes can lead to useful multidisciplinary discussions and improvement strategies; the involvement of key partners influences the values of individual outcome measures. For example, medical forensic examiners collect sexual assault kit (SAK) evidence and law enforcement will usually be involved in submission of SAKs to the lab; coordination of those steps is essential.

Our focus here is on the measurement and use of “outcome” measures. Outcome measures represent what prosecutors, with their partners, seek to accomplish, as well as goals important to victims and the public. “Output” measures, by way of contrast, represent the quantity or volume of work done, such as “number of sexual assault kits tested.” The primary focus in the RSVP Model is not on outputs themselves, but their results – the outcomes that occur and the implementation of promising prosecution practices associated with producing those outcomes.

The suggestions here, including identification of outcome measures and data collection procedures, have been pilot tested in seven unique jurisdictions and refined based upon lessons learned, but they are by no means definitive. They need to be tested in the field – beyond the initial pilot sites – to permit identification and correction of problems in the process that inevitably will arise.

### ***1.2-A. What are the prerequisites for implementing performance management?***

- **An openness to new ideas.**
  - For most prosecutors, performance management requires a fundamental change in perspective. It requires them to abandon the practice of viewing cases in isolation, in favor of comprehensively examining trends across cases. Performance management also requires prosecutors to look beyond conviction rates and to adopt a more expansive definition of successful prosecution. Such an approach may seem challenging at first but is crucial for obtaining a more comprehensive understanding of our sexual violence response. Finally, performance management goes beyond the determination of “outcome measures” – in other words, what is happening – and provides guidance for determining *why* an outcome is happening. The process provides prosecutors’ offices with a roadmap for targeting areas needing improvement, perhaps through training and technical assistance.
- **A willingness to critically and constructively examine one’s own practice and the courage to share critiques with colleagues, staff, and communities.**
  - No one likes to fall short of success. Performance management will reveal where prosecutors are doing well, but also where they need improvement. The best performance management systems identify areas for training and resources while avoiding unproductive criticisms of individual prosecutors. Still, performance management requires us to check our egos and maintain focus on how we can continually improve responses to secure justice for victims and hold offenders accountable.



- **High-level, active, and sustained buy-in.**
  - Full implementation of performance management requires a long-term commitment. Sustaining the team’s energy and interest over time ensures the system will be fully implemented and the full benefits realized.
- **Availability of support from information technology (IT) staff, such as an IT unit within a prosecutor’s office or the county government.**
  - One essential element of a successful performance management system is the mechanization of data collection, data processing and analysis, and reporting of outcome metrics. Engaging IT staff or other tech-savvy personnel to focus on the data is vital. The simplest data collection via Excel spreadsheets may provide a useful foundation and, where such a method is the only option, can allow for basic data analysis. However, spreadsheets are too cumbersome and time-consuming for sustaining a quality performance management process. A very basic software solution could facilitate faster and more efficient data collection, processing, and reporting.
- **Ongoing support for routine reporting.**
  - Staff with basic analytic and reporting skills are needed to examine the quantitative information and extract the issues, successes, and challenges provided by the data.

**TIP:** Focus on using the data as a learning tool for improving the effective and efficient handling of sexual violence cases. The primary use of the data should NOT be to assign blame but to learn how to improve practice. Focusing on fault-finding is unproductive and will not result in the needed improvements in a prosecutor’s office.

### ***1.2-B. Does performance management cost anything?***

Although performance management need not be a high-cost expense, some investment is required. Many of the outcome measures described in this volume are based on information that is already being collected by prosecutors and other partners in the community. However, new elements may need to be added to existing case management systems to enhance the ability to track outcomes. One of the major new data collection processes suggested in this volume is the implementation of an ongoing process for obtaining victim feedback through surveys. An online survey can be low-cost to maintain, once the survey content has been developed. Another new set of elements to add to existing data management systems will document the use of victim-centered, trauma-informed practices throughout the prosecution of sexual violence. See [Chapter 8](#) for more information.

### ***1.2-C. Are there any limitations to performance management as described by the RSVP Model?***

The performance management process proposed in this volume is limited in scope in several ways. First, the focus of this work has been limited to criminal sexual violence cases in which victims are adults at the time of the assault. However, many procedures described herein may be adaptable to sexual violence cases involving child victims, as well as to cases involving other violent crimes.

This volume has been informed in part by the efforts of seven pilot sites over a period of approximately two years. While these seven jurisdictions are diverse in terms of geography, size, and the populations they serve, their caseloads do not represent the universe of possible sexual violence cases; nor do their experiences with performance management necessarily predict another office's experience. Nevertheless, their experiences in pilot-testing sexual violence prosecution performance management were invaluable to the refinement of the outcome measures and the development of tools to guide implementation. While the processes described in the volume are meant to be broadly applicable across jurisdictions, prosecutors' offices will need to refine them as necessary to adapt to local needs and resources.

### **1.3. How This Volume Is Organized**

The remainder of this volume is organized by the key activities necessary to build a sexual violence case performance management system, in roughly chronological order. It may not be feasible or necessary to undertake all of these activities, particularly in small jurisdictions or in jurisdictions with limited staff resources. Scaled-down versions of most of these activities may yield less, but still useful, information. Suggestions for both full and modified versions of these activities will be discussed throughout.

**Activity 1:** Develop an outcome-oriented mission statement and select the outcome measures that will be tracked over time to identify progress toward the outcome mission. ([Chapter 2](#)).

**Activity 2:** Develop procedures to track (*i.e.*, follow the case through the system) sexual violence crimes that have not gone through a criminal adjudication process (case attrition), including cases in which victims did not report to law enforcement, cases closed by law enforcement without being referred to prosecution, and cases in which prosecutors decline to bring charges. ([Chapter 3](#)).

**Activity 3:** Select victim subgroup characteristics by which outcome measures will be examined to explore issues of equal access to justice. ([Chapter 4](#)).

**Activity 4:** Develop a system to measure case complexity, which will enable us to more fairly and accurately assess case outcomes. ([Chapter 5](#)).

**Activity 5:** Identify and track the scope of possible case resolutions and examine case outcomes by level of complexity. ([Chapter 6](#)).

**Activity 6:** Develop holistic definitions for case success (*i.e.*, justice) and the process for making these assessments. ([Chapter 7](#)).

**Activity 7:** Identify a software tool for data collection and case processing, or manually enter data into an easy-to-use spreadsheet if automated data systems are unavailable. ([Chapter 8](#)).

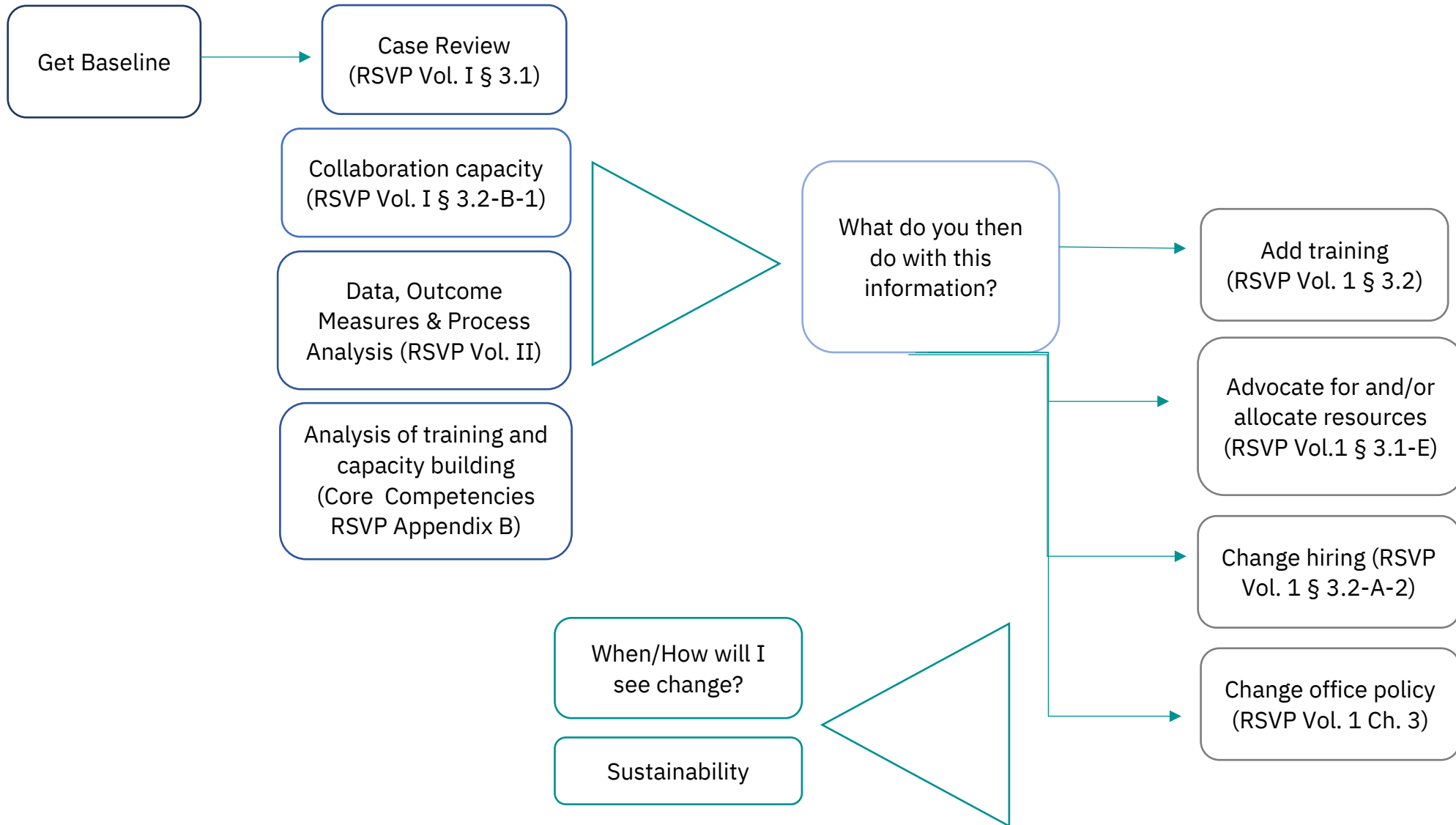
**Activity 8:** Develop and test a victim survey process that captures victims' assessment of the quality of their experiences. ([Chapter 9](#)).

**Activity 9:** Conduct data analysis and report findings internally, to allied partners, and to the public. ([Chapter 10](#)).

**Activity 10:** Using data analysis as the basis for examining prosecution policies and practices, amend existing ones and adopt new ones where necessary. ([Chapter 11](#)).

**EXHIBIT 1-1**  
**Mapping the RSVP Model**

*“I want to implement promising practices and performance management, what does that look like?”*



# Chapter 2. Identify Goals and Select Corresponding Outcome Measures

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## 2.1. Outcome Measures

This chapter discusses outcome measures grouped by the goals commonly sought by sexual violence response systems. These goals include:

- Reducing the number of sexual violence crimes in the community.
- Increasing the number and percentage of cases that are prosecuted.
- Defining and categorizing successful case resolutions.
  - Successful case resolution is where: (a) case complexity has not improperly resulted in declination, discharge, or acquittal; (b) promising prosecutions practices have been used; (c) the perpetrator has been held accountable; and (d) the victim’s experience with criminal justice professionals has been positive.
- Protecting victims and witnesses.
- Helping victims feel respected by criminal justice professionals.
- Delaying fewer cases.
- Enhancing public trust in case management (*i.e.*, the prosecution’s decision-making and practice is research-informed and data-driven, and outcomes are discussed transparently).

Included below is an explanation for how each outcome measure helps capture the overall progress made toward each desired goal. Likely data sources for each measure also are presented. A list of all of measures categorized by goal is provided in [Exhibit 2-1](#).

**TIP:** Ask key local government officials (such as local government leadership — *e.g.*, mayors and county executives, district attorneys, chiefs of police) to make personal commitments of support to the effort at a preliminary joint meeting.

Please note that the availability of data to support these measures may be significantly affected by many factors, including the data collection practices of each partner agency, the sophistication of data management systems, and the level of collaboration between agencies.

Many jurisdictions will likely find it very difficult to track all the measures listed below, at least initially. **It is not necessary to collect data for all of the below outcome measures.** The measures can be implemented in phases. To start, stakeholders should work jointly to prioritize a set of measures they would like to begin tracking. They could then focus on (1) implementing

systems to track these data, and (2) training staff to record them. Other measures could then be added over time. While the below measures provide a solid foundation for sexual violence response systems and prosecution performance management, the measures may be adapted or tailored by a jurisdiction to fit its unique needs.<sup>4</sup> It is not necessary for a particular jurisdiction's identified measures to fit squarely within any of the measures described below. If you are interested in adapting these measures to suit your own jurisdiction's practice, please contact the authors of this volume for assistance.

***GOAL 1: The number of sexual violence crimes is reduced.***

**1. Total number and percentage of sexual violence crimes, both reported and unreported.**

This is a very powerful outcome measure to track. However, assessing this with any degree of accuracy will most likely require use of either a community-wide survey or national survey providing reliable data at the community level, conducted on a regular basis, and including questions specific to sexual violence.

Unfortunately, few communities are likely to have such data. If such data become available, prevalence rates (*i.e.*, cases per 1,000 residents or percentage of cases reported) could be derived from the survey. The number of sexual violence crimes would be estimated by multiplying the percent derived from the survey by the estimated population of the community. For example, if 24 percent of survey respondents reported that they had been sexually assaulted in that particular jurisdiction during a particular timeframe, and there are 10,000 people in the adult population, the estimated total number of sexual violence crimes in the jurisdiction, both reported and unreported, would be 2,400. ( $.24 \times 10,000 = 2,400$ ).

Although it is unlikely that most agencies will immediately be able to collect the data necessary to measure the total number of reported and unreported sexual violence crimes, this measure is included in the RSVP Model because it provides critical information to guide our criminal justice response. It is well-known that prevalence of sexual violence in a jurisdiction is greater than the number of sexual violence incidents reported to law enforcement. Nevertheless, capturing a number, even a rough estimate, makes the theoretical concrete. If we understand the extent of sexual violence in our communities, we will be able to better guide prevention efforts and more accurately understand the percentage of sexual violence cases that go unreported. We will also be able to assess changes in sexual violence incidence that may occur over time following the introduction of new practices or policies addressing sexual violence response.

While tracking the total number of sexual violence crimes may seem impossible initially, additional sources of data may become available in the future, eventually making this measure feasible. Findings from national surveys and special one-time local surveys may provide rough indicators, but will be less useful for assessing changes over time.

Likely data source(s): This outcome would likely require surveying a large sample of adults, with carefully crafted questions and a very specific definition of sexual violence crimes. The most feasible approach might be to add a small number of questions to a community survey already in use, which would greatly reduce the cost of data collection. Another cost-effective option would be to collect such information every other year, or even every third year, though the data would be less timely. With successive surveys, respondents would be asked about sexual violence occurring within the period since the most recent, previous survey. This activity will be most successful when undertaken by researchers, and, therefore, can be a catalyst for expanding collaboration in the community.

2. **Total number of known victims.** This is the sum of the number of victims who reported to law enforcement ([Measure 3 below](#)) and the number who had reported the assault to another agency but NOT to law enforcement ([Measure 4 below](#)). This number may include some double-counting attributable to victims who initially decline to report to law enforcement but later decide to report. When such cases are known to law enforcement, that case should be deducted from the unreported cases. When [Measure 1](#) is not available – as it most likely will not be for many jurisdictions – this may be the best available estimate of the overall prevalence of sexual violence in the community. (Note that this measure does not include those incidents for which victims did not report to any of the partner organizations).  
Likely data source: See data sources under [Measures 3](#) and [4](#) below.

*GOAL 2: The number and percentage of sexual violence cases prosecuted is increased.*

3. **Number and percentage of sexual violence cases reported to law enforcement, including police departments, sheriff's agencies, and campus/school police.** These numbers represent the measure that has commonly been used, in the absence of the above-mentioned population survey data, to indicate the prevalence of reported sexual violence in a community. The percentage refers to the total number of reports, divided by the most current estimate of the community's adult population (yielding a per capita reported sexual violence rate).

Likely data source: The number of sexual violence crimes reported to police is available from police records. For the percentage measure, the most current community adult population estimate is likely to be available from census surveys or from the local planning department.

4. **Number and percentage of sexual violence cases reported by victims to a health or victim service agency, public or private, but not to law enforcement.** Such cases include those in which the victim requested a sexual assault medical forensic exam or sought help from a community-based advocate, but declined to report to law enforcement. It would be helpful to understand the reasons why victims declined to report the assault to law enforcement (if recorded by the medical forensic examiner or the advocate), because knowing this information could assist in targeting areas for improvement. See [Chapter 3](#) for more on how

to collect this information. The percentage is calculated by dividing the number of cases in which victims indicated they would not report the assault to the police, by the sum of this number plus the number of cases that were reported to law enforcement ([Measure 3](#)).

Likely data source: The number of sexual violence incidents and number of assaults for which the victim declines to report to the police are not commonly tracked by health or victim service organizations. To utilize this measure, the site will need to set up a process for routinely obtaining this information from partner agencies in a way that does not compromise victims' identities. The only data needed for each reporting period here are the number of assaults reported only to medical or victim service agencies and subtotals of the reasons for declining to report to law enforcement. Personally identifying information is not needed to track this performance metric.

- a. *Number and percentage of sexual violence cases reported by victims to a health or victim service agency, public or private, but not to law enforcement, categorized by reason for not reporting to law enforcement.* As mentioned above, it would be helpful to understand the reasons victim choose not to report sexual violence to law enforcement. By identifying the most prominent reasons, criminal justice professionals can take steps to address them. See [Chapter 3](#) for more on how to collect this information.

5. **Number and percentage of sexual violence cases reported to law enforcement that are not referred by law enforcement to the prosecutor's office.** This measure may indicate the need to provide training and/or technical assistance to law enforcement or for better communication and coordination among partners. The percentage is calculated by dividing the number of cases not referred to the prosecutor's office by the number of sexual violence cases reported to law enforcement.

Likely data source: Law enforcement records.

- a. *Number and percentage of sexual violence cases reported to law enforcement that are not referred by law enforcement to the prosecutor's office, categorized by reason for not referring to the prosecutor's office.* Measure 5 may be more helpful if it is categorized by reasons given for not referring a case, such as insufficient evidence, inability to disprove a claim of consent, victim declined to speak with police, etc. See [Chapter 3](#) for more on how to collect this information.

6. **Number and percentage of cases declined by the prosecutor.** This percentage is calculated by dividing the number of sexual violence cases declined by the prosecutor by the number of cases referred to the prosecutor from law enforcement.



Likely data source: Prosecutor’s office records.

- a. ***Number and percentage of cases declined by prosecutor, categorized by reason for declining to prosecute.*** The above measure may be more helpful if it is categorized by reasons given for declining to prosecute, such as insufficient evidence, outside the statute of limitations, inability to locate the victim or witnesses, etc. See [Chapter 3](#) for more on how to collect this information.

7. **Total number and percentage of cases declined, whether by law enforcement or the prosecutor.** The percentage is calculated by dividing the total number of reported cases declined by either law enforcement or the prosecutor by the total number of cases reported to law enforcement.

Likely data source: Law enforcement and prosecutor’s office records. For this number to be accurate, offices must ensure that they have access to complete and reliable data related to the number of cases referred – formally or informally – by law enforcement.

***GOAL 3: Prosecutors acknowledge and utilize more comprehensive metrics of case success.***

8. **Number of persons charged with sexual violence crimes and percentage convicted of that charge (the “conviction rate”).** This is the outcome measure most often used as the primary measure for assessing sexual violence case outcomes. A considerably more accurate and fairer assessment can be obtained by factoring the complexity of cases into conviction rates. See [Chapter 5](#) for more information. In so doing, the overall conviction rate would be supplemented by tabulations of the number and percentage of convictions for each level of complexity (that is, the percent of cases convicted that are rated as highly complex, the percent of cases convicted that are rated as low complexity, etc.).

Likely data source: Prosecutor’s office records.

9. **Number and percentage of cases rated as: (a) fully successful; (b) partially successful; and (c) fully unsuccessful based on multiple measures of case success.** Conviction rates, of course, are of major importance in determining success. However, many other case resolutions are possible that indicate varying degrees of success. The conviction rate outcome does not account for cases resulting in dispositions to other charges or for lesser sentences. The conviction might be for a less serious charge (*e.g.*, attempted rape rather than forcible rape). Pleas may be accepted that involve concessions of various kinds. The success level also will likely be affected by case complexity and prosecutors’ expectations of what is possible to achieve. As such, three measures of success should be combined to understand the success of case outcomes: Measure 9a and Intermediate Measure 9b (below), and [Measure 10](#).

- a. *The number, percentage, and disposition of cases accepted for prosecution by case resolution.* [Chapter 6](#) provides a comprehensive discussion of how to consider case disposition as an important (though not sufficient) case outcome to consider. Though not the only measure of case success to consider, case resolution remains a primary way that prosecutors examine cases for success.

Likely data source: Law enforcement and prosecution data for case resolution, as well as data to be created by prosecution for measures of implementation of best practice.

- b. *An intermediate measure based on the use of prosecution practices that are research-based and trauma-informed (“best practices”).* The process of prosecuting a sexual assault case is arguably as important as its outcome. Even if a case results in a resolution that falls short of the charges or sentence pursued by the prosecutor, the implementation of best practices throughout the life of the case, from initial evaluation and charging through resolution, can generate a high quality of procedural justice for the victim and the public. A comprehensive definition of case success should thus account for the prosecution’s efforts to bring about justice. This can be captured as an intermediate outcome measure.

A “best practices” checklist can function as a tool to measure the level of procedural justice in our cases. It can also be used as the basis for regular meetings between unit chiefs and line-level prosecutors to examine the actions taken throughout the case and identify areas for improvement.

A comprehensive explanation of best case-level practices for prosecuting sexual violence crimes can be found in Chapter 4 of RSVP Volume 1. [Exhibit 7-1](#) provides a sample checklist based on some of these critical practices, with a sample rating scale for each. Both the checklist and the rating scale can be modified based upon a jurisdiction’s needs.

Likely data source: Prosecutor self-report and review and modification by supervisor during evaluation.

10. **Percentage of victims who felt that justice was served in their case.** This measure captures a victim's overall perception of justice — based on both case process and case outcome. One victim may find a conviction on the highest possible charge as just, while another may find a conviction on a lesser charge, or even an acquittal, as just. These perceptions vary based on a number of factors, including someone's cultural background, their relationship with the person who committed the assault, their belief system, etc. It is important to not only capture the criminal justice system’s perception of case success, as defined above, but victim perceptions of justice as well.

Likely data source: Surveys of victims conducted soon after disposition. See [Chapter 9](#) for more details on suggested survey content and process.

***GOAL 4: Victims and witnesses are protected.***

11. **Percentage of cases in which the victim was threatened**, by the offender or the offender's allies, broken down as follows:
  - a. Threat before the sexual violence crime.
  - b. Threat during the sexual violence crime.
  - c. Threat after the sexual violence crime.

Measures could be further categorized by the timing of the report of the threat to law enforcement:

- a. Threat reported before the conclusion of the case.
- b. Threat not reported until after conclusion of the case (*i.e.*, first reported during follow-up survey).

Likely data sources: [a] Victim statements reported to law enforcement or to any of the other partners; and [b] surveys of victims conducted soon after disposition. See [Chapter 9](#) for more details on suggested survey content and process.

12. **Percentage of cases in which the victim reported being threatened by the offender or the offender's allies, after case disposition.** It is important for prosecutors' offices to consider victim safety and to work with victim advocates as needed to ensure victim needs are being met after the case has been resolved.

Likely data source: Surveys of victims conducted soon after disposition. See [Chapter 9](#) for more details on suggested survey content and process.

***GOAL 5: Victims are satisfied with how they were treated by criminal justice professionals.***

13. **Percentage of victims who rated their overall experience with the sexual violence case handling as good or excellent.** This measure includes the input from victims themselves, allowing us to understand their perspectives about case handling processes and the resolution of the case.
  - a. Percentage of victims who rated the performance of the advocacy agency they dealt with as good or excellent (rather than fair or poor).
  - b. Percentage of victims who rated the performance of the SANE program/medical forensic examiner/medical personnel as good or excellent (rather than fair or poor).
  - c. Percentage of victims who rated the performance of the police (including investigators) they dealt with as good or excellent (rather than fair or poor).
  - d. Percentage of victims who rated the performance of the prosecutor's office as good or excellent (rather than fair or poor).

Likely data source: Surveys of victims conducted soon after disposition. See [Chapter 9](#) for more details on suggested survey content and process.

**GOAL 6: Fewer cases are affected by avoidable delay.**

- 14. Average case processing time from initial report to law enforcement to arrest to case resolution/disposition; and/or number and percentage of cases with delays.** Delays should be quantified (*e.g.*, “by X days”) and preferably broken down by step where the delay occurred (*e.g.*, submission of SAK evidence to the crime lab for testing, forensic testing of kit evidence and DNA analysis, receipt of lab reports, referral to prosecutor, trial delay).

Likely data source: Law enforcement and/or prosecutor’s office records.

- 15. Number and percentage of cases in which: findings from sexual assault kits were not available in time to be useful for investigatory or prosecutorial purposes;** kits were either not appropriately stored or chain of custody was not fully documented, or sexual assault kits were misplaced. This measure focuses on the processing time for sexual assault kits, on the assumption that timeliness of sexual assault kit submission is a major source of case delays. The measure also focuses on processing quality by tracking cases in which the handling of sexual assault kits or other evidence did not follow proper protocol.

Likely data source: Law enforcement and/or prosecutor’s office records.

- 16. Number and percentage of cases in which the forensic lab required over “Y” days to provide its findings; and/or average lab processing time.** Some states may have set a legal limit on the amount of time a lab has to test a kit and upload its findings into the Combined DNA Index System (CODIS). The value of “Y” could then be that amount of time. For jurisdictions without such statutory requirements, the stakeholders involved in the response system could jointly decide what threshold they want to set for this requirement.

Likely data source: Law enforcement and/or prosecutor’s office records.

**GOAL 7: Public has trust in handling of cases (i.e., the prosecution handles cases competently, the prosecution explains their practices as based upon research and data collection/analysis, and the process is perceived as transparent).**

- 17. Percentage of the population reporting trust in the way cases are handled.**

Likely data source: The data for this outcome can be measured by including a question in the same community survey conducted to obtain data for [Measure 1](#).

- 18. Ratings by allied professionals of the overall performance of the prosecution of sexual violence cases as either good or excellent.** Judicial, law enforcement, sexual assault forensic examiners/healthcare providers and advocate evaluations, while enlightening, should be reviewed with an awareness that these and other allied professionals, as well as the public, may have gaps in their understanding of sexual violence and the principles underlying the RSVP Model. Negative evaluations should be discussed to determine whether

they reflect problems in the prosecution response or whether they suggest a need for partner, judicial, or perhaps even community education or training. In any case, collecting data for this outcome measure provides a good basis for increased transparency and enhanced interagency dialogue.

- a. Number and percentage of judges who rated the overall performance of the prosecution of sexual violence cases as good or excellent.
- b. Number and percentage of law enforcement who rated the overall performance of the prosecution of sexual violence cases as good or excellent.
- c. Number and percentage of advocates who rated the overall performance of the prosecution of sexual violence cases as good or excellent.

Likely data source: Surveys of judges, law enforcement, and advocates responsible for criminal sexual violence cases during the reporting period. The feedback information should be confidential. These surveys would likely be done on an annual basis. Respondents would be asked about the prosecution's handling of sexual violence cases collectively, not about individual cases or prosecutors. The survey would also prompt them to evaluate specific aspects of case processing, possibly specialized to expertise – such as victim treatment and notification, prosecutor preparation, direct examination, cross-examination, knowledge of the law, and knowledge of the rules of evidence – as well as to provide suggestions for improving the handling of sexual violence cases.

## EXHIBIT 2-1

### Key Outcome Measures Grouped By Goals of Sexual Violence Response Systems

#### 1. Reducing the number of sexual violence crimes in the community.

OM-1. Total number and percentage of sexual violence crimes, both reported and unreported.

OM-2. Total number of known victims. This is the sum of the number of victims who reported to law enforcement ([OM-3](#), below) and the number who had reported the assault to another agency but NOT to law enforcement ([OM-4](#), below).

#### 2. Increasing the number and percentage of cases that are prosecuted.

OM-3. Number and percentage of sexual violence cases reported to law enforcement, including police departments, sheriff's agencies, and campus/school police.

OM-4. Number and percentage of sexual violence cases reported by victims to a health or victim service agency, public or private, but not to law enforcement.

OM-5. Number and percentage of sexual violence cases reported to law enforcement that are not referred by law enforcement to the prosecutor's office.

OM-6. Number and percentage of cases declined by the prosecutor.

OM-7. Total number and percentage of cases declined, whether by law enforcement or the prosecutor.

#### 3. Utilizing more comprehensive metrics of case success.

OM-8. Number and percentage of cases accepted for prosecution resulting in conviction on the primary charge (the "conviction rate").

OM-9. Number and percentage of cases rated as: (i) fully successful (ii) partially successful outcomes or (iii) fully unsuccessful based on multiple measures of case success.

OM-9a. The number, percentage, and disposition of cases accepted for prosecution by resolution.

IOM<sup>1</sup>-9b. A measure based on the use of prosecution practices that are research-based and trauma-informed ("best practices").

OM-10. Percentage of victims who felt that justice was served in their case.

<sup>1</sup> This measure is labeled IOM rather than OM because it reflects an intermediate outcome measure, as opposed to a measure representing the ultimate outcomes of such efforts.

#### 4. Protecting victims and witnesses.

- OM-11. Percentage of cases in which the victim was threatened by the offender or the offender's allies, broken down by:
- a) Threats before the sexual violence crime.
  - b) Threats during the sexual violence crime.
  - c) Threats after the sexual violence crime.
- And further broken down by:
- a) Threats reported before the conclusion of the case.
  - b) Threats not reported until after conclusion of the case.
- OM-12. Percentage of cases in which the victim reported being threatened by the offender or the offender's allies, *after case disposition*.

#### 5. Helping victims feel respected by criminal justice professionals.

- OM-13. Percentage of victims who rated their overall experience with the process as good or excellent (rather than fair or poor).

OM-13a. Percentage of victims who rated the performance of the advocacy agency as good or excellent (rather than fair or poor).

OM-13b. Percentage of victims who rated the performance of the SANE program/medical team as good or excellent (rather than fair or poor).

OM-13c. Percentage of victims who rated the performance of the police and investigators as good or excellent (rather than fair or poor).

OM-13d. Percentage of victims who rated the performance of the prosecutor's office as good or excellent (rather than fair or poor).

#### 6. Delaying fewer cases.

- OM-14. Average case processing time from initial report to arrest to case resolution/disposition, and/or number and percentage of cases with delays.
- OM-15. Number and percentage of cases in which: findings from sexual assault kits were not available at the time to be useful for prosecutorial purposes; kits were either not properly stored or chain of custody was not fully documented; or kits were misplaced.
- OM-16. Number and percentage of cases in which the forensic lab required over "Y" days to provide its findings; and/or average lab processing time.

## **7. Enhancing public trust in case management.**

OM-17. Percentage of the population that indicates trust in the way cases are handled.

OM-18. Ratings by allied professionals of the overall performance of the prosecution of sexual violence cases as good or excellent.

OM-18a. Number and percentage of judges who rated the overall performance of the prosecution of sexual violence cases as good or excellent.

OM-18b. Number and percentage of law enforcement who rated the overall performance of the prosecution of sexual violence cases as good or excellent.

OM-18c. Number and percentage of advocates who rated the overall performance of the prosecution of sexual violence cases as good or excellent.



# Chapter 3. Capturing Case Attrition

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## 3.1. Why case attrition?

As discussed in the [Foreword](#), a major concern is that a substantial proportion of sexual violence cases are never prosecuted or are not successfully prosecuted. Research suggests that at one or more points in the system, many – if not most – cases are declined without thorough investigation, perhaps due to factors such as bias, lack of capacity, or the presence of facts that increase case complexity (*e.g.*, a voluntarily intoxicated victim). This volume suggests procedures for tracking the number of cases dropped at each of the following three stages and for classifying each such case by the reason the it was dropped:

- (1) The victim chose not to report the crime to law enforcement;
- (2) The police declined the case; or
- (3) The prosecutor's office declined the case.

Tracking the number and percentage of cases declined that fall into each of these categories provides important information for understanding which cases were declined and why, laying the groundwork for reducing these numbers, and assessing implementation efforts to improve them. Each jurisdiction can modify each list as it sees fit.<sup>5</sup> The resulting checklist is likely to be most helpful to those entering the data if it is programmed into a computer software program (*e.g.*, through the creation of a dropdown menu) to minimize the effort required to enter the assessments).

The data obtained from these procedures should be relevant for all professionals responding to sexual violence. All partners – including law enforcement and prosecution – should consider the extent to which their actions, as well as those of allied professionals in other agencies, are affecting victim nonreporting. If a partner makes changes to its program, later data will reveal any effect on the outcomes.

## 3.2 Capturing prevalence and reasons why victims do not report.

This subchapter suggests procedures for obtaining estimates of the number of cases not reported to law enforcement ([Measure 4](#)) and the number of these cases categorized by reason for not reporting ([Measure 4a](#)).<sup>6</sup> The data on ([Measure 4](#)) plus the number of cases reported to law enforcement ([Measure 3](#)) provides a more complete count of sexual violence crimes occurring in a community. Collecting and tabulating the reason for not reporting cases ([Measure 4a](#)) can greatly enhance the value of the information by providing insight into how the criminal justice system can enhance victims' ability to report sexual violence.

**Data Collection for OM-4.** The number of sexual violence cases reported by victims to a health or victim service agency, public or private, but not to law enforcement, will need to come from caseworker interviews with each victim. Such cases would include those in which the victim requested a sexual assault medical forensic exam at the hospital but declined to report to law enforcement.<sup>7</sup>

This information, when added to the number of cases in which victims reported to law enforcement, will provide a more accurate count of the number of sexual violence crimes that occurred within the jurisdiction. However, this process does not provide information on the number of sexual violence crimes not reported to any of the partners.<sup>8</sup>

**Data Collection for OM-3a:** The data for [Measure 3](#) will be considerably more useful if it is also broken out by reason(s) for declining to report. This information can greatly assist in targeting actions for improvement.

Health and/or victim service partners will need to collect and provide the data for this measure. The number of sexual violence incidents victims decline to report to law enforcement is not commonly tabulated by such organizations. Even more rarely are the reasons for nonreporting noted. To obtain this data, the jurisdiction will need to work with these organizations to set up a process for routinely obtaining this information from victims in a way that does not compromise the victim's identity. This process calls for health and/or victim service partners to explore with each of these victims the victim's reason(s) for declining to report and then to provide the health and/or victim service partner's interpretation and judgment as to the victim's reasons. This data would then be reported to the prosecutor's office.

The data needed for each reporting period is the total number and percentage of assaults victims indicated they did not want to report to law enforcement. Subtotals by selected victim characteristics (such as age, risk level, ethnicity and/or underserved characteristics) or any others will make the data considerably more helpful. For example, a tabulation might be made of the number and percentage of non-reporting victims that stated fear of treatment by police or prosecutors as the reason they did not come forward.

We emphasize that health and/or victim service providers should not provide data that would enable others to identify those victims who decided not to report the sexual violence crime to the police, unless such information is legally required. The outcome data for [Measure 4](#) and [Measure 4a](#) require only the totals for each category of victim.

To help provide assessments that are more accurate and reliable, [Exhibit 3-1](#) provides a starter list of such reasons. This list of factors is supported by research examining the reasons why victims decline to report sexual violence crimes.

## EXHIBIT 3-1

### Reasons Why Victims Do Not Report Sexual Violence to Law Enforcement

*Those responsible for entering the information regarding victims not planning to report the sexual violence crime to law enforcement may check all that apply. Another option is to ask those entering the data to identify the most important reason. The information regarding a victim's decision not to report to law enforcement must be obtained from agencies to whom victims reveal the assault while indicating they do not want to formally report the incident. The following list has been compiled from available research on reasons victims do not report crimes, particularly sexual violence crimes.*

- Victim is worried about how police/investigators will treat him/her.<sup>9</sup>
- Victim is worried about how prosecutors will treat him/her.<sup>10</sup>
- Victim is worried he/she won't be believed by police or prosecutors.<sup>11</sup>
- Victim perceives that he/she engaged in "risky behaviors" (e.g., drinking alcohol) that led to the sexual violence crime (victim self-blames).<sup>12</sup>
- Victim chooses to report to other authorities (e.g., school officials).<sup>13</sup>
- Victim was engaged in criminal behavior at the time of the sexual violence crime (e.g., prostitution, gang activity, underage drinking, illicit drug use).<sup>14</sup>
- Victim fears getting in trouble with law enforcement (e.g., due to immigration status).<sup>15</sup>
- Victim fears that a lack of, or "unfavorable" evidence, would harm their case.<sup>16</sup>
- Victim believes the assault did not constitute "real" rape (e.g., no weapon used, no injuries, offender was an acquaintance or intimate partner).<sup>17</sup>
- Offender was the victim's friend, intimate partner, or acquaintance.<sup>18</sup>
- Victim does not want family/friends/acquaintances to find out about the assault.<sup>19</sup>
- Victim lacks confidence in the criminal justice system's ability to pursue and achieve justice.<sup>20</sup>
- Victim fears the trial process (e.g., testifying in court, seeing the assailant, cross-examination).<sup>21</sup>
- Victim fears retaliation by the perpetrator or others.<sup>22</sup>
- Victim has experienced intimidation or retaliation by the perpetrator or others.<sup>23</sup>
- Responding officer discouraged victim from going forward with case.<sup>24</sup>
- Investigating officer discouraged victim from going forward with case.<sup>25</sup>
- Prosecutor discouraged victim from going forward with case.<sup>26</sup>
- No reason given.

### 3.3 Capturing prevalence and reasons why law enforcement does not refer cases.

This sub-chapter suggests procedures for obtaining the number and percentage of cases not referred to the prosecutor's office ([Measure 5](#)) and the number of these cases categorized by reason for not reporting ([Measure 5a](#)).

To help provide reliable, more accurate assessments, [Exhibit 3-2](#) provides a starter list of such reasons. This list of factors is supported by research examining the reasons why police close out cases without referring for prosecution.

A possible concern of law enforcement is reporting the reasons for individual cases. Such information would likely best be treated as for internal use only. For purposes of reporting the information, it is sufficient to tabulate only the total number of cases declined for each reason.

#### EXHIBIT 3-2

##### Reasons Why Police Don't Refer Cases to Prosecutors

*Those responsible for entering the information on each case may check all the reasons that apply. Another option is to ask those entering the data to identify the most important reason. (The data can then be tabulated in either or both ways). The following list has been compiled from available research on reasons police close cases without referring them to prosecution.*

1. Victim was unwilling to participate in the investigation/participate in the criminal justice process.<sup>27</sup>
2. Victim recanted their report.<sup>28</sup>
3. Victim perceived as not credible by police.<sup>29</sup> If checking this option, identify the victim characteristics that apply:
  - a. Victim has behavioral health/mental health issues.<sup>30</sup>
  - b. Victim was using drugs or alcohol during the time of the assault.<sup>31</sup>
  - c. There was a delay in reporting the sexual violence crime.<sup>32</sup>
  - d. Victim is perceived as making a false report.<sup>33</sup>
  - e. Victim behavior runs counter to what is perceived to be a “typical” victim’s behavior (*e.g.*, flat affect, contacting the perpetrator after the assault, return to normal daily routine).<sup>34</sup>
  - f. Victim occupation perceived as problematic (*e.g.*, victim is employed as a stripper or has been a victim of commercial sexual exploitation).<sup>35</sup>

4. There was delay in reporting the crime. If checking this option, choose any/all that apply”
  - a. The delay led to questions about victim credibility.<sup>36</sup>
  - b. Due to the time lapse, corroborating physical evidence could not be collected/preserved.<sup>37</sup>
  - c. The statute of limitations for the offense has expired.<sup>38</sup>
5. Victim was engaging in “risky” behavior at the time of the assault.<sup>39</sup>
  - a. Victim was using drugs or alcohol during the time of the assault.<sup>40</sup>
  - b. Victim was engaged in criminal behavior during the time of the assault (*e.g.*, prostitution-related crimes, gang activity).<sup>41</sup>
  - c. Victim was engaged in other sexual behavior at the time of the assault.<sup>42</sup>
  - d. Victim did not have permanent housing at the time of the assault.<sup>43</sup>
6. The suspect has not been identified.<sup>44</sup>
7. The suspect is an acquaintance or intimate partner of the victim.<sup>45</sup>
8. There is little/no corroborating evidence.<sup>46</sup>
  - a. There was no witness to the sexual violence crime.<sup>47</sup>
  - b. Victim was unable to give details of the assault.<sup>48</sup>
9. The assault was not perceived as serious. If checking this option, choose any/all that apply:
  - a. The victim was not physically injured or verbally threatened by the alleged perpetrator.<sup>49</sup>
  - b. The assault did not involve penetration.<sup>50</sup>
  - c. No weapon was used to facilitate the assault.<sup>51</sup>
  - d. The victim did not physically resist the assault.<sup>52</sup>
10. Police believe/know that the case will be declined by the prosecutor but believe that the case should be considered for prosecution.<sup>53</sup>
  - a. If checking this option – please ensure to also check off one of the above options or to explain reasoning in space below.

### **3.4 Capturing prevalence and reasons why prosecutors decline cases.**

This subchapter suggests procedures for obtaining the number and percentage of cases that were referred to the prosecutor's office but declined for prosecution ([Measure 6](#)) and the number of these cases categorized by reason for not reporting ([Measure 6a](#)). To help provide assessments that are more reliable and accurate, [Exhibit 3-3](#) provides a starter list of such reasons. This list of factors is supported by research examining the reasons prosecutors do not charge cases.<sup>54</sup>

Note that more than one percentage point can be useful. The numerator for each percentage would be the number of cases declined by the office of the prosecutor. Useful denominators include: (a) number of cases referred to the prosecutor's office (for each reporting period); (b) number of cases reported to the police; and (c) the sum of the number of cases reported to police and the number provided by other victim support organizations.

The reasons for declining individual cases should likely be kept for internal use only. For reporting purposes, it is sufficient to tabulate only the total number of cases declined for each reason. An analysis of case attrition at the prosecution stage can also take place as part of a larger, systematic case review examining the prosecutor's office handling of sexual assault using a randomly-selected sample of cases. A sample case review protocol, data tracking spreadsheet, and sample timeline are included in the Appendices.

### **EXHIBIT 3-3**

#### **Reasons Why Prosecutors Decline Cases**

*Those responsible for entering the information on each case may check all the reasons that apply. Another option is to ask those entering the data to identify the most important reason. (The data can then be tabulated in either or both ways). The following list has been compiled from available research on reasons prosecutors decline cases.*

1. Victim is unwilling to participate in the investigation/criminal justice process.<sup>55</sup>
2. Victim recanted their report.
3. Victim could not be located.<sup>56</sup>
4. Victim failed to appear for meetings or hearings.<sup>57</sup>
5. Victim perceived as not credible by prosecutors. If checking this option, identify victim characteristics that apply:
  - a. Victim has behavioral health/mental health issues.<sup>58</sup>
  - b. Victim was using drugs or alcohol during the time of the assault.<sup>59</sup>
  - c. There were inconsistencies in the victim's account of the assault.<sup>60</sup>
  - d. There was a delay in reporting the crime.<sup>61</sup>
  - e. Victim is perceived as making a false report.<sup>62</sup>
  - f. Victim behavior runs counter to what is perceived to be a "typical" rape victim's behavior (*e.g.*, flat affect, contacting perpetrator after the assault, return to normal daily routine).<sup>63</sup>

6. There was a delay in reporting the crime. If checking this option, check any/all that apply:
  - a. The delay led to questions about victim credibility.<sup>64</sup>
  - b. Due to the time lapse, corroborating evidence could not be preserved.<sup>65</sup>
  - c. The statute of limitations for the offense has expired.
7. Incident does not constitute a sexual violence crime under the jurisdiction's code.<sup>66</sup>
8. Evidence for a particular element (*e.g.*, penetration; force, threat, coercion; capacity) of the offense is missing. Indicate it in the space below.<sup>67</sup>
9. Evidence critical to prosecution of sexual violence was suppressed.<sup>68</sup>
10. Lack of jurisdiction.
11. Victim was engaging in "risky" behavior at the time of the assault.<sup>69</sup>
  - a. Victim was using drugs or alcohol during the time of the assault.<sup>70</sup>
  - b. Victim was engaged in criminal behavior during the time of the assault (*e.g.*, prostitution-related crimes, gang activity).<sup>71</sup>
  - c. Victim was engaged in other sexual behavior at the time of the assault.<sup>72</sup>
  - d. Victim did not have permanent housing at the time of the assault.<sup>73</sup>
12. Suspect has not been identified.<sup>74</sup>
13. Suspect is an acquaintance or intimate partner of the victim.<sup>75</sup>
14. There is little/no corroborating evidence.<sup>76</sup>
  - a. There was no witness to the sexual violence crime.<sup>77</sup>
  - b. Victim was unable to give details of the sexual violence crime.<sup>78</sup>
15. The assault was not perceived as serious. If checking this option, check any/all that apply:
  - a. Victim was not physically injured or verbally threatened by alleged perpetrator.<sup>79</sup>
  - b. The assault did not involve penetration.<sup>80</sup>
  - c. No weapon was used to facilitate the assault.<sup>81</sup>
  - d. Victim did not physically resist the assault.<sup>82</sup>
16. After investigation or preliminary hearings/motions, victim requested case not proceed.<sup>83</sup>
17. The case is perceived as unlikely to result in conviction.<sup>84</sup>
  - a. If checking this option, choose one of the above options or explain below.

# Chapter 4. Identify Outcomes for Victim Demographic Subgroups

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## 4.1. Importance of Categorizing Data

For many outcome measures, the findings will be most useful if the data is reported not only in the aggregate but also categorized by specific victim characteristics or demographics. This additional information can provide staff valuable insights for identifying training needs — as well as a factual understanding of the community they are serving. This added information may provide insight relevant to interactions with victims, particular victim vulnerabilities, and case outcomes specific to particular subgroups. Information pertaining to different groups also can help indicate the extent to which equal access to justice issues are present.

[Exhibit 4-1](#) provides a set of suggested victim characteristics for consideration. Sites may wish to add other victim characteristics or may decide to report routinely on only a small subset of victim characteristics. Tabulations by other characteristics would be made on an as needed basis. It would be helpful if all stakeholders within a sexual assault response system jointly identify the victim subgroup categories that should be a priority to track within their system because, *e.g.*, they identify particular victim populations being targeted by offenders, or particular victim populations unable or unwilling to participate in the prosecution of their offenders.

Tabulations of victim characteristics will be easiest to process if the prosecutor's office has a computerized case management system. A checklist of victim characteristics can be incorporated into the case management system, enabling a prosecutor or other staff to readily record relevant victim's characteristics in each case. For jurisdictions without a computerized case management system, data can be tabulated using an Excel spreadsheet.

As mentioned above, examining case outcomes based on victim characteristics can be useful for understanding the community that is being served. It can also help with workload planning; *e.g.*, if there are a large number of victims who do not speak English, more time and resources may be dedicated to translation services. The totals for each subgroup can provide officials with important information on case volume and how it is changing over time for each subgroup, as well as in total. The more difficult step is to link the information on each victim's characteristics to the outcomes of their cases, so that the relationship between case resolution and victim characteristics can be examined. For example, the data might show that during year 2019, 29% of tourist-victim resolutions were satisfactory. This statistic can be compared to those for other victim subgroups and to the overall percentage of cases resolved successfully. See [Chapter 8](#) for more information.



Suppose the tabulations revealed that during year 2019 the overall rate of successful resolution was 58%. This would suggest problems in handling tourist cases, because a smaller proportion of these cases are resolved satisfactorily. The ability to categorize case outcomes by victim characteristics provides much more actionable information than simply knowing the overall resolution rate. Such information encourages offices to explore why such differences exist. It might, for example, indicate the need for training or technical assistance. Using only the aggregate or overall value hides the fact that certain groups of victims have unequal access to justice and/or considerably fewer successful outcomes than others. (Of course, other considerations could also explain the difference – one such being that the number of sexual violence crimes within a particular victim characteristic was so small that one or two cases greatly influenced the resulting percentages).

A similar set of suspect characteristics might also be chosen to report outcome data by suspect subgroups. For example, data could compare repeat offenders to single case offenders, and outcomes could highlight case resolution disparities by documenting comparable cases and the sentences given to different racial and ethnic groups. Variances in suspect subgroup information might indicate issues requiring attention, such as areas for specific technical assistance and training. However, it is important to note that such information, as with most performance data, does not tell what actions should be taken.

Prosecutors' offices can also track case attrition by victim characteristic. For cases in which sexual violence victims seek help from service/advocacy organizations and do not want to report their assault to law enforcement, the organization can be asked to provide both the total number of victims which do not want to report along with subtotals by victim characteristics. To protect the victim's privacy, the victim service organization need only provide the aggregate and subgroup totals. These tallies supplement other information for a fuller picture of the total number and characteristics of sexual violence victims. See [Chapter 3](#) for more information on data collection procedures relating to victims who do not report their assaults to law enforcement.

Be sure to take steps to protect victim privacy when disseminating this data. Some jurisdictions may have such small populations of certain demographics that data categorized by these victim subgroups may inadvertently reveal a particular victim's identity or other confidential information. Ensure compliance with applicable confidentiality and privacy laws. For more guidance on ensuring victim privacy, contact the authors of this volume.<sup>85</sup>

It should be noted that data for some victim characteristics might not be available for every case. Any substantial data gaps should be identified when reporting the information so users of the information are alerted to possible data accuracy problems.

## **EXHIBIT 4-1**

### **Candidate Victim Categories for Analyzing Sexual Violence Case Outcomes**

1. Age
2. Gender identity or presentation
3. Sexual orientation
4. Race or ethnicity
5. Income group
6. Geographical location of the assault
7. Educational level
8. Family size
9. Disability status
10. Presence of cognitive disability
11. Past history of alcohol or drug use/abuse
12. Past criminal justice involvement
13. Previous victim of sexual violence
14. Relationship to the offender
15. Sexually exploited person
16. Tourist
17. Non-resident
18. Student
19. Homeless or transient

# Chapter 5. Capturing Case Complexity

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## 5.1. The Issue

Although sexual violence crimes are among the most challenging cases to try, the level of complexity varies among cases based upon a variety of factors. According to research, these factors impact decision-making about whether or how a case proceeds through the system, as well as affecting the case outcome. In this context, “complexity” refers to the presence or absence of certain case, victim, or suspect characteristics, many of which are common in sexual assault cases but may affect a prosecutor’s perception about the strength of the case.

Such factors may lead to case attrition.<sup>86</sup> Prosecutors may decline to charge a case due to the presence of certain complexity factors that they perceive, based on past experience and anticipated juror response, would make it nearly impossible to secure a conviction at trial. Law enforcement may also fail to refer a case for prosecution based on a perception that the prosecution will decline to charge it. Victims may even decide to not report the sexual violence crime based on the perception that police and/or prosecutors won’t believe them or won’t bring the case forward. The minimum ethical standard for charging a crime is probable cause. While some offices have policies requiring a higher charging standard — a reasonable likelihood of conviction — speculation about what a (potentially uninformed) jury will do should never be the standard for prosecuting a case.<sup>87</sup> To the extent that cases are declined based upon the presence of complexity factors that can be addressed through training, technical assistance, and the use of promising strategies, justice is not served. Understanding the impact of complexity on case processing and outcomes in one’s own jurisdiction is an important part of assessing prosecutors’ capacity (*i.e.*, their level of knowledge and experience) to properly evaluate the relevance of particular factors present in their cases and to achieve the best possible outcome. It effectively exposes areas where additional prosecution training or technical assistance is needed, as well as areas where community, law enforcement, or judicial education is necessary.

Accounting for case complexity will also provide necessary context for case outcomes. One foundational premise of the RSVP is that conviction rates, used alone, are not a fair measure of whether justice is being achieved in sexual violence prosecutions. Additionally, a prosecutor’s skill level cannot be assessed solely by conviction rate, a measure that fails to account for the complexity of the cases tried. Prosecutors and their offices should never be penalized for advancing complex cases that might lower their conviction rate, nor should they be encouraged to decline complex cases to ensure high conviction rates. Encouraging prosecutors to take on the difficult cases requires their offices to develop a system that consistently captures the complexity of their cases, examines how those cases are being handled, and permits identification of those areas where improvements can be made. When areas needing improvement are identified, the office must identify, obtain, and allocate the resources necessary to make those improvements.

Certain characteristics of a sexual violence case (*e.g.*, lack of physical injury, intoxication by the victim or suspect, presence of a developmental disability) may make the crime more difficult to prove beyond a reasonable doubt and thus may be associated with lower conviction rates. By accounting for case complexity, we can obtain a more comprehensive, meaningful, and reasonable view of case resolutions. For example, complexity ratings can help explain why certain less-than-desirable resolutions occurred in certain reporting periods; perhaps those periods had a greater number of highly complex cases. As prosecutors begin to take on more complex cases, their conviction rates may go down, at least initially. It takes time for prosecutors and their offices to become accustomed to handling these cases and for judges and juries become accustomed to hearing them. These lower conviction rates should improve over the long term as prosecutors' proficiency increases and as judges and juries become more acquainted with sexual violence dynamics.

Armed with a more complete picture of case complexity and case outcomes, prosecutors can be incentivized to pursue challenging cases, and their offices can support their efforts by ensuring that prosecutors have sufficient training, knowledge, skills, and resources (*e.g.*, experts) to pursue these cases proficiently. Offices can also determine whether bias, misinformation around the perpetration of particular types of sexual violence, or general lack of public awareness may be resulting in unjust acquittals.

The outcome for each case should be linked to the complexity rating for that case. This yields an outcome measure for each level of complexity, such as "percentage of very complex cases with guilty disposition." Case outcomes would be reported for each level of case complexity. This can help alleviate prosecutors' natural hesitancy to take on complex cases. It also provides data users with explanations for potentially low overall disposition rates. ("My overall rate of convictions decreased this reporting period because my cases became more complex.")

A secondary reason to examine case complexity is that it enables prosecutors to use the list of complexity factors as a checklist to guide them in planning their cases. Taking stock of particular complexities presented in a case can help the prosecutor plan for and systematically address (to the extent possible) each factor to mitigate its effect on the ultimate case outcome. For instance, if a case checklist indicates that the victim had consumed alcohol or drugs immediately prior to the assault, the prosecutor may consider identifying a toxicologist to explain the effects of the intoxicant on a victim's capacity to consent. Incorporating a complexity checklist into case planning may be particularly helpful to prosecutors who are new to prosecution of sexual violence cases. Understanding the percentage of cases involving victims who consumed drugs or alcohol may also identify more long term needs, such as the identification of nearby toxicology experts and ensuring that assigned staff have received the appropriate training.

Finally, accounting for case complexity can help with office workload planning. More complex cases require more time and attention than less complex cases. Estimating trends in case complexity over time will better enable prosecutor offices to estimate their staffing needs.

## 5.2. How can complexity be measured?

A reasonably straightforward approach is for the prosecutor's office to identify key factors influencing prosecution decisions, and then assess the extent to which individual cases contains these factors. A key issue for this procedure is how to rate the complexity of each case in a way that is reasonably reliable.

The simplest approach is to ask prosecutors to rate the complexity of each case using a pre-determined list of factors believed to make a case complex. Each prosecutor would assess the case based on the presence or absence of each factor. The complexity rating for each factor could be only "yes" or "no". After considering the number of "yes" factors, the prosecutor would place the case into one of three or four levels of complexity, such as: (1) very complex; (2) somewhat complex; (3) somewhat straightforward; or (4) straightforward. This type of rating is subjective. Not all prosecutors would judge the same case the same way, and the ratings of a prosecutor might be affected by how they felt on a given day. The problem of subjectivity can be somewhat alleviated by having two or even three prosecutors separately rate each case. This approach also would be strengthened by providing detailed definitions of the complexity levels, including the presence or absence of selected complexity factors. A candidate list of such factors is contained in [Exhibit 5-1](#). A second, more involved approach increases the precision of the complexity ratings. This involves developing a computerized calculation of complexity for each case as in the first approach, but each factor would be assigned a numerical value within a rating scale. For each case, a prosecutor would rate each complexity factor on its level of influence on the case.

An example of such a complexity rating system is presented in [Exhibit 5-2](#). The rating system uses three levels of influence on the case valued at 0, 1, and 2. The system allows for additional nuance of each factor to be accounted for in the scoring process.

Once each factor has a rating, a user can then add the ratings across each factor to come up with an overall complexity score, which then can be grouped into a small number of overall complexity levels, such as: (1) high complexity; (2) medium complexity; and (3) low complexity. The prosecutor's office must establish the range of values for each of these levels. For example, "low complexity" cases might range from 0-5; "medium complexity" might range from 6-10; and "high complexity" might be 11 and over.

Simply adding the ratings across factors implies that each one has equal importance and influence. This is unlikely to be true. For example, victim intoxication may make a case exponentially more complicated than other complexity factors. Thus, prosecutors' offices may want to consider weighting complexity factors based on their perception of added complexity in a case. Rather than using 0, 1, and 2 in the rating system, prosecutors could assign a number weighted based on relevance to complexity. So, a victim's lack of injury may be rated a 2, but victim intoxication rated an 8. This process allows certain factors to weigh more heavily on the overall complexity score.

The process for adding the ratings of each factor and then assigning a level of case complexity could be digitized based on whatever software program an office chooses to use – meaning prosecutors would not need to make manual calculations. From there, only simple analysis is needed to determine the number and percentage of cases that fall into the three or four complexity categories during a particular reporting period. Next, this data can be linked to each case's level of success to provide the percentage of cases at each complexity level with successful outcomes.

The computer-calculated rating system is preferable because of its reduced subjectivity. Some offices, however, might want to start out with the simpler procedure and then switch to the computer-calculated procedure at a later date.

More details on complexity rating procedures are provided in [Exhibit 5-3](#).

## **EXHIBIT 5-1**

### **Initial List of Candidate Factors for Complexity Ratings<sup>88</sup>**

1. Lack of statement from the defendant.
2. Lack of DNA or other forensic evidence, especially if the offender was unknown to the victim.
3. Lack of physical evidence that the victim was assaulted (*e.g.*, damaged clothing).
4. Lack of third-party witnesses to events or statements before, during, or after the assault.
5. Lack of sexual assault kit evidence.
6. Lack of documented physical injury.
7. Lack of supportive testimony from medical forensic examiner.
8. Lack of other corroborating evidence.
9. Lack of use of a weapon by the offender.
10. Prior sexual relationship between the victim and offender.
11. Offender claim of consent to act.
12. Victim is unable to participate in prosecution.
13. Witness is unable to participate in prosecution.
14. Victim has a disability.
15. Significant difficulties understanding the victim's or offender's speech.
16. Victim has a history of mental health issues, alcohol/drug use/abuse, and/or activity associated with commercial sexual exploitation.
17. Offender has a history of mental health issues.

18. Lack of offender history of sexual abuse or other crimes (felonies or misdemeanors).
19. Victim's use of alcohol or drugs at time of assault.
20. Offender's use of alcohol or drugs at time of assault.
21. Lack of physical resistance by the victim.
22. Delayed report.
23. Significant forensic and/or digital content in case (requiring major effort and cost).
24. Prominent status of offender or offender's connections/family.
25. Significant political/media attention pressuring prosecution.
26. Unusual elements with which prosecutors have little or no experience.
27. Involvement of multiple offenders.
28. Consensual interactions between offender and victim at, or near, the time of the assault.
29. Offender has a disability.

## **EXHIBIT 5-2**

### **Example of a Complexity Rating Scale**

*Adapted from Complexity Rating Scale Developed by Assistant District Attorney, Rick Spoentgen,  
Sauk County District Attorney's Office*

#### **1. *Statement from the defendant***

- 0 – Confession / very inculpatory admission
- 1 – Partial admission with slight inculpatory statements
- 2 – No statement / strong consent defense (*i.e.*, only part of defendant's account that conflicts with other available evidence account is issue of consent)

#### **2. *No helpful DNA***

- 0 – Autosomal / strong Y-STR return in non-consent case
- 1 – Autosomal / strong Y-STR return in consent case – weak Y-STR return in non-consent case
- 2 – No match

**3. *Lack of sexual assault kit evidence***

- 0 – Kit evidence with highly probative/inculpatory findings
- 1 – Kit complete but with nothing probative
- 2 – No kit

**4. *Lack of other corroborating evidence***

- 0 – Probative corroborative evidence exists
- 1 – Corroborative evidence exists, but not probative
- 2 – No corroborating evidence exists

**5. *Consent defense***

- 0 – Inapplicable or not claimed
- 1 – Imperfect consent defense (*i.e.*, some parts of defendant's account match other available evidence, but not all)
- 2 – Strong consent defense (*i.e.*, only part of defendant's account that conflicts with other available evidence account is issue of consent)

**6. *Lack of victim participation***

- 0 – Victim is active participant
- 1 – Victim is partial participant (labor intensive/reluctant)
- 2 – Victim is non-participant / unwilling participant (openly hostile /unable to be located)

**7. *Lack of witness participation***

- 0 – Witnesses participating
- 1 – Witnesses reluctant / statement changing
- 2 – Witnesses nonparticipating

**8. *Presence of credibility concerns with victim's account***

- 0 – No relevant issues
- 1 – Has issues raising of credibility concerns
- 2 – Has issues which significantly impact case or credibility



**9. Lack of defendant history of sexual assault**

- 0 – Significant probative history found
- 1 – Slight history / debatable probative value
- 2 – No history found

**10. Victim use of alcohol or drugs at time of incident**

- 0 – No use OR use to the extent it clearly shows victim is incapacitated
- 1 – Slight-moderate use with limited impact on perception, memory, or other issues related to credibility
- 2 – Moderate-heavy use with severe impact on perception or memory, but not incapacitated

**11. Consensual sexual interactions at or near time of assault<sup>89</sup>**

- 0 – No physical intimate contact within a week of incident
- 1 – Intimate contact without sex within week of incident
- 2 – Full oral/anal/vaginal/digital sex within week of incident

**12. Complicating legal factors/motions:**

- 0 – None / boilerplate
- 1 – Novel and not time/labor intensive OR standard motion and highly fact-specific
- 2 – Novel and time/labor intensive

**EXHIBIT 5-3**

**Steps for Assessing Case Complexity**

Step 1: **Identify and select the complexity factors to be assessed in each case.**<sup>90</sup> [Exhibit 5-1](#) provides a non-comprehensive list of factors. Prosecutor's offices should solicit input from as many sexual violence prosecutors as is feasible, not only to increase the accuracy of the factors identified but also to increase prosecutors' interest in, and understanding of, the information that comes from this process.

Step 2: **Selecting a rating system.** The individuals deciding the ratings for each case's complexity should use this scale.

**Option A:** The simplest option is to count the number of complexity factors, developed in Step 1, that are present in a particular case and sum the total. For instance, if a prosecutor is using the above suggested list of complexity factors, and has determined that 5 are present in a particular case, each factor would add a value of 1 to the rating, and thus the complexity rating for that case would be 5.

**Option B:** A more challenging option is to rate each factor according to the extent it is present in the case using a pre-determined rating scale (like that discussed earlier), rather than only assessing the presence or absence of a factor as in [Option A](#). For instance, the complexity factor might have three levels (0-2), where “0” means the particular factor did not increase case difficulty at all and “2” means the factor greatly increased case complexity. Prosecutors’ offices can enhance the reliability of these complexity scores by developing definitions for each grade of each complexity factor (as exhibited in [Exhibit 5-2](#)).

For example, when rating the factor, “supportive testimony from medical forensic examiner,” if the testimony indicated that the defendant was guilty, the complexity factor would likely be rated 0 or 1. However, if the testimony was weak, the rating would likely be 2 or 3. If no such evidence was available, the rating would depend on the circumstances of the case. If the lack of such evidence was a minor problem, a 0 or 1 might apply, but if it was a major problem, a rating of 2 might be appropriate.

Another example: When rating “statement from the defendant,” if the statement was particularly powerful, the factor would likely be rated 2. If the defendant did not testify on his behalf, the rating would depend on how the prosecutor judged the effect of that choice; if the statement inculpated the defendant, the factor might be 0.

**Option C:** Yet another option is to consistently weight the complexity factors across all cases, while varying the weight of each factor to abide by the site’s predetermined value. For instance, “involvement of multiple offenders” (#24 in [Exhibit 5-1](#)) could be assigned a weighted numerical complexity rating of 2, while “lack of cooperation of witness” (#13 in [Exhibit 5-1](#)) could be assigned a weighted numerical complexity rating of 5. Thus, in all cases with a disabled offender, the factor would be assigned a rating of 2, and in all cases that lack witness cooperation, the factor would be assigned a rating of 5.

The upside of this approach is that it reduces some of the subjectivity present in [Option B](#). However, it also reduces the precision of the case’s overall complexity rating. For instance, perhaps the evidence available in your case was so strong that the lack of a cooperating witness did not add much complexity to the case; you would still need to add a weighted complexity factor of “5” to the case’s overall complexity score.

[Exhibit 5-4](#) below provides an example of Options, [A](#), [B](#), and [C](#) for a subset of complexity factors. The first column names a subset of five factors, and the second column illustrates a

system that rates the presence/absence of each factor ([Option A](#)). Each factor, if present, would receive a score of 1 with a total possible case complexity score of 5. The third column illustrates a system where an attorney would rate the extent to which each factor matters for particular cases on a scale from 0-2 ([Option B](#)). The total possible case complexity score would be 10. The last column illustrates a system where factors would be consistently weighted across all cases, with the value predetermined by sites (and represented in each row) ([Option C](#)). The total possible complexity score using this system would be 12.5.

**Step 3: Select a set of three, four, or five non-numerical categories that represent overall levels of case complexity.** For example, a three-level complexity scale might select the categories: “Low Complexity,” “Medium Complexity,” and “High Complexity.” Sites with small numbers of sexual violence cases might prefer fewer categories than sites with large numbers. The total score for each case (from [Step 2](#)) is used to place each sexual assault case into one of the complexity levels, using a procedure like that discussed below in [Step 4](#). The calculations preferably would be done automatically using computer software, not manually.

**Step 4: Select the numerical complexity ranges for each level identified in Step 3.** This will depend in part on the number of factors selected in [Step 1](#) and non-numerical categories selected in [Step 3](#). (The more the complexity factors, or the fewer the non-numerical categories, the larger the ranges will be). The simplest approach is to use equal intervals calculated by dividing the maximum case score by the number of levels chosen (see [Step 3](#)). For example, if the prosecutor’s office selects five complexity factors ([Step 1](#)) and uses a rating scale of 0-2 ([Step 2](#)), the range of possible values for a case would be 0-15. If the office selected the three levels of complexity noted in [Step 3](#) and chooses to use equal intervals, the ranges would then be:

Low Complexity	=	0 - 5
Medium Complexity	=	6 - 10
High Complexity	=	11 - 15

Instead of using equal intervals, the office may choose to "validate" the complexity scale using a small number of cases and cutting the intervals at the point it makes sense in reality. This would involve looking at how cases fall within categories and determining what the thresholds are for each complexity levels — *i.e.*, is a case one of medium complexity with a score of 4; and one of high complexity with a score of 13? If so, the ratings might be adjusted to reflect 0-4 = Low Complexity; 5-13 = Medium Complexity; and 13-15 = High Complexity. A problem can arise when the individual examining a case believes it to be of high complexity even when it’s score does not reflect this. In this case, an option is to add a procedure to override the automatic calculation. In that case, a written explanation for the override should be provided. The site is advised to test its procedure with a sample of cases (perhaps 10% of a caseload within a given timeframe) to decide whether the option is needed.

**Step 5: Develop a process to systemically record information regarding case complexity for every matter that comes to the prosecutor's office.** The process should specify who is responsible for calculating the ratings of each factor and assessing the category of complexity in which it falls. Options include: the prosecutor assigned to the case, a prosecutor who has not worked on the case, and the unit chief. The process should also specify at which point in a case the complexity should be rated. Case complexity could be evaluated: early in the case (*e.g.*, at the time of charging — which would make these ratings useful in case and office workload planning); and/or after the case is resolved (where complexity can be compared with level of case success). Offices may have varying opinions about the utility of case complexity ratings at each stage of the case, and these opinions should be considered when determining the timing. For example, early ratings can help prosecutors estimate the amount of effort and resources the case may require, and encourage them and other team members to identify ways to meet challenges posed by the identified complexity factors. The risk is that such a determination early on may bias the process in favor of a less than optimal disposition because of the perceived difficulty of securing a conviction at trial. Offices might consider not disclosing early complexity ratings until after the case is resolved.

Rating complexity after the case has been resolved may provide a more accurate picture of the complexity. The post-resolution case review could encourage prosecutors to identify challenges in future cases as a way to improve their practices.

Ratings at both points — early in the case and after disposition — may be best, where feasible. Conducting both assessments may yield important information, such as the usefulness of an expert witness in securing a favorable outcome, and may challenge the prosecutor's own pre-conceived ideas about the case. However, complexity factors rating will take additional prosecutor time.

Offices might wish to seek outside assistance to help set up the procedures. Faculty or students from nearby universities, colleges, etc., might be available to help. Once the process has been established, implementing it can become a routine task.

**Step 6: Once the complexity rating process is established, an analytic software program or case management system can calculate and provide the number and percentage of cases for each complexity level and any reporting period, quickly and accurately.** The prosecutors' role, once the process is implemented, is to make and record their ratings of each case, as called for by [Step 2](#).

The analytic software program can calculate the “percentage of guilty resolutions (and/or not guilty resolutions) of cases resolved during the reporting period that fell into each level of complexity. Resolutions should be considered alongside determinations of case success, which is discussed in detail in [Chapter 7](#). This could provide outcome measures in the following form: Percentage of moderately complex cases within a particular reporting period

resolved with satisfactory outcomes and a higher number of promising practices implemented. The analytic process also could provide outcome values categorized by each victim characteristic or circumstance group, such as “percentage of moderately complex cases involving a teenaged victim with successful outcomes.” A detailed discussion of victim demographic subgroups can be found in [Chapter 4](#).

**EXHIBIT 5-4. Methodology Comparison: Case Complexity Factors for a Prosecutor’s Office**

<b>Complexity Factor</b>	<b><a href="#">Option A:</a> Rating Factors Based on Presence in Case</b>	<b><a href="#">Option B:</a> Rating Factors on a Scale of 0-2 in Each Case</b>	<b><a href="#">Option C:</a> Weighting Factors Consistently Across all Cases</b>
Lack of SAK evidence	1	0-2	1
Prior sexual relationship between victim and offender	1	0-2	3
Victim’s use of alcohol or drugs	1	0-2	4
Lack of participation by victim	1	0-2	3
Delayed report	1	0-2	1.5
<b>Total possible case complexity score</b>	5	10	12.5

**5.3. Final Thoughts**

These procedures do not eliminate subjectivity (judgment calls) by prosecutors in making complexity determinations. However, as the famous quote goes, “[i]t is better to be partially right than precisely ignorant.” Consideration of case complexity via a predetermined method, even though far from perfect, nevertheless can provide actionable and fair information, enabling a more accurate understanding of prosecution performance.

# Chapter 6. Measuring Case Resolutions

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[Measure 9a](#), listed in the performance measures set forth in [Chapter 2](#), documents the number, percentage, and disposition of cases accepted for prosecution by resolution. This measure should incorporate case complexity in order to meaningfully represent a prosecutor’s or jurisdiction’s sexual violence case resolution. See [Chapter 5](#) for more information on case complexity.

## 6.1. Recommended Steps to Measure Resolutions

### *6.1-A. Identify all possible case resolutions.*

Case resolutions should encompass the many possible outcomes that can occur, including the type of charge for which the defendant was ultimately convicted, the length and type of sentence (prison, probation, etc.), and conditions imposed in the sentence, such as whether the conviction requires sex offender registration. [Exhibit 6-1](#), below, is a sample list intended to represent a continuum of case resolutions; each resolution is a combination of possible case outcomes.

Each jurisdiction is welcome to add, delete, or modify any of the case resolutions in Exhibit 6-1 as appropriate for its circumstances. It is important to note that the case resolutions should be based on objective criteria (*e.g.*, “sentence does not involve incarceration”) as opposed to subjective criteria (*e.g.*, “lighter sentence than deemed appropriate”) to improve the likelihood that different persons rating a case’s level of success would give the same rating.

### *6.1-B. Consider case complexity.*

By viewing case resolutions through the lens of case complexity, discussed in [Chapter 5](#), prosecutors can achieve a fairer and more nuanced view of their case resolutions. For instance, a “not guilty” verdict for a low complexity case and the same resolution for a high complexity case can and should be viewed differently; each resolution, however, requires a deeper case review to determine the reason for the outcome. Keep in mind that the purpose of measuring case resolutions, is to help improve the effectiveness, efficiency, and equitableness of prosecution – for cases at all complexity levels – not for the purpose of laying blame or criticizing the prosecutor.

For each case, the office should identify the complexity level and case resolution, and calculate the number and percentages of cases at each case resolution for each level of complexity. For example, results could be: “number and percentage of high complexity cases with defendant found guilty as charged with appropriate upper guideline sentence imposed” and “number and percentage of moderate complexity cases with negotiated plea bargain to major charge with major penalties”. Each case can be coded for level of complexity and case disposition to generate these measures. The relationship of case resolution to case complexity can be reported in a table like the following:

<b>Case Resolution</b>	<b>Low Complexity</b>	<b>Medium Complexity</b>	<b>High Complexity</b>
Trial resolution: Guilty as charged with appropriate upper guideline sentence imposed.	X%	X%	X%
Negotiated plea bargain: On lead charge with appropriate upper guideline sentence imposed.	X%	X%	X%
Trial resolution: Guilty as charged with less than appropriate upper guideline sentence imposed.	X%	X%	X%
Trial resolution: Guilty on a lesser-included sex offense with guideline sentence imposed.	X%	X%	X%
Trial resolution: Guilty on a lesser-included sex offense with less than guideline sentence imposed.	X%	X%	X%
Negotiated plea bargain: On to lead charge or lesser-included sex offense, with guideline sentence and/or sex offender registration.	X%	X%	X%
Negotiated plea bargain: On non-sex offense with guideline sentence or sex offender registration.	X%	X%	X%
Trial resolution: Not guilty on any sex offense charge; guilty on only least serious sex offense or non-sex offense charges.	X%	X%	X%
Not guilty: On all charges.	X%	X%	X%

## **EXHIBIT 6-1**

### **Illustrative List of Resolution-Success Levels**

1. Trial resolution: Guilty as charged with appropriate upper guideline sentence imposed.
2. Negotiated plea bargain: On lead charge with appropriate upper guideline sentence imposed.
3. Trial resolution: Guilty as charged with less than appropriate upper guideline sentence imposed.
4. Trial resolution: Guilty on a lesser-included sex offense with guideline sentence imposed.
5. Trial resolution: Guilty on a lesser-included sex offense with less than guideline sentence imposed.
6. Negotiated plea bargain: On lead charge or lesser-included sex offense, with guideline sentence and/or sex offender registration.
7. Negotiated plea bargain: On non-sex offense that does not result in incarceration or sex offender registration.
8. Trial resolution: Not guilty on any sex offense charge; guilty on only least serious sex offense or non-sex offense.
9. Not guilty: On all charges.



# Chapter 7. Identifying Degrees of Case Success

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[Measure 9](#), listed in [Chapter 2](#), examines measures of case success. But what makes sexual assault cases successful, and who gets to define success?

Case resolutions are a critical component of case success. But success cannot and should not be defined by case resolution alone. For example, in addition to case resolution, a prosecutor should consider whether they: used available evidentiary and legal strategies and tools; considered the victim's input and weighed the impact of prosecutorial decision-making on victims; considered community safety and the requirements of justice; considered aggravating and mitigating circumstances, etc. Success can also be measured by whether the victim felt safe and satisfied with the criminal justice process.

These latter two prongs of success may occasionally differ or outright conflict with one another. For instance, a victim may be conflicted about the most traditionally "successful" outcome in the eyes of the prosecutor – a conviction – if they empathized with the suspect due to an existing prior relationship or was re-traumatized by the criminal justice process. Thus, success can not be linked to a single outcome and should be measured on a case-by-case basis. But a determination must be made on objective outcomes to accurately evaluate and, where necessary, refine practices. Success from the victim's perspective will be discussed in [Chapter 9](#).

## 7.1. Recommended Steps to Measure Case Success

*7.1-A. Decide what measures will be included in your office's definition of success. They can include some combination of the following:*

*A measure based on case resolution. ([Measure 9a](#))*

See [Chapter 6](#) for a list of sample case resolution categories. These case resolutions alone could be disaggregated by level of complexity.

*A intermediate measure based on the use of prosecution practices that are research-based and trauma-informed ("best practices"). ([Intermediate Measure 9b](#))*

The process of prosecuting a sexual assault case is arguably as important as its outcome. Even if a case results in a resolution that falls short of the charges or sentence pursued by the prosecutor, the implementation of best practices throughout the life of the case, from initial

evaluation and charging through resolution, can generate a high quality of procedural justice for the victim and the public. A comprehensive definition of case success should thus account for the prosecution's efforts to bring about justice.

As such, it is critical to track best practices in order to compare their use against case outcomes. This practice would be for internal assessments of success only and would not necessarily need to be part of any transparency reporting to the general public. Instead, tracking these measures is about driving practice change within an office and/or about addressing individual prosecutor performance. Perhaps a case resulted in a conviction to a lower-level sex offense rather than the most serious offense initially charged. Is there anything we could have done to increase the chances of getting a guilty verdict on the higher-level charge? By revisiting our actions throughout the case, we may be able to find our answer. Did we file a 404(b) motion? If not, should we have? Do we have the necessary training and skills, and access to experts, to work with victims with disabilities? If not, how will we build our capacity and identify experts?

A "best practices" checklist can help measure the level of procedural justice in our cases. It can also be used as the basis for regular meetings between unit chiefs and line-level prosecutors to examine the actions taken throughout the case and identify areas for improvement. Tracking practices will not help reveal "why" an outcome was achieved or not, but it does allow for focused attention on practices being implemented. This could help to determine, for example, if trial lawyers are falling short of implementing best practices, or, if case resolutions include high rates of acquittal and/or victim experiences are negative regardless of whether best practices are used.

Although this intermediate outcome measure was not tested in the pilot sites, it was identified as a useful resource and developed based on the authors' experience working with professionals across these sites. A comprehensive explanation of best case-level practices for prosecuting sexual violence crimes can be found in Chapter 4 of RSVP Volume I. [Exhibit 7-1](#) provides a sample checklist based on some of these critical practices, with a sample rating scale for each. Both the checklist and the rating scale presented here are recommendations based on the authors' experiences, as well as RSVP Volume I. Each can be modified based upon a jurisdiction's needs and experience implementing performance management.

It is important to note that best practices contained within [Exhibit 7-1](#) cannot be checked off with a simple "yes or no" answer. Completing the checklist for each case will require a thorough examination and honest critique of the prosecutor's efforts with respect to each practice. Following each case resolution, prosecutors can engage in a self-evaluation and then meet with their supervisors or unit chiefs to discuss their performance and complete the checklist.

**Together, the prosecutor and the supervisor should consult Chapter 4 of RSVP Volume 1 for an explanation of the specific actions that comprise each of the below strategies. Remember, the purpose of this determination is to understand and constantly improve individual and office-level response to sexual violence cases by not only identifying what is working well but also identifying areas for improvement: subjects which require additional training, specific skills requiring refinement, and/or community responses highlighting increased outreach efforts or public awareness.**

Once the checklist is finalized, each case can be rated based on the fidelity of the implementation of best practices (0, 1 or 2) for each item listed. These ratings can be summed to represent the total score for implementation of best practices, with higher scores representing greater adherence to and fidelity of implementation. If ten practices are rated based on 0, 1, or 2, the minimum best practice implementation score is 0 and the maximum is 20.

*A measure based on victim's sense of safety and satisfaction with criminal justice process. (Measure 10)*

As mentioned above, it is critical to include the victim's perspective when considering case success. A victim survey might ask each victim to rate the resolution as to whether the resolution was "fully," "partially," or "not at all," satisfactory. See [Chapter 9](#) for more information. Victims' rating of the quality of their experience with the handling of their cases ([Measure 10](#)) could be a useful measure in defining case success. Therefore, multiple measures of success are important to consider: one based on case resolution (while accounting for complexity); one based on the implementation of prosecution best practices throughout case processing; and one based solely on victims' ratings of satisfaction with their case and the quality of treatment they received by stakeholders responding to sexual assault.

#### ***7.1-B. Define a rating scale with 3-4 levels of success.***

The next step is to define levels of case success. It is helpful to define three to four levels of success for cases that reached the prosecutor's office. At least initially, three or four levels are likely to be sufficient, such as "fully successful," "moderately successful," and "unsuccessful." Each site may wish to use other labels it believes are more appropriate for itself.

#### ***7.1-C. Establish a standardized operational definition for each success level.***

Group case outcomes, case practices, and/or victims' case ratings into success categories developed in [Step 2](#).

In terms of case resolutions, "unsuccessful" might include outright acquittal on all charges, guilty pleas or verdicts on low-level, non-sexual offenses (such as non-sexual misdemeanors), or no-contest pleas without meaningful penalties. The definition of "fully successful" might

include guilty pleas or verdicts on the most serious sexual assault count or, in some cases, guilty pleas or verdicts on other charges carrying lengthy prison sentences. The definition of “moderately successful” might include guilty pleas or verdicts on lesser (but significant) charges. Another example: a plea to the initial charge may be considered a partial or fully successful success, whereas a plea to a reduced charge (such as to a non-sexual offense) might be considered less satisfactory, depending on other factors. Some cases might not fit neatly into the defined categories. In that case, it may be a wise to define more categories.

In terms of case practices, “unsuccessful” might include cases with best practice implementation scores ranging from 0-6, or some number that an office feels is a justifiable cut-off demonstrating the lack of use of best practices. “Fully successful” cases might include cases with best practice implementation scores that are higher than 10 or 15, or whatever cut-off point an office believes demonstrates that best practices were indeed implemented during case processing. The definition of “partially successful” might include scores between the unsuccessful and fully successful cut-off points.

In term of victim case ratings, these can only be examined across an aggregate of victim surveys. In [Chapter 9](#), we advise that victim surveys should be confidential. As such, offices will not be able to link an individual victim’s survey to their particular case. Therefore, prosecutors will have to review this case success measure based on the percentage of victims that report justice being served for them across cases, rather than individual cases.

#### ***7.1-D. Assign a success level for each case.***

Once a site articulates definitions of success, cases can be assigned initial success levels shortly after case completion across the first two measures: case disposition and implementation of best practices. The third measure will not be generated after each case resolution because individual victim surveys will not be linked to individual cases, but can be generated during data reporting periods.

For each reporting period, all three ratings of success can be tallied across all cases resolved during that timeframe: two that are based on individual cases, (1) case resolution, and (2) best practices; and one that is aggregated for victim experience. This would provide the data for SAJI [Measures 9](#) and [10](#).

#### ***Who should develop definitions of success and rate the cases?***

Who should prepare the definitions of success? Who should rate each case as to its degree of success? The site’s prosecutor’s office, in collaboration with their partners, should be responsible for determining the definitions of success for all three measures described above.

Who rates cases on level of success for case resolution and implementation of best practices also is the responsibility of the prosecutor’s office. Options include: (1) attorneys rate their own cases, abiding by the definitions of each level of success for the two measures; (2) a different attorney than the one prosecuting the case provides ratings of success for the two measures; (3) multiple attorneys rate the case and a consensus is sought; and (4) an administrator in the prosecutor’s office with adequate credentials rates all cases. The first option has less credibility because they are self-ratings. However, attorneys could rate their own cases, which can be reviewed later by supervisors.

*Consideration of Case Complexity*

By viewing two case success outcomes (case resolutions and implementation of best practices) through the lens of case complexity as discussed in [Chapter 5](#), prosecutors can achieve a more nuanced and fairer view of their practice. For instance, a less-than-desirable case resolution for a low complexity case and a less-than-desirable resolution for a high complexity case, can and should be viewed much differently. Keep in mind that the purpose of measuring case resolutions – as with all performance management efforts is to help improve the effectiveness, efficiency, and equity of prosecution – not to play “gotcha” or to criticize the prosecutor.

For each case, the site would identify the complexity and success levels of each case. It can then calculate the number and percentages of cases at each level of success for each level of complexity. The resulting measures would be in the form: “Number and percentage of moderately complex cases that had: (a) fully successful outcomes for case resolution; (b) partially successful outcomes for case resolution; and (c) fully unsuccessful outcomes for case resolution.” This can be repeated with the case outcome categories for implementation of best practices. An example is included in the figure below. The process by which to measure case complexity is explained in [Chapter 6](#).

<b>Complexity Level of Case</b>	<b>Percentage with Fully Successful Outcomes</b>	<b>Percentage with Partially Successful Outcomes</b>	<b>Percentage with Fully Unsuccessful Outcomes</b>
High	32%	54%	14%
Moderate	58%	35%	7%
Low	80%	15%	5%

## EXHIBIT 7-1

### Sample Checklist To Track Use of Best Prosecution Practices

1. **Recommend charges** based on totality of evidence, applicable laws, ethical considerations and understanding of relevant research (RSVP Vol. 1, 3.1.C).

- 0 – Charging decision was inconsistent with evaluation based upon all admissible evidence, relevant research, and ethical considerations.
- 1 – Charging decision was somewhat consistent with evaluation based upon all admissible evidence, relevant research, and ethical considerations.
- 2 – Charging decision was fully consistent with evaluation based upon all admissible evidence, relevant research, and ethical considerations.

2. **Conduct a trauma-informed interview** of victim to reveal evidence of the crime (3.1-F-1).

- 0 – Interview(s) with victim was not trauma-informed.
- 1 – Interview(s) with victim was somewhat trauma-informed.
- 2 – Interview(s) with victim were fully trauma-informed.

3. **Review and analyze DNA** and forensic evidence, if available (3.1-F-2).

- 1 – DNA and/or forensic evidence SAKs were either not appropriately stored or chain of custody was not fully documented, or SAKs were misplaced.
  - 2 – DNA and/or forensic evidence SAKs were appropriately stored, chain of custody was fully documented but prosecutor lacks sufficient capacity to evaluate and litigate.
  - 3 – DNA and/or forensic evidence SAKs were appropriately stored, chain of custody was fully documented and prosecutor has the capacity to evaluate and litigate.
- N/A – Discount a value of 2 from total possible score.

4. **Prevent and/or respond to witness intimidation** (3.1-F-3).

- 0 – No attempt to prevent or respond to witness intimidation.
  - 1 – Some attempt to prevent or respond to witness intimidation.
  - 2 – Fully responded to witness intimidation.
- N/A – Discount a value of 2 from total possible score.<sup>91</sup>

5. **Work with experts** to understand and explain the evidence (3.2-A).

- 0 – Did not work with experts to understand and explain evidence.
- 1 – Somewhat worked with experts to understand and explain evidence.
- 2 – Fully worked with experts to understand and explain evidence.
- N/A – Discount a value of 2 from total possible score.<sup>92</sup>

6. **File motions** to shield victims and expose defendants (3.2-B).

- 0 – Did not file any motions to shield victims or expose defendants.
- 1 – Filed motions to shield victims or expose defendants that were average or satisfactory.
- 2 – Filed motions to shield victims or expose defendants that were strong or exemplary.
- N/A – Discount a value of 2 from total possible score.

7. **Construct a compelling case theme** and theory (3.2-C).

- 0 – Did not construct a case theme and theory.
- 1 – Case theme and theory were constructed but were unconvincing or not fully used at trial.
- 2 – Case theme and theory were compelling and fully used at trial.

8. **Anticipate and overcome expected defenses** to guard against victim shaming/blaming (3.2-D).

- 0 – Did not anticipate and overcome predictable defenses.
- 1 – Somewhat anticipated and overcame predictable defenses.
- 2 – Fully anticipated and overcame predictable defenses.

9. **Educate jury panel** and select an unbiased jury (3.3-C).

- 0 – Did not use voir dire to educate jury about case and to select unbiased jurors.
- 1 – Somewhat used voir dire to educate jury about case and to select unbiased jurors.
- 2 – Fully used voir dire to educate jury about case and to select unbiased jurors.
- N/A – Discount a value of 2 from total possible score.

10. **Recreate victim's reality of the crime** and offender's predation by using direct examination, witness order, and physical or demonstrative exhibits (3.3-E).

- 0 – Did not develop trial strategy to recreate reality of the assault.
- 1 – Trial strategy recreating reality of the assault was somewhat successful.
- 2 – Trial strategy recreating reality of the assault was fully successful.
- N/A – Discount a value of 2 from total possible score.

# Chapter 8. Entering Data

## 8.1. Example Manual Data Collection Tool

Most often, sophisticated data sharing systems are unavailable or not readily accessible for a prosecutor’s office to capture performance measures system-wide. If data-sharing is not automated, the office may need to create a manual data collection tool. For example, the Office of the Cobb County District Attorney in Marietta, Georgia – one of seven SAJI pilot sites – created an online data entry system to compile, share, and analyze data related to sexual violence crimes across agencies.<sup>93</sup> Prosecutors’ offices can utilize information technology (IT) personnel to create data entry systems similar to Cobb’s, which centralizes data from the prosecutor’s office, the county’s police department, and a community advocacy organization.<sup>94</sup>

Even without IT, prosecutor’s offices can easily collect and manually enter data from different sources. This example that follows uses an Excel workbook, with simple auto-populate formulas, to collect data from multiple agencies.

The workbook is comprised of multiple spreadsheets. Each participating agency can use a spreadsheet within the workbook to collect its particular data. Data from each individual stakeholder or agency is rolled up into one sheet (in this sample, Sheet A) that feeds into their outcome measures.

### Sheet A -Yourtown Police Department (2018 and 2019)

Law Enforcement Performance Measures						
Time Period	Law Enforcement (LE) Agency	Total Number of Cases	Total Number of Arrests	Total Number of Cases Closed by LE Without Referral to Prosecutors	Total Referred for Prosecution	Total Declined for Prosecution
2018	Yourtown PD	6	1	3	3	2
2019	Yourtown PD	5	2	2	3	1

A simple formula, which pulls data manually entered into Sheet B (see below), auto-populates the data in Sheet A. For example, when any adult sexual violence case is entered into Sheet B, the total is automatically calculated and auto-populated into the corresponding column in Sheet A, using the



formula (=‘Yourtown PD’!B9<sup>95</sup>). The same formula is used to calculate and populate the corresponding column for each performance measure in Sheet A. Each stakeholder agency would have its own sheet that would also populate into Sheet A. There is no limit to the number of sheets that can be included in the workbook. Large jurisdictions with multiple agencies will likely have multiple sheets making up the workbook.

**Sheet B - Yourtown Police Department (2018 and 2019)**

Year	Case #	Adult Sexual Assault Cases	Cases Declined by LE Without Referral	Cases Referred to Prosecutor	Cases Declined Prosecution	Open Cases	Cases Closed / Suspended (1=Y)	Arrests	Reason Case Closed / Suspended / Declined	Delay of Report (Date of Report / Date of Offense)
<b>2018</b>	<b>18-111</b>	1		1	1		1		Unknown	5 days
	<b>18-112</b>	1		1	1		1	1	Victim declined to go forward	2 months
	<b>18-113</b>	1	1						No crime established	1 day
	<b>18-114</b>	1		1		1	1		Case pending	2 days
	<b>18-115</b>	1	1						Victim declined to go forward	1 month
	<b>18-855</b>	1	1						No crime established	1 day
<b>2018 Totals</b>		<b>6</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>1</b>		
Year	Case#	Adult Sexual Assault Cases	Cases Declined by LE Without Referral	Cases Referred to Prosecutor	Cases Declined Prosecution	Open Cases	Cases Closed / Suspended (1=Y)	Arrests	Reason Case Closed / Suspended / Declined	Delay of Report (Date of Report / Date of Offense)
<b>2019</b>	<b>19-111</b>	1		1	1		1		Victim declined to go forward	2 months
	<b>19-112</b>	1		1		1			Case pending	3 days
	<b>19-113</b>	1	1				1		Suspect not identified	8 months
	<b>19-114</b>	1		1			1		Victim declined to go forward	2 months
	<b>19-115</b>	1	1				1		No crime established	1 day
<b>2019 Totals</b>		<b>5</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>4</b>			

Sheet C is an example of outcome measures from a prosecutor’s office. As cases received, cases declined, etc., are entered, the totals are calculated and automatically populated into the performance measures sheet using the formula (=‘Yourtown Prosecution’!D14).

### Sheet C - Yourtown Prosecutor’s Office (2018)

Prosecution Performance Measures											
Time Period	Prosecutor Office	Total Number of Cases Received for Prosecution	Total Number of Cases Declined for Prosecution	Total Number of Cases Charged were Filed	Total Number of True Bills	Total Number of No True Bills	Total Number of Cases Dismissed After Charges Filed	Total Number of Pleas	Total Number of Trial Convictions	Total Number of Acquittals	Average Case Processing Time
		2019	Your town Prosec	2	0	2	2	0	0	0	0

### Sheet D - Yourtown Prosecutor’s Office (2018)

2018	Case Number	Total Number of Cases Received for Prosecution	Total Number of Cases Declined for Prosecution	Total Number of Cases Charged were Filed	Total Number of True Bills	Total Number of No True Bills	Total Number of Cases Dismissed After Charges Filed	Total Number of Pleas	Total Number of Trial Convictions	Total Number of Acquittals	Average Case Processing Time
	18-111	1	1	1					unknown		5 days
	18-112	1	1				1		victim declined to go forward		2 months
	18-113	1							no crime established		1 day
	18-114	1				1			case pending		2 days
	18-115	1				1			victim declined to go forward		1 month
	18-855	1				1			no crime established		1 day
	<b>Totals</b>	19	7	1	0	3	6				

These tables depict a few select outcome measures. Each jurisdiction is free to choose performance measures that fit its specific needs. Multiple years’ worth of data, when available, can be displayed on each sheet.

Ideally, tools of this nature should be viewed as a short-term solution. Substantial work is necessary to keep this type of tool updated. Before undertaking this type of labor-intensive method, consider which personnel will have the responsibility to enter the data. Without an automated system, it is likely that clerical staff or prosecutors will have to do this, significantly increasing their workloads. It is very important to make the process as practical and efficient as possible; the data will be less useful if not collected and entered in a consistent and timely manner. Assigning a dedicated staff person for the task will improve the process and its accuracy.

# Chapter 9. Assessing the Quality of Services Provided to Victims: Obtaining Victim Feedback

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## 9.1. Determining Effectiveness of Victim Services

Any assessment of performance in sexual violence cases must consider the extent to which victims are provided with assistance that promotes their healing and overall well-being. Thus, it is important to answer: how well have victims been served? One way to obtain this information is by asking victims directly about their perceptions of their experiences through a survey, which can be implemented and tracked over time.<sup>96</sup>

Although prosecutors' offices rarely survey victims, it can be helpful to systematically obtain feedback over time from victims regarding their perceptions of the quality of their experiences with various components of the criminal justice process. Victim survey findings can provide all partners (victim advocacy, law enforcement, medical providers, and prosecutors' offices) with: (a) a comprehensive picture of progress; (b) an understanding of which problem areas need to be addressed (*e.g.*, through training and technical assistance); (c) feedback on the extent to which identified problems are improving or getting worse; and (d) knowledge regarding which aspects of the criminal justice response enhance victim safety and/or victim perceptions of justice.

Whatever the final disposition of an individual case, a victim's experience is impacted by the level of respect, dedication, expertise, and temperament of the professionals handling their cases. In addition, the feedback process itself may be helpful to sexual violence victims by affording them the opportunity to express their feelings and concerns about the process. Past research shows that victims who participated in surveys about their assault found the survey to be a neutral or positive experience, with only a small minority reporting the survey process was a negative experience.<sup>97</sup> Further, a majority of victims reported that, had they known in advance what the experience of completing the survey would be like, they still would have agreed to complete it.<sup>98</sup>

Some stakeholders within a jurisdiction's sexual assault response system, such as victim advocates and healthcare providers who may have adopted more comprehensive victim- or patient-centered practices, may already conduct surveys to capture victims' experience. Ideally, all stakeholders should work together to: (1) identify the specific services or activities on which they want victim feedback; (2) create a survey (possibly adapted from existing surveys); (3) implement it, and; (4) analyze the data rendered. By working together, prosecutors, law enforcement, advocates, and medical providers can ensure victims are able to provide feedback on services throughout the

system and that all areas in need of corrective action can be identified and addressed.<sup>99</sup> The survey procedures proposed here can provide regular, ongoing, performance information.

The survey should be short, both to reduce the burden on victims (and on the prosecutor's office) and to maximize the likelihood that victims will complete it.

## 9.2. Survey Design

Suggested topics to include in victim survey questionnaires include:

1. **The victim's overall feelings of safety throughout the process.**
2. **Threats to or intimidation of the victim by the offender or the offender's allies**, before the victim's report, during the criminal justice process, and after case resolution, as well as the effectiveness of the prosecutor's efforts to educate victims and witnesses about intimidation, identify intimidation behaviors, and respond to intimidation or threats. Because threats designed to silence victims may have occurred well before the assault, questions should be designed to capture threats that have preceded the immediate incident and report.
3. **Overall satisfaction with the victim's interactions with each partner** (law enforcement, prosecution, healthcare, and victim services).
4. **The timeliness of response on the part of prosecutors and allied professionals**, including the time it took from report to receipt of follow-up medical care or advocacy services; the time it took for a follow-up interview with a detective after the initial report; the time it took for the prosecutor's office to contact the victim; frequency of contact from personnel at the prosecutor's office; and the timing of various stages of the prosecution through final disposition.
5. **Whether the victim received clear and helpful information about the criminal justice process**, including information regarding key allied professionals and any applicable victims' rights statutes.
6. **The supportiveness/respectfulness of personnel with whom the victim came into contact**, including responding law enforcement officers, medical forensic examiners, detectives/investigators, prosecutors, and community advocates.
7. **The quality/helpfulness of the various types of assistance the victim received**, such as crisis intervention, emergency housing, physical health care, mental health care, transportation, emotional support, legal advocacy, medical advocacy, and trial preparation.
8. **The victim's satisfaction with the outcome of the case.**
9. **The victim's feeling of safety since case resolution.**
10. **The victim's explanations for any negative responses/feedback.**
11. **The victim's suggestions for improving the process.**

To encourage victims to complete the survey, keep it short – perhaps no more than two pages. The questions should be clearly worded and free of jargon. Most questions should be closed-ended, meaning the respondent chooses among a small number of pre-specified responses (*e.g.*, excellent, good, fair, poor, n/a). The survey can also include “open-ended” questions (for which a respondent is asked to write out a narrative answer) for topics on which stakeholders are interested in narrative information – but the number of open-ended questions should be limited. Victim responses to closed-ended questions can be more quickly and efficiently analyzed (with simple summary analysis), whereas narrative answers require a lengthier process and must be reviewed for themes.

**TIP:** Involve all partners in the development of the survey and consider their opinions regarding how the survey should be implemented. This will not only help ensure that the survey covers the right topics, but will also increase the buy-in and utility of the survey to all partners.

### 9.3. Survey Administration

Designing the process of victim survey administration involves consideration of a number of questions.

**Who?** The first question to answer is which agency will administer the survey.

**Option 1:** The survey could be directed by the prosecutor's office and administered by the office's victim/witness unit.

**Option 2:** If a victim advocacy organization or police department is already administering a survey, consider how these agencies/organizations might share, or take on, added survey responsibilities. Advocates could encourage victims to complete the survey, explaining the importance of victim voices for improving services. The police department may be able to contribute data analysis and calculation of outcome measures.

Regardless of who administers the survey, it is crucial for all involved partners to coordinate efforts to ensure that victims are receiving a single survey that enables them to provide feedback on all or most of the professionals they interacted with during the criminal justice process. Avoid duplication of effort, which burdens both victims and agencies.

### *Summary of Survey Design Principles*

- Keep the survey short to reduce respondent burden and encourage responses.
- Keep the wording of the questions clear; focus on only one topic per question.
- Write questions targeted to a 3<sup>rd</sup>-5<sup>th</sup> grade reading level so as to not overly complicate content.
- Ask victims to rate satisfaction on various topics of interest.
- Elicit additional feedback about any negative ratings.
- Include a final question asking victims for their suggestions to improve the process.
- Translate the survey into languages spoken by a substantial portion of the victim population. Victims with limited literacy may need to be interviewed in person or via telephone (preferably by an advocate or victim-witness coordinator rather than law enforcement or prosecutors).
- Use clear fonts and colors to create an attractive survey that encourages victims response.
- Ensure the survey, whether print or online, adheres to accessibility guidelines.<sup>1</sup>
- Seek assistance from allied professionals, including victim advocates, to ensure questions are victim-centered and trauma-informed.

**TIP:** Make IT part of the team from the beginning! IT can help reduce survey administration burden.

If possible, bring data analysis professionals or IT staff into the survey design process. In lieu of administering a paper and pencil survey, which requires separate data entry steps, consider using an online survey program, such as SurveyMonkey or Qualtrics. Doing so can significantly reduce the staff time needed to develop the survey, administer it, and export data for analysis. Seeking IT input from the beginning of the survey process can significantly increase the efficiency of data collection.

**When?** The survey should be distributed to each victim shortly after the case is resolved. Resolved cases include any dispositional outcome (*e.g.*, sentencing after guilty plea or trial; trial verdict of not guilty; dismissal of case by the prosecutor's office, etc.). Ideally, victims should also be re-surveyed about 6-12 months thereafter to assess the quality of post-resolution services and to reassess their overall experience with the criminal justice system. As a practical matter, though, this can become quite expensive, particularly since locating victims for follow-up will cost time and resources. These surveys may not be practical except when funds are available for special studies.

**TIP:** Emphasize to victims the importance of completing the survey for improving the handling of future sexual violence cases. Aim for a 40% response rate.

**What?** Ensure the following to maximize the successful implementation of the survey.

- Access help as needed. Establishing the survey process will likely require outside assistance (*e.g.*, to review wording of questions and to set up the tabulation procedures). In addition to an available IT professional, faculty or students from nearby colleges or universities may be available to help. Once survey processes are established, conducting the survey can become a routine task. However, partners should ask an outside expert to review the survey process at regular intervals for data quality control to ensure it reflects current best practices and research.
- Establish procedures to protect respondent anonymity and/or confidentiality. Surveys should not require victims to use their names or case numbers, and online surveys should allow for anonymity. Survey findings should be reported only in the aggregate (*e.g.*, as the "percentage of respondents that rated the respectfulness of the staff as excellent or good"). Reports from individual surveys, particularly in smaller jurisdictions, might the identity of the respondent to be deduced based on the timing of the survey's submission. Always inform victims of the procedures being used to protect their anonymity and/or confidentiality.
- Emphasize to victims – verbally and/or in writing – that completion of the survey is completely voluntary and that their willingness or unwillingness to participate will not affect their ability to continue receiving services.
- Work with victim advocates to encourage survey completion. Advocates also could be asked to help administer the survey to victims, with the prosecutor's office bearing the cost of such assistance.
- Distribute the survey (or survey link, if online) and request a response as to whether the victim is willing to take the survey. If they are, send reminders via mail, email, or phone (calls or text); whichever the victim prefers. Respect victims' privacy and only distribute the survey via their preferred method of communication.
- Offer multiple ways to complete the survey. The survey administration method may need to be a mixed-mode approach, such as use of a combination of paper and pencil surveys, online surveys, and/or telephone interviews. Ask victims their preferred mode of survey administration when explaining that they will be contacted. Online surveys through programs such as SurveyMonkey or Qualtrics will be the most cost-efficient option, and can be responded to via smartphones. However, some victims may be more comfortable completing a paper version or answering questions directly through an in-person interview (*e.g.*, when there are literacy issues).
- Ask all victims for their participation in the survey, rather than only a sample of victims. This will enable the partners to obtain more reliable and complete information.

- Acknowledge that certain categories of victim populations may be unavailable for survey, such as those who cannot be located (*e.g.*, migrant workers, people without homes). Identify such limitations when reporting survey findings. Where possible, ask such victims if they would be comfortable completing a survey in the prosecutor’s office or advocate’s office. Set up a space in the office that ensures privacy and confidentiality.
- Set up a process for analyzing and reporting the data. The primary purpose of the victim survey is to provide understandable and useful information to guide decision-making for improved sexual violence response. Arrange for an IT or other analytic professional to analyze the data, usually in the form: “percentage of victims that responded favorably (or unfavorably) to [specific survey item].”
- Develop clear and accessible formats for reporting the findings. Disseminate regular reports on the findings to all partners. This has been an often-neglected step in implementing performance management systems.
- Identify a person responsible for examining each outcome report, identifying findings that warrant attention, and reporting that information to the relevant individuals. [Chapter 10](#) on data analysis suggests several ways to examine the outcome information to make full use of the information.
- Track response rates. Seek to achieve a 40% response rate or better (percentage of victims completing the survey during a particular reporting period). Higher response rates mean more reliable and credible information about victim perceptions of the system’s response. [Exhibit 9-2](#) contains a number of suggestions for increasing victim response rates.

## **EXHIBIT 9-1**

### **Sample Survey for Sexual Violence Victims**

The following is a sample survey with sample questions. Each jurisdiction can, of course, construct its own survey.

A transmittal letter, or introductory chapter if the survey is online, should accompany the survey explaining that it is completely confidential (or anonymous, depending on how it is administered) and voluntary – participation or lack thereof will not affect ability to receive services or help.

*Based on your recent experience, please provide your overall rating of the help you received:*



### **Overall Ratings**

Response scale: excellent, good, fair, poor, or N/A (not applicable).

1. The services I received from [name advocacy agency] were (excellent, good, fair, poor, or N/A).
2. The services I received from [name SANE program/medical personnel] were (excellent, good, fair, poor, or N/A).
3. The contacts I had with the police were (excellent, good, fair, poor, or N/A).
4. The contacts I had with staff from the victim/witness unit of the District Attorney's Office were (excellent, good, fair, poor, or N/A).
5. The contacts I had with prosecutors from the District Attorney Office were (excellent, good, fair, poor, or N/A).
6. Overall, I felt that the help I was provided was (excellent, good, fair, or poor).

### **Ratings of the Services Provided by Each Organization**

Response scale for each of the following questions: strongly disagree, disagree, undecided, agree, strongly agree, or N/A (not applicable).

#### ***Advocacy:***

1. I felt respected by staff from [name advocacy agency].
2. Staff from [name advocacy agency] helped me feel safe.
3. Staff from [name advocacy agency] gave me needed information about my case.
4. Staff from [name advocacy agency] provided services when I needed them.

#### ***SANE Program/Medical Personnel:***

1. I felt respected by staff from [name SANE program/medical personnel].
2. Staff from [name SANE program/medical personnel] helped me feel safe.
3. Staff from [name SANE program/medical personnel] gave me needed information about my case.
4. Staff from [name SANE program/medical personnel] provided medical services when I needed them.

***Police Officers and Detectives:***

1. I felt respected by the police.
2. The police helped me feel safe.
3. The police gave me needed information about my case.
4. The police provided services when I needed them.

***Prosecutor:***

1. I felt respected by the prosecutor.
2. The prosecutor helped me feel safe.
3. The prosecutor gave me needed information about my case.
4. The prosecutor referred me to services when I needed them.

***Victim-Witness Advocacy Unit in the Office of the Prosecutor:***

1. I felt respected by the victim-witness advocate.
2. The victim-witness advocate helped me feel safe.
3. The victim-witness advocate gave me needed information about my case.
4. The victim-witness advocate provided services when I needed them.

***Overall, how was justice served?***

5. Justice was fully served.
6. Justice was partially served, but the outcome of the case was satisfactory.
7. Justice was partially served, but the outcome of the case was unsatisfactory.
8. Justice was not served at all.

***What suggestions do you have for improving the handling of sexual violence cases that might help future victims?***

***THANK YOU!***

## EXHIBIT 9-2

### Suggestions for Increasing Victim Response Rates

The safety and well-being of victims throughout the criminal justice process is a major concern in sexual violence cases. Prosecutors and their partners should regularly assess how successful they have been in providing quality services to victims. Comprehensive assessments require information obtained through victim surveys. However, a common concern with such surveys is how to encourage victims to complete the survey so that the aggregate results provide reliable information. Below are suggestions for increasing the number of responses to the survey:

1. **Notify victims in advance** that they will be asked to provide feedback on the quality of their treatment and of the services they were provided. They should also be informed that the survey is completely voluntary, the information they provide will be confidential, and their decision to participate will not influence how their case is handled or what the outcome may be, nor the services they receive. If the victim indicates they are willing to provide feedback, indicate to the victim when they will be asked for feedback.
2. **Emphasize to victims that the survey is an opportunity to express their opinions and concerns about the process, and that their response will help improve case handling for future victims.** Express gratitude and appreciation for considering the survey request. Personalize the request when possible. This is an opportunity for victims to confidentially express any complaints or lingering concerns about the process or their experience.
3. **Guarantee confidentiality.** State up front that victims' responses will be seen by very few individuals who will not have information identifying them. The survey will be used only to generate aggregate statistics for the purpose of improving the criminal justice response. Make it clear that responding is completely voluntary and that participants can decline to answer any questions they do not wish to answer.
4. **Work with victim advocates to encourage survey completion.** Advocates could be asked to help administer the survey to victims, with the prosecutor's office bearing the cost of their assistance.
5. **Confirm the victim is willing to participate in the survey as well as the victim's contact information.** Ask if the victim is willing to be contacted for a survey and how they would like to be contacted. The file will already include cell phone numbers, landline numbers, addresses, and names and phone numbers of relatives or friends who are identified as confidants. Confirm the contact information. This will help reduce the number of victims for whom the available contact information is incorrect.
6. **Offer victims a choice in how they complete the survey,** such as by mobile device, telephone, mail, or in-person at the prosecutor's office or advocacy organization. Ask each victim their preferred mode of response.
7. **For mailed surveys,** provide a pre-stamped and self-addressed envelope.

8. **Translate the survey** into languages spoken by a substantial portion of the victim population.
9. **Keep the survey short, perhaps two pages.** This information is not for a research or evaluation study, which often requires a great deal of information. The survey can be short and to the point, with few open-ended questions. The open-ended questions that are included should ask victims to explain any “fair” or “poor” responses and to make any suggestions for improving services. These questions should be placed at the end of the survey so they do not discourage a victim from moving through the remainder of the survey content. Alternatively, an online survey might include a pop-up, open ended comment box for responses that report dissatisfaction.
10. **Make the wording of the questions as clear as possible** to avoid frustrating the respondent and ultimately preventing respondents from completing the survey. Ensure that the respondent will understand the intent of each question. Include only one idea per question.
11. **Make the survey attractive and accessible.** For example, use questions that only require respondents to check off which of a small number of responses best represents the quality of their experience. Use some color, but keep the design simple. Allow ample space for the questions. Use attractive and easily readable fonts and font sizes. For paper surveys, use high-quality paper. For open-ended questions (ones that ask for explanations as to why some service was not satisfactory or ask for suggestions for improving the services) allow adequate space for the respondent to answer.
12. **Provide multiple reminders.** Once a victim has indicated that they are willing to complete the survey, provide reminders (no more than three), to those victims who have not returned the survey. Provide a visible, easy way to opt out of further requests for those victims who do not want to be bothered by reminders. Attach the survey (or link to the online survey) each time. Allow a week or two between reminders.
13. **Combine the survey with an after-care follow-up** to ask how the victim is doing and whether further assistance is needed or desired. (Because advocates generally want to follow up with victims, such an approach may encourage advocates to assist with administering the survey).
14. **Consider providing a low-cost incentive to those victims who provide a complete survey.** One incentive may be providing respondents with a copy of the latest survey report. It could also be small-cost items, such as bus/rail passes or entry into a raffle for a \$100 gift card. Another option may be to reimburse the cost of the respondent’s transportation if a victim takes the survey at one of the partner’s facilities (such as an advocacy agency).
15. **Seek response rates of 40% or higher.** Very low response rates, under 20%, should not be considered reliable.
16. **The organization that is seen as the least threatening/intimidating to potential respondents should administer the survey.** Victims may be more receptive to filling out a survey administered by an advocacy organization, as opposed to a police department or a prosecutor’s office.

# Chapter 10. Data Analysis and Reporting

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Raw outcome measurement data are necessary ingredients for performance management. But to make that data really useful it needs to be analyzed and reported to those managing or handling sexual violence cases. Analysis of the data, and then reporting the findings, are what transforms outcome measurement into performance management.

This chapter first discusses the analysis process and then suggests basic, inexpensive analyses that can be undertaken, reported, and used to inform decision-making. Investigation into underlying causes of problems identified by the analyses, however, may require more in-depth study and evaluation.

## 10.1. Basic Analysis and Reporting Process

The focus of the RSVP is on conducting basic, straightforward analysis — procedures that prosecutors' offices (and their partners) can implement without advanced statistical skills. The primary purpose is to help prosecutors' offices and their partners to continually improve the effectiveness, efficiency, and equity of their response to sexual violence.

The data will not by itself explain why outcome values have changed or what needs to be done to improve them.<sup>100</sup> However, it provides the foundation upon which prosecution performance can be accurately and thoughtfully discussed, and reveals useful clues if basic analytic steps are used. Each step helps identify patterns, and suggests issues that prosecutors' offices and/or their partners need to address, even if only to explain outcome data that is concerning, *e.g.*, high declination rates. Outcome measurement and analysis can also help identify potential training and technical assistance needs.

Performance reports should be prepared and reported at regular intervals — monthly, quarterly, or annually.<sup>101</sup> The process also should permit access to the latest performance data at any time, as specific issues arise.

### *10.1-A. An important early step is to identify who will design and then undertake the ongoing analytic process.*

This person could be someone from the prosecutor's office who is tasked with managing data or working with office data systems, *e.g.*, someone from the IT department or a partner agency with expertise in data management and analysis. Criminal justice professionals may also want to consider partnering with a local university's criminal justice, sociology, psychology or even computer science department to automate data collection and analysis.<sup>102</sup> The analytic tasks would include:

- a. Developing the process to minimize calculation efforts required of prosecutors and partnered staff;
- b. Summarizing the findings from each reporting period for the prosecutor's office and its partners; and
- c. Highlighting the findings that warrant additional attention.

This resource is targeted to prosecutors' offices' collection and review of their own data. Given trends in reporting data to outside agencies and the public,<sup>103</sup> each partner should undertake its own analysis, focusing on those outcome measurements particularly relevant to their work. This will allow the prosecutor's office and its partners to identify the extent to which progress has or has not been made – which practices are working well and which are not, and for whom. It should also help explain and compare progress for various victim groups and for various types of cases.

## 10.2. Basic Analysis Options

Below are thirteen straightforward ways to examine outcome measurement data. Each site will need to select those analyses for which data is available and add other analyses it deems appropriate. These analyses can be undertaken by each partner – not only prosecutors' offices, but police departments, advocacy agencies, and medical facilities – and can be facilitated by automation. Sites might focus on one or more of these analyses:

1. **Examine the latest performance data on each outcome measure and identify outcome values that are unexpectedly disappointing or surprisingly good.**

Use: This can signal the need for attention from the prosecutor's office or one or more of its partners, such as the need for additional training or technical assistance. The data also can be used to sustain high performance on sexual violence cases and extend them, where appropriate, to other cases in the office.

2. **Compare outcome measurements between victim subgroups (for those with available subgroup data).**

Use: This will identify victim groups for which current practices are working well and those for which they are not, suggesting practices which might need revision or potential biases that may need examination. [Exhibit 9-1](#) illustrates what such a report might look like. The illustration displays the findings of six different victim demographic groups for a single outcome measure, such as age, gender, and race/ethnicity. The report also displays the outcome totals for all groups combined.

### 3. **Compare outcome values over time.**

Use: This will indicate progress, setbacks, and trends. [Exhibit 10-2](#) illustrates a basic reporting format that displays the latest data on outcome measures over time. The measures can be organized by the particular goals the prosecutor and partner agencies aim to achieve (such as the six listed in [Chapter 2](#); [Exhibit 10-2](#) groups outcome measures into four broad subject areas that can translate to goals).

### 4. **Compare outcomes for different levels of case complexity (for those with appropriate and available complexity data).**

Use: This information will enable prosecutors and others to more accurately and fairly interpret case outcomes. [Exhibit 10-1](#) illustrates a comparison on outcomes grouped by case complexity level – a tool which can be used to assign prosecutors to cases. Some prosecutors might be particularly successful working on high complexity cases and, when possible, should be assigned to them without risking denigration for a lower overall success rate.

### 5. **Compare the outcomes from before and after a new or modified practice is implemented.**

Use: This permits the testing of new or modified practices by indicating whether the new/modified practice should be continued, further modified, or repealed – before making a full commitment to it.

### 6. **Compare the outcomes of different strategies.**

Use: This comparison can help to assess the relative effectiveness of different prosecution strategies, such as those suggested in RSVP Volume 1. For example, a site might wish to test a different way of processing SAKs (such as submitting kits to private instead of public labs) to improve the timeliness of results. Such a change in process may affect the average case processing time from initial report through to case resolution/disposition, and the number and percentage of cases with delays. On the other hand, a site might want to examine the benefit of a law enforcement policy requiring multiple reviews before clearing a case as “unfounded,” something which possibly affects the number and percentage of reported sexual violence cases not referred by law enforcement to the prosecutor’s office.

### 7. **Compare outcomes to targets set for individual outcome measures.**

Use: These comparisons can serve as a motivational tool for professionals responding to sexual violence crimes. However, selecting appropriate targets can be difficult as it requires consideration of recent history and trends, budget considerations, and possibly changes in the law. Targets might be set as ranges rather than single numbers, and should strike an appropriate balance between optimism and pragmatism. Expectations should be realistic to keep pace with the often-incremental changes resulting from refining criminal justice policies or practices.

Setting targets for conviction rates is not recommended, particularly during the first few years of performance management implementation. Taking on more complex cases may cause conviction rates to decrease – at least at first – as prosecutors build the skills necessary to litigate such cases and judges and juries adapt to these new types of cases. Setting early or unrealistic conviction rate targets will likely discourage prosecutors from taking on high complexity cases. When conviction rate targets are set, they must be placed in the context of the overall prosecution rate in order to be meaningful. For instance, a conviction rate of 87% for an office with a prosecution rate of 15% reflects a higher rate of attrition of referred cases than an office with the same conviction rate but a 67% prosecution rate. A determination of reasons for attrition (*e.g.*, inadequate investigation, level of complexity of case, referral of noncriminal matter) requires a review of the cases declined.<sup>104</sup> This level of review not only brings proper context to a conviction rate but also identifies, with some level of precision, areas of needed training and technical assistance.

**8. Examine the reasons for case attrition, if reasons are collected as part of the outcome measurement process.**

Use: [Chapter 3](#) suggests three points of case attrition for sexual violence crimes: (a) the victim did not report the assault to law enforcement; (b) the cases were reported to law enforcement but not forwarded to the prosecutor; and (c) the cases were forwarded to the prosecutor's office but ultimately declined. The prosecutor's office can conduct an analysis of the reasons cases are not reported, forwarded, or charged and then identify reasons that are avoidable. This information could be used to help determine the need for internal trainings, to revamp practices by one or more partners, or inform public information campaigns to encourage victims to report.

**9. Examine suggestions from the victim surveys to improve sexual violence response.**

Use: Victim surveys, if conducted, can be reviewed for suggestions requiring corrective action. This information can be summarized and discussed with the multidisciplinary team partners to improve policies and procedures. The person examining the survey data can even group suggestions by topic. If victims' confidentiality is preserved, the suggestions can be examined individually, even a single response might give one or more of the partners a helpful suggestion for improvement.

**10. Examine and compare the outcomes of individual police departments, if the prosecutor's office handles cases from more than one law enforcement agency.** For information that is more meaningful and fair, examine the data for differences in the complexity of cases handled by each police department.

Use: This could call attention to police departments with less successful outcomes to identify and implement best practices in handling sexual violence cases, as well as indicate training, staffing and resource needs.



**11. Examine the performance of individual prosecutors.**

Use: This can identify prosecutors with low-level case dispositions and/or usage of research-informed practices, which may indicate the need for training and technical assistance. It can also identify prosecutors who most consistently use best strategies, which can be used as a basis for recognition. If an office chooses to calculate case dispositions or use of research-informed practices by individual prosecutor, such information should probably be restricted for internal use only, as it may implicate personnel and performance concerns.

This use will be more informative and fair if considered in the context of the complexity of each prosecutor's caseload. See [Chapter 5](#) for a discussion of case complexity assessments

**12. Examine the frequency and relationship between case disposition and other important case characteristics**, such as: relationship of perpetrator to the victim (*e.g.*, stranger, family member, person in a position of power); and time of the assault (time of day, day of week, month).

Use: This can help indicate the need for adding training topics, as well as to strengthen or change practices and policies regarding resource assignment. Some attorneys may be especially skilled in implementing particular research-informed protocols (as articulated in RSVP Volume I), and when possible, should be assigned cases that will be strengthened by their use.<sup>105</sup>

**13. Identify and track key case characteristics of sexual violence reports.** Most of the previous analyses involve examining the relationship between cases characteristics and case outcomes. However, counting the frequencies with which various case characteristics occur also can be useful by themselves without being linked to case outcomes.

Use: Such information can be examined for trends and provide useful information for assessing the need for training and technical assistance, as well as to revise practices. The information enables partners (and the public) to better understand the nature of sexual violence cases in the community. The information tracked could include: workload-related counts; selected victim demographic characteristics; and counts of various case characteristics, such as relationship of perpetrator to the victim, location of incidents, and time of day of assault.

Computer programming can greatly assist in calculating data and formatting reports to display findings for all of the above-mentioned assessments. Initially, an office may want to use spreadsheet software in which the relevant data on each case is entered, desired tabulations are made, and displays are set up. However, having an IT professional or other employee with technical knowledge program the full process will make it much faster, more accurate, and considerably less burdensome on the prosecutor's office.

### **10.3. Reporting Results**

Performance information should be reported to staff; partners; and ultimately, once performance management has been fully integrated into the office and sexual violence response system practice, the public. All reports should convey the essential information clearly, and the format should be simple and easy to read. The reports should make use of descriptive labeling, visuals (like charts or graphs), and color (such as traffic-light colors identifying levels of success for each outcome measure). All of this can be accomplished with basic desktop publishing software.

Prosecutors' offices and their partners should consider what information to report to the public. In the interest of transparency, much of the data described in this volume should be made publicly available. Information about individual cases, of course, continues to be subject to considerations of victim privacy, confidentiality requirements, and rules of professional responsibility. Be sure that the reported data does not prematurely and inappropriately release information that might jeopardize individual cases. This might be of greater concern to smaller offices with smaller caseloads, where someone might easily identify a particular case based on specific pieces of data. Such identification might discourage a victim from continuing to participate in the criminal justice process or jeopardize the confidentiality of victims who participate in post-disposition surveys.

An office may consider formatting the data into two reports: one for public release and one for internal use. The internal report would likely contain considerably more detail than the public report; these additional details would be used to inform internal decision-making. However, problematic findings should not be hidden from the public and any report detailing them should be accompanied by appropriate explanatory information as well as preliminary plans to address the problem.

Reporting formats can take many forms. The outcome reporting formats shown in [Exhibits 10-1](#) are [10-2](#) are two examples.

## EXHIBIT 10-1

### Case Outcome (Implementing Prosecution Best Practices) Broken Out by Case Characteristics

Characteristic	Number of Cases	Unsuccessful Implementation of Best Practices (%)	Fully Successful Implementation of Best Practices (%)
<b>Gender</b>			
Male	31	29	71
Female	43	70	28
<b>Age Group</b>			
21–30	13	54	46
31–39	28	53	47
40–49	24	50	51
50–59	9	55	44
<b>Race/Ethnicity</b>			
African-American	25	52	48
Asian	5	60	40
Hispanic	20	55	45
White/Caucasian	24	50	51
<b>Case Complexity</b>			
Low	13	23	77
Moderate	21	57	43
High	40	61	40
<b>Did victim know offender?</b>			
Yes	49	51	49
No	25	56	44
<b>Prosecutor</b>			
Prosecutor A	19	52	47
Prosecutor B	18	50	50
Prosecutor C	18	23	78
Prosecutor D	19	84	16

**EXHIBIT 10-2**

**Example of a Summary Sexual Violence Prosecution Performance Report**

<i>Outcome Measure</i>	<i>2020</i>	<i>2019</i>	<i>2018</i>	<i>Change From 2018</i>
<b><i>Sexual Violence Reporting</i></b>				
<i>1. Total number of sexual violence crimes reported: (OM# 2 + OM# 3).</i>				
<i>2. Number of sexual violence cases reported to law enforcement (LE).</i>				
<i>3. Number of sexual violence cases reported to a health/victim agency but not to LE.</i>				
<i>4. Percentage of all known cases that were reported to LE: ((OM# 3 ÷ OM# 1) x 100).</i>				
<b><i>Case Disposition</i></b>				
<i>5. Number closed by LE without prosecutor review.</i>				
<i>6. Percentage of cases reported to LE but declined without review by prosecutor: (OM#5 ÷ OM#2) x 100).</i>				
<i>7. Number of cases referred to prosecutor.</i>				
<i>8. Number of cases declined by prosecutor.</i>				
<i>9a-1. Number and percentage of sexual violence cases with Level 1-3 case resolution.</i>				
<i>9a-2. Number and percentage of sexual violence cases with Level 4-6 case resolution.</i>				
<i>9a-3. Number and percentage of sexual violence cases with Level 7-9 case resolution.</i>				

<i>9b-1. Number and percentage of sexual violence cases with implementation of 1-3 promising prosecution practices.</i>				
<i>9b-2. Number and percentage of sexual violence cases with implementation of 4-6 promising prosecution practices.</i>				
<i>9b-3. Number and percentage of sexual violence cases with implementation of 7-10 promising prosecution practices.</i>				
<i>10. Percentage of cases successfully prosecuted: ((OM#9÷OM#7) x 100) or ((OM#9÷[OM#7-OM#8]) x 100) or both.<sup>106</sup></i>				
<b><i>Quality of Service as Reported by Victims<sup>107</sup></i></b>				
<i>11. Percentage of victims reporting that, overall, the help provided was excellent or good, rather than fair or poor.</i>				
<b><i>Workload Management</i></b>				
<i>12. Average case processing time.</i>				
<i>13. Number of cases at the end of the reporting period waiting for prosecutor's decision.<sup>108</sup></i>				
<i>14. Number of all open cases at end of reporting period.</i>				

# Chapter 11. Using Outcome and Performance Information

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This chapter discusses the many uses for performance and outcome information, suggests a number of steps for improving its use, and identifies the limitations of the information.

## 11.1. Uses for Performance/Outcome Information

All the work required for collection and analysis of performance management and outcome data will not be worth the effort if it is not used to help improve the system's response to sexual violence. The findings from the data collection, analysis, and reporting can be used to:

1. Help develop, and subsequently justify, budget and staffing recommendations.
2. Identify overall progress and trends based on changes in outcome data over time.
3. Identify problem areas that need attention and corrective action.
4. Identify victim subgroups with significant differences in outcomes, such as groups with selected characteristics (*e.g.*, age, race/ethnicity, disability, sexual orientation, local resident/tourist).
5. Assess outcomes that follow from changes in sexual violence case processing policies and practices.
6. Identify characteristics of cases for which victims do not report incidents to law enforcement or do not participate in the investigation — indicating a need for new practices or changes to existing practices.
7. Identify patterns among cases to determine: (a) which types of cases law enforcement did not refer for prosecution; and (b) which types of cases prosecutors declined to prosecute — thereby permitting an examination of why such cases were not referred or were declined so that any obstacles can be alleviated.
8. Encourage partnerships and increased cooperation and coordination among law enforcement, advocates, medical forensic examiners, and prosecutors by providing linkages for sharing data (while protecting victim confidentiality) and holding regular "How Are We Doing" meetings.
9. Identify staff training and technical assistance needs.
10. Motivate personnel to continuously improve their response to sexual violence.
11. Encourage innovation.

12. Adjust staff work allocations by identifying the types of cases that appear to need the most effort and resources; forecast workload based on case complexity levels and frequencies of sexual violence crimes *e.g.*, to support training and resource requests.

All partners responding to sexual violence cases – not just prosecutors’ offices – would be able to use the data in these ways to inform their work and improve practices.

### ***11.1-A. Steps to maximize utility of sexual violence prosecution performance and outcome data.***

1. **Prepare and disseminate performance and outcome reports on a regular basis (quarterly or biannually).** Make reports readily available to all involved in sexual assault response. Reports should include the latest findings from victim feedback surveys as discussed in [Chapter 9](#), as well as the performance and outcome data based on office records.
2. **Assign someone in the prosecutor's office the responsibility to analyze the data, highlight key findings, and identify issues that might need attention.** A particularly useful focus of these analyses would be examining findings by victim characteristics (as discussed in [Chapter 4](#)) and levels of case complexity (as discussed in [Chapter 5](#)). As noted in the previous chapter, this person might be a prosecutor who enjoys working with numbers or someone with technical knowledge employed by or partnered with the prosecutor’s office.

**Seek explanations for unexpected findings, whether poor or good.** One primary purpose of the performance and outcome measurement process is to identify problem practice areas and seek explanations as to why those problems exist. While outcome measurement does not explicitly provide information on why the outcomes occurred, outcome information can provide useful clues. Here are suggestions as to what you can do:

- a. Ask staff and partners for their insights on why the unexpected outcomes occurred;
- b. Dig into the data to identify which victim or other case characteristics are related to case outcomes. For example, the problem might occur primarily for one specific subgroup of cases, indicating a practice issue related to those cases. (The box titled “Search for Explanations” below provides an example. The analytic procedures discussed in [Chapter 10](#) provide more specific suggestions).
- c. Examine the answers to "open-ended" questions asked of victims in the ongoing victim feedback process discussed in [Chapter 9](#). These questions ask sexual violence victims to say, in their own words, why they rated some services/interactions with system responders negatively and to suggest improvements.
- d. Conduct roundtables with the law enforcement and prosecutors involved in the investigation and prosecution of a sample of cases to walk through decision-making processes at each critical stage – initial report, investigation, examination, charging, and disposition (if applicable) – to identify reasons for particular outcomes and areas that suggest refinement of practices is necessary. The sample number of cases will

depend on the size of the jurisdiction, the sexual violence caseload, and the time and resources available to dedicate to such review. Professionals interested in conducting roundtables should first create a case review protocol to ensure a comprehensive and uniform assessment of selected cases. The roundtable could also be preceded by a systematic case review of a smaller team to identify trends and themes in the data, which can provide the basis of the larger roundtable discussion.

See Appendices M through O for a sample case review protocol, data tracking spreadsheet, and suggested timeline.

3. **Hold regular "How Are We Doing" meetings for prosecutor's office personnel (quarterly or biannually).** At these meetings: (a) review the latest performance and outcome information; (b) identify successful and disappointing findings; (c) discuss why findings may have occurred; (d) identify any corrective action needed; and (e) make a plan for who needs to do what by when. Progress on these actions should be examined at future meetings.

Remember, the point of using performance and outcome information is to evaluate sexual violence response practices and improve them. It should not be used to highlight or call out specific personnel performance issues.

4. **Hold regular "How Are We Doing" meetings with partners (police departments, advocacy agencies, and medical providers).** Many prosecutor's offices already hold similar meetings as part of a Sexual Assault Response Team (SART), so these meetings may provide an existing opportunity to present performance management information. Having available outcome and performance data enables partners to have meaningful conversations that go beyond individual cases, anecdotes, and feelings around sexual violence prosecution to allow for data-driven analysis and strategic planning for improvement.
5. **Provide the public with regular outcome reports (perhaps annually).** Provide a comprehensive picture of the outcomes and performance in sexual violence prosecutions. This includes information pertaining to success, challenges, and failures, which, if properly reviewed and analyzed, can provide opportunities to learn from failure and improve practices.<sup>109</sup>

The process of reporting data to the public may raise community consciousness regarding the prevalence of known sexual violence crimes and the need for appropriate action. By regularly reporting performance management and outcome data, prosecutors' offices have an opportunity to raise public concern over sexual violence while signaling the criminal justice system's willingness to be accountable for its investigation and prosecution of these crimes.

An expanded list of actions is provided in [Exhibit 11-1](#).

## 11.2. Cautions and Limitations

Despite the utility of performance management and outcome data, they are subject to some limitations. The following caveats must be understood:



- **Recognize the limitations of the data.** The data does not tell us why the findings might be bad (or good), because determining why something is or is not working requires complex research and evaluation studies. Even large evaluation studies are limited in what they can learn about what causes particular findings or outcomes, and are likely to be costly to undertake. One way to overcome this is to work with the grant writers in your office to identify opportunities to secure funding from (*e.g.*, National Institute of Justice or private funders) for evaluations of the effectiveness of practices related to criminal justice response. Even absent externally-funded evaluations, data can be analyzed in more nuanced ways (*e.g.*, by subgroup or by case complexity), by asking staff and partners about their perceptions of why something might be the way it is, or by conducting case reviews and corresponding roundtables as described in suggestion 3(d) above.
- **Know your limits.** A prosecutor's office may have difficulty finding the necessary resources to conduct the basic data analyses recommended in this report. Data entry automation, processing, and analysis may be needed to avoid over-burdening prosecution staff. As prosecutors' offices adopt case management systems and administrative tasks inevitably become more automated, incorporating the collection of data relevant to performance and outcome measures identified in this resource will help ensure that the data collected and analyzed by offices provides meaningful insight into effectiveness.
- **Know that the data is limited to your jurisdiction alone.** External benchmarks are not available for most of the outcome measures discussed in this report. Few prosecutors' offices are regularly collecting and reporting such information; therefore, relative comparisons cannot yet be made. As this process is adopted by more offices, external benchmarks may become available to enable similarly situated jurisdictions to compare practices, moving the field closer to identifying and sustaining effective practices in sexual violence cases.
- **Be sure to avoid using the data as a "gotcha" device.** Using the data to point fingers or assign blame can create discord among sexual violence response partners, who need to rely on and trust one another to adequately address these crimes. In addition to undermining trust and cooperation, assigning blame provides an incentive to manipulate data, undermining the accuracy necessary for the data to be useful. The focus of the performance and outcome measurement process is to improve services and the effectiveness of the sexual violence response.

## **EXHIBIT 11-1**

### **Actions for Using Outcome Data to Improve Programs<sup>110</sup>**

1. Compare performance measures and outcomes across categories and sub-categories, using the findings for targeting training and resources needs.
2. Provide regular, frequent, and timely performance management and outcome reports (perhaps quarterly or biannually) that are made available to office and partner staff.
3. Put reports into a user-friendly format that engages the reader.
4. Attach brief "report highlight" statements that call out particular findings to reports.
5. Compare the latest data to previous time periods to identify patterns of change.
6. Hold "How Are We Doing" meetings with staff and partners as reports become available.
7. Examine explanatory information provided by staff and partners, considering victim input based on responses to the victim survey.
8. Use reports to encourage staff to suggest improvements.
9. Use the findings to test new or different procedures.
10. Provide the public with regular reports to enhance citizen knowledge and support. Ensure the information released does not compromise victim safety/privacy and that it complies with professional obligations.
11. Use the outcome findings in developing, and subsequently justifying, budget requests.

# Chapter 12. Putting it All Together

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## 12.1. Logic Models

Each of the preceding chapters has discussed a vital part of a performance management approach to the prosecution of sexual violence cases. The overall mission of such an approach is to continually improve the effectiveness, efficiency, and equity of the way sexual violence cases are handled within a given jurisdiction. This point cannot be overstated. It is critical for offices and individual prosecutors aiming to improve their practice to see the connection between performance management and improvements on the prosecution response.

The following logic models aim to summarize this crucial connection.<sup>111</sup> These logic models are intended as companions to the Office-Level and Case-Level Conceptual Models in Volume I, linking the office-level and case-level practices that are the focus of that volume to the intended outputs, outcomes, and performance management practices discussed in this volume. The logic models help ensure a clear and logical relationship between all of these elements.

There are four main components to the logic models:

- **Strategies** describe what actions should be taken at various stages in preparing and trying sexual violence cases;
- **Implementation Process** enumerates the specific steps that will be used as part of the strategy to produce a specific output/deliverable;
- **Outputs/Deliverables** represent the immediate result of a practice (*e.g.*, the activity of training individuals produces an output of a specific number of people trained); and
- **Outcomes** which reflect the long-term change that is envisioned (*i.e.*, what will be different as a result of the activities).

**EXHIBIT 12-1**  
**Office-Level Logic Model**

	<b>STRATEGIES</b>	<b>IMPLEMENTATION</b>	<b>OUTPUTS/DELIVERABLES</b>	<b>PRIMARY OUTCOMES</b>
<b>1</b>	Regularly assess incidence of sexual assault	Identify sources and collect data that captures prevalence of sexual violence in your jurisdiction (2.1A.)	Scope and extent of violence affecting community recognized	Increased transparency and safety
<b>2</b>	Regularly assess reporting and prosecution rates	Compare prosecution rate with prevalence data and reports to law enforcement (2.1A.)	Attrition rate at key decision points in the case process identified	Declined attrition rate of prosecutable cases
<b>3</b>	Regularly assess the quality of prosecution response	Identify and link prosecution policies and practices to specific outcomes the office is striving to meet (2.1B)	Data on use of particular strategies and impact of policies and practices	Increased victim satisfaction with services
<b>4</b>	Regularly examine outcome data and seek explanation for problems identified by the data	Track practices to establish links between prosecution policies/practices and specific outcomes (2.1B)	Identified need for improved services and/or response  Influence trial policy and practice	Increased community confidence and trust in the justice system
<b>5</b>	Identify common factors that contribute to case complexity	Define and capture elements of case complexity (2.1C)	Complex cases advanced  Identify training and other resources needed to improve practices	Increased public trust in system
<b>6</b>	Develop a more nuanced procedure for identifying levels of case success	Identify the specific outcomes that are used to categorize each case into a set of case outcome success levels (2.1C)	Complex cases advanced  Identify training and other resources needed to improve practices	Better outcomes on complex cases

	<b>STRATEGIES</b>	<b>IMPLEMENTATION</b>	<b>OUTPUTS/DELIVERABLES</b>	<b>PRIMARY OUTCOMES</b>
<b>7</b>	Establish ongoing office communication	Routinely capture, analyze, and communicate data about cases trends, emerging issues, and decision making (2.1D)	Identify appropriate resources needed for effective prosecution	Continuous improvement plan instituted
<b>8</b>	Assess resources necessary for effective sexual violence prosecutions	Identify ideal capacity, skill, and caseload for prosecutors; routinely evaluate and refine (2.1E)	Properly allocate resources necessary to prosecute sexual violence	More efficient distribution of necessary resources
<b>9</b>	Establish and maintain office capacity	<p>Develop and institutionalize core principles within office policy and trial/appellate prosecutors through training, mentorship, and experience (2.2-A-1, A-3)</p> <p>Identify recruiting, training, and mentoring replacements; ensure those who come after have a clear path to a sustained unit (2.2-A-2)</p> <p>Recognize and address the impact of vicarious trauma (2.2-A-4)</p>	Better trained prosecutors; improved individual and office capacity	Sustained prosecution of sexual violence that is research-informed, victim-centered, and offender-focused

**EXHIBIT 12-2**

**Case-Level Logic Model**

	<b>STRATEGIES</b>	<b>IMPLEMENTATION PROCESS</b>	<b>OUTPUTS / DELIVERABLES</b>	<b>PRIMARY OUTCOMES</b>
	<b>CHARGING</b>			
<b>1</b>	Review investigative reports in a timely manner	Review reports in a timely manner (3.1-A)	Uncovered evidence of co-occurring crimes, intimidation, digital evidence, application of statutes of limitations ( <i>e.g.</i> , tolling, expired, other acts) and increased participation	Higher number and percentage of sexual assault cases reported to law enforcement  Trust in system increases
<b>2</b>	Comprehensive review of investigative reports, laws, policies, and research (legal, medical, and scientific)	Conduct comprehensive review of reports in context of laws, policies, and research (3.1-B)	Increased percentage of cases where all reports were reviewed	Decreased number and percentage of reported sexual assault cases not referred by law enforcement to the prosecutor
<b>3</b>	Evidence-based and ethical charging decisions	Recommend charges based on the totality of evidence, applicable laws, and understanding of relevant research (3.1-C)	Increased percentage of cases where all applicable and appropriate charges are filed  Increased percentage of cases with no contact orders requested	Decreased number and percentage of cases declined by the prosecutor and law enforcement

<b>4</b>	Reasonable bail decisions	Consider relevant factors in bail recommendations (3.1-D)	Increased percentage of cases in which reasonable bail was recommended	Decreased number of overturned bail decisions  Increased public confidence in system integrity
<b>5</b>	Prioritize calendaring	Request timely calendaring, oppose unreasonable continuances (3.1-E)	Decreased victim frustration	Increased levels of victim satisfaction  Ongoing trauma support for the victim
<b>6</b>	Meaningful victim engagement	Communicate with victim about charging decisions and connect her/him with appropriate support (3.1-F)	Mitigate negative responses	Increased levels of victim satisfaction with the process and procedural justice
<b>CASE PREPARATION</b>				
<b>1</b>	Communicate regularly with investigator	Review and analyze results of ongoing investigation and identify additional evidence (3.1-F)	Informed and fair evidence-based verdicts	Increased conviction rates for complex cases
<b>2</b>	Consult relevant experts and research	Work with experts and consult research to understand and explain evidence (3.2-A)	Informed evidence-based verdict	Cases prosecuted and plead with a high level of skill, knowledge, and victim-centered and trauma-informed practices
<b>3</b>	Develop and file appropriate motions	File motions to shield victims and expose defendants (3.2-B)	Ensured victim privacy and limited intimidation	Increased victim trust and satisfaction with prosecution practices

<b>4</b>	Develop case theme and theory	Build framework in which the jury is to consider the evidence (3.2-C; 3.3-I)	Connected jury with victim's experience	Increased jury empathy with the victim's experience and support for conviction
<b>5</b>	Build an offender-focused case	Maintain focus on offender's acts throughout development of prosecution strategy (3.2-B-2; 3.2-C)	Connected jury with victim's experience	Increased jury empathy with the victim's experience and support for conviction
<b>6</b>	Guard against victim shaming/blaming	Anticipate and develop strategies to overcome predictable defenses (3.2-D)	Victim was supported	Increased victim satisfaction with process
<b>7</b>	Ensure plea offer reflects seriousness of charge	Craft appropriate plea agreements that indicate defendant's crime is sexual violence (3.2-E)	Plea reflected seriousness of charge; plea reflected sexual violence; victim felt empowered and part of process	Improved public safety and victim satisfaction with outcome
<b>8</b>	Conduct final case review and prepare jury instructions	Link all evidence to elements of crimes charged, prepare for evidentiary challenges, prepare all witnesses; conduct final review of trial strategies, introduce all relevant evidence (3.3-A)	Jury is prepared with all relevant evidence and understands their charge	Better informed jury is likely to produce better results for victim



	<b>TRIAL</b>			<i>Secondary Outcomes</i>
<b>1</b>	Protect and complete the record to preserve any conviction contested on appeal	Consult with any appellate division to identify issues likely to be argued on appeal; ensure complete evidence and strong legal arguments are on record (3.3-H)	Conviction was affirmed on appeal	Decreased number of overturned verdicts
<b>2</b>	Offender-focused strategies in opening, motion practice, direct, cross, closing and sentencing consistent with applicable law	Maintain focus on offender behavior and link to elements and theory of case (3.3-B)	Offender was appropriately on trial, not the victim	Increased victim perception of procedural justice
<b>3</b>	Deliberative, tactical, and fair jury selection	Impanel unbiased and informed jury by using voir dire to question panel regarding challenging factual and legal issues (3.3-C)	Jury was not prejudiced against defendant or victim	Increased fairness in outcomes
<b>4</b>	Craft an opening statement that provides overview of anticipated evidence and issues in case	Use opening to address reality of crime, including most significant facts and with a focus on offender planning and behavior (3.3-D)	Jury had well-constructed roadmap for outline of case	Increased juror comprehension
<b>5</b>	Recreate the reality of the sexual assault for the jury	Use direct examination, witness order, and introduction of physical or demonstrative exhibits to maximize impact and give the jury a complete picture of offender's predation of the victim (3.3-E)	Jury was well-informed and empathetic to victim	Thoughtful deliberation by jury

<b>6</b>	Identify areas of expert testimony to help jury understand topics requiring specialized knowledge	Take the time to allow the expert to explain the theory underlying the testimony (3.3-G)	Jury can more clearly understand what the expert is telling them	Increased jury understanding of specialized information
<b>7</b>	Protect the victim against unfair credibility attacks and privacy invasions	Use cross-examination to support the prosecution theme and theory of the case; look for opportunities in cross-examination to corroborate any prosecution evidence and undermine defense's goal (3.3-F)	Prosecution case was bolstered and defense case was fairly impeached with evidence and the applicable law	Victim is supported through the process
<b>9</b>	Deliver a compelling closing argument that ties evidence and law together	Focus on theme and theory of case by connecting witness testimony and exhibits to evidence; i.e., build the framework in which you want the jury to consider the evidence (3.3-I)	Jury understood what happened and why	Fair verdict based upon comprehensive information provided Decreased delays due to jury questions
<b>10</b>	Propose points for final charge that fairly and fully conveys applicable law to the jury	File written proposed points for jury charge covering favorable and challenging points of law to ensure the law is fairly and completely presented to the jury (3.3-J)	Jury fully informed on relevant and applicable points of law and could accurately apply them to the facts of the case	Favorable verdicts

## 12.2. New Tools

This volume suggests a number of new – or at least vastly underused – tools that provide important information in understanding and improving outcomes of sexual violence cases. Data collection procedures are suggested for each tool, including:

1. A starter list of performance and outcome measures for tracking sexual violence case handling and outcomes – the latter covering key processes of interest to all partners involved with responding to sexual violence, including law enforcement and victim service agencies. ([Chapter 2](#)).
2. A process for tracking cases which never reach the charging stage, due to victims' decisions not to report, law enforcements' decision not to refer cases to prosecutors, and prosecutors' decision not to charge; and the reasons for case attrition at each of these stages. ([Chapter 3](#)).
3. A process for exploring issues of equal access to justice by categorizing outcomes by victim or suspect characteristics (*e.g.*, race/ethnicity, age, disability status). ([Chapter 4](#)).
4. A process for assessing and tracking *case complexity* so that comparisons of success can be more meaningful and fair. A list of case complexity factors has been provided which offices can adapt as they see fit. Examining case outcomes by complexity level can reduce prosecutors' concerns of being unfairly criticized when overall convictions rates may be low or reduced due to a larger proportion of complex cases. ([Chapter 5](#)).
5. A procedure for distinguishing *levels of case success*, recognizing that there are many definitions of success beyond conviction rates. ([Chapter 6](#)).
6. A simple, organized procedure for data entry that does not rely on expensive or sophisticated computer programs. ([Chapter 8](#)).
7. Procedures for obtaining feedback from victims on the quality of treatment they experienced throughout the sexual violence response system. Victim input is integral to fully implementing performance management in these systems and identifying areas needing improvement. ([Chapter 9](#)).
8. A set of options for analyses and guidelines to summarize and report information in a way that is effective, efficient, and accessible. ([Chapter 10](#)).
9. A proposed list of concrete actions to be taken after performance management data has been collected and analyzed according to the steps above. This last, critical step enables prosecutors and their allied partners to channel their efforts into actions that increase community safety, improve justice for victims, and enhance offender accountability. All other steps in the performance management process are a means to this end. ([Chapter 11](#)).

### **12.3. Putting It All Together: Key Elements**

Key elements to sexual violence case performance and outcome management systems success are:

1. Active and sustained leadership that supports and encourages implementation and continued use of the system as the primary way to identify areas needing improvement.
2. Active collaboration among prosecutor's office, law enforcement, medical forensic examiners, and victim service agencies (advocacy and wellness organizations) – a true performance partnership where each organization contributes to successful sexual violence response.
3. Assistance from someone specifically tasked with data management and analysis (*e.g.*, from an IT unit) to develop and maintain the ability of partners to process the data in a timely, meaningful, and reliable way – and link data across partners without compromising victim confidentiality. IT has emerged as a major contributor to enabling partners to obtain the basic information needed to assure that justice is served.
4. Active, regularly assigned personnel who conduct basic analysis of the data to identify successes and problem areas, and gather insights into the data's meaning. This allows both criminal justice professionals and the public to understand where progress is being made, identify where attention is needed, and provide explanations for unexpected findings.
5. Regular reporting of findings in a clear, accurate, and timely manner to all interested parties – including officials in the sexual violence response partnership – as well as the public.
6. Use of the data by each partner for continuous learning aimed at improving the three “E’s” – effectiveness, efficiency, and equity – when handling sexual violence cases.

### **12.4. Going Forward**

As professionals in the criminal justice system, it is our duty to serve the public and the interests of justice. This requires us to continually refine strategies to improve our response. It is difficult, if not impossible, to target areas for improvement in any meaningful way without a comprehensive understanding of our current practice. That is where performance management comes in.

The steps involved in performance management may not come intuitively to most prosecutors. The process requires some number-crunching, additional time on top of often heavy caseloads, and a willingness to look critically – albeit constructively – at one's own performance. Taking on performance management is no easy feat.

Inevitably, these processes will evolve over time as new technologies continue to become available, making data collection and processing easier to implement. But doing so now is absolutely within our reach, even for offices with limited resources. This volume serves as a collection of tools for creating effective, sustainable performance management systems *today*.

# References

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<sup>1</sup> See, e.g., MELISSA S. MORABITO, LINDA M. WILLIAMS, & APRIL PATTAVINA, DECISION MAKING IN SEXUAL ASSAULT CASES: REPLICATION RESEARCH ON SEXUAL VIOLENCE CASE ATTRITION IN THE UNITED STATES 37 (National Criminal Justice Reference Service, 2019).

<sup>2</sup> See, e.g., T. CHRISTIAN MILLER AND KEN ARMSTRONG, A FALSE REPORT: A TRUE STORY OF RAPE IN AMERICA (New York: Crown Publishing Group, 2015).

<sup>3</sup> Some prosecutors may find it useful to keep initial performance management efforts limited to their own offices, *i.e.*, by only selecting outcome measures for which data is readily available to the prosecutor's office. This may provide a useful foundation but should only be considered a first step to a more comprehensive performance management process. However, although this resource is targeted to prosecutors, it should be read by other stakeholders (*e.g.*, law enforcement, advocacy) and where possible adapted and implemented. Prosecutors' offices are encouraged to work with allied professionals to develop a comprehensive performance management system.

<sup>4</sup> One of the Sexual Assault Justice Initiative (SAJI) pilot sites, for example, adopted several new measures to meet its jurisdictional needs, including "number and percentage of sexual battery cases that resulted in dismissal by the court due to the defendant's mental health."

<sup>5</sup> This list in [Exhibit 3-1](#) contains a large number of reasons for victim non-reporting. Each jurisdiction, based on the experience of health and victim support partners, may consider narrowing down this list to fewer factors.

<sup>6</sup> These OM numbers refer to the number of the key outcome measures listed in [Exhibit 2-1](#).

<sup>7</sup> The numbers of cases in which the assault was reported to law enforcement but the victim would not cooperate in the investigation are included in the tabulations for OM-2, discussed in the next chapter.

<sup>8</sup> To obtain a fuller estimate, a community-wide survey would be needed. While desirable to have a more complete estimate each year of the number of sexual violence crimes in a community, this process would likely be quite costly. This volume does not, at this time, recommend annual surveys, even if the survey was conducted only every other year.

<sup>9</sup> Melissa Schaefer Morabito, et al., *It All Just Piles Up: Challenges to Victim Credibility Accumulate to Influence Sexual Assault Case Processing*, J. INTERPERSONAL VIOLENCE, 1, 14 (2016); Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2(2) LAW & INEQ. 609, 616-617 (1984); D. KILPATRICK ET AL., DRUG-FACILITATED, INCAPACITATED, AND FORCIBLE RAPE: A NATIONAL STUDY 47 (National Crime Victims Research & Treatment Center, Medical University of South Carolina, 2007).

<sup>10</sup> See Morabito, *supra* note 9.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*; see also Nicole Heath, Shannon Lynch, April Fritch, & Maria Wong., *Rape Myth Acceptance Impacts the Reporting of Rape to the Police: A Study of Incarcerated Women*, 19(9) VIOLENCE AGAINST WOMEN 1065-1978 (2013).

<sup>13</sup> See MICHAEL PLANTY, ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FEMALE VICTIMS OF SEXUAL VIOLENCE 7 (2013).

<sup>14</sup> See, e.g., Erbe, *supra* note 9, at 627.

<sup>15</sup> See *id.*, see also Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. TIMES, April 30, 2017.

<sup>16</sup> See Ronet Bachman, *The Factors Related to Rape Reporting Behavior and Arrest*, 25(1) CRIM. JUSTICE & BEHAV. 8-29 (1998); see also Kilpatrick, *supra* note 9, at 47.

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- <sup>17</sup> See Megan Alderden, *What victims want: Do sexual assault victims also use the “good” victim ideology?* Paper presented at the annual meeting of the American Society of Criminology, Philadelphia, PA; Kilpatrick, *supra* note 9, at 44.
- <sup>18</sup> See Kilpatrick, *supra* note 9, at 44.
- <sup>19</sup> See *id.*
- <sup>20</sup> See Planty et al., *supra* note 13, at 7.
- <sup>21</sup> See Patricia A. Frazier & Beth Haney, *Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives*, 20(6) L. & HUMAN BEHAV. 607, 624 (1996).
- <sup>22</sup> See Morabito, *supra* note 9, at 15; see also Planty et al., *supra* note 13, at 7.
- <sup>23</sup> See *id.*; see generally TERESA GARVEY, WITNESS INTIMIDATION: MEETING THE CHALLENGE (AEquitas: The Prosecutor’s Resource on Violence Against Women: Washington, D.C., 2013); Amy E. Bonomi, Rashmi Gangamma, Chris R. Locke, Heather Katafiasz, & David Martin, “Meet me at the hill where we used to park”: *Interpersonal Processes Associated with Victim Recantation*, 73 SOC. SCI. & MED. 1054 (2011).
- <sup>24</sup> See Wayne Kerstetter & Barrik Van Winkle. *Who Decides? A Study of the Complainant’s Decision to Prosecute in Rape Cases*. 17 CRIM. JUSTICE & BEHAV. 268-83 (1990).
- <sup>25</sup> See *id.*
- <sup>26</sup> See *id.*
- <sup>27</sup> See Frazier & Haney, *supra* note 21, at 611; see also Morabito, *supra* note 9, at 11; Megan Alderden & Sarah Ullman, *Creating a More Complete and Current Picture: Examining Police and Prosecutor Decision-Making When Processing Sexual Assault Cases*, 18(5) VIOLENCE AGAINST WOMEN 525, 541 (2012); Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>28</sup> See Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>29</sup> See Morabito, *supra* note 9, at 4; see also Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>30</sup> See *Id.*
- <sup>31</sup> See Morabito, *supra* note 9, at 12; see also Morabito, Williams, and Pattavina, *supra* note 1; Regina Schuller & Anna Stewart, *Police responses to sexual assault complaints; the role of perpetrator/complainant intoxication*, 24(5) LAW HUM. BEHAV. 535-51 (2000).
- <sup>32</sup> See Morabito, Williams, and Pattavina, *supra* note 1; see also Jan Jordan, *Beyond Belief? Police, Rape, and Women’s Credibility*, 4(1) CRIMINOLOGY & CRIM. JUSTICE 29, 39 (2004).
- <sup>33</sup> See SEXUAL VIOLENCE JUSTICE INSTITUTE, RESEARCH FINDS MOST SEXUAL ASSAULT MYTHS TO BE TRUE: UNCOVERING MYTHS AND PRACTICES, INFLUENCING CHANGE (2016).
- <sup>34</sup> See Lisa Frohmann, *Discrediting Victims’ Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections*, 38(2) SOCIAL PROBLEMS 213, 218 (May 1991).
- <sup>35</sup> See Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>36</sup> See Jordan, *supra* note 32, at 39.
- <sup>37</sup> See, e.g., CHRISTINE ROTENBERG, POLICE-REPORTED SEXUAL ASSAULTS IN CANADA, 2009 TO 2014: A STATISTICAL PROFILE (Canadian Centre for Justice Statistics, 2017).
- <sup>38</sup> See END THE BACKLOG, STATUTE OF LIMITATIONS, available at <http://www.endthebacklog.org/information-survivors-survivors-rights-locating-rape-kit/statute-limitations>.

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- <sup>39</sup> See Morabito, *supra* note 9, at 8; *see also* Morabito, Williams, and Pattavina, *supra* note 1; Alderden & Ullman, *supra* note 27, at 544.
- <sup>40</sup> See Morabito, *supra* note 9, at 12.
- <sup>41</sup> See *id.*; *see also* Erbe, *supra* note 9, at 616-17.
- <sup>42</sup> See Chen Shen, *Study: From Attribution and Thought-Process Theory to Rape Shield Laws: The Meanings of Victim's Appearance in Rape Trials*, 5 J.L. & FAM. STUD. 435, 437 (2003).
- <sup>43</sup> See LISA GOODMAN, KATYA FELLS, AND CATHERINE GLENN. NO SAFE PLACE: SEXUAL ASSAULT IN THE LIVES OF HOMELESS WOMEN (ViolenceAgainstWomen.net, 2006).
- <sup>44</sup> See Frazier & Haney, *supra* note 21, at 622.
- <sup>45</sup> See Alderden & Ullmann, *supra* note 27, at 544; *see also* Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>46</sup> See Morabito, *supra* note 9, at 4; *see also* Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>47</sup> See Frazier & Haney, *supra* note 21, at 624; *see also* Morabito, *supra* note 10, at 11.
- <sup>48</sup> See Morabito, *supra* note 9, at 15; *see also* Morabito, Williams and Pattavina, *supra* note 1.
- <sup>49</sup> See Frazier & Haney, *supra* note 21, at 624.
- <sup>50</sup> See *id.* at 625.
- <sup>51</sup> See Morabito, *supra* note 9, at 11; *see also* Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>52</sup> See Alderden & Ullman, *supra* note 27, at 542.
- <sup>53</sup> See Lisa Frohmann, *Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking*. 31(3) LAW & SOCIETY REV. 531-555 (1997). In a 2014 study by Cassia Spohn and Katherine Tellis, the authors found that detectives would sometimes present cases to the prosecutor prior to making an arrest for a pre-arrest filing decision. CASSIA SPOHN & KATHERINE TELLIS, POLICING AND PROSECUTING SEXUAL ASSAULT: INSIDE THE CRIMINAL JUSTICE SYSTEM (Lynn Reinner Publishers, 2014).
- <sup>54</sup> This list contains a large number of reasons for declining cases. Jurisdictions may consider narrowing down this list to fewer factors.
- <sup>55</sup> See Frazier & Haney, *supra* note 21, at 611; *see also* Morabito, *supra* note 9, at 11; Alderden & Ullman, *supra* note 27, at 541.
- <sup>56</sup> See Cassia Spohn, Dawn Beichner, & Erika Davis-Frenzel. *Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the "Gateway to Justice,"* 48(2) SOCIAL PROBLEMS 206 (May 2001).
- <sup>57</sup> See *id.*
- <sup>58</sup> See Morabito, *supra* note 9, at 12.
- <sup>59</sup> See Morabito, *supra* note 9, at 12; *see also* Schuller & Stewart, *supra* note 31.
- <sup>60</sup> See Alderden & Ullman, *supra* note 27, at 541.
- <sup>61</sup> See Jordan, *supra* note 32, at 39.
- <sup>62</sup> See Sexual Violence Justice Institute, *supra* note 33.
- <sup>63</sup> See Frohmann, *supra* note 34, at 218.
- <sup>64</sup> See Jordan, *supra* note 32, at 39.

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- <sup>65</sup> See, e.g., Rotenberg, *supra* note 37.
- <sup>66</sup> See generally CRIMINAL JUSTICE STANDARDS: PROSECUTION AND DEFENSE FUNCTION, Standard 3-3.9. (AM. BAR ASS'N 1993).
- <sup>67</sup> See WHAT TO EXPECT FROM THE CRIMINAL JUSTICE SYSTEM (Rape, Abuse, & Incest National Network, 2018).
- <sup>68</sup> See generally *Mapp v. Ohio*, 367 U.S. 643 (1991) (holding that evidence obtained in violation of the Constitution may not be used in state law criminal prosecutions).
- <sup>69</sup> See Morabito, *supra* note 9, at 8; see also Alderden & Ullman, *supra* note 27, at 544.
- <sup>70</sup> See Morabito, *supra* note 9, at 12.
- <sup>71</sup> See *id.*; see also Erbe, *supra* note 9, at 616-17.
- <sup>72</sup> See Shen, *supra* note 42, at 437.
- <sup>73</sup> See Goodman, *supra* note 43.
- <sup>74</sup> See Frazier & Haney, *supra* note 21, at 622.
- <sup>75</sup> See Alderden & Ullmann, *supra* note 27, at 544; see also Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>76</sup> See Morabito, *supra* note 9, at 4.
- <sup>77</sup> See Frazier & Haney, *supra* note 21, at 624; see also Morabito, *supra* note 1, at 11.
- <sup>78</sup> See Morabito, *supra* note 9, at 15.
- <sup>79</sup> See Frazier & Haney, *supra* note 21, at 624.
- <sup>80</sup> See Frazier & Haney, *supra* note 21, at 625.
- <sup>81</sup> See Morabito, *supra* note 9, at 11.
- <sup>82</sup> See Alderden & Ullman, *supra* note 27, at 542.
- <sup>83</sup> See generally Garvey, *supra* note 23.
- <sup>84</sup> See Frohmann, *supra* note 34; see also Morabito, Williams, and Pattavina, *supra* note 1.
- <sup>85</sup> See The National Crime Victim Law Institute, [https://law.lclark.edu/centers/national\\_crime\\_victim\\_law\\_institute/about\\_ncvli/](https://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/).
- <sup>86</sup> See [Chapter 3](#) for more on case attrition.
- <sup>87</sup> See RSVP Vol. I § 4.1-C for more on making charging decisions consistent with research and ethical considerations.
- <sup>88</sup> This initial list of candidate factors for complexity ratings is based on findings from research on sexual violence case attrition, *i.e.*, reasons victims do not report sexual violence cases, reasons police close cases without referring them to prosecution, and reasons prosecutors decline to charge cases. See [Chapter 3](#) for more on case attrition.
- <sup>89</sup> Although consensual sexual conduct following sexual violence is a common victim behavior, this factor is listed here because such a circumstance would need to be properly explained to the factfinder. It is also listed here because it may raise questions as to the offender's identity, if there is an identity defendant, since multiple individuals' DNA may be extracted from a sexual assault kit.
- <sup>90</sup> Uniform definitions of complexity factors and complexity levels across prosecution offices would be ideal, facilitating comparisons among prosecutor offices to identify successful ("best") practices. However, this is unlikely to be immediately feasible. It may be better, at least initially, for each community to select its own definitions and parameters for rating case complexity.



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<sup>91</sup> Before selecting this option, keep in mind that intimidation is often subtle and surreptitious. In the words of Kerry Healey, former law and public safety consultant, “[o]nly unsuccessful intimidation ever [comes] to the attention of police or prosecutors.” *Victim and Witness Intimidation: New Developments and Emerging Responses*, NATIONAL INSTITUTE OF JUSTICE RESEARCH IN ACTION (1995). Thus, intimidation requires proactive investigation.

<sup>92</sup> Before selecting this option, keep in mind that experts can assist in educating prosecutors and law enforcement about a particular area of expertise, and therefore supervisors should ask additional questions to determine if the decision not to use an expert was based on a lack of understanding of the issue. This is a helpful way to target staff training and capacity building.

<sup>93</sup> For more information on Cobb County’s data entry system, please contact AEquitas.

<sup>94</sup> No confidential victim information collected by Cobb County’s local advocacy agency, liveSAFE, is accessible by any personnel at the prosecutor’s office or the police department.

<sup>95</sup> There are a number of different Excel formulas that can be used. This formula takes the name of the worksheet and the particular cell that data is being pulled from to achieve this calculation, *i.e.* Yourtown PD is the name of the sheet, B9 is the cell the data pulled from.

<sup>96</sup> Jurisdictions also can track the time between case processing milestones (*e.g.*, the time between report to police and submission of the sexual assault kit to the crime lab for analysis) using case file information.

<sup>97</sup> See E.A. Walker et al., *Does the Study of Victimization Revictimize the Victims?* 19(6) GEN. HOSP. PSYCHIATRY 403-10 (1997).

<sup>98</sup> See *id.*

<sup>99</sup> This victim survey procedure is proposed regardless of whether a jurisdiction is participating in an in-depth evaluation of its practices. In-depth evaluations would likely require a longer survey or interview, different sampling strategies, and a longer follow-up process than that proposed here.

<sup>100</sup> To obtain such information would require in-depth program evaluations, involving more advanced data collection and mathematical techniques.

<sup>101</sup> The frequency of reporting may depend on the size of the office and the sexual violence caseload.

<sup>102</sup> See, *e.g.*, BRUKE MAMMO, PRAVEER NARWELKAR, AND ROSHAN GIANANI, TOWARDS EVALUATING THE COMPLEXITY OF SEXUAL ASSAULT CASES WITH MACHINE LEARNING, LU-CSE-19-002 (May 31, 2019), *available at* <https://engineering.lehigh.edu/sites/engineering.lehigh.edu/files/DEPARTMENTS/cse/research/tech-reports/2019/LU-CSE-19-002.pdf>. In the spring of 2019, students in the Lehigh University graduate course, “Artificial Intelligence for Social Good” commenced development of a computer programming system to automate data collection and analysis related to sexual violence cases. The students’ work demonstrates that automated performance management systems are attainable in the near future. For more information, contact AEquitas.

<sup>103</sup> See, *e.g.*, Measures for Justice, *available at* <https://measuresforjustice.org>; see also San Francisco District Attorney’s Office DA Stat Dashboards, *available at* <https://sfdistrictattorney.org/da-stat-dashboards>.

<sup>104</sup> See [Chapter 3](#).

<sup>105</sup> This may be more realistic for larger offices than for smaller officers that have few sex crimes prosecutors.

<sup>106</sup> To be more meaningful this measure should be reported by case complexity, case resolution and implementation of promising practices.

<sup>107</sup> Since victim feedback will be solicited anonymously this number will not be tracked to specific case outcomes or complexities.

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<sup>108</sup> To be more useful in helping manage the prosecution workload, this measure, and the next measure, should be reported by number of days since the case was referred to the prosecutor.

<sup>109</sup> *See generally* GREG BERMAN AND AUBREY FOX, TRIAL AND ERROR IN CRIMINAL JUSTICE REFORM: LEARNING FROM FAILURE (Washington, DC: The Urban Institute Press, 2010).

<sup>110</sup> Adapted from "Performance Indicators: Getting Started," National Academy of Public Administration, Washington DC, Not dated.

<sup>111</sup> A logic model is a graphic representation of practices that can be visually linked to expected outcomes.