

Note: When this report was originally published, we were known as Protection & Advocacy, Inc. (PAI). In October 2008, we changed our name from PAI to Disability Rights California.

PUBLIC ADVISORY:

LAW ENFORCEMENT'S RESPONSE TO THE SEXUAL ASSAULT OF DANIEL SHARP

INTRODUCTION

People with developmental disabilities are at disproportionately high risk of abuse, neglect, and criminal victimization. While there are few studies regarding the incidence of victimization, based upon surveys and limited research studies, experts conservatively estimate that people with disabilities are at least four times more likely to be victimized than people without disabilities. Individuals with an intellectual impairment are at the highest risk of victimization.

The rate of sexual assault is 2 -10 times higher for people with disabilities when compared to people without disabilities. One study of San Francisco Bay Area residents with mild mental retardation found that nearly 80% of women and 54% of men had been sexually abused at least once. An earlier study of 95 Californians with developmental disabilities found that 83% of women and 32% of men had been sexually assaulted.

Protection & Advocacy, Inc. (PAI) issues this public advisory to encourage law enforcement and others within the criminal justice system to respond promptly and impartially to allegations of assault involving people with developmental disabilities, particularly given their increased risk of victimization.

THE SEXUAL ASSAULT

In the summer of 2005, Daniel Sharp¹, a 38 year old male, was residing with his mother in Santa Maria, California. Mr. Sharp has a developmental disability, including a cognitive impairment approximating the intellectual capacity of a 10 year old. He is a client of Tri-Counties Regional Center. Mr. Sharp spends his days building model trains and working out at a local health and fitness club.

¹ To protect the confidentiality of the victim, a pseudonym has been used in this report.

On July 18, 2005, Mr. Sharp went to his health club for his regular workout. While in the men's locker room, Mr. Sharp was approached by a fellow gym member, Jake², an acquaintance. According to Mr. Sharp, Jake grabbed him around the waist from behind and pressed his penis between Mr. Sharp's buttocks. Mr. Sharp told Jake to stop but he continued for several more minutes. After it was over, Mr. Sharp saw white fluid consistent with semen. There were no witnesses. Mr. Sharp reported that Jake then apologized for the incident.

After arriving home, Mr. Sharp immediately reported the assault to his mother. Mr. Sharp had red marks around his back, sides, and buttocks. Mr. Sharp told his mother, "There was white stuff all over the place." Mr. Sharp complained of soreness around his anus for several days afterwards.

After speaking with his mother, Mr. Sharp called his regional center Service Coordinator and told her that he had been "raped by Jake." The Service Coordinator, who knew Mr. Sharp well, described him as "very nervous, very scared and very upset." She directed the Sharps to immediately call the Local Police Department (LPD). Mrs. Sharp then called LPD. A short time later, the Service Coordinator arrived at the Sharp home to offer support and assistance and await the arrival of LPD.

THE RESPONSE BY LAW ENFORCEMENT

Mrs. Sharp called LPD and told them that her son had been raped. The responding officer did not request to speak with Mr. Sharp but rather asked Mrs. Sharp about Daniel's disability and level of cognitive functioning. A short time later, a detective called back to interview Mr. Sharp by telephone. No officer responded to the Sharp home or directed Mr. Sharp to come to the police department for an interview on the day of the assault.

The telephone interview with Mr. Sharp lasted no more than three to five minutes. The detective interviewing Mr. Sharp used words he could not understand, such as "penetration" and "ejaculation." Mr. Sharp told the detective that "Jake put his penis in [my] butt." Based upon the fact that

² A pseudonym has been used in this report.

there was no reported penetration into the anus, LPD declined to send Mr. Sharp for a Sexual Assault Response Team (SART) examination.³

Mr. Sharp was told by the detective that he could bathe. According to the Service Coordinator, the detective said, "If there was any evidence, it will be there tomorrow." The detective advised Mrs. Sharp to arrange for Mr. Sharp to be seen by his primary care physician. The physician prescribed preventative HIV medication.

Two days later, Mr. Sharp went to the police station with his mother to be interviewed and to identify Jake using photographs in the LPD imaging files. The interview and photo review lasted approximately twenty minutes. In his interview, Mr. Sharp repeated that he felt Jake's penis in his buttocks. The LPD detective again asked Mrs. Sharp about Mr. Sharp's cognitive capacity and if Mr. Sharp was known to lie. Although the photo line-up proved fruitless, Mr. Sharp correctly identified Jake 20 days later using photos supplied by the fitness center of their members.

The day after being identified by Mr. Sharp, Jake was interviewed by LPD. He initially denied any inappropriate contact with Mr. Sharp. When asked to provide a DNA sample, Jake admitted touching Mr. Sharp on the arm, chest, back, and legs while in the locker room but denied any sexual contact.

Ultimately, law enforcement concluded that something "upsetting" happened to Mr. Sharp in the locker room but no charges were brought against Jake because of a lack of physical evidence and no corroborating witnesses. As the investigation stalled, Mr. Sharp expressed concern to his Service Coordinator that, "Jake is going to get away with it, with what he's done. And maybe do it to someone else." She said, "He didn't think it was fair."

The LPD acknowledged in an interview with PAI that the initial decision not to send Mr. Sharp for a SART examination was based upon a very brief telephone conversation and may not have reflected the best investigation practices. However, they maintain that the initial decision was supported two days later during the detective's interview with Mr. Sharp at the police station when detectives again concluded there was no penetration.

³ Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy. Penal Code §286.

SEXUAL ASSAULT INVESTIGATIONS

POST Sexual Assault Investigation Guidelines

In 1999, the Commission on Peace Officer Standards and Training (POST) published revised guidelines for sexual assault investigations to assist law enforcement agencies in developing procedures for investigating sexual assault cases. The POST guidelines emphasize the importance of the responding officer's initial steps, including taking time to interview the victim and to gather supporting evidence. According to POST:

Sexual assault is one of the most offensive crimes committed in our society. ... The personal nature of this act makes it even more critical that responding officers possess the skills and sensitivity necessary to provide the support that the victim needs.

Many times little or no physical evidence is found to corroborate the victim's statement. Thus, the criminal justice system must rely on the skills of the police officers handling the investigation to provide the necessary information to successfully prosecute the offender. Often, it comes down to the victim's statement of what took place versus the offender's denial. ... The work done during the initial phases of the investigation may have a positive or negative impact on both the victim as well as on the successful prosecution of the offender.

During the preliminary investigation, POST advises the officer responding to the initial report to:

- care for the victim's needs, including taking the victim for a sexual medical/legal examination as soon as possible and photographing any evidence of injury or trauma, and
- obtain a detailed account of the crime from the victim and witnesses.

The guidelines do not waive a SART examination on the basis of lack of penetration. In fact, they discuss physical evidence collection on the body surface.

Local Police Department SART Protocol

LPD protocol regarding responding to sexual assault/abuse allegations is contained within the Santa Barbara County SART policies and procedures, revised in 2003. LPD acknowledged lacking an agency specific policy regarding investigation into reports of sexual abuse/assault. According to the protocol, “The [LPD’s] initial response to a sexual assault is critical both to the outcome of the investigation and to the psychological health of the victim and the victim’s family.”

The LPD protocol requires:

The officer(s) involved must assure that the crime scene and evidence, including evidence seized during the SART examination, is recorded, collected and preserved in an accurate and thorough manner. The investigating officer(s) will be considerate of the traumatic and emotional aspects of sexual assault and treat the victim and the victim’s support group accordingly.

The protocol also requires LPD investigating officers to, “obtain a complete and detailed statement from the victim” and “preserve all aspects of the crime scene,” including assuring that all evidence is properly collected, documented, and preserved. The policy does not waive the SART examination on the basis of lack of penetration. According to Santa Barbara County policies, SART examinations should be conducted within 72 hours of an acute sexual assault to yield reliable forensic evidence.

PAI’S DEPENDENT ADULT ABUSE EXPERT

PAI consulted with Diana Koin, M.D., former Director of the Elder and Dependent Abuse Education Program at the California Medical Training Center and a recognized medical expert in abuse and neglect of elders and dependent adults. Dr. Koin reviewed the LPD investigation report and transcripts of PAI interviews with Mr. Sharp, his mother, and the regional center Service Coordinator. In Dr. Koin’s opinion, LPD’s response to Mr. Sharp’s allegations failed to meet community standards.

According to Dr. Koin, law enforcement should immediately interview the victim of an alleged sexual assault to determine the indication for a SART examination. Dr. Koin was critical of LPD’s failure to interview Mr. Sharp in person on the day of the incident and reliance upon Mr. Sharp’s initial

statements over the telephone to conclude there was no indication for a SART examination. Regarding the delay of two days for a more in-depth interview, Dr. Koin said:

It is an inexcusable delay for any victim, not only for forensic reasons but for emotional reasons. It's disrespectful and adds to the emotional trauma of an episode like this.

In Dr. Koin's medical experience, penetration is not needed for a SART examination to be indicated. Furthermore, in her opinion, Mr. Sharp's description of the incident was consistent with penetration and warranted a SART examination. According to Dr. Koin:

A SART gathers forensic evidence, including any evidence of injury and collection of body fluids for DNA testing. In this case, the mother described some injuries – red marks on his body. These marks suggest injury from force. LPD should have seen Mr. Sharp at his home that afternoon and accompanied him to an emergency room or met him there for a SART examination.

It was a total mistake for the officer to have told Mr. Sharp that it was okay to bathe. You wash away evidence. It suggests LPD had no intention of doing a SART examination on Mr. Sharp.

Concurring with the research cited above, Dr. Koin offered:

People with developmental disabilities are at extraordinarily high risk for sexual assault. Eighty-four percent of women with developmental disabilities have had sexual assault histories. Police and law enforcement need to respond urgently to allegations from victims with developmental disabilities and not postpone an interview – because there is a greater likelihood that the assault in fact occurred.

Dr. Koin concluded:

Because of the mishandling of the case as it unfolded, the possibility of prosecution evaporated – because of a lack of evidence. That evidence should have been obtained immediately after the assault from a sexual assault examination of Daniel. I think the bias against [Daniel's] disability was just a total blockage of justice in this situation.

FINDINGS AND RECOMMENDATIONS

The LPD Response to Mr. Sharp's Allegations of Sexual Assault Failed to Meet Community Standards

LPD's response to Mr. Sharp's sexual assault allegations failed to meet community standards and comply with POST guidelines and LPD protocol. Officers or detectives should have interviewed Mr. Sharp in person on the day of the assault. The conversation and questions posed by the officer over the phone were confusing to Mr. Sharp. He was asked about penetration and ejaculation, words he did not understand. Mr. Sharp consistently reported to officers and others that, "Jake put his penis in [my] butt," a statement suggesting penetration. Without further interview, it was premature for LPD to conclude otherwise.

The second interview at the police station two days later offered another opportunity to carefully interview Mr. Sharp about pertinent facts of the assault. According to the Sharps, this encounter lasted little more than twenty minutes and included Mr. Sharp reviewing photographs on LPD's imaging file. Interviews of sexual assault victims and victims with developmental disabilities often require additional time and periodic breaks.

Based upon PAI's interview with representatives from LPD, their unwritten policy requires penetration before authorizing a SART. This practice is unsupported by the POST guidelines and PAI's medical expert. The forensic evidence collected during a SART examination exceeds mere collection of semen. Physical injuries, such as the red marks on Mr. Sharp's torso and anus, are examined and photographed. Other physical evidence, including hair samples and fingernail scrapings, are obtained. The SART examination also includes a careful interview of the victim – another opportunity to have obtained a more thorough statement from Mr. Sharp regarding the assault.

Ultimately, no charges were brought against the alleged assailant because there was no corroborating physical evidence. Evidence can only be produced if it is collected – a seemingly vicious circle in this case.

Given the increased risk of victimization, allegations of sexual assault involving victims with developmental disabilities warrant immediate and thorough investigation to support successful prosecution.

People with disabilities are victims of violent crime at substantially higher rates than most citizens; yet the prosecution and conviction rates for these crimes is much lower than comparable crimes involving non-disabled victims. Given their higher risk of victimization, the criminal justice system must respond with greater vigor to allegations involving victims with disabilities.

People with developmental disabilities and cognitive impairments are reliable reporters of abuse. Additional time may be needed to conduct a complete interview. The interviewer may need to modify his/her language or manner of communication to be understandable to the victim. If possible, the interviewer should use the victim's own terms to understand the description of the incident. According to Dr. Koin:

Law enforcement and the criminal justice system must understand that people with developmental disabilities can be excellent witnesses. It sometimes takes more time and may require a translator. But they are reliable and consistent in their testimony.

Regardless of the victim's disability, all victims should be treated with care and respect. cursory interviews over the telephone or briefly preceding a photo line-up fail to support the victim in providing valuable information regarding the assault. As stated by POST:

It is critical that officers understand the combination of sensitivity and investigative work necessary to obtain the most accurate information from victims and witnesses.

Law enforcement should maintain liaisons with organizations and advocates serving people with developmental disabilities in their community. Regional centers may be available to assist with interviews or to conduct training to law enforcement regarding working with people with developmental disabilities. There are several excellent training resources available, including an on-line roll-call training designed by the U.S Department of Justice⁴ and a training DVD by the University of Southern California under a grant by the California Department of Justice.

⁴ The on-line is accessible at the following website:
<http://www.usdoj.gov/crt/ada/videogallery.htm#Anchor-Dial-47492>