



# Safety & Accountability Audit

of the response to Native women who  
report sexual assault in Duluth Minnesota  
2006-2008



## Mending the Sacred Hoop & The Program to Aid Victims of Sexual Assault

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The Native women who joined the audit team deserve special thanks. They kept the team centered on the intricacies and subtleties of how Native women are affected by the crime of sexual assault. They provided perspective on the myriad effects of the systems' responses to crimes against Native people and what it's like to live in a world that is not always kind to Native people. They shared incredible wisdom and strength throughout a process that was often painful.

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*Indigenous people not only have  
solutions for ourselves, but for  
the world at large.*

Vicki Ybañez

As a member on this safety audit team, I knew accepting the invitation to work on this process would have profound implications, for myself as a Native woman and for those in our community. The issue of sexual violence is too familiar. I can reach out around me and see so many faces of women I know who have lived through this incomprehensible experience. I can feel its deep reach into the lives of women and see the way it unfurls its effects into our families and to our communities. This is the Native way, as we find ourselves inextricably connected. And yet, being raped disconnects everything. The violation cannot be explained and this makes it impossible to reconcile. It changes the very reality of life. In our American Indian culture, women are the core of our families and communities. For our role and the power we carry, we are sacred. The prevalence of sexual violence against Native women is an assault that rips through the fabric of our culture and our community. This offense must be held accountable; women must be protected. As the final findings are compiled, I emerge from this process knowing that the utmost care has been taken through every step. I hear the voices of many strong women, who are our mothers, aunts, grandmothers, sisters, daughters, and best friends, who want others to know they are very real women. With heartbreaking candor, they are speaking a truth we must hear. We must not turn away from them. These Native women stand before us now, challenging us to remember what is sacred and take our own courage and commitment to the work before all of us as a community.

LeAnn Littlewolf  
Anthesogeeshick, Annishinaabe Ikwe  
Leech Lake Band of Ojibwe

In the fall of 2006 the Duluth Police Department signed a Memorandum of Understanding agreeing to actively participate in this safety audit. As Deputy Chief of Police I was responsible for putting this agreement into action. At first, I considered assigning someone from the police department to work on the audit, but over time my thoughts on this changed and I decided to participate in the audit myself. I must admit that I was more than just a little apprehensive about being part of the safety audit for several reasons. I had a limited understanding of Native American culture and traditions. I knew the subject matter would be difficult at best. I also knew the policies and procedures of the Duluth Police Department would be put under a microscope. As a police professional I feared non-governmental organizations, which may not have a thorough understanding of police work, scrutinizing the department. However, at the same time I knew that participating in the audit was an important opportunity. Almost every police officer I know would say the reason he or she became an officer was to help people and to make a difference in this world. The safety audit provided a real and meaningful opportunity to do both.

Participating in the safety audit itself was challenging both personally and professionally because it was difficult to hear from victims that they believed the police department had failed them. It was disturbing to see how many sexual assault cases did not get the resources and attention this serious crime deserves. As the audit team worked through the process, we began identifying the gaps that allowed this to happen which will surely become apparent as you read the audit.

The benefits of this audit will not be realized unless the recommendations are understood and put into action. The Duluth Police Department has already made substantive changes as a result of the audit process. We have tightened several internal processes to ensure initial police reports are completed promptly and the cases are properly referred to investigators. In addition, we have built a process to ensure sexual assault cases are assigned promptly, usually within 48 hours, and that victims are consistently contacted by the investigator assigned to the case. These changes represent only a first step and much more work needs to be done. Hopefully each and every change that is made will result in increased offender accountability and, more importantly, an increased sense that the system is working for victims and a belief in which victims know that their case was not forgotten, lost in the shuffle, or deemed unimportant.

I encourage systems providers who read this report to ask themselves what gaps identified in this safety audit may exist within their organizations. Finally, if your organization ever has the opportunity to participate in a safety audit, do it!

John W. Beyer  
Deputy Chief of Police  
Duluth Police Department  
Duluth, Minnesota

As a veteran prosecutor and a former board member of the local sexual assault program, I welcomed the opportunity to work on a collaborative project to study the system's response to sexual violence against Native American Women. Over the years, the St. Louis County Attorney's Office has worked on efforts to improve our response to sexual assault cases, but I was unprepared for the profound impact, both personally and professionally, that participating in this project had on me.

The horrific, wrenching stories of so many Native American women and their experiences with the "system" in which I've spent most of my adult life working, were shocking and saddening to me. Initially hearing the stories and experiences of Native Women made me feel defensive, guilty and angry. As the project progressed and we began to identify the gaps, I became more committed and more hopeful that significant changes can be made. I also felt better equipped to deal with the challenges of implementing the system changes that are so desperately needed to improve our response and to protect Native American women.

Leslie E. Beiers  
Assistant St. Louis County Attorney, Head of the Criminal Division  
St. Louis County Attorney's Office

## *Introduction*

In the summer of 2006, Mending the Sacred Hoop (MSH) and the Program for Aid to Victims of Sexual Assault (PAVSA) began a Safety and Accountability Audit, a collaborative process of examining the system's response to reported rapes of Native women. An audit team was formed that included Native women from the community, advocates, the head of the criminal division from the St. Louis County Attorney's office, the Deputy Chief of Police from the City of Duluth, and the Supervising Deputy Sheriff from St. Louis County.

Our process was not a cold, distant analysis of a system. The committed individuals on the audit team spent countless hours hunched over notes from interviews, police reports, state statutes and policies. The team rode along with police officers on their shifts, interviewed professionals from all over the system, and cried after conducting focus groups with Native women who had survived devastating circumstances. Difficult conversations were had and stereotypes and biases from all sides were uncovered and confronted. The team gained insight into how the criminal justice system affects the lives of Native women who have been sexually violated and journeyed through the emotional, physical, mental and spiritual aspects of Native women's experiences. That understanding, coupled with a stronger awareness of how different aspects of the system intersect, gave the team the information it needed to suggest positive changes within those systems.

### **What is an audit?**

A Safety and Accountability Audit is a self-assessment tool developed by Praxis International by which communities can critically examine their collective institutional response to violence against women. The examination is conducted by a team comprised of community members and advocates who can keep the lived experience of Native women "present" throughout the process, and a selection of interagency representatives from agencies charged with intervening in cases of sexual assault. This Audit team does the "work" of the Audit: collecting and analyzing the data, identifying problem areas, and articulating a series of recommendations for improvement. (See Acknowledgements section for a list of team members.)

The data gathered throughout this process assists auditors in identifying whether a woman's safety is increased or decreased throughout the systemic response to her assault, and whether or not the offender is held accountable. If the audit team discovers a way in which a woman's safety is compromised, or ways in which offenders can escape accountability, they identify those problematic areas as "gaps." These identified gaps can therefore be directly addressed by the agencies involved as they envision, implement, and sustain their response to address, in our case, sexual violence against Indian women.



The audit process rests on the premise that individuals within any given system are committed to doing their best work. However, the way that individual practitioners do their jobs on a daily basis is coordinated by a larger system. The audit was not designed to catch individuals doing poor work. Instead, it uncovers the systemic barriers that keep individual practitioners from addressing the safety of Native women when they report sexual violence and from holding the perpetrators accountable.

### **Why sexual violence?**

Safety audits have thus far primarily been used to examine a system's response to domestic, not sexual, violence. The criminal justice response to domestic violence has been relatively well-developed and refined thanks, in part, to the many safety audits that have been conducted on the subject. Because of the activism of domestic violence advocates, domestic violence has been criminalized, useful risk assessments have been developed to help ensure battered women's safety, predominant aggressor statutes have been implemented to help keep battered women who fight to protect themselves from going to jail, and mandatory arrest policies for domestic violence have been put into law. All of these reforms and more have clarified the role of police and have given them multiple tools to ensure safety and accountability in cases of domestic violence.

Unfortunately, across the U.S., sexual assault continues to be an area in which the criminal justice response is lacking. There are problems with inconsistent—or non-existent—investigations, a lack of attention to safety for women who have been sexually assaulted, low charging and prosecution rates for perpetrators, and a system that is overly focused on victim behavior.

Sexual assault and domestic violence are often lumped together simply because, more often than not, they are crimes perpetrated by men against women. The response to domestic violence may provide some clues as how to better address sexual violence and it is undeniable that the two crimes often overlap. However, they are vastly different crimes and require different responses.

### **Why Native women?**

American Indian/Alaskan Native women are sexually assaulted three times as often as women of all other races.<sup>1</sup> In surveys, three out of four Native women report having been sexually assaulted

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<sup>1</sup> Lawrence Greenfield and Steven K. Smith, *American Indians and Crime*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, 1999

in some way in their lives.<sup>2</sup> They also report higher rates than non-Native women of being physically assaulted and having a weapon used against them *during* the sexual assault.<sup>3</sup>

While these statistics illustrate the high rate of victimization of Native women, they do not tell us what happens to a Native woman if she chooses to report a rape. There is a prevalent belief among many in the community that Native women do not report sexual assaults, and that if they do, the very system they have turned to for help is just as likely to re-victimize them by blaming them for the assault, not believing them, and generally not treating them with respect. This audit was designed to find out whether those beliefs are true.

Some members of the audit team wondered if we would have trouble finding Native women who had reported sexual assault to the police to be in our focus groups. We did not—in fact, we generally ended up with waiting lists. Some of us wondered if we would find enough police reports involving Native women to analyze (there were plenty). We often had a hard time finding, though, systems practitioners who could articulate how things might be different for Native women than for non-Native women, or who could even remember when they had last responded to the sexual assault of a Native woman.

Our focus on Native women was not meant to ignore or minimize the plight of other sexual assault survivors. Rather, we wanted to be sure that Native women did not slip through the cracks of our investigation. We found right away upon beginning the audit that cases involving Native women seemed to just disappear. When reading police reports, the cases seemed to just stop, with no explanation and no follow through. When conducting focus groups, the women consistently reported the same thing. Had we conducted an audit examining our response to all sexual assaults, Native women may have disappeared completely. For instance, when interviewing one prosecutor, he was very articulate and able to speak about sexual assault in terms of legal and social issues. He was well-expressed about the social and racial realities of Native women in the criminal justice system in general, and in Duluth in specific. Yet when asked how he handled sexual assault cases that involved Native women, he was startled and professed embarrassment that he could not remember prosecuting the rape of a Native woman since the 1980s. Assuming that could have easily been a lapse in memory on his part, we attempted to audit a case or two that had been prosecuted. This proved to be impossible because, going back to 2004, we could not find any.

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<sup>2</sup> Hawkins, Nancy, et. AL., 1993. American Indian Women's Chemical Health Project, Chemical Dependency Division, Dept. of Human Services, State of Minnesota.

<sup>3</sup> From a survey conducted by the National Crime Victimization Study (NCVS) over a ten-year period (1992-2002), 90% of Native women responded affirmatively when asked whether the assailant physically hit them during the assault, as compared to 74% of the general population. Thirty-four percent of Native women reported that a weapon was used in the assault, compared to 11% of the general population. (<http://www.ojp.usdoj.gov/bjs/cvict.htm>)

It is alarming to learn just how scarce the follow-up is to reported rapes of Native women—the courageous acts women take to report those rapes end up going largely without a meaningful community response. It is perhaps even more disturbing that—because of the nature of our fragmented roles in an incident-specific criminal justice system—nobody has noticed. However, within the audit team and throughout the audit process, once the focus was firmly placed on Native women’s experience, it stayed at the forefront of our work. It became less important to point it out, because it inherently became part of our audit. And while some of our final recommendations are very specific to addressing rape of Native women, the vast majority of them will benefit anyone who reports being sexually assaulted in Duluth.

### **Why Duluth?**

When the Amnesty International report *Maze of Injustice* was published in 2007, a great deal of national attention was given to the plight of American Indian women who have been raped on reservations. Prior to that report, much activism was done through organizations such as Sacred Circle, Tribal Law and Policy Institute, and Mending the Sacred Hoop and others, to highlight the sad reality of what happens when a woman is raped in Indian country. Most of the work done to this point focuses on the complicated jurisdictional gaps in Indian country that enable most perpetrators of this horrible crime to get away without investigation, charges, prosecution, or any other kind of accountability.

What has not been adequately addressed is what happens to urban Indian women when they are sexually assaulted. Nearly 60 percent of Indians in the US live off-reservation, where those complicated jurisdictional problems are not necessarily an issue.<sup>4</sup> However, urban Indian women are still raped at the same rates, and as far as we can see, there is still very little appropriate response to those crimes.

Located in northeastern Minnesota on the shores of Lake Superior, Duluth’s largest minority population is Native Americans. The Fond du Lac reservation is only about twenty miles away, while six other Ojibwe reservations are all within a couple of hundred miles of Duluth.

Duluth is also the home of the famed “Duluth model,” what some see as the pinnacle of effective responses to domestic violence. The first safety audits were done in Duluth, including a precursor to safety audits, the Native Women’s Research Project.<sup>5</sup> Over twenty years of revolutionary community organizing to improve the lot of women experiencing violence in Duluth allowed the

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<sup>4</sup> <http://news-info.wustl.edu/tips/page/normal/9263.html>

<sup>5</sup> Community-Based Analysis of the U.S. Legal Systems’ Intervention in Domestic Abuse Cases Involving Indigenous Women, Thomas Peacock, Principal Investigator.  
<http://www.msh-ta.org/Resources/Native%20Women%20%20Research%20Project.pdf>

possibility of this audit. The systems' doors were already cracked open, waiting for us to walk through and explore this particular aspect of violence against women.

### **Why PAVSA and Mending the Sacred Hoop?**

While Mending the Sacred Hoop and PAVSA have worked informally on a number of projects in the past, this is the first formal collaboration of the two organizations.<sup>6</sup>

When Mending the Sacred Hoop (MSH) first thought of doing an audit of this scope, it quickly became clear that they could not do it without PAVSA. As a Native organization, MSH has worked on the issues of domestic and sexual violence for years. MSH first formed in the mid-1980s in response to the lack of appropriate responses for Native women who were being battered in southern St. Louis County. Since that early time, MSH has maintained local systems and individual advocacy for battered women and has evolved into a national training and technical assistance provider for tribes and tribal communities all over the country. In that role, MSH has provided technical assistance in the areas of domestic violence, stalking, dating violence, tribal code development, coordinated community responses to domestic violence, and sexual violence. But, MSH has done relatively little to address violence against urban Indian women, and locally in the Duluth area, MSH has done very little to address sexual violence.

For the past 30 years, PAVSA has provided services to survivors of sexual violence as well as their families, friends and the community-at-large. PAVSA was created in 1975 by a small group of women who wanted to address the issue of rape. PAVSA offers a variety of unduplicated services to the community including: a 24-hour crisis line, medical and legal advocacy, individual and group counseling, a community based Sexual Assault Nurse Examiner (SANE) program, community education, awareness events and professional training.

In 2000, PAVSA started the Sexual Assault Multi-disciplinary Action Response Team (SMART) for southern St. Louis County, which includes representatives from health care, law enforcement, the legal system, clergy, advocacy, mental health professionals and educators. The team's mission is "to ensure a victim-centered community response to sexual assault with a culturally competent and multi-disciplinary approach". Through focus groups with survivors and other targeted community groups, and by analyzing statistics and interviewing practitioners, SMART gathers information to challenge current practices in every system that responds to survivors. In the past two years, the team successfully created a community based SANE program to address the need for victims to receive more comprehensive medical forensic exams within a safe environment. Recently SMART

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<sup>6</sup> For example, a representative from MSH has been on the SMART almost from its inception, MSH has worked with PAVSA to help organize the annual Take Back the Night rally and march, PAVSA and MSH have both been involved with organizing some activities for Domestic Violence Awareness Month in Duluth, and a member of MSH has done some volunteer advocacy for PAVSA.

created the first process for anonymous reporting within the state of Minnesota, which allows victims the option to have evidence collected and preserved indefinitely in order to give them additional time to make a decision about reporting to law enforcement. The team continues to grow with greater participation from smaller law enforcement agencies and corrections.

The team developed policies and protocols intended to be sensitive to all forms of diversity in order to improve and initiate the institutionalization of a victim centered response. Slowly and consistently, these efforts are affecting the lives of victims as they receive better care emotionally and medically and better communication throughout the criminal justice process. Victims are afforded more choices and given information to make decisions with accurate information. But while PAVSA worked with MSH to develop SMART protocols that address working with American Indian victims, PAVSA's work has not reached Indians as effectively as is desired. The MSH representative who attends SMART meetings is the only person representing a Native organization.

The complementary strengths and weaknesses of PAVSA and MSH create a natural fit for addressing and improving the community's response to the rape of Native women in Duluth.

## *Our Audit Process*

There have been many audits conducted throughout the country. This is the first to not only focus on sexual assault, but also to focus fully on Native women. We felt it necessary to be very conscious of incorporating traditional Native customs into the audit process. The evening before the basic training for the audit team, we hosted a ceremony and feast to officially start the audit process. The audit team, the trainers from Praxis International, and a number of community members joined us as a spiritual advisor, Skip Sandman, spoke and blessed the project in traditional Anishinaabe way. One of the audit team members brought her hand drum group to the gathering, and they offered songs. Medicine bags that had been made by a couple of the audit team members were ceremonially given to all members of the team.

The two-day audit team training started and ended each day with smudging and a talking circle. We discussed and agreed upon the importance of keeping those traditions with us throughout the process, both to help keep us centered, and to remind us continually why we were there—to force us to stop and think about the women who would be affected by our work.

The audit process, as set out by Praxis, is fairly clear: map the systems being audited; conduct focus groups; analyze text; conduct interviews and ride-alongs; observe practitioners in their work; and, throughout those activities, search for the eight primary methods that institutions use to standardize workers actions (see figure 8). “Most systemic problems will be found in one or more of these methods. Think of each as an Audit Trail that points the way to discovering where victim safety is located as intervening agencies respond. Is safety at the center, on the margin, or somewhere in between? How did it get placed there?”<sup>7</sup>



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<sup>7</sup> From The Praxis Safety and Accountability Audit Toolkit, by Ellen Pence and Jane Sadusky, revised April 2007

As straightforward as the process seemed, however, we found ourselves stuck early on. The emotional and spiritual impact on some team members was more acute than expected.

*We were faced with how institutionalized our violent past and present was. It was impossible to examine the issue from a scientific distance, as a group of researchers examining the “other.” We were continually confronted with the stories of our sisters, our mothers, our grandmothers, and ourselves. And while those stories were often bloody, oppressive, and ugly, we needed to find a way to remind ourselves that they were also full of strength, beauty, and survival. We talked about these issues, some of us kept journals about the dreams that kept coming to us, and we continued to smudge. Some of us wanted to quit, and many of us had a hard time seeing what we were even trying to do. Some of us just cried.*

Audit co-facilitator, Rebecca St. George

Our non-Native team members had their own struggles during this time. The first day of the Praxis audit training was dedicated almost completely to dialogue about institutionalized racism. For some practitioners, this was their first confrontation with the notion that the racism existing within “mainstream society” seeps into their own lives. It remained difficult in the early months of the audit to have open discussions about the importance of focusing on Native women’s experiences. It was far too easy to slip into the mindset that all women had common experiences of sexual assault. On the other hand, it was difficult not to consider each Native woman’s bad outcome as an individual circumstance rather than to consider its place in the collective whole. Meetings seemed to spin in circles. Most of the advocates and Native community members on the team had only begun to understand the systemic response to sexual violence and were outraged at what the audit began to uncover. Non-Native team members representing the criminal justice system often found themselves on the defensive.

About six months into the process, the team was completely stuck. We needed to analyze police reports, but when we tried, it seemed to go nowhere. Some team members found themselves speaking in defense of a system to which they had dedicated their lives, while others expressed anger at the systems’ failure of Native rape victims. One of the audit co-coordinators offered tobacco to a local spiritual advisor, Roxanne DeLille, hoping she could help at least the Native women on the team work through some of the pain we were uncovering. She taught us about an Anishinaabe healing ceremony that was supposed to take place during the next month, and advised that the entire team should participate, not just the Native women. We also opened the ceremony to the community.

This process required one month of preparation and ended with the ceremony and a feast at the home of one of the members of the audit team member. Participating cemented the solidarity and

cohesiveness of our team. It also had the benefit of helping some of the non-Native team members develop a deeper understanding of Native culture and spirituality.

The benefits of the ceremony were immediately apparent. While the topic never got easy, we were able to move ahead and have meaningful, respectful discussions about what the audit process was uncovering.

### **Choice of focus area**

The audit of the law enforcement response to Native women who report sexual assault in Duluth originally had a much broader focus. In order to narrow the scope of this project, the team conducted a series of focus groups with Native women who had experienced sexual assault; “ride-alongs” with law enforcement officers; interviews with practitioners; and analysis of police reports, general orders, state statutes and other policies and procedures. Throughout the initial information gathering phase, the team found evidence that Native women’s cases were treated inconsistently by patrol officers and investigators. The team found an utter lack of accountability for men who had assaulted Native women—we found no cases that had resulted in conviction, or even charges. The team also found evidence of gaps within PAVSA’s advocacy services that resulted in a lack of support of Native women who had reported their assault.

Over time, the team’s central audit question honed in specifically on what happened when Native women who had been sexually assaulted made a formal report to the Duluth Police Department (DPD). The team ultimately decided that, without a solid response from law enforcement, cases have little hope of reaching the courtroom. Although the primary focus was on law enforcement, PAVSA’s advocacy services were also evaluated by the team because of the agency’s potential for supporting victims through the criminal justice process. The team chose to examine police reports from 2004 to 2007 that involved Native girls and women ages 14 and up. The team further defined “Native women” as women who either self-identified as Native or who were coded in law enforcement records as such.

### ***A word about the medical process and the St. Louis County Sheriff’s Office (SLCSO)***

The audit intended to focus its attention evenly on both the DPD and SLCSO. However, SLCSO receives a small number of adult Criminal Sexual Conduct (CSC) reports in comparison to DPD. The team ultimately decided that many of the recommendations for the DPD would also apply to the SLCSO. The team did participate in ride along observations, conducted interviews, and reviewed cases and policies with the SLCSO that heightened our overall understanding of the law enforcement response to Native women. However, over time, our focus naturally gravitated towards the DPD.



Hospitals have been a source of both historical and contemporary trauma for many Native people. While the team recognized that the response to Native women at the hospital was important, the PAVSA Sexual Assault Nurse Examiner (SANE) Program was only launched around the same time the audit began. Although the medical response is an area that will require greater attention, it made sense to wait to evaluate that system until after SANE was fully implemented and enough information was available to fully understand the program's strengths and weaknesses.

## **Mapping**

One of the first activities the team undertook was mapping what happened when a Native woman chose to report that she was sexually assaulted to the Duluth Police Department. The most common ways for women to first interact with the system are by calling PAVSA's crisis line and deciding to report after speaking with an advocate, going to the hospital for medical treatment, or contacting the police directly.<sup>8</sup>

The initial mapping helped us to identify every step of "case processing" in our law enforcement and advocacy response to Native women who report sexual assault. Our work was then before us: to examine every step in terms of whether or not it accounted fully for victim safety and offender accountability. The maps created by the audit team in the initial phases of our project can be viewed in the Appendix. These can be compared to maps of redacted police reports that show how the case progressed and the strengths, weaknesses and gaps within the response.

## **Observations**

The audit team completed 10 ride-along observations with law enforcement. Five were with St. Louis County (SLCSO) Sheriff's Deputies and 5 were with Duluth Police Department (DPD) Patrol Officers. Team members accompanied officers for 4 to 6 hours of the officer's shift and responded with the officer to all calls. This helped the team to understand how dispatch operates and the equipment officers have available to them. It also gave our team a deep appreciation of how varied the officers' duties are and the conditions under which they respond to, investigate, and document sexual assault cases. Those who went on ride-alongs wrote short briefings on their experience. The team dedicated one meeting to reviewing all the notes and discussing our experiences. We identified themes and questions that needed further investigation and could be addressed in our subsequent interviews.

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<sup>8</sup> It is important to note that this can happen a few different ways. Obviously, the victim may call the police herself, but the team found many other scenarios where the police became involved. We found several examples where the rape was reported to the police by a third party such as a parent, whether the victim wanted them to or not. In other situations, the victim initiated contact with the police for something else entirely and the rape became the focus.

## **Interviews**

The interviews the team conducted were broken into two categories: “big picture” and “work practice”. The team conducted eleven big picture interviews with long-term practitioners from every field that handles sexual assault cases in Duluth. These interviews gave us a broad context for understanding the systems that are set up to respond to Native women who report sexual assault. The interviews also helped the team to narrow the scope of the audit. Combined with our observations and analysis of police reports, we began to see gaps in how patrol, investigators and advocates respond to sexual assaults.

Big picture interviews were conducted with:

- Two prosecutors from the St. Louis County Attorney’s Office
- One Duluth Police Department (DPD) Investigative Sergeant and one DPD Patrol Sergeant
- One Nurse Manager from St. Mary’s Hospital emergency room
- One St. Louis County Sheriff’s Department Lieutenant and one Supervising Deputy
- Two St. Louis County defense attorneys
- The Executive and Associate Directors of PAVSA

Work practice interviews were conducted with:

- Chief of the DPD
- One Patrol Sergeant and one Investigative Sergeant
- Two DPD investigators
- Five patrol officers
- DPD Supervisor of Records
- Advocacy Coordinator of PAVSA

## **Text analysis**

The audit team reviewed approximately 35 police reports from the Duluth Police Department. However, this was not the full extent of our text analysis. Our initial meetings focused on text analysis generally included a review of general orders or statutes followed by an analysis of police reports. The expertise of our team members representing prosecution and law enforcement were invaluable to this process.

The team reviewed the following Minnesota state statutes regarding sexual assault, or Criminal Sexual Conduct (CSC):

- 609.341 Definitions
- 609.342 Criminal sexual conduct in the first degree
- 609.343 CSC in the second degree

- 609.344 CSC in the third degree
- 609.345 CSC in the fourth degree
- 609.3451 CSC in the fifth degree

The team also reviewed the DPD general orders that guide officers' response to reports of CSC. Although there is an order specifically for sexual assault investigation by patrol officers, many of their orders are generic, not "crime specific", such as those for follow up and investigation, case screening and assignment, and description of officers' powers. The team also reviewed job descriptions for DPD officers and investigators as well as statistics on the ratio of officers to the number of calls the department receives each year.

## ***Findings and Recommendations***

In our audit, our focal point was the *gap* between the experiences and needs of Native women who report a sexual assault to the police and what the institution of law enforcement is organized to offer them. At the center of our interviews, observations and text analysis was the effort to see the gap from the woman’s position and to see how it is produced by case management practices.

In locating a problem’s source in an institutional practice, we simultaneously developed possible solutions so that we can move forward together with tangible recommendations to improve our response to the sexual assault of Native women in Duluth. This report also identifies who might be involved in that process, with an emphasis on contributions by Native women and the practitioners most directly responsible for safety and intervention.

Our entire audit team participated in framing these findings, articulating clear recommendations for change, and reviewing and commenting on this report. Gap statements have been discussed and debated, clarified, added and set aside. This report represents our collective work.

To support our findings, and to illustrate and add depth to your understanding of the gaps as well as how those gaps come about, we have included quotes and excerpts from focus groups, interviews, and police reports. These quotes and excerpts have been redacted from their sources, meaning that all dates, individual names, and other identifying information have been changed or removed. Where a name has been changed, any resemblance to a real person is coincidental.

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**Gap #1: Intervening agencies do not reliably follow through with investigation and charging of rapes of Native women.**

**How is it a problem?**

*Sometimes I feel like I'm screaming and no one is listening to me.*

Clare, focus group participant

Perhaps the most central theme that emerged from the focus groups conducted as a part of this Audit was a belief that “the cops don’t take [rape] seriously;” that the police “shrug it off,” or won’t do anything if:

- You were drinking or using drugs
- You’ve reported before
- The police don’t like your family
- You have any sort of criminal history
- You are Native

Indeed, the team was not able to find any police reports that followed through with charging. None of the prosecutors that we interviewed could remember in recent years charging, or even refusing to charge, a CSC that involved a Native woman.

According to Minnesota statute 609.01, the purpose of prosecution is twofold:

- To protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires
- To protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited, authorizing sentences reasonably related to the conduct and character of the convicted person, and prescribing fair and reasonable post-conviction procedures

Generally, prosecution and conviction is a strategy to bring down the incidence of specific crimes. For instance, because of the increased criminalization of domestic violence, it is now much harder than it was thirty years ago for a man to beat his wife without consequences. The team discussed on several occasions that, statutorily, sexual assault is the most serious crime someone can commit against another human being without murdering them. However, it seems that rape of Native women is not treated that way in the criminal justice system. Sexual assault may be a serious, criminal offense, but the system only inconsistently follows through with investigating, charging and convicting those who sexually assault Native women.

Another purpose of increased prosecution is to create a specific deterrent to a specific perpetrator; in other words, to create circumstances so that person will not rape again. Social factors often make Native women vulnerable to rape—they may be targeted, at least in part, because perpetrators can be relatively certain that they will escape accountability if they do rape a Native woman. Prosecution can act as a tool to ensure that perpetrators do not get a “free shot” at women in vulnerable situations.

*He broke my jaw in two places. After he raped me, I was trying to get out of the truck and he grabbed my jacket and dragged me while he continued to drive, then he let go and ran me over with the truck. I was on the dirt road and somebody stopped... and took me to the hospital... I saw a detective from Duluth. I ended up with a cast from hip to ankle, with my jaw wired shut. My last day in the hospital the detective came back and said that it was his word against mine, that the perpetrator had a family and three kids... nothing was done. I think they closed the case.*

Brenda, focus group participant

Stronger prosecution is also intended to administer justice. Justice demands the visibility of truth; the elimination of the conditions that created the crime; and the restoration of the person violated.<sup>9</sup> It is unclear from this audit whether prosecuting cases would have a positive effect on the safety and healing of Native women. However, it became very clear throughout the audit that some sort of follow up is an extremely important component of their ability to feel safe and begin the healing process. When a Native woman takes the relatively unusual step of actually reporting the crime of rape, it can be devastating when there is no follow up.

*Once I asked a cop why? When you know the name of the guy, why do you ignore it? What do you do with that info? The cop's answer was, "if you didn't put yourself in that position..." You can call the cops – they won't do anything. They push you to do something yourself. When does the victim become the victimizer?*

Judy, focus group participant

The other women in the group agreed with Judy, and felt that they had all had the same experience of the police not doing anything, even after they get all the information.

*I hear other women in town talking, wishing the cops wouldn't shrug it off. Maybe cops need a class?*

Clarisse, focus group participant

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<sup>9</sup> Conversation with Ellen Pence, Praxis International; 1/15/09

*The cops said I gave him consent, but I told him no several times. I was raped twice by him, once anally. I was raped twice that night, once in Superior, and once in Duluth. I reported it to police in both Duluth and Superior. Police from both cities said that I gave consent, so they couldn't do anything... I had tearing and bruising that needed medical attention, which is why I went to the hospital.*

Clare, focus group participant

The audit team examined a number of police reports where patrol stopped their investigation before they obtained time-sensitive information that would have been useful to investigators later on. For instance, there were multiple reports where the victim did not remember exactly where the assault had taken place; patrol might, for instance, drive around with the victim in order to find the exact location. However, if they didn't immediately identify an exact location, the investigation stopped. There were other reports where the victim was well aware of the location, but the investigation still ended. In yet other reports, patrol officers' investigations were conducted diligently, but if the victim disclosed that she had traded sex for drugs or money at any point, the investigation stopped. In all of these cases, the patrol officer never looked for the suspect, and they rarely looked at any other corroborating evidence (See Gap #4 for more discussion on issues of victim credibility.)

When domestic and sexual violence overlap, the police tend to investigate the domestic and all but ignore the sexual assault. For instance, in one report, the initial call was for a sexual assault, but when the police arrived, the woman had not only been sexually assaulted by her boyfriend's friend, she had also been physically assaulted by her boyfriend. Once it was clear that there was a domestic to investigate, the sexual assault became invisible although the officer did a very good job of investigating the domestic assault. It seemed as though the officer felt much more comfortable with the investigation, as though there was clear protocol to follow at that point (such as asking risk questions). In all of the reports that we looked at where there was overlapping domestic and sexual violence, the domestic violence was investigated and generally charged, while the sexual violence was unexamined.

### **What contributes to the gap?**

#### Patrol Investigation

##### Administrative Practices

There is general lack of clarity regarding the investigative responsibility of patrol officers versus investigators, as demonstrated by the often contradictory opinions of individual officers:

*Bring it as far as you can if you have a suspect.*

*FCU does it. Further investigation is out of patrols' hands unless the officer is really invested. That doesn't happen a lot.*

*[Bring the case] as far as you can because it often happens when FCU isn't around. If I can establish they did it, I bring them [the suspect] in.*

This inconsistency arises from a variety of places. While the bulk of officer training on responding to CSCs comes from on-the-job training, the infrequency of CSC investigation throughout the department ensures that each patrol officer's on-the-job training is inconsistent. The general order does not help this situation.

*Initial officers responding to a sexual assault usually provide the bulk of the evidence for prosecution. Therefore a concise, thorough, and accurate initial investigation is essential.*

*[...] The victim should be questioned concerning specific details of the sexual aspects of the crime only to the extent necessary to establish what evidence there may be and what crime was committed. The inquiry concerning details should be left to the investigator and the prosecutor.*

#### DPD General Order: Sexual Assault Investigations by Patrol Officers

This seeming inconsistency may be partially due to somewhat confusing terminology. "Evidence collection" to a patrol officer often means activities like collecting the forensic evidence kit. A patrol officer may not think of a statement as evidence, although they may be very important to the outcome of the case. One patrol officer recounted how after her sergeant reviewed a report she had forwarded to an investigative unit, he brought it back to her and asked, "What do you want them to do with it?" She said after that point she always includes notes such as, "for informational purposes only" or "requires follow up". While this is a wonderful example of how an individual practitioner learned to better communicate with the next people to come in contact with a case, there is little to ensure that steps like this are consistently taken by all officers.

The Sexual Assault Multidisciplinary Team (SMART) that is facilitated by PAVSA developed interdisciplinary protocols several years ago for law enforcement, advocacy, medical personnel, and prosecution response to American Indian victims. The protocol states that the "initial officers responding to a sexual assault usually provide the bulk of the evidence for the prosecution." However, few officers interviewed or observed by the audit team were familiar with the protocol, although much of the information was adapted into the DPD's general order for patrol response to sexual assault.



Moreover, while much of the information in the SMART protocol and general order is very detailed, significant gaps exist. The protocol does not direct officers to interview people other than the victim, such as witnesses or suspects, nor does it speak to taking a statement from any witnesses at the scene or “outcry” witnesses (the first person told about the assault), which could be crucial evidence.<sup>10</sup> The protocol does include a lot of specific information about advocacy and the medical protocols, and although the officers are required to write a report for every CSC, the protocol is very broad and general when it comes to the officer’s actions. This may be partially due to the department’s emphasis on officer discretion in the report-taking decision. All situations are different and scripting policy too tightly may take away the flexibility that officers need. Additionally, the majority of the general orders that guide their response to sexual assault victims, such as those for follow up or case screening and assignment, are not crime-specific. They are intended to be demonstrative of solid police work. However, when it comes to reports of sexual assault by Native women, something is not working.

An additional factor is that most of the officers the team interviewed expressed discomfort in responding to reports of CSC, which they all acknowledge are “big calls”. As a result, patrol officers take calls as far as they can, but given their discomfort with CSC cases, and in the absence of tools and guidance to conduct a thorough investigation, many naturally leave the bulk of the information gathering to the investigators in FCU. Some patrol officers explain to victims that they will be contacted by an investigator later, but some investigators said that they will wait for the victim to contact them before deciding whether it is worthwhile to pursue a case. In the meantime, crime scenes are left to deteriorate and witnesses and suspects are not interviewed.

After the patrol officer forwards a report to FCU, it may take up to a week for an investigator to see it because it must first be transcribed, reviewed, approved, forwarded and assigned by a Sergeant. If it is incomplete or does not look like a “strong” or prosecutable case, FCU will not invest their limited time and resources into investigating it further. It becomes an ill-fated scenario where patrol feels compelled to leave the bulk of the information gathering to the “experts”, who then suspend cases that they feel are not substantive enough to move forward.

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<sup>10</sup> The vast majority of CSC victims do not immediately report the assault to law enforcement. They are far more likely to tell a friend, family member or partner (“outcry witnesses”), and file a formal report later. This “delayed reporting” is a common hurdle to prosecuting these cases, because it is perceived as weakening her credibility. Accounting for reports to outcry witnesses can help to broaden the definition of what counts as an immediate report of sexual assault. Incorporating statements from the first person the victim told is considered a best practice for CSC cases.

### Accountability

Patrol crews all run differently based on the Sergeant or crew dynamics. For instance, according to the general order, patrol is supposed to let their supervisor know when they start a CSC investigation. According to one patrol sergeant, “some do and some don’t”. With most of the officers, he is confident of their skills and does not require a call, but there are some who need to work on their investigative techniques. He “wishes” they would let him know. He said that policy exists for “weird” cases, not regular ones.<sup>11</sup>

### Concepts and Theories/Education and training

There seems to be some confusion among patrol about what is CSC or about other sexual assault-related crimes. For example, when interviewing one patrol officer, he talked about women who are “wiling for one but not the other” [willing to have vaginal sex but not anal]. He asked, “Where do you draw the line?” In one police report, a 16-year-old girl admitted to prostitution. At that point they stopped the investigation, rather than investigating the suspect for the possibility of trafficking.

The team had robust discussions regarding the state statutes and definitions, particularly terms like “coercion,” “force,” “physically helpless,” “mentally impaired” and “significant relationship”. What qualifies as a “real” sexual assault in the eyes of the law may be determined by statute; however, even when the legal definitions are taken into consideration, interpretation of those terms is very subjective. Factors that influence whether or not a case will be pursued include: if the victim and perpetrator know one another, if some physical intimacy was consensual but he continued forcibly when she wanted to stop, if alcohol was involved, if she has previously reported an assault, or if she was participating in criminal activity when the assault took place.

A couple of years ago, the DPD added what many patrol officers refer to this “the sex question” to their domestic violence risk assessments: “Has s/he ever forced you to perform sexual acts under the threat of violence?” One intention of adding this question was to help officers determine if there was sexual violence also occurring in the relationship. Unfortunately, according to the officers that we interviewed, the question was added to the risk assessment with little or no explanation. As a result, the officers don’t understand why they ask it, and that part of the assessment seems to have become a joke within the department, rather than a useful tool. Every officer we spoke to about that question found it difficult to use, or didn’t use it, although some said that it got easier the more they used it. None of them understood why it was there.

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<sup>11</sup> This once again becomes a question of interpretation. What constitutes an “abnormal” sexual assault? More important, what is a “normal” sexual assault?

*I've used it, but it was almost embarrassing. I'm not used to it.*

DPD patrol officer

It was evident from talking to patrol officers that no one outside of FCU particularly wants to respond to a sexual assault call. Most of the officers we spoke with, either in formal interviews or during ride-alongs, expressed strong discomfort when responding to CSC. Most said that their discomfort could be alleviated by further training, but some indicated that they really were not interested in further training or really in talking about it at all. A retired sergeant from FCU noted that, in his experience, there were occasionally officers who did volunteer for CSCs, or who were more comfortable with them than others were. He said those officers generally ended up responding to *all* of the CSCs and none of the other officers got the experience necessary to get comfortable with them.

## Referring Cases to Family Crimes Unit (FCU)

### Administrative Practices/Accountability

Many police reports never make it to FCU. Early on, the audit team sought out the police reports connected to the sexual assault reports made by several women in our focus groups. The original intention was to compare the women's account of what happened to what ended up in the report. However, we found something unexpected. The audit team member who located the reports is a domestic violence advocate within the DPD. She is skilled at navigating SHIELD, the computer system used by DPD and SLCSSO. Even so, she had a hard time locating the women's reports, even though it should have been relatively easy. We discovered glitches with the coding of cases that sometimes results in a dead end without any oversight for ensuring that reports are completed and referred. In most of the patrol interviews, the officers claimed that it was basically impossible for a CSC to be overlooked or lost, yet we found several examples where they had. The head of the records department, the department responsible for the transcribing of all dictated police reports, told team members in an interview that reports of any kind can get lost, not just CSC.

[Possible explanations for cases being lost are that] *someone didn't do a CAL [Case Activity Log] entry to target a specific office or didn't fill in "route to" on the dictation envelope. Officers have several chances to catch mistakes.*

She said that the records department tries to act as part of the "checks and balances":

*They [records staff] go over everything as they transcribe. Date, entry, names, addresses, code and. After reports are transcribed, they are printed. Reports go to the officer's box. They get a chance to read it, make corrections, give to Sergeant (or however each crew works). If there are corrections, they bring it back to records; put it in box for paperwork. They are given back*

*to the person who originally transcribed it to make the corrections (another opportunity for mistakes to be caught). Anything marked as a draft report hasn't been approved by a Sergeant.*

Responding officers are responsible for correctly coding their calls and routing their reports to the appropriate investigative unit, but the records department also tries to notice mistakes. However, it is ultimately, the responsibility of Patrol Sergeants to ensure that reports are accurate, complete and referred. According to a Patrol Sergeant, one possible explanation for delayed referrals to FCU is that “the report doesn’t get rushed”. Some officers may think that if the report is delayed (the assault was not recent), it does not need to go in the “Rush Bin”.<sup>12</sup> The Sergeant knows that investigators are frustrated when officers do not promptly finish reports, but that “it doesn’t happen often”. Accountability for writing reports for all calls has “always been a question”. There are some checks within SHIELD; for instance, a report has to be entered for all cases coded “CSC”. The system will not allow the field to be left blank. But, the Sergeant added, “Who’s to say they didn’t do a report if you can’t find it?”

When asked about the accountability of patrol officers to their supervisors, particularly when it comes to completing their reports in a timely manner, the Sergeant admitted that there is not a good system in place—the reports are mainly tracked by memory.

## FCU Investigation

While some of the cases we examined made it as far as investigation, none of the cases made it past that to charging and prosecution.

### Resources/Administrative Practices

#### *Assigning Cases*

Once a case makes it to the FCU, it must be assigned. According to protocol, the sergeant in charge of FCU is responsible for reviewing and assigning an investigator to each case. At the time that we interviewed the investigators in FCU, this was not happening. The investigators themselves were reviewing and choosing cases, creating a situation ripe for inconsistent screening, at best, and at worst, creating opportunities for the “less desirable” or most challenging cases to be neglected. A significant factor in this practice is that the sergeant in charge of FCU was spread too thin. He was

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<sup>12</sup> After officers dictate their reports, the tapes are placed in “dictation envelopes” that “guarantee the tapes gets to where they need to go”, according to the records supervisor. Envelopes marked “RUSH” mean that those reports get first priority.

in charge of both FCU and the Violent Crimes Unit, and simply cannot review every CSC that came through the office, so the investigators took it upon themselves to self-assign.

### *Prioritizing Cases*

When we started the audit, we did not intend to examine cases that were still pending. Unfortunately, we had a very hard time finding cases that had been closed. In 2006, it appears that FCU attempted to have the computerized categorization of cases become more accurate, and a number of cases were changed from “pending” to “closed.” Other than that, most of the cases that we examined simply stopped. Some of the cases we reviewed have been “pending” since 2004.

A number of reasons explain this, most of which appear to be strategies to determine whether or not the victim was “serious” about the charges or is willing to participate in a prosecution. Given the workload of FCU, and the impossibility of fully investigating and prosecuting every case, cases need to be prioritized in some way. For example, one investigator talked about cases in which there is a possible consent defense:

*I won't contact her [the victim] at all with these types of cases – if she isn't interested enough to contact me, I won't bother... resources just don't allow us to address them all.*

In the police reports that we analyzed that followed this pattern (possible consent defense → referred to FCU → no follow up or charges), many of them were never closed out. When one investigator was asked when he will close a case out, he said:

*Nothing gets totally blown off. I will call the victim, voice my concerns, and discuss the issues with the victim. If the case is not viable, I let the victim know.*

The investigators did indicate that it was possible to reactivate cases that had been on the back burner, though they said that only happens if the victim calls them—they will make no effort to contact victims. And it was acknowledged that generally victims do not call, especially with “alcohol cases.” Considering how common it is for sexual assault victims to blame themselves, especially if they were using alcohol, it is unsurprising that so many of these cases linger, pending contact from the victim.

### *Investigating Cases*

It is recommended that interviews of victims of violent crimes occur after the victims have had a sleep cycle or two so that the immediacy of the trauma is slightly faded, making their statements a little more consistent and more thorough. But waiting too much longer compromises the case, sometimes irreparably: victims disappear, important evidence is lost or deteriorates, and interest in the case diminishes or disappears.

According to investigators, low priority cases might take as long as one or two weeks to be assigned and followed up on. According to some of the advocates involved with the audit, follow up investigations sometimes take as long as 7 months, if they happen at all. According to women in the focus groups, investigative interviews never happened. One investigator commented that he really hated to think of how many CSCs have not been investigated because of staff shortages.

## County Attorney's Office

Current best practice for sexual assault investigations is *prosecution-led*. Throughout the audit process, officers and investigators reiterated that cases need to be “viable”; prosecutable”; or otherwise conducted with a potential jury trial in mind. However, prosecutors never saw any of the 35-40 cases the team reviewed. While prosecutors cannot be faulted for the outcome of cases they never had the opportunity to see, their office does have a role in ensuring that cases make it to their desks in the first place. Throughout the interviews, it was clear that the relationship between law enforcement and prosecution can be strained when prosecutors send cases back for further investigation. If prosecution is not prepared to meaningfully challenge a consent defense, for example, or to prosecute the rape of a woman used in prostitution, law enforcement will quickly learn to spend its valuable time and energy pursuing other cases. The sequence of events once CSC cases reach prosecution was beyond the scope of this audit. However, it behooves prosecution to watch closely the improvements made in the investigation of CSC cases that arise from this audit, and to be prepared to take up these cases with full diligence.

### **How do we close the gap?**

#### Patrol Investigation

- The policies and protocols for patrol response to CSC need to be tightened up, particularly as they define the specific investigative responsibilities of patrol officers. The protocols need to be consistent, they need to make sense, and they need to be accessible to all patrol officers. There also needs to be a method in place that ensures adherence to those policies and protocols. Development of a good tracking and monitoring system is crucial to ensuring follow up.
- Once policies have been developed and revised, officers must receive updated training. The confines of a tight budget and use of the peer mentor model that most officers learn under will have to be part of any solution to provide new training.
- There should be a standardized system of accountability between Sergeants and the officers they supervise, particularly around the completion of good solid investigative reports. However, this is not meant to insinuate that Sergeants should take a heavy hand with those they supervise. Several officers told interviewers that the best sergeants are those who are

available as a resource. All of us respond well to the clearly-articulated priorities of our supervisors.

- More consistency between crews: It may be best for there to be one set of expectations for how CSC is investigated and how reports are reviewed by Sergeants.
- The training that patrol officers receive to respond to sexual assault, and to respond to Native women, needs to be expanded, and it needs to be updated annually. In order to ensure consistency throughout the department, this training needs to be required for both new recruits and for seasoned officers.
- There needs to be some way for more patrol officers to get more experience responding to sexual assaults in order for them to get more comfortable with the crime. One opportunity that has been discussed is the now-defunct Peer Empowerment Program (PEP) that the DPD used in the past. In that program all officers took short stints in each investigative unit. It gave them perspective on what each unit requires of patrol and helped build relationships between officers. Every officer that we talked to who was familiar with this program talked about how wonderful and useful it was in helping them understand the whole of the police department. Fortunately, the DPD is already making plans to reinstate this valuable training program. However, that makes it all the more important that the DPD address the problems with CSC response in a timely fashion. Otherwise, the same problems will continue.
- There needs to be more oversight from patrol sergeants to ensure that patrol officers follow through with all calls for sexual assault. Patrol sergeants need to be consulted at some point every time there is a CSC, and they need to be responsible for making sure that *every* CSC is sent to FCU. Patrol should not be determining whether there should be further investigation or charging on CSCs. That should be determined by the investigators, in conjunction with prosecutors.
- There should be a protocol for reported incidences of sexual assault within intimate relationships. When an officer is responding to a call that involves both domestic and sexual assault, it is important that the officer not simply fall into his or her comfort zone and exclusively investigate the domestic. Protocols must be re-written to reflect the reality of the frequent co-occurrence of domestic and sexual assault, and to give the police the tools that they need to investigate them both at the same time. A joint protocol that reflects both the particular safety needs of the battered woman as well as the separate issues surrounding the sexual assault must be in place to help ensure that all crimes committed are taken into account.
- Better practices for investigating consent defense cases must be established. When there is a consent defense, the issue is not whether the police are able to identify the suspect, but rather whether it can be proven that the victim did not consent to the sexual act.

Corroborating evidence becomes extremely important. Best practices should be explored and a checklist of necessary actions should be created. For example, an officer can:

- Interview witnesses
- Identify and assess the crime scene
- Make full use of medical reports and photographs that may document genital abrasions or tearing
- Check for non-genital bruising, scrapes or abrasions
- Check clothing for rips, stretched out elastic, missing buttons, blood, and dirt stains<sup>13</sup>

## Referral to FCU

- The codes that cases are given are of paramount importance. The records department should be better utilized to ensure that all cases get the appropriate code, and that the appropriate referrals are made.
- A system needs to be developed to catch cases that might be ignored because, on the surface, they seemed unimportant. The records department will be a key resource to solve this issue.
- There needs to be a stronger connection between investigators and patrol officers. When interviewing patrol officers about CSC, they often referred to Luann Taylor, the Domestic Violence Investigator. Very few of them ever referred to the investigators who handle CSC by name, possibly because they don't have any communication with them. Once patrol officers send a case to FCU, unless they go looking for it, they often never hear about it again.
- There needs to be something in place to encourage more curiosity about where their cases go, so patrol officers notice if their cases go nowhere. Opportunities to encourage more communication should be explored.

## FCU Investigation

- FCU is under new leadership and new protocols are currently being drafted. This is an opportunity to make changes and improve response. Innovative approaches to CSC are being developed throughout the country. Many include suggestions for investigating consent defense cases, establishing tracking and monitoring systems, case consultation methods and prosecution-led investigations.
- Methods need to be established to ensure that cases are dealt with in a timely fashion and in a consistent manner. The FCU sergeant should re-evaluate methods for case screening

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<sup>13</sup> [www.mysati.com/Downloads/ClothingarticlewitheditsfromLedray.doc](http://www.mysati.com/Downloads/ClothingarticlewitheditsfromLedray.doc)



and assignment, and possibly incorporate a time for routine case review. The tracking and monitoring system that will be developed will help evaluate the efficacy of these new methods and processes.

- Work with sexual assault advocates, community groups, and the prosecutor's office to draft a prioritization protocol for CSC cases referred to FCU by patrol. This protocol should account for the vulnerability of the victim, the level of risk posed by the alleged offender, the resources available to FCU, and the investigative circumstances.

## Prosecution

- If formal charging is the intended result, then it makes sense to start with the needs of prosecution and work backwards, but always with the input of advocates or, ideally, survivors of sexual violence themselves. A working team of top level prosecutors; the Lieutenant overseeing FCU; the FCU sergeant; the PAVSA staff working to develop case tracking and case consultation methods; and Native advocates should be established in order to address how the DPD and the SLCAO can improve the response to Native women who have been raped.

### **Who should be involved?**

Duluth Police Department  
Program for Aid to Victims of Sexual Assault  
St. Louis County Attorney's Office



## **Gap #2: Native women do not have regular access to sexual assault advocacy**

### **How is it a problem?**

For many reasons, it is rare for a Native woman who has been raped to talk to anyone about it. She may not think anyone will believe her, or does not trust that she will be treated well if she discloses. One of the most prevalent reasons for not telling anyone is that women tend to blame themselves for the assault.

Many of the women who attended the four focus groups we conducted had never reported their assault. Their reasons consistently centered around self-blame and a belief that anyone they told would either not believe them or blame them.

*I was out so late... I brought it on myself.*

Clarisse, focus group participant

*I thought the cops would say it was my fault, and besides that there was a warrant out for me... I didn't call the cops because I was drinking and having a party... I couldn't call because of the warrant.*

Monica, focus group participant

*I never told anyone because I shouldn't have been there at 3:30 am, drunk.*

Rose, focus group participant

*I put myself in that situation, I was using, I asked for it.*

Emily, focus group participant

For Native women who do report assaults to the police, they do so despite the fact that it means seeking help from a system that they experience as foreign and sometimes hostile.<sup>14</sup> The focus groups we conducted indicated that Native women's experiences with law enforcement (from several different cities and reservations and one other state) were shockingly consistent. They said that the police were disrespectful, as indicated by the officers' tone, language and attitude towards them as victims. They felt that the officers were "uncooperative" and unwilling to help them. This experience is connected with what many Native people feel: that the police will never be a resource to them, but instead are a force they must constantly guard against and *protect* themselves from.

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<sup>14</sup> For the purposes of this audit, references to "the system" generally mean the criminal justice system (law enforcement, prosecution) and advocacy. It can also be hospital, social services, etc.

Women in the focus groups generally felt that their cases “disappeared” because Native women are not supported and believed by the system. “The system” becomes another adverse entity that they avoid in their quest for survival.

*I did report being raped a couple of times, but nothing was ever done about it. So most of the times I never reported it – I was drinking, and nobody ever contacted me before, so I didn’t bother.*

Wendy, focus group participant

*I could have pursued it more but I was there all by myself. Nobody was there to help.*

Michelle, focus group participant

The extent to which law enforcement—and indeed, the broader “system”—is perceived as helpful by Native women will improve only slowly, perhaps with efforts like this Audit. However, as we learned from focus groups, in the short-term, when an advocate is involved in a Native woman’s experience of reporting a rape, it significantly improves how she feels about her experience in that “system.” Moreover, when asked what would help other women who reported sexual assault, the answers were consistent:

*An advocate there right away with the police. The questions the police ask... sometimes you don’t want to talk right away. It was distracting with police radios going off and all their gear, asking all these detailed questions military style. Advocates will give you a hug, encourage you, tell you to take your time, reassure, comfort.*

Yvonne, focus group participant

*Have an advocate on call, to go with the police.*

Brenda, focus group participant

*It would have gone a long way if an advocate was present. Nobody was there, just a nurse.*

Frances, focus group participant

Ensuring the involvement of advocates is a crucial element in providing the best possible care to sexual assault victims.

*Advocates walk through every aspect of the process and personal life with victims... At the hospital, advocates provide support [and] make sure communication is clear between everyone involved; for example, making sure the exam is billed to the county. Advocates also make sure the victims have a safe place to go once they leave the hospital. They make arrangements for the victim to have follow-up medical care, advocacy in the criminal justice system, help prep them for reporting to the police, and keep communications between agencies running smoothly... recognize each person as an individual with various characteristics, whatever those*

*might be, and to validate each victim's unique reality. Each case is different and the characteristics in each victim's life are different.*

PAVSA Advocate

When advocates are not involved, the only person left to navigate this confusing process is the victim. The audit found that gaps exist within patrol to investigation and investigation to prosecution. When advocates provide on-going support to victims, they become part of the checks and balances that keep women from falling through the cracks.

PAVSA has provided advocacy for victims of sexual assault for over thirty years, yet many of the women who came to the focus groups had never heard of PAVSA, and were generally unaware of advocacy services available in the area. Those who had accessed PAVSA's services were largely happy with that experience. However, they seemed to talk about it as an afterthought, usually only if they were specifically asked if there was an advocate. There appears to be wide variations in accessibility to advocacy.

*It depends on where you are for advocates' response. In Fond du Lac or Carlton, I call, leave voice mail after voice mail, get a call back in 3 days, always get the answering machine.*

Annie, focus group participant

*I talked with PAVSA today and have meeting on Friday. It's pretty easy to get in there.*

Pamela, focus group participant

Unfortunately, more often than not, the women reported that there was no one available to help or follow up with them. If they were made aware of advocacy services, they were often left to seek those services out on their own. If they did connect with an advocate, there was often no follow-up past the initial interaction.

*No one came to talk to me – I was in the hospital for 2 days.*

Brenda, focus group participant

*Nobody from PAVSA was there. So after I left the hospital I went to PAVSA.*

Becky, focus group participant

## **What contributes to the gap?**

### **Rules and Regulations/Administrative Practices**

The Duluth Police Department and the St. Louis County Sheriff's Department have good protocols and general orders specifying that officers are to make arrangements to have an advocate available (if the hospital has not already done so) before conducting a CSC interview. The policy is for advocates to come directly to the hospital to determine whether or not her help is needed; she

does not know until she arrives whether or not she will stay for the interview. The logic behind this policy is that victims are more likely to meet with an advocate if she is readily available, waiting just in the other room. Many people do not know what advocates do or whether or not they would find them helpful. Some victims, already embarrassed or blaming themselves for the assault, initially may not want “one more person” involved or do not want to bother someone to come to the hospital in the middle of the night.

Unfortunately, our review of police reports did not indicate that advocacy is consistently offered to Native women. While many of the police reports we reviewed did mention the presence of a PAVSA advocate, many of them had no mention of advocacy at all. Sometimes the reports document some effort to contact PAVSA, but the officers did not follow the policy closely enough for the advocate to be present and helpful from the beginning. The following excerpt is a representative example.

*It should be noted that while we were arriving at St. Mary's for the second time, I asked [victim] if she would like a PAVSA representative to come to the hospital to talk to her... at that point, I called PAVSA and a representative by the name of [advocate] came to St. Mary's as well.*

*While we were waiting for a sexual assault kit and a PAVSA advocate, I went in and spoke with [victim]. I asked her what had happened... [details of assault follow]*

*At this time, [victim] advised she was going to be leaving and had already called a cab. She said she did not want to cooperate with the investigation and did not want to talk with officers... At about this same time, the PAVSA advocate arrived and also tried to convince her to stay...*

Duluth police report

### Accountability

The lack of accessible advocacy for Native women who report sexual assault is partially an issue of accountability on the part of law enforcement. The measures in place to ensure that officers are held accountable to their policies and protocols are not consistently utilized.<sup>15</sup> Technically, Sergeants are responsible for reviewing their officers' police reports and providing feedback. However, each patrol crew runs differently. For instance, supervisors are not always contacted when a CSC comes in; there is no consistent way to ensure that serious calls are followed up on, so some supervisors track by memory and others use the patrol log as their main tool. Because of this lack of consistency and lack of checks and balances, many sexual assaults fall through the cracks.

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<sup>15</sup> This is discussed at length in gaps 1 and 3.

### Education and Training

The audit found that patrol officers are generally not very familiar with their own CSC protocol. They learn how to respond to these calls via peer mentoring, by following the lead of a senior officer. When conducting interviews with patrol officers, the audit team found that many officers did not understand the role of advocates beyond that of a “hand-holder”. However, the officers that demonstrated the greatest understanding of advocacy were the ones who said they liked having them there and thought they were an important part of the process. Several even said that there needed to be more training about what PAVSA did and how advocates can make the officers’ job easier just by being a supportive presence in the room.

### Mission, Purpose & Function/Resources

The lack of accessible advocacy for Native women is not solely due to a lack of contact by patrol officers. Many Native women simply do not know about PAVSA. The program does not have a formal media or advertising plan. They do have a web site, are in the phone book and have flyers posted in the community. The number and information may be out there, but the information is not frequently updated and is not culturally geared.

### **How do we close the gap?**

Accessibility to sexual assault advocacy for Native women must come from a variety of changes, from a variety of sources. For example, PAVSA must be more pro-active in distributing their information to Duluth’s Native community and must actively listen and include Native women in efforts to increase the program’s accessibility. The police need to not only be more consistent in telling the Native women they encounter about advocacy resources, but they also must learn more about what advocacy is, and what it is for. Native women who report sexual assault deserve accountability from services providers, which will only happen if it is consciously built into the systemic response.

- Increase the accountability for patrol officers to ensure that advocates are contacted. This could be included in a checklist of actions that must be completed for every CSC and turned in to the Patrol Sergeant at the end of the officer’s shift.
- PAVSA should develop and maintain awareness efforts specific to Native women. In order to be effective, this should be coordinated with the agencies who currently serve Native women and other Native women from the community. Efforts should focus on development of a plan to encourage volunteers, review and revise advocacy training, and improve outreach and response to Native women.
- Educate law enforcement officers on the role advocates play when working with victims of sexual assault, ideally co-facilitated by a law enforcement professional and an advocate.

**Who should be involved?**

Program for Aid to Victims of Sexual Assault  
Mending the Sacred Hoop  
American Indian Community Housing Organization  
Duluth Police Department  
St. Louis County Sheriff's Department  
Fond du Lac advocacy



**Gap #3: Very few Native women receive any follow-up contact, either from police or from advocates, after they report to the police that they have been raped.**

### **How is it a problem?**

Perhaps the most consistent message we heard from the focus groups was that the women who had reported their sexual assault to the police never heard back from anyone, and they wished they had. Anecdotally, advocates know that for many victims, seeking justice through the courts is a long, arduous, and often re-traumatizing process. It is debatable whether or not charging and convicting the perpetrators of sexual assault against Native women would bring the women a true sense of justice. Regrettably, there were no Native women whom we could ask about the court experience. Their cases never got that far. Some of them may have chosen to forego the long and difficult process had the cases been charged. However, regardless of what they wanted to come of their decision to report, they all wanted someone to follow up with them, to show that they mattered.

*I went straight to the hospital and told what happened. They did the [sexual assault] exam and said the police would get a hold of me, but they [the cops] never did. I knew who it was, but nothing happened because the police didn't get a hold of me [for a follow up interview]. Advocate was there. I told people on the street to get him beat up. I didn't call the police or follow up – I just kept drinking. I felt like the police weren't doing their job.*

Miranda, focus group participant

The most consistent problem we heard from the women in our four focus groups was, “No one ever called me back.”

## Duluth Police Department

### **What contributes to the gap?**

#### Administrative Practices

When cases reach the Family Crimes Unit, policy dictates that they are assigned to investigators by the Sergeant. The investigator is supposed to review the case and make the determination about whether to pursue the case, suspend the case or put it on the “backburner”, which means they are cases that might be reactivated if the victim calls or if new information arises. The only time investigators consistently make contact with victims is if they want to conduct an investigative interview. There is no policy or office practice of notifying victims that their case is suspended or on the backburner. Some investigators even said that they often leave it up to the victim to call, yet

when victims first report, they are generally told by patrol that they will be contacted by an investigator.

An additional issue is the lag time that often exists between the initial report and the FCU investigative interview. Investigators say they contact victims (the ones who receive some sort of follow up) within one to two weeks of receiving the reports. However, advocates told the audit team that they have worked with victims who waited up to seven months to speak with an investigator. This is partially due to a long-term lack of staffing within the unit, but the fact remains that women are left to wait. It is common for victims to move or, if they have a phone, change phone numbers after an assault. Attempts to contact victims months down the road may result in a dead end if they have given up and chosen to move on with their lives without pursuing a criminal case.

FCU does not have consistent practices when it comes to contacting victims to let them know the status of their case. Some investigators say they contact all victims to let them know the status of their case, others say that they let victims call them. Some say they triage cases primarily on age and address child sex abuse cases first, which pushes the cases of adult women to the backburner, others say they do not prioritize in this way. Meanwhile, women are left to wait, to try to keep details of the rape fresh in their minds for an investigative interview that may never happen.

### **How do we close the gap?**

The audit team understands that the DPD is currently revising protocols for the entire department. Revising protocols should not be done without the input of patrol officers, sergeants, investigators and advocates. There must also be efforts to incorporate the input of victims. It is recommended that a survivor's advisory council be created with the help of advocacy organizations to incorporate the voices and realities of those most affected by sexual violence.

Nationally, there has been a push to involve the input of prosecutors in CSC investigation. At its core, a community's response to crime is supposed to result in punishment of wrongdoers via the court system. Although the details of that process were far beyond the scope of this audit, we do know that prosecutors have a vested interest in how cases are investigated. The whole process could be improved if the requirements of a strong case for prosecution are taken into consideration.

Specific issues that require resolution are

- The lack of clarity regarding the role of patrol officers and investigators: What do they expect and need of one another? What do prosecutors need from them? How do we ensure that cases no longer fall "between the cracks" because the investigative responsibility is murky?

- FCU must inform all victims of the status of their case within 1 – 2 weeks of reporting. The unit must develop a way to ensure this happens.

### **Who should be involved?**

Duluth Police Department representatives from patrol and investigation  
St. Louis County Attorney's office  
Program for Aid to Victims of Sexual Assault

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## Program to Aid Victims of Sexual Assault (PAVSA)

### **What contributes to the gap?**

Some of the gaps within the law enforcement response parallel gaps within the advocacy response to Native victims. An important aspect of advocacy programs is keeping victims connected with the criminal justice system. Many victims will share information with advocates that they do not initially share with law enforcement. Because advocates assist people with a variety of issues, they often have more frequent contact with victims than anyone else in the system so naturally, when investigators cannot contact victims, they often call PAVSA for help. The confidentiality that victims have with advocates is fundamental to their relationship with each other; advocates should never share information without the express permission of that person. This sometimes leads to conflict with law enforcement if the victim does not want certain information shared. Generally, advocates are able to help the lines of communication flow smoothly between survivors and practitioners within the system. However, PAVSA advocates are also failing to sufficiently follow up with Native women who report.

### **Administrative Practices**

There are no institutionalized policies to ensure that Native women receive consistent follow up. Moreover, the follow-up strategies currently used by advocates may not work for many Native women. For example, the team discussed how PAVSA's primary source of contact is by telephone, but that some Native women do not have phones, and other women's phone numbers change frequently. Use of the "message phone" may not be something confidentiality-conscious advocates feel they can trust to relay information.

### **Accountability**

Currently, the Advocacy Coordinator assigns staff advocate to work with individual women, and tracks their work together. Staff advocates are also expected to consult with PAVSA's Licensed Therapist about women with whom they are working. In the past, a Systems Coordinator

maintained a list of who was receiving “systems advocacy” (such as assistance with the criminal justice process), but due to budget constraints that position no longer exists. Although the licensed counselor and other agency staff have some methods of monitoring who each advocate is working with and in what capacity, there are no checks and balances to ensure that advocates are following up with women. It rests very heavily on the individual advocate.

### **Mission, Purpose & Function**

One of the philosophical approaches of advocacy—allowing women to have control of when and in what fashion they have contact—may be part of the problem. For example, advocates are unclear about how long they should continue to try to contact women when early attempts fail. One advocate said that her practice is to contact women three times, with the last voice message letting the woman know that how she can contact PAVSA if she chooses to. PAVSA advocates do not go searching for women after they have reported. If they run into a woman that they have worked with, they generally allow that woman to approach first, out of respect for her privacy.

*It's difficult. People go through [the reporting] process and they might be crashing 6 months later and have no one to call. On the other hand, we don't want to bother them. Some are hard to get [a hold of], then they are angry and felt left hanging. The contact attempts don't matter when they are hurt and in crisis. They're hurt regardless of the attempts.*

PAVSA advocate

### **How do we close the gap?**

PAVSA should evaluate its current practices, with the help of Native community partners, and make changes as needed. It will be important to bring in people from outside the agency who can provide a fresh perspective on how PAVSA could better meet the needs of Native women. This could involve more oversight of who each advocate is working with.

Although it was purposefully left out of the audit, the PAVSA SANE program may provide more opportunities for both follow up and for women's voices to be heard. When people go to the hospital and are given care by a SANE nurse, it is now standard for the SANE to ask the victim if the SANE Coordinator may follow up with them so s/he can give input about her/his experience. The SANE Coordinator asks about how they felt they were treated by the advocate, SANE, law enforcement (if they were involved) and ER staff. This information will help the PAVSA SANE Program address issues as they arise and document trends.

Some of the outreach PAVSA currently provides to the community may provide a platform to increase follow up with Native women who are particularly vulnerable, such as those suffering from addiction, homelessness or incarceration. PAVSA provides on-site outreach groups at CHUM, Bethel Work Release; St. Louis County Jail, Lifehouse and Arrowhead Juvenile

Corrections. The staff who originally started the groups knew that the most vulnerable women were never going to come to PAVSA, so PAVSA had to come to them. If PAVSA successfully makes connections with Duluth's Native community and broadens the scope of its outreach, it may provide more opportunities to "find" women who would otherwise fall off the radar after the initial response.

Specific steps include:

- Increasing accountability for PAVSA staff advocates and reassessing the current follow up methods. PAVSA staff advocates should begin asking the Native women they work with what the best follow up methods would be and look for themes in the answers.
- Partnering with Native organizations to better reach Native women.
- Attending more Native events (pow-wows, community events, conferences), which may give more opportunities to reconnect with women who cannot be reached by phone.
- Address the need for more Native advocates. Although sexual assault advocacy for Native women needs to come from a grassroots level within the Native community, PAVSA has expertise and resources that should be utilized. As described in Gap #6, the Minnesota Indian Women's Sexual Assault Coalition is developing a 40-hour sexual assault advocacy training. PAVSA and other organizations like AICHO, MSH and the sexual assault services at Fond du Lac should collaborate to co-host this training and adapt it to the Duluth community.

### **Who should be involved?**

Native women who use PAVSA services  
American Indian Community Housing Organization  
Mending the Sacred Hoop  
Program for Aid to Victims of Sexual Assault  
Fond du Lac advocates



**Gap #4: Many cases hinge more on perceptions of a woman's credibility than it does on the entire set of circumstances.**

**How is it a problem?**

Many of the police reports reviewed by the team did not document that the responding officers completed a sound investigation: suspects and witnesses were often not identified or interviewed, evidence such as photographs or clothing was not collected, and in some cases crime scenes were left unvisited.<sup>16</sup> When these steps are not taken, the primary source of evidence becomes the victim herself. While law enforcement must carefully evaluate the credibility of an allegation, relying solely on a victim's perceived credibility—rather than the totality of circumstances—is particularly problematic in cases of sexual assault of Native women.

Factors such as chemical dependency or homelessness can work against a victim's perceived credibility. Ironically, even though alcoholism or street life makes women more vulnerable to being targeted by rapists, in cases of sexual assault, those circumstances reduce a woman's credibility and therefore the likelihood that the perpetrator will be stopped from further violence. The level of our intervention in these cases is not commensurate with the level of risk or vulnerability.

Many sexual assault victims are plagued by self-blame. The result is often a twisted scenario where both the officer and the victim are so focused on her behavior (Did she consent? Does she tell the truth? Does she remember it well? Can she describe it well?) that the assailant, who most likely handpicked the woman because she was vulnerable, becomes completely invisible.

*It [the rape] happened in the alley behind the casino. He dragged me to a dark spot – someone I knew. I never told anyone because I shouldn't have been out there at 3:30 AM, drunk. I was "out there" because I had been beat up by my boyfriend, and when the cops came to that, since I was drunk and he was not, they told me to leave the house.*

Rose, focus group participant

[This focus group was the first time she told anyone about the rape]

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<sup>16</sup> In some cases this makes sense, such as when a suspect is not identified or there is lack of clarity regarding where the assault occurred. However, in many reports, inspecting the alleged crime scene would have contributed to the investigation.

*He [the rapist] gave me a disease that I was hospitalized for. I reported it and went to the hospital. Cops came and interviewed me at the hospital—they called it date rape. I knew the guy for six months, thought he was a friend. He tells everyone I'm a slut and asked for it. I had three bottles of beer—I was not drunk. It happened at his house. I was at CHUM [homeless shelter]. He knew I was vulnerable.*

Judy, focus group participant

*People [officers, prosecutors] are looking for a perfect victim in order to do something with a case. Victims who are angry, have prior system contacts, prior police involvement, or were drunk get treated differently. Many Native women tend to be angry and everyone else in the system is turned off and then they shut down. Native women then get treated badly... When women are angry, have a bad experience at the hospital and then have other issues like being on probation, prior system involvement, domestics, etc, people don't want to do anything on her case. People in the system are still looking for force and physically fighting back in order to prosecute. Historic bad reputations add to all of this, one bad experience compounds into others.*

PAVSA staff member

Throughout our interviews and reading of police reports, we were able to identify some themes that contributed for a woman's loss in credibility. The most prominent themes were:

- Alcohol and drug use
- “Uncooperative victim”
- Prior interaction with law enforcement
- Poverty or homelessness
- Past, present or assumed involvement in prostitution or trafficking

### *Alcohol and drug use*

The statutes for Criminal Sexual Conduct (CSC) account for a wide variety of circumstances. However, in regards to victims' level of intoxication at the time of the assault, according to Minnesota State Statute 609.32 a person has committed First Degree CSC if they:

- 1) engage in sexual penetration and;
- 2) cause physical injury to the victim and;



- 3) “the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless”<sup>17</sup>

It is hard to ignore that alcohol and drug use is a factor in many sexual assaults. The most obvious example is when a person is slipped something that is meant to render them helpless. The willing consumption of drugs and alcohol is what complicates things. Alcohol is considered to be the most commonly used “date rape drug”.<sup>18</sup> This ends up playing out in confusing ways. Law enforcement acknowledges that intoxication makes people more vulnerable, but also counts it against their credibility.

*When the person was really drunk, the rape might be genuine, but how she acted earlier will affect her case.*

DPD patrol officer

*If the woman is so drunk she can't consent, then it tips the other way in terms of credibility... Credibility doesn't mean the rape didn't happen—but how do you figure it all out? On the one hand, there's victim blaming, but on the other hand, substance abuse and other issues leave victims vulnerable because people won't believe them or will want the victim to be responsible for their actions.*

DPD patrol officer

This double standard is not lost on many Native women who have been raped. Many of the women in the focus groups cited their use of alcohol as one of their reasons for not reporting. The stereotypes of the Native community has left many women with the impression that if you are drunk and Native, nothing will happen if you report violence to the police.

*If you are drunk, the cops won't believe you, or they blame you.*

Miranda, focus group participant

Often, the use of alcohol or drugs goes hand-in-hand with what practitioners commonly refer to as the “consent defense”, which is discussed at greater length in Gap #1. Because there is little consistency in the level of follow-up victims receive from law enforcement, and no common practice of investigating cases where consent is the defense, often the only documented information comes from the victim at the time she reports. This information is likely to be

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<sup>17</sup> From MN Statute, 609.32, section d (ii). As defined by 609.341, “Physically helpless” means that the person is unconscious and unable to consent or withdraw consent. “Mentally incapacitated” refers to someone who is under the influence of drugs or alcohol that were given to that person without her/his knowledge.

<sup>18</sup> <http://womenshealth.gov/faq/date-rape-drugs.cfm>

incomplete and possibly distorted due to not only her level of intoxication, but the trauma she has experienced.

### ***“Uncooperative” Victim***

A victims’ level of cooperation with law enforcement was a prominent theme throughout the information gathering process, and the word “uncooperative” showed up frequently in police reports. The word itself is loaded with meaning. As one team member put it, “It’s a conclusion, not a description.”

*It should be noted, [victim] was very intoxicated and very uncooperative with the investigation.*

Police report

[There was no further description of the victim’s demeanor, and no charges were pressed.]

However, a fascinating parallel was highlighted in the focus groups. While officers often referred to the lack of cooperation from victims, several of the Native women in our focus groups said that it was the officers who were uncooperative. They described “uncooperative” police who didn’t want to help with even very basic requests, such as providing transportation to a safe location after reporting the sexual assault. This consistent experience is connected to the reality that many Native people feel that the police will never be a resource and are a force they must constantly guard against and *protect* themselves from—hence defensiveness, aggression, and other survival skills get employed.

### ***Prior interaction with Law Enforcement***

Many of the women who participated in the focus groups and whose stories are in the police reports have been “in trouble” before. Some were on probation or had warrants. Many of the women said their families are known to the cops and just having the same last name was enough to guarantee a poor experience.

Other women had had prior interaction with police because of past victimization. Some have been victims of domestic violence. Unfortunately, many survivors of sexual assault are revictimized and have reported before. All of these different circumstances seemed to affect law enforcement’s response to victims and their perception of the women’s credibility. None of the women in the focus groups who had reported their assaults had a positive experience as a result of prior interaction with law enforcement.

Personally knowing someone who is reporting a sexual assault is not inherently a bad thing. According to several officers the team interviewed, relationships with people in the neighborhoods they patrol can be invaluable to information gathering and to a community’s sense of trust in the

Police Department. Several officers expressed that a lack of relationships and lack of interaction with Native people other than those in crisis contributes to this culture of mistrust. However, prior interaction with the DPD seemed to work against most of the Native women the team encountered either through the focus groups or the police reports.

*It should also be noted, I am very familiar with [victim] from previous events.*

DPD police report

*I don't like to call the cops about anything because they don't like my family. I don't care for the cops.*

Amber, focus group participant

*He [DPD officer] said to me, "If it's not you raising hell, it's your kids."*

Rose, focus group participant

*Cops regularly tell me to leave Duluth... [Rape is an] uncomfortable subject. Even if we're drunk, take us seriously.*

Emily, focus group participant

Many of the officers interviewed by the audit team expressed frustration with women who have reported sexual assault more than once. Several officers acknowledged biases with women who had reported before. One patrol officer simply said, "The regulars just don't fly", though he said he will still send over even the most "absurd" of cases.

### ***Poverty and homelessness***

Native women who are living in poverty or who are homeless are seen as less credible in the eyes of some officers. One officer acknowledged that homelessness made women more vulnerable to sexual assault, but explained:

*How does that affect your ability to respond? [It] changes how credible they are as witnesses. Suspect and victim are equally un-credible.*

This was a thread that we were unable to follow completely. Issues of poverty and homelessness came up subtly in interviews, focus groups and police reports. It was often mentioned in tandem with issues that have already been mentioned such as alcohol use and prior involvement with law enforcement. A full examination of this issue warrants further investigation.

### ***Prostitution of Native women***

The team reviewed a handful of police reports where either the officer or the victim reports that she (the victim) has a history of prostitution. One officer referred to the rape of prostituted women

as “customer disputes” and seemed to genuinely feel that nothing could be done when they report being sexually assaulted. The team reviewed some police reports that were conducted conscientiously, but the investigation seemed to screech to a halt if the victim reported that she was prostituting or if it was assumed that she had traded sex for drugs.

The audit team feels it would be beneficial for officers to recognize and address issues of prostitution and trafficking within a framework of recognizing those crimes as violence against women and girls. For instance, one team member accompanied an officer to an abandoned house where a break-in had been reported. The house was filthy and it was apparent by the beer cans and pizza boxes that people were periodically staying there. The upstairs was littered with pornographic magazines. One room had mirrors on the ceiling and on three of the walls. The fourth wall was painted with a mural of a woman in fishnets with a ball gag in her mouth. The officer and team member discussed how it looked like it was being used to photograph or film pornography. Once in the vehicle, the officer typed a few comments into CAD, but made no mention of the “porn room”. When discussing this ride-along at an audit meeting, several team members who are knowledgeable about the interface between trafficking and pornography expressed surprise that the officer did not document anything. Vulnerable women are often exploited and coerced into the making of pornography. For many women, it is then a short step into a life of forced prostitution and trafficking. If there was ever an investigation into the making of pornography in Duluth, the mural could potentially be an identifier if that was what the house was being used for.

Trafficking of Native women and girls is an issue in the Duluth community and has been for years. It was far beyond the scope of this project, but warrants mentioning here for the effect it has on officers’ perceptions of women’s credibility if they have ever been involved in the sex industry.

## **What contributes to the gap?**

### Concepts and Theories

Problematic perceptions about sexual assault are common in our culture, and make it difficult to navigate troublesome issues like victim credibility. Concepts like women provoke rape through their own conduct (e.g. prostitution), women mean yes when they say no (e.g. consent defense, being uncooperative with police), and nice girls don’t get raped (e.g. women who are homeless, have criminal records, or abuse alcohol and drugs), keep our focus on a victim’s characteristics, leaves the offender almost entirely unexamined, and complicates the prosecution of the crime in a public court.<sup>19</sup> What is required is a system-wide re-think of how to address sexual assault, in the way that our prosecution of domestic violence cases became possible when we established as a crime the beating of your wife in your own home.

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<sup>19</sup> Scully, Diana. *Understanding Sexual Violence: A Study of Convicted Rapists*. 1994. New York: Routledge.

The perception of victims being uncooperative was often linked with anger. Many victims of sexual violence are angry. They have a right to be. However, it often comes as a surprise to others. Many people, including nurses, advocates and law enforcement, often expect victims of sexually assault to cry or be hysterical, which is not always the case. That anger may not be directed at any particular individual, but if shown to law enforcement, could affect their response. The crux of law enforcement training is attaining control over unruly situations and angry individuals.

Anger seemed to also be a factor when the victim herself was not the person to report the rape. For example, the team reviewed a police report where a woman was raped by her uncle while she was passed out. Another member of the household saw it happen and called the police. The victim was awakened by law enforcement, still intoxicated, and told she had been raped by a family member.

*I went in to look at [the victim] and she was lying on the bed completely passed out. I could not rouse her by shaking her or by voice. [The reporting party] had covered her with the covers prior to our arrival. When I pulled the covers back, I could see she had on a white T-shirt with some blue writing and she was unclothed from the waist down. Her legs were spread open and her underwear had been pulled off and her pants were still partially around one leg. [The ambulance] was summoned to the scene as we could not rouse [the victim] and we were going to have her transported to the hospital for a sexual assault kit to be completed. When [the ambulance] got there, they were able to rouse [the victim] and she then became uncooperative with the officers and would not agree to go to the hospital and did not believe [the suspect] could have done this to her. Without her consent, there was not much we could do for her.*

DPD police report

Barriers to cross-cultural communication could further complicate interactions between Native women and non-Native officers. These issues are addressed more thoroughly in Gap #7. However, it should be noted that law enforcement may consider victims uncooperative if they don't fit the timeline and methods of the law enforcement institution. The team discussed how one aspect of this issue may not be a woman's lack of cooperation, but the officer's unwillingness to take the time to hear the story she is trying to tell. How much of that label is a woman's refusal to "cut to the chase" and give only the facts *as the officer wants to hear them?*

### **Education and Training**

When interviewing patrol officers, sergeants and investigators about how they learned how to conduct CSC investigation, they all said they learned the most by following the example of more senior officers. The audit team found that on an individual level, some officers understand that sexual predators will pick vulnerable women, but lack adequate training, resources or structure

within which to conduct investigations. Instead they are learning within a peer mentor system; learning from senior officers a broken model of sexual assault investigation.

As a result, the investigative response of some officers is hindered by a lack of information about the dynamics of sexual violence, and an absence of a modern investigative approach to this crime. For instance, a DPD investigator told interviewers that he has had “absolutely no sexual assault training since the academy”. He also said that he wished patrol had better training to interview victims because it would save time and resources. When asked what tools he had available to him when the suspect’s defense was that the victim consented, he acknowledged that consent defense cases are difficult to prove. He said he tries to establish her level of intoxication to determine whether she was too drunk to consent. Aside from assessing intoxication, he said he “goes with his gut” and “tries to get the full picture”. For example, he talked about checking with the victim’s peers to find out if she commonly goes home with men from the bar. He said he goes with a “gut feeling” and tries to read body language when assessing a suspect’s credibility. He said he will sometimes ask the suspect’s friends if it is common for him to take women home and, essentially, if they think he’s the kind of guy who will commit date rape. Once again, this approach is highly subjective and focuses primarily on the victim’s credibility rather than on corroborative evidence from the crime scene, witness statements, DNA evidence, or a thorough suspect interview.

#### **Administrative Practices/ Rules and Regulations/ Accountability;**

Because there is a lack of institutionalized methodology to address reports of sexual violence, individual officers conduct cases from their own frame of reference. The general order for the patrol response to CSC is vague and often confusing in terms of what information officers are expected to gather. There are generalized policies for how to conduct follow up investigations and case screening and assignment, but no guidance is given on the specific steps that should be taken in follow-up investigations on reported cases of sexual assault. As a result, the only protocols for investigating CSC cases are the same as those used in, for example, follow up investigation of property crimes. Informal administrative practices do guide how investigators conduct investigations, but this provides little consistency or accountability. There are no checklists to guide the actions of officers and investigators, and there are no risk assessments to assist officers and investigators in determining the victim’s safety. The audit found multiple examples in police reports where officers made their final determination on how far to take a case based solely on an initial interview with a Native woman who had experienced a recent assault.

When asked what tools officers and investigators have to conduct sexual assault investigations, particularly those where consent is the suspect’s defense, several officers talked about “going with their gut” as to whether they believed her story. It is human nature to make judgments and assumptions based on our own experiences, both good and bad. However, factors that make some

Native women vulnerable to rape must not be used to discredit them. As mentioned in other gap statements, it is crucial that sound policies and modern investigation practices are put into place to ensure that Native women receive a thorough and consistent response from law enforcement. Accountability and adherence to policies that do not allow for such value judgments will inevitably decrease the importance of women's perceived credibility.

### **How do we close the gap?**

The issues surrounding the perception of Native women's credibility are complex. Because it is so subjective, it is difficult to pinpoint exactly what would improve the situation. It is easy to recommend that law enforcement could benefit from training about vulnerability and sexual violence. However, training only goes so far. One of the themes that continue to emerge is the lack of consistent law enforcement response and accountability for following up with Native women who report sexual violence.

- General orders for CSC response should undergo revision, and include a police report checklist outlining investigative elements that are evaluated and approved of by a patrol sergeant. Revised protocols should borrow from those developed for responding to cases of domestic violence, and emphasize the need for officers to thoroughly describe the victim's and suspect's behaviors and demeanor, as well as corroborative observations and interviews with witnesses.
- General order for follow up investigation should be revised and include methods to increase oversight and accountability to the investigative sergeant.
- Thorough investigations should be conducted on a consistent basis. Identify and interview witnesses, gather evidence, and identify and interview suspects.
- The decision to decline investigation and charging should be accompanied by a documented, written explanation. There should be periodic review of these decisions, both by internal supervisors like the Lieutenant of the Family Crimes Unit and a multidisciplinary case tracking team.
- Education and training for law enforcement on vulnerability and sexual violence
- Law enforcement should receive training on using the best practice method of documenting sexual assault using the language of nonconsensual sex. Sergeants must hold officers and investigators accountable for using the language of nonconsensual sex.
- Any efforts to better track and monitor sexual assault cases of Native women should include special attention to factors that would increase women's vulnerability to violence such as homelessness and prostitution.
- Establish a case consultation team of law enforcement, prosecutors, advocates (including Native advocates), and medical experts. A primary mission of this team should be to address cases where credibility and consent are key barriers to charging.

**Who should be involved?**

Program for Aid to Victims of Sexual Assault  
Mending the Sacred Hoop  
Duluth Police Department  
St. Louis County Sheriff's Department  
St. Louis County Attorney's Office



**Gap #5: There is a lack of sexual assault-specific Native advocacy in Duluth.**

**How is it a problem?**

Even when an advocate is made available right away to a Native woman reporting a sexual assault, the likelihood that the advocate is Native is very low. PAVSA has no Native staff, and only one Native volunteer. Women in the focus groups indicated that having Native advocates and services specific to Native women was important.

*There were Native advocates, all women, who helped me. This made a big difference; they were really helpful, even coming to visit at non-business hours.*

Lisa, focus group participant  
[She received advocacy outside of our geographical area]

*As we began to close for the night, we passed out our business cards to all the women. Some of the women wanted to know if there was a support group for them. We talked about the groups at DAIP and PAVSA, but some of them want to meet separate.*

Audit team member, after observing the third focus group

*Several women asked about CAIR [the Center for American Indian Resources, tribal clinic in Duluth], and wondered what they have there.*

Audit team member, after observing the fourth focus group

Many of the women we spoke to had received local Native specific advocacy services for assistance with domestic violence. It was clear that they did not see those services as relevant to their experiences with sexual violence, so it did not seem to occur to them that they would use those services when they were raped. They clearly wanted advocacy specific to sexual violence, and advocacy that was relevant to them as Native women. Preferably, most of them wanted a Native advocate.

*There needs to be more Native advocates, more Native advocacy, there's not enough right now. Police can incorporate into their training to familiarize with different culture - they're smart in their field, but they need to know what they're looking for with Native women.*

Beth, focus group participant

*The police need a policy to have a Native advocate right on the scene, to have a woman with you as soon as possible, to help get the story out, encourage you.*

Irene, focus group participant

## What contributes to the gap?

### Resources/Linkages

Throughout the nation, the lack of Native-specific sexual assault advocacy is a problem that is just now starting to be addressed. Of the 22 tribal coalitions addressing violence against women in the United States, only two are specific to sexual assault. Fortunately for Duluth, one of them is in Minnesota (the other is in New York). According to the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC), there are 20 Native advocates in the state certified to do sexual assault advocacy.<sup>20</sup> Many Native programs consider themselves to be dual (addressing both domestic and sexual violence), but the historic reality is that in dual programs, sexual assault tends to get lost.<sup>21</sup>

As has been previously addressed, PAVSA has only one Native volunteer (with no Native staff or Board members). Prior to this audit, PAVSA had only a passing connection to Duluth's Native community. As a result, many Native women do not know about PAVSA.

While a number of wonderful Native advocates and programs work with Native women in Duluth, none of them systematically address sexual violence in Duluth.

- American Indian Community Housing Organization works on issues of domestic violence, homelessness, long-term homelessness, is developing an American Indian Center for the city of Duluth, and is beginning to address trafficking of Native women and girls. They do not have a sexual assault advocate or any advocates who are trained in sexual assault advocacy.
- Wren House is a transitional living facility for chemically dependent American Indian women.<sup>22</sup> They do not have staff trained in sexual assault advocacy.
- The Fond du Lac reservation, approximately 20 miles from Duluth has a sexual assault advocate on staff. Unfortunately, it is difficult for her to get to Duluth often enough or quickly enough to be readily accessible to Native women who have been raped. The tribal clinic has a branch in Duluth (the Center for American Indian Resources), but they do not have any programming there that addresses sexual violence.

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<sup>20</sup> There is 1 in St. Paul, 2 in Minneapolis, 1 in Brainerd, 1 in Duluth, 1 on the Mille Lacs reservation, 1 working for Upper and Lower Sioux, 1 on the Bois Fort reservation, 5 on White Earth, and 7 in Red Lake.

<sup>21</sup> Bois Fort, Red Lake, Fond du Lac, White Earth and Mille Lacs reservations all have dual programs; Upper and Lower Sioux have a sexual assault program (with no DV program - very unusual).

<sup>22</sup> An almost universal underlying issue for chemically dependent American Indian women is that they are struggling with issues of sexual victimization. (Henry, Tribal Responses to Violence Against Women, 1998, presentation to Federal Bar Association Conference, Indian Law Section)

- The Domestic Abuse Intervention Program has a Native women's resource advocate who advocates on behalf of Native battered women. They do not have a sexual assault advocate or any advocates who have been trained in sexual assault advocacy.

### **How do we close the gap?**

PAVSA should increase the number of Native women involved with the program as volunteers, Board members and paid staff. The Minnesota Indian Women's Sexual Assault Coalition is aware of the need for more Native advocates, and is in the early stages of developing a 40-hour certification training specifically for that purpose. PAVSA should collaborate with MIWSAC to make that training available and accessible in Duluth as well as:

- Recruit Native Board, staff, and volunteers at PAVSA
- Install some affirmative action for Native hiring
- Provide a Native women's support group, facilitated by Native women
- Create an outreach plan to help broaden awareness of PAVSA's services
- Include in law enforcement protocol an appropriate way for police to find out if the woman to whom they are responding is Native, or if she would prefer a Native advocate.
- Create a support/healing group for Native women
- Work with MIWSAC to create a new version of the 40-hour sexual assault advocacy training that is geared toward Native women already working in advocacy in and around Duluth. Schedule it so that they will be able to attend and complete it.

### **Who should be involved?**

Program for Aid to Victims of Sexual Assault  
 Duluth Police Department  
 Minnesota Indian Women's Sexual Assault Coalition  
 American Indian Community Housing Organization  
 Wren House  
 Fond du Lac human services  
 Domestic Abuse Intervention Programs





**Gap #6: Key aspects of safety and danger assessments have not been well-developed in the law enforcement response to sexual violence.**

**How is it a problem?**

Native women who have been raped generally articulate their safety needs as being both physical and emotional: they are primarily afraid of retaliation for reporting, which might include physical or sexual assaults, even homicide. Women also fear social threats such as harassment from mutual friends or family, being fired from jobs, or being ostracized.

*He threatened to kill me if I told anyone, and said that no one would believe me anyway. He would say I was meant for him and that he was gonna marry me...*

Clarisse, focus group participant

*The assault happened at his house. I don't know his last name. I was at the CHUM [homeless shelter]. He knew I was vulnerable... he's still walking the streets, and I see him all the time.*

Judy, focus group participant

*The police arrived and started to interview me with my ex-husband in the room. I didn't want to talk in front of him and asked the police to give me a ride to my friends but they didn't want to.*

Stacy, focus group participant

*I didn't want everyone in town to know, spreading rumors, gossiping... I was afraid I would be pregnant from it [the rape]... scared of HIV; I was too scared to take the test.*

Monica, focus group participant

*Nobody ever suggested counseling or therapy, but now I think it would help. At this point I have a boyfriend, but I trust absolutely nobody.*

Brenda, focus group participant

Risk and safety assessments, developed and refined over the past thirty years, are now a standardized component of the law enforcement response to domestic violence. Ask any police officer in Duluth how to assess the safety of a battered woman, and chances are she or he will be able to rattle off a list of criteria they use to determine a woman's safety needs. Regrettably, we are not as prepared to assess the risk and safety needs of a victim of sexual assault. Interviews with patrol officers found that some police, without any better tools at hand, try to use domestic violence assessments when responding to sexual assault reports.

*When I go on some CSC call, I'll pull the questions from the domestic violence checklist. I made my own little cheat sheet with these DV questions.*

DPD Patrol officer

Many police reports do not document any attempts by officers to assess a sexual assault victim's safety concerns. Even those in which the officer identified or documented information that might help to assess for safety, as in the excerpts above, did not document that anything was done about it. For instance, in one report, it is noted that the suspect lives near the victim, but the report did not include suggestions for resolving this safety issue—steps that the victim, advocate, or officer could take. For example, the officer could have talked to the victim about finding a different place to stay for a while, or they could have discussed the possibility of a harassment or restraining order against the suspect.

Native women survivors of rape are also much more likely to “cooperate” with the police, or even go to them in the first place, if they feel that their emotional and spiritual safety needs will be addressed in some way. Thus, whether or not Native women are safe, or feel safe, will affect our ability to hold perpetrators of sexual violence accountable for their actions.

It may not be the officer's job or within the scope of law enforcement's limited resources to attend to a victim's emotional safety. However, the officer's job will be much more easily accomplished if that safety is accounted for. Sexual assault advocates can partner with law enforcement in this effort—both by attending to a victim's emotional needs, as well as offering more sustained follow-up by filing for restraining orders, locating alternate housing, etc. While the emphasis of advocacy will always be a woman's needs—regardless of her interest in participating in criminal proceedings—victims of sexual assault are much more likely to be a part of an investigation and subsequent prosecution if doing so does not compromise their own safety. This need for an enhanced relationship between law enforcement and sexual assault advocacy is further explored in Gap #2.

### **What contributes to the gap?**

#### **Mission, Purpose and Function**

Law enforcement generally must not only pursue the investigation and processing of crime, but more generally, attend to issues of public safety. Even in those cases when no crime will be charged after an investigation is chargeable, there often remain significant public safety issues. Similarly, when responding to a domestic violence call, even if probable cause were not established, an officer is likely to offer a woman a ride to a battered woman's shelter as a safety measure.

It is common when examining issues of safety and sexual assault to put the onus of creating safety onto victims, or potential victims. Women are expected to take steps to ensure that they are safe

from sexual violence, or to find safety after being sexually violated, but little or no focus is placed on the behavior of perpetrators, or the community that accepts the behavior of the perpetrators.

As described in Gap #4, a victim's perceived credibility seemed to foreshorten standard investigative practices. Similarly, lack of credibility seemed to lessen the need to explore a woman's safety needs. Consider these two scenarios in which a woman's lack of credibility overshadowed an opportunity to explore significant safety issues.

*For instance, a woman claimed she had been raped. According to the suspect, she had actually traded sex for crack. In that case, we would search for DNA to show that the sex occurred, but then looking to prove force or coercion we would look for threats, weapons, etc. "I will destroy you," may not be a threat, more "he said-she said." Are there injuries, and it must meet elements of the crime. Barring physical evidence, credibility of the witness becomes important.*

DPD police officer

*An example of a low priority case might be if a woman goes to the bar, gets drunk, goes home with a guy, then says it's rape to explain it to her boyfriend – that's hard to prove. There are a lot of date rape cases that go nowhere.*

DPD police officer

### **Administrative Practices**

Interviews with officers from the Duluth Police Department demonstrated that they do not have clear guidelines on how to assess a sexual assault victim's safety. They were more likely to talk about "discretion" or how case-specific sexual assaults are. We noticed that in the absence of clear guidelines, many officers end up having to rely on discretion, or just "go with their gut".

Some said they assess for safety if the victim and perpetrator know each other. However, they are then likely to fall back into the familiar territory of domestic violence assessments. While two-thirds of all sexual assaults are committed by someone the victim knows, just because the victim knows the perpetrator does not mean that an abusive intimate partner relationship exists.<sup>23</sup> Domestic violence assessments were created around the reality of battered women who suffer ongoing patterns of violence and control. Victims of sexual assault, on the other hand, are likely to be targeted by a predator for a one-time assault. As indicated by the women in the focus groups, rapists are likely to make threats of further harm if she tells, and there is little in place to ensure her safety is she comes forward.

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<sup>23</sup> According to U.S. Department of Justice. *2005 National Crime Victimization Study*. 2005.



The audit found that the police have no tools to consistently assess for the safety of sexual assault victims. Officers talked about the importance of open communication with victims, which is certainly a good approach to conducting interviews because it may allow more opportunity for women to express their safety concerns. However, much is likely missed if that is the closest thing they have to a safety assessment tool.

### **Rules and Regulations/Resources**

It is rare for the Duluth Police Department to take into custody a rape suspect who has not been charged with a crime. When an individual is taken into custody, the prosecution has 36 hours within which to either formally charge that person with a crime or release him or her. The majority of law enforcement officers and prosecutors agreed that arresting someone for CSC soon after they have been accused is not often the best solution because of the time constraints it puts on the officers to get them charged; given current resources with the Duluth Police Department, 36 hours may not be enough time to conduct a thorough investigation.<sup>24</sup> While this makes sense, it may conflict with the best interest of the victim, whose safety may be compromised if the perpetrator has continued access to her.

### **How do we close the gap?**

Officers investigating reports of sexual assault need practical methods for assessing the safety of sexual assault victims. The lack of attention that is paid to the safety of Native women who report sexual assault has become invisible to our collective criminal justice response because no one is responsible for assessing it.

While domestic violence and sexual assault are generally separate crimes and require separate responses from the criminal justice system, we can learn from the evolution of the law enforcement response to domestic violence. The risk assessment for domestic violence is so useful to officers that they use it in situations where it does not apply. It could be used as a model. Similarly, the external monitoring of domestic violence reports has provided us with more opportunities to hold offenders accountable. We can learn from that. Many of the officers the team interviewed said a laminated card, similar to the one used when responding to domestics, would be useful when responding to sexual assault.

The risk assessment should include, but not be limited to:

- Whether threats have been made

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<sup>24</sup> That means that a formal complaint must be completed and the suspect must appear before a judge within 36 hours. If that does not happen in 36 hours, they are released from jail. They can get an extension up to 48 hours if needed.

- Whether he knows or has access to where she lives
- The level of violence used in the assault

Because sexual assault investigations are conducted over a longer period of time, it may be important to assess her safety needs multiple times. Her safety might not be in jeopardy when she first reports, but may become so after he knows she has reported the assault. Information from these safety assessments may be useful in several ways. An understanding of what level of risk exists in a case may help officers better identify the most dangerous and volatile perpetrators, which could help busy investigators prioritize their cases. Risk and safety information may also assist officers connect victims with the resources they need the most.

Once the new assessments are developed, it will be important to build in accountability to make sure they are being used consistently and there must be ways to evaluate their effectiveness. A tracking and monitoring system that can be used to assess the criminal justice response to reports of rape of Native women will be an essential tool in improving the safety of all Native women.

- Conduct focus groups with survivors of sexual violence to inform the design of a safety assessment
- Create a pocket card sexual assault tool for use in by patrol and FCU Investigators; this will help enable them to determine how best to keep the victim's safety at the forefront of the case.
- Create protocol to require police to use the assessment
- Develop a tracking and monitoring system to evaluate the effectiveness of the new assessments
- Arrest suspects of rape. Prosecute them. Seek appropriate sentences.
- If there is no arrest of a suspect of rape, have mandatory inclusion in the police report a reason why. Same for if they don't even talk to them or look for them or ask for their name or notice that a crime occurred.
- Use safety assessment information within case consultation for individual outcomes, and also as a larger tool for case tracking and monitoring.

### **Who should be involved?**

Duluth Police Department  
 St. Louis County Sheriff's Office  
 Program for Aid to Victims of Sexual Assault  
 Mending the Sacred Hoop



**Gap #7: Native women are negatively affected by the systems' efforts to be "color blind".**

**How is it a problem?**

The interaction between many Native people living in Duluth and the Duluth Police Department (DPD) is both complex and strained. The problem is complicated to unravel; while all of the Native women in the focus groups said their race plays a negative part in how they are treated by law enforcement, few of the officers acknowledged that race is a factor in their response. In fact, the Native women in our four focus groups who reported the assault to Duluth police had such bad experiences that, if they were subsequently raped again, they did not report it.

*It's a stereotype - We're Natives, we're drunk all the time.*

Miranda, focus group participant

*If it's a white woman, they'd have responded right away.*

Clarisse, focus group participant

*Alcoholism is a disease – show compassion. It's such a racial thing in this town.*

Monica, focus group participant

In contrast, for example, we asked a DPD patrol officer, "What differences have you experienced when working with Native women who have been raped?" The officer shook her head, "No" as the question was being asked. She said, "I can honestly say, no." She said she doesn't treat them differently and just doesn't "think to go there." She said she does not interact with many Native victims of sexual assault. We explored this with her further, but the officer did not know of any way in which Native women experience police intervention differently than non-Native women.

Her approach to this issue is representative of almost every police officer we interviewed: they let us know that they do not pay attention to race, that they treat everyone the same.

*I grew up near Fond du Lac and spend a lot of time there – I don't treat anyone differently.*

DPD officer

*[Racism] is in the eye of the beholder. I can't help my race. I'm not racist.*

DPD officer

*[When asked, "Do you think people get treated less fairly based on race?"] Things have gotten better, but we're never going to get rid of racism. Have to put it aside and do the job.*

DPD officer

The Audit team acknowledges that race and racism are controversial and sensitive issues, especially in public institutions like law enforcement. We appreciated that—to a person—the law enforcement personnel we interviewed and observed share our interest in race equity.

However, the differences between the experiences of Native women and the equitable intentions of the system are striking, and contribute to the tension and mistrust between the Native community and the Police Department. As a result, while treating everyone the same is an admirable approach, “colorblindness” drives real or perceived inequities to the margins, leaving them unexplained and unsolvable by those of us in a position to change our practices.

### **What contributes to the gap?**

#### **Concepts and Theories/Accountability**

When interviewing officers and reviewing police reports, the team observed that race is only acknowledged indirectly. In many of our interviews with law enforcement, there seemed to be an unspoken sentiment that recognizing differences could be perceived as racist. There has been such a strong movement towards “undoing racism” that many people are uncomfortable acknowledging that differences exist for people of different races and ethnicities. Even though it may stem from good intentions, this shift may in fact be leading us to a new level of cultural *incompetence*.

The officers the team interviewed were all white, primarily male, and clearly indicated that they do not think that race affects how they respond to calls. However, many of them also recognized that differences do exist for Native women and Native people in general. Some said that poverty is a huge issue for many Native families in Duluth. One patrol officer said that “we don’t have true poverty in this country, except on the reservations.” He said he thought the rates of sexual assault of Native women were probably much higher than the statistics claim, but went on to reiterate that while he could not speak for other officers he doesn’t “look at race.” So, while he acknowledged that differences do exist for Native women, he does not alter his response to accommodate those differences. The team began to notice that certain terms were repeatedly used by many of the officers, both in interviews and in police reports, in tandem with their descriptions of their interactions with Native people.

“Uncooperative”; “Intoxication”; “Lack of trust”; “Credibility issues”

Some of these issues are explored in Gap #4. One that is relevant here is the lack of trust many Native people in Duluth have with the Duluth Police Department. As has been mentioned earlier, many Native people have grown up with fear of the police and do not feel they can turn to them for help.

### Education and Training/Resources

According to the Chief of the DPD, part of the problem is that many of the people hired onto the DPD are white, middle-class men with little experience with people of color, except for those who are in crisis. He said that the DPD has emphasized hiring more people of color and women to help diversify the department and was happy to report that they had hired their first African-American female and Asian-American female.

Until recently there has been little education on the Native community in the DPD's law enforcement training. Training on cultural competency was last offered a number of years ago, but inquiries into this training were often met with rolled eyes or outright disdain from officers, who generally acknowledged that they could benefit from some education, but that the current training is ineffective.

New officers attend a 6-week in-house academy, part of which includes cultural awareness training.<sup>25</sup> Admirably, the Chief of the DPD estimates that approximately 50% of his staff has attended anti-racism training over the last eight years. At Fond du Lac (FDL) College, where the vast majority of new recruits for DPD get their education, there is a class available that is taught by two or three Native instructors, but that class is only mandatory if you are getting the 2-year degree. Many new DPD hires have four-year degrees, and only attend FDL for basic training. Therefore, they never receive any specialized training on working with the Native community.

The Chief of the DPD said that in the past, officers had to take a three to four hour class every month on various topics, but that their department no longer has the resources for this. Police are now required to receive 48 hours of continuing education every 3 years, but state mandated training, such as weapons licensure, eats up the bulk of those hours. There are no requirements for continuing education for sexual assault response, much less anything related to cultural understanding.

It is unknown how effective these past trainings have been. One patrol officer described a two day, cultural competency-type training at Fond du Lac. He referred to it as a "sit-around" and that people could choose to participate. He said he "went for two days, looked bored as hell and left," although he took what he could from it. This is unfortunate because police officers may not recognize that rocky interactions can stem from a lack of understanding of one another. For instance, the audit team had multiple discussions about how circular storytelling is common among Native people. Officers, however, may see that kind of storytelling as evasive and indicative of untruthfulness.

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<sup>25</sup> The academy was recently extended to 10 weeks.

According to a former sergeant from the Duluth Police Department, in interviews with Native people “there seemed to be some difference, some kind of power dynamic in play”. He said that Native people being interviewed did not give him a lot of eye contact and that they were often soft-spoken. He acknowledged multiple times that race needed to be part of cultural competency training.

It is worth mentioning that the officers the team interviewed consistently expressed their desire for more training on a variety of topics. However, whether it is for investigative techniques or cultural education, a consistent message from the officers interviewed was that it had to be provided by someone with a law enforcement background.

### Linkages

Building new relationships and mending old ones may be what is most important for officers to gain a true understanding of Duluth’s Native community. Right now, there seems to be a culture of mistrust and stereotypes from which no one can benefit, although this very process has begun to yield changes. The Deputy Chief of Police; Head Criminal Prosecutor and Supervising Deputy for the County who participated in the audit all made new connections over this two-year period. The three participated in the ceremony described in the introduction and have said it had a powerful affect on their personal and professional lives. The Deputy Chief even found himself in a round dance at his first pow-wow at the 11<sup>th</sup> Annual Indian Nations Tribal Conference in Palm Springs, CA where he and 3 other audit members presented our process.

Prior to the audit, positive relationships did exist. Some of the deputies the team met throughout the audit process had respectful relationships with other officers from Fond du Lac and the Chief of Police of the DPD has begun to attend meetings of the Indian Commission. However, while this is a start, it should not stop there.

### Administrative Practices/Rules and Regulations

Officers do not always know the race of the person to whom they are responding. It is not mandatory to document race in SHIELD, the computer system used by law enforcement. When asked if he ever noticed any differences between dealing with Native versus non-Native victims, the retired Sergeant of FCU said that with the exception of women they knew personally, they did not identify women by race. He said they did not look at race until the DPD began using SHIELD. He also could not remember any cases involving Native women that had resulted in prosecution, but once again said that, at the time, it did not make sense to notice race, which speaks to how “there is something wrong with our criminal justice system”.

Race is only documented if the officer or dispatcher knows, and asking about race is not required of practitioners. When brainstorming possible solutions to this problem, the team discussed the

possibility that requiring that officers or dispatch document the race of the parties could have unintended consequences, such as perceiving the very question as racist. Avoiding this type of discomfort or misunderstanding appears to be part of what has led to the current situation. Current practices are to not acknowledge race at all, which also carries unintended consequences. Because race is not documented consistently, it is virtually impossible to recognize trends from a statistical standpoint. This project has amassed a large quantity of qualitative data, but a long-term solution for tracking and monitoring is needed to learn and strengthen the response.

### *Regarding the County Attorney's office*

It has been stated several times that a thorough examination of prosecution is needed, but was beyond the scope of this project. The audit team recommends that the County Attorney's office examine its own approach to acknowledging racial differences. When we asked prosecutors about cases involving Native women, they could not remember any for many years, but did not know if that was a gap of memory or an institutional gap. We attempted to locate prosecution files regarding Native women, but this proved to be nearly impossible, partially because they do not document the race of parties involved in cases. When we could not identify any sexual assault cases against Native women that had resulted in charging and prosecution, the prosecutors were stunned. Because their organization is not set up to capture this information, it is not likely that individual practitioners would notice a lack of justice for a particular racial group.

### **How do we close the gap?**

Attempts to ignore race and racial dynamics stem from well-intended efforts, but may actually exacerbate racial tensions between Duluth's Native community and the Duluth Police Department. Efforts to acknowledge and address differences that exist for Native women who report sexual violence to law enforcement must be conducted with utmost care. Leaders in Duluth's Native community and Native women who have experienced violence themselves must be meaningfully involved. Otherwise, the results could be disastrous.

- The DPD should expand its dialogue with Duluth's Native community. Some communities have held listening sessions where the police invite disenfranchised communities to speak of their concerns. There must be methods for community members to address issues that require attention.
- Documenting race is an important element of a sound tracking and monitoring system. Tracking and monitoring of sexual assault cases should be conducted by the DPD and St. Louis County Attorney's Office (SLCAO). Both agencies should seek out best practices and community input on the best methods to document race as well as work with the currently funded OJP project through PAVSA to create a tracking and monitoring system.



- Regular training on cross-cultural communication between Native and non-Native people should be held for all DPD and SLCAO staff. Facilitators of the training must include Native trainers, as well as law enforcement and prosecution. Best practice models for community policing should be researched in order to find the most effective means to build and repair relationships between DPD and the Native community.
- The cultural competency training at Fond du Lac should be reevaluated. Specific information on racial and class dynamics in Duluth should be included.

**Who should be involved?**

Duluth Police Department  
St. Louis County Sheriff's Office  
Program for Aid to Victims of Sexual Assault  
Mending the Sacred Hoop  
American Indian Community Housing Organization  
Fond du Lac College  
St. Louis County Attorney's Office