



SEXUAL ASSAULT
INVESTIGATION CHECKLIST

John Threet, Prosecuting Attorney
4th Judicial District of Arkansas

This page intentionally left blank.

*T*his checklist was inspired by a two-page checklist done by the Arkansas Commission on Child Abuse, Rape and Domestic Violence and used with their permission. They modified a list from the Northampton District Attorney's Office. I modified it with the help of the Prosecutors and the Victim Assistance from my office, the 4th Judicial District in Arkansas. I also used a lot of advice from police officers. Most suggestions are derived from police and prosecutors who have seen the issues contained in this checklist. Most of the specific suggestions on ways to successfully investigate sex crimes were learned from police officers here in Washington County.

I hope this is beneficial in some way in helping in the investigation and prosecution of sexual offenses. If anyone has any comments or suggestions, please feel free to let me know.

JOHN THREET
4th Judicial District Prosecuting Attorney

The Arkansas Coalition Against Sexual Assault is providing this checklist on its website and to law enforcement agencies with thanks to John Threet. The material refers specifically to the 4th Judicial District of Arkansas but should be a valuable model to all law enforcement agencies. Information on other rape crisis programs in Arkansas and sexual assault coalitions in other states is available on the ACASA website, www.acasa.us.

This project was supported by Award No. 09915-9SD awarded by the Office on Violence Against Women, U.S. Department of Justice.

This page intentionally left blank.

INDEX

In General	5
ASAP	6
Documentation of Physical Injury	8
At SARPA, Healthcare Facility or Children's Safety Center	8
Follow-up Investigation	9
Police Report	9
Interview of Victim	10
Interview of Suspect	11
Arrest	13
Juvenile Law	13

This page intentionally left blank.

IN GENERAL

1. Investigate a sex crime as if it is any other crime (robbery, theft etc..) as far as evidence needed for a conviction is concerned.

If you wouldn't make an arrest in a theft case based on the same amount/type of evidence collected, don't make an arrest in a sex case. Just because it is a sex offense doesn't make the case automatically stronger. Would twelve people off the street agree in the guilt? If not, further investigation is needed. Be overly thorough with sex offense investigations because physical evidence is generally slight so any corroboration is a must. As soon as an arrest is made, witnesses clam up and evidence begins to disappear. It is easier to turn over every stone before an arrest than after.

2. Don't assume guilt. Assuming guilt creates several problems.

Among the problems created is investigators sometimes have a tendency to ignore other potential witnesses and evidence because the assumption is the suspect is obviously guilty. "If everyone and his dog knows this guy is guilty, why spend the time on these other witnesses?" The answer is that the defense will spend the time and often before we can get to them. It also can damage the jurors' perception that the law enforcement officer is objective and unbiased.

It is vital that investigating officers maintain a professional and objective appearance throughout the entire investigation. If a juror believes that the officer was acting in the role of an advocate instead of an impartial investigator seeking the truth and evidence, it opens the door for doubt about the integrity of the investigation and opens the door for too many defense arguments and cross-examination questions.

3. Call or send reports for a review. Whenever in doubt, call our office.

At a minimum, call our office and talk to a prosecutor. We want to give input and it is our job. If there is no present danger to the victim nor danger that the suspect will victimize someone else, then there is no need to make an arrest if you have any doubts as to the strength of the case....call our office or send it over for a review by our office.

If any agency is lacking prosecutor phone numbers outside of their office numbers, call Chris Williams at our office for a list of contact numbers. Probable Cause does not equal Beyond a Reasonable Doubt. It's unethical for our office, under ethics standards, to begin a prosecution or continue one if there is insufficient evidence to sustain a conviction.

4. Make sure that cases involving a child victim are given even more attention to detail and any corroborating witnesses or evidence.

Photographs are especially important in a child victim case to back up any scene or item that the child describes. The Children's Safety Center is open 24/7 at 479-872-6183 and has extensive training in interviewing any child under age 18. The Center sends all of their interviews to our office and we then critique the interview for them.

The investigating officer stays and views the interview while it is occurring to give input and additional information. The Safety Center interviewer needs the officer's knowledge of the situation to do a proper interview and clarify and answer questions. Remember, although we all want to prosecute anyone who abuses a child, the strength of the case depends upon the strength of the evidence. If you wouldn't make an arrest in a case that has a 31 year old victim based on the evidence you have, your case isn't made stronger by the simple fact that a victim is 4 or 5 years old. The fact that you believe the suspect did it, doesn't mean he did it. The actual facts that can be proven make that determination.

The Safety Center also video tapes all victim interviews. While not admissible in court for the state (almost never) it is helpful to assess the demeanor and reactions and sophistication levels of the victim and is helpful in preparing the victim and in making charging decisions. Also, remember in almost every situation, a recorded interview of the victim and witnesses isn't admissible in court so don't tell them or their parents that it is. Also, don't tell a victim that no one will ever know what they say. They will remember that when their statement is used.

Remember, the Children's Safety Center is not a substitute for the investigator. The officer who is assigned to investigate the case is the one who is responsible. The Safety Center is designed to help and assist the officer investigating the case. A Safety Center interview is just one part of an investigation.

5. If your department breaks down enforcement and investigation among different officers, always assign sex crimes to a detective or whoever is designated as the officer who is responsible for investigation and follow-up in your department.

It is VITAL that interviews and investigation are done immediately before the defendant and/or his attorney start their follow-up. Statements and evidence are gone too quickly and easily in sex offenses.

6. Always think of any possible avenue for evidence whether it backs up a story or destroys it.

Facebook, Myspace, texts, computers, cellphone tower records, jail calls, store and club video, ATM video, photos on cell phones, etc....are now places that evidence, statements and pictures can be found that aid an investigation even if by themselves don't prove guilt or innocence. If you have to debate whether to get a warrant, get a warrant. Always err on the side of caution. Waiting can lose cell phone tower records, store videos and the like.

7. Warn the victim/witnesses that things they publicize after the incident will be looked at by the defense.

Facebook comments and photos will be viewed by the defense for ANYTHING that could possibly put a victim or witness in a bad light even if it has nothing to do with the case at issue. Comments to friends and relatives can be damaging as the defense may interview those people for any comments or actions post incident. Let them know, for their own protection, that everything they post will be looked at so be careful.

ASAP

1. Make sure the victim is safe.

Make sure the victim is taken to a healthcare facility or contact SARPA at 479-927-1025 if there is any chance to collect physical evidence and to do a physical exam on the victim. SARPA handles exams for any victim 18 years or older but SARPA does not do interviews.

2. Take custody of ALL physical evidence that may contain DNA.

If offender ejaculated, collect any items that may contain bodily fluids: defendant's clothing, victim's clothing (collected by SARPA or hospital if victim taken in), sheets, pillow cases, etc.. items that may contain bodily fluid. The victim may have changed clothes so both sets of clothes must be collected. Make sure wet items are collected in paper bags. Do not use plastic for any DNA or bodily fluids evidence. Do not forget to collect any items that the suspect or victim used to clean themselves (toilet paper, tissues, towels, etc.....).

Even if the suspect admits to sex, but says it was consensual, get the evidence. The suspect's statement could get suppressed, the suspect may change his story, and a thorough investigation allows proving the case as conclusively as possible. Also, make sure you document where the items are found and label and photograph those items so there will be proof of what item was found where.

3. Do not forget to check out text messages.

Getting text messages with phone companies varies and are usually not kept long but try and get them. Also, photographing the text messages if there is any statements on them during any relevant time period or to/from any involved witness.

Text messages can be vital, especially in cases where the victim or suspect claimed they were too intoxicated to know what was going on and often there will be incriminating messages left. Do a consent to search "Phone Dump" on the victim's phone because some text messages could be deleted. If a victim doesn't want to share her text messages, there could be a problem.

4. Interview any possible witness, whether it is an eye witness to the event or a witness who has knowledge about either the victim or the suspect.

Some witnesses may be able to corroborate the victim's account of the scene. For example, a neighbor may have seen the defendant park in the victim's driveway at 8 instead of 6 as the defendant stated. The defendant may claim it was consensual but a neighbor may state she heard the victim yell "stop" from her apartment.

A lot of this type of information is necessary to collect prior to interviewing the suspect. If you wait to interview witnesses, that gives the defendant or his attorney the opportunity to get to the witness first and allows the defendant to sway witnesses from the truth. It will also mean that the suspect will know far more facts than you will when you interview him.

5. Always attempt to interview any witness who has information about how the suspect and victim were acting before and after the incident.

Have victims, suspects and witnesses explain street terms like “hit it”, “did it” and “hooked up”. Even if you are 100% certain what the person means by the term, ask them to explain it. By the time it rolls around to trial day, you will be surprised what they say the terms meant. So have them explain it when they use it.

6. Photograph the scene, evidence, the suspect and victim if possible.

Photographs will back up one story or the other. Photographs of the scene are important to allow a jury to see the places and items that are described by the witnesses and are especially important with child victims. If there are no photographs, then each juror uses his own imagination to recreate the scene and what happened based on that imagination.

Make sure the objects in photos are labeled so it can be proven what is in the photo and where it was located. Once, a Springdale officer took photos of indentions in the carpet where an easy chair had been moved to corroborate the victim’s story of a forcible rape where the suspect had pushed the victim into the chair. I thought that was great and argued it during the trial.

Photograph with context in mind. A spot of blood on the door takes on much more meaning when there is also a photo of the entire door and where the door is located in the room. It can also corroborate the victim/witnesses’ stories.

Draw a diagram of the overall scene. This will help anyone who picks up the report in understanding the events. Children have difficulty remembering days and time, but can describe surroundings.

7. Collect any items that tend to corroborate or negate that the incident occurred.

It is always better for us to find any evidence to show the suspect didn’t do it, than for the defense to find it after arrest and prosecution has begun. We are required by law to turn over to the defense any evidence that shows the defendant may be not guilty of the crime. We are seeking truth and facts, good or bad. No one wants an innocent person to be arrested and prosecuted, ever.

8. Interview any witness to whom the victim reported the sex crime.

Ask for all details as well as the demeanor of the victim while reporting. Record witness statements whenever possible to lock in their story and to get the facts. Make sure you have good contact information on witnesses, victims, suspects and complainants.

Sometimes more than one phone number and address is necessary like getting a relative and work place info from your subject. It is amazing how many phone numbers and addresses turn out to be false if a subject is just asked for one phone number or address. Giving one false name, number and address is easy...asking for multiple ones usually trips up a liar. Many times in reports, a name of a witness is listed and no contact information is given. Therefore the witness, with great information, is lost forever.

9. School records can sometimes be used to determine the relationship between the suspect and the victim.

Also, school teachers and counselors can often shed some light on the victim’s account by explaining a change or lack of any change in behavior or work.

DOCUMENTATION OF PHYSICAL INJURIES

- 1. Specifically ask the victim and suspect if he/she suffered any physical injury.**

Photograph any injury possible using as much modesty as possible. Follow-up photos may be necessary for bruising that may show up later. If too busy, get someone to do the follow-up photos. It can really have an impact on the case when a photo or report shows just some redness and then 2-3 days later the massive bruising shows up. Include descriptions in your report of any injuries the suspect or victim claims. Photographing in sexual assault cases is as important as it is in battery cases.

- 2. Ask about any scars or tattoos that a suspect/victim may have that aren't readily visible and photograph all whether readily visible or not.**

AT SARPA, THE HEALTHCARE FACILITY OR CHILDREN'S SAFETY CENTER

- 1. SARPA does not interview, but does physical exams, photographs of the victim, rape kits, and gathers some info from the victim throughout the course of the exam.**

They can be contacted 24/7. If at a hospital, ask the victim if they would like to have SARPA contacted for at least counseling purposes.

- 2. Get names and contact numbers for any healthcare providers who deal with the victim and include them in reports.**

Nurses often spend the most time with the victim and have useful statements that become even more important if the victim hedges on her story later.

- 3. If possible, have the victim sign a release for medical records.**

It is often extremely difficult to get a victim back in to sign a release and often simple to get it done upfront while the victim is still at the facility.

- 4. If a rape kit is done, make sure you are given all of the paperwork especially any paperwork or names of people involved in the chain of custody requirements for the rape kit.**

Always include in your report the names of any hospital employees who deal with the victim or any of the evidence. Later, it is often very difficult to track down who did what. It has to be done for chain of custody of any of the evidence. Also, a victim or suspect will make spontaneous utterances to hospital personnel and we will need those witnesses.

- 5. The Children's Safety Center has a SANE certified person who does the physical exam and photographs.**

FOLLOW-UP INVESTIGATION

1. **Get 911 calls.**
2. **Take rape kit to the crime lab ASAP.**

Delay means a delay in receiving the results and can cause a delay in the trial. The sooner the evidence is in, the sooner we know where we stand.

3. **Make sure a copy of the entire file is turned over to the prosecutor.**

Our office is legally responsible for ANYTHING the police have even if we don't know that it exists. All statements, names, whatever...has to be turned over to us as soon as possible. Waiting to turn over evidence to us just gives some defense attorneys an argument that we're hiding evidence. Sometimes we find out just days before a trial date that there is some officer's narrative that was never turned over or a statement from a witness. We are required to have it and turn it over. Make sure we get any new evidence or statements from a continuing investigation ASAP even if the arrest is already made.

POLICE REPORT

Most of this is already covered in the other sections. Detail all investigative steps taken. Include only the facts. Do not include conclusions and editorial comments. Often an officer has great editorial comments and conclusions, but tell them to the prosecutor. Don't put them in a report. An investigating officer must be seen as an objective and professional fact finder or it is just giving the defense cross-examination material and closing arguments. An investigator should not be seen as having a stake in the outcome, only that it is a thorough investigation and that the truth comes out.

INTERVIEW OF THE VICTIM

1. While interrogating the victim is not appropriate, a neutral, fact finding interview is very important.

Gathering as much detail as possible is vital. DETAILS! DETAILS! DETAILS! No matter how small you may think some detail is, it often times is critical. Also, if you cover all of the details the first time, it will cut down on the number of interviews needed later.

Refrain from multiple interviews, especially with children. Phone a prosecutor and check to see if the prosecutor feels additional interviews are necessary. A prosecutor can many times follow-up with questions when meeting with a victim prior to the trial date. Recording a victim prevents arguments later as to what the victim actually said. The victim can't claim "that's the officer's interpretation of what I said" if it's recorded. Too often the defense can trip up a victim and/or officer because there is no recorded statement, only an officer's account of what the victim said months earlier and the victim can't recall verbatim what she said.

2. Again, and it can't be emphasized enough, be a neutral and detached investigator, not an advocate.

You advocate for the truth, wherever it may lead. Do not tell a victim what the outcome will be because no one knows. Strength of case and evidence is the #1 determining factor in what will happen. Do not push a victim into a decision one way or the other. If you do, the victim may change his/her mind and hate you for pushing one way or the other.

Allow the victim to decide. It also will look like the victim was hesitant and it appeared that nothing criminal may have happened but she was pushed into a story or action. Do not tell a victim you believe him or her. You can be supportive without losing objectivity. You must be neutral and detached and your opinion that the victim is telling the truth may not be backed up later and allows the defense cross-examination material on your bias.

3. Ask follow-up questions regarding comments that appear to be contradictory.

Be more concerned about the facts and proving the case than whether the victim wants to talk about a story that doesn't make sense.

4. If explanations are vague or hard to understand, ask for clarification.

If it doesn't make sense to you, it probably won't make sense to anyone else. Have the victim fully explain. Make sure the victim understands the need to be thorough is part of a complete investigation. It needs to make sense to someone with no law enforcement or courtroom experience.

5. Does the victim know of anyone (and contact info) who can back up any part of the victim's story?

Any part would include when the victim arrived, who the victim was with, etc... Is there anything that can back up any part of the victim's story or explanation? Any corroboration can make the difference in these cases. Talk to everyone involved who has any information.

6. Don't put words in the mouth of a victim.

Don't give them ideas, terms, and ways to explain what you might already have in your mind. The defense will pick up on that and quickly make it an issue of the investigator is the one who came up with the story and not the victim.

7. Do not interview a victim nor a witness with multiple parties in the interview.

Not only will they prompt each other, a witness or victim may withhold statements or change statements based on the reaction of others. Also, the other witnesses may add facts that the victim then adopts as her own. They might also say inappropriate things for the effect it will have on the other parties. A defense attorney will pound on that. Separate all witnesses and keep them separate until completed interviews have been done.

8. Determine if they have personal knowledge about what they are telling you or if they just heard and adopted the information.

Too many times when we ask witnesses about something they told police they will say that they only heard that and assumed that it was true.

9. Ask the victim what she wants to do. Ask if she wants to prosecute.

Watch for responses that don't answer those questions like "I want it to stop" or "I don't want him to bother me anymore". Do not pressure the victim by telling her she has to report it and prosecute it. Make sure the victim makes the decisions. Do not let a relative or boyfriend report the rape or sit in for support. It is not a thorough investigation if you don't get out any motives or reasons behind reporting the rape. The defense will do it, so ignoring it only damages the state's case.

Motives are especially important when alcohol is involved or someone finds out that a sex act occurred between people, but the victim never reported it until someone else tells the victim they are aware that it occurred. Make sure you get complete explanations from the victim. If something doesn't make sense to you, it probably won't to anyone else so get a complete explanation.

10. Ask to view any text messages between the victim and suspect and anyone else the victim was texting during the relevant time frame.

Photograph those messages. If a victim refuses, there may be an issue so make sure the victim knows this has to be thorough investigation. Since phone records will take a while, ask to see the victim's incoming and outgoing phone numbers and ask who the people are. That often leads to great follow-up witnesses. Check for voicemails.

INTERVIEW OF THE SUSPECT

1. Always get DNA samples from the suspect while still dealing with the suspect.

Get it in writing. The law treats buccal swabs from a suspect as a search. Ask for consent and if consent is denied, get a search warrant. If the samples aren't collected right then, there is nothing with which to compare the results of the rape kit and that usually means a delay of the trial. It is simpler to get evidence early than late.

Don't forget that sometimes swabs of the suspect's hands (if caught soon enough and no chance to wash up) may have DNA evidence and in at least one jury trial here in Washington County, a penis swab had DNA evidence from the victim several hours after an oral rape was reported. A swab of the penis is a search and consent or a warrant is needed.

2. Always attempt to interview the suspect.

Always attempt to interview the suspect prior to arrest if possible and as soon after the incident as possible. This helps prevent the suspect from fabricating a story. Even if you feel the defendant will not confess to the elements of the crime, we can get him locked into a story and often he will tell plenty of lies that we can use against him later. When you start calling him on his lies, often a suspect feels trapped and starts changing the story and/or eventually comes around to the truth. Establish a timeline that contains times, places, events and people who saw him. If there is no attempt to talk to the suspect, but the suspect would have talked, then the defense attorney has several months to come up with a plausible story to match the evidence.

3. Always attempt to be nice to the suspect (I know this varies with the situation) no matter how angry and indignant you may feel about the suspect's actions.

The suspect will be far more likely to open up to someone who acts like he understands the suspect's actions than someone the suspect feels already hates him and doesn't care about the suspect's side of the story. Too much anger (especially when unwarranted) tells the jury that you are not neutral and unbiased and the defense will argue that any part of a confession was based on coercion and not voluntary. Even if a suspect lawyers up or invokes his right to remain silent, there is a far better chance that he will reinitiate if he likes the investigator.

Also, if evidence may be lacking and there is no probable cause to arrest, the suspect may be more willing to do interviews with you in the future about the case. Sometimes, it is effective for officers when they let the suspect know they are there to "help tell the suspect's side of the story and seek the truth." Also, "making mistakes is human nature and we all have made mistakes." "What is important now is how the mistake is confronted and dealt with in this case." Reassuring them that you aren't there to judge, just doing your job and that includes making the report and getting the truth out.

4. **When asking the suspect about his relationship with the victim, follow-up with any witness who could back up the story.**
5. **If the suspect alleges consent, make sure to draw out all the details of the language used and actions taken.**

Be careful on running bluffs, remember, the suspect knows what happened. Running bluffs to gain the truth can be effective (like stating there is a DNA match already) but sometimes a suspect will know a bluff is a bluff and that might tell him you don't have anything.

6. Always record the suspect if possible.

If the suspect won't allow a recording, try and get him to write out and sign a statement. Do recorded phone calls. Either use the victim or even try it as the investigator if the victim is unwilling. If the victim is unwilling, make sure it is because she is too traumatized and not because she is afraid the suspect will blow her story. Some themes I have seen used by officers that seem effective are "I just want/need your side of the story", "I understand people make mistakes", "A lot of people have been in that exact same situation", "Tell us your side of it, and we will see what we can do."

Be careful on promises. A false promise by an officer gets the statement suppressed. With a victim phone call, "Why did you do that me?" seems effective. Also, be careful when telling the suspect his crime is no big deal. If overdone, it is used by the defense to downplay the significance. In other words, when giving the suspect an out to see if he bites on it and tells the truth, don't go overboard.

7. Ask the suspect about any possible motive the victim would have to make up the story and who or what could back up the defendant's claims.

Follow up with investigation to try and determine whether those claims can be backed. Ask the suspect why in the world would the victim lie and have to go through all of this for a lie? What is her motive to lie? Often the suspect will give several very unreasonable reasons why the victim would lie or at least reasons that follow-up investigation shows to be unreasonable which can be very helpful to our case. Many times the suspect will tell officers that the victim doesn't ever lie and wouldn't lie.

8. Is there anyone or anything that can back up any of the defendant's claims?

If it is an unreasonable claim by the defendant then it should be easy to investigate and show the defendant is/isn't lying.

9. Even if the suspect claims consent, get DNA samples from him.

The suspect may change his story later, the statement may get suppressed, and the jury gets to see that it was a thorough investigation.

10. Do not call a statement a confession unless it is a specific confession to the elements of the crime.

Otherwise, the defense will use that on cross-examination to show that you were misleading and were biased. A confession is when the suspect admits to committing the elements that make up the crime. An admission is a statement by the defendant that he simply is admitting to something. "I was there" is an admission but not a confession. "I touched her" is an admission because it isn't confessing to the elements of the crime unless he gives more details that admit to the elements of the crime.

11. Ask the suspect if he has EVER been accused of such in the past.

Many times, the suspect assumes the officer knows something and the suspect will tell about previous accusations. Get as much detail about the previous accusations as possible: names, places, dates, etc. That way, we might be able to track it down and find more evidence.

12. Ask to see the suspect's text messages and photograph them if they're good.

Sometimes texts from the suspect are to the victim and include "sorry" and "don't tell anyone".

13. I have seen officers use "apology letters" to the victim.

They always seem very effective and suspects often feel that a written letter to the victim is the first step on the road to recovery. Sometimes, even when the suspect won't confess to the elements, just asking him "what would he like to say to the victim" evokes some concession of guilt.

14. Always consider various themes with each individual suspect in your interviewing attempts to gain the truth.

The same theme with one suspect may not work with another.

ARREST

- 1. Once the investigation is completed, then determine if there should be a probable cause arrest, warrant request, review by a prosecutor, or no action.**

Whenever you have the slightest doubt, call a prosecutor in our office. We get paid to talk with our officers about cases and what is needed to obtain a conviction.

- 2. The older the case or with delayed disclosure, the more likely the need to go over it with a prosecutor before an arrest decision is made.**

Also, the older the case, the less likelihood of admissible evidence so the greater the need to check with a prosecutor prior to arrest. Many times speedy trial has become an issue on a particular offense but it may not have run on a different charge with the same suspect. Statute of Limitation issues are always a concern with older cases.

JUVENILE LAW

Anytime a juvenile is arrested on probable cause, A.C.A. 9-27-326 requires that a hearing be held within 72 hours of a juvenile being detained or the next time court is held, whichever occurs first. At this hearing the judge makes a finding of probable cause and determines whether the Juvenile/Defendant/Suspect will remain detained or will be released. The Judge may detain the suspect for any number of reasons, but generally, three factors play the biggest role when dealing with a sexual offense.

- i. Does the victim live in the home? Do other kids live in the home? Is there a realistic plan to provide suspect with line-of sight supervision?
- ii. Are the Parents/Custodians willing to take the suspect back into the home?
- iii. Or a suspect might be detained in order to complete an assessment to determine if they are a danger to themselves or others.

A. If the juvenile is detained after a hearing, A.C.A. 9-27-313 requires the State file a petition (charge him) within 24 hours of the hearing.

- i. This can make things incredibly difficult in Washington County where detention hearings are almost always held first thing in the morning followed by a full days docket (Mondays) or a half day docket (Thursdays). The prosecutor cannot begin collecting supplements, making phone calls to officers and witnesses, or watching interviews until after court.
- ii. Because of this scheduling issue, the decision to file charges or not is often made based on the preliminary report only.
- iii. This can lead to difficult situations. The Judge often discovers she has to let a potential sexual predator out of JDC because enough information wasn't available on the arrest. The victim's parents can get upset because the suspect is out. The officer starts receiving calls from the victim's family complaining about the release. The suspect's parents start calling the court because their kid has been in jail for 3 or 4 days and we "don't even have enough to charge him?"

B. If the juvenile was detained at the detention hearing, A.C.A. 9-27-327(b) says an adjudication/trial must take place within 14 days of the detention hearing. If the State cannot be ready for trial, the juvenile must be released.

- i. Preparing sex crimes for trial is often the most difficult crime to prepare, but with only two weeks and the victim being a child, infant, or low functioning, it becomes even more difficult. The victims in juvenile sex crimes are always young and/or low functioning.
- ii. If the juvenile is released because the State cannot be ready, the State will get more time but it leads to multiple problems for the entire justice system (see number 3 directly above).

C. A.C.A. 9-27-317 provides 3 circumstances under which a juvenile may NEVER give up his/her right to counsel during a criminal investigation. In other words, if any of these circumstances exist, law enforcement may NOT speak with the juvenile unless an attorney is present.

- i. If the juvenile is in DHS custody.
- ii. If the parent/custodian has caused a petition to be filed against the juvenile.
 - While there is no case law on this specific issue, I believe it can be interpreted to mean a FINS petition (if the parent signed the FINS affidavit that led to a FINS petition being filed by the State) or Delinquency Petition (Parent/Custodian is the victim of a crime committed by their juvenile child).
 - Most likely, it will be FINS petition that gives us trouble. Because they are considered civil cases, you will not have access to that information unless you ask the Prosecutor's Office, Juvenile Intake or the Parents/Custodians.

- iii. If the parent has requested removal of the juvenile from their home.
 - There is no case law on this either, but I imagine the following scenario could be an example of how this law could negatively affect a case. A report is made to the hotline of a sex crime being committed by a 16 year old boy against his 4 year old sister. The police are sent to the home to make contact and the first thing Mom or Dad says is, "Take him to JDC." It is possible that the Judge would say, from that moment on, law enforcement cannot speak to the suspect without an attorney present.
- iv. The issue of having counsel present under the above circumstances becomes significant when the statement by the defendant is the best evidence you have, and it almost always is when dealing with sex crimes.