"Building Partnerships"
Working Together to Protect Persons with Disabilities
Is this a Crime?

Massachusetts’ Practices for the Identification & Investigation of Abuse Committed Against Persons with Disabilities

August 30, 2016
Philadelphia, Pennsylvania
PANEL MEMBERS

- Elizabeth Dunphy Farris
  Legal Counsel to the
  Hampden District Attorney (MA)

- Timothy F.X. Grant
  Sergeant, Massachusetts State Police
  State Police Detective Unit DPPC
Agenda

- MA BPI – A multidisciplinary team (MDT) approach to the investigation and prosecution of abuse and crimes committed against persons with disabilities in Massachusetts
- Strategies for interviewing alleged perpetrators and victims, collecting evidence and making a case for prosecution in the criminal justice system
- Case studies from MA BPI MDT investigations and prosecutions
Pictures of victim with visible signs of physical abuse, such as burns, bruises, welts, scars and a broken nose.
What Went Wrong

- Inaccurate and/or no information reported to APS
- Little to no response to complaints
- Lack of communication
- No coordination
- Delayed referral for criminal investigation
- Inadequate protections
Response to the System Failure

- Media scrutiny of high-profile systemic failures
- Legislature-authorized investigation
- House Post Audit report
- DDS Investigations Advisory Panel (IAP) review and report
- EOHHS effort to unite APS and human service agencies
- Statewide conference to join law enforcement, APS and human service agencies to create MOU
Building Partnerships for the Protection of Persons with Disabilities Initiative (BPI)

Statewide multidisciplinary initiative to address abuse and crimes against persons with disabilities – with several components
Creation of BPI

To effectively address abuse and crimes committed against persons with disabilities using a multidisciplinary approach to ensure equal protections and equal access to the criminal justice system.
BPI Steering Committee

- District Attorney
- MA District Attorneys Association
- Massachusetts State Police
- Disabled Persons Protection Commission
- Department of Developmental Services
- Department of Mental Health
- Massachusetts Rehabilitation Commission
BPI Steering Committee (cont’d)

- Office of Attorney General
- MA Office of Victim Assistance
- Provider Agency
- Massachusetts Advocates Standing Strong
- Department of Public Health
- Sexual Assault Nurse Examiner
- Executive Office of Elder Affairs
Implementation of BPI

- Developed Memorandums of Understanding
- Secured funding
- Drafted and secured passage of new legislation
- Developed training curricula and implemented training recommendations
The Agreement (MOU)

I. Statement of Purpose
II. Participating Agencies
III. Goals
IV. Reporting and Investigation
V. Human Services Investigation Liaison
VI. Review and Evaluation
BPI Training Curricula

Includes:

- Law Enforcement
  - State & Municipal Police Recruits
  - Veteran Officers
- Service Providers
- Persons with Disabilities
  - Learning Tool
  - Awareness & Action
Other Trainings

- Adult Protective Service (APS) Investigators
  - Forty-hour basic investigation certification
  - Forty-hour sexual assault certification
  - In-Service Training
- Emergency Room Nurses and Physicians (in collaboration with SANE)
- Judiciary/Court Personnel Training
  - Americans with Disabilities Act (ADA) Coordinators training
Reference Materials

- Crisis Intervention Program (CIP) Officer Reference Book
FY2015 DPPC
Hotline & Investigation Activity

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5125</td>
<td>6008</td>
<td>6504</td>
<td>6298</td>
<td>6594</td>
<td>7485</td>
<td>7193</td>
<td>6854</td>
<td>7061</td>
<td>7732</td>
<td>7986</td>
<td>9018</td>
<td>9449</td>
<td>16304</td>
<td>15413</td>
</tr>
</tbody>
</table>

- **Hotline Activity**
- **19C Reports**
- **19C Investigations**

**Graph:**
- Hotline Activity: Blue line
- 19C Reports: Red line
- 19C Investigations: Green line
FY2015 DPPC Criminal Reports by County

- **Total Reports Received**
- **Total Reports Investigated Under DPPC Jurisdiction**
- **Total Reports Involving Criminal Activity**

**Counties**:
- Barnstable
- Berkshire
- Bristol
- Essex
- Franklin
- Hampden
- Hampshire
- Middlesex
- Nantucket/Dukes
- Norfolk
- Plymouth
- Suffolk
- Worcester
- Out-of-State

- Barnstable: 238
- Berkshire: 932
- Bristol: 273
- Essex: 840
- Franklin: 259
- Hampden: 153
- Hampshire: 280
- Middlesex: 1810
- Nantucket/Dukes: 496
- Norfolk: 1033
- Plymouth: 1063
- Suffolk: 1413
- Worcester: 425
- Out-of-State: 16

**Graph Notes**:
- Blue bars represent **Total Reports Received**.
- Red bars represent **Total Reports Investigated Under DPPC Jurisdiction**.
- Green bars represent **Total Reports Involving Criminal Activity**.
## Criminal Activity

**DPPC Database FY 2015**

<table>
<thead>
<tr>
<th>Crime</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault &amp; Battery on a Person with a Disability</td>
<td>744</td>
</tr>
<tr>
<td>Domestic Assault &amp; Battery</td>
<td>275</td>
</tr>
<tr>
<td>Assault &amp; Battery on a Person with an Intellectual Disability</td>
<td>16</td>
</tr>
<tr>
<td>Assault &amp; Battery with a Weapon</td>
<td>28</td>
</tr>
<tr>
<td>Indecent Assault &amp; Battery</td>
<td>278</td>
</tr>
<tr>
<td>Rape</td>
<td>198</td>
</tr>
<tr>
<td>Larceny of a Person with a Disability</td>
<td>252</td>
</tr>
<tr>
<td>Death</td>
<td>40</td>
</tr>
<tr>
<td>Narcotics Violations</td>
<td>15</td>
</tr>
<tr>
<td>Caregiver Negligence</td>
<td>66</td>
</tr>
</tbody>
</table>
MA Law Enforcement Agencies

- Attorney General
- District Attorneys (11 Districts)
- State Police
  - Patrol Highways, State Parks
  - State Police Detective Units
    - Attorney General
    - District Attorney
    - Specialized Units
    - Disabled Persons Protection Commission
- Municipal Police (local) Cities and Towns
DPPC Profile

- Created: 1987, Independent Agency
- Location: Braintree, Massachusetts
- Staffing: 32
- Units
  - Administration Finance
  - Hotline/Intake
  - Investigations
  - Oversight
  - Legal
  - Informational Technology
  - Outreach and Prevention
- State Police Detective Unit
DPPC Statute
M.G.L. c. 19C

Jurisdiction:
- Person with a disability
- 18-59 years of age, and
- Wholly or partially dependent on others for daily living needs
- Abused by a caregiver
- Residing in state care or private setting
Mandated Reporters

- A person, who as a result of their profession, is more likely to be aware of the abuse
- Mandated Reporters are required by law to report instances of suspected abuse to the DPPC Hotline
Who are Mandated Reporters

- Medical Personnel
- Medical Examiners
- Social Workers
- Foster Parents
- Police Officers
- Dentists
- Public or Private School Teachers
- Educational Administrators
- Psychologists
- Guidance or Family Counselors
- Day Care Workers
- Employees of Private Agencies Providing Services to People with Disabilities
- Employees of State Agencies within the Executive Office of Health and Human Services
How to File an Abuse Report

- Call the DPPC 24-Hour Hotline at:
  1-800-426-9009
  1-888-882-0350 TTY

And file WRITTEN REPORT to the DPPC within 48 hours

- In case of an Emergency or a Crime, call 911 or Local Police followed by a call to the DPPC
Case Example
Worcester
*Cry Wolf*
Assault and Battery
DPPC Intake Unit
24 HOUR HOTLINE

- Operates a 24-hour Hotline:
  - 1-800-426-9009
  - 1-888-882-0350 TTY
- Receives reports of suspected physical, verbal, sexual abuse, neglect and deaths of adults with disabilities
- Evaluates reports to determine required response [emergency or non-emergency] and jurisdictional criteria
- Provides information and referrals to callers
DPPC/SPDU Criminal Screening

- District Attorney’s office notified
- Designated assistant district attorney assigns criminal investigations to:
  - Local Police
  - DA’s SPDU
  - DPPC’s SPDU
- Human Service agency contacts notified
- Civil Investigator proceeds with protective services
CASE ASSIGNMENT
DPPC 19C APS Investigations
Conducts abuse/neglect investigations, assesses risk and recommends protective service actions

DPPC    DDS    DMH    MRC
Cases not Meeting DPPC Jurisdiction

Disabled Persons Protection Commission (DPPC)

Executive Office of Health & Human Services (EOHSS)

DCF

DDS

Department of Children and Families

Department of Developmental Services

DMH

Department of Mental Health

MRC

Massachusetts Rehabilitation Commission

DPH

EOEA

Department of Public Health

Executive Office of Elder Affairs
DPPC Oversight

Assesses victims risk, monitors civil and criminal investigation and ensures protective services are in place

DPPC  DDS  DMH  MRC
Protective Service Examples

- Access Warrants
- Protective Orders
- Respite Care
- Emergency Shelter
- Restraining Orders
- Case Management
- Family Planning
- Housing Assistance
- Adaptive Equipment
- Transportation
- Specialized Counseling

- Guardianship/GAL
- Counseling
- Financial Management
- Education/Training
- Support Groups
- Employment/Vocational Services
- Legal Assistance
- PCA’s/Home Health
- Clinical Evaluation
- Medical Assistance
A 45 year old female with developmental disabilities, named Jane, who is a person that is intellectually challenged, mildly autistic, deaf and non-verbal, returns home, to her residential program, 45 minutes later than her usual time.

The van driver that transports Jane back and forth to her day program tells the staff at the residence that he ran into traffic and that is why they are late.

In the course of changing Jane out of her work clothes, it is observed that she has multiple scratches and bug bites all over her body.

At this time Jane tried to cover the bites up, and seemed visibly upset and distraught, and ran to her room. …
“JANE” – The “mosquito bite” case

- The staff present at the time, are the 3-11 shift staff; two staff assigned to provide support for four individuals.
- One of the staff is a part-time relief staff. He is assigned to float between several residences, depending on coverage needs. He is not familiar with Jane or her typical behaviors.
- The other staff is more experienced. She has been working at this residence for one year and has received basic orientation, human rights and first aid/CPR/safety training.
- She is concerned about Jane's appearance and behavior, but there are three other individuals who have also returned to the residence, all requiring some degree of personal care.
What does a BPI-based MDT look like given these facts?
Law Enforcement Role in BPI

- Investigation
  - Interviewing victim
  - Interviewing suspects
  - Obtaining corroborating evidence
  - Access to judicial system/process
  - Powers of arrest

- Education and Training
Law Enforcement Assistance to APS

- Education and training
- Interview victims/suspects
- Access to judicial system/process
- Powers of arrest
APS Assistance to Law Enforcement

At the Scene:

- Secure protective orders, access warrants and emergency guardianship
- Obtain emergency residential placement
- Obtain alternative personal care attendants
- Access emergency and non-emergency medical treatment
- Arrange for interpreters
APS Assistance to Law Enforcement

At the Interview:

- Provide background data on alleged victims, abusers and providers
- Assist with gathering and analysis of medical and administrative records
- Assist in identifying communication abilities
- Assist with scheduling interviews
- Arrange for interpreters
- Assist with interview process, as needed
Interviewing Persons with Intellectual Disabilities

The nature of the interview and the type of questions asked are critically important and can have significant impact upon the quality of the individual’s responses.

- Set the Stage
- Prepare
- Conduct interview(s) according to the persons level of understanding
Tips for a Successful Victim Interview

Prepare for the victim’s interview, by:

- Obtaining background information
- Assessing communication abilities
- Determining level of understanding
- Reducing stress
- Establishing rapport
- Giving the person a sense of control
- Seeking assistance, whenever necessary
Remember

- Every person with an intellectual or other disability is unique and there may be broad differences in ability to think and communicate in interviews.
- The nature of the interview and type of questions asked are critically important and can have significant impact upon the quality of the individuals responses.

Victims most often disclose to someone they trust. IF THIS IS YOU .... Contain your emotions.
Caregivers/providers should not:

- Try to conduct an investigation
- Re-interview the individual
- Interpret or edit the information
- Interrogate the alleged abuser/suspect
- Involve other persons
- Interview other individuals or staff
- Go looking for evidence
- Touch physical evidence
Evidentiary Foundational Requirements

Gather essential information, by asking:

- What happened?
- Where did it happen?
- When did it happen? (If within 120 hours of sexual assault, go to an emergency room for a sexual assault exam)
- Who is alleged abuser?
- Why were you there?
Set the Scene. Someone else will be relying on your report to understand the events you describe.

What happened? How did you respond?

Typically, the only information a prosecutor has is the police/APS report. It can influence charging decisions, bail/dangerousness hearings and other pretrial events.
Where and when??

- Where did the incident occur?
  (Area and address)

- Describe the surroundings:
  (Lighting; scene conditions, including obstructions, if any, distance between you and what you observed, etc.)

- When did the incident occur?
  (Day, Date and Time of Day)
Who???

- Names, addresses and phone numbers of defendant, victims and witnesses

- Relationship of parties  [How long have they known each other?? And, if appropriate (in domestic cases), Why did the relationship end ??]
Why ???

- Why where you there? [*i.e.,* Were you called there? Were you conducting a home visit? Were you conducting a statutory investigation?]
- What attracted your attention?
- Have you received complaints at this address/or from this person previously?
Consider Corroborating Evidence

- Suspect’s interview
- Forensic evidence
  - DNA/CODIS
  - Crime scene(s)
  - Victim’s injuries
- Other documentary evidence
  - photographs/charts
  - medical records
  - school/work records
Burns

Accidental or Inflicted?

- Immersion burns are the most common burns caused by:
  - Glove
  - Sock/ Stocking
  - No splash marks
- Immersion burns are often associated with toileting “accidents”
- Splash burns are the most common type of accidental burns
## Average water temperature

<table>
<thead>
<tr>
<th></th>
<th>Degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comfortable infant bathing</td>
<td>mid 90s</td>
</tr>
<tr>
<td>Comfortable jacuzzi</td>
<td>@ 103</td>
</tr>
<tr>
<td>Adult - painful to touch</td>
<td>118 - 120</td>
</tr>
<tr>
<td>Adult deep 2nd to 3rd degree in 30 sec.</td>
<td>130</td>
</tr>
<tr>
<td>Adult deep 2nd to 3rd degree in 10 sec.</td>
<td>138</td>
</tr>
<tr>
<td>Adult deep 2nd to 3rd degree in 3-4 sec.</td>
<td>146</td>
</tr>
<tr>
<td>AVERAGE HOME TAP WATER !!</td>
<td>140-145</td>
</tr>
</tbody>
</table>
Bruising

- Rate of healing depends on location and depth of bruise
- Face and genital area heal faster than other parts of the body because excellent blood supply
- Color changes: red, purple, blue, green, yellow, brown
- Because of variability in this progression:
  - new - red, purple, blue
  - old - green, yellow, brown
Middle aged woman with fresh bruises on left arm and torso, and....
... laceration and electrical cord marks on left arm and torso.
Skin lesions caused by wire brush
Human bite mark
(10 days old)
Human bite mark (with size standard)
Lesions from suction
Oval grab marks (control marks)
SANE Role in BPI

Sexual Assault victims can wait up to 8 hours to be examined

- **Average length of exam is 3 - 4 hours**
- **85% of hospitals offered some training to new RN’s**
  - only 25% offered yearly updates

**Evidence**

- **39% of evidence collection, when indicated, was not completed**
- **38% of evidence collected was collected inappropriately**

(Source: MA DPH Study)
SANE and CAC Program Site Designation

CAC Sites
- Non-Designated Hospitals
- Designated SANE Sites

REGIONS
- Region 1: Western
- Region 2: Central
- Region 3: Northeast
- Region 4: Boston
- Region 5: Southeast
- Region 6: Cape Cod
- Region 7: Nantucket

Massachusetts
Criteria for a SANE Exam

- Patient must be medically cleared
- Able to consent
- Assault within **5 days/120 hours**
- Patient does not have to report to police to have evidence collected (evidence held for 6 month+ if not reporting at this time)

90-95% conviction rate when a SANE testifies at trial!
Prosecution-Based BPI Model

- Coordinate team response
- Provide legal assistance
- Prosecute Offenders
District Attorney’s Personnel

- Eleven (11) jurisdictions in Massachusetts
- Geographically Divided (primarily by county)
- Assistant District Attorney(s)
  - Elders and Persons with Disabilities Unit
  - Superior/District Court
- Victim Witness Advocate(s)
- Forensic Interviewer
- Massachusetts State Police Detective Unit
DA’s Role in BPI

- **Notification from DPPC**
  - Identifies parties
  - Details reportable incident(s)

- **Review by ADA**
  - Coordinate with APS to ensure victim safety
  - Obtain necessary mental health, medical, school, work or social worker records from APS agencies
  - Determine civil/criminal focus
  - Designate investigating agency
  - Identify available collateral agencies
  - Request necessary medical services
  - Coordinate forensic interview, if any
  - Assign person with disability victim/witness advocate
Forensic Interview of Victim

- One interview of victim meets needs of all agencies
- Less trauma for victim (and family)
- More efficient investigation
- Improved evidence collection
- Access to more information
- Increased chance of successful prosecution
Compiling a case file

- Reports
- Statements
- Photos/Videos
- Electronic Recordings (911)
- Diagrams
Corroborating Evidence


- Grand jury may order blood/buccal samples from individuals
- **Standard:** *Reasonable basis for believing* that blood sample will provide test results that will significantly aid grand jury in their investigation of circumstances in which there is good reason to believe a crime has been committed
Has a crime been committed? .....
Does the scene match the story?
Make observations. Document what you see.
Search can reveal weapons
Search can reveal weapons
One of three children in home, among other injuries, exhibits fresh and old patterned bruises
At scene, three year old child with developmental disabilities and limited communication abilities exhibits fresh patterned bruises
Subsequent medical examination documents injuries
Case Studies of BPI-MDT Referrals

- **Case #1** – Alleged Financial Abuse of adult male with an intellectual disability, by relative;
- **Case #2** – Alleged Sexual Abuse of adult male with physical disabilities, by caretaker;
- **Case #3** – Alleged Sexual Abuse of teenage male with developmental disabilities, by stranger;
- **Case #4** – Alleged Sexual Abuse of two adult women, sisters with developmental disabilities, by biological father (involving delayed disclosures).
In talking about income tax and bank accounts with ALV, Reporter discovered that ALAB’s name was added to ALV’s bank account. ALV never gave permission for this. Reporter also observed that ALAB has been taking out $500 from ALV’s account for rent.

Reporter also discovered that ALV had a deposit of $64,000 from retirement fund and a withdrawal of $40,000 on the same day. ALV indicated ALAB took $40,000 for rent. ALV had no plans to cash in retirement fund.

Reporter went to the bank with ALV. She and ALV moved $20,000 to another account. Bank is investigating how ALAB got her name on account and withdrew money. ALAB used to work at the bank and was fired.
MDT Approach

- Police obtain ALV statement and background. ALV denies knowing $86,000 in retirement funds disseminated and did not consent to ALAB taking money.

- Obtain telephone calls from ALV’s employer, wherein ALAB is overheard “directing” ALV to provide personal information for dissemination of funds.

- Police interview ALAB who admits transferring funds to personal account. Alternatively claims money for ALV’s use and enjoyment and that she intended to pay back withdrawn funds. Says ALV “knowingly” gave her SS# and PIN.
RESULT

ALAB charged with Larceny over $250 from a Person with a Disability

Plea of guilty. Restitution of all monies to ALV.
Legal Issues relating to victim/witness

- **Consent** – person’s free/voluntary act
- **Competency** – question of law
- **Capacity** – question of fact
- **Privilege(s)** – question of common law/statute
- **Confidentiality** – involves private information
Competency of Victim/Witness

- Any person with a "sufficient understanding" is competent to testify. G.L. c. 233 sec. 20.
- Refers to a person's basic understanding and for witness to relate back truthfully .... Commonwealth v. Tatisos, 238 Mass. 322, 325 (1921)
Capacity

- Question(s) of Fact
  - Encompasses personal characteristics of an individual that assist/deter “understanding”
  - Defined as to purpose of legal proceeding

*Capacity is evidentiary fact(s) produced for factfinder; Competency is legal conclusion by factfinder from evidentiary facts of capacity presented*
Approved Alternative Procedures

- Family member, clinician, counselor, social worker or friend may sit near or next to such witness;
- Permitting testimony at other location and/or on videotape
  - Provided that in criminal case defendant and counsel are present at location and defendant has unobstructed view of witness
- Court SHALL not deny a witness the benefit of an appropriate alternative procedure and is required to allow additional time or continuances to accommodate these procedures
- Use of expert witness regarding persons with intellectual disabilities by proponent of witness
- Any other appropriate means
ALV reported to his care coordinator that he had been sexually assaulted in the early morning. ALV said that he had been asleep in his bed when ALAB, whom he knew, came into his room, fondled his genitalia and anally raped him. ALV believed ALAB ejaculated on him. ALV reported his genitalia had been touched with ALAB’s hands.

ALV was a 37 year old male at time of incident. He is a person with Cerebral Palsy and is a spastic quadriplegic. His physical mobility is very limited. He communicates effectively through a device called a Dynavox, a communication board.

ALV’s Case Coordinator brings ALV to local hospital. Once there, ALV undergoes SANE during which anorectal swabs were collected.
MDT Approach

- Police contact ALAB. He denies allegations. Moves away from area while investigation is pending.
- Crime laboratory processes ALV’s rape kit after prolonged delay. Semen is found on anorectal swab. Results submitted into CODIS. CODIS hit with ALAB profile.
- Police re-interview ALAB who is now incarcerated in Maryland for theft charges. After initial denials, ALAB admits penetration of ALV, alleges consent by ALV.
A percipient witness may testify to what his/her senses perceived.

Percipient witness: relates what he/she saw, heard, smelled, tasted, or touched. NOT what others said, unless non-hearsay use of evidence or hearsay exception applies....

Hearsay: Out of court statement(s) offered for the truth of the matter asserted.
What is an “Excited Utterance”?  Any statement made by a person, while under the influence of the “exciting event”, concerning the cause or circumstances surrounding the event.
Daubert/Lanigan Challenge?

- *Daubert* “gatekeeper” obligation applies to all expert testimony, not only “scientific” testimony;
- Trial judge is not limited to enumerated factors in *Daubert* in making “gatekeeper” inquiry. Instead, standard is flexible to particular facts and expert’s particular experience and nature of issue;
- Trial judge has broad latitude of discretion when ruling on admissibility.

*Canavan’s Case, 432 Mass. 304, 313-316 (2000) citing Kumho Tire Co., Ltd. v. Carmichael (1999) (Extending holding of *Lanigan* to apply to expert opinions based on personal observation and clinical experience, concluding diagnosis and causation could be subject to *Lanigan* analysis)*
RESULT

ALAB charged with Rape and Indecent Assault and Battery on a Person Over Fourteen Years Old

Pleas of guilty. State Prison sentence imposed.
DPPC REFERRAL #3

- ALV’s mother reported to police that the ALV, her 19 year old son, was assaulted while taking out the trash. Police arrive at scene, speak with ALV who is then transported to a local hospital for a sexual assault examination.

- ALV is a teenager with developmental disabilities. A forensic interview is conducted with ALV. There, he reports that while taking out the trash, he noticed a man, ALAB, following him. ALAB pulls ALV into an alleyway, removes his clothing and anally penetrates him. ALV escapes and goes home. ALAB follows ALV to his home. ALV immediately reports incident to his mother. Reporter approached ALAB, who denies assault. ALAB flees area.
MDT Approach

- Police obtain video surveillance footage that captures ALV and ALAB heading toward area described by ALV. Minutes later ALV is seen running toward home with ALAB.
- SANE makes note of abrasion on ALAB backside. It is consistent with markings that could have been made from watch found with ALAB.
- ALAB had past incident involving another assault seven years earlier.
RESULT
ALAB charged with Rape and Indecent Assault and Battery on a Person Over Fourteen Years Old [c. 265 §22 and c. 265, §13H]

Introduction of Physical Evidence

Establish: Chain of Custody
Introduction of Pictures

Foundation: Fair and accurate representation
Introduction of Opinion

Foundation: Training and experience in field
ALV, a twenty-three year old woman with intellectual disabilities, reported to her supervisor at her day program that the ALAB, her biological father, had sexually assaulted her six months previously and tried to molest her sister.

Police are notified and a forensic interview of ALV is conducted. ALV reports that on three separate occasions she had been sexually assaulted by her father starting when she was sixteen years old. Her disclosure was made due to a telephone call from ALAB requesting that she move back to his home. Upset still at her day program the next day, she confided in a supervisor.

ALV’s younger sister, a twenty-one year old woman with intellectual disabilities is interviewed and reports that, when she was seventeen or eighteen, ALAB asked her to perform oral sex on him and to have sexual intercourse with him.
MDT Approach

- Police obtain statements from first complaint witnesses at ALV’s day program.
- Biological mom is interviewed and reveals ALV’s sister’s disclosure at time of incident.
- ALAB is interviewed and denies inappropriate touching of his daughters and a “misunderstanding” of his approach to ALV’s sister.
RESULT
ALAB charged with Incest, Rape and Indecent Assault & Battery on Person with an Intellectual Disability

Jury Trial. Verdicts of Not Guilty.
Corroborating Evidence


- Grand jury may order blood/buccal samples from individuals
- Standard: Reasonable basis for believing that blood sample will provide test results that will significantly aid grand jury in their investigation of circumstances in which there is good reason to believe a crime has been committed
Admissibility of evidence

Legality of Search(es)/Seizure(s)

➢ Warrant obtained?

No crime scene exception to warrant requirement, so if police become involved ....

- Flippo v. West Virginia, 528 U.S. 11 (1999)

➢ Valid warrantless exception available?

- No search
- Abandonment
- No reasonable expectation of privacy
- Consent
- Plain view
- Emergency
- Exigency
- Search Incident to Arrest
“Lost”/Missing Evidence


- Due Process Clause of the U.S. Constitution does not require police and other law enforcement agencies to collect all “evidence”

- Failure to preserve evidence that may be “potentially useful” for a defendant will not violate due process unless the failure to collect/preserve is based upon “bad faith” on the part of the police or other law enforcement agencies
Lessons Learned

- No one person or agency possesses all of the skill, knowledge and resources necessary to respond to the complex problems of mistreatment and abuse;

- Each agency brings a different perspective and different information to the table; and

- In working together, crimes committed against persons with disabilities are being recognized, reported, investigated and prosecuted.
Measures of Success

- Trained staff has increased
- Mandated report to DPPC is timely made
- APS is notified to optimize victim’s safety
- DA is notified for case review
- DA coordinates with BPI partners to conduct criminal/civil investigation
- Collection of forensic evidence is optimized with timely SANE and other forensic examinations
- Prosecution of offender can be maintained
Contact Information

- **Elizabeth Dunphy Farris**  
  Legal Counsel to the Hampden District Attorney (MA)  
  beth.farris@state.ma.us

- **Timothy F.X. Grant**  
  Sergeant, Massachusetts State Police  
  State Police detective Unit DPPC  
  Timothy.Grant@massmail.state.ma.us
Questions?
THE END.