

# Title IX in Motion

August 2-4, 2022

12:00PM – 5:15PM EDT



## Trauma-Informed Victim / Complainant Interview

August 3, 2022



Chief Tom Tremblay (Ret)  
Thomas Tremblay Consulting & Training  
[www.tomtremblayconsulting.com](http://www.tomtremblayconsulting.com)



# Training and Guidance for Consideration

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This presentation was designed based on experience and input from multi-disciplinary partners to reflect examples of promising practices, alternative approaches, and lessons learned. It is not intended to constitute legal advice, or to create a legal standard of care. Participants should follow their own policies, procedures, and guidance from their respective institution's legal counsel.

*Chief Tom Tremblay (Ret), Tom Tremblay Consulting & Training*

# Learning Objectives:

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1. Recognize trauma in the context of sexual assault / misconduct to assist in preparing for the victim / complainant interview;
2. Identify helpful communication strategies to promote victim / complainant empowerment and encourage continuation in the administrative and / or criminal justice process;
3. Develop trauma-informed victim / complainant interview skills to help capture and consider potentially compelling evidence of the victim's / complainant's experience.

# Trauma-Informed Approach: Presumption of Innocence & Due Process

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- We can be trauma-informed and still ensure the critical rights of those who have been reported to have committed an offense;
- Trauma-informed approach means understanding victim trauma and developing strategic approaches in an effort to minimize trauma throughout the reporting / investigative process;
- The trauma-informed approach is about being more objective in our response to sexual assault / misconduct – including adherence to the presumption of innocence and due process rights of respondents who are reported to have committed an offense.

# Terminology During This Session:

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Complainant / Reporting Party: Title IX language;

- Victim: referencing the trauma that a victim of sexual assault or sexual misconduct may experience during and after an assault;
- Survivor: referencing the trauma and recovery of a victim following sexual assault or sexual misconduct.

Respondent / Responding Party: Title IX language

- Suspect: referencing a person suspected of a criminal offense;
- Offender: referencing a person who has been adjudicated or convicted of sexual misconduct or criminal sexual offense.

# My Journey: Understanding Trauma

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- 1970s Ann Burgess (Psychiatric Nurse) and Lynda Holmstrom (Sociology Professor) *“Rape Trauma Syndrome”*
- 1980: American Psychiatric Assoc: *“PTSD.” “Rape Related PTSD”* followed
- 2000: Dr. David Lisak is credited with coining the phrase *“Neurobiology of Trauma”*
- 2012: Dr. Rebecca Campbell, promoted *“Neurobiology of Trauma,” trauma-informed approaches”*
- 2017: Dr. Jim Hopper, *“Brain Based Response” / Survival Reflexes & Self-Protection Habits*

# My Journey: Understanding Trauma

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The research and science is consistent with what I learned through my own trauma, and from listening to and investigating the experiences of victims and survivors.

# Is your response Trauma Informed?

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Trauma Informed Care: Strengths-based service delivery grounded in responsiveness to the **impact of trauma**, emphasizing **physical, psychological, and emotional safety for survivors and providers**, and promoting **survivor empowerment**.

*From Hopper, E.K., Bassuk, E.L., Ollivet, J. (2010). Shelter from the Storm: Trauma-Informed Care in Homelessness Services Settings. The Open Health Services and Policy Journal, 3, 80-100.*



# Defining Trauma

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**A traumatic event either witnessed or experienced, representing a fundamental threat to one's physical integrity or survival**

- Responses involve intense fear, helplessness or horror
- The meaning of the event may be as important as the actual physical act/experience

*(Lisa Ferentz, 2008)*

Credit Dave Thomas M.S., Johns Hopkins University

# Potential Impacts of Victim Trauma

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## **Post Traumatic Stress Disorder: 4 major symptoms:**

1. Re-experiencing the trauma
2. Social withdrawal
3. Avoidance behavior and actions
4. Increased physiological arousal characteristics

*National Center for Victims of Crime*

# Overview: Trauma-Informed Victim / Complainant Interview

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The interview is a way to allow the victim to express what their **experience was** rather than just what they remember or don't remember. Capturing the **trauma** and exploring **sensory details** of the event can lead to potentially **compelling evidence of the victim's experience.**

# Victim / Complainant Interview

## Trauma-Informed Interview Recognizes:

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- Traumatic memory may be stored in the brain differently...
- Don't demand or expect a chronological narrative...
- Delayed reporting, inability to recall details and sequence of events can be common as a result of **victim trauma**
- Disclosure is a process, not an event...
- Complainant may remember additional details over time, keep options open for continued disclosures

# Building Trust: Providing Physical, Psychological, and Emotional Safety

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- **Before we ask a single question about the incident:**  
Providing physical, psychological, and emotional safety
- The need for a consistent and supportive institutional message (What is your institutional message?)
- Use victim empowerment: **Ask – don't tell**
- Where would you like to sit? Is it okay if I sit here?
- May I introduce myself and my role (professional, compassionate tone and demeanor)?

# Building Trust: Providing Physical, Psychological, and Emotional Safety

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Ask – don't tell...

- Would it be helpful if I briefly explain the statement process? (in accordance with your policy)
- Can I answer any other questions about the process?
- Communicate empathy / demonstrate active listening
- Address complainant's concerns

# Preparing the Complainant for the Interview

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- Acknowledge difficulty disclosure, establish common language
- Permission to recall additional details later
- Importance of being accurate / truthful: don't hold back, its okay if you don't remember...
- Amnesty – *“our focus is on what you are reporting”*
- Note taking / recording (Institutional Policy)
- Introduce clarifying questions (*“Ice Breaker”*)

# Starting the Interview

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- What are you able to tell me about your experience?  
Where would you like to begin?
- Allow victim to give uninterrupted statement (**P**atience)
- Demonstrate empathy and active listening



# Capturing the Experience

Following the complainant's uninterrupted narrative:

- Commend and reassure (thank you...)
- Seek clarifying information (avoid leading questions)
  - What are you able to tell me more about... ?
  - Can you tell me more about...?
  - It would be helpful to hear more about...

# Exploring / Seeking Details from the 5 Senses

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- What are you able to tell me about...
  - What did you see?
  - What did you hear?
  - What did you taste?
  - What did you smell?
  - What did you feel?

# Avoid “Victim Blaming”

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Questions to avoid:

~~Why~~ did you...?

~~Why~~ didn't you...?

We can find a better way to ask “why” by reframing with “thinking, “feeling, and “experiencing” questions.

# Capturing the Victim's Experience: Thinking and Feeling Questions

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“Thinking and feeling questions” can take the place of

“why did you...” “why didn't you...”

- Can you help me understand what your thought process was when...?
- Can you help me understand how that made you feel when...?

# Capturing the Victim's Experience: Thinking and Feeling Questions

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“Thinking and feeling questions” take the place of:

“why did you...” “why didn't you...”

- What are you able to tell me about what you were experiencing when...?
- Are there other things about that moment that stand out in your mind?

# Capturing the Experience

Document traumatic impact:

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What are you able to tell me about...

- ...What you were thinking..., feeling..., experiencing...?
- ...your reactions to this experience physically? (During / After)
- ...your reactions to this experience emotionally? (During / After)
- ...anything that may have changed for you since this experience?
- ...what has been the most difficult part of the experience for you / ...is there anything that you can't forget?

# Capturing the Experience

## Document traumatic Impact:

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What are you able to tell me about...

- ... any images, smells, or sounds that keep coming back?
- ... any re-occurring thoughts?
- ... your sleep now compared to before? Eating? Drinking?
- ... anything you avoid now that you didn't before?
- ... if your friends / family expressed concern about you, observations, changes, etc...

# Complainant Interview

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After collecting the complainant's experience:

- Seek clarification, facts and information pertaining to elements of misconduct and other potential evidence (Who, What, Where, When)



# Explain All Your Questions – Reframing Questions

## **WHAT YOU SAY...**

Are those the clothes you were wearing when this happened?

Were you drinking or doing any drugs?

Why did you go to the respondent's room?

Why didn't you report this immediately after it happened?

## **WHAT THE COMPLAINANT HEARS...**

The investigator thinks it is my fault because of what I was wearing!

This is my fault for drinking, the investigator thinks so too!

The investigator thinks I deserved this because I went to the room!

There is nothing they can do, I knew I shouldn't bother reporting

# Interview for Clarification

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Some victims may provide information that is incomplete, inaccurate, or untrue: (avoiding trauma /“face-saving” / recantation)

- **Interview for clarification, don't interrogate**
- What are you able to tell me about that?
- Can you help me understand...?
- Can you tell me what your thought process was when...?

# Interview for Clarification

## Interview for clarification, don't interrogate:

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- Can you tell me what you were feeling at that point?
- Can you tell me more about that?
- Are there other things about that moment that stand out in your mind?
- **Acknowledge difficulty of disclosure... importance of not holding back / accuracy**

# Complainant Interview

What are you **able** to tell me about...

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- ...what did respondent say; threats, language, tone?
- ...how did respondent appear; facial expressions, posture, demeanor?
- ...communication after; calls, texts, social media?

# Explore Potential Serial Nature of Some Offenders

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What are you able to tell me about...

- ...any previous conduct?
  - controlling, threatening, frightening behavior
  - abuse, harassment, stalking
  - physical assault, injury, strangulation
- ...Respondent's conduct with other potential victims?

## Prior to concluding interview...

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Is there any additional information you think would be helpful for me to know?

Is there anything you thought that we would discuss that we didn't discuss?

Is there anything else you want to add before we end the interview?

# Managing Expectations and Outcomes

## Come to **Agreement** with the Complainant

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- Interview is a process, write down new details as they come
- Next steps, follow-up questions, time line
- Contact details and information?
- How would you to be kept informed?
- Is it okay to leave messages?
- Safety planning / interim actions
- Work with advocate: resources and referrals

# What About Follow-up or Clarifying Questions Following the Complainant Interview?

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- Maybe you are unclear about something from the original statement
- New witness information or new evidence comes to light
- Responding Party provides additional information or potentially exculpatory evidence (e.g. alibi, photos, videos, messages...)



# Trauma-Informed Approach

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- Consider use of experts to help understand trauma and impact;
- Evidence of victim trauma by itself does not prove sexual assault / misconduct;
- The absence of victim trauma does not disprove sexual assault / misconduct;
- Victim trauma should be carefully considered along with all other evidence, taking into account the totality of circumstances for each investigation.

# Trauma-Informed Approach

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Being Trauma-Informed and Balancing Equitable, Reliable and Impartial Investigations:

- understanding victim trauma and impact;
- developing approaches designed to minimize trauma for victims / complainants in the process;
- support services and compassionate response are necessary for the Respondent;
- ensuring equitable, reliable, and impartial investigations for all involved.

# Are You Working Together?

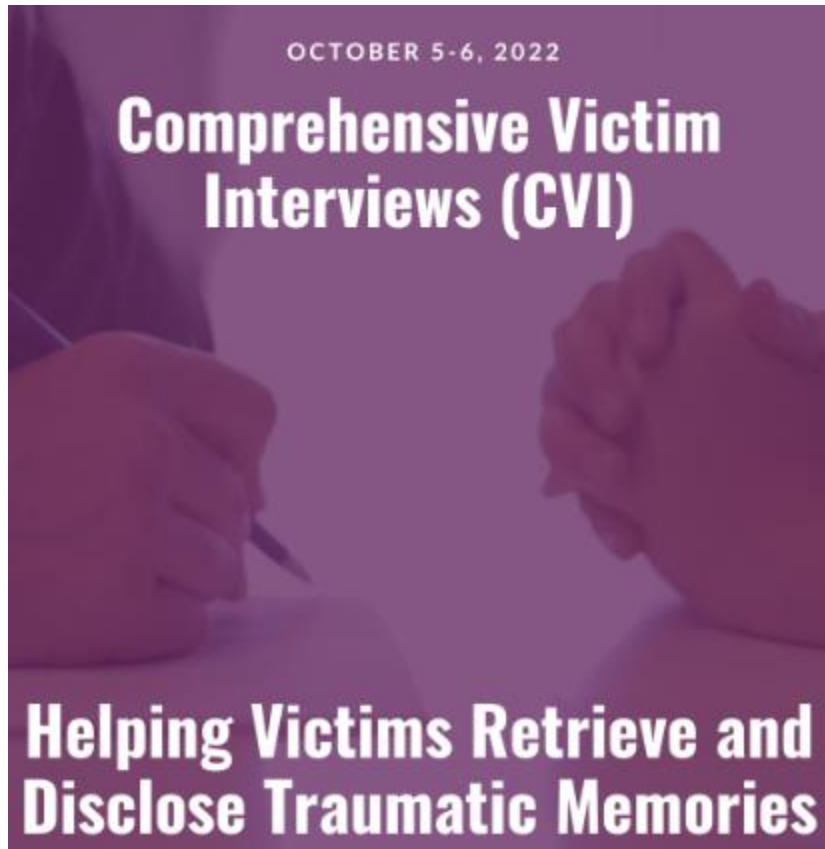
## Table Top Exercise with All Partners



Identify potential conflict points, gaps in service, benefits of collaboration and information sharing



# Interview Training Resource



October 5 – 6, 2022, Registration: \$299

Offered through a high-performance technology platform, participants will have plenty of opportunities to interact and review videorecorded interviews with survivors conducted by skilled investigators following best practices, including accompaniment by a victim advocate. Register now, to join CVI and enhance your skills!

<https://evawintl.org/victim-interviewing/>

# Trauma-Informed Victim / Complainant Interview

## Q & A



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