



Training Key® #572

Investigating Sexual Assaults Part II: Investigative Procedures

A timely, well-done forensic examination will aid in the investigation and prosecution of sex offenders. Victim-centered care is paramount to the success of the forensic examination of victims of sexual assault. It is therefore critical to adapt the forensic examination and the care given to the circumstances of each victim as much as possible.

Forensic Examination for Victims of Sexual Assault

Alternative Community Models. There are a number of different models for providing forensic examinations across the country. In some communities, the hospital emergency department provides all sexual assault examinations. The examiner may be the physician working in the emergency department at the time the victim is brought in. However, this practice can lead to frustration for everyone involved. The physician may not have the training or the equipment to conduct the best forensic examination possible. In addition, the victim will be triaged with other patients, meaning that patients with life threatening medical conditions will be seen first. This can lead to long delays for both the victim and law enforcement professionals.

Other communities have developed a Sexual Assault Response Team (SART), a multi-disciplinary team dedicated to timely, comprehensive attention to the medical and emotional needs of the patient as well as the forensic needs of the criminal justice system. As part of the movement toward Sexual Assault Response Teams, many communities now provide forensic examinations conducted by specially trained Sexual Assault Forensic Examiners, physicians, or Sexual Assault Nurse Examiners who are on call to respond to any sexual assault victim. However, for small or rural communities it may be cost effective to have a mobile team that can respond to sexual assault victims. Because community resources and needs vary, creative combinations of various parts of the alternative models can be combined for unique approaches.

At a minimum, health care facilities have an obligation to provide complete and appropriate services to patients disclosing a sexual assault. If the victim first disclosed to law en-

forcement, arrangements should be made for the forensic examination to take place as soon as practically possible. In many cases, the victim may seek medical care without wanting law enforcement involved. However, some states have mandated reporting laws requiring that health practitioners notify law enforcement when a patient is treated for injuries resulting from a violent crime, including sexual assault. Although victims should be encouraged to at least discuss the options available and what an investigation would entail, they cannot and should not be forced to talk to law enforcement when an officer is dispatched in such cases.

Time Guidelines. Although many jurisdictions currently use 72-96 hours as a standard cutoff for collecting evidence following a sexual assault, evidence collection and the documentation of injury is often possible even beyond that timeframe. For example, sperm has been recovered from the vagina of a victim as much as 10 days following a sexual assault and from the cervix from a victim as much as 19 days following a sexual assault.¹ Moreover, advancing DNA technologies continue to extend time limits due to the stability of the evidence and the sensitivity of new methods of testing.

At a minimum, a forensic examination should be conducted with a victim when the sexual assault occurred within 72-96 hours of the report. However, a forensic examination should also be encouraged beyond 72-96 hours if the victim is complaining of pain or bleeding. In the case of a stranger sexual assault, biological evidence and DNA may have a significant impact on the likelihood of holding the assailant accountable. In these cases, a forensic examination may be considered up to three weeks following a vaginal sexual assault since evidence may still be recoverable.

If there is a question about the timeliness of a forensic examination, dialogue among forensic examiners, law enforcement representatives, and forensic scientists should be encouraged to determine the potential benefits or limitations of collection. Decisions to collect evidence, however, should not be based on the characteristics of the victim or the assault (e.g., the victim is a drug addict, runaway, or prostitute).

When a forensic examination is not indicated or authorized by law enforcement, sexual assault victims should always be encouraged to get medical attention, including testing for pregnancy and sexually transmitted infections. Medical attention can address any physical health needs of the victim, and treatment for pregnancy or sexually transmitted infections may even provide evidence that could be used to corroborate an assault and support prosecution. The investigator can explore these possibilities, regardless of whether a forensic examination is conducted.

Responsibilities of the Forensic Examiner. The forensic examiner should document the victim's medical history and history of the assault, document all injuries that are observed, and collect biological and trace evidence from the victim's body. Information gained from the history can guide examiners in determining whether there may be evidence to collect. For example, although a light source (such as a hand-held *Wood's Lamp* or a long-wave ultraviolet light source) may be used to enhance the examiner's ability to identify biological evidence, the victim's history (when available) should always be the primary means of directing evidence collection efforts.

It is important to note that there is no reason for a law enforcement representative—even one of the same sex as the victim—to be present in the examining room. The forensic examiner will testify to the collection of evidence and the chain of custody.

Addressing Victim Rights. When a forensic examination is to be conducted, the investigating officer should promptly notify a victim advocate to become involved in the process and to offer the victim support. Ideally, an advocate should be involved as soon as possible after the disclosure of the assault. However, the victim should be given an opportunity to decline offers of assistance from victim service advocates. If the victim declines assistance from an advocate once they have arrived at the facility, the victim should be provided with written referrals by the investigator for community organizations trained to work with victims of sexual assault.

Prior to contacting the victim advocacy organization, the investigating officer must assess any special needs of the victim, such as restoring communication, or mobility, or contacting an interpreter. The victim advocate should be notified of any such special needs the victim might have, such as language differences or difficulties, mental or physical impairment, or the need for a male advocate. In some cases, the advocate might be able to assist in addressing these special needs.

Absent exigent circumstances, family members and interested parties should not be used to interpret or translate for the victim, witnesses or suspect. Victim advocates also should not be used as translators, because this places them in the inappropriate position of assisting with the law enforcement investigation rather than focusing on their role of providing victim support. Therefore, it is critical that law enforcement agencies work with victim advocacy organizations and others to explore ways to provide comprehensive services for special pop-

ulations, including the hearing impaired and those who do not speak English.

Before the forensic examination is initiated, the investigator should also ask the victim if she or he would like anyone else to be called or notified. If so, this should be facilitated whenever possible, as should a victim's request to have a relative, friend, or other support person (e.g., a spiritual healer) present in the examination room -- unless this is considered to be harmful in the particular circumstances. The victim should be informed, however, that the presence of such individuals during the medical history may influence the statements that the victim is willing to make. Alternatively, it may be perceived as influencing the victim's statements. Therefore, these individuals should not actively participate in the interview or examination process.

At this point, the investigator should explain to the victim the general examination procedure and inform the victim of the right to decline any or all parts of the examination. The investigator should also explain that declining part of the examination may negatively affect the quality of care, the usefulness of evidence collection, and ultimately any criminal investigation and/or prosecution of the case. Declining a particular procedure might also be used to discredit a victim if prosecution is pursued. However, a victim's decision to decline any part of the forensic examination must be respected.

The Team Approach. When a forensic examination is going to be conducted, the investigating officer should brief the examining nurse or physician about the details of the sexual assault, as they are known at that time. The same nurse or physician should then again brief the investigating officer at the conclusion of the examination. Notes about what was known before and after the forensic examination can then be compared. In this process, it is not unusual to realize that additional information was revealed during the forensic examination. For example, many victims will disclose acts to medical personnel that they might not immediately share with law enforcement personnel because of embarrassment (e.g., sodomy or oral copulation).

The examiner should also alert the reporting officer of visible forensic findings such as carpet fibers or other debris that might be connected to the crime scene. The examination findings must then be summarized in the preliminary report, specifically noting any significant information or injury.

Drug-Facilitated Sexual Assault. If a drug-facilitated sexual assault is suspected, it is critical to get a urine sample from the victim as soon as possible. Yet not all hospitals or forensic examination facilities have sexual assault evidence kits and even if they do, many such kits do not have urine specimen containers in them. Efforts should therefore be made to add this step to the forensic examination procedure.

Forensic Examinations without Law Enforcement Involvement. Some agency protocols provide for a forensic examination with or without law enforcement's involvement. The rationale is that the victim will then receive timely medical care while at the same time documenting the assault and collecting evidence that provides the victim with time to decide whether or not to report and prosecute. If a victim reports to a medical facility first or if the victim expresses a reluctance to report to law enforcement, it is imperative that the protocol involve meeting with a trained professional (such as a forensic examiner or victim advocate) to explain that the forensic examination is only one part of a thorough criminal investigation.

If law enforcement is not involved in the early stages of the investigation, however, communities must develop protocols for long-term evidence storage. In most cases, medical facilities do not have this ability and there is no way to properly store the evidence for victims while maintaining the chain of custody. One possible solution is for law enforcement agencies to use blind reporting so victims can provide information about the sexual assault without initiating a full-scale police report and investigation. With blind reporting, the evidence collected in the forensic examination can then be transferred to law enforcement where it is retained for the statute of limitation, or for the period of time deemed reasonable by the investigating agency and members of the sexual assault response team.

Release of Medical Records. Hospital/medical records are confidential and generally require a subpoena for release. However, the victim has the right to sign a waiver releasing specific information or medical records. For example, the victim could release all records and specimen samples relating to the criminal investigation of a sexual assault. Investigators should obtain such a waiver whenever possible.

Follow-Up Victim Interview

Interview Protocol. An in-depth follow-up interview should typically be conducted after the victim has been medically examined and treated, and personal needs have been met (such as changing clothes, bathing, and/or getting something to eat.) Officers can often conduct this follow-up interview at the hospital or other medical facility where the victim is being treated. This is appropriate as long as the physical surroundings provide the necessary level of privacy and an environment of professional care to instill confidence on the part of the victim.

Depending on the circumstances of the assault, it may be best to schedule the follow-up interview for the following day. This is especially true in cases where the victim is still under the influence of drugs or alcohol, or where the victim has been injured, or has not had any sleep. Unless there are exigent circumstances requiring an arrest or identification, delaying the follow-up interview in these cases will generally enhance the investigation and the quality of information obtained. It is also important for investigating officers to recognize that victims need time to begin to process the assault. For example, some victims may initially be unwilling or unable to participate in an investigation. However, if provided with support from friends and family, the victim may be a viable witness at a later time.

Before initiating the follow-up interview, the investigator should consult with the initial responding officer(s) and any other agency personnel who responded to the scene. As with the preliminary interview, the investigator should also begin the follow-up interview with opening remarks expressing sympathy, updating any contact information, providing detailed contact information to the investigator, and addressing the questions of any support people present. The investigator should then explain the purpose and scope of the interview and outline the victim's rights, including the right to confidentiality and freedom from harassment by the suspect. The investigator should also describe in detail the available resources and support organizations. The victim should be encouraged to call law enforcement if the suspect violates any

existing criminal or court orders or if the suspect contacts the victim in any way.

As with the preliminary interview, the follow-up interview should be conducted using simple language and a non-threatening manner that encourages conversation rather than implies interrogation. The victim should then be allowed to first describe what occurred in his or her own words without any interruption by the investigating officer.

During the interview, the investigator must be alert to new information or developments that should be explored. If the victim's story differs from the originally reported facts, or the facts, as they were understood by the first responding officer, the investigator should ask for clarification.

Evidence Collection and Recovery. The investigating officer must evaluate the evidence that has been impounded in the case and determine which items might have probative value. At that point, the investigating officer must submit a service request to the appropriate crime laboratory and forensic discipline (e.g., DNA/Biology, Latent Finger Print Examiner, Trace, Toxicology). After the lab service request is submitted, the investigating officer should maintain contact with the crime laboratory to determine the status of the request and the results. This may result in the identification of new evidentiary leads that require additional follow-up investigation. If so, the investigating officer may need to request assistance from the prosecuting attorney.

Referral for Prosecution. Once a thorough follow-up investigation has been completed, it should be presented to the prosecuting attorney's office for review. The investigating officer should then discuss the case with a representative from the prosecutor's office and conduct any further investigation as requested (e.g., securing additional evidence or results from the crime laboratory, reinterviewing the victim, suspect, or witnesses). Once the case is referred to the prosecutor, the investigating officer should provide the victim with the name and contact information for the prosecutor assigned to the case and coordinate the first meeting between the prosecutor and the victim. When needed, the investigating officer can even provide transportation to enable the victim to participate fully in the criminal justice process.

Victim Needs and Notification. As previously stated, it is imperative that law enforcement professionals coordinate with other relevant agencies, assistance organizations, service providers, or members of the Sexual Assault Response Team to address the needs of the victim. These needs may include a follow-up forensic examination (to document whether injuries healed as would be expected given the history of the assault), medical testing, counseling, financial assistance, and guidance throughout the criminal justice process. The investigator should therefore work closely with any victim witness assistance professionals, representatives from the state victim crime compensation program, and community-based advocates to support the victim through interviews and other investigative procedures and court hearings.

The investigator should also discuss the best means of keeping the victim informed during the investigative process. If the victim consents, an advocate can be very helpful in bridging communications between the victim, investigator(s), and other service providers. The victim should always be notified as soon as possible after an arrest is made, a suspect is released from custody, or the prosecuting attorney decides not to file criminal charges against the defendant.

Drug-Facilitated Sexual Assault

Sexual assaults have long been linked to the abuse of substances, primarily alcohol, that may decrease inhibitions and render the user incapacitated. In addition to alcohol, the drugs most often implicated in the commission of drug-facilitated sexual assaults are GHB, Rohypnol, Ketamine, Ecstasy, and Soma, although others are used as well (including benzodiazepines and other sedative hypnotics).

Victims of drug-facilitated sexual assault often have concerns about cooperating with the police investigation, especially if they voluntarily engaged in substance abuse. While there are times when a drug is given to the victim surreptitiously by the suspect to facilitate a sexual assault, it is much more common for the victim to voluntarily take the drug. The suspect may even offer the victim an unidentified "date rape drug," which he or she takes to get high, never suspecting that this will result in being sexually assaulted.

Conducting the Victim Interview. When drugs or alcohol are involved, the victim may remember very little, if anything, about the sexual assault itself. The victim's account of the events may even have large gaps which makes it difficult to describe what occurred to the investigating officer. As a result, the victim may be extremely anxious during the course of the interview. Investigating officers must remain patient and maintain an open mind while listening to the events as the victim recalls them. Investigators must also remember that a victim whose memory is impaired due to the pharmacological effect of a drug may innocently and unconsciously seek facts to fill in the blank spots in memory. It is therefore critical that investigators and examiners avoid suggestive questions while conducting the interview.

In the interview, it is very important to have victims articulate how they felt or what they had been doing prior to losing consciousness. However, it is equally crucial to interview any witnesses who might have seen the victim or spoken with the victim, either before, during or after the assault. Often, it is these witnesses who can establish time frames, comment on unusual behavior, provide critical facts, and identify potential sources of information in cases of drug-facilitated sexual assault.

Evidence Collection Issues. When an investigating officer suspects that a sexual assault may have been facilitated with drugs or alcohol, he or she should immediately determine the time frame of the incident. If the assault could have occurred within 96 hours (4 days), the investigator should promptly facilitate the collection of a urine sample from the victim. Police departments often have urine collection bottles available for investigations of driving under the influence and other crimes. It is therefore easy and cost-effective for officers to carry urine bottles in the field with them. If an officer responds to a radio call of a suspected drug-facilitated sexual assault and the victim can urinate, he or she should be encouraged to do so. The sooner the sample is collected, the better the chance that a drug can be successfully detected in a crime laboratory or other laboratory specializing in toxicology.

Because there could be a need for multiple toxicology tests, it is important to obtain as much urine as possible (i.e., 100 ml if possible). If two voids are needed to obtain a sufficient sample size, the samples should not be mixed. Officers or forensic examiners must carefully note the date and exact time of each void. If the sexual assault could have occurred

within 24 hours of the report, officers should additionally obtain a 30 ml blood sample (in gray top tubes), as well as urine. Biological specimens such as urine and blood should be refrigerated (not frozen) as soon as possible. They should never be left in the trunk or glove compartment of a police car or in a desk for any period of time.

In cases where a victim is transported to a hospital because he or she needs medical attention, blood and urine samples may be obtained to assist in diagnosis and treatment. Because it is important to obtain the sample as close to the point of ingestion as possible, the diagnostic sample may offer the best chances for positive toxicology results. However, hospitals do not typically retain biological specimens once analyzed. Therefore, in cases where criminal activity is suspected, it is important that hospital personnel are trained to either split the sample or retain anything left over from the diagnostic laboratory so that it can be given to law enforcement with the victim's consent.

Additional evidence that may be found in cases of a drug-facilitated sexual assault might be located in the suspect's residence, vehicle, place of employment, locker, etc. This evidence may include such items as the drugs themselves, ingredients used to make the drugs, drug or rape-drug literature and recipes, Internet correspondence, drug packaging and bottles, photographs and videotapes of victims. If written consent cannot be obtained by the suspect to search the premises in question, a search warrant should be obtained. If large quantities of drugs or evidence are found during a sexual assault investigation, indicating that the suspect is involved in drug sales, assistance should be requested from officers trained in Narcotics or DEA if possible.

Information for the Victim. When a drug-facilitated sexual assault is suspected, investigators should inform the victim that a full drug screening is necessary to identify the drug(s) used to facilitate the assault. It is not advisable that law enforcement test only for the presence of one or more of the publicly recognized drugs. Rather, a full drug screening should be used to test for any and all drugs and alcohol in the victim's system at the time of the assault. To properly investigate the case, it is imperative that investigators and prosecutors have complete knowledge of any drugs and alcohol in the victim's body at the time of the assault, including recreational drugs, prescription drugs, and over-the-counter medications. These drugs often interact with each other and have an exponential effect on the victim's ability to function when taken together.

Investigators, examiners and advocates must also emphasize to victims the importance of being truthful about all drug use so that it is less likely to be used against them by the defense if the case goes to trial. However, it is critical that this information not be used by law enforcement officers to discredit the victim's report of the sexual assault.

Contacting and Interviewing the Suspect

Custodial vs. Non-Custodial Interviews. If the suspect has been identified and detained, the investigating officer then needs to determine if the suspect is under arrest or free to leave, as in a non-custodial situation. This decision should be based on guidelines from the local prosecuting attorney and agency policies. A number of factors should be considered when determining whether an immediate arrest should be made, including: the type of assault, protection of the victim

and the public, the possible flight risk of the suspect, and the potential for the destruction of evidence. Other factors should not be considered, however, such as speculation that the victim will not prosecute, past sexual history or behavior of the victim, the perceived likelihood of conviction, or the characteristics of the victim or suspect, such as their race, culture, sexual orientation, class or profession.

Conducting the Suspect Interview. Regardless of whether the initial interview with the suspect is custodial or non custodial, it is important to obtain a statement from the suspect in a non-threatening manner. The goal is to document as many statements as possible. For example, the first responding officer may be one of the few people who have the opportunity to hear the suspect deny any sexual contact with the victim. With any time to consider the potential charges, however, most suspects will quickly resort to a consent defense. Therefore, such a statement of denial is critically important to preserve in the exact wording of the suspect. Depending on the prosecuting agency and departmental policies, investigators should consider audiotaping or videotaping the interview whenever possible.

If the suspect invokes his constitutional right to remain silent, investigating officers must still evaluate the circumstances of the assault to anticipate the suspect's defense strategy (e.g., the relationship between the victim and the suspect, whether evidence links the offender to the victim, whether a witness can link the offender to the victim or scene, and whether evidence or witnesses can corroborate a lack of consent). These factors can guide the investigative strategy and evidence collection efforts, as well as the interpretation and relative importance placed on various pieces of evidence.

Evidence Collection with the Suspect. In all sexual assault cases, the investigating officer must evaluate the need for a search warrant to identify and collect evidence from the suspect. This assessment should include questioning the victim regarding any knowledge of photographs or videotapes that might have been taken during the assault. The suspect might also have taken something belonging to the victim, or the victim might have left something in the suspect's home (e.g., an earring or panties). In general, search warrants should be obtained when:

- The assault took place in the suspect's home or vehicle and written consent cannot be obtained from the suspect for a search.
- Probable cause has been developed and the investigating officer believes that evidence can be located that the suspect might have worn or used at the time of the assault, such as a mask, foreign objects, lubricating substances, items used for bondage, videos, pictures, weapons, and property or souvenirs that the suspect might have taken from the victim.
- The investigating officer has probable cause to believe evidence of the type of drug used to facilitate a sexual assault might be found in the suspect's home, car, place of employment or school locker. This might include ingredients used to make the drug such as GHB or literature about the effects of a drug and its use as a "date rape drug."

Vehicles are an often overlooked but crucial location of evidence. If the sexual assault occurred inside a vehicle, it should be impounded for later processing by the crime laboratory based on departmental policy.

Officers should not hesitate to obtain the appropriate warrants needed to complete a proper search for all relevant evidence. Law enforcement agencies are thus advised to work with the prosecut-

ing attorney's office in advance to make templates available for such warrants.

Sexual Assault Resources for Victims

Rape, Abuse, & Incest National Network (RAINN)
Hotline 1-800-656-HOPE www.rainn.org

National Sexual Violence Resource Center (NSVRC) Toll Free 1-877-739-3895 www.nsvrc.org

Office on Violence Against Women 202-307-6026
www.ojp.usdoj.gov/vawo

National Organization for Victim Assistance (NOVA)
202-232-6682, 800-TRY-NOVA (24-hour information and referral) www.try-nova.org

Office for Victims of Crime (OVC) 202-307-5983
www.ojp.usdoj.gov/ovc

Endnotes

¹Green, W., Kaufhold, M. & Schulman, E. *Sexual Assault Evidentiary Exam Training for Health Care Providers*. California Medical Training Center, University of California at Davis, Module 7, Page 45 Slide 100.

Acknowledgement

This *Training Key* was prepared by Sergeant Joanne Archambault San Diego, CA, Police Department (Ret.), Training Director, SATI Inc., Addy, WA. www.mysati.com

questions

The following questions are based on information in this *Training Key*. Select the one best answer for each question.

1. Which of the following statements is *false* regarding sexual assault victims?
 - (a) *Collection and documentation of forensic evidence from a victim is possible even beyond 96 hours of the attack.*
 - (b) *Decisions to collect forensic evidence from a victim should be based largely on characteristics of a victim, such as whether he or she is a drug addict, runaway, or prostitute.*
 - (c) *There is no reason for a law enforcement representative, even one of the same sex as the victim, to be present during the forensic examination of a victim.*
 - (d) *None of the above.*

2. Which of the following statements is *false*?
 - (a) *Investigators should explain to sexual assault victims the general procedures involved in a forensic examination and their right to decline any and all parts of the exam.*
 - (b) *If a drug-facilitated sexual assault is suspected, it is critical to get a urine sample from the victim as soon as possible.*
 - (c) *In a sexual assault case, a hospital has the duty to release all victim medical exams to the police.*
 - (d) *None of the above.*

3. Which of the following statements is *false*?
 - (a) *Sexual assaults have long been linked to substance abuse, particularly alcohol.*
 - (b) *If an investigator suspects that drugs or alcohol may have facilitated a sexual assault within the prior four days, a urine sample should be obtained from the victim.*
 - (c) *A suspect's statement of denial to sexual assault allegations is important to record verbatim, because if charged, most suspects quickly resort to a consent defense.*
 - (d) *None of the statements is false.*

answers

1. (b) Decisions to collect forensic evidence from a victim should never be based on such characteristics.
2. (c) Hospital records in such cases are confidential and require the written authorization of the victim/patient for release.
3. (c) All of the statements are true.

have you read . . . ?

"Drug-Facilitated Sexual Assault," Training Key #509, International Association of Chiefs of Police, Alexandria, VA 22314.

This document provides extensive detail on the effects and uses of Rohypnol, GHB, and related drugs.

