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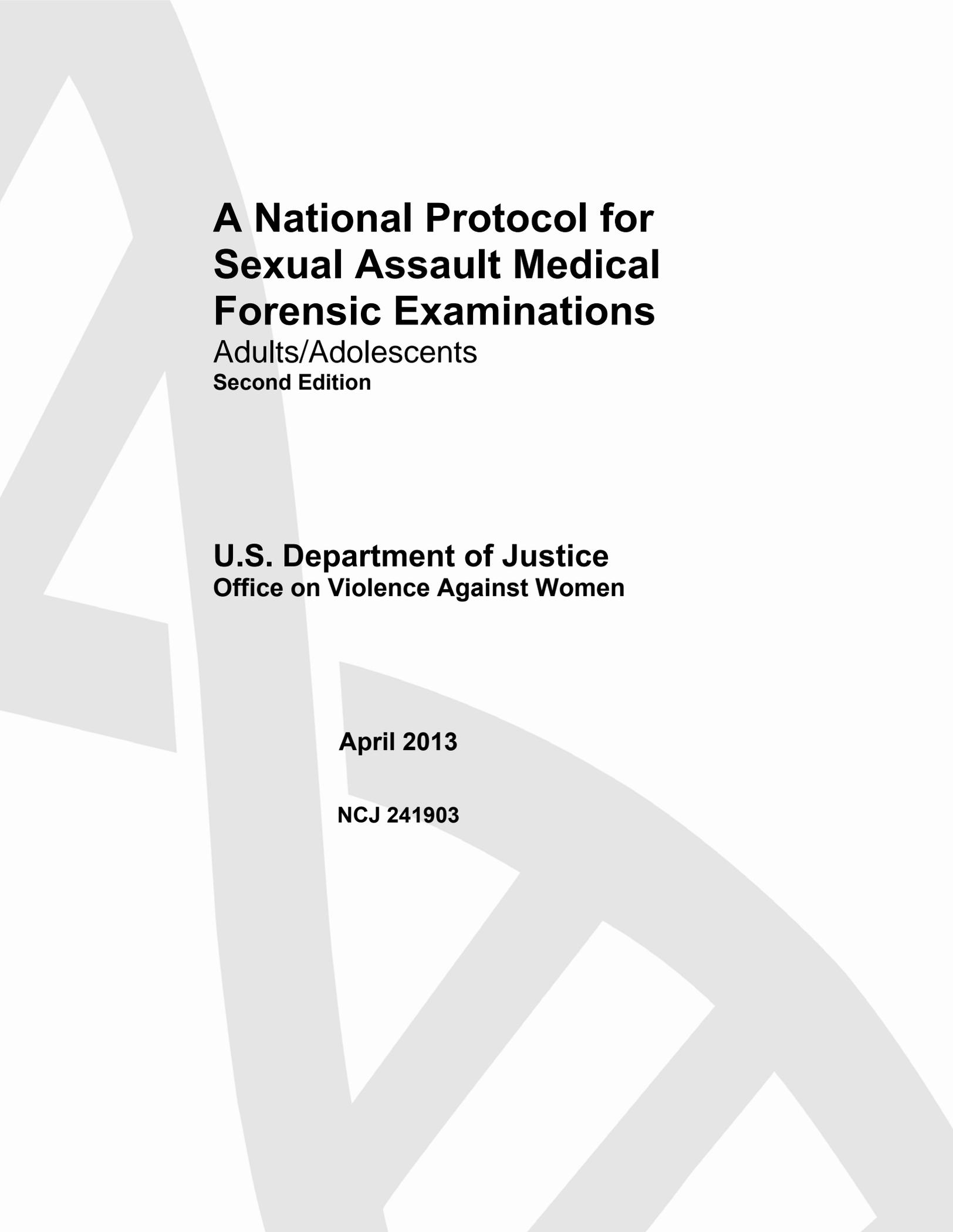
**A National Protocol for
Sexual Assault Medical
Forensic Examinations
Adults/Adolescents**

Second Edition



**DNA
INITIATIVE**





A National Protocol for Sexual Assault Medical Forensic Examinations

**Adults/Adolescents
Second Edition**

**U.S. Department of Justice
Office on Violence Against Women**

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Acknowledgments

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Foreword

Sexual violence continues to plague our Nation and destroy lives. All members of society are vulnerable to this crime, regardless of race, age, gender, ability, or social standing. When sexual assault does occur, victims deserve competent and compassionate care. This second edition of the *National Protocol for Sexual Assault Medical Forensic Examinations* provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. We know that effective collection of evidence is of paramount importance to successfully prosecuting sex offenders. Just as critical is performing sexual assault forensic exams in a sensitive, dignified, and victim-centered manner. For individuals who experience this horrendous crime, having a positive experience with the criminal justice and health care systems can contribute greatly to their overall healing.

As we have learned in the years since the implementation of the 1994 Violence Against Women Act, coordinated community efforts are the best way to stop violence against women, hold offenders accountable for their crimes, and promote victim healing and recovery. That is why this protocol was designed as a guide for practitioners who respond to victims of sexual assault, including health care professionals, law enforcement officers, prosecutors, interpreters, advocates, and others. Combining cutting edge response techniques with collaboration among service providers will greatly enhance our ability to treat and support victims as well as identify and prosecute the sex offenders. We hope that this protocol lays the foundation for these efforts.

Since this protocol was initially released in 2004, the “state of the art” for forensic medical examinations has improved. This revised edition of the protocol has the same emphasis and values as the original but has been updated to reflect current technology and practice. It has also been updated to include additional information reflecting changes from the Violence Against Women Act of 2005.

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Goals of the National Protocol for Sexual Assault Medical Forensic Examinations

Sexual assault is a crime of violence against a person's body and will. Sex offenders use physical and/or psychological aggression or coercion to victimize, in the process often threatening a victim's sense of privacy, safety, autonomy, and well-being. Sexual assault can result in physical trauma and significant mental anguish and suffering for victims. In some communities, sexual violence is considered a form of oppression. Victims may be reluctant, however, to report the assault to law enforcement and to seek medical attention for a variety of reasons. For example, victims may blame themselves for the sexual assault and feel embarrassed. They may fear their assailants or worry about whether they will be believed. Victims may also lack the ability or emotional strength to access services. For example, they may not have their own transportation or access to public transportation. They may also not speak English well or fear that reporting the assault may jeopardize their immigration status.¹ They may lack health insurance and believe it would be too costly to get the medical care they need. They may not be aware that as a crime victim, they are eligible for financial reimbursements for certain services. Their budgets may not allow them to pay out-of-pocket expenses and then await reimbursements. Those who do have access to services may perceive the medical forensic examination as yet another violation because of its extensive and intrusive nature in the immediate aftermath of the assault. Rather than seek assistance, a sexual assault victim may simply want to go somewhere safe, clean up, and try to forget the assault ever happened.² It is our hope that this protocol will help jurisdictions in their efforts to respond to sexual assault victims in the most competent, compassionate, and understanding manner possible.

This protocol was developed with the input of national, local, and tribal experts throughout the country, including law enforcement representatives, prosecutors, advocates, medical personnel, forensic scientists, and others. We hope that this protocol will be useful in helping jurisdictions develop a response that is sensitive to victims of sexual assault and that promotes offender accountability. Specifically, the protocol has the following goals:

- Supplement, but not supersede, the many excellent protocols that have been developed by states, tribes, and local jurisdictions, as well as those created at the national level. We hope that this protocol will be a useful tool for jurisdictions wishing to develop new protocols or revise their existing ones. **It is intended as a guideline for suggested practices rather than a list of requirements.** In many places, the protocol refers to "jurisdictional policies" because there may be multiple valid ways to handle a particular issue and which one is best should be determined by the jurisdiction after consideration of local laws, policies, practices, and needs.
- Provide guidance to jurisdictions on responding to adult and adolescent victims. Adolescents are distinguished in the protocol from prepubertal children who require a pediatric exam. **Pediatric exams are not addressed in this document. This protocol generally focuses on the examination of females who have experienced the onset of menarche and males who have reached puberty.** Legally, jurisdictions vary in the age at which they consider individuals to be minors, laws on child sexual abuse, mandatory reporting policies for sexual abuse and assault of minors, instances when minors can consent to treatment and evidence collection without parental/guardian involvement, and the scope of confidentiality that minors are afforded. **If the adolescent victim is a minor under the jurisdictional laws, the laws of the jurisdiction governing issues such as consent to the exam, mandatory reporting, and confidentiality should be followed.**
- Support the use of coordinated community responses to sexual violence, such as Sexual Assault Response Teams (SARTs) or Sexual Assault Response and Resource Teams (SARRTs). Although

¹ Carolyn Ham, *Reducing Language Barriers to Combating Domestic Violence: The Requirements of Title VI*, Battered Women's Justice Project, October 2004, http://new.vawnet.org/summary.php?doc_id=1621&find_type=web_desc_GC.

² Paragraph adapted in part from the *Ohio Protocol for Sexual Assault Forensic and Medical Examination*, 2004, p. 2. <http://www.odh.ohio.gov/~media/ODH/ASSETS/Files/hpr/sexual%20assault/adultprotocol2011.ashx>.

this document is directed primarily toward medical personnel and facilities, it also provides guidance to other key responders such as advocates and law enforcement representatives. This type of coordinated community response is supported by the Violence Against Women Act and subsequent legislation. Such a response can help afford victims access to comprehensive immediate care, minimize the trauma victims may experience, and encourage them to utilize community resources. It can also facilitate the criminal investigation and prosecution, increasing the likelihood of holding offenders accountable and preventing further sexual assaults.

- Address the needs of victims while promoting the criminal justice system response. Stabilizing, treating, providing social and legal services, including knowledge of immigration protections, and engaging victims as essential partners in the criminal investigation are central aspects of the protocol. Thus, this protocol includes information about concepts such as “anonymous reporting,” which may give victims needed time to decide if and when they are ready to engage in the criminal justice process. An anonymous report may also provide law enforcement agencies with potentially useful information about sex crime patterns in their jurisdictions.³ The objective is to promote better and more victim-centered⁴ evidence collection, in order to provide better assistance in court proceedings and hold more offenders accountable.
- Promote high-quality, sensitive, and supportive exams for all victims, regardless of jurisdiction and geographical location of service provision. The protocol offers recommendations to help standardize the quality of care for sexual assault victims throughout the country and is based on the latest scientific evidence. It also promotes timely evidence collection that is accurately and methodically gathered, so that high-quality evidence is available in court.

This protocol discusses the roles of the following responders: health care providers, advocates, law enforcement representatives, forensic scientists, and prosecutors, as well as interpreters. Clearly, each of these professions has a distinct and complementary role in responding to sexual assault. But rather than dictate who is responsible for every component of the response or within the exam process, the protocol is designed to help communities consider what each procedure involves and any related issues. With this information, each community can make decisions for its jurisdiction about the specific tasks of each responder during the exam process and the coordination needed among responders. The following is a general description of the responsibilities with which each responder may assist:⁵

- **Advocates** may be involved in initial victim contact (via 24-hour hotline or face-to-face meetings); offer victims advocacy, support, crisis intervention, information, language assistance services, including interpreters, and referrals before, during, and after the exam process; and help ensure that victims have transportation to and from the exam site. They often provide comprehensive, longer term services designed to aid victims in addressing any needs related to the assault, including but not limited to counseling, legal (civil, criminal, and immigration), and medical system advocacy.
- **Law enforcement representatives** (e.g., 911 dispatchers, patrol officers, officers who process crime scene evidence, detectives, and investigators) respond to initial complaints, work to enhance victims’ safety, arrange for victims’ transportation to and from the exam site as needed, interview victims in a language they understand, collect evidence from the scene, coordinate collection and delivery of evidence to designated labs or law enforcement facilities, interview suspects, and conduct other investigative activities (such as interviewing suspects and witnesses in a language they

³ States are responsible for ensuring that the costs associated with performing a medical forensic examination are paid and ensuring that all victims of sexual assault are provided the opportunity to have a medical forensic examination conducted, regardless of whether they choose to participate in the criminal justice system.

⁴ Please see the section on “Victim-Centered Care” beginning on page 29 for more explanation of this term.

⁵ There are instances where a case may be prosecuted concurrently in two or more jurisdictions. For example, sexual assault cases occurring on Indian reservations can be prosecuted concurrently in tribal and state or federal court. In such situations, each sovereign will likely have its own victims’ advocate, law enforcement, prosecutor, and judicial/court officers. Coordination of services in multijurisdictional investigations and prosecutions is critical to the success of the criminal case and the well-being and healing of the victim.

understand, requesting crime lab analyses, reviewing medical and lab reports, preparing and executing search and arrest warrants, writing reports, and presenting the case to a prosecutor).

- **Health care providers** assess patients for acute medical needs and provide stabilization, treatment, and/or consultation. Ideally, sexual assault forensic examiners perform the medical forensic exam, gather information for the medical forensic history, collect and document forensic evidence, and document pertinent physical findings from patients. They offer information, treatment, and referrals for sexually transmitted infections (STIs),⁶ and other nonacute medical concerns; assess pregnancy risk and discuss treatment options with the patient, including reproductive health services; and testify in court if needed. They coordinate with advocates to ensure patients are offered crisis intervention, support, and advocacy before, during, and after the exam process and encourage use of other victim services. They may follow up with patients for medical and forensic purposes. Other health care personnel who may be involved include, but are not limited to, emergency medical technicians, staff at hospital emergency departments, gynecologists, surgeons, private physicians, health care interpreters, and/or local, tribal, campus, or military health services personnel.
- **Forensic scientists** analyze forensic evidence and provide results of the analysis to investigators and/or prosecutors. They also may testify at trial regarding the results of their analysis.
- **Prosecutors** determine if there is sufficient evidence for prosecution and, if so, prosecute the case. They should be available to consult with first responders as needed. A few jurisdictions involve prosecutors more actively, paging them after initial contact and having them respond to the exam site so that they can become familiar with the case and help guide the investigation.

This document is intended only to improve the criminal justice system’s response to victims of sexual assault and the sexual assault forensic examination process. It does not address the remedies that may be available to victims through the civil justice system, and does not create a right or benefit, substantive or procedural, for any party.

⁶ STIs are also commonly known as sexually transmitted diseases (STDs).

Recommendations at a Glance: A National Protocol for Sexual Assault Medical Forensic Examinations

The National Protocol for Sexual Assault Medical Forensic Examinations offers guidance to jurisdictions in creating and implementing their own protocols, as well as recommending specific procedures related to the exam process. *Recommendations at a Glance* highlights key points discussed in the protocol, but it is not designed to be a stand-alone checklist on exam procedures or responsibilities of each involved responder. The protocol should be read to understand and respond to the complex issues presented during the exam process. See the protocol introduction for an explanation of select terms used in this chapter and the protocol.

Goal of the Protocol

A timely, high-quality medical forensic examination can potentially validate and address sexual assault patients'⁷ concerns, minimize the trauma they may experience, and promote their healing. At the same time, it can increase the likelihood that evidence collected will aid in criminal case investigation, resulting in perpetrators being held accountable and further sexual violence prevented.

The examination and the related responsibilities of health care personnel are the focus of this protocol. Recognizing that multidisciplinary coordination is vital to the success of the exam, the protocol also discusses the responses of other professionals, as they relate to the exam process.

A. Overarching Issues

1. Coordinated approach: A coordinated, multidisciplinary approach to conducting the exam provides victims⁸ with access to comprehensive immediate care, helps minimize trauma they may experience, and encourages their use of community resources. Such a response can also enhance public safety by facilitating investigation and prosecution, which increases the likelihood that offenders will be held accountable for their actions. Raising public awareness about the existence and benefits of a coordinated response to sexual assault may lead more victims to disclose the assault and seek help. (SEE PAGES 23–29)

Recommendations for jurisdictions to facilitate a coordinated approach to the exam process:

- Understand that the purposes of the exam process are to address patients' health care needs and collect evidence suitable for possible use by the criminal justice system.
- Identify key responders and their roles.
- Develop quality assurance measures to ensure effective response during the exam process.

2. Victim-centered care: Victim-centered care is paramount to the success of the exam process. Response to victims should be timely, appropriate, sensitive, and respectful. (SEE PAGES 30-45)

Recommendations for health care providers and other responders to facilitate victim-centered care:

- Give sexual assault patients priority as emergency cases.
- Provide the necessary means to ensure patient privacy.
- Adapt the exam process as needed to address the unique needs and circumstances of each patient.

⁷ Sexual assault patients are also referred to as victims, depending on which responders are primarily being discussed. The term "patients" is generally used by health care professionals.

⁸ The term "victim" is not used in a strictly criminal justice context. The use of "victim" simply acknowledges that persons who disclose that they have been sexually assaulted should have access to certain services.

- Develop culturally responsive care and be aware of issues commonly faced by victims from specific populations.
- Recognize the importance of victim services within the exam process.
- Accommodate patients' requests to have a relative, friend, or other personal support person (e.g., religious and spiritual counselor/advisor/healer) present during the exam, unless considered harmful by responders.
- Accommodate patients' requests for responders of a specific gender throughout the exam as much as possible.
- Prior to starting the exam and conducting each procedure, explain to patients in a language the patients understand what is entailed and its purpose.
- Assess and respect patients' priorities.
- Integrate medical and evidentiary procedures where possible.
- Address patients' safety during the exam.
- Provide information that is easy for patients to understand, in the patient's language, and that can be reviewed at their convenience.
- Address physical comfort needs of patients prior to discharge.

3. Informed consent: Patients should understand the full nature of their consent to each exam procedure. By presenting them with relevant information, in a language they understand, patients are in a position to make an informed decision about whether to accept or decline a procedure. However, they should be aware of the potential impact of declining a particular procedure, as it may negatively affect the quality of care, the usefulness of evidence collection, and, ultimately, any criminal investigation and/or prosecution. They should understand that declining a particular procedure might also be used against them in any justice system proceeding. If a procedure is declined, reasons why should be documented if the patient provides such information. (SEE PAGES 47-49)

Recommendations for health care providers and other responders to request patients' consent during the exam process:

- Seek the informed consent of patients as appropriate throughout the exam process.
- Make sure policies exist to guide the process of seeking informed consent from specific populations.

4. Confidentiality: Involved responders must be aware of the scope and limitations of confidentiality related to information gathered during the exam process. Confidentiality is intricately linked to the scope of patients' consent. Members of a sexual assault response team (SART) or other collaborating responders should inform victims of the scope of confidentiality with each responder and be cautious not to exceed the limits of victim consent to share information in each case. (SEE PAGES 51-53)

Recommendations that jurisdictions may take to maintain confidentiality of patients:

- Be sure jurisdictional policies address the scope and limitations of confidentiality as it relates to the exam process and with whom information can be legally and ethically shared.
- Increase the understanding of relevant confidentiality issues. .
- Consider the impact of the federal privacy laws regarding health information on victims of sexual assault.
- Strive to resolve intrajurisdictional conflicts.

5. Reporting to law enforcement: Reporting the crime provides the criminal justice system with the opportunity to offer immediate protection to victims, collect evidence from all crime scenes, investigate cases, prosecute if there is sufficient evidence, and hold offenders accountable for crimes committed. Given the danger that sex offenders pose to the community, reporting can serve as a first step in efforts to stop them from reoffending. Equally important, reporting gives the justice system the chance to help victims address their needs, identify patterns of sexual violence in the jurisdiction, and educate the public about such patterns. Service providers should discuss all reporting options with victims in a language they understand

and the pros and cons of each, including the fact that delayed reporting may be detrimental to the prosecution of an offender. Even if a victim does not get a forensic medical exam, the victim can still report the crime at a later time. However, it will be much more difficult for criminal justice personnel to investigate and prosecute the crime if evidence was not collected.

Reporting requirements in sexual assault cases vary from one jurisdiction to another. Every effort should be made to facilitate treatment and evidence collection (if the patient agrees), regardless of whether the decision to report has been made at the time of the exam. Victims who are undecided about reporting who receive respectful and appropriate care and advocacy at the time of their exam are more likely to assist law enforcement and prosecution. Because immigrant victims may be more reticent to report crimes, they need to be aware of crime victim protections for immigrants. Access to immigration relief for crime victims will enhance the ability of law enforcement to detect, investigate, and prosecute crimes. (SEE PAGES 55-59)

Recommendations for jurisdictions and responders to facilitate victim-centered reporting practices:

- Except in situations covered by mandatory reporting laws, patients, not health care workers, make the decision to report a sexual assault to law enforcement.
- Inform patients about reporting consequences.
- As a result of VAWA 2005, many jurisdictions have implemented alternatives to standard reporting procedures.
- Promote a victim-centered reporting process.

6. Payment for the examination under VAWA: Under the Violence Against Women Act (VAWA),⁹ a state, territory, or the District of Columbia is entitled to funds under the STOP Violence Against Women Formula Grant Program only if it, or another governmental entity, incurs the full out-of-pocket cost of medical forensic exams for victims of sexual assault. "Full out-of-pocket costs" means any expense that may be charged to a victim in connection with the exam for the purpose of gathering evidence of a sexual assault.¹⁰ In addition, under the Violence Against Women Act of 2005, states may not require victims to participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic medical exam.¹¹ (SEE PAGES 61-62)

Recommendations for jurisdictions to facilitate payment for the sexual assault medical forensic exam:

- Understand the scope of the VAWA provisions related to exam payment.
- Notify victims of exam facility and jurisdictional policies regarding payment for medical care and the medical forensic exam.

B. Operational Issues

1. Sexual Assault Forensic Examiners: These are the health care professionals who conduct the examination. It is critical that all examiners, regardless of their discipline, are committed to providing compassionate and quality care for patients disclosing sexual assault, performing the physical examination, collecting evidence competently, documenting all findings, and testifying in court as needed. (SEE PAGES 65-67)

Recommendations for jurisdictions to build the capacity of examiners performing these exams:

- Encourage the development of specific knowledge, skills, and victim-centered approaches in examiners.
- Encourage advanced education and supervised clinical practice of examiners, as well as certification for all examiners.

⁹ 42 U.S.C. § 3796gg-4.

¹⁰ 28 C.F.R. § 90.14(a).

¹¹ 42 U.S.C. 3796gg-4(d).

- Provide access to experts on anti-sexual assault initiatives who can participate in sexual assault examiner training, mentoring, proctoring, case review, photograph review, and quality assurance.

2. Facilities: Health care facilities have an obligation to provide services to sexual assault patients. Designated exam facilities or sites served by specially educated and clinically prepared examiners increase the likelihood of a state-of-the-art exam, enhance coordination, encourage quality control, and increase quality of care for patients. (SEE PAGES 71-74)

Recommendations for jurisdictions to build capacity of health care facilities to respond to sexual assault cases:

- Recognize the obligation of health care facilities to serve sexual assault patients in a culturally and linguistically appropriate manner.
- Ensure that exams are conducted at sites served by examiners with advanced education and clinical experience, if possible.
- Explore possibilities for optimal site locations.
- Communities may wish to consider developing basic requirements for designated exam sites.
- If a transfer from one health care facility to a designated exam site is necessary, use a protocol that minimizes time delays and loss of evidence and addresses patients' needs.

3. Equipment and supplies: Certain equipment and supplies are essential to the exam process (although they may not be used in every case). These include a copy of the most current exam protocol used by the jurisdiction, standard exam room equipment and supplies, comfort supplies for patients (e.g., changes of clothes, food, and water), sexual assault evidence collection kits, an evidence drying device/method, a forensic imaging system, testing and treatment supplies, a purified water source, an alternate light source, an anoscope, and written materials for patients. A microscope and/or toluidine blue dye may be required, depending on jurisdictional policy. A colposcope or other magnifying instrument may also be used. Some jurisdictions are also beginning to use advanced technology (telemedicine), which allows examiners offsite consultation with medical experts by using computers, software programs, and the Internet. Jurisdictions using such technology should be careful to protect patient confidentiality. (SEE PAGES 75-77)

Recommendations for jurisdictions and responders to ensure that proper equipment and supplies are available for examinations:

- Consider what equipment and supplies are necessary to conduct a medical forensic exam.
- Address cost barriers to obtaining necessary equipment and supplies.

4. Sexual assault evidence collection kit (for evidence from victims): Most jurisdictions have developed their own sexual assault evidence collection kits or purchased premade kits through commercial vendors. Kits often vary from one jurisdiction to another. Despite variations, however, it is critical that every kit meets or exceeds minimum guidelines for contents: broadly including a kit container, instruction sheet and/or checklist, forms, and materials for collecting and preserving all evidence required by the applicable crime laboratory. Evidence that may be collected includes, but is not limited to, clothing, foreign materials on the body, hair (including head and pubic hair samples and combings), oral and anogenital swabs and smears, body swabs, blood and urine samples for possible alcohol and/or toxicology testing, and a blood or saliva sample for DNA analysis and comparison. The instruction sheet and/or checklist should guide examiners on maintaining the chain of custody for evidence collected. (SEE PAGES 79-80)

Recommendations for jurisdictions and responders when developing/customizing kits:

- Use kits that meet or exceed minimum guidelines for contents.
- Work to standardize sexual assault evidence collection kits within a jurisdiction and across a state or territory, or for federal cases.

5. Timing considerations for collecting evidence: Although many jurisdictions have traditionally used 72 hours after the assault as the standard cutoff time for collecting evidence, a large number of jurisdictions have

moved toward longer time frames as cut off points. Many jurisdictions have now extended the standard cutoff time (e.g., to 5 days or 1 week). The use of such timeframes is supported by empirical evidence. Advancing DNA technologies continue to extend time limits because of the stability of DNA and sensitivity of testing. These technologies are even enabling forensic scientists to analyze evidence that was previously unusable when it was collected years ago. Thus, it is critical that in every case where patients are willing, examiners obtain the pertinent medical forensic history, examine patients, and document findings. Not only can the information gained from the relevant history and exam help health care providers address patients' medical needs, but it can guide examiners in determining whether there is evidence to collect and, if so, what to collect. (SEE PAGES 81-82)

Recommendations for health care providers and other responders to maximize evidence collection:

- Recognize the importance of gathering information for the medical forensic history, examining patients, and documenting exam findings, separate from collecting evidence.
- Examine patients promptly to minimize loss of evidence and identify medical needs and concerns.
- Make decisions about whether to collect evidence and what to collect on a case-by-case basis, guided by knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected.
- Responders, examiners, and law enforcement representatives should seek education and resources to aid them in making well-informed decisions about evidence collection.

6. Evidence integrity: Properly collecting, preserving, and maintaining the chain of custody of evidence is critical to its subsequent use in criminal justice proceedings. (SEE PAGES 83-84)

Recommendations for health care providers and other responders to maintain evidence integrity:

- Follow jurisdictional policies for drying, packaging, labeling, and sealing evidence.
- Make sure transfer policies maximize evidence preservation.
- Make sure storage policies maximize evidence preservation.
- Document the handling, transfer, and storage of evidence.

C. The Examination Process

1. Initial contact: Some sexual assault patients may initially present at a designated exam facility, but most who receive immediate medical care initially contact a law enforcement or advocacy agency for help. If 911 is called, law enforcement or emergency medical services (EMS) may be the first to provide assistance to victims. Communities need to have procedures in place to promptly respond to disclosures/reports of sexual assault in a standardized and victim-centered manner. (SEE PAGES 87-90)

Recommendations for jurisdictions and responders to facilitate initial contact with victims:

- Build consensus among involved agencies regarding procedures for a coordinated initial response when a recent sexual assault is disclosed or reported. Educate responders to follow procedures
- Recognize essential elements of initial response.

2. Triage and intake: Once patients arrive at the exam site, health care personnel must evaluate, stabilize, and treat for life-threatening and serious injuries according to facility policy. Standardized procedures for response in these cases should be followed, while respecting patients and maximizing evidence preservation. (SEE PAGES 91-92)

Recommendations for health care providers to facilitate triage and intake that addresses patients' needs:

- Consider sexual assault patients a priority.

- First perform a prompt, competent medical assessment. Then respond to acute injury, the need for trauma care, and safety needs of patients before collecting evidence.
- Alert examiners of the need for their services.
- Contact victim advocates so they can offer services to patients, if not already done.
- Assess and respond to safety concerns upon arrival of patients at the exam site, such as threats to patients or staff.
- Assess patients' needs for immediate medical or mental health intervention prior to the evidentiary exam, following facility policy.

3. Documentation by health care personnel: Examiners document exam findings, the medical forensic history, and evidence collected in the medical forensic report. (SEE PAGE 93-94)

Recommendations for health care providers to complete needed documentation:

- Ensure completion of all appropriate documentation.
- Educate examiners on proper documentation.
- Ensure the accuracy and objectivity of medical forensic reports.

4. The medical forensic history: Examiners ask the patient questions in a language the patient understands to obtain this history. This information guides them in examining the patient and collecting evidence. (SEE PAGES 95-98)

Recommendations for health care providers to facilitate gathering information from patients:

- Coordinate medical forensic history taking and investigative interviewing.
- Advocates should be able to provide support and advocacy during the history, if desired by patients.
- Consider patients' needs prior to and during information gathering.
- Obtain the medical forensic history.

5. Photography: Photographic documentation of injury or other visible evidence on the patient's body can supplement the medical forensic history and the written documentation of physical findings and evidence. (SEE PAGES 99-102)

Recommendations for health care providers and other responders to photograph documentation:

- Consider the extent of forensic photography necessary.
- Consider the equipment.
- Consider patient comfort and privacy.
- Explain forensic photography procedures to patients.
- Take initial and follow-up photographs as appropriate, according to jurisdictional policy.

6. Exam and evidence collection procedures: Examiners examine patients and collect evidence according to jurisdictional policy. Findings from the exam and collected evidence often help reconstruct the events in question in a scientific and objective manner. (SEE PAGES 103-113)

Recommendations for health care providers to conduct the exam and facilitate evidence collection:

- Recognize the evidentiary purpose of the exam.
- Strive to collect as much evidence from patients as possible, guided by the scope of informed consent, the medical forensic history, exam findings, and instructions in the evidence collection kit.
- Be aware of and document evidence and injuries that may be pertinent to the issue of whether the patient consented to the sexual contact with the suspect.
- Understand how biological evidence is tested.

- Prevent exposure to infectious materials and risk of contamination of evidence.
- Understand the implications of the presence or absence of seminal evidence.
- Modify the exam and evidence collection to address the specific needs and concerns of patients.
- Explain exam and evidence collection procedures to patients.
- Conduct the general physical and anogenital exam and document findings on body diagram forms.
- Collect evidence to submit to the crime lab for analysis, according to jurisdictional policy.
- Collect other evidence.
- Keep medical specimens separate from evidentiary specimens collected during the exam.

7. Alcohol and drug-facilitated sexual assault: Responders must consider the possibility that drugs and/or alcohol may have been used to facilitate an assault. They must know how to screen for suspected alcohol and drug-facilitated sexual assault, obtain informed consent of patients for testing, and collect toxicology samples when appropriate. (SEE PAGES 114-118)

Recommendations for jurisdictions and responders to facilitate response in suspected alcohol- or drug-facilitated sexual assault:

- Promote training and develop jurisdictional policies.
- Plan response to voluntary use of drugs and/or alcohol by patients.
- Be clear about the circumstances in which toxicology testing may be indicated. Routine testing is not recommended.
- Toxicology testing procedures should be explained to patients.
- Toxicology samples should be collected as soon as possible after a suspected drug-facilitated case is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement.
- Identify toxicology laboratories.
- Preserve evidence and maintain the chain of custody.

8. Sexually transmitted infection (STI) evaluation and care: Because contracting an STI from an assailant is of significant concern to patients, it should be addressed during the exam. (SEE PAGES 119-124)

Recommendations for health care providers to facilitate STI evaluation and care:

- Offer patients information in a language they understand.
- Consider the need for STI testing on an individual basis.
- Encourage patients to accept prophylaxis against STIs if indicated.
- Encourage follow-up STI exams, testing, immunizations, counseling, and treatment as directed.
- Address concerns about HIV infection.

9. Pregnancy risk evaluation and care: Patients may fear becoming pregnant as a result of an assault. Health care providers must address this issue according to facility and jurisdictional policy. (SEE PAGES 125-126)

Recommendations for health care providers to facilitate pregnancy evaluation and care:

- Discuss the probability of pregnancy with patients who have reproductive capability.
- Administer a pregnancy test for all patients with reproductive capability (with their consent).
- Discuss treatment options with patients in their preferred language.

A victim of sexual assault should be offered prophylaxis for pregnancy, subject to informed consent and consistent with current treatment guidelines. Conscience statutes will continue to protect health care providers who have moral or religious objections to providing certain forms of contraception. In a case in which a provider refuses to offer certain forms of contraception for moral or religious reasons, victims of sexual assault must receive information on how to access these services in a timely fashion.

10. Discharge and follow-up: Health care personnel have specific tasks to accomplish before discharging patients, as do advocates and law enforcement representatives (if involved). Responders should coordinate discharge and follow-up activities as much as possible to reduce repetition and avoid overwhelming patients. (SEE PAGES 129-131)

Recommendations to facilitate discharge and follow-up:

- Address issues related to medical discharge and follow-up care.
- Advocates, law enforcement representatives, and other involved responders can coordinate with health care providers to discuss a range of other issues with patients prior to discharge.

11. Examiner court appearances: Health care providers conducting the exam should expect to be called on to testify in court as fact and/or expert witnesses. (SEE PAGES 133-135)

Recommendations for jurisdictions to maximize the usefulness of examiner testimony in court:

- Encourage broad education for examiners on testifying in court.
- Promote prompt notification of examiners if there is a need for them to testify in court.
- Encourage pretrial preparation of examiners.
- Encourage examiners to seek feedback on testimony to improve effectiveness of future court appearances.

Introduction

Sexual assault is a prevalent crime in our society that has a devastating and long-term impact on individuals from all walks of life. Although an assault can be traumatizing in and of itself, it can result in a range of problems for the victim, such as acute and chronic mental health problems, physical injuries, pregnancy, and sexually transmitted infections (STIs).¹² It is essential that communities offer assistance to victims in the immediate aftermath of an assault. Communities must also work to hold offenders accountable for their actions and stop them from committing further sexual violence. Elements of response typically include the following:

- Provision of a prompt medical screening exam and treatment, including stabilization and/or referral for medical care for victims as needed;
- Collection of evidence from victims and documentation of findings, which may aid investigation and prosecution;
- Responding to, documenting, and investigating sexual assault, which generally includes collection of evidence from the scene of the sexual assault, which may lead to charges against suspects and prosecution;
- Support, crisis counseling, information and referrals for victims, as well as advocacy to ensure that victims receive appropriate assistance; and
- Support and information for victims' families and friends.

This document focuses on elements of immediate response that are the responsibility of health care providers—medical care for sexual assault patients and collection of evidence from them. It seeks to assist health care personnel in validating and addressing patients' health concerns, minimizing the trauma patients may experience, promoting healing, and maximizing the collection and preservation of evidence from patients, including documentation of findings, for potential use in the legal system. (A sexual assault medical forensic examination as described in this document addresses both medical and evidentiary needs of the patient following sexual assault).

This protocol also addresses the role of advocates, law enforcement representatives, prosecutors, forensic scientists, and other responders in the medical forensic exam process. For various reasons (such as fear, stigma, lack of information, lack of access, or mental trauma), many sexual assault victims choose not to seek medical care or have evidence collected. However, coordination among professionals involved in immediate response may be instrumental in reversing this trend. It is often found that victims will seek assistance when responders work together to ensure that victims are informed of their options for assistance, encouraged to address their needs, have their spiritual and psychological needs respected, and are aided in obtaining the help they want. In addition, multidisciplinary coordination has proven to enhance medical care provided to victims as well as evidence collection and preservation efforts.¹³

Background

This national protocol was developed by the Office on Violence Against Women (OVW) under the direction of the Attorney General pursuant to the Violence Against Women Act of 2000.¹⁴ In developing the protocol, OVW reviewed existing protocols on sexual assault forensic examinations and consulted with national, state, local, and tribal experts on sexual assault. Experts were consulted from rape crisis centers; state and tribal sexual assault and domestic violence coalitions and programs; and programs for criminal justice, forensic

¹² STI are also commonly known as sexually transmitted diseases (STDs).

¹³ For example, when first responders explain to victims how to preserve evidence on their bodies and clothing prior to arrival at the exam site, they may increase the likelihood that the evidence will be collected rather than contaminated or destroyed.

¹⁴ The statutory requirement to develop this protocol can be found in Section 1405 of the Violence Against Women Act of 2000, Public Law 106-386. The statutory requirement also mandates the development of a national recommended standard for training for health care professionals performing these examinations, as well as related training for all health care students. These training standards were released in June, 2006 and are available at <http://www.dna.gov/>.

nursing, forensic science, emergency-medicine, law, social services, and sex crimes in underserved communities.¹⁵

Starting in the summer of 2001, the Department of Justice (DOJ) began gathering information on resources, issues, and gaps related to sexual assault medical forensic exams. The first task was to identify and obtain relevant materials and data. Existing national and jurisdictional protocols on the exam and immediate multidisciplinary responses to sexual assault were sought,¹⁶ as well as documents that analyzed jurisdictional response. Input was solicited on issues, gaps, and promising practices from numerous organizations, associations, and individuals representing disciplines involved in the response to sexual assault. In addition, numerous persons were contacted who could offer perspectives on particular issues related to the exam process. State sexual assault coalitions and state government agencies that oversee violence against women programs, as well as tribal coalitions, were also contacted to gain information on their activities concerning protocol development and training. In some states, data was obtained through discussions with sexual assault forensic examiners and coordinators of examiner programs or sexual assault response teams.

A series of forums was held in the summer and fall of 2002, calling upon practitioners and policymakers involved in victim advocacy, health care, forensic science, and criminal justice fields to assist in developing a national protocol. After a draft protocol for adult and adolescent victims was developed in early 2003, it was distributed to a wide array of individuals and organizations for their review and feedback.¹⁷ Comments were first solicited from the individuals who were invited to the forums. Then input was sought from sexual assault survivors, as well as tribal sexual assault and domestic violence coalitions and local advocacy programs. Members of the National Advisory Committee on Violence Against Women also reviewed the draft and provided input. After several revisions of the document, feedback was solicited during the summer of 2003 from many national and state organizations and some local agencies that deal with sexual assault issues or serve diverse populations, as well as other individuals representing relevant disciplines. Comments received were incorporated into the document where appropriate.

Many of the revisions from the original protocol are based on recommendations made by the consulted experts. Some of the recommendations are based on empirical research. Although research has been and continues to be done in many areas related to the medical forensic exam, much more research needs to be done to evaluate the impact of the exam process and specific exam components on victim well-being and criminal justice outcomes. For this revision, OVW solicited input from technical assistance providers representing the relevant disciplines, such as forensic nurses, doctors, prosecutors, law enforcement, advocates, and civil attorneys, as well as the National Institute of Justice. We also held a webinar with relevant experts.

The national protocol recommends, rather than mandates, methods for conducting the medical forensic exam.¹⁸ It serves as an informational guide to communities as they develop or revise their own protocols.¹⁹ In no way does it invalidate previously established jurisdictional protocols, policies, or practices.

About This Document

Organization. Protocol recommendations are organized into several broad sections: A) overarching issues, B) operational issues, and C) the examination process. Each section builds on information presented in

¹⁵ Such consultation was required under Section 1405 of the Violence Against Women Act of 2000, Public Law 106-386.

¹⁶ Protocols reviewed varied in scope, focus, targeted audiences, and level of detail. Most addressed to some extent exam and evidence collection procedures, drug-facilitated assault, evidence integrity, and evaluation and care for STIs, HIV, and pregnancy. Some also addressed roles of involved responders, multidisciplinary coordination, reporting, crime lab testing, court testimony, issues related to victims' needs, working with specific populations of victims, payment for the exam, and crime victims' compensation.

¹⁷ The scope of this protocol is limited to the sexual assault medical forensic exam of adult and adolescent victims. A separate protocol should be developed on child exams. Not only is child sexual victimization a complex topic in and of itself, but response to child victims can be considerably different from response to adult and adolescent victims.

¹⁸ The protocol has no regulatory purpose and is not intended to nor does it provide legal advice. (Statement adapted from the *Hawaii State Sexual Assault Protocol for Forensic and Medical Examinations*, Introduction, 1999.)

¹⁹ Those involved in the development of this protocol strove to create a document that addressed the many issues facing communities across the nation related to the exam process. However, there may be instances where the document falls short of adequately addressing specific needs or challenges facing a jurisdiction or a specific population of victims. See appendix A on customizing protocols for ways that jurisdictions can address these limitations when they are developing/revising their own protocols.

previous sections and comprises tasks to be addressed, issues to be considered and related recommendations. Although an effort has been made to avoid repetition of information throughout the document, there are instances where data are repeated for clarity or emphasis. The appendixes discuss the topics of protocol customization by jurisdictions and creation of sexual assault response teams.

Protocol foundation. This protocol is based on a belief that it is possible, with a victim's consent, to simultaneously address the immediate health needs of a victim and the future needs of the justice system.

Key principles underlying response to sexual assault victims as discussed in this document include:

- Recognition of victim safety and well-being as paramount goals of response.
- Recognition that victims know far more about themselves and their needs than responders.
- Respect for victims' right to make their own choices.
- Recognition that providing victims with information about their options during the exam process, expected consequences of choosing one option over another, and available resources can help them make more informed decisions.
- Recognition that all victims, regardless of differences in backgrounds and circumstances, and regardless of their decision to report the crime or not, have the right to receive a high-quality medical forensic exam and to be treated with respect and compassion.
- Respect for victims' right to confidentiality.
- Recognition of the importance of victims' feedback to improving the exam process.

Another important principle is recognition that the vast majority of sexual assaults are committed by assailants known to victims. Historically, sexual assault committed by nonstrangers was not taken seriously and interventions were less than adequate. It is imperative that all involved responders acknowledge that sexual assaults committed by persons known to victims are as grave a crime as those committed by strangers. Responders should be aware that victims' reactions to an assault are affected by a multitude of factors: one of them being the prior relationship between the victim and the offender. They should also understand that many variables may affect the relevance of certain types of evidence to a particular case, including whether an assault was committed by a stranger, a known offender who claims no sexual contact with the victim, or a known offender who claims the victim consented to the contact.²⁰

Use of Terms

Many terms are explained throughout the protocol to clarify the context in which they are used.²¹ However, it may be helpful to discuss briefly the following terms in advance (in alphabetical order):

Adolescent: Adolescents are distinguished in the protocol from prepubertal children who require a pediatric exam. This document focuses on the examination of females who have experienced the onset of menarche and males who have reached puberty. However, it is important to recognize that age also plays a role in whether a person is treated as a child or adolescent. For example, some adolescent girls may not start menstruating until their later teen years. While the physical developmental level of these patients must be taken into account when performing the exam, they should otherwise be treated as adolescents rather than children. Legally, jurisdictions vary in the age at which they consider individuals to be minors, laws on child sexual abuse, mandatory reporting policies for sexual abuse and assault of minors, instances in which minors can consent to treatment and evidence collection without parental/guardian involvement, and the scope of confidentiality that minors are afforded. Involved responders should be well versed in their jurisdictional laws and policies regarding the above issues, screening procedures for determining whether a pediatric exam is needed (particularly in the case of younger adolescents), and local protocols for response to prepubertal victims. Exam sites are to follow the jurisdictional laws regarding parental/guardian consent.

²⁰ For example, evidence that identifies a suspect in a stranger case, such as DNA evidence, is critical to the continuing investigation. In cases in which the victim knows the suspect, evidence that identifies suspects is important if suspects claim they had no sexual contact with victims. In cases in which suspects claim that victims consented to the sexual contact, evidence identifying suspects is less crucial and evidence and documentation related to whether force or coercion was used against victims is often more important.

²¹ Keep in mind that these definitions may vary from those used generally or in exam protocols developed by states, territories, tribes, and local communities.

Communitywide sexual assault coordinating councils: These multidisciplinary groups typically work to facilitate a communitywide response to sexual assault that is appropriate, coordinated, and comprehensive. They tend not to be involved in direct response, but rather endeavor to improve overall services, interventions, and prevention efforts. Communitywide coordinating council is a broad term for such a group, but possibilities are endless for what a jurisdiction may call such a group. This group may be a subcommittee of an entity that more generally promotes coordinated response to violence in the community.

Coordinated community response: This term refers to immediate and longer term community response to sexual assault that is coordinated among involved responders. The idea is that while each responder provides services and/or interventions according to agency-specific policies, they also work with responders from other agencies and disciplines to ensure that they coordinate responses. The desired result is a collective response to victims and offenders that is appropriate, streamlined, and as comprehensive as possible. Coordinated community response to sexual assault is a concept that developed out of a need to reduce the historically fragmented approach to these cases and the negative impact of fragmentation on victim well-being, offender accountability, and prevention of future assault. These community responses may be known as sexual assault response teams or sexual assault response and resource teams (SARTs or SARRTs).

Culture: This term refers to a body of learned beliefs, traditions, and guides for behaving and interpreting behavior that may be shared among members of a particular group. Aspects of a culture include its values, beliefs, customs, communication styles, behaviors, practices, and institutions.²² In this document, a cultural group refers not only to an ethnic, racial, or religious group, but also to other groups with distinct cultures such as senior citizen; Deaf and hard-of-hearing communities; populations with differing sexual orientations, gender identities, or gender expressions; immigrants; refugees; the homeless; military personnel and their dependents; adolescents; prison inmates; and victims of sex trafficking or victims of commercial sexual exploitation. Individuals often belong to multiple cultural groups.

An immediate response to victims should sensitively and appropriately address their related cultural needs and concerns. It is important that responders acknowledge that victims from certain cultures in a community may be underserved, unserved, or misserved by the systems responsible for response and should work to improve response to these populations.

Disability: A person with a disability is an individual who has a physical or mental impairment that substantially limits one or more of that individual's major life activities, who has a record of such impairment, or is regarded as having such impairment.

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also may include the operation of major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered a disability. Determining whether an impairment substantially limits a major life activity is done without regard to the ameliorative effects of mitigating measures. Mitigating measures include medication, medical supplies, equipment, appliances, prosthetics, hearing aids and cochlear implants, mobility devices, oxygen therapy equipment, use of assistive technology, and learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

²² The first two sentences in this paragraph are drawn from A. Blue, *The Provision of Culturally Competent Health Care*, from the Web site of the Medical University of South Carolina College of Medicine (http://academicdepartments.musc.edu/fm_ruralclerkship/curriculum/culture.htm).

An individual is “regarded as” a person with a disability if that individual is discriminated against because of an actual or perceived physical or mental impairment, whether or not the impairment limits a major life activity.

Domestic violence: This term broadly refers to any abusive and coercive behavior used to control an intimate partner (a spouse, boyfriend/girlfriend, or former spouse or boyfriend/girlfriend) and/or a family member.²³ Some examples of tactics employed by abusers to control victims are use of coercion, threats, and intimidation; emotional, physical, and sexual abuse; economic manipulation; use of privilege; use of children and pets; isolation of victims; minimization and denial of violence; and blaming victims for violence.²⁴ An episode of domestic violence often includes multiple actions, and the violence typically escalates over time. In this protocol, it is important to be aware that sexual assault can be a significant part of domestic violence. Response to sexual assault occurring within a domestic violence context requires understanding of the overlapping dynamics of sexual assault and domestic violence, the complex needs of victims, the potential dangerousness of offenders, the resources available for victims, and adherence to jurisdictional policies on response to domestic violence.

Exam site: Emergency health care facilities, such as those in hospitals, traditionally have been the setting for provision of medical forensic services to sexual assault patients. However, nonemergency health care programs, such as hospital-based or community-based examiner programs, community clinics, mobile health clinics, tribal health clinics, local health departments, military hospitals or clinics, and college and university health centers, may also offer full or partial sexual assault medical forensic services. Sexual assault forensic examiners also may conduct exams at additional health care and non-health care sites. The facility conducting the exam may be referred to in this protocol as the “exam site,” in recognition of the fact that not all sites performing the exam are health care facilities. Clinical staff providing care at exam sites are broadly referred to in this document as “health care providers,” “health care staff,” “health care personnel,” and “health care clinicians.” In some communities, forensic exams may be conducted by lay health care providers, community health aides, or others who have been trained to perform forensic exams.

Examiner: The term refers to the health care provider conducting the sexual assault medical forensic examination. The examiner is also referred to in this document as the “sexual assault forensic examiner,” “sexual assault examiner,” and “forensic examiner.” Many communities refer to their sexual assault examiners by more specific acronyms based upon the discipline of practitioners and/or specialized education and clinical experiences.

First responder: A first responder is a professional who initially responds to a disclosure of a sexual assault (there is often more than one first responder). These professionals typically must follow agency-specific policies for responding to victims. Those who traditionally have been responsible for immediate response to adult and adolescent sexual assaults include victim advocates, 911 dispatchers, law enforcement representatives, and health care providers. A wide range of other responders also may be involved, such as emergency medical technicians, public safety officials, protective service workers, prosecutors and victim/witness staff, private physicians, staff from local health care facilities, mental health providers, social service workers, corrections and probation staff, religious and spiritual counselors/advisors/leaders, school personnel, employers, qualified interpreters, and providers from organizations that address needs of specific populations (e.g., persons with disabilities, racial and cultural groups, senior citizens, the poor and homeless, runaways and adolescents in foster care, and domestic violence victims). Families and friends of victims also can play an important role in the initial response, because victims may first disclose the assault to them, ask for their help in seeking professional assistance, and want their ongoing support. However, they are not considered first responders in this document, because they are not responding to these disclosures in an official capacity.

Forensic scientist: The forensic scientist is responsible for analyzing evidence in sexual assault cases. This evidence typically includes DNA and other biological evidence, toxicology samples, latent prints, and trace evidence. Some forensic scientists specialize in the analysis of specific types of evidence. In this protocol, forensic scientists working in jurisdictional crime laboratories are often referred to as “crime lab/laboratory

²³ Drawn from M.A. Dutton, “The Dynamics of Domestic Violence: Understanding the Response from Battered Women,” *Florida Bar Journal* 68(9), January 24, 1994.

²⁴ Drawn from the Power and Control Wheel developed by the Domestic Violence Intervention Project of Minnesota.

personnel” and “crime lab/laboratory scientists.” Forensic scientists analyzing drug and alcohol samples are also referred to as “toxicologists.” Forensic scientists in many communities may respond to crime scenes to collect evidence and to process the scene.

Jurisdiction: This term is used in two ways in the protocol. One is to broadly describe a community that has power to govern or legislate for itself. For example, a jurisdiction may be a local area, a state, a territory, or tribe. A jurisdiction may also be referred to in the protocol as a “community.” The term also describes the authority to interpret and apply laws and is used in this context mainly when identifying who has “jurisdiction” over a particular case.

Language assistance services (LAS): Language assistance services are oral language services for interpretation and written language services, translation of written materials into languages other than English for limited English proficient (LEP) individuals.

Law enforcement representative: Different types of law enforcement agencies exist at the local, state, territory, tribal, and federal levels (e.g., state, county, tribal, or local police or sheriff, sworn police on college campuses, the FBI, the Bureau of Indian Affairs (BIA), and military police). Any of these agencies could potentially be involved in responding to sexual assault cases. Also, in areas without a local law enforcement agency, public safety officials may assist in immediate response to sexual assault victims. Some agencies may have staff with specialized education and experience in sexual assault investigations, which may be dedicated to investigating sexual assault cases and/or may be part of a special unit for investigating sexual assaults. In this protocol, personnel from law enforcement agencies are referred to as “law enforcement officers” or “law enforcement representatives,” unless more specificity is required.

Limited English Proficient (LEP): Refers to individuals who do not speak English as their primary language and have a limited ability read, speak, write, or understand English. LEP individuals may be entitled to language assistance services to ensure they have meaningful access to a benefit, program, or service that receives federal financial assistance.

Prosecutor: Different types of prosecution offices exist at the local, tribal, state, territory, and federal level (e.g., tribal prosecutor’s office, county prosecutor’s office, district attorney’s office, state attorney’s office, United States Attorney’s office, and military judicial branches). Any of these offices could be involved in responding to sexual assault cases. In addition, some offices may have personnel with specialized education and experience in sexual assault prosecutions, who may be dedicated to prosecuting sexual assault cases and/or may be part of a special unit for prosecuting sexual assaults. In this protocol, attorneys from prosecution offices will be referred to as “prosecutors” unless more specificity is required.

Sexual assault: Generally speaking, sexual assault is the sexual contact of one person with another without appropriate legal consent. This definition includes, but is not limited to, a wide range of behavior classified by state, territory, federal, and tribal law as rape, sexual assault, sexual misconduct, and sexual battery. Refer to applicable statutes for precise definitions in a specific jurisdiction.²⁵

Sexual assault medical forensic examination: The sexual assault medical forensic exam is an examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients. The examination includes gathering information from the patient for the medical forensic history; an examination; coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient; documentation of findings; information, treatment, and referrals for STIs, pregnancy, suicidal ideation, alcohol and substance abuse, and other nonacute medical concerns; and follow-up as needed to provide additional healing, treatment, or collection of evidence. This exam is referred to as the “forensic medical examination” under the Violence Against Women Act (VAWA).

Sexual assault response team (SART) also called a sexual assault response and resource team (SARRT): A SART/SARRT is a multidisciplinary team that provides specialized immediate response to victims of recent

²⁵ Drawn from the American College of Emergency Physicians’ *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, Overview, p. 7.

sexual assault. The team typically includes health care personnel, law enforcement representatives, victim advocates, prosecutors (usually available on-call to consult with first responders, although some may be more actively involved at this stage), and forensic lab personnel (typically available to consult with examiners, law enforcement, or prosecutors, but not actively involved at this stage). However, SART/SARRT components vary by community. The term “SARRT” (written with two “R”s) stands for “Sexual Assault Response and Resource Team.” This term is used for communities that involve a wider array of agencies and disciplines in their collaborative effort. A SARRT (with two “R”s) will thus involve all of the first responders who are typically included in a SART (with one “R”), but it may also include professionals who coordinate services for victims beyond the immediate response (e.g., representatives from mental health, public health, substance abuse treatment, and other social services). Many of these SARRTs meet monthly and often engage in systems review to ensure that the best victim-centered services are being provided in their communities.

Suspected sex offender: A suspected sex offender is an individual suspected of committing a sexual assault. In this document, the suspected sex offender is typically referred to as a “suspect.” When litigation is discussed, the suspected sex offender may be referred to as a “defendant.” When talking more broadly about sex offenders, they may be referred to as “sex offenders,” “assailants,” or “perpetrators.”

Victim: A sexual assault victim is someone who has been sexually assaulted. In this document, a victim can be a female or male; a person whose gender identity may not conform to his or her sex, or may be someone who doesn’t identify as either male or female; either adult or adolescent. There may be instances where individuals, such as unconscious persons or persons with cognitive disabilities, do not actually disclose that they have been assaulted, but others suspect that this may be this case and may be lawfully able to seek help for them. The term “survivor” is used in this document when referring to victims who are involved in long-term healing or have healed from sexual assault. It is important to note that because this document addresses a multidisciplinary response, the term “victim” is not used in a strictly criminal justice context. The use of “victim” simply acknowledges that persons who disclose they have been sexually assaulted should have access to certain services and interventions designed to help them be safe, recover, and seek justice. The term “patient” is also used when discussing the role of medical providers.

Victim service provider/advocate: A victim service provider/sexual assault victim advocate (also referred to as “victim advocate” and “advocate”) may offer victims and their significant others a range of services during, and following, the exam process. These services may include support, crisis intervention, information and referrals, interpretation or translation, and advocacy to ensure those victims’ interests are represented, their wishes respected, and their rights upheld. In addition, advocates and other victim service providers may provide follow-up services, such as support groups, counseling, accompaniment to related appointments, and legal advocacy (civil, criminal, and immigration) to help meet the needs of victims, their families, and friends.

A number of agencies may offer some or all of the services described above, including community-based sexual assault victim advocacy programs,²⁶ criminal justice system victim-witness offices, patient advocate programs at health care facilities, campus or military victim service programs, tribal social services, adult protective services, and others. Where they exist, community-based sexual assault victim advocacy programs are typically best positioned to provide these specific services. Community-based advocacy programs may use paid and/or volunteer advocates to provide services 24 hours a day, every day of the year. It is important to know that information victims share with government-based service providers usually becomes part of the criminal justice record, while community-based advocates typically can provide some level of confidential communication for victims. In addition, community-based advocates commonly receive education specific to the medical forensic exam process and sexual assault issues in general.

Victim-centered: A “victim-centered” approach as used in this protocol recognizes that sexual assault victims are central participants in the medical forensic exam process, and they deserve timely, compassionate, respectful, and appropriate care. Victims have the right to be fully informed in order to make their own decisions about participation in all components of the exam process. Responders need to do all that is

²⁶ In some areas, the community-based sexual assault victim advocacy program is a component of an umbrella organization serving additional populations (e.g., a dual sexual assault/domestic violence advocacy agency, a center for women, or a mental health agency). In others, the community-based sexual assault victim advocacy program is a stand-alone organization.

possible to explain possible options, the consequences of choosing one option over another, and available resources, as well as support victims in their choices. Medical personnel may refer to this as “patient-centered care.”

Vulnerable adults: This term is used in this document to refer to adult individuals with impaired and/or reduced mental capacity who have difficulty or cannot comprehend events that occurred or will occur (e.g., the assault itself or initial response by professionals), questions they will be asked during the exam, or the exam process itself. Exam sites should have internal policies based on jurisdictional statutes governing consent for treatment for and evidence collection from such patients.

A. Overarching Issues

This section presents issues that impact all or most of the sexual assault medical forensic exam process. The following chapters are included:

- Coordinated Team Approach
- Victim-Centered Care
- Informed Consent
- Confidentiality
- Reporting to Law Enforcement
- Payment for the Examination Under VAWA

1. Coordinated Team Approach

Recommendations at a glance for jurisdictions to facilitate a coordinated team approach:

- Understand that the purpose of the exam is to address patients' health care needs and collect evidence when appropriate for potential use within the criminal justice system.
- Identify key responders and their roles.
- Develop quality assurance measures to ensure effective response during the exam process.

Communities should ensure that victims, regardless of their backgrounds or circumstances, have access to medical, legal, and advocacy services. Use of a coordinated, multidisciplinary approach in conducting the medical forensic examination can afford victims access to comprehensive immediate care, help minimize trauma they may be experiencing, and encourage the use of community resources. Such a response can also enhance public safety by facilitating investigation and prosecution, thereby increasing the likelihood that offenders will be held accountable for their behavior and further sexual assaults will be prevented. Raising public awareness about the existence and benefits of a coordinated response to sexual assault may lead more victims to disclose the assault and seek the help they need.²⁷

Understand that the purpose of the exam is to address patients' health care needs and collect evidence when appropriate for potential use within the criminal justice system. The medical/forensic examination in its entirety addresses the medical and evidentiary needs of the consenting patient:

- Conducting prompt examinations.
- Providing support, crisis intervention, and advocacy.
- Obtaining a history of the assault.
- Performing a complete assessment.
- Documenting exam findings.
- Evaluating and treating injuries.
- Properly collecting, handling, and preserving potential evidence.
- Providing information, treatment, and referrals for STIs and pregnancy.
- Providing follow-up care for medical and emotional needs as well as further forensic evaluation.
- Providing language assistance services for limited English proficient, Deaf and hard-of-hearing individuals, and those with sensory or communication disabilities.

It is also possible that examiners may provide the following as a routine part of their post-examination process depending upon the criminal justice system response:

- Interpreting and analyzing examination findings.
- Presenting findings and providing factual and/or expert opinion related to the medical forensic examination.

Coordination among involved disciplines is strongly recommended to simultaneously address the needs of both victims and the justice system. Ensuring that victims' needs are met often can increase their level of comfort and involvement with the legal system.

Identify key responders and their roles. Two types of teams are recommended to facilitate a coordinated community response to sexual assault. Some form of a sexual assault response team (SART/SARRT) is useful to coordinate immediate interventions and services, including victim support, medical care, evidence collection and documentation, and the initial criminal investigation. A communitywide coordinating group (often called a "council") can help promote efforts to improve comprehensive response to sexual violence,

²⁷ This paragraph is drawn partially from American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 7.

including prevention education and outreach,²⁸ training and technical assistance, improvement of victim services, protocol development, public policy advocacy, dissemination of materials, and evaluation of the effectiveness of these efforts.²⁹ A communitywide coordinating council may also oversee activities of a SART/SARRT. Military bases, school campuses, and tribes may develop coordinating councils or SARTs or SARRTs of their own to allow for a more specialized response tailored to the needs of their populations. Coordinating councils may also exist to encourage consistent responses across a state, territory, tribal land or region.

SART/SARRT membership. A SART/SARRT is composed of professionals involved in immediate response to disclosures of sexual assault. A core SART/SARRT commonly includes health care providers, law enforcement representatives, and victim advocates. Prosecutors and forensic scientists also are often involved, but more as consultants than first responders. Civil attorneys who represent victims are sometimes involved as well. Broad roles for SART/SARRT members include (listed in alphabetical order):³⁰

- **Advocates** may be involved in initial victim contact (via 24-hour hotline or face-to-face meetings), offer victim advocacy, support, crisis intervention, information, translation or interpretation, and referrals before, during, and after the exam process, and facilitate transportation for the victim to and from the exam site. They often provide comprehensive, longer term services designed to aid victims in addressing any needs related to the assault, including but not limited to counseling and legal (civil, criminal, and immigration) and medical systems advocacy.
- **Civil attorneys** protect the interests of sexual assault victims, address concerns that affect immediate everyday life and long-term wellbeing of victims, and represent victims in civil legal matters. Civil legal matters may include: privacy, safety, immigration, education, housing, employment, and financial issues. Because civil attorneys represent the individual victim, and not the prosecutor, they play a very different role from that of the prosecutor.
- **Forensic scientists** analyze forensic evidence and provide results of the analysis to investigators and/or prosecutors. They may respond to crime scenes to assist in the collection and processing of evidence. They also testify at trial regarding the results of their analysis.
- **Health care providers** assess patients for acute medical needs and provide stabilization, treatment, and/or consultation. Ideally, sexual assault forensic examiners perform the medical forensic exam, gather information for the medical forensic history, collect and document forensic evidence, and document pertinent physical findings from patients. They offer information, treatment, and referrals for sexually transmitted infections (STIs), pregnancy, and other nonacute medical concerns. They may also testify in court if needed. They coordinate with advocates to ensure that patients are offered crisis intervention, support, and advocacy during and after the exam process and encourage use of other victim services. They may follow up with patients for medical and forensic purposes. Other health care personnel that may be involved include, but are not limited to, emergency medical technicians, staff at hospital emergency departments, gynecologists, surgeons, private physicians, and/or local, tribal, campus, or military health services personnel.
- **Law enforcement representatives** (e.g., 911 dispatchers, patrol officers, officers who process crime scene evidence, investigators, and federal law enforcement officers) respond to initial complaints, work to enhance victims' safety, arrange for victims' transportation to and from the exam site as needed, interview victims, coordinate collection and delivery of evidence to designated labs or law enforcement property facilities, and investigate cases (e.g., interviewing suspects and witnesses, requesting crime lab analysis, reviewing medical and lab reports, preparing and executing search warrants, writing reports, and presenting the case to a prosecutor).
- **Prosecutors** determine if there is sufficient evidence for prosecution and, if so, prosecute the case. They should be available to consult with first responders as needed. A few jurisdictions more actively

²⁸ Although victim advocacy programs and coordinating councils often lead local prevention efforts, SARTs play a role in prevention by helping victims plan for their safety and well-being and connecting them with resources that may reduce the likelihood of their future revictimization (e.g., emergency shelters and longer term housing programs, protective orders, programs offering free cell phones that automatically dial 911 when activated, or businesses that can help change locks and install alarm systems). Initial evidence collection and investigative efforts can play a pivotal role in holding offenders accountable and preventing them from reoffending.

²⁹ American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 19.

³⁰ Bulleted section partially adapted from Pennsylvania's *SART Guidelines*, 2002, created by the Pennsylvania Coalition Against Rape.

involve prosecutors, paging them after initial contact and having them respond to the exam site so that they can become familiar with the case and help guide the investigation.³¹

- **Victims' rights attorneys** ensure victims' rights are upheld during the criminal justice process. Examples in the sexual assault cases include independent motions to quash subpoenas filed in the criminal case (e.g., subpoenas for counseling, medical, educational, and employment records), independent rape shield arguments, motions to close courtrooms or limit media access, and motions for alternative means of testifying and/or support during testifying.

Each responder should be able to explain to victims the roles of other team members. Depending on the case and jurisdictional policies, other professionals or agencies - from perhaps multiple jurisdictions - may also be involved in immediate interventions and service provision. They need information about the SART/SARRT and its procedures to guide their responses and facilitate coordination of activities with the SART/SARRT. SART/SARRT members also need information about those professionals and agencies, their roles in sexual assault response, and how to contact and interact with them.

Team efforts are enhanced when SART/SARRT members reflect the communities being served. At the least, SART/SARRT members should strive to understand the needs and concerns of specific populations living in the area served. SART/SARRTs should reach out to agencies that serve these populations so that team members can promptly access their services if needed.

See *Appendix B* for more information on the creation of SARTs/SARRTs.

Membership of a coordinating council. A coordinating council typically comprises a wide array of professionals and citizens who develop the community's response to sexual assault. Organizations with an interest in or a responsibility for sexual assault victims should be considered for membership.³² For example, members might include³³ victim advocates; legal services providers (civil, criminal, and immigration); survivors of sexual assault and their families and friends; health care workers; public health and safety officials; law enforcement personnel; prosecutors; victim/witness staff; judicial personnel;³⁴ corrections and probation staff; sex offender treatment providers; forensic lab personnel; staff from mental health agencies; personnel serving persons with disabilities; substance abuse treatment staff, staff from residential living settings such as nursing homes, assisted living programs, and group homes; educators from all levels; legislators and government policymakers; exam site administrators; religious and spiritual leaders; and the media and business community. Representation from all levels of government that potentially have jurisdiction over these cases in the area served should be involved. Equally important are members who can address the needs of diverse populations in the community (e.g., racial and cultural groups, senior citizens, persons with disabilities, immigrants, the poor and homeless, runaways and adolescents in foster care, domestic violence victims, college students, military personnel and dependents, and populations with differing sexual orientations and gender identities or expressions). Agencies that provide qualified interpreters in sexual assault cases should also be invited to participate.

Attempting to involve all agencies and individuals listed above is an enormous task and could prove to be a barrier to council formation and initial council efforts. Therefore, communities should make their own decisions about which stakeholders are critical to initial efforts and form a core membership, and then

³¹ In addition to seeking prosecution of offenders, victims who attend institutions of higher education may have the option of filing disciplinary charges. When that happens, members of the judiciary board review the case to decide if the institutional code of conduct has been violated and, if so, to determine sanctions. Tribes may also have their own codes related to sexual assault and/or processes through which victims can seek remedies, beyond what is available through state or federal prosecution.

³² American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 19.

³³ List adapted from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 19.

³⁴ Judges' conduct in and out of the courtroom is governed by a code of judicial conduct that requires that they do nothing that would give the appearance of partiality. Depending on local interpretation of the code, the participation of judicial personnel on a council should not negate their ability to be impartial in court. In the unlikely instance that the council is involved with individual cases, judges can excuse themselves from those activities.

identify which agencies and individuals would be useful to have at the table at some point but are not essential to getting started.³⁵

Develop quality assurance measures to ensure effective response during the exam process. Involved agencies should have mechanisms to ensure that the quality of discipline-specific response and coordinated response is optimal. Some tools to ensure consistent high-quality response by involved professionals include training, ongoing education, supervision, periodic performance evaluations, and peer reviews (e.g., medical forensic reports). Also useful in facilitating improvements to immediate response are feedback from victims and involved professionals and collection and analysis of data from the exam process (as discussed below). Review of both active and resolved cases provides many opportunities to improve the performance of individual team members and the team as a whole, although certain team members, such as community based advocates, may need to be careful about confidentiality in case discussions.

Obtain feedback on victim impact, the exam process, and criminal justice outcomes. All involved responders can benefit from victims' feedback about whether they felt response to the crime was adequate and if anything could have been done to improve response or better address their needs. It can be useful to talk with victims about their experiences during the exam process, including the location of the exam, and explore how the process might be changed to better minimize trauma. Victim feedback can be obtained in several ways: by requesting completion of an evaluation form (not immediately after the exam), conducting a follow-up phone survey, and inviting participation in focus group discussions. It is important to solicit feedback from diverse populations in the community (e.g., racial and cultural groups, senior citizens, persons with disabilities, persons with limited English proficiency, immigrants, the poor and homeless, runaways and adolescents in foster care, domestic violence victims, college students, military personnel and dependents, and populations with differing sexual orientations and gender identities). Ask victims prior to medical discharge if they will allow such subsequent contacts and the best method of contacting them. Responders should be careful to ask victims for a safe manner to contact them, particularly in situations involving sexual assault by intimate partners. Advocates can help design a victim feedback system that is sensitive, does not harm victims, and has mechanisms to quickly link victims with appropriate victim services if needed. Families and friends of victims may also be able to provide useful feedback.

Obtaining feedback from and facilitating dialogue among the first responders (law enforcement, advocate, medical personnel) to the sexual assault and the individual who conducted the exam is also critical. Some of this information could be routinely solicited and discussed at SART/SARRT meetings and jurisdictional sexual assault coordinating council meetings (to assess what works and what needs improvement). Also, periodic evaluation of the exam process by examiners, medical supervisors/examiner program directors, advocates, law enforcement representatives, and prosecutors can help ensure that victims' needs are addressed, problems are resolved, cutting-edge practices and technologies are utilized as much as possible, and training needs are identified. In terms of getting feedback on how the exam process impacts criminal justice outcomes, examiners can benefit from access to crime lab reports on evidence collected and feedback from crime lab personnel about improving their evidence collection techniques. Prosecutors can provide examiners and law enforcement representatives with information about the usefulness of evidence collected in case prosecution. Advocates can encourage discussion on how the exam process can affect victims' interest in and willingness to be involved in the criminal justice system. Law enforcement representatives and other first responders can discuss with examiners and crime lab personnel optimal methods to preserve evidence from victims prior to their arrival at the exam site. Again, review of both active and resolved cases by the team as a whole is a rich opportunity for improvement. These are but a few examples of how first responders could use feedback on criminal justice outcomes to improve the exam process.

Consider collecting and analyzing data from the exam process to better understand the nature of assaults in the community and evaluate effectiveness of responses. (Information that identifies victims should not be

³⁵ The protocol does not further explore issues related to more comprehensive coordinated response to sexual assault. However, one useful resource for communities interested in the development of a multidisciplinary response is the National Center for Victims of Crime's *Looking Back, Moving Forward: A Guidebook for Communities Responding to Sexual Assault*.

included in collected data. Attention must be given to protecting victims' identity in communities where residents tend to know one another or word of a crime travels quickly). Over time, such data may help to:³⁶

- Track the participation of involved responders, agencies, and facilities.
- Evaluate the strengths and weaknesses of agency and coordinated responses.
- Assess the effectiveness of response in different types of cases (e.g., stranger assaults versus nonstranger assaults).
- Improve the quality of the examination.
- Evaluate the impact of the collected evidence on criminal justice outcomes.
- Track and evaluate victim service outcomes.

Some jurisdictions have developed centralized databases to collect and analyze information across disciplines. **However, such a venture requires significant resources, coordination, and thought regarding how to maintain victims' confidentiality.** Coordination can be particularly challenging in communities where cross-jurisdictional issues arise frequently (e.g., in tribal lands). A centralized database may be more easily accomplished if it is built into multidisciplinary coordination planning. For example, involved agencies can together determine how to utilize existing resources, seek new funding, maintain victims' privacy, and systematically obtain data. Jurisdictions considering such databases should take into consideration the fact that pooling empirical data (such as patient age, Zip Code, or use of a weapon) is likely to be reliable while use of pooled interpretive data (such as blunt cervical trauma or findings of strangulations) is risky and may be unreliable because of uncontrollable variables in examiner training and experience.

³⁶ Bulleted section partially adapted from the *County of San Diego Sexual Assault Response Team Systems Review Committee Report: Five-Year Review, 2005*, San Diego County, California.

<http://www.sdcounty.ca.gov/hhsa/programs/phs/documents/EMS-SARTReportJuly2005.pdf>.

2. Victim-Centered Care

Recommendations at a glance for health care providers and other responders to facilitate victim-centered care during the exam process:

- Give sexual assault patients priority as emergency cases.
- Provide the necessary means to ensure patient privacy.
- Adapt the exam process as needed to address the unique needs and circumstances of each patient.
- Develop culturally responsive care and be aware of issues commonly faced by victims from specific populations.
- Recognize the importance of victim services within the exam process.
- Accommodate patients' requests to have a relative, friend, or other personal support person (e.g., religious -and spiritual counselor/advisor/healer) present during the exam, unless considered harmful by responders.
- Accommodate patients' requests for responders of a specific gender throughout the exam as much as possible.
- Prior to starting the exam and conducting each procedure, explain to patients in a language the patients understand what is entailed and its purpose.
- Assess and respect patients' priorities.
- Integrate medical and evidentiary procedures where possible.
- Address patients' safety during the exam.
- Provide information that is easy for patients to understand, in the patient's language, and that can be reviewed at their convenience.
- Address physical comfort needs of patients prior to discharge.

It is critical to respond to individuals disclosing sexual assault in a timely, appropriate, sensitive, and respectful way.³⁷ Every action taken by responders during the exam process should be useful in facilitating patient care and healing and/or the investigation (if the case was reported).

Give sexual assault patients priority as emergency cases. This includes a prompt medical screening exam. Recognize that every minute patients spend waiting to be examined may cause loss of evidence and undue trauma. Individuals disclosing a recent sexual assault should be quickly transported to the exam site, promptly evaluated, treated for serious injuries, and offered a medical forensic exam. (For more discussion on this topic, see *C.2. Triage and Intake*.) Have plans for what to do, if the examiner is not available right away. For example, is there a quiet, private place the patient can wait? Is there a phone available so the patient can talk to an advocate or a friend or family member while waiting? Jurisdictions should consider policies and training for facility staff and administration regarding what to do while sexual assault patients are waiting.

Provide the necessary means to ensure patient privacy. Exercise discretion to avoid the embarrassment for individuals of being identified in a public setting as a sexual assault victim. Some health care facilities use code plans to avoid inappropriate references by staff to sexual assault cases. Also, do not leave sexual assault patients in the main waiting area at the exam site. Instead, give them as much privacy as possible (e.g., a private treatment room and waiting area) and be cognizant of their sense of safety (e.g., do not examine suspects in same location at the same time). Make sure that the first responding health care providers attend to patients' initial medical needs and arrange for an on-call advocate to offer onsite support, crisis intervention, and advocacy. It may be useful to give patients the option of speaking with an advocate via a 24-hour crisis hotline (if one exists) until an advocate arrives. Health care providers should provide patients with access to a phone to contact family members and/or support persons as desired, and should promptly contact law enforcement, if not already involved, if patients want to report the assault.

³⁷ The chapter was partially built on information from the *North Carolina Protocol for Assisting Sexual Assault Victims*, 2000.

Health care providers should explain, in a language the patients understand, the scope of confidentiality during the exam process and during communication with advocates. (For information on this topic, see *A.4. Confidentiality*.)

Adapt the exam process as needed to address the unique needs and circumstances of each patient.

Patients' experiences during the crime and the exam process, as well as their post-assault needs, may be affected by multiple factors, such as:

- Age.
- Gender and/or perceived gender identity/gender expression.
- Physical health history and current status.
- Mental health history and current status.
- Disability.
- Language needs for limited English proficient patients, Deaf and hard-of-hearing individuals, and those with sensory or communication disabilities.
- Ethnic and cultural beliefs and practices.
- Religious and spiritual beliefs and practices.
- Economic status, including homelessness.
- Immigration and refugee status.
- Sexual orientation.
- Military status.
- History of previous victimization.
- Past experience with the criminal justice system.
- Whether the assault involved drugs and/or alcohol.
- Prior relationship with the suspect, if any.
- Whether they were assaulted by an assailant who was in an authority position over them.
- Whether the assault was part of a broader continuum of violence and/or oppression (e.g., intimate partner and family violence, gang violence, hate crimes, war crimes, commercial sexual exploitation, sex and/or labor trafficking).
- Where the assault occurred.
- Whether they sustained physical injuries from the assault and the severity of the injuries.
- Whether they were engaged in illegal activities at the time of the assault (e.g., voluntary use of illegal drugs or underage drinking) or have outstanding criminal charges.
- Whether they were involved in activities prior to the assault that traditionally generate victim blaming or self-blaming (e.g., drinking alcohol prior to the assault or agreeing to go to the assailant's home).
- Whether birth control was used during the assault (e.g., victims may already have been on a form of birth control or the assailant may have used a condom).
- Capacity to cope with trauma and the level of support available from families and friends.
- The importance they place on the needs of their extended families and friends in the aftermath of the assault.
- Whether they have dependents who require care during the exam, were traumatized by the assault, or who may be affected by decisions patients make during the exam process.
- Community/cultural attitudes about sexual assault, its victims, and offenders.
- Frequency of sexual assault and other violence in the community and historical responsiveness of the local justice system, health care systems, and community service agencies.

Clearly, the level of trauma experienced by patients can also influence their initial reactions to an assault and to post-assault needs. While some may suffer physical injuries, contract an STI, or become pregnant as a result of an assault, many others do not. The experience of psychological trauma will be unique to each patient and may be more difficult to recognize than physical trauma. People have their own method of coping with sudden stress. When severely traumatized, they can appear to be calm, indifferent, submissive, jocular, angry, emotionally distraught, or even uncooperative or hostile towards those who are trying to help.³⁸

³⁸ Paragraph adapted from Iowa's *Sexual Assault: A Protocol for Forensic and Medical Examination*, 1998, pp. 1–4.

Examiners should ensure they do not make credibility determinations based on myths or misconceptions about victim behavior.

In addition, patients' fears and concerns can affect their initial reactions to the assault, their post-assault needs, and decisions before, during, and after the exam process. For example, female and transgender patients may be worried about getting pregnant. If they are already pregnant or have just given birth, they may be concerned about how the assault will affect their children. Patients may be concerned about being infected with HIV or another STI. They may not want anyone to know about the assault, or may be afraid that family members and friends will reject or blame them. They may fear bringing shame to their families or be concerned that family members will seek revenge against the assailant. They may fear perceived consequences of reporting to law enforcement. They may be concerned how their cultural background could affect the way they are treated by responders. They may wonder if the assailant will harm or harass them or their loved ones if they tell anyone about the assault. They may worry about losing their home, children, ability to remain in the United States, job, and other sources of income as a result of disclosure, particularly if an intimate partner assaulted them.³⁹ They may be concerned about costs related to the exam and subsequent care of injuries.⁴⁰

It is important to avoid making assumptions about patients, offenders, and the assault itself. Forms used during the exam process and discussions with patients should be framed in a way that does not assume they are of a specific background or gender identity and gender expression. Always ask questions and actively look and listen to understand patients' circumstances and tailor the exam process to address their needs and concerns. Whatever the response, it should be respectful to patients and adhere to jurisdictional policies.

Recognize that patients control the extent of personal information they share. While it is useful for responders to get a full picture of patients' circumstances, it is up to patients to decide whether and to what extent to share personal information. During the exam process, responders may ask patients to divulge some data, such as age or whether they think the assault was alcohol- or drug-facilitated. Some information, such as language needs, may be obvious. There is no reason for responders to question patients about certain data, such as sexual orientation and gender identity, immigration status, or religious or spiritual beliefs, beyond certain information that medical providers may need for appropriate care.

Develop culturally responsive care and be aware of issues commonly faced by patients from specific populations. Develop culturally competent and sensitive care by building awareness about and sensitivity to the ways that culture can impact a person's experience in the immediate aftermath of sexual assault and across their lifespan. Be aware and responsive to the ways in which cultural identities (e.g., race, ethnicity, gender, religion, ability/disability, language (limited English proficiency), immigration status, socioeconomic status, sexual orientation, gender identity or expression, age) may influence a person's experience during the exam process as well. Education for responders on issues facing a specific population may serve to enhance care, services, and interventions provided during the exam process. Responders should identify different populations that exist in their jurisdiction and determine what information they should have readily available to help them serve patients from these populations, including what languages are spoken by the populations and how to access interpreters for each language needed. Building understanding of the perspectives of a specific population may help increase the likelihood that the actions and demeanor of responders will mitigate victim trauma. However, do not assume that patients will hold certain beliefs or have certain needs and concerns merely because they belong to a specific population. And, as pointed out earlier, recognize that patients' experiences are affected by a plethora of other personal and external factors.

Develop policies and plans. Involved agencies and SART/SARRTs should develop policies and plans to meet the needs of specific patient populations (e.g., to obtain necessary interpreter services and translated documents for limited English proficient patients, qualified interpreters for Deaf and hard-of-hearing patients and individuals with sensory or communication disabilities, and identify legal referrals for immigrant victims of sexual assault, domestic violence, dating violence, and stalking.) When creating these plans, consider what barriers exist for patients from different populations to receiving a high-quality exam and what can be done to

³⁹ Minors may fear being removed from their homes if suspects live with them. Persons living in residential settings, such as group homes or nursing facilities, may fear being removed from their homes if they report an assault that occurred in that setting.

⁴⁰ Paragraph partially adapted from the *Ohio Protocol for Sexual Assault Forensic and Medical Examination*, 2002, p. 2.

remove these barriers. Also, consider what equipment and supplies might be needed to assist persons from specific populations (e.g., a hydraulic lift exam table may be useful with victims who have a physical disability or non-gendered body maps for transgender patients). Relevant responders need to have access to and know how to use such equipment or supplies.

Partner with those who serve specific populations. Involved responders should seek expertise from and collaborate with organizations and leaders that serve specific populations. Not only may they be willing to provide information and training on working with victims from the population they serve, but they also may be a resource before, during, and after the exam process. If responders may be involved in the immediate response to victims, they should be trained on the dynamics of sexual victimization and procedures for getting help for victims and work with the multidisciplinary response team to clarify their roles and procedures for response.

Explore the needs of specific populations. To gain a basic understanding of potential issues and concerns facing different groups of sexual assault victims, this section explores several specific populations.⁴¹ Clearly, this exploration is not inclusive of all populations of victims, but a more comprehensive discussion on this topic is beyond the scope of this document.

—Victims from various cultural groups

- Understand that culture can influence beliefs about sexual assault, its victims, and offenders. It can affect health care beliefs and practices related to the assault and medical treatment outcomes. It can also influence beliefs and practices related to emotional healing from an assault. In addition, it can impact beliefs and practices regarding justice in the aftermath of a sexual assault, the response of the criminal justice system, and the willingness of victims to be involved in the system.⁴²
- Understand that some victims may be apprehensive about interacting with responders from ethnic and racial backgrounds different from their own. They may fear or distrust responders or assume they will be met with insensitive comments or unfair treatment. They may benefit from responders of the same background or at least who understand their culture. Conversely, in smaller ethnic and racial communities, victims may be more likely to know the responder and doubt the responder's ability to maintain confidentiality.
- Be aware that cultural beliefs may preclude a member of the opposite sex from being present when victims disrobe. Also, it may be uncomfortable for victims from some cultures to speak about the assault with members of the opposite sex.
- Understand that victims may not report or discuss the assault because the stigma associated with it is so overwhelmingly negative. In some cultures, for example, the loss of virginity prior to marriage is devastating and may render victims unacceptable for an honorable marriage. Even discussing an assault or sexual terms may be linked with intense embarrassment and shame in some cultures.
- Be aware that beliefs about women, men, sexuality, sexual orientation, gender identity or expression, race, ethnicity, and religion may vary greatly among victims of different cultural backgrounds. Also, understand that what helps one victim deal with a traumatic situation like sexual assault may not be the same for another victim.
- Help victims obtain culturally specific assistance and/or provide referrals where they exist.⁴³

—Victims with limited English proficiency⁴⁴

⁴¹ This section was adapted partially from Connecticut's *Technical Guidelines for Health Care Response to Victims of Sexual Assault*, 1998, pp. 12–14, and from Iowa's *Sexual Assault: A Protocol for Forensic and Medical Examination*, 1998, pp. 1–4.

⁴² Bullet drawn from A. Blue, *The Provision of Culturally Competent Health Care*, from the Web site of the Medical University of South Carolina College of Medicine (http://academicdepartments.musc.edu/fm_ruralclerkship/curriculum/culture.htm).

⁴³ For example, to raise their level of hope and comfort during the exam, some patients may benefit from talking about culturally specific models of healing (where they exist) and their application to recovery from sexual assault. To facilitate such a discussion, they may wish to speak with a religious or spiritual healer from their culture.

⁴⁴ The Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) *New & Revised Standards & EPs for Patient-Centered Communication, Accreditation Program: Hospital*, HR.01.02.01, PC.02.01.21, RC.02.01.01, RI.01.01.01, RI.01.01.03, effective January 1, 2011, http://medicine.osu.edu/orgs/ahec/Documents/Post_PatientCenteredCareStandardsEPs_20100609.pdf (PDF); Joint

- Be patient and understanding toward victims' language skills and barriers, which may worsen with the crisis of sexual assault.⁴⁵
- Develop policies and train responders to be able to identify a victim's limited English proficiency and primary language spoken and written.
- Make every attempt to provide same language service through the use of demonstrably bilingual examiners or by providing monolingual examiners with support from professional interpretation services and translated materials for victims who are not proficient in English,⁴⁶ are LEP or who may prefer to communicate in a non-English language. Use qualified interpreters when possible and not victims' families or friends.⁴⁷ Take the victim's country of origin, acculturation level, and dialect into account when responding or arranging interpretation.⁴⁸ Remember to speak directly to victims when interpreters are used. Consider the victim's need for modesty and privacy when determining where interpreters should be located in the exam room.
- Train interpreters about issues related to sexual assault and the exam process⁴⁹ whenever they are needed to facilitate communication in these cases. Ensure that the examiners are trained in the proper utilization and ethical requirements of using an interpreter.
- Make sure that interpreters understand that they may need to testify.⁵⁰
- Understand that immigrant victims may fear that assisting law enforcement may identify them to immigration authorities for deportation.
- All sexual assault victims should be provided information regarding U-Visa relief, in the event that this information would be helpful. Even if this information is not helpful to them directly, the information is often passed on to others by word of mouth and can benefit others in the future.
- Work with law enforcement partners to develop and publicize protocols precluding detention or other immigration enforcement against victims who come forward to report a sexual assault.
- Work with law enforcement to develop and publicize U-Visa certification protocols.
- While it is not appropriate to ask a victim's immigration status, anticipate that an immigrant victim will not self-identify as undocumented for fear of deportation. Such information about their rights should be offered in a non-judgmental manner to all victims and in coordination with a referral to an immigration service provider expert in working with immigrant victim populations.

—Victims with disabilities

- Understand that victims with disabilities may have physical, sensory, cognitive, developmental, or mental health disabilities, or a combination of disabilities. Make every effort to recognize issues that arise for victims with disabilities (both in general and in relation to their specific disability) and provide reasonable accommodations when working with them.
- Be aware that the risk of criminal victimization (including sexual assault) for people with disabilities is much higher than for people without disabilities. People with disabilities are often victimized

Commission, *Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care*, Appendix B, August 2010, <http://www.jointcommission.org/assets/1/6/ARoadmapforHospitalsfinalversion727.pdf>.

⁴⁵ Carolyn Ham, Reducing Language Barriers to Combating Domestic Violence: The Requirements of Title VI, Battered Women's Justice Project, October 2004, http://new.vawnet.org/summary.php?doc_id=1621&find_type=web_desc_GC.

⁴⁶ Health care providers generally are covered by language access requirements under Title VI which requires them to take reasonable steps to provide language-appropriate health care, including the use of qualified bilingual staff, interpreters, and translators.

⁴⁷ Use of such informal and biased interpreters may result in unreliable communication, violate the patient's privacy, undermine the patient's claim of privilege, and jeopardize the use of the victim's statements in court. In cases of intimate partner sexual assault, it is particularly important not to use family members who are not likely to adopt a neutral stance or maintain the confidentiality necessary.

⁴⁸ For example, a Cuban interpreter may encounter language and trust obstacles when trying to communicate with a victim from rural Mexico. (L. Zarate, Suggestions for Upgrading the Cultural Competency Skills of SARTs, Arte Sana Web site, <http://www.arte-sana.com>, 2003.)

⁴⁹ Professional interpreters are expected to be familiar with confidentiality requirements and cultural issues.

⁵⁰ Interpreters would not be expected to act as witnesses as to what was said in the examination room if they are present solely to facilitate direct communication between the patient and examiner.

repeatedly by the same offender.⁵¹ Caretakers, family members, or friends may be responsible for the sexual assault. In such cases, offenders may bring victims to the exam site, and jurisdictional and facility policies should be in place to provide guidance on how staff should screen for and handle situations that are threatening to patients or facility personnel.

- Respect victims' wishes to have or not to have caretakers, family members, or friends present during the exam. Although these individuals may be accustomed to speaking on behalf of persons with disabilities, it is critical that they not influence the statements of victims during the exam process. If aid is required (e.g., from a language interpreter or mental health professional), those providing assistance should not be associated with victims.
- Follow exam facility and jurisdictional policy for assessing vulnerable adults' ability to consent to the exam and evidence collection and involving protective services. Again, note that guardians could be offenders. (For a more detailed discussion on seeking informed consent of patients, including consent by victims from specific populations, see *A.3. Informed Consent*.)
- Speak directly to victims with disabilities, even when interpreters, intermediaries, or guardians are present.
- Assess a victim's level of ability and need for assistance during the exam process. Explain exam procedures to victims and ask what help they require, if any (e.g., people with physical disabilities may need assistance to get on and off the exam table or to assume positions necessary for the exam, or may need an alternative to the standard table). But, do not assume they will need special aid. Ask for permission before proceeding to help them (or touch them, handle a mobility or communication device, or touch a service animal).⁵²
- Note that not all individuals who are Deaf or hard-of-hearing understand sign language or can read lips. Not all blind persons can read Braille. Communication equipment that may be beneficial to victims with sensory disabilities include TTY machines, word boards, speech synthesizers, anatomically correct dolls, materials in alternative formats, and access to interpreter services. Responders should familiarize themselves with the basics of communicating with an individual using such devices.⁵³ Let the individual specify the preferred method of communication. Be aware that victims with sensory disabilities may prefer communicating through an intermediary who is familiar with their patterns of speech.
- Recognize that individuals may have some degree of cognitive disability: mental retardation, traumatic brain injury, neurodegenerative conditions such as Alzheimer's disease, or stroke. Speak to victims in a clear and calm voice and ask very specific and concrete questions. Be exact when explaining what will happen during the exam process and why. Be aware that victims with cognitive disabilities may be easily distracted and have difficulty focusing. To reduce distractions, conduct the exam in an area that is void of bright lights and loud noises. It may also be helpful if examiners and others present in the exam room refrain from wearing uniforms with ornamental designs and jewelry.
- Keep in mind that victims with disabilities may be reluctant to report the crime or consent to the exam for a variety of reasons, including fear of not being believed, fear of getting in trouble, and fear of losing their independence. For example, they may have to enter a long-term care facility if their caretakers assaulted them or may need extended hospitalization to treat and allow injuries to heal. The perpetrator may also be their caregiver and the only person they rely on for daily living assistance.
- Recognize that it may be the first time victims with disabilities have an internal exam. The procedure should be explained in detail in language they can understand.⁵⁴ They may have limited knowledge of reproductive health issues and not be able to describe what happened to them. They may not know how they feel about the incident or even identify that a crime was committed against them.
- Some victims with disabilities may want to talk about their perceptions of the role their disability might have played in making them vulnerable to an assault. Listen to their concerns and what the

⁵¹ The above two sentences are drawn from the Office for Victims of Crime, *First Response to Victims of Crime Who Have a Disability*, 2002, p. 1.

⁵² Examples of service animals include guide dogs and hearing-assistance dogs, and therapy dogs.

⁵³ Note that individuals may have their own assistive devices, but words needed to communicate may have to be programmed.

⁵⁴ Drawn from A. Conrad, *SANE/SAFE Organizing Manual*, 1998, p. 7, developed for the New York State Coalition Against Sexual Assault.

experience was like for them.⁵⁵ Assure them that it was not their fault they were sexually assaulted. If needed, encourage discussion in a counseling/advocacy setting on this issue as well as on what might help them feel safer in the future.

- Recognize that the exam may take longer to perform with victims with disabilities. Avoid rushing through the exam—such action not only may distress victims, it can lead to missed evidence and information.

—Male victims⁵⁶

- Help male victims understand that male sexual assault is not uncommon and that the assault was not their fault. Many male victims focus on the sexual aspect of the assault and overlook other elements such as coercion, power differences, and emotional abuse. Broadening their understanding of sexual assault may help reduce their self-blame.
- Because some male victims may fear public disclosure of the assault and the stigma associated with male sexual victimization, emphasis may need to be placed on the scope of confidentiality of patient information during the exam process.
- Offer male victims assistance in considering how friends and family members will react to the fact that they were sexually assaulted (e.g., by a male offender or a female offender).
- Male victims may be less likely than females to seek and receive support from family members and friends, as well as from advocacy and counseling services. Their ability to seek support may vary according to the level of stigmatization they feel, the circumstances of the assault, the sensitivity of care they initially receive, and the appropriateness of referrals provided.
- Encourage advocacy programs and the mental health community to build their capacity to serve male sexual assault victims and increase their accessibility to this population. Requests by male victims to have an advocate of a particular gender should be respected and honored if possible.⁵⁷

—Adolescent victims⁵⁸

- Adolescents may be brought to the exam site by their parents or guardians. The presence of parents or guardians creates an additional challenge for those involved in the exam process because they are often traumatized by their child's victimization.
- Understand that parents or guardians may blame victims for the assault if the victim disobeyed them or engaged in behaviors perceived as increasing risk for victimization.
- Health care providers must assess the physical development of adolescent victims and take their age into consideration when determining appropriate methods of examination and evidence collection.⁵⁹ Involved professionals should be well versed in jurisdictional policies related to response to minor victims.
- Be aware of jurisdictional laws governing minors' ability to consent to forensic exams and medical treatment. Follow exam facility and jurisdictional policy in obtaining appropriate consent. (For a more detailed discussion on seeking informed consent of patients, including consent by victims from specific populations, see A.3. *Informed Consent*.)
- Recognize that the sexual assault medical forensic exam may be the first time an adolescent female victim has an internal exam. There may be a need to go into detail when explaining what to expect.⁶⁰

⁵⁵ Drawn from L. Ledray, *SANE Development and Operation Guide*, 2000, pp. 82–85.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

⁵⁶ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 79.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

⁵⁷ A national resource for male patients is Male Survivor: The National Organization Against Male Sexual Victimization. Contact information: PMB 103, 5505 Connecticut Avenue, NW, Washington, DC 20015–2601, 800–738–4181, <http://www.malesurvivor.org>.

⁵⁸ Adapted partially from the *West Virginia Protocol for Responding to Victims of Sexual Assault*, 2011, pp. 26–27.

<http://www.fris.org/Resources/PDFs/Books/WVProtocol.pdf>.

⁵⁹ For example, the size of the speculum used with adolescent female victims and exam positions of victims may vary.

⁶⁰ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 7.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

- Adolescence is often a time of experimentation. Reassure these victims that regardless of their behavior (e.g., using alcohol and drugs, engaging in illegal activities, or hitchhiking), no one has the right to sexually assault them, and they are not to blame for the assault.
- Ideally, attending health care providers should gather information from adolescents without parents or guardians in the room, subject to victims' consent. The concern is that parents or guardians may influence or be perceived as influencing victims' statements.
- Inform victims, particularly those who do not involve parents or guardians in the exam process, of facility billing practices (e.g., that their parents may get a bill from the medical facility for medical treatment provided or an explanation of benefits from their insurance provider).⁶¹
- Be aware of mandatory reporting laws regarding minor victims and explain to the victim any mandatory reporting obligations.

—Older victims

- Keep in mind that the emotional impact of the assault may not be felt by older victims until after the exam when they are alone in the days, weeks, and months following an attack. Older victims may feel common trauma reactions such as being physically vulnerable, reduced resiliency, and mortality. Fear, anger, and depression can be especially severe in older victims who are isolated, have little support, and live on a fixed or limited income.⁶²
- Be aware that caretakers may sexually assault older adults. Older adults may be dependent on these sexual offenders for emotional or financial support or housing. Offenders may bring victims to the exam site. Some offenders may be charming to staff while others may be threatening or menacing. Jurisdictional and facility policies should be in place to provide guidance on how staff should screen for and handle situations that are threatening to patients or facility personnel.
- Note that older victims may be more physically fragile than younger victims and thus may be at risk for tissue or skeletal damage and exacerbation of existing illnesses and vulnerabilities.⁶³
- Hearing impairment and other physical conditions attendant to advancing age, coupled with the initial trauma reaction to the assault, may render some older victims unable to make their needs known, which could result in prolonged or inappropriate treatment.⁶⁴
- Do not mistake disabilities (such as hearing loss or aphasia) or acute stress reaction following assault for senility. Use of appropriate communication remedies, for example, a personal listening device, may enable an older adult with a severe hearing loss to communicate effectively. Also, be aware that older adults typically process information more slowly than younger adults and take longer to put their thoughts into words. This is a normal age-related change and should not be viewed as evidence of lack of mental capacity. Health care professionals treating elders need to speak slowly and clearly and give elders ample time to process information provided and formulate responses. If questions about the victim's capacity arise, contact trained experts to conduct an assessment.
- If a forensic medical exam has been requested by a law enforcement officer, guardian, or other authority, it is still important to obtain the victim's consent and cooperation to forensic evidence-gathering procedures. Those making the request may argue that evidence collection may be especially important because the victim may be unable to provide a statement or testify. However, when victims lack capacity and are unable to provide consent and cooperation, they should not be

⁶¹ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 98.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

⁶² Ibid.

⁶³ Older women are at an increased risk for vaginal tears and injury when they have been vaginally assaulted. Decreased hormonal levels following menopause result in a reduction in vaginal lubrication and cause the vaginal wall to become thinner and more friable. Because of these physiological changes, a Pedersen speculum, which is longer and thinner than the Graves speculum, should be used during the pelvic exam for evidence collection. Special care should also be taken to assess for intravaginal injury. In some older women, examiners will need to simply insert the swabs and avoid the trauma of inserting a speculum. If there are external tears in the introitus, internal injuries must also be considered. The recovery process for older victims also tends to be longer than for younger victims. (Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 86-87.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.)

⁶⁴ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 87.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

forcibly examined or subjected to forensic procedures that are not necessary for their own health and safety.

- Health care personnel should follow facility policy for assessing a vulnerable adult's ability to consent to the exam and evidence collection, as well as involving adult protective services.
- Some older victims may want to talk about their perceptions of the role their age and physical condition might have played in making them vulnerable to an assault. Others may be traumatized by being harmed sexually by a family member or trusted caregiver. Listen to their concerns and what the experience was like for them.⁶⁵ Assure them that it was not their fault they were sexually assaulted. If needed, encourage further discussion on this issue in a counseling/advocacy setting.
- Some older victims may be reluctant to report the crime or seek treatment because they fear losing their independence. Some older sexual assault victims may need a significant amount of time to recover from injuries that are the result of the abuse or attack. When a change in a living environment, such as placement in a residential facility, is truly needed, older victims who have not been adjudicated as lacking mental capacity and requiring guardians have the legal right to make their own decisions regarding choice of residence. Health care providers must avoid colluding with relatives who want to force older adults into unwanted lifestyle changes subsequent to assault.
- Older adults who have been sexually assaulted in care facilities often experience intense feelings of vulnerability in those facilities following sexual assault and desperately want to be relocated. Elders who rely upon others for care are likely to need the assistance of relatives and involved professionals in being safely relocated.
- Encourage use of follow-up medical, legal, and nonlegal assistance. Older victims may be reluctant to seek these services or proceed with prosecution. If barriers to accessing services or ongoing health care exist, such as lack of transportation, work with local service providers to identify potential remedies.

—Victims in the military⁶⁶

- The military offers victims the option of restricted reporting or unrestricted reporting.⁶⁷ Restricted reporting allows a sexual assault victim to confidentially disclose the details of his or her assault to specified individuals and receive medical treatment and counseling without triggering the official investigative process or command notification. Restricted Reporting can be voided if the medical facility contacts law enforcement or other professionals other than advocates, chaplains, and military sexual assault response coordinators.
- Exam sites that provide exams for military installations are encouraged to draft Memoranda of Understanding to address such issues as confidentiality and storage of evidence.

—American Indian and Alaska Native victims

- Keep in mind that American Indian and Alaska Native victims may have unique cultural or language needs, whether they are assaulted in Indian Country or an Alaska Native village or in an urban area.
- Recognize that Indian tribes may have their own laws and regulations, as well as their own police, prosecutors, advocates, courts, and service providers to address sexual assault. Responders should be familiar with procedures for coordinating services and interventions for victims from these

⁶⁵ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, pp. 82-85.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

⁶⁶ The Office for Victims of Crime (OVC) has developed a resource to assist address sexual assault in the military. *Strengthening Military-Civilian Community Partnerships to Respond to Sexual Assault* is a training curriculum and tool kit for community-based civilian rape crisis centers and state sexual assault coalitions to use in their work with the military installations in their regions. Funding for this project was provided by OVC and the Office on Violence Against Women (OVW), and was developed by the Pennsylvania Coalition Against Rape (PCAR) and the National Sexual Violence Resource Center (NSVRC) in coordination with the Department of Defense's Sexual Assault Prevention and Response Office. Through OVC's Training and Technical Assistance Center (OVC TTAC) the curriculum and tool kit will be available for communities to use in their regions to train on enhancing community response, and effectively responding to the needs of sexual assault victims in the military.

⁶⁷ For more information on reporting in the military, please see <http://www.sapr.mil/>.

communities and should work with community groups to develop plans for providing exams to members of Indian tribes. These plans should address evidence preservation and provide examination payment and reimbursement information. Responders within tribal communities should share resources and information to enable them to develop their own protocols and programs that address the community's unique needs.

- Promote partnerships among tribal and relevant federal and state agencies so they better coordinate responses and resources, learn from past mistakes, and strive towards a shared vision of aiding and empowering victims.
- Be aware that tribal jurisdictions may have their own SAFE protocol in place that addresses the tribe's unique needs and incorporates its cultural traditions, practices, and language.
- As in many cultures, American Indian/Alaska Native women are of central and primary importance to the family and the community. Be mindful that sexual violence against a Native woman may be seen as an assault on both the individual and her community.
- Be sensitive to victims' cultural beliefs and practices. The best practice is to always ask victims rather than assume what they need to be safe, address their health concerns, be supported in inner healing, and feel a sense of justice.
- Be aware of the tribe's history. Responders should have an understanding of the impact of history on American Indian/Alaska Native people as it may influence victims' reactions and needs. Adequate self-education combined with training by tribal members can prepare non-Native responders to be sensitive to the historical context in which victimization occurs and to avoid assumptions about victims' cultural practices.
- Recognize that there are multiple ways for victims to seek justice—through criminal justice interventions, tribal justice systems, and use of more traditional practices of the tribe related to holding perpetrators accountable, and/or other victim-identified strategies.
- Include American Indian/Alaska Native populations in Limited English Proficiency protocols for victims of sexual assault.

—Lesbian, gay, bisexual, or transgender (LGBT) victims

- Intake forms and other documents that ask about gender or sex should allow patients to write in a response, or include transgender and intersex options. Make sure questions appropriately distinguish between sexual orientation (the gender(s) someone is attracted to), gender identity (the internal sense of being woman, man, or gender non-conforming), and their sex.
- Always refer to victims by their preferred name and pronoun, even when speaking to others. If unsure of what to call the person or what pronoun to use, ask.
- Treat the knowledge that the person is LGBT as protected medical information subject to all confidentiality and privacy rules. Be aware that companions of LGBT victims may not know their gender identity or sexual orientation.

Additional suggestions specific to victims who are transgender or gender non-conforming:

- It is critical to not show surprise, shock, dismay, or concern when you are either told or inadvertently discover that a person is transgender. Be especially careful about your body language – gasping, sighing, a sharp intake of breath, or widening eyes can all be very upsetting to someone who may worry that you are making a judgment or assessment of their body.
- Understand that transgender people have typically been subject to others' curiosity, prejudice, and violence. Keep in mind that transgender victims may be reluctant to report the crime or consent to the exam for fear of being exposed to inappropriate questions or abuse. If the victim does consent to an exam, be especially careful to explain what you want to do and why before each step, and respect their right to decline any part of the exam.
- Be aware that transgender individuals may have increased shame or dissociation from their body. Some use nonstandard labels for body parts, and others are unable to discuss sex-related body

- parts at all. Reflect the victim's language when possible and use alternative means of communication (such as anatomically correct dolls or paper and pen for the victim to write or draw) if necessary
- Vaginas that have been exposed to testosterone or created surgically are more fragile than vaginas of most non-transgender women and may sustain more damage in an assault. There may be additional layers of psychological trauma for patients with a male identity or a constructed vagina when they have been vaginally assaulted.
 - Transgender male individuals who still have ovaries and a uterus can become pregnant even when they were using testosterone and/or had not been menstruating.
 - Transgender people may engage in self-harm as a coping mechanism. However, cutting and genital mutilations are also frequently part of anti-transgender hate crimes. Be nonjudgmental and careful when documenting such injuries.
 - Some transgender victims may want to talk about their perceptions of the role their gender identity might have played in making them vulnerable to an assault. Because of their value in possible prosecutions under hate crime laws, document any anti-transgender statements the victim says were made during the assault. Otherwise, listen to the victim's concerns and what the experience was like for them. Assure them that it was not their fault they were sexually assaulted. If needed, encourage discussion in a counseling/advocacy setting on this issue as well as on what might help them feel safer in the future.
 - Ensure that all referrals given to a transgender victim have been trained on or have significant experience with the special needs of transgender survivors of sexual assault.
 - Include opportunities for LGBT individuals to influence the development of sensitive responses for victims of sexual assault.

Recognize the importance of victim services within the exam process. In many jurisdictions, sexual assault victim advocacy programs and other victim service programs offer a range of services before, during, and after the exam process (see below for a description of typical services). Ideally, advocates should begin interacting with victims in a language the victims understand prior to the exam, as soon after disclosure of the assault as possible. Victims who come to exam sites in the immediate aftermath of an assault are typically coping with trauma, anticipating the exam, and considering the implications of reporting. Most responders that victims come in contact with are focused on objective tasks. Law enforcement officials gather information and collect crime scene evidence to facilitate the investigation. Health care personnel assess medical needs, offer treatment, and collect evidence from victims. Victims must make many related decisions that may seem overwhelming. Advocates⁶⁸ can offer a tangible and personal connection to a long-term source of support and advocacy. Community-based advocates, in particular, have the sole purpose of supporting victims' needs and wishes. Typically, these advocates are able to talk with victims with some degree of confidentiality, depending on jurisdictional statutes, while statements victims make to examiners become part of the medical forensic report.⁶⁹ When community-based advocates support victims, examiners can more easily maintain an objective stance.⁷⁰ In addition, civil attorneys may be able to help victims assess legal needs and options, including privacy, safety, immigration, housing, education, and employment issues.

Be aware of the extent of services. Services offered by advocates during the exam process may include:⁷¹

- Accompanying the victims through each component (advocates may accompany victims from the initial contact and the actual exam through to discharge and follow-up appointments).
- Serving as an information resource for victims (e.g., to answer questions; explain the importance of prompt law enforcement involvement if the decision is made to report; explain the value of medical and evidence collection procedures; explain legal aspects of the exam; help them understand their

⁶⁸ To prepare them to competently provide sexual assault victim services, community-based advocates are typically trained according to the policies of the sexual assault advocacy agency where they are employed/volunteer and receive supervision related to their interactions with victims. In addition, many jurisdictions have specific requirements that community-based advocates must meet in order to fit within jurisdictional confidentiality or privilege laws. Advocates should meet these requirements. System-based advocates may be required to have specific credentials based on system and jurisdictional policies and laws.

⁶⁹ K. Littel, *SANE Programs: Improving the Community Response to Sexual Assault Victims*, 2001, p. 6.

⁷⁰ Ibid. See also IAFN position statement Dated Nov 19, 2008: Collaboration with Advocates <http://iafn.org/associations/8556/files/IAFN%20Position%20Statement-Advocate%20Collaboration%20Approved.pdf>.

⁷¹ This bulleted section was drawn partially from Iowa's *Sexual Assault: A Protocol for Forensic and Medical Examination*, 1998, p. 7, and the 1989 *Volunteer Manual* of Virginians Aligned Against Sexual Assault (VAASA).

treatment options for STIs, HIV, and pregnancy; serve as a resource and follow-up point of contact for any future inquiries such as payment method for the exams; and provide referrals).

- Assisting in coordination of victim transportation to and from the exam site.
- Providing victims with crisis intervention⁷² and support to help cope with the trauma of the assault⁷³ and begin the healing process.
- Actively listening to victims to assist in sorting through and identifying their feelings.
- Letting victims know their reactions to the assault are normal and dispelling misconceptions regarding sexual assault.
- Advocating for victims' self-articulated needs to be identified and their choices to be respected, as well as advocating for appropriate and coordinated response by all involved professionals;
- Supporting victims in voicing their concerns to relevant responders.
- Responding in a culturally and linguistically sensitive and appropriate manner to victims from different backgrounds and circumstances and advocating for the elimination of barriers to communication.
- Providing replacement clothing when clothing is retained for evidence, as well as toiletries.
- Aiding victims in identifying individuals who could support them as they heal (e.g., family members, friends, counselors, employers, religious or spiritual counselors/advisors, and/or teachers).
- Helping victims' families and friends cope with their reactions to the assault, providing information, and increasing their understanding of the type of support victims may need from them.
- Assisting victims in planning for their safety and well-being.

Postexam, advocates can continue to advocate for victims' rights and wishes; offer victims ongoing support, counseling,⁷⁴ information, and referrals for community services; assist with applications for victim compensation programs;⁷⁵ and encourage victims to obtain follow-up testing and treatment and take medications as directed. They can also accompany victims to follow-up appointments, including those for related medical care and criminal and civil justice-related interviews and proceedings. They can work closely with the responders involved to ensure that postexam services and interventions are coordinated in a complementary manner and are appropriately based on victims' needs and wishes.

Contact the victim service/advocacy program immediately. Utilize a system in which exam facility personnel, upon initial contact with a sexual assault patient, call the victim service/advocacy program and ask for an advocate to be sent to the exam site (unless an advocate has already been called).⁷⁶ Prior to introducing the advocate to a patient, exam facility personnel should explain briefly, in a language the patient understands, the victim services offered and ask whether the victim wishes to speak with the onsite advocate. Note that some jurisdictions require that patients be asked whether they want to talk with an advocate before the advocate is contacted.⁷⁷ If possible, victims should be allowed to meet with advocates in a private place prior to the exam. Ideally, a patient should be assisted by the same advocate during the entire exam process.⁷⁸

⁷² Crisis intervention counseling is short term in nature, aimed at returning individuals to their precrisis state through the development of adaptive coping responses. Broadly, it entails establishing a relationship with the individual in crisis, gathering information about what is occurring, clarifying the problem, helping the individual identify options and resources so that they are able to make an informed decision as to what, if any, actions will be taken. (Adapted from the 1991 Women Helping Women *Volunteer Training Manual*, Cincinnati, Ohio.) Note: Crisis intervention is not intended to address longer term counseling and advocacy needs.

⁷³ See A. Burgess and L. Holmstrom, Rape Trauma Syndrome, *American Journal of Psychiatry*, 131: 981-986, September 1974, for a summary of the psychological, somatic, and behavioral impact of sexual assault on victims.

⁷⁴ Many advocacy agencies offer ongoing support and advocacy to victims. Some also provide professional mental health counseling, but many refer victims to community or private agencies.

⁷⁵ For more information on crime victim's compensation, please see <http://www.ovc.gov/publications/factsheets/companassist/welcome.html>.

⁷⁶ Use community-based sexual assault victim advocates where possible. If not available, victim service providers based in the exam facility, criminal justice system, social services, or other agencies may be able to provide some advocacy services if educated to provide those services. Patients should be aware that government-based service providers typically cannot offer confidential communication.

⁷⁷ In very small communities, patients may know some or all advocates (e.g., a small, close-knit community that speaks an uncommon dialect). Some patients may feel comfortable being supported by an advocate known to them while others may not. Patients concerned about anonymity should be provided with as many options as possible. For example, ask if they would like to speak with an on-call advocate on the phone prior to making their decision about whether they want an advocate present during the exam. Another option may be for the local advocacy program to partner with an advocacy program in a neighboring jurisdiction, so they can provide one another with backup to handle situations such as this one.

⁷⁸ Continuity of advocates can be challenging when response by other professionals is delayed, the exam process is lengthy, or travel to the exam site is considerable. Volunteers may or may not be able to continue providing services after the end of their on-call shift.

Understandably, immigrant victims may be reluctant to discuss or report the victimization. It is inappropriate to ask patients about aspects of their health, body, legal status, or identity that are not related to the assault. It is, however, appropriate to ensure that all victims are provided with information regarding U-Visas, in the event that this relief would be appropriate.⁷⁹

Accommodate patients' requests to have a relative, friend, or other personal support person (e.g., religious and spiritual counselor/advisor/healer) present during the exam, unless considered harmful by responders.⁸⁰ An exception would be if responders consider the request to be potentially harmful to the patient or the exam process.⁸¹ Patients' requests to not have certain individuals present in the room should also be respected (e.g., adolescents may not want their parents present). Examiners should get explicit consent from patients to go forward with the exam with another person present. When others are present, appropriately drape patients and position additional persons. (It is also important to inform patients of confidentiality considerations regarding the presence of support persons during the medical forensic history. For a discussion of this topic, see *C.4. The Medical Forensic History.*)

Strive to limit the number of persons (beyond the patient, examiner, advocate, personal support person, and any necessary interpreters) in the exam room during the exam. The primary reason is to protect patients' privacy, but also because exam rooms often cannot accommodate more than a few individuals. Law enforcement representatives should not be present during the exam. When additional health care personnel are needed for consultation (e.g., a surgeon), patients' permission should be sought prior to their admittance. In cases in which examiners are supervising an examiner-in-training/licensed health care student, patients' consent should be obtained prior to the student's admittance to examine patients or observe the exam. It is inappropriate to ask patients to allow a group of nonlicensed medical students to view the exam. It is also inappropriate to ask patients about aspects of their health, body, legal status, or identity that are not related to the assault.

Accommodate patients' requests for responders of a specific gender throughout the exam as much as possible. For a variety of reasons, some patients may prefer to work with a male or female law enforcement official, advocate, and/or examiner.

Prior to starting the exam and conducting each procedure, explain to patients in a language the patients understand what is entailed and its purpose. In addition, it is important to explain the exam process and the purpose of the exam more generally (e.g., how the evidence may be used by the criminal justice system). A clear explanation is particularly important for individuals who may not previously have had a pelvic exam or medical care, or who have difficulty understanding what has happened and why they are being asked to undergo a medical forensic exam. Remember that some exam procedures may be uncomfortable and painful to patients, considering the nature of the trauma they have experienced. By taking the time to explain procedures and their options, patients may be able to better relax, feel more in control of what's occurring, and make decisions that meet their needs. After providing the needed information, seek patients' permission to proceed with exam procedures. (For a more detailed discussion on seeking informed consent of patients, see *A.3. Informed Consent.*)

Address and respect patients' priorities. Although medical care and evidence collection may be encouraged during the exam process, responders should provide patients with information about all of their options and assess and respect their priorities.

Integrate medical and evidentiary procedures where possible. Medical care and evidence collection procedures should be integrated to maximize efficiency and minimize trauma to patients. For example, draw blood needed for medical and evidentiary purposes at the same time. Also, coordinate information-gathering by health care and legal personnel to minimize the need for patients to repeat their statements. (For more information on coordination in information gathering, see *C.4. The Medical Forensic History.*) Consider the

⁷⁹ Legal Momentum has extensive resources available regarding U-Visas. See: <http://www.legalmomentum.org/our-work/immigrant-women-program/u-visa.html>. Additionally, immigrant women are entitled to emergency medical and post-assault healthcare. For a state-by-state breakdown of the benefits afforded see: http://www.legalmomentum.org/assets/pdfs/4_nilc_table_10.pdf.

⁸⁰ Paragraph partially drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 15.

⁸¹ For example, in cases involving adolescents or vulnerable adults, caretakers should not be allowed in the exam room if they are suspected of committing the assault or of being otherwise abusive to the patient.

implications of the evolving law on hearsay exceptions when determining the level and nature of coordination. See *Appendix C* for more information on the relevant case law and how it relates to medical forensic examinations.

Address patients' safety during the exam. When patients arrive at the exam site, health care providers should assess related safety concerns. For example, a caretaker, partner, or family member who is suspected of committing the assault may have accompanied the patient to the facility. Some victims, including transgender people, may also fear assault or belittlement by health care professionals' and/or law enforcement officials' responses to their gender identity or expression and/or transgender body. Follow facility policy on response to this and other types of threatening situations. Also, exam sites should have plans in place to protect patients from exposure to potentially infectious materials during the examination. (See *B.1. Sexual Assault Forensic Examiners.*) Prior to discharge, assist victims in planning for their safety and well-being. Planning should take into account needs that may arise in different types of cases. For example, patients who know the assailants may not be concerned only about their ongoing safety but also about the safety of their families and friends. Local law enforcement may be able to assist facilities in addressing patients' safety needs. (See *C.10. Discharge and Follow-up.*)

Provide information that is easy for patients to understand, in the patient's language, and that can be reviewed at their convenience.⁸² Information should be tailored to patients' communication skill level/modality and language. This includes providing interpreter services and the translation of documents into languages other than English for limited English proficient (LEP) patients. Developing material in alternative formats may be useful, such as information that is taped, in Braille, in large print, in various languages, or uses pictures and simple language.⁸³ A victim booklet or packet that includes information about the following topics may be helpful:

- The crime itself (e.g., facts about sexual assault and related criminal statutes).
- Normal reactions to sexual assault (stressing that it is never the victim's fault), and signs and symptoms of traumatic response.
- Victims' rights.
- Victim support and advocacy services.
- Civil, criminal, and immigration legal services.
- Mental health counseling options and referrals.
- Resources for the victim's significant others.
- The examination—what happened and how evidence/findings will be used.
- Medical discharge and follow-up instructions.
- Planning for the victim's safety and well-being.
- Examination payment and reimbursement information.
- Steps and options in the criminal justice process.
- Civil and immigration remedies that may be available to sexual assault victims.
- Procedures for victims to access their medical record or applicable law enforcement reports.

Address physical comfort needs of patients prior to discharge. For example, provide them with the opportunity to wash in privacy (offering shower facilities if at all possible⁸⁴), brush their teeth, change clothes (clean and ideally new replacement clothing should be available); get food and/or a beverage, and make needed phone calls. They may also require assistance in coordinating transportation from the exam site to their home or another location.

⁸² Many local sexual assault advocacy programs and state coalitions of sexual assault programs offer publications that speak to victims' concerns in the aftermath of an assault. However, any involved agency, SART, or coordinating council could develop such literature.

⁸³ For example, one sexual assault advocacy program offers a booklet "for those who read best with few words" designed for people with developmental disabilities who have been sexually assaulted. For more information on this publication, contact the Los Angeles Commission on Assaults Against Women by phone (213-955-9090) or e-mail info@lacaaw.org.

⁸⁴ It would be useful for the exam room to have an attached bathroom with a shower.

3. Informed Consent

Recommendations at a glance for health care providers and other responders for requesting patients' consent throughout the exam process:

- Seek the informed consent of patients as appropriate throughout the exam process.
- Make sure policies exist to guide the process of seeking informed consent from specific populations.

Seek the informed consent of patients as appropriate throughout the exam process. There are two essential but separate consent processes—one for overall medical evaluation and treatment and a second for evidence collection and release. Patients should understand the full nature of their consent to each procedure, whether it is medical or evidentiary (e.g., what the procedure entails, possible side effects, limits of confidentiality, and potential impact). The only way to put patients in the position of being able to make informed decisions about whether to allow a procedure is by presenting them with all relevant information in a language they understand. Patients can decline any part or all of the examination. However, the informed consent process includes making patients aware of the impact of declining a procedure, as it may negatively affect the quality of care and the usefulness of evidence collection. It may also have a negative impact on a criminal investigation and/or prosecution both because evidence not collected may have been useful and because defense attorneys in a civil or criminal case may use the fact that the victim declined a procedure to claim that the victim is hiding something that would have been revealed by that procedure. They should understand that declining a procedure might also be used by opposing counsel to discredit the victim at trial.

Before making any disclosures, patients should be advised whether their communications are confidential and whether the confidentiality of the statements is covered by a privilege. Understanding what will happen to the information provided and the extent to which it may be protected is an important component of informed consent.

Health care providers and other responders must refrain from any judgment or coercive practice in seeking patients' consent. It is contrary to ethical and professional practices to influence their decisions.

Seek both verbal and written consent as required by policy. In addition to verbally providing information and seeking consent throughout the exam process, written consent of patients may be needed in order to carry out specific procedures. Verbal and written consent from patients who are limited English proficient may require the use of foreign language interpreters for verbal consent and for written consent to have the interpreters provide a sight translation of written documents and the translation of consent forms and other documents into non-english languages.⁸⁵ It is important that jurisdictions, agencies, and exam facilities make it very clear to responders when written consent is necessary, how it should be sought, and provide appropriate checklists and forms to facilitate obtaining written consent in a consistent manner.

Methods to inform patients verbally and seek their consent vary significantly across jurisdictions and individuals requesting consent. For example, some examiners ask patients to voice their consent to each exam procedure while others explain from the start that they need patients to tell them if they want to stop at any time. While respecting the individual communication styles of responders, the process of obtaining consent can be enhanced when they are educated on how to seek verbal consent logistically in a way that is consistent across patients and helps facilitate the exam process as specified by the jurisdiction and facility.

Verbal and written information given to patients to facilitate the consent process should be complete, clear, and concise. This information, along with consent forms, should be tailored to the communication skill level/modality and language of patients. Responders should be aware of verbal and nonverbal cues from patients and adjust their methods of seeking consent to meet patients' needs. Encourage patients to ask questions and to inform relevant responders if they need a break or information repeated or do not want a particular part of the exam process done. Make sure all signatures and dates needed are obtained on written

⁸⁵ See The Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) New & Revised Standards & EPs for Patient-Centered Communication, Accreditation Program: Hospital, RI, 01.01.03, effective January 1, 2011.

consent forms and document consent or reasons for declining to consent as appropriate (either on the medical record or forensic report forms).

Seek consent for medical evaluation and treatment in a language that the patient understands. Follow facility policy for seeking patients' consent for medical evaluation and treatment. Any written medical consent forms developed for the purpose of the exam may need to be reviewed and approved by facility administration. Documentation on consent for medical evaluation and treatment becomes part of the medical record. Informed consent of patients for medical evaluation and treatment typically is needed for the following:

- General medical care.
- Pregnancy testing and care.
- Testing and prophylaxis for STIs.
- HIV prophylaxis.
- Photographs, including colposcopic images.
- Permission to contact the patient for medical purposes.
- Release of medical information.

Seek consent for evidence collection and release in a language that the patient understands. Follow jurisdictional procedure for obtaining informed consent for the exam and evidence collection. Informed consent of patients typically is needed for:

- Notification to law enforcement or other authority (depends upon reporting requirements).
- Evidence collection and release.
- Toxicology screening.
- Release of information and evidence to criminal justice system personnel, SART/SARRT members, and partnering service providers.
- Contact with patients for reasons related to their criminal sexual assault case.
- Patient notification in case of a DNA match or additional victims.

Patients should be informed that data without patient identity can be collected from the report for health and forensic purposes by health authorities or other qualified persons with a valid educational or scientific interest for demographic and/or epidemiologic studies.

Responders should coordinate efforts to seek patients' consent. On a jurisdictional level, SART/SARRTs (or involved responders if a SART/SARRT does not exist) can identify all procedures where consent is needed during the exam process. They can make sure appropriate written consent forms are developed as well as procedures for requesting verbal and written consent. They should determine which responder has the knowledge needed to provide patients with information about each procedure and consider from whom patients might feel the most comfortable receiving this information. For example, while each responder may provide discipline-specific information to patients, advocates may provide a broad overview of all components of the exam process. Checklists that clarify discipline-specific roles in obtaining consent may be useful.

Make sure policies exist to guide the process of seeking informed consent from specific populations.

In order to provide informed consent, patients should be able to weigh the risks and benefits of different treatment and evidence collection options. It is always important for examiners to assess patients' ability and legal capacity to provide informed consent.⁸⁶ Providers should be aware of jurisdictional laws governing the ability of specific populations to provide consent (e.g. minors, individuals with cognitive disabilities, etc.).

In addition, facilities should have internal policies based on applicable jurisdictional statutes governing consent for treatment of vulnerable adult patients. The medical provider will generally need to assess whether the patient has the cognitive capacity to give consent for the examination, and, if not, the provider should follow these internal policies and jurisdictional statutes. Policies should include procedures to

⁸⁶ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p.82.
<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

determine whether or not patients are their own guardians; if there is a guardian, to determine the extent of the guardianship; to obtain consent from a guardian if needed; and what to do if the guardian is not available or is suspected of abuse or neglect. Exam facilities should also have policies in place to address consent for treatment in cases in which patients are unconscious, intoxicated, or under the influence of alcohol or drugs, and are therefore temporarily incompetent to give consent.

In cases of adolescent patients, jurisdictional statutes governing consent and access to the exam should be followed. For instance, a state statute may allow minors to receive care for STIs and pregnancy, but not a medical forensic examination without parental or guardian consent. In some jurisdictions, a minor may consent to the examination but not keep the results private from a parent or legal guardian. Exceptions to parental consent requirements also exist when the parent or guardian is the suspected offender or where the parent or guardian can't be found and the collection of evidence needs to be done quickly. In such cases, the law generally specifies who may give consent in lieu of the parent or guardian, such as a police officer, representative from the jurisdiction's children's services department, or judge.⁸⁷

It should be clarified whether policies and statutes regarding consent for medical evaluation and treatment for the above populations encompass consent for the forensic component of the exam. If not, additional guidance from the jurisdiction is needed to develop the appropriate policies. Also, jurisdictional statutes regarding mandatory reporting to law enforcement or protective services in cases of vulnerable adult and minor sexual assault victims must be observed.

Examiners should develop policies and procedures for providing sexual assault care to the unconscious patient. Such care should respect the autonomy of the individual and be consistent with jurisdictional interpretations of emergency exceptions to informed consent. Policies should ideally be approved by hospital ethics committees. Similarly, examiners should have policies for patients that present with altered mental status, which could be from alcohol or drug intoxication or for other reasons. At a minimum, if serious problems are ruled out, the patient will likely need to be observed until consent and cooperation can be obtained which will delay the start of the examination.

In all cases, the medical forensic examination should never be done against the will of patients. Responders should not touch patients or otherwise perform exam procedures without their permission.

⁸⁷ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 97.
<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

4. Confidentiality

Recommendations at a glance for jurisdictions to maintain confidentiality:

- Be sure jurisdictional policies address the scope and limitations of confidentiality as it relates to the examination process and with whom information can be legally and ethically shared.
- Increase the understanding of relevant confidentiality issues.
- Consider the impact of the federal privacy laws regarding health information on victims of sexual assault.
- Strive to resolve intrajurisdictional conflicts.

Be sure jurisdictional policies address the scope and limitations of confidentiality as it relates to the examination process and with whom information can be legally and ethically shared. The confidentiality of records (as well as forensic evidence and photographic and video images) is intricately linked to the scope of patients' consent. Members of a SART/SARRT or other collaborating responders should inform victims of the scope of confidentiality with each individual responding to the sexual assault victim and be cautious not to exceed the limits of victim consent.

Increase the understanding of relevant confidentiality issues. Individuals responding to the sexual assault victim need education on the basics of maintaining the confidentiality of their patients (e.g., knowing what information is confidential and with whom confidential data can be shared, and being aware of their surroundings and who may be listening when discussing cases). They also should build their understanding of the scope and limitations of confidentiality of each agency and responder involved.

In addition, individuals responding to sexual assault victims should be aware of the laws in their jurisdiction pertaining to privileged communications.⁸⁸ More than half of the states have laws in place providing some level of privilege to the communications of sexual assault/rape crisis and domestic violence counselors. A few states' laws apply to victim counselors in general. In most states, counselors must complete a certain number of training hours to qualify for the privilege. However, privileges vary from state to state.

Responders should be aware that there is no victim advocate privilege in the military but there is a psychotherapist/patient privilege, and victims who choose restricted reports can confidentially speak with a sexual assault response coordinator, military chaplain, or other specified military professionals. Jurisdictions should be careful in their local response to protect any privileges that are available to victims. This can be done by limiting who speaks with the victim at each stage of the process, who will be present during discussions and/or interviews, and who will be the recordkeeper or notetaker.

In some jurisdictions, patients who are minors have fewer or more limited confidentiality rights than adults. For example, in some jurisdictions, minor patients have the right to grant or withhold consent to a forensic examination but not to keep the results of the exam private from their parent or legal guardian.

Involved responders should be able to explain the following to patients:

- Community-based advocates usually can provide patients with some level of confidentiality (depending upon applicable jurisdictional statutes). It is important to convey to patients the scope and limits of confidentiality of this communication. System-based advocates (such as those based in police departments, prosecutor's offices, or military installations) usually have limited or no ability to keep information confidential.

⁸⁸ Traditionally, many types of communication have been protected from disclosure in court. These include communication between husband and wife, physician and patient, attorney and client, clergy and parishioner, and psychotherapist and patient. Confidential communication generated in the course of a counseling relationship has more recently been afforded some statutory protection. In general, victim-counselor privilege laws enable counselors (such as community-based victim advocates) to maintain confidentiality of information revealed to them. This does not usually apply to system-based advocates, such as those in law enforcement departments or prosecutor's offices. In addition to preventing counselors from testifying in court, many privilege laws extend protection to their written records. (Drawn from *Privacy of Victims' Counseling Communications*, Office for Victims of Crime, Legal Series, Bulletin #8 (November 2002), pp. 1–2.)

- Absent a court order, patients' medical records are confidential—exam facilities typically have policies in place to protect these records. It is important that patients understand the scope and limits of confidentiality of these records.
- If the assault is reported to law enforcement, health care providers provide to the criminal justice system information collected during the examination that is related to forensic evidence.
- If the victim chooses to get an exam, but not make a police report, the evidence collection kit is typically held in a secure setting for a period of time as determined by jurisdictional policy. Patients' identity should not be revealed to law enforcement. Patients usually need to make an official report by the end of the designated period of time or the evidence and information will be destroyed.
- Information that patients share with law enforcement representatives, prosecutors, justice system based advocates, and adult/child protective services becomes part of the criminal justice record. This record is typically available to investigators and prosecutors handling the patient's case. It also may have to be provided to the defense pursuant to the government's discovery obligations⁸⁹ (although prosecutors may request the court to shield certain information from the defense, such as history of prior pregnancies, abortions, and STIs).⁹⁰
- Each case potentially involves individuals from different agencies responding to the sexual assault victim that may have their own confidentiality policies (e.g., school counselors and mental health providers).
- Both prosecutors and defense attorneys can call witnesses, including responders, to testify in court;
- Court documents and proceedings are generally matters of public record, with the exception of certain excluded materials (e.g., some states' statutes prohibit victim contact information from appearing on public court documents).
- Patients may at some point wish to view or obtain applicable medical records and/or law enforcement reports. They should have access to such documentation, and exam site and jurisdictional procedures for accessing this data should be conveyed to patients.
- Military members can confidentially⁹¹ report being sexually assaulted to specified officials within the military and therefore can be eligible to receive medical care, counseling, and victim advocacy services without requiring command notification or triggering the investigatory process. This is known as restricted reporting. Release of the information regarding the sexual assault to anyone other than the specified officials who may receive a restricted report will result in the loss of confidentiality for the victim and command and law enforcement will have to be notified of the sexual assault.

Consider the impact of federal privacy laws regarding health information on victims of sexual

assault. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and its implementing regulations (found at 45 CFR Part 160 and Subparts A and E of Part 164), established national standards for the protection of certain individually identifiable health information created or held by health plans, certain health care providers, and health clearinghouses. With respect to disclosures to victim advocacy organizations, the HIPAA Privacy Rule permits hospitals and other health care providers to alert a victim advocacy organization to the presence of a victim of sexual assault at the hospital without giving any identifying information about the victim. Further, once the advocate is at the hospital, if the victim is informed in advance and agrees or does not object, or the hospital reasonably infers from the circumstances, based on professional judgment, that the victim does not object, then the Privacy Rule permits hospital staff to introduce the advocate to the victim and share information pertinent to the advocate's involvement in the victim's care. For more information on the ability of a health care provider to communicate with persons identified by an individual as involved in the individual's care, see *A Health Care Provider's Guide to the HIPAA Privacy Rule: Communicating with a Patient's Family, Friends, or Others Involved in a Patient's Care*, available at http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/provider_ffg.pdf.

⁸⁹ Discovery in a criminal case is the turning over of any evidence or information that the prosecutor is obligated by jurisdictional statute or case law to turn over to the defense. (Drawn from electronic communications with Norm Gahn, Assistant District Attorney, Office of the District Attorney for Milwaukee County, Wisconsin, during the fall of 2003.)

⁹⁰ Depending on jurisdictional law, law enforcement reports and reports of other governmental agencies may be subject to open public records laws or Freedom of Information Act laws. In such instances, jurisdictional policy would govern when such information could be released to the general public upon request. (Drawn from electronic communications with Robert Laurino, Deputy Chief Assistant Prosecutor, Essex County Prosecutor's Office, New Jersey, during the fall of 2003.)

⁹¹ Within the U.S. Department of Defense's Restricted Reporting Policy, a military member may make a restricted report to a Sexual Assault Response Coordinator (SARC), victim advocate, or health care provider.

For more information about the HIPAA Privacy Rule generally, including the conditions under which other disclosures are permitted, visit the Department of Health and Human Services Office for Civil Rights (OCR) Web Site at <http://www.hhs.gov/ocr/privacy/> for an array of helpful guidance documents and Frequently Asked Questions.

HIPAA is not the only federal law that governs victims' privacy rights. Agencies that receive funding under the Violence Against Women Act (VAWA) must also comply with VAWA's confidentiality provisions. These provisions require that a victim's personally identifying information may not be released without a victim's written, time-limited, informed consent or a court or statutory mandate.

Strive to resolve intrajurisdictional conflicts. For example, maintaining confidentiality is often difficult in isolated or small communities where people know one another or word of a crime travels quickly (e.g., school campuses and tribal, military, religious, or immigrant communities). Special precautions must be taken in these situations to preserve confidentiality. Every effort should be made to avoid conflicts of interest (e.g., the investigator is the cousin of the suspect or the health care provider, or the advocate or interpreter is an acquaintance of the patient). Give patients as many options as possible to avoid these dilemmas (e.g., allow them to work with a different investigator or be examined at another site or by another examiner, if possible).

5. Reporting to Law Enforcement

Recommendations at a glance for jurisdictions and individual responding to the sexual assault victims to facilitate victim-sensitive reporting practices:

- Except in situations covered by mandatory reporting laws, patients, not health care workers, make the decision to report a sexual assault to law enforcement
- Inform patients about reporting consequences.
- As a result of VAWA 2005, many jurisdictions have implemented alternatives to standard reporting procedures.
- Promote a victim-centered reporting process.

Many sexual assault victims who come to health care facilities or other exam sites for the medical forensic exam choose to report the assault to law enforcement. Reporting provides the criminal justice system with the opportunity to offer immediate protection to the victim, collect evidence from all crime scenes, investigate the case, prosecute it if there is sufficient evidence, and hold the offender accountable for crimes committed. Given the danger that sex offenders pose to the community, reporting can serve as a first step in efforts to stop them from reoffending. Equally important, reporting gives the justice system the chance to encourage victims to seek assistance to address their needs, identify patterns of sexual violence in the jurisdiction, and educate the public about such patterns. Service providers should discuss all reporting options with victims and the pros and cons of each, including the fact that delayed reporting may be detrimental to the prosecution of an offender. Victims need to know that even if they are not ready to report at the time of the exam, the best way to preserve their option to report later is to have the exam performed. Information should be provided in a language victims understand.

Some victims, however, are unable to make a decision about whether they want to report or be involved in the criminal justice system in the immediate aftermath of an assault. Pressuring these victims to report may discourage their future involvement. Yet, they can benefit from support and advocacy, treatment, and information that focuses on their well-being. Recognizing that traumatic injuries heal and evidence on their bodies is lost as time passes and that they may report at a later date, victims can also be encouraged to have the medical forensic exam conducted. Victims who are recipients of compassionate and appropriate care at the time of the exam are more likely to cooperate with law enforcement and prosecution in the future.

Except in situations covered by mandatory reporting laws, patients, not health care workers, make the decision to report a sexual assault to law enforcement. Health care workers in some jurisdictions are bound by law to report some or all forms of sexual assault, regardless of patients' wishes.⁹² In the remaining jurisdictions, no report should be made without the consent of patients. (Exceptions typically include cases involving vulnerable adults and minors victimized by caretakers or other authority figures). All involved health care providers should be aware of the reporting requirements in the jurisdiction in which they work.

In jurisdictions in which mandatory reporting by health care personnel is required, patients should be informed of the legal obligations of health care personnel, what triggers a mandatory report, that a report is being made, and the contents of the report. Patients should understand that even if health care personnel make a mandatory report, they are not obligated to talk with law enforcement officials⁹³

⁹² Some jurisdictions mandate reporting for some or all violent crimes, requiring health care workers to notify law enforcement in cases involving a gunshot or knife wound, strangulation/choking, or other serious bodily injury. They vary, however, in whether they require acts of sexual violence without serious physical injuries to be reported. Health care personnel should be aware that these reporting laws may come into conflict with military policy allowing for restricted reporting for victims in the military.

⁹³ Some victims may fear possible consequences of reporting (e.g., retaliation by offenders; rejection by family members and friends; being discriminated against if they are males). Victims may have these and other fears because they are from populations with differing sexual orientations or gender identities, or they are from racially or otherwise oppressed groups; they are inmates; or they fear being deported or refused citizenship (in the case of recent immigrants and refugees). Some recent immigrants or refugees may fear law enforcement because of past experiences of oppression by authorities in their countries of origin. In addition, many victims are not willing to deal with the humiliation, loss of privacy, and negativity they perceive would accompany reporting, an investigation, and prosecution. If an intimate partner or a family member committed the assault, victims may also be concerned about the consequences of

States are required, as a condition of eligibility for STOP Violence Against Women Formula Grant funds, to allow victims to receive examinations and to have the examinations paid for regardless of the level of participation of victims in the criminal justice process. Documentation and evidence collected could be invaluable to the investigation and prosecution if patients should report at a later date, which often occurs. Patients also have the right to receive medical care for assault-related injuries and concerns, regardless of their decision to report and/or have evidence collected, although the state is not required to pay for medical care.

Jurisdictions need to consider the challenges of storing evidence in cases where victims go through the medical forensic exam but opt not to participate with the criminal justice process. In some communities, it is a challenge to find adequate space to hold evidence in cases where a report has not been made. For more information on this topic, see *B.6. Evidence Integrity*.

In addition, under VAWA 2005 as a condition of STOP Formula Grant funding, states must also certify that law enforcement officers, prosecutors, and other government officials do not ask or require victims of sex offenses to submit to polygraph exams or other truth telling devices as a condition for proceeding with the investigation or prosecution of the offense.

Inform patients about reporting consequences. Prior to making a decision about reporting, patients need information about issues related to reporting. For example, they should be informed of the following:

- The process of reporting the sexual assault to law enforcement and the information that will typically be requested from the victim.
- Procedures dealing with reporting in the jurisdictional protocol for immediate response to sexual assault.
- Whether health care personnel are mandated by law to report the assault.
- The fact that the report will trigger an investigation. Depending upon the results of the investigation, the case may be referred to the prosecutor, and the prosecutor may file charges.
- The purposes of the exam and how documented injuries as well as evidence gathered could be used during investigation and prosecution.
- Types of evidence (beyond that found on patients) that may be gathered during an investigation.⁹⁴
- The fact that delays in reporting, especially extended ones, can result in loss of evidence and may negatively affect the ability of the criminal justice system to investigate and prosecute a case.⁹⁵
- Practices regarding prosecution of sexual assault victims for unrelated criminal charges.
- The right to accept or decline exam procedures and the possible consequences of declining.
- The right to copies of any communication or report issued to law enforcement and procedures for accessing such data.
- Policies related to payment for the exam, evidence collection, and medical care, whether or not a report is made.
- Policies on collecting/holding evidence in cases where patients are undecided about reporting, and, if evidence can be collected with no report, the amount of time they have to make a reporting decision.

prosecution on their families (e.g., loss of income, employment, profession, attorney fees, and childcare costs) and being blamed for “tearing the families apart.” Incest victims may be deterred from reporting because offender registries might indirectly identify them.

⁹⁴ For example, other evidence may be found on the suspect’s bodies and clothing, at the locations of actual assaults, and locations victims went to immediately after the assaults.

⁹⁵ Prompt reporting can facilitate a thorough investigation. Collecting evidence from patients is but one piece of investigative information gathering. Other investigative activities may include, but are not limited to, identifying and collecting evidence from all crime scenes; identifying, apprehending, and interviewing suspects; interviewing witnesses (both eyewitnesses and persons to whom victims initially disclose); obtaining search warrants as needed (e.g., to search for drugs that might have been used to facilitate an assault or for evidence used during an assault such as clothing, ropes, or condoms). Investigative activities depend on the specifics of each case.

In response to VAWA 2005, many jurisdictions have implemented alternatives to standard reporting procedures.⁹⁶ Many communities have implemented alternatives to traditional reporting procedures, such as anonymous or blind reporting. These procedures are used when victims do not want to immediately report or are undecided about reporting with their own name and contact information (but are willing to report anonymously).⁹⁷ Government entities that mandate reporting for sexual assaults, in particular, have implemented an option of third-party anonymous reporting for mandated reports, which allow a third-party, such as the medical personnel, to make the report without including identifying information about the victim.⁹⁸ Although the practice of anonymous reporting is not widespread it allows victims and/or third-party reporters to share critical information about the assault with law enforcement without sacrificing privacy. It also enables investigators to gain information about sex crimes that would otherwise go unreported.

To develop an anonymous/blind reporting system, law enforcement agencies can:

- Establish and uphold a policy of victim confidentiality.
- Allow victims to disclose as little or as much information as they wish.
- Accept the information whenever victims might offer it—a delay in disclosure is not an indicator of the validity of the statement.
- Develop procedures and forms to facilitate anonymous information from third parties (e.g., examiners).
- Clarify options with victims for future contact—where, how, and under what circumstances they may be contacted by the law enforcement agency or by another agency.
- Maintain these reports in separate files from official complaints to avoid inappropriate use.

Informed consent from victims for notification should be sought during the initial report, as well as appropriate times, reasons, and methods to recontact them.⁹⁹ For example, a victim may want to be contacted if another victim who was likely assaulted by the same suspect comes forward.

Promote a victim-centered reporting process. Some approaches for communities to consider:

- Explore the myriad reasons why victims are reluctant to report and how the actions or attitudes of agencies may help perpetuate these fears. Help agencies consider how to address reluctance and fears (e.g., immigrant victims who fear deportation and immigration enforcement may benefit from immediate access to legal services or information about their rights as potential U-Visa holders). Information regarding U-Visas should be universally provided to all victims. The resource, if not appropriate for the victim being seen, may be passed along to others through word of mouth.¹⁰⁰
- Evaluate local trends regarding reporting and victims' involvement in the criminal justice system. Based on feedback, develop and implement a plan to improve multidisciplinary response to sexual assault.
- Improve and increase professional training for first responders (e.g., training for law enforcement investigators on effective interviewing techniques for sexual assault victims, training for health care personnel on the clear use of language in documentation, training for prosecutors on strategies for

⁹⁶The first two paragraphs in this section are drawn from S. Garcia and M. Henderson, *Blind Reporting of Sexual Violence*, FBI Law Enforcement Bulletin, June 1999, pp. 12–16.

⁹⁷ For example, the Chapel Hill, North Carolina, Police Department's blind reporting system for sexual assault enables victims to disclose as much or as little information as they want. A detective records the information but does not initiate an investigation unless victims decide to file a formal complaint. The blind reporting system has been credited with contributing to a steady increase in sexual assault reporting. The number of male victims who reported during that time also rose. (K. Littel, M. Malefy, and A. Walker, *Assessing the Justice System Response to Violence Against Women: A Tool for Law Enforcement, Prosecution, and the Courts to Use in Developing Effective Response*, 1998, pp. 18–9.)

⁹⁸ For example, all health care providers in Massachusetts who attend to, treat, or examine a sexual assault patient are required to submit a third-party anonymous report (with no identifying information) to law enforcement in the community where the assault occurred as well as to the state police. This report is required even if patients report the assault themselves. (Commonwealth of Massachusetts *SANE Protocol*, 2002, pp. 8–9.)

⁹⁹ All those involved in immediate response, including victims, need to understand the nature of DNA evidence and how CODIS can be used to match offenders with DNA in the database. They also need to know the status of CODIS in their jurisdiction (states have varying laws regarding which crimes qualify for inclusion in the database).

¹⁰⁰ Legal Momentum has extensive resources available regarding U-Visas. See <http://www.legalmomentum.org/our-work/immigrant-women-program/u-visa.html>. Additionally, immigrant women are entitled to emergency medical and post-assault healthcare. For a state-by-state breakdown of the benefits afforded, see http://www.legalmomentum.org/assets/pdfs/4_nilc_table_10.pdf.

overcoming a consent defense, and training for first responders on effective use of interpreters when responding to sexual assault cases).

- Encourage reporting of criminal justice statistics that accurately reflect the full range of sexual assaults that are reported in a jurisdiction.
- Initiate community education, outreach, and services targeting groups that may be reluctant to seek assistance after an assault.
- Expand community collaboration to include immigrant victim advocates who can work with the local coordinating council and SART/SARRT to inform immigrant victims of their rights as soon as possible post-assault.
- Offer viable options for reimbursement of exam costs for which victims are responsible, such as costs that are purely medical in nature.¹⁰¹
- Ensure that victims who opt not to participate in the criminal justice process have access to the same comprehensive medical forensic examination as those who do.
- Encourage the development of a coordinating council and/or SART/SARRT to facilitate a more coordinated, victim-centered, comprehensive community response to sexual violence.
- Support the formation of specialized examiner programs, investigative and prosecution units, and sexual assault victim advocacy programs to handle these cases. Specialization can potentially increase the knowledge base and commitment of those responding to sexual assault victims, increase adherence to jurisdictional protocols for immediate response to sexual assault, encourage a victim-centered response, and positively advertise services offered.
- Develop jurisdiction-wide public information initiatives on mandatory reporting—mandatory reporters need to know applicable statutes regarding reporting sexual assault cases that involve older vulnerable adults, persons with disabilities, and minors. A toll-free hotline number exclusively dedicated to abuse reports may also help simplify reporting and ensure a written report of each case and referrals to appropriate agencies. Such a hotline could be operated at a state, tribal, regional, or local level. To encourage both reporting and follow-through, protective agencies that investigate these cases should work collaboratively with local law enforcement agencies to ensure that each case is dealt with in the best possible manner and that further harm does not occur.¹⁰²
- In institutional settings such as prisons, jails, immigrant detention centers, nursing homes and assisted living programs, inpatient treatment centers, and group homes, ensure that victims can report assaults to outside agencies and are offered protection from retaliation for reporting.
- In each case, strive to create an environment in which victims are supported and respected throughout the criminal justice process and beyond.¹⁰³
- After steps have been taken to identify and remove barriers to reporting sexual assaults, educate the public about the potential benefits of reporting, how to go about reporting, what happens once a report is filed, and jurisdictional legal advocacy services available (if any) for sexual assault victims. Build upon already existing public awareness efforts of local advocacy programs.

¹⁰¹ It would be ideal if victims did not have to cover any costs for the exam and related medical care. However, jurisdictions and exam facilities vary in the costs that victims are required to cover. In some jurisdictions, victims are responsible for the costs of treatment for injuries and possible pregnancy, STIs, and HIV infection. Some exam facilities are flexible—they may allow victims to pay as they are financially able or may be willing to waive some or all charges.

¹⁰² Bullet drawn from A. Vachss, *Redefining Rape Response: When the Victim is Elderly or Has a Disability*, 2004, pp. 6 and 18.
<http://www.nj.gov/lps/dcj/agguide/standards/standardssartsane.pdf>

¹⁰³ Bullet adapted from the New Jersey Office of the Attorney General's *Standards for Providing Services to Survivors of Sexual Assault*, 1998, pp. 6 and 18.

6. Payment for the Examination Under VAWA

Recommendations at a glance for jurisdictions to facilitate payment for the sexual assault medical forensic exam:

- Understand the VAWA provisions related to exam payment.
- Notify victims of exam facility and jurisdictional policies regarding payment for medical care and the medical forensic exam.

Understand the VAWA provisions related to exam payment.¹⁰⁴ Under the Violence Against Women Act (VAWA) and subsequent legislation, grantees of the STOP Violence Against Women Formula Grant Program must meet certain requirements concerning payment for the forensic medical exam in order to receive funds. The STOP Program is a formula grant program which provides funds to all states, Territories, and the District of Columbia.¹⁰⁵

Each of these entities certifies each year that it is in compliance with the requirements of VAWA.¹⁰⁶ Specifically, the state, territory, or the District of Columbia must certify that it or another governmental entity "incurs the full out-of-pocket cost of forensic medical exams" for victims of sexual assault. If one part of a state or territory, such as a county or city, is forcing victims to incur these costs, then the state or territory will not be able to certify and will be ineligible for the grant funds. In addition, under the Violence Against Women Act of 2005, states must also certify that they do not require victims to participate with the criminal justice process in order to be provided with an exam.¹⁰⁷

States are permitted to use STOP Program funds to pay for the exams if they meet two conditions.¹⁰⁸ First, the exam must be performed by a "trained examiner for victims of sexual assault." Second, the state may not require victims of sexual assault to seek reimbursement from their insurance carriers.

In cases of victims associated with the U.S. military services, sexual assault forensic examinations may be covered under Tricare for service members.

By regulation, "full out-of-pocket cost" means "any expense that may be charged to a victim in connection with a medical forensic examination for the purpose of gathering evidence of a sexual assault."¹⁰⁹ Examples of such expenses may include the full cost of the exam or a fee established by the facility conducting the exam, or a copayment or deductible in jurisdictions that require victims to submit the charges to insurance. Often, medical services that are not related to evidence gathering will not be covered by this requirement.

Notify victims of exam facility and jurisdictional policies regarding payment for medical care and the medical forensic exam. Victims must be aware of exam facility and jurisdictional policies regarding payment for other medical care related to the sexual assault. Many jurisdictions will not pay for medical care provided as part of the medical forensic examination, such as the costs of treatment for injuries or treatment for STIs, or may require victims to apply separately for crime victim compensation to be reimbursed for such

¹⁰⁴ As a result of the Violence Against Women Reauthorization Act of 2013, states can no longer pay for exams by reimbursing the victim, instead they need to either provide the exams free of charge to the victim or arrange for victim to obtain the exams free of charge to the victims.

¹⁰⁵ Its purpose is to assist these jurisdictions in developing and strengthening law enforcement and prosecution strategies to combat violence against women, as well as in developing and strengthening victim services in cases involving violence against women.

¹⁰⁶ For American Indian/Alaska Native victims, the costs of the exam will be born by either the state or in some cases the federal government. Although tribes are not directly eligible for STOP Formula Grants, they are eligible for subgrants from the states, as well as other Office on Violence Against Women grant programs that can address sexual assault.

¹⁰⁷ Under 42 U.S.C. § 10607, a federal investigating agency that conducts a sexual assault investigation shall pay for the cost of a forensic exam "which an investigating officer determines was necessary or useful for evidentiary purposes." However, in most cases where the victim does not choose to report the assault to law enforcement or to participate with the criminal justice process, a state that receives STOP funds will still be responsible for payment because at that stage there will be no federal investigation. The state's responsibility for payment applies regardless of whether the crime occurred in Indian Country or within the special maritime and territorial jurisdiction of the United States.

¹⁰⁸ 42 U.S.C. 3796gg-4(c).

¹⁰⁹ 28 C.F.R. § 90.14(a).

expenses. Individuals responding to the sexual assault victim need to be informed regarding payment policies and procedures for all aspects of the medical forensic examination, so that they can accurately inform victims.¹¹⁰ For example, responders can help them apply for crime victims' compensation (if available) or arrange a payment plan with the exam facility.¹¹¹ When victims are billed by the exam facility for costs that are their responsibility, procedures to protect their privacy should be incorporated into the billing process. Personnel in facility billing departments should be educated regarding coding and billing practices in these cases, as determined by facility and/or jurisdictional policy.

Reporting to law enforcement. States, territories, and the District of Columbia must pay for sexual assault medical forensic exams without requiring victims to report the assault to law enforcement. Some victims are unable to make a decision about whether they want to report to law enforcement in the immediate aftermath of the assault. Recognizing that injuries heal and that evidence is lost as time progresses, victims should be encouraged to have the physical findings documented and evidence collected right away, and then have time to decide about reporting the crime.

See <http://www.ovw.usdoj.gov/faq-forensic-examinations.html> and <http://www.ovw.usdoj.gov/docs/stop-formula-faq.pdf> for more information on the STOP Formula Grant Program medical forensic exam payment requirement.

¹¹⁰ Victims in federal cases should first apply to the state or territory crime victim compensation program for reimbursement of costs that are their responsibility. If they are unable to obtain reimbursement via this channel, they should work with victim-witness specialists in the federal agency investigating or prosecuting the case to identify other possible sources of funding or reimbursement. For more information about crime victim compensation, please see <http://www.ovc.gov/publications/factsheets/companassist/welcome.html>.

¹¹¹ Exam facilities are sometimes willing to waive some related medical care costs that are not covered by government entities.

B. Operational Issues

This section discusses components essential to conducting the sexual assault forensic examination: the health care providers conducting the exam, the facilities where exams are performed, the equipment and supplies needed during the exam, and the sexual assault evidence collection kit. It also discusses timing considerations in collecting evidence and evidence integrity during and after the exam.

The following chapters are included:

1. Sexual Assault Forensic Examiners
2. Facilities
3. Equipment and Supplies
4. Sexual Assault Evidence Collection Kit
5. Timing Considerations for Collecting Evidence
6. Evidence Integrity

1. Sexual Assault Forensic Examiners

Recommendations at a glance to build capacity of examiners to conduct these exams:

- Encourage the development of specific knowledge, skills, and victim-centered approaches in examiners.
- Encourage advanced education and supervised clinical practice of examiners, as well as certification for all examiners.
- Provide access to experts on anti-sexual assault initiatives who can participate in sexual assault examiner training, mentoring, proctoring, case review, photograph review, and quality assurance.

It is critical that health care providers conducting the sexual assault medical forensic exam are committed to providing compassionate and competent health care, collecting evidence in a thorough and appropriate manner, and testifying in court if needed. Their commitment should be grounded in an understanding that sexual assault is a serious crime that can have profound acute and chronic consequences for those victimized. Providers should recognize the role of advanced education and clinical experience in building competency to perform the exam.

A growing trend across the United States is the use of sexual assault nurse examiners (SANEs) to conduct the exam. SANEs are registered nurses who receive specialized education and fulfill clinical requirements to perform these exams. Some nurses have been certified as SANEs—Adult and Adolescent (SANE—A) through the International Association of Forensic Nurses (IAFN).¹¹² Others are specially educated and fulfill clinical requirements as forensic nurse examiners (FNEs), enabling them to collect forensic evidence for a variety of crimes. The terms “sexual assault forensic examiner” (SAFE) and “sexual assault examiner” (SAE) are often used more broadly to denote a health care provider (e.g., a physician, physician assistant, nurse, or nurse practitioner) who has been specially educated and completed clinical requirements to perform this exam.

All communities should strive to ensure that victims of a recent sexual assault have access to specially educated and clinically prepared examiners to perform the medical forensic exam. As much as possible, examiners should be permanent rather than on temporary assignment in a jurisdiction. It can be challenging for examiners who are temporary (e.g., at an Indian Health Service facility) to understand needs of victims from the community or to be familiar with jurisdictional policies and procedures. If they move to another job assignment, arranging for them to testify in court can be complicated.¹¹³

Encourage the development of specific knowledge, skills, and victim-centered approaches in examiners. Conducting a sexual assault medical forensic examination is a complex and time-consuming procedure. It is useful for examiners to have specific knowledge and skills that can guide them as they perform these exams.¹¹⁴ For example, it is beneficial for them to know about the following:

- The dynamics and impact of sexual victimization.
- Jurisdictional laws related to sexual offenses.
- Coordinated multidisciplinary response, roles of each responding agency, and procedures for communicating with each agency during immediate response.
- The importance of examiner neutrality and objectivity during the examination.

¹¹² Eligibility criteria for IAFN SANE Adult/Adolescent certification includes: registered license as an R.N. in the United States or its Territories, or a license as a first-level general nurse in the jurisdiction of current practice; a minimum of 2 years of practice as an R.N. in the United States or as a first-level general nurse in the country of licensure; successful completion of an adult/adolescent SANE education program that includes either (a) a minimum of 40 continuing education contact hours of classroom instruction, or (b) 3 semester hours (or the equivalent) of academic credit in an accredited school of nursing, and sufficient supervised clinical practice until determined competent in SANE practice. An appropriate clinical authority, as outlined in the adult section of the IAFN *SANE Education Guidelines* (2008) must validate current SANE competency. (Drawn from the *IAFN Web Site Certification Area* at <http://www.iafn.org>.)

¹¹³ Most hospitals or medical clinics that physicians or advanced practice nurses are employed by or affiliated with require them to apply for facility privileges. Those requesting privileges usually must agree to provide forwarding addresses when they leave. Also, medical licenses can be tracked to the state or territory where the health care provider is working.

¹¹⁴ The next two bulleted sections are adapted from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, pp. 25–26, produced by the California Governor’s Office of Criminal Justice Planning. Also see the National Training Standards..

- The broad spectrum of potential evidence and physical findings in these cases.
- The importance of the medical forensic history and other documentation.
- Proper evidence collection and preservation procedures.
- Preexisting needs and circumstances of patients that may affect how the exam is conducted.
- Treatment options and procedures for common concerns such as pregnancy, STIs, and HIV infection.
- Equipment, supplies, and medication typically used during the exam.
- Precautions to prevent exposure to potentially infectious materials.¹¹⁵
- Indications for follow-up health care and documentation of injuries.
- Applicable laws and protocols regarding performance of medical forensic exams and standardized forms used to document findings.
- Patients' needs for support, crisis intervention, advocacy, information, and referrals during the exam process, local resources for addressing these needs, and procedures for accessing resources.
- The importance of establishing vehicles to ensure the quality of the exam and related documentation.
- Examiner court testimony (what it involves and how examiners can prepare for it).
- Applicable research findings, technological advances, and promising practices.

It is critical for examiners to be able to:

- Preserve their neutrality and objectivity in each case.
- Assess patients' clinical condition (physical and psychological assessment¹¹⁶) and provide appropriate treatment and medical referrals (e.g., to a surgeon).
- Adapt exam procedures to address patients' needs and circumstances as much as possible.
- Take measures during the exam process to reduce the likelihood of patients' retraumatization.
- Take precautions according to facility policy to prevent exposure to potentially infectious materials.
- Contact advocates (where available) upon initial contact with patients so they can offer patients support, crisis intervention, advocacy, information, and community referrals before, during, and after the exam.¹¹⁷
- Explain the obligation and scope of mandatory reporting to the patient, if mandatory reporting is required.
- Gather information sensitively from patients for a medical forensic history and use the history as a guide when performing an exam.
- Explain to patients what items need to be collected for evidence and for what purposes.
- Involve law enforcement representatives promptly if patients want to report and work with them to optimize the collection of evidence from patients, suspects, and crime scenes.
- Identify and describe pertinent genital and anorectal anatomical structures and external landmarks.

¹¹⁵ See the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) for its Bloodborne Pathogens Standard (CFR 1910.1030). It may be accessed at <http://www.osha.gov> or by calling 800-321-OSHA. According to this standard, bloodborne pathogens are pathogenic microorganisms that are present in human blood and can cause disease in humans. Among other things, the standard requires employers who have employees at risk for occupational exposure to bloodborne pathogens and other potentially infectious materials to develop plans to eliminate or minimize employee exposure. It also advises universal precautions that should be observed to prevent contact with blood or other potentially infectious materials (this approach treats all human blood and certain human body fluids as if they are known to be infectious). In addition, the standard requires employers to ensure that all employees at risk participate in a training program to inform them of risks, related facility policies, and necessary precautions. Employers must also establish and maintain a record for each employee with occupational exposure.

¹¹⁶ Examiners typically assess patients' psychological functioning to determine whether there is a risk for suicide and whether patients are oriented to person, place, and time. They may request a mental health evaluation for patients, if necessary.

¹¹⁷ It is helpful if jurisdictions clarify the specific roles of advocates and examiners during the exam process. In the absence of advocates or other victim service providers, examiners may be responsible for providing crisis intervention and support to patients. In situations where examiners are both collectors of evidence and crisis counselors, it is important to understand how these dual roles affect the perception of their ability to testify in an unbiased manner.

- Identify and document injuries and interpret physical findings; this documentation should include a diagram of the finding on an appropriate anatomic drawing, a written description of the finding (including any indication of tenderness or induration), and forensic imaging of any visible finding.
- Use enhancement techniques for detection and documentation of findings.
- Collect and preserve evidence for analysis by the crime laboratory.
- Collect and preserve toxicology samples in suspected alcohol- or drug-facilitated sexual assault cases.
- Maintain and document the chain of custody for evidence.
- Maintain the integrity of the evidence to ensure that optimal lab results are obtained.
- Evaluate the possibility of STIs and HIV infection and provide prophylactics and/or treatment.
- Assess pregnancy risk and discuss treatment options with the patient.
- Recognize evidence-based conclusions and limitations in the analysis of findings.
- Complete standard forms for documenting the medical forensic results of the exam.
- Discuss evidentiary findings with investigators, prosecutors, and defense attorneys as requested (according to jurisdictional policy).
- Testify in court if needed.

Encourage advanced education and supervised clinical practice for health care personnel conducting the exam, as well as certification for all examiners. Such a standard must speak to specific education and supervision needs of involved disciplines. For example, nonphysician examiners may require medical supervision and backup, in addition to completing necessary training and clinical requirements. Certification through the IAFN is currently available only to nurses trained as SANEs. When designing classroom education for examiners, make sure the examiners understand the importance of a multidisciplinary response during the exam process. Consider involving trainers from health care, advocacy, law enforcement, prosecution, judiciary, and crime laboratories.

Standardized curricula on sexual assault exams in medical school, nursing and nurse practitioner programs, and physician assistant programs are recommended. Consideration must be given to how to systematically secure, supervise, and retain examiners in/for poor, rural, or remote areas, institutional settings,¹¹⁸ military bases, college campuses, tribal lands, migrant farm worker communities, and other areas needing increased victim outreach. Examiners need to know how to respond in a respectful manner to various populations within their community (e.g., local tribal victim service providers may be able to provide training on cultural beliefs and practices that might be relevant in sexual assault cases).

In addition, other health care providers who come into contact with patients who disclose a recent assault need information on procedures for obtaining immediate patient assistance and caring for patients prior to their arrival at the exam site.

Provide access to experts on anti-sexual assault/violence initiatives who can participate in sexual assault examiner training, mentoring, proctoring, case review, photograph review, and quality assurance. Access to such experts can help increase examiner competence and the consistency of high quality forensic examinations. Telemedicine may help provide this expertise, especially to rural and underserved areas.

¹¹⁸ Examples of institutional settings include prisons, jails, immigration detention centers, juvenile detention centers, nursing homes, assisted living and rehabilitation programs, and inpatient treatment centers.

2. Facilities

Recommendations at a glance to build the capacity of health care facilities to respond to sexual assault cases:

- Recognize the obligation of health care facilities to serve sexual assault patients in a culturally and linguistically appropriate manner.
- Ensure that exams are conducted at sites served by examiners with advanced education and clinical experience, if possible.
- Explore possibilities for optimal site locations.
- Communities may wish to consider developing basic requirements for designated exam sites.
- If a transfer from one health care facility to a designated exam site is necessary, use a protocol that minimizes time delays and loss of evidence and addresses patients' needs.

Recognize the obligation of health care facilities to serve sexual assault patients in a culturally and linguistically appropriate manner.¹¹⁹ It is essential that all sexual assault patients who present to health care facilities be thoroughly evaluated. Treating injuries alone is not sufficient in these cases. Staff who examine these patients must be educated and clinically prepared to collect evidence and document findings while maintaining the chain of custody. They should be able to coordinate crisis intervention and support for patients, as well as provide STI evaluation and care, pregnancy assessment, and discuss treatment options. They must be aware of and follow jurisdictional reporting policies, and be able to provide court testimony if necessary.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO)¹²⁰ requires emergency and ambulatory care facilities to have established policies for identifying and assessing possible victims of sexual assault. It also requires staff to be trained on these policies. As part of the assessment process, JCAHO requires these facilities to define their responsibilities related to the collection and preservation of evidentiary materials.¹²¹ Sexual assault examiner programs are helping many health care facilities to carry out these requirements. Facilities should also familiarize themselves with the federal Emergency Medical Treatment and Active Labor Act (EMTALA), which has provisions pertaining to the ability of hospitals to turn away patients with emergency medical conditions.¹²²

Ensure that exams are conducted at sites served by examiners with advanced education and clinical experience, if possible. Some jurisdictions designate specific facilities as exam locations because they employ or have ready access to specially educated and clinically prepared examiners, as well as the necessary space, equipment, supplies, and policies to facilitate the exam process. Jurisdictions may rely on examiner programs to serve multiple exam sites within a specific area.¹²³ Communities can benefit from designated exam facilities and examiner programs that use specially educated and clinically prepared examiners to conduct the exam because they:

- Increase the quality of care for patients and attention to their needs.
- Increase the likelihood of a state-of-the-art examination.

¹¹⁹ This and the next paragraph were drawn from L. Ledray, *Evidence Collection and Care of the Sexual Assault Survivor: The SANE-SART Response*, 2001, p. 1.

¹²⁰ JCAHO standards for accreditation address a health care organization's level of performance in specific areas—not just what the organization is capable of doing, but what it actually does. The standards set forth maximum achievable performance expectations for activities that affect the quality of care. These standards are developed in consultation with health care experts, providers, measurement experts, purchasers, and consumers, and usually are updated every 2 years. (Drawn from http://www.jointcommission.org/standards_information/standards.aspx).

¹²¹ The JCAHO requirements are discussed at <http://www.mincava.umn.edu/documents/commissioned/2forensicevidence/2forensicevidence.html>.

¹²² 42 U.S.C. § 1395dd. See <http://www.emtala.com> for more information about EMTALA.

¹²³ A mobile examiner program may be based in a health care facility—in addition to providing services at that facility, it also may contract with other exam sites to provide services as requested. Such a program may also be independent, with administrative offices only, and solely contract with exam sites to provide examiner services.

- Enhance a coordinated team approach.
- Encourage quality control (e.g., through use of competent and dedicated examiners, established procedures for evidence collection, and standards for medical care).

Explore possibilities for optimal site locations. SART/SARRTs (or involved agencies) should determine where exams should be conducted. Some factors to consider when identifying sites include safety and security for patients and staff, physical and psychological comfort for patients, capacity to accommodate victims with disabilities,¹²⁴ availability of examiners with advanced education and clinical experience, access to a pharmacy for medication, access to medical support services for care of injuries, access to lab services, and access to the supplies and equipment needed to complete an exam.¹²⁵ Decisions about site location should reflect the needs of victims (e.g., for accessible care close to their home and local referrals), what is most efficient for the multidisciplinary response team, and the need to maintain the neutrality and objectivity of examiners (e.g. if the site location is at a rape crisis center, it may be seen as biased against the offender). Designated facilities may be in hospitals, health clinics, mobile health units, or other alternative sites, including family justice centers¹²⁶ or nonprofit sexual assault victim services programs.¹²⁷ The majority of medical forensic exams are conducted in hospital emergency departments. This location typically offers some level of security, is open 24 hours a day, and provides access to a wide array of medical and support services. Clinical staff often have the experience and expertise to perform the exam and collaborate with appropriate disciplines. Some jurisdictions have or are developing specialized hospital or community-based examiner programs.¹²⁸

SART/SARRTs may need to decide whether a tribal, local, regional, or state/territorial system of designated facilities best serves community needs. Some issues that might impact this decision include community demographics and geography; the need for and availability of specialized services; availability of local health care facilities; local capacity to secure competent examiners and necessary space, equipment, and supplies; willingness of involved disciplines to coordinate with a local facility or examiner program; distance to/from tribal, regional, or state/territorial facilities; and service capacity of tribal, regional or state/territorial facilities. Communities are encouraged to first consider using local designated exam sites. However, some may ultimately opt for tribal-, regional- or state/territorial-level facilities. For example, a small state, tribe, or sparsely populated region may establish one or more designated facilities to serve all of its localities.

Exam facilities and examiners that serve at the local level may benefit from networking with examiners in other facilities or areas for support for peer review of medical forensic reports, quality assurance, and information sharing (e.g., on training opportunities, practices, and referrals for patients).

Communities may wish to consider developing basic requirements for designated exam sites.

Examples of such requirements include:¹²⁹

- The site will be within a reasonable distance from any point in the area it serves (“reasonable” is locally defined).
- The site will promptly alert a SART/SARRT member, if one exists, when sexual assault patients arrive.
- Urgent or emergent physical injuries (or other acute medical needs) will be treated immediately.

¹²⁴ Title II and Title III of the Americans with Disabilities Act explains requirements for facilities in accommodating persons with disabilities (which may vary depending on the type of facility). Title II prohibits discrimination against persons with disabilities in all programs, activities, and services of public entities. Title III requires places of public accommodation to make reasonable modification in their policies, practices, and procedures in order to accommodate individuals with disabilities. See <http://www.ada.gov/> for related information and resources.

¹²⁵ Drawn from L. Ledray, *SANE Development and Operation Guide*, 2000, pp.35–36.

¹²⁶ Particularly on tribal land that is devoid of or a significant distance from a hospital, and the tribe is serviced by an Indian Health Service (IHS) facility; consideration should be given to securing and maintaining examiners and necessary space, equipment, and supplies to conduct these exams. Ideally, all IHS facilities should have examiners and a minimum standard for examiner training.

¹²⁷ For more information on the President’s Family Justice Center Initiative, see <http://www.ovv.usdoj.gov>.

¹²⁸ The pros and cons of developing hospital versus community-based examiner programs are discussed in more detail in L. Ledray’s *SANE Development and Operation Guide*, 2000, pp.35–9; L. Ledray’s *Sexual Assault: Clinical Issues*, SANE Program Pros and Cons, *Journal of Emergency Nursing*, 23(2), p.183; and in K. Littel’s *SANE Programs: Improving the Community Response to Sexual Assault Victims*, pp.10–11.

¹²⁹ Adapted from Pennsylvania’s *SART Guidelines*, 2002, p.21.

- Responding examiners will be competent in their knowledge and skills.
- The site will ensure that admissions staff have the necessary resources and knowledge to best accommodate the patient until the examiner or victim advocate arrives.
- The site will arrange for interpretation as needed in patients' preferred languages and/or obtain devices that facilitate communication for individuals with sensory or communication disabilities.
- Patients will be provided with a comprehensive medical forensic exam and resources to address their immediate emotional and psychological needs.
- The site will provide a private, secure, and quiet waiting area for patients and for personal support persons accompanying them.
- The site will provide a private and secure setting for the investigative interview.
- The site will provide a private exam room and other measures to assure patients' privacy.
- The site will have a bathroom (preferably with shower facilities) available for patients' use following completion of the exam.
- The site or examiner program that serves the site will have/provide proper equipment and supplies to facilitate a comprehensive exam ("proper equipment and supplies" are locally defined).
- The site or examiner program that serves the site will have a mechanism to ensure that evidence collection kits are available and up to date.
- Patients will be offered medications for possible exposure to sexually transmitted infections.
- Patients will be assessed for pregnancy risk, informed about treatment options, and offered treatment.
- Patients will be offered information about how exams are paid for in their jurisdiction and reimbursement sources (if they exist) for related expenses that are their responsibility.
- Site billing departments will adhere to proper coding and billing practices for sexual assault cases, as determined by the facility and informed by jurisdictional policy.

If designated facilities or sites served by examiner programs are selected, their success depends on getting information about them to victims and agencies that provide immediate response or refer victims for treatment and evidence collection. At a minimum, the list of designated exam sites should be provided to all local hospitals, law enforcement agencies, emergency medical services, sexual assault victim advocacy programs, and protective services. Promoting community public awareness about these sites is also important given that victims may first disclose an assault to family members, friends, teachers, faith-based leaders, employers, coworkers, and others. In addition, success will depend on interagency cooperation in explaining facility options to victims and transporting them to designated exam sites (with their permission). Law enforcement representatives and advocates may need guidance on how to recommend an exam location to victims without mandating that they go to a specific site.

If a transfer from one health care facility to a designated exam site is necessary, use a protocol that minimizes time delays and loss of evidence and addresses patients' needs.¹³⁰ Avoid transferring sexual assault patients whenever possible. If transfer is necessary, explore options to ensure that the patient's comfort is prioritized. Every transfer can destroy evidence and cause patients further stress. However, if a sexually assaulted individual arrives at a health care facility that, for some reason, is not able to provide a medical forensic exam, interagency transfer procedures must be in place to transfer that individual to the nearest designated exam site. Evidence should be preserved when examining, treating, or transferring patients and providers should take care to preserve the chain of custody of such evidence. If there are acute medical or psychological injuries that must be treated immediately, treatment should be provided at the initial receiving facility. It may be helpful to offer patients support and advocacy from advocates at both the receiving facility and exam site. A copy of all records, including any X-rays taken, should be transported with patients to the exam facility. (However, it may not be necessary to send all medical records if patients' medical needs are met before they are transferred to a nonmedical exam site for evidence collection.) All health care facilities receiving federal funds, including Medicare and Medicaid payments, are required to screen patients medically before transferring them to another exam site.¹³¹

¹³⁰ This section was drawn from the *North Dakota Sexual Assault Evidence Collection Protocol*, 2005, p. 12, and the *Texas Evidence Collection Protocol*, 1998, p. 14.

¹³¹ Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd.

Patients have a right to decline a transfer. They should be aware, however, of the impact of refusing transfer, as it may negatively affect the quality of care, the usefulness of evidence collection, and, ultimately, any criminal investigation and/or prosecution. They should understand that declining a transfer might also be used to discredit them in court. Providers should carefully discuss with patients the benefits of the transfer, the possible benefits of refusing the transfer and the drawbacks of both options, so that patients can make an informed decision. Providers should avoid pressuring patients to accept a transfer.

3. Equipment and Supplies

Recommendations at a glance to ensure proper equipment and supplies are available for exams:

- Consider what equipment and supplies are necessary to conduct a medical forensic exam.
- Address cost barriers to obtaining necessary equipment and supplies.

Examiners should know how to use all equipment and supplies (including medications) properly during the exam. It is important that examiners and other individuals involved in sexual assault cases stay abreast of the latest research on the use of equipment and supplies used in caring for sexual assault patients and/or collecting evidence from them.

Consider what equipment and supplies are necessary to conduct a medical forensic exam. Plan to have the following equipment and supplies readily available for the exam, according to jurisdictional policies:¹³²

- A copy of the most current exam protocol used by the jurisdiction.
- Standard exam room equipment and supplies for a physical assessment and pelvic exam. Access for patients with physical disabilities should be taken into account.¹³³
- Comfort supplies for patients, even if minimal. Suggested items: clean and ideally new replacement clothing, toiletries, food and drink, and a phone or at least easy access to a phone in as private a location as possible. It is also important during the exam process to help patients obtain items they request related to their spiritual healing.¹³⁴ It may be useful for facilities to have items on hand that are commonly requested in that jurisdiction (e.g., things that are used for local tribal traditional healing practices) and policies for their use in the facility.¹³⁵
- Sexual assault evidence collection kits and related supplies. (See *B.4. Sexual Assault Evidence Collection Kit* for information on minimal kit contents.) Related supplies might include tweezers, tape, nail clippers and scrapers, scissors, collection paper, saline solution or distilled water, extra swabs, sterile containers, envelopes, paper bags, and pens/pencils.
- A method or device to dry evidence. Drying evidence is critical to preventing the growth of mold and bacteria that can destroy an evidentiary sample. With any drying method or device used, ensure minimal contamination of evidence, and maintain the chain of custody. The kit's design can also aid in the drying process (e.g., by providing clear instructions and supplies to allow drying to occur).
- A camera and related supplies (using the most up-to-date technology possible) for forensic photography during initial and follow-up examinations. Related supplies might include digital media, batteries and/or charger, a flash, a color bar, and a scale ruler for size reference. (Also see *C.5. Photography*.)
- Testing and treatment supplies needed to evaluate and care for patients medically (follow exam facility policies). Also, testing supplies may be needed that are not included in the evidence collection kit. For example, supplies for toxicology testing are often not in the kit.
- An alternate light source (using the most up-to-date technology possible) can aid in examining patients' bodies, hair, and clothing. It can be used to scan for evidence, such as dried or moist

¹³² All the equipment and supplies discussed will not be needed in every exam. What is appropriate in each case will depend on the circumstances of the assault and medical and forensic attention called for, patients' needs, and patients' consent to utilize equipment and supplies. Jurisdictional and/or facility policies will also influence what equipment and supplies are used.

¹³³ For example, it would be ideal to have an exam table with a hydraulic lift for persons with mobility impairments. If this exam table is not available, health care personnel must be aware of how to assist patients with physical disabilities onto standard exam tables. If it is determined that a patient can only be examined on an exam table with a hydraulic lift, procedures should be in place to get the patient to a site with such a table with as little loss of evidence as possible.

¹³⁴ Along with these items, patients may want the opportunity to speak with a trusted religious or spiritual leader, such as a medicine man/woman, a rabbi, a priest, or a pastor, before, during, or after the exam.

¹³⁵ Involved responders/facilities should be aware of local traditional healing practices and support patients if they wish to use such practices at some point before, during, or after the exam. Keep in mind that each tribe has its own traditional practices to promote healing, but not all Native people follow traditional spiritual paths. Rather, spiritual values and belief systems among Native people are as widely diverse as they are among the general population.

secretions, fluorescent fibers not visible in ambient light, and subtle injury.¹³⁶ While the exam can be done without a light source, it is a relatively inexpensive piece of equipment that is commonly used during exams.¹³⁷ (Also see *C.6. Exam and Evidence Collection Procedures*.)

- An anoscope may be used in cases involving potential anorectal penetration or anal/rectal trauma.¹³⁸ This instrument may be used to assist in visualizing an anal injury, obtaining reliable rectal swabs (if there is a concern about contamination), and identifying and collecting trace evidence. (Also see *C.6. Exam and Evidence Collection Procedures*.)
- Written materials for patients. (For details on this topic, see *A.2. Victim-Centered Care*.)

In addition:

- A colposcope with photographic capability may be used. Although some injuries can be detected visually by examiners without the colposcope, the colposcope is an important asset in the identification of microscopic trauma. Photographic equipment, both still and video, can be attached for forensic documentation. (Also see *C.6. Exam and Evidence Collection Procedures*.)
- A microscope. In some jurisdictions, examiners are required to prepare a wet mount slide and immediately examine vaginal/cervical secretions for motile and nonmotile sperm.¹³⁹ In these cases, an optically staining microscope is used to highlight cellular material and facilitate the search for sperm.¹⁴⁰ (Also see *C.6. Exam and Evidence Collection Procedures*.)
- Toluidine blue dye. In some jurisdictions, the dye is used to assist in highlighting observed genital and perianal injuries. (Also see *C.6. Exam and Evidence Collection Procedures*.)

(See *C. The Examination Process* for more discussion on use of equipment and supplies during the exam.)

Note that some jurisdictions, particularly those in rural and remote areas, are beginning to utilize advanced technology (equipment and methods) such as real-time video consultation, store and forward video consultation, and interactive video consultation to support examiners conducting exams. Using this type of technology, examiners can eliminate the barriers of geography and consult with offsite medical “experts.” (This use of such technology in medicine is sometimes called telemedicine.) Equipment needed to facilitate use of telemedicine may include, but is not limited to, computers, software programs, and the Internet.¹⁴¹ Jurisdictions that use such technology should consider ways to protect victim confidentiality.

Address cost barriers to obtaining necessary equipment and supplies. Obtaining equipment and supplies that can increase the quality and quantity of evidence collected can have a significant impact on case outcomes. However, the costs of equipment and training on equipment use can be prohibitive for some jurisdictions and examiner programs. Some ideas to address cost barriers:

- Seek used or donated equipment or alternative, less-expensive equipment where it exists.

¹³⁶ Drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 37.

¹³⁷ A Wood’s Lamp is perhaps the most commonly used type of light source in sexual assault exams. Examiners should be aware of what the light sources they use will detect and their limitations. For example, many examiners find the Wood’s Lamp useful in helping to detect secretions, stains, and fibers on patients. However, one research study questioned its utility as a screening device for the detection of semen. (K. Santucci, D. Nelson, K. McQuillen, S. Duffy, and J. Linakis, “Wood’s Lamp Utility in the Identification of Semen,” *Pediatrics*, 104(6), 1999.) Continued research is needed (and being conducted) on the utility of this and other light sources in evidence collection. Ongoing refinement of these instruments is encouraged.

¹³⁸ The examiner should use discretion in determining whether a case warrants the use of the anoscope for medical and/or forensic purposes, as well as obtain patients’ informed consent for anoscopy. Particularly if a patient has been anorectally penetrated, that patient may be uncomfortable with the use of the anoscope and could possibly even feel revictimized by it. The discomfort this procedure may cause the patient should be weighed against its potential medical or forensic benefits.

¹³⁹ Wet-mount evaluation of vaginal secretions for infection (e.g., yeast infection and STIs) may be conducted if medically or forensically indicated, whether or not wet-mount evaluation for sperm is done. Hospital lab personnel rather than examiners usually analyze these samples.

¹⁴⁰ The most commonly used optically staining instrument by hospital labs is the phase contrast microscope. In jurisdictions that require examiners to do wet-mount evaluations for sperm, an optically staining microscope should be readily available to them at all times. Ideally, due to chain-of-custody issues and the fact that the slide will dry in 5 to 10 minutes, examiners should not have to leave the exam room to evaluate the slide.

¹⁴¹ Keep in mind that telemedicine in sexual assault cases is in its infancy—further research and debate is needed to address concerns related to logistics of use, patients’ consent, confidentiality, and impact; legal implications; affordability; and accessibility.

- Apply for grant or foundation funding for equipment where eligible.¹⁴²
- Ask for help from community groups in raising funds for one-time equipment or ongoing supply costs;
- Consider sharing costs and equipment with other departments in an exam facility or among other near-by local health care facilities.
- Consider the benefits of a mobile examiner program where costs of equipment, examiner education and clinical preparation, and on-call costs may be shared by multiple exam sites.
- Since the information gathered in the exam is used to investigate and prosecute the offense, ask for assistance from local law enforcement and prosecutor's offices in obtaining equipment and supplies used specifically for forensic evidence collection.

¹⁴² Funding under the STOP Violence Against Women Formula Grant Program and the Grants to Indian Tribal Governments Program may be used to cover costs of some equipment. For more information, see <http://www.ovw.usdoj.gov>.

4. Sexual Assault Evidence Collection Kit

Recommendations at a glance when developing/customizing kits:

- Use kits that meet or exceed minimum guidelines for contents.
- Work to standardize sexual assault evidence collection kits within a jurisdiction and across a state or territory, or for federal cases.

Use kits that meet or exceed minimum guidelines for contents. Many jurisdictions have developed their own sexual assault evidence collection kits (for evidence from victims) or have purchased premade kits through commercial vendors. Kits may vary from one another in types of samples collected, collection techniques, materials used for collection, and terms used to describe categories of evidence. Despite variations, however, it is critical that every kit meets or exceeds the following minimum guidelines for contents.¹⁴³

- A kit container. It is suggested that this container have a label with blanks for identifying information and documenting the chain of custody. Most items gathered during evidence collection are placed into the container, after being dried, packaged, labeled, and sealed according to jurisdictional policy. Bags are typically provided for more bulky items that will not fit in the container (e.g., clothing). Some jurisdictions provide large paper bags to hold the container and additional evidence bags.
- An instruction sheet or checklist that guides examiners in collecting evidence and maintaining the chain of custody.
- Forms that facilitate evidence collection and analysis, including patients' authorization for collection and release of evidence and information to the law enforcement agency; the medical forensic history; and anatomical diagrams.
- Materials for collecting and preserving the following evidence, according to jurisdictional policy:¹⁴⁴
 - Patients' clothing and underwear and foreign material dislodged from clothing.
 - Foreign materials on patients' bodies, including blood, dried secretions, fibers, loose hairs, vegetation, soil/debris, fingernail scrapings and/or cuttings, matted hair cuttings, material dislodged from mouth,¹⁴⁵ and swabs of suspected semen, saliva, and/or areas highlighted by alternate light sources.¹⁴⁶
 - Hair if required in the jurisdiction.¹⁴⁷
 - Vaginal/cervical swabs.
 - Penile swabs.
 - Anal/perianal swabs.
 - Oral swabs.
 - Body swabs.¹⁴⁸

¹⁴³ The following resources were helpful in developing this list: the *Sexual Assault Evidence Collection Kit, VEC100*, by Sirchie Finger Print Laboratories, the *Texas Customized Sexual Assault Evidence Collect Kit* by Tri-Tech, Inc., the Commonwealth of Virginia's *Physical Evidence Recovery Kit*, the state of California's *Medical Forensic Report: Adult/Adolescent Sexual Assault Examination, Less than 72 Hours (OCJP 923)*, the *Ohio Department of Health's Sexual Assault/Abuse Evidence Collection Kit* (as found in their protocol), *Detailed Instructions*; *Connecticut's Sexual Assault Evidence Collection Kit* (as found in their protocol), and the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, pp. 101–107.

¹⁴⁴ Some samples that historically have been collected are no longer recommended in many jurisdictions, unless the medical forensic history and physical exam indicate otherwise (e.g., collection of a saliva sample for "secretor status").

¹⁴⁵ Flossing for evidence is not routinely done across jurisdictions. Any related safety risks to patients (e.g., potential increased risk of HIV exposure if there is semen in the mouth and flossing causes gums to bleed) must be considered and flossing for evidence can potentially expose the patient to that risk.

¹⁴⁶ It is acknowledged that approaches to categorizing evidence vary. For example, one kit may collect external genital swabs when gathering foreign materials, while in another kit, collection of genital swabs may be a separate category of evidence.

¹⁴⁷ Some jurisdictions collect pubic and head hair combings, others collect only pubic combings. Some also collect pubic and/or head hair reference samples. Materials should be included in the kit to collect and preserve hair evidence required by jurisdictional policy. Jurisdictions should evaluate the necessity of routinely collecting hair samples based on discussions of how often such evidence is actually useful or used in the jurisdiction.

¹⁴⁸ Material may be present on any body surfaces from contact with blood or body fluids. The swabs available as a standard in each kit varies by jurisdiction.

- Known blood, saliva sample, or buccal swab for DNA analysis and comparison.

(See *C.6. Exam and Evidence Collection Procedures* for specifics about evidence collection techniques.)

All forms included in the kit should be designed to facilitate optimal forensic evidence collection, analysis, and examiner testimony. Extra copies of forms should be available to examiners for cases when the kit is not used, but documentation of the medical forensic history is completed.

Materials and forms for collecting toxicology samples should be available to examiners (and to responding law enforcement officers and emergency medical technicians, according to jurisdictional policy).

Work to standardize sexual assault evidence collection kits within a jurisdiction and across a state or territory, or for federal cases.¹⁴⁹ A designated agency in the jurisdiction should be responsible for oversight of kit development and distribution.¹⁵⁰ It should:

- Ensure that facilities that conduct sexual assault medical forensic exams are involved in kit development and supplied with kits.¹⁵¹
- Work with relevant agencies (e.g., crime labs, law enforcement agencies, exam facilities and examiner programs, advocacy programs, and prosecutors' offices) to keep abreast of related changes in technology, scientific advances, and cutting-edge practice.
- Review periodically (e.g., every 2 to 3 years) kit efficiency and usefulness.
- Make adjustments to the kit as necessary.
- Establish mechanisms to ensure that kits at exam facilities are kept up to date (e.g., if a new evidence collection procedure is added, facilities need to know what additional supplies should be readily available).

(See *B.6. Evidence Integrity* for handling and storage of kits.)

¹⁴⁹ It may be useful to consider developing a standardized kit across all communities, states, and territories, and for federal cases. Further analysis is needed to assess the benefits and disadvantages of such a kit and the feasibility of development and implementation. Some challenges could include building consensus across communities regarding best practices and obtaining buy-in from involved agencies.

¹⁵⁰ It is important to consider costs to the state/territory/tribe/federal agencies and local community, and ability of local communities to cover costs. In some states, one state agency (e.g., the crime laboratory) assumes the costs. In others, the costs are passed onto local criminal justice agencies.

¹⁵¹ As a backup to having kits readily available at exam sites or with examiner programs, jurisdictions may also want to discuss the feasibility of storing a few kits at local law enforcement agencies or in law enforcement patrol cars. Before storing kits in patrol cars, however, make sure that the temperatures the kit will be exposed to will not affect kit contents.

5. Timing Considerations for Collecting Evidence

Recommendations at a glance for health care providers and other individuals responding to sexual assault victims to optimize evidence collection:

- Recognize the importance of gathering information for the medical forensic history, examining patients, and documenting exam findings, separate from collecting evidence.
- Examine patients promptly to minimize loss of evidence and identify medical needs and concerns.
- Make decisions about whether to collect evidence and what to collect on a case-by-case basis, guided by knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected.
- Examiners and law enforcement representatives should seek education and resources to aid them in making well-informed decisions about evidence collection.

Recognize the importance of gathering information for the medical forensic history, examining patients, and documenting exam findings, separate from collecting evidence. Examiners should obtain the medical forensic history as appropriate, examine patients, and document findings when patients are willing, whether or not evidence is gathered for the sexual assault evidence collection kit. The history and documentation of exam findings can help in determining if and where there may be evidence to collect and in addressing patients' medical needs. In addition, they can be invaluable in and of themselves to an investigation and prosecution if a report is made. It is also important to document patients' demeanor during the exam process using specific, concrete terms (e.g., crying, shaking) and their statements made related to the assault because if the case is reported, this information could be admitted as evidence at trial. When documenting patient statements, it is important to write down the exact wording of the statement.

Examine patients promptly to minimize the loss of evidence and identify medical needs and concerns. Evidence can be lost from the body and clothing through a number of mechanisms. For example, degradation of some seminal fluid components can occur within body orifices, semen can drain from the vagina or wash from the mouth, sperm can lose motility, bodily fluids can get washed away, and dried secretions and foreign materials can fall from the body and clothing.¹⁵² Prompt examination also helps to quickly identify patients' medical needs and concerns.

Due to the stability of DNA and sensitivity of tests, advancing DNA technologies also continue to extend time limits. These technologies are even enabling forensic scientists to analyze stored evidence from crimes that occurred years before.¹⁵³ Such breakthroughs demonstrate the importance of collecting all possible evidence.

Make decisions about timeliness issues for evidence collection on a case-by-case basis, guided by the knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected. Examiners and law enforcement representatives, in particular, should be aware of the standard cutoff time for evidence collection in their jurisdictions, which is typically indicated in instructions in evidence collection kits. But it is important to remember that evidence collection beyond the cutoff point is conceivable and may be warranted in particular cases. In any case where the utility of evidence collection is in question, encourage dialogue between law enforcement representatives (if involved), examiners, and forensic scientists regarding potential benefits or limitations.

¹⁵² Paragraph drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 29.

¹⁵³ When the evidence was initially collected after the assault, it was not of adequate quality to allow crime lab analysis using existing technologies. See . T.S. Corey, A.R. Wetherton, P.J. Foncek, and D. Katz, Investigation of Time Interval for Recovery of Semen and Spermatozoa from Female Internal Genitalia, from the Office of the Chief Medical Examiner, the Department of Pathology and Laboratory Medicine, University of Louisville School of Medicine, and the Kentucky State Police Forensic Science Laboratory. See also K. A. Mayntz-Press, L.M. Sims, A. Hall, and J. Ballantyne, "Y-STR Profiling in Extended Interval (≥ 3 days) Postcoital Cervicovaginal Samples", *Journal of Forensic Sciences*, V. 53, Issue 2, pp. 342–348, March, 2008.

Individuals responding to sexual assault victims should avoid basing decisions about whether to collect evidence on how they think patients' characteristics or circumstances will affect the investigation and prosecution. For example, the fact that an adolescent may have lied to her parents about where she was going the night of the assault should in no way influence the decision of the examiner and/or the law enforcement representative to collect evidence.

Examiners and law enforcement representatives should seek education and resources to aid them in making well-informed decisions about evidence collection. Examiners and law enforcement representatives require training and resources to allow them to make informed decisions about whether to collect evidence and what to collect in each case. They also need local policies and kit instructions that encourage them to make informed decisions in each case, rather than applying a limiting general standard to all.¹⁵⁴ First responders also need instructions on collecting a urine sample if there is any suspicion of alcohol- or drug-facilitated sexual assault and victims cannot wait to urinate until their arrival at the exam site.

¹⁵⁴ For many communities, moving away from the 72-hour cutoff time represents a major shift in policy. Training and policies should discourage decision making about evidence collection that is based on extraneous factors, such as reluctance of a criminal justice agency to pay for sexual assault evidence collection in general.

6. Evidence Integrity

Recommendations at a glance to maintain evidence integrity:

- Follow jurisdictional policies for drying, packaging, labeling, and sealing evidence.
- Make sure transfer policies maximize evidence preservation.
- Make sure storage policies maximize evidence preservation.
- Document the handling, transfer, and storage of evidence.

Follow jurisdictional policies for drying,¹⁵⁵ packaging, labeling, and sealing evidence. Examiners should be educated regarding these policies. It is critical to air-dry wet evidence at room temperature in a clean, sterile environment and quick manner that prevents contamination.¹⁵⁶ A drying box or other device may be used to facilitate the drying process. Jurisdictions should have policies for handling evidence that cannot be dried thoroughly at the exam site (e.g., wet clothing, tampons, sanitary napkins, tissues, diaphragms, and condoms), as well as for liquid evidence such as urine and drawn blood samples. When packaging dry evidence, use paper containers rather than plastic, because plastic containers retain moisture and promote degradation of biological evidence. Following proper drying and packaging procedures is vital to prevent the growth of mold and bacteria that can destroy an evidentiary sample.

Keep in mind that evidentiary materials include exam documentation. Follow jurisdictional policies for documenting exam findings and the medical forensic history and for packaging, labeling, and sealing such documentation. Properly recording and preserving this information is critical for its admissibility during a trial.

Make sure transfer policies maximize evidence preservation. Minimize transit time between collection of evidence and storage of kits. To avoid potential degradation of evidence, it is important to transport kits containing liquid samples and other wet evidence in a timely fashion. Only a law enforcement official or duly authorized agent should transfer evidence from the exam site to the appropriate crime laboratory or other designated storage site (e.g., a law enforcement property facility). Jurisdictional procedures for evidence management and distribution must be in place and followed. Those involved in evidence management and distribution should be educated on the specifics of these procedures and their responsibilities.

Make sure storage policies maximize evidence preservation. Secure storage sites should be designated and storage requirements should be consistent across a jurisdiction. Storage requirements depend on what types of specimens are being collected and on jurisdictional policy. For example, kits without drawn blood or other wet evidence generally do not need to be refrigerated. Follow jurisdictional policy for refrigeration of drawn blood samples and other wet evidence. The use of dried blood samples on blood collection cards is encouraged because they do not require refrigerated storage.¹⁵⁷ Urine should be refrigerated or frozen when stored.¹⁵⁸ Those involved in storing biological evidence should be knowledgeable regarding optimal storage conditions as well as the hazards for handling and storing evidence such as blood and urine. Evidence should be retained for as long as possible, as storage space permits. Some jurisdictions require storage of evidence for the full statute of limitations of the offense.

Make sure jurisdictional policies are in place to address evidence storage in cases where patients are undecided about reporting. Finding adequate storage space for these kits is a challenge for many facilities and agencies (e.g., community-based or hospital examiner programs may lack the capacity for secure long-term storage of kits at their facilities). Local responders, particularly examiners, law enforcement representatives, and crime lab staff, should discuss and address these and related challenges and develop

¹⁵⁵ Dry evidence unless indicated otherwise (e.g., freezing).

¹⁵⁶ With the ever-increasing sensitivity of DNA analysis, there is a greater chance that accidental contamination and dilution by foreign DNA can be detected. Every precaution should be taken to reduce outside contamination and dilution of evidence.

¹⁵⁷ The National Institute of Standards and Technology is conducting a 10-year project on DNA storage. Thus far, it confirms that refrigeration of dried DNA is generally unnecessary.

¹⁵⁸ Liquid blood and urine are generally required for toxicology purposes. These samples require refrigeration, preferably in a locked refrigerator. If a locked refrigerator is not immediately available, these samples can be kept at room temperature for no longer than 24 hours.

procedures that allow for the secure storage of these kits without revealing patients' identity. Storing the evidence as long as necessary is the ideal (e.g., until the patient decides whether to report or until the jurisdiction's statute of limitations for retaining evidence expires). However, due to lack of storage space, kits in some jurisdictions are stored for a limited period of time (e.g., 1, 5, or 10 years) and then destroyed if no report is made. Many jurisdictions have elected to store kits for the duration of the statute of limitations for the offense. If a limited-time policy is implemented, it is important that patients are informed regarding the amount of time they have to decide to report and procedures for reporting. It is also critical that the period of time given to patients to decide allows them the chance to consider their decision thoroughly; a short time such as a week or a month may not be sufficient to make such a decision.

Document the handling, transfer, and storage of evidence. Examiners must maintain control of evidence during the exam, while evidence is being dried, and until it is in the kit container and sealed (and then follow jurisdictional procedures for storing evidence securely or handing it over to a duly authorized agent for transfer to a storage site). Documentation should continue with each transfer of the evidence to law enforcement, the crime laboratory, and others involved in the investigative process.¹⁵⁹ Patients, advocates, family members, and other support persons should not handle the evidence. Documentation of the chain-of-custody information is vital to ensuring that there has been no loss or alteration of evidence prior to trial. Educate all those involved in handling, transferring, and storing evidence regarding the specifics of maintaining the chain of custody. If the patient is transferred between facilities, staff at both facilities should be careful to complete this documentation.

¹⁵⁹ Adapted from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 34.

C. The Examination Process

This section focuses on the various medical and forensic components of the exam process, starting with the initial contact with victims to the court testimony by examiners on exam findings.

The following chapters are included:

1. Initial Contact
2. Triage and Intake
3. Documentation by Health Care Personnel
4. The Medical Forensic History
5. Photography
6. Exam and Evidence Collection Procedures
7. Alcohol- and Drug-Facilitated Sexual Assault
8. STI Evaluation and Care
9. Pregnancy Risk Evaluation and Care
10. Discharge and Follow-up
11. Examiner Court Appearances

1. Initial Contact

Recommendations at a glance to facilitate initial contact with victims:

- Build consensus among involved agencies regarding procedures for coordinated initial response when a recent sexual assault is disclosed or reported. Educate responders to follow procedures.
- Recognize essential elements of initial response.

Build consensus among involved agencies regarding procedures for coordinated initial response when a recent sexual assault is disclosed or reported. Educate responders to follow procedures.

First responders from these agencies (e.g., 911 dispatchers, law enforcement representatives, emergency medical services (EMS) technicians, hospital emergency department staff, sexual assault examiners, and advocates) need to be educated about and follow these procedures. Responders also need discipline-specific procedures (e.g., EMS procedures should stress the importance of preserving evidence when caring for acute injuries and treating victims with sensitivity).

In addition, other community professionals to whom victims may disclose need to know procedures for activating the SART/SARRT or obtaining immediate assistance for victims if a SART/SARRT does not exist. (For information on this topic, see *A.1. Coordinated Team Approach* and *Appendix B. Creation of SART/SARRTs*.) Also, recognize that some institutions and residential living programs have internal procedures for handling sexual assault disclosures. SART/SARRT members should work with these entities to ensure that their procedures address the needs of victims and are coordinated with jurisdictional multidisciplinary response.

Recognize essential elements of initial response. Some victims may initially present at an exam site. But most victims who receive immediate medical care for sexual assault initially contact 911, law enforcement, or an advocacy agency for help.

Law enforcement, 911, and EMS response. Steps that should be taken during initial law enforcement, 911, or EMS contact include:

- Assess victims' needs for immediate care for potentially life-threatening or serious injuries. Administer necessary first aid and request/obtain emergency medical assistance according to jurisdictional policy.
- Address safety needs of victims and others at the scene (e.g., offenders may be present), calling for assistance/backup if needed.
- Assess quickly the age, abilities, communication modality, and health condition of victims and tailor your response as appropriate (e.g., a qualified interpreter, assistive devices, or protective service worker may be needed).
- Respond to requests for victim assistance as quickly as possible.¹⁶⁰ Understand that victims need immediate assistance for many reasons: they may not be safe, may be physically injured, and/or are experiencing trauma. Be aware that time delays in response can cause loss of evidence and increased trauma.
- If injuries do not appear serious, emphasize to victims the need for medical evaluation and address related health concerns. Also, explain the purpose of the exam and what happens during the exam process, keeping in mind that the amount of information that victims want at this time varies.

¹⁶⁰ In some areas, law enforcement representatives may not respond promptly because they must travel considerable distances and through rough terrain to get to victims' locations. Some law enforcement agencies may not have enough representatives to respond to each case in a timely manner (e.g., a rural sheriff's office may only have one officer). In communities with such limitations, it is important that agencies and professionals involved in these cases advocate for increasing the capacity of law enforcement agencies to respond promptly. They also can work jointly to ensure that there is at least one responder/agency from which victims can consistently receive initial help (e.g., EMS or the advocacy program). That professional/agency should be trained in initial response and be able to access emergency medical assistance if needed and coordinate transportation to the exam facility. Information about which agency/responder to call for help must be publicized in the community.

- Inform victims about exam facility options (if options exist) and seek their consent to transport them to the facility of their choice (if they had options) for treatment and/or medical/forensic evaluation.¹⁶¹
- Encourage victims' interaction with advocates as soon as possible after disclosure of the assault, even if victims choose not to receive medical care and/or have the medical forensic exam. In a few jurisdictions, advocates may be dispatched directly to the scene to provide victim support and advocacy, if appropriate. Follow local procedures for activating an advocate.
- Ask victims if they would like family members or friends to be contacted.
- Explain options for interpretation and translation for victims who are not proficient in English or who may prefer to communicate in a non-English language.
- Take measures to preserve crime scene evidence, including evidence on the body and clothing of victims. Document victims' demeanor and statements related to the assault, according to jurisdictional policy.
- Explain to victims their reporting options. Keep in mind that the amount of information desired will vary per individual.
- Responding law enforcement officials should seek basic information from victims about the assault in order to apprehend suspects and facilitate crime scene preservation in a timely manner.

If victims agree to seek emergency care and/or have evidence collected:

- Explain to victims in a language they understand how to preserve bodily evidence until it can be collected (e.g., do not wash, change clothes, urinate, defecate, smoke, drink, eat, brush hair or teeth, or rinse mouth).
- Explain to victims in a language they understand that clothing most likely will be taken as evidence. They may wish to bring or have someone bring a clean change of clothes to the exam facility. If applicable, let victims know that replacement clothing will be available at the exam site. If they changed clothes since the assault, the clothing worn during and immediately after the assault will be needed. Follow law enforcement procedures for retrieving clothing or other items from a crime scene so that evidence is not inadvertently destroyed or contaminated.
- In suspected cases of alcohol- or drug-facilitated assault, victims' first available urine sample should be sought if they cannot wait to urinate until arrival at the exam site. (For information on procedures, see *C.7. Drug-Facilitated Sexual Assault*.) Victims might have been drugged without their knowledge. If they or their families, friends, or responders suspect alcohol- or drug-facilitated assault, a urine sample should be sought.
- Transport or arrange transportation for victims to the exam site that has the most appropriate forensic medical examination capability.¹⁶² Victims with disabilities may have equipment (e.g., wheelchairs and other assistive devices) and/or service animals that also need to be transported.¹⁶³ Keep in mind that victims may consider such equipment as extensions of themselves, so any such equipment should be treated with care.
- Follow jurisdictional policy on alerting exam facilities about the pending arrival of patients.
- Do not take suspects to the same exam facility as victims at the same time, if possible.

Advocate response. If victims have initial contact with advocates, this contact typically occurs through a phone hotline call or a face-to-face meeting. Advocates should follow agency-specific and jurisdictional policy for first response. For example, advocates should assess victims' safety and need for medical assistance and call 911 in cases of serious injuries or when there is an imminent threat to someone. Advocates should describe potential medical concerns related to sexual assault, support victims in seeking care for possible injuries, provide information about their options (e.g., health care, advocacy and counseling, interpretation and translation, evidence collection, exam site options, and reporting to law enforcement), and offer referrals.

¹⁶¹ Inform victims of the approximate amount of time it will take to travel to the facility and how long they will be at the exam site. This information can help them prepare for what to expect and make needed arrangements (e.g., childcare, getting time off from work or school, or informing family members). In some areas, it may take considerable time to get to the exam site (i.e., several hours). Involved agencies in these areas may want to consider the feasibility of having a specially trained examiner located in their community.

¹⁶² Many jurisdictions have designated exam sites. For more information on this topic, see *B.2. Facilities*.

¹⁶³ In addition, evidence may be found on assistive devices and/or service animals.

They can explain to victims how to preserve bodily evidence for evidence collection and the importance of prompt toxicology testing if alcohol- or drug-facilitated assault is suspected. In general, advocates can help victims identify and consider how to address their needs and concerns, as well as identify individuals who might support them in dealing with the aftermath of the assault. They can activate the SART/SARRT (if one exists) with victims' permission. Alternately, advocates can offer to help victims arrange transportation to the exam site, obtain nonemergency medical care, and obtain assistance from law enforcement. They can also accompany them through medical forensic procedures.

Regardless of which agencies are first responders, responders should always be sensitive to the victim's needs and level of trauma. It is common for victims of sexual violence to have showered, eaten or taken other self-protective actions that may have destroyed evidence prior to engaging any service providers. Responders should react in an understanding and non-judgmental manner to ensure they receive appropriate care.

2. Triage and Intake

Recommendations at a glance for health care providers to facilitate a triage and intake process that addresses patients' needs:

- Consider sexual assault patients a priority.
- Perform a prompt, competent medical assessment. Then respond to acute injury, the need for trauma care, and safety needs of patients before collecting evidence.
- Alert examiners of the need for their services.
- Contact victim advocates so they can offer services to patients, if not already done.
- Assess and respond to safety concerns of victims upon arrival at the exam site, such as threats to patients or staff.
- Assess patients' needs for immediate medical or mental health intervention prior to the evidentiary exam, following facility policy.

Consider sexual assault patients a priority.¹⁶⁴ (For a discussion of this topic, see *A.2. Victim-Centered Care*.)

Utilize a private location within the exam facility for patient intakes, as well as for a waiting area for patients' family members and friends and law enforcement interviews. (Also see *A.2. Victim-Centered Care*.)

Perform a prompt, competent medical assessment. Then respond to acute injury, the need for trauma care, and safety needs of patients before collecting evidence. In addition to promoting physical health, sensitive and timely medical care can help reduce the likelihood of acute psychological trauma and its aftereffects, support patients' existing and emerging coping skills, and set the tone for patients' resumption of normal functioning.

Acute medical needs take precedence over evidentiary needs. Patients should be instructed to not wash, change clothes, urinate, defecate, smoke, drink, or eat until initially evaluated by examiners, unless necessary for treating acute medical injuries. If alcohol- or drug-facilitated sexual assault is suspected, and patients need to urinate prior to the arrival of examiners, ensure that the urine sample is collected properly while maintaining the chain of custody.

The forensic examiner should be involved in all aspects of the medical forensic examination of the sexual assault patient. As soon as possible after the initial triage, management, and stabilization of acute medical problems and before treating non-acute injuries, the evidentiary exam can be conducted (with patients' permission). In circumstances in which patients are seriously injured or impaired, examiners must be prepared to work alongside other health care providers who are stabilizing and treating them. In such cases, examiners may need to perform exams in settings such as a health care facility's emergency department, an operating room, a recovery room, or an intensive care unit.

Alert examiners of the need for their services. The SART/SARRT, if one exists, can work with exam facilities to identify acceptable timeframes to conduct a medical forensic exam after a patient's arrival and medical evaluation, management, and stabilization. If examiners are not based at the site or need to be dispatched, the facility should contact them immediately after identifying a sexual assault patient.¹⁶⁵

¹⁶⁴ Historically, sexual assault patients who came to a health care facility (namely hospital emergency departments) for medical care and forensic evidence collection had to wait a long time to be examined. Often, they were not considered priority cases because they lacked visible physical injuries or their physical injuries were less serious than others coming into the facility. The psychological trauma they were experiencing often was not taken into account, nor was the fact that evidence can be destroyed or contaminated if collection is delayed. Many communities are addressing this problem by establishing examiner programs. At busy health care facilities that make life or death decisions about prioritizing patients, these programs can help ensure that sexual assault patients are offered and receive a medical forensic examination promptly.

¹⁶⁵ It is possible that examiners could also be dispatched by first responders at the crime scene or by health care staff after being alerted that a sexual assault patient will be arriving at their facility. Although activating examiners as early as possible seems like it would benefit these patients, such a procedure can potentially cause confusion. For example, after activating an examiner to go to a particular

Examiners are often required to arrive at the exam site within a certain period of time (e.g., 30 minutes) after being dispatched.

Contact victim advocates so they can offer services to patients, if not already done. (For a discussion of this topic, see *A.2. Victim-Centered Care*.)

Assess and respond to safety concerns of victims upon arrival at the exam site, such as threats to patients or staff. The facility should have procedures to assess such safety concerns at the exam site and to respond to such threats or dangerous situations. (For a discussion of this topic, see *A.2. Victim-Centered Care*.) Communicating any information may require a qualified interpreter¹⁶⁶ for victims who are LEP.¹⁶⁷

Assess patients' needs for immediate medical or mental health intervention prior to the evidentiary exam, following facility policy. Seek informed consent of patients before providing treatment. (For more information on this topic, see *A.3. Informed Consent*.) Also, inform them that they have a right to receive medical care regardless of whether the assault is reported to law enforcement. (For more information on this topic, see *A.5. Reporting to Law Enforcement*.)

exam facility, there may be significant delays in getting the patient to the site or changes en route to the facility. Sexually assaulted individuals may also change their minds about care or evidence collection.

¹⁶⁶ There is currently no certification process for health care interpreters or translators. For more information about qualifications including standards of practice for health care interpreters and translators, please see *What's in a Word: A Guide to Understanding Interpreting and Translation in Health Care*, National Health Law Program (2010).

¹⁶⁷ Title VI of the Civil Rights Act of 1964 and its implementing regulations require that entities that receive federal financial assistance provide meaningful access to their programs, services, and activities for persons with limited English proficiency.

3. Documentation by Health Care Personnel

Recommendations at a glance for completing needed documentation:

- Ensure completion of all appropriate documentation.
- Educate examiners on proper documentation.
- Ensure the accuracy and objectivity of medical forensic reports.

Ensure completion of all appropriate documentation. Examiners are responsible for documenting the details of the medical forensic exam and treatment provided in the medical record, as well as documenting required data for the evidence collection kit, according to jurisdictional policy. This evidence collection kit report usually includes patient consent forms related to evidence, the history of the assault, and information pertaining to evidence collection that will assist the crime lab in material identification for analysis.¹⁶⁸ (The medical forensic history and documentation of exam findings are discussed in more depth in later chapters in this section.) The only medical issues documented in this report are findings that potentially relate to the assault or preexisting medical factors that could influence interpretation of findings. If the case is reported, the criminal justice system will use the entire medical forensic record of the sexual assault visit, along with collected evidence, photographs and video images, and victim/witness statements, as a basis for investigation and possible prosecution. If examiners are required to testify in court, they will use the report to recall the incident.

The overall medical forensic record kept by examiners and other clinicians follows a standard approach of addressing acute complaints; gathering pertinent historical data; describing physical findings, laboratory and x-ray findings, consultation reports (if done) and evidence collection procedures; and documenting treatment (and response to treatment) and follow-up care. The complete medical forensic record of the sexual assault visit should be maintained separately from the patient's medical record to limit disclosure of unrelated information and to preserve confidentiality. The medical record is stored at the exam site. The exam site should have clear policies about who is allowed access to these records.¹⁶⁹

The medical record is not part of the evidence collection kit and it should not be submitted to the crime lab or given to law enforcement. Much of the record is not relevant to case prosecution, and releasing it infringes upon patients' privacy rights. Although all or part of the medical record may be subpoenaed, if patients do not consent to its release, it is ultimately up to the court to decide whether such information is pertinent to the case and should be released.

Educate examiners on proper documentation. It is vital that the exam documentation be thorough, precise, and accurate. It is essential that examiners receive education on the importance of proper documentation and on writing reports that are relevant to their role. As previously discussed, forensic documentation must include diagrammatic rendering, written description (including assessment for tenderness and induration), and forensic imaging of any visible finding (traumatic or evidence).

Law enforcement representatives and advocates who are involved in the response should understand the importance of examiner documentation and be able to convey that importance to patients.

Ensure the accuracy and objectivity of medical forensic reports. It is suggested that examiners within an exam site, jurisdiction, or region devise an appropriate review process tailored to their needs. Consider having a clinical director or supervisor at the exam site systematically review documentation related to the exam. (In some jurisdictions, review of nonphysician examiner's documentation by a medical director/supervisor is required.) These reviews can serve to increase the overall effectiveness of the examiner program by ensuring that reports are completed according to policy, assessing staff training needs,

¹⁶⁸ Documentation of exam findings should include patients' demeanor and statements related to the assault not already recorded on the medical forensic history. Such documentation can be admitted as evidence at trial in most states. Local prosecutors can provide more detailed information on this type of documentation.

¹⁶⁹ Mechanisms to restrict access to records related to the exam are particularly important in small communities where exam site employees may be acquaintances, friends, and family members of patients or suspects.

considering adjustments needed to paperwork, troubleshooting for potential problems, and identifying trends in presenting the issues of patients. All identifying patient information should be removed when a document is copied for a review. The clinical director or supervisor can also be involved in broader multidisciplinary quality assurance efforts related to the exam process.

4. The Medical Forensic History

Recommendations at a glance for health care providers to facilitate gathering information from patients:

- Coordinate medical forensic history taking and investigative interviewing.
- Advocates should be able to provide support and advocacy during the history, if desired by patients.
- Consider patients' needs prior to and during information gathering.
- Obtain the medical forensic history.

Coordinate medical forensic history taking and investigative interviewing. Examiners typically ask patients to provide a medical forensic history after initial medical care for acute problems and before the examination and evidence collection. This history, obtained by asking patients detailed forensic and medical questions related to the assault, is intended to guide the exam, evidence collection, and crime lab analysis of findings. In cases where the victim reports the assault, law enforcement representatives should also collect information from patients to help in the apprehension of suspects and in case investigation.¹⁷⁰

Gathering information from patients often takes place soon after they have experienced the assault. Not only can discussing the assault cause patients to feel re-violated, but their emotional and physical condition may make communication difficult. They may also be uncomfortable discussing personal matters with involved responders. Those seeking information about the assault should work collaboratively to create an information-gathering process that is as respectful to patients as possible and minimizes repetition of questions.¹⁷¹ However, jurisdictions should consider the implications of the evolving law on hearsay exceptions when determining the level and nature of coordination. See *Appendix C* for more information on the relevant case law and how it relates to medical forensic examinations.

Promote a streamlined, victim-centered information-gathering process. Jurisdictions employ several methods, including the following:

- Communication and coordination among responding officers, examiners, investigators, and prosecutors as they go about their separate information-gathering processes.
- Examiners and investigators together ask patients basic questions in a language that she or he understands. One asks questions while the others listen. They then speak to patients separately to gather any remaining information required.
- The medical forensic history and investigative interviews are conducted simultaneously to the extent feasible. The SART/SARRT should determine the information-gathering process, reflecting the best use of resources and needs and consent of patients. The team may agree that a particular person or agency will be the primary interviewer.¹⁷²

Whatever the method selected, jurisdictions should carefully plan how they will coordinate the logistics of medical forensic history taking and investigative interviewing.

Advocates should be able to provide support and advocacy during the history if desired by patients. The presence of an advocate may help patients feel more comfortable answering questions. Advocates may also assist patients in voicing their concerns about questions being asked and clarifying their needs during this time. Advocates should be careful not to answer questions asked of patients or otherwise influence their statements.

¹⁷⁰ The website of the Violence Against Women Online Resources offers several resources on law enforcement investigation of sexual assault crimes. See <http://www.vaw.umn.edu/categories/2.8>.

¹⁷¹ Some repetition of questions is likely to occur during the exam process.

¹⁷² Caution should be exercised if combining medical forensic history taking with investigative interviewing. At the time of such information gathering, patients may not want to speak with law enforcement or be ready to go into the extensive details needed for investigative purposes. Patients may withhold information from law enforcement representatives or not want to talk with them about certain issues (e.g., their menstrual cycle or types of penetration). They might feel more comfortable talking to examiners in private about these topics. There is also a concern about questioners asking questions outside of their realm of responsibility.

Presence of family members, friends, and other personal support persons. Prior to taking the history, patients should be informed that the presence of personal support persons (other than advocates) may influence or be perceived as influencing their statements.¹⁷³ These individuals could be subpoenaed as witnesses in their case.¹⁷⁴ If, after receiving this information, patients choose to have personal support persons present during the history, these individuals should be advised not to actively participate in the process. For example, they should not answer questions for patients, comment on patients' answers, interrupt patients, or make facial expressions in response to patients' answers.¹⁷⁵

Consider patients' needs prior to and during information gathering. Pressing issues (e.g., for treatment of serious injuries, crisis intervention and support, translation and interpretation, and childcare during the exam process) should be addressed before commencing with information gathering. Be mindful of patients' capacity to answer questions during a lengthy information-gathering process, and take breaks as needed.

The facility should have procedures in place and examiners should be educated to accommodate patients' communication skill level and preferred mode of communicating. This is particularly important for patients with communication-related disabilities and limited English proficient patients. If interpreters are necessary, they should be present prior to questioning and there should be space for them in the exam room and other rooms where information is gathered. Patients with communication-related disabilities may wish to use wordboards, speech synthesizers, or other assistive communication devices to help them communicate. The use of cards with pictures (e.g., of medical procedures and human anatomy) may facilitate communication with patients with some types of cognitive disabilities or limited vocabularies.¹⁷⁶

It is important that examiners are aware of and responsive to verbal and nonverbal cues from patients. For example, patients may react negatively as they recall experiences during the assault or are reminded of previous violence committed upon them. (It is important to document this information.) What they may need most at this point is a break, the understanding of examiners, and opportunities to talk about what they are experiencing. Advocates can be particularly helpful to patients who are dealing with these emotions.

Use a private and quiet setting for information gathering. Ideally, there should be no interruptions and no time constraints for questioners or for use of the room where the information is being gathered. Although some facilities may lack space, an effort should be made to secure a private and quiet setting for this purpose. In many jurisdictions, history-taking takes place in the exam room prior to the exam.

Obtain the medical forensic history. The specific questions asked of patients by examiners for the medical forensic history vary from one jurisdiction to the next, as do forms used to record the history.¹⁷⁷ However, the following information should be sought routinely from patients:¹⁷⁸

1. Date and time of the sexual assault(s): It is essential to know the period of time that has elapsed between the assault and the physical examination/collection of evidence as well as documentation of

¹⁷³ Ideally, these individuals should not be present when giving patients this information or when patients make the decision whether they want the support person present.

¹⁷⁴ They should also be informed that the presence of these individuals during the medical forensic history could potentially reduce the degree of confidentiality advocates can offer patients (e.g., they may be called on to provide testimony regarding the interactions between patients and family members or friends present during this time). Also, in jurisdictions that have physician/patient privilege, but not a victim advocate privilege, the advocate could be required to testify. Victims should be informed of this before disclosing non-medically relevant information.

¹⁷⁵ Requests to have family, friends, and other personal support persons present during the medical forensic history should be allowed unless it is considered potentially harmful to the exam process by the SART/involved responders. For example, in cases involving adolescents, parents or guardians should not be allowed in the exam room if they are suspected of committing the assault or of being abusive to patients.

¹⁷⁶ Carolyn Ham, *Reducing Language Barriers to Combating Domestic Violence: The Requirements of Title VI*, Battered Women's Justice Project, October 2004, http://new.vawnet.org/summary.php?doc_id=1621&find_type=web_desc_GC.

Paragraph partially drawn from N. Baladerian, *Skills for Interviewing Adult Abuse Victims Who Have Developmental Disabilities*, p. 1.

¹⁷⁷ In some jurisdictions, examiners ask for investigative details during history taking. In others, examiners only ask for information related to treatment and collecting/interpreting physical and lab findings. One concern is that investigative details reported by examiners that differ from the law enforcement report may be used to undermine the credibility of patients. Patients should be told that if they are too uncomfortable or embarrassed to talk about something, they should say so rather than saying something that contradicts information that may be in the law enforcement report. (Drawn from L. Ledray, *SANE Development and Operation Guide*, 1998, p. 77.) Another concern is that asking investigative questions is outside the examiner's role.

¹⁷⁸ Drawn from California's *Medical Forensic Report: Adult/Adolescent Sexual Assault Examination, Less Than 72 Hours* (OCJP 923), the *Tulsa Sexual Assault Report Form*, and the *West Virginia Protocol for Responding to Victims of Sexual Assault*, 2008, pp. 40–42.

injuries. Evidence collection may be influenced by the time interval since the assault as well as the interpretation of both the physical exam and evidence analysis.

2. Pertinent patient medical history: The interpretation of physical findings may be affected by medical data related to menstruation, recent anal-genital injuries, surgeries, or diagnostic procedures, blood-clotting history, and other pertinent medical conditions or treatment.
3. Recent consensual sexual activity: The sensitivity of DNA analysis makes it important to gather information about recent consensual intercourse, whether it was anal, vaginal, and/or oral, and whether a condom was used. A trace amount of semen or other bodily fluid, as well as genital microtrauma, may be identified that is not associated with the crime. Once identified, it may need to be associated with a consensual partner, and then used for elimination purposes to aid in interpreting evidence.¹⁷⁹
4. Post-assault activities of patients: The quantity and quality of evidence is affected both by actions taken by patients and the passage of time. It is critical to know what, if any, activities were performed prior to the examination (e.g., have patients urinated, defecated, had consensual sexual intercourse, wiped genitals or the body, douched, removed/inserted a tampon/sanitary pad/diaphragm, used oral rinse/gargled, washed, brushed teeth, eaten or drank, smoked, used drugs, or changed clothing?).
5. Assault-related patient history: Information such as the location of nongenital injury, tenderness, pain and/or bleeding, and anal-genital injury, pain, and/or bleeding can direct evidence collection and medical care. Patients should also be questioned about strangulation since this type of injury can result in airway obstruction if swelling occurs and strangulation is a very common occurrence in sexual assault cases.
6. Suspect information (if known): Forensic scientists seek evidentiary items that may have had cross-contact or transfer among patients, suspects, and crime scenes. The gender and number of suspects may offer guidance to types and amounts of foreign materials that might be found on patients' bodies and clothing. Suspect information gathered during this history should be limited to that which will guide the exam and forensic evidence collection. Detailed questions about suspects are asked during the investigative interview.
7. Nature of the physical assault(s): Information about the physical surroundings of the assault(s) (e.g., indoors, outdoors, car, alley, room, rug, dirt, mud, or grass) and tactics employed by suspects is crucial to the detection, collection, and analysis of physical evidence. Tactics may include, but are not limited to, use of weapons (threatened and/or injuries inflicted), physical blows, grabbing, holding, pinching, biting, using physical restraints, strangulation, burns (thermal and/or chemical), threat(s) of harm, and involuntary ingestion of alcohol/drugs. Knowing whether suspects may have been injured during the assault may be useful when recovering evidence from patients (e.g., blood) or from suspects (e.g., bruising, fingernail marks, or bite marks).
8. Detection of alcohol- or drug-facilitated sexual assault: It is critical in these cases to collect information such as whether there was memory loss, lapse of consciousness, or vomiting; whether the patient was given food or drink by the suspect (if the patient knows); or whether the patient voluntarily ingested drugs or alcohol. Collecting toxicology samples within 120 hours of the suspected ingestion is recommended if there was either loss of memory or lapse of consciousness, according to jurisdictional policy.
9. Description of the sexual assault(s): An accurate but brief description is crucial to detecting, collecting, and analyzing physical evidence. The description should include any:¹⁸⁰
 - Penetration of genitalia (e.g., vulva, hymen, and/or vagina of female patient), however slight, including what was used for penetration (e.g., finger, penis, or other object);
 - Penetration of the anal opening, however slight;
 - Oral contact with genitals (of patients by suspects or of suspects by patients);
 - Other contact with genitals (of patients by suspects or of suspects by patients);
 - Oral contact with the anus (of patients by suspects or of suspects by patients);
 - Nongenital act(s) (e.g., licking, kissing, suction injury, strangulation, and biting);
 - Other act(s) including use of objects;
 - If known, whether ejaculation occurred and location(s) of ejaculation (e.g., mouth, vagina, genitals, anus/rectum, body surface, on clothing, on bedding, or other); and

¹⁷⁹ Patients should be aware that there might be a need at a later time to obtain an elimination sample from consensual partners. Jurisdictions may have policies in place for seeking such samples within a certain timeframe following the exam.

¹⁸⁰ Specific questions asked will depend on case facts (e.g., the gender of the patient and the gender of the suspect).

- Use of contraception or lubricants.¹⁸¹

These questions require specific and sometimes detailed answers. Some may be especially difficult for patients to answer. Examiners should explain that these questions are asked during every sexual assault medical forensic exam. They should also explain why each question is being asked.

¹⁸¹ Certain contraceptive preparations can interfere with accurate interpretation of preliminary chemical tests frequently used in the analysis of potential seminal stains. In addition, contraceptive foams, creams, or sponges can destroy sperm. Lubricants of any kind are trace evidence and may be compared with potential sources left at the crime scene or recovered from bodies of suspects. Knowing whether a condom was used also may be useful in explaining the absence of semen.

5. Photography

Recommendations at a glance to photograph evidence on patients:

- Consider the extent of forensic photography necessary.
- Consider the equipment.
- Be considerate of patient comfort and privacy.
- Explain forensic photography procedures to patients.
- Take initial and follow-up photographs as appropriate, according to jurisdictional policy.
- Consider policies on storage, transfer, and retention of photographs.

Consider the extent of forensic photography necessary. Taking photographs of patients' anatomy that was involved in the assault should be part of the medical forensic examination process in sexual assault cases. Such photographs can supplement the medical forensic history, evidence documentation, and physical findings.¹⁸² As to the extent of photographs necessary, communities appear to take two different approaches. Some routinely take photographs, with patients' permission, of both detected injuries and normal (apparently uninjured) anatomy involved in the assault. These jurisdictions encourage examiners to collect and document all evidence and leave the determination about the value of the evidence to litigants. Other communities limit photographs to detected injuries. However, photographs should not be used to interpret subtle and/or nonspecific findings (e.g., erythema or redness) that are not noted on exam documentation. Review of photographs cannot reliably diagnose injuries not seen by examiners.

Involved prosecutors, law enforcement officials, examiners, and advocates should further discuss the extent of photography they view as critical, examine any related case law, consider their concerns on this issue and how to be sensitive to victims, and, ultimately, determine what strategy is right for their community.

Consider the equipment. Examiners should take these photographs, due to the highly personal nature of the photography involved. Examiners are responsible for forensic photography during the exam because patients are often more comfortable and less traumatized when they take photographs.¹⁸³ Any photographs taken by nonmedical personnel should include only the head and extremities and should not document findings on the torso or genital region.

Examiners should be familiar with equipment operation and be educated on forensic photography in sexual assault cases. Photographic equipment should be used that can clearly document the level of injury. Consult with local criminal justice agencies regarding the types of equipment that should be used (e.g., prosecutors can assess which types of equipment produce results that are acceptable to the court).¹⁸⁴ Also consult with local examiners, because they are often knowledgeable regarding photographic and video equipment used in these cases and their effectiveness in capturing images during the exam.

Be considerate of patient comfort and privacy. Minimize patients' discomfort while they are being photographed and respect their need for modesty and privacy. Drape them appropriately while taking photographs.¹⁸⁵

Also, consider how to best provide support to patients during this time. Patients may want an advocate and/or a personal support person to be present. Take measures to avoid allegations of impropriety when photographing patients. For instance, if for some reason a male examiner is photographing a female patient, another woman should be present at this time.

¹⁸² The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 56.

¹⁸³ Avoid requiring that patients go to another site (e.g., the law enforcement agency) to have initial photographs taken.

¹⁸⁴ For a discussion of the admissibility of digital photographs, please see D. Nagosky, *The Admissibility of Digital Photographs in Criminal Cases*, *FBI Law Enforcement Bulletin*, December, 2005.

¹⁸⁵ Drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 56, and the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 113.

Explain forensic photography procedures to patients. Taking photographs of patients in the aftermath of an assault can be retraumatizing. To help reduce the chances of retraumatization, examiners can help patients understand the purpose of photography in forensic evidence collection, the extent to which photographs will be taken and procedures that will be used, potential uses of photographs during investigation and prosecution (especially anogenital images if taken), and the possible need to obtain additional photographs following the exam. (Also see *A.3. Informed Consent*.)

Take initial and follow-up photographs as appropriate, according to jurisdictional policy.¹⁸⁶ Strive to control every element in the photograph to produce a clear, powerful statement. Photographs should be taken prior to evidence collection.

Patient identification. Link patients' identity and the date to the photographs, according to jurisdictional policy.¹⁸⁷ For example, print the patient's name, date of exam, and the examiner's name/initials on a plain sheet of paper, or using a patient label. Photograph this sheet at the beginning and end of the roll of film for identification. Some jurisdictions also photograph the face of patients for identification purposes. Some cameras offer the option of imprinting the date and/or time on the negative, and some have the ability to enter a case number so the face or name of a patient is not on the film. Digital imaging can automatically embed the date/time and a variety of other technical data in each image. This information can be accessed when the image is downloaded onto the computer.

Mechanisms should be in place (e.g., at law enforcement agencies and exam facilities) to protect patients' privacy and confidentiality related to the photographs.

Clear and accurate photographs. Use the shutter speed and lens aperture to control exposure (automated cameras and flash units can give incorrect exposures). Use adequate lighting whether the source is natural, flood, or flash. Use of flashes and lighting in the exam room can change the color of evidence; a filter may help adjust lighting so that the photograph is truer to color (noting in records any alterations to the environment to enhance photographs). Include a color bar in the photograph to ensure accurate color reproduction.

Strive for undistorted photographs with good perspective (whenever possible, use a normal focal length lens, and keep the plane of the film or digital sensor parallel to the plane of the object to be documented. Maintain sharp focus (keep the camera steady, focus carefully, use maximum depth of field, and look at the frame of the scene).

A good-quality macro lens with a ring strobe flash offers the best quality and most flexibility for forensic photography involving sexual assault.

Scale. Use a forensic scale or ruler for size reference in photographs. In addition to those photographs that identify patients and anatomical locations being photographed, take at least two photographs of each area—one with and one without scale. Taking two photographs in this manner demonstrates that the scale was not concealing anything important. Photograph evidence in place before moving it or collecting it. Do not alter or move evidence when photographing, and make every effort to minimize background distraction in photographs while maintaining the focus of areas being photographed.

Orientation of shots. Take at least two shots at three orientations:

1. Take medium-range photographs of each separate injury, including cuts, bruises, swelling, lacerations, and abrasions. Work from one side to the other and then top to bottom, or design a workable method. Be consistent. Take "regional" shots to show injuries in the context and orientation of a body region; these photographs should include easily identifiable anatomical landmarks.
2. Take closeup images of particular injuries, using the scale. When photographing a wound, show its relationship to another part of the body. Take at least three photographs involving a wound area. Shield

¹⁸⁶ This section is drawn from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, pp. 113–115.

¹⁸⁷ The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 56.

uninvolved breast or genital areas when possible; highly graphic photos may be deemed inadmissible in court and make the case less credible. All injuries should be recorded with a closeup view using a macro lens or setting. Try to capture subtleties in texture and color. Document pattern injuries caused by an object. Do not use a flash function around an injured eye as it can cause retinal damage.

3. In some cases, a full body photograph may be appropriate to show scope of injury or state of clothing. However, such photos should be taken ensuring as much modesty and privacy as possible, through draping and other techniques. Photos taken solely for the purpose of identification should be done with patients fully clothed or in a gown.

Photographing skin. Closeup photographs of hands and fingernails may show traces of blood, skin, or hair. Be sure to look for damage to nails or missing nails. Photograph marks of restraint or bondage around wrists, ankles, or neck; they may be compared later with the object in question that made the marks. Photograph transfer evidence present on the body or clothing, such as dirt, gravel, or vegetation.

Bite mark evidence. Photograph bite marks, according to jurisdictional policy.¹⁸⁸

Accountability. All photographs should be clearly labeled and the chain of custody maintained. Follow jurisdictional policy for development of film, transfer, duplication or additional prints, and storage of photographs. Do not include photographs in the evidence collection kit sent to the crime lab.

Follow-up photographs. Photography should be repeated as new or different evidence on patients' bodies is found following the exam (e.g., bruising may appear days later). Create procedures that examiners, law enforcement investigators, and patients follow to ensure this evidence is documented. In addition to documenting emerging or evolving injuries, follow-up photographs provide documentation of healing or resolving injuries and clarify findings of stable, normal variants in anatomy and nonspecific findings like redness or swelling that could be confused with acute injuries.

Consider policies on storage, transfer, and retention of photographs. Photographs taken by examiners should primarily be considered as part of the patient's medical forensic record and should not be automatically turned over to law enforcement. Law enforcement should be guided by the body diagrams used in documentation in deciding what photographs to subpoena.

¹⁸⁸ When bite mark evidence is presented, it may be helpful to consult a forensic odontologist, if one is available. However, this type of evidence is controversial. It is more important to ensure swabbing of bite marks.

6. Exam and Evidence Collection Procedures

Recommendations at a glance to facilitate the exam and evidence collection:

- Recognize the evidentiary purpose of the exam.
- Strive to collect as much evidence from patients as possible, guided by the scope of informed consent, the medical forensic history, exam findings, and instructions in the evidence collection kit.
- Be aware of and document evidence and injuries that may be pertinent to the issue of whether the patient consented to the sexual contact with the suspect.
- Understand how biological evidence is tested.
- Prevent exposure to infectious materials and risk of contamination of evidence.
- Understand the implications of the presence or absence of seminal evidence.
- Modify the exam and evidence collection to address the specific needs and concerns of patients.
- Explain exam and evidence collection procedures to patients.
- Conduct the general physical and anogenital exam and document findings on body diagram forms.
- Collect evidence to submit to the crime lab for analysis, according to jurisdictional policy.
- Collect other evidence.
- Keep medical specimens separate from evidentiary specimens collected during the exam.

Recognize the evidentiary purpose of the exam. During the exam, examiners methodically document physical findings and facilitate the collection of evidence from patients' bodies and clothing. The findings in the exam and collected evidence often provide information to help reconstruct the details about the events in question in an objective and scientific manner.¹⁸⁹ Of course, health care needs and concerns of patients may be presented in the course of the exam that should be addressed prior to discharge. However, patients must understand that the exam does not provide routine medical care. For example, a pap smear will not be done during the female pelvic exam.¹⁹⁰ (This chapter focuses on evidentiary components of the exam. Other chapters in the protocol discuss more fully medical and other related needs and concerns of patients.)

Collect as much evidence from patients as possible, guided by the scope of informed consent, the medical forensic history, exam findings, and instructions in the evidence collection kit. Evidence collected during the exam mainly includes biological and trace evidence. To reconstruct the events in question, evidence collected is used in four potential ways in sexual assault cases:

- To identify the suspect;
- To document recent sexual contact;
- To document force, threat, or fear; and
- To corroborate the facts of the assault.

Be aware of and document evidence and injuries that may be pertinent to the issue of whether the patient consented to the sexual contact with the suspect. In the majority of sexual assaults, patients know the suspects. For example, according to the National Crime Victimization Survey, in 2008, 57 percent of rapes/sexual assaults involved offenders who were nonstrangers.¹⁹¹ Most nonstranger suspects and many stranger suspects (if confronted by professionals in the criminal justice system) will claim that the patient consented to the sexual contact.¹⁹² Consent claims typically stem from a lack of evidence and documentation concerning force and coercion. Thus, evidence and documentation of physical findings related to whether

¹⁸⁹ Note that while exam findings and evidence collected from patients are important in reconstructing the events in question, during a criminal investigation, law enforcement officials look for additional evidence that will create a more complete picture of the event.

¹⁹⁰ Drawn from L. Ledray, SANE Development and Operation Guide, 2000, p. 79.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>, SANE Development and Operation Guide, 1998, p. 63.

¹⁹¹ U.S. Department of Justice, Bureau of Justice Statistics, *Female Victims of Violence*, <http://www.bjs.gov/content/pub/pdf/fvv.pdf>

¹⁹² J. Archambault and D.K. Faugno, Overcoming a Consent Defense to Sexual Assault, *Journal of Emergency Nursing*, 27:204–208, April 2001.

force or coercion was used against patients (e.g., findings that reveal injuries, alcohol or drugs taken involuntarily, or signs of a struggle) are important in these types of cases. However, the absence of physical trauma does not mean that coercion/force was not used or prove that patients consented to sexual contact.¹⁹³ Also, some physical findings that suggest force are not necessarily indicative of a sexual assault. It is important to remember that if an investigation takes place, law enforcement officials will look for additional evidence that may help to overcome a claim of consent.

Understand how biological evidence is tested.¹⁹⁴ Semen, blood, vaginal secretions, saliva, vaginal epithelial cells, and other biological evidence may be identified and profiled by a crime lab. The information derived from the analysis can often help determine whether sexual contact occurred, provide information regarding the circumstances of the incident, and be compared to reference samples collected from patients and suspects for identification purposes. A primary method used by crime labs for testing biological evidence is DNA (deoxyribonucleic acid) analysis.¹⁹⁵ The most common form of DNA analysis used in crime labs for identification is called polymerase chain reaction (PCR). PCR allows the analysis of evidence samples of limited quality and quantity by making millions of copies of very small amounts of DNA. Using an advanced form of PCR testing called “short tandem repeats” (STR); the laboratory is able to generate a DNA profile, which can be compared to DNA from a suspect or a crime scene.¹⁹⁶

Distinguish patients’ DNA from suspects’ DNA. Blood or buccal (inner cheek) swabbings should be collected from patients for DNA analysis to distinguish their DNA from that of suspects. (Procedures for collecting these samples are provided later in this chapter.) If the case is reported to law enforcement, patients’ biological samples and DNA profiles should be used only for investigation of the sexual assault, and their DNA profiles should not be uploaded into CODIS.¹⁹⁷ Neither biological samples nor DNA profiles should be provided to law enforcement or prosecution for another case in which patients may be suspects, inadvertently given to health insurance carriers, or used for research purposes without patients’ consent.¹⁹⁸ Criminal justice agency policies should be in place and followed for the secure storage of biological samples and appropriate disposal of these samples and DNA profiles.

Prevent exposure to infectious materials and risk of contamination of evidence. Examiners should take precautions during the exam to prevent exposure (to both patients and health care staff) to bloodborne pathogens and other potentially infectious materials. For example, it is important to follow facility policies on washing hands, handling contaminated needles and other contaminated sharps, wearing protective equipment, and minimizing splashing, spraying, and spattering of these materials. (For more information on this topic, see *B. 1. Sexual Assault Forensic Examiners.*)

With the ever-increasing sensitivity of DNA analysis, there is a greater chance that accidental contamination can be detected. Forensic evidence, which is usually small in volume, can be contaminated and diluted by foreign DNA. Every precaution should be taken by all first responders to reduce outside contamination and dilution of evidence. For example, examiners should wear non-powdered gloves¹⁹⁹ and change them throughout the exam/evidence collection whenever cross-contamination could occur or when moving to different body surface areas. Examiners and other responders should seek guidance from their crime labs on procedures to prevent contamination.

¹⁹³ L. Ledray, *SANE Development and Operation Guide*, 2000, p. 63.

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>.

¹⁹⁴ Section drawn from *Understanding DNA Evidence: A Guide for Victim Service Providers* by the National Commission on the Future of DNA Evidence; the *West Virginia Protocol for Responding to Victims of Sexual Assault*, 2002, pp. 31–32; and the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 40.

¹⁹⁵ DNA determines each person’s individual characteristics. An individual’s DNA is unique except in identical twins. DNA in the cell nucleus is genetic material inherited from biological parents. (Drawn from Arkansas’ *Sexual Assault: A Hospital/Community Protocol for Forensic and Medical Examination*, 2001.)

¹⁹⁶ There is a concern that if DNA evidence is found, prosecutors may not utilize other evidence, especially when labs have limited resources. But because persons known to victims commit the vast majority of sexual assaults, DNA findings must be used in conjunction with other forensic evidence recovered, particularly when issues of consent arise. Law enforcement investigators and prosecutors should receive training on maximizing the use of all forensic evidence collected.

¹⁹⁷ In the fall of 2003, legislation was introduced to implement the President’s DNA Initiative provisions that would bar the inclusion of elimination samples in CODIS. These samples include those obtained from sexual assault victims, as well as individuals with whom they had recent consensual sex prior to the exam.

¹⁹⁸ An exception is that a forensic lab may input frequency information related to the DNA profiles in its statistical database. Victims’ identity remains anonymous.

¹⁹⁹ Drawn from Connecticut’s Video Training Program, Part 1, *The Examination: Sexual Assault Evidence Collection*, 1998.

Understand the implications of the presence or absence of seminal evidence.²⁰⁰ The relevance of semen evidence in cases involving male suspects covers the spectrum, depending upon case facts. Semen is composed of cellular and liquid components known as spermatozoa (sperm) and seminal fluid. Semen evidence is valuable because it can be used to positively identify suspects.²⁰¹ However, it is critical to note that failure to recover semen is not an indication that a sexual assault did not occur. There are a number of reasons why semen might not be recovered in these cases: Assailants may have used condoms, ejaculated somewhere other than in an orifice or on patients' clothes or bodies, or not ejaculated at all. Semen may have been depleted by frequent ejaculation prior to the sample in question.²⁰² Chronic alcohol or drug abuse, chemotherapy, cancer, infection (e.g., mumps or tuberculosis), or congenital abnormalities also may suppress semen production. Other factors may contribute to the absence of detectable amounts of semen evidence. For example, significant time delays between the assault and collection of evidence may cause loss of semen evidence, semen may be washed away prior to the exam or improperly collected, and an object other than a penis may have been used for penetration.

Modify the exam and evidence collection to address the specific needs and concerns of patients. Examiners should be aware that patients' beliefs might affect whether and how certain evidence is collected. For example, patients from certain cultures or religious backgrounds may view hair or fingernails as sacred and decline collection of hair evidence. (For more information on this topic, see *A.2. Victim-Centered Care*. Accommodating mobility impairments is discussed in footnotes for this chapter. For details on accommodating communication needs and responding to verbal and nonverbal cues, see *C.4. The Medical Forensic History*.)

Explain exam and evidence collection procedures to patients. Whatever the methods used for seeking informed consent from patients for the exam and evidence collection, the full nature of procedures and options should be explained. Examiners may provide some basic information prior to starting the exam and additional information as the exam proceeds. For example, if specialized equipment is used, examiners can explain to patients, at some point prior to its use, what the equipment is, how it will be used, for what purpose, and how long the procedure will take. Encourage patients to ask questions and to inform examiners if they need a break or do not want a particular part of the exam or evidence collection done. (For more information on obtaining informed consent of patients, see *A.3. Informed Consent*.)

Conduct the general physical and anogenital exam and document the physical findings on body diagram forms.²⁰³ In addition to instructions included in the evidence collection kit, the exam should be guided by the scope of informed consent and the medical forensic history.

In the course of the exam, examiners may question patients about trauma related to the assault. These questions should be specific enough to yield clinically relevant information. For example, simply asking if patients are injured or hurt anywhere is not focused enough—they may not know where they are injured until examined and/or asked questions such as if they hurt in specific body locations.

General physical examination. Obtain patients' vital signs, note the date and time of the exam, physical appearance, general demeanor, behavior, and orientation, and condition of clothing on arrival. Record all physical findings (which include observable or palpable tissue injuries; physiologic changes; and foreign materials such as grass, sand, stains, dried or moist secretions, or positive fluorescence) on body diagram forms. Be observant for redness, abrasions, bruises, swelling, lacerations, fractures, bites, burns, and other forms of physical trauma. Potential traumatic findings should be palpated to assess for tenderness and induration. On dark-skinned individuals, it may be difficult to identify these areas and they may need to be sought out specifically.

²⁰⁰ Drawn from the *West Virginia Protocol for Responding to Victims of Sexual Assault*, 2082, pp. 32, and New Hampshire's *Sexual Assault: A Hospital Protocol for Forensic and Medical Examination*, 1998, pp. 26–27.

²⁰¹ In the absence of sperm, certain seminal fluid components may be used to identify semen.

²⁰² If assailants who had a vasectomy ejaculated, their seminal fluid would not contain sperm.

²⁰³ This section on performing the exam is primarily drawn from the American College of Emergency Physicians' (ACEP) *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, pp. 103–107. Much of the ACEP exam procedures were based on the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*.

Anogenital examination.²⁰⁴ During the female genital exam,²⁰⁵ examine the external genitalia and perineal area for injury, foreign materials, and other findings in the following areas: abdomen, thighs, perineum, labia majora, labia minora, clitoral hood and surrounding area, perurethral tissue/urethral meatus, hymen,²⁰⁶ fossa navicularis, and posterior fourchette. The use of a colposcope during the external genital exam enhances viewing microscopic trauma and may provide photographic documentation.²⁰⁷

Then examine the vagina and cervix for injury, foreign materials, and foreign bodies. Use a colposcope or other magnifying device if available. In some jurisdictions, toluidine blue dye may be used to highlight trauma, either with or without the use of a colposcope.²⁰⁸ Examine the buttocks, perianal skin, and anal folds for injury, foreign materials, and other findings. If rectal penetration is reported or suspected, an anoscope can be used as a tool to identify and evaluate trauma (it may also be used to help obtain anal swabs and trace evidence).

For male patients, examine the external and perineal area for injury, foreign materials, and other findings, including from the abdomen, buttocks, thighs, foreskin, urethral meatus, shaft, scrotum, perineum, glans, and testes. Document whether patients are circumcised.

Documentation of findings. Record findings from the general physical and anogenital exam on appropriate body diagram forms. Detailed descriptions of findings should be provided as required. During the exam, collect evidence as specified in the evidence collection kit and photograph anatomy involved in the assault according to jurisdictional policy. Follow jurisdictional policy regarding documentation, photography, and collection of bite mark evidence.²⁰⁹

Collect evidence to submit to the crime lab for analysis, according to jurisdictional policy.²¹⁰ The following evidence from patients, along with completed documentation forms, typically is submitted to the crime lab designated by the jurisdiction.²¹¹ Jurisdictions may require collection of additional or different

²⁰⁴ If patients are mobility impaired, review their history at this stage. In patients with spinal cord injury (SCI), the level of injury and any history of autonomic dysreflexia will have to be noted and given special attention. Other considerations in these patients are histories of muscle spasm and triggers for both muscle spasm and autonomic dysreflexia. Examiners should be sure to ask about things such as whether these patients have ever had a speculum exam, what this experience was like, what the most comfortable position would be for the anogenital exam, and any history of autonomic dysreflexia with a speculum exam. (Commonwealth of Massachusetts's *SANE Protocol*, 2002, p. 36.) Transgender individuals with a masculine identity and those with a constructed vagina may sustain additional physical and emotional damage when vaginally assaulted.

²⁰⁵ Some patients may not have previously had a gynecological exam and need a detailed explanation and support during this part of the exam. (Drawn from L. Zarate, 2003, *Suggestions for Upgrading the Cultural Competency Skills of SARTs*, Arte Sana Web site, 2003.)

²⁰⁶ The Tanner Scale of Secondary Sexual Development is a sexual maturity rating scale that defines a child's stage of puberty. (American Professional Society on the Abuse of Children, *Glossary of Terms and the Interpretation of Findings for Child Sexual Abuse Evidentiary Examinations*, p. 7.) These developmental stages are relevant to the interpretation of physical findings in child and adolescent cases. There is a relationship between Tanner Stages and hymenal development. Physical findings must be evaluated in the context of hymenal development for the interpretation of findings. (The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 61.)

²⁰⁷ Colposcopes have magnifying lenses ranging from 4x to 30x power and can have 35-mm camera or video camera attachments. Colposcopes have a green filter that enhances the visualization of scars, unusual vascular patterns, and genital warts. Examiners can use the colposcope to obtain magnified images of the oral pharynx, genital, and rectal areas. Minor skin and/or mucosal trauma such as abrasions, lacerations, petechiae, focal edema, hymeneal tears, and anal fissures are more easily seen with magnification, and photographs can be taken for documentation. Attached video cameras can also record images. (Drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 58).

²⁰⁸ The use of toluidine blue dye is controversial in some jurisdictions (e.g., it may be perceived by the court as changing the appearance of the tissue) and not universally used. When employed, toluidine blue dye (1-percent aqueous solution) should be applied by cotton swab before any internal or digital speculum examination. Although DNA evidence will be preserved, care should be taken to avoid letting dye enter the vaginal vault. Excess dye may be blotted away with 1-percent acetic acid solution or lubricating jelly. Toluidine blue dye cannot separate consensual from nonconsensual lesions. Patients should be advised that small traces of the dye might shed in their clothing over the 2 days following the exam. (Information on use of this dye is drawn from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Abused Patient*, 1999, p. 117.)

²⁰⁹ In addition to documenting, swabbing, and photographing bite marks, an odontologist may need to make casts. Without a cast, teeth cannot be matched to suspects. The American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Abused Patient*, 1999, pp. 111–112, offers guidelines for bite mark documentation.

²¹⁰ Much of this section was drawn from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Abused Patient*, 1999, pp. 103–107.

²¹¹ In some cases, it may be appropriate to submit evidence to the FBI Laboratory. It accepts cases from any duly authorized law enforcement agency. However, if the case is not a FBI case and the jurisdiction has capability to analyze DNA, then the DNA Unit of the FBI Lab will generally not accept the case. Cases that occur on Indian reservations may be submitted directly to the FBI Lab from local or tribal law enforcement agencies, the Bureau of Indian Affairs, or the FBI and will be worked on by the Indian Country Evidence Task

specimens. Trained examiners should use the medical forensic history and the physical assessment of the patient to guide the evidence collection process. Instructions supplied in the kit may be helpful as a guide for those who are not experienced in the process of evidence collection. However, it should be recognized that the kit instructions should not be read in front of the patient, which could be cause further emotional trauma in the aftermath of the assault. If any requested evidence is not collected, examiners should note reasons on documentation forms.

Collect clothing evidence. Clothing frequently contains important evidence in sexual assault cases. It provides a surface upon which traces of foreign materials, such as semen, saliva, blood, hairs, fibers, and debris from the crime scene, may be found. While foreign matter can be washed off or worn off the body, the same substances often can be found intact on clothing for a considerable length of time following an assault. Damaged or torn clothing may be significant, as damage may be evidence of force (do not cut through any existing holes, rips, or stains on clothing). If the examiner detects damage to the clothing, ask the patient if that damage was related to the assault or present prior to the events in question. Evidence on patients' clothing can be compared with evidence collected from suspects and crime scenes. Common items collected from patients include underwear, hosiery, blouses, shirts, and pants. Coats and shoes are collected less frequently because they are less likely to have evidentiary value and their loss may represent a significant financial burden for victims.²¹² Transgender individuals may be unwilling to part with prostheses and similar items for reasons of safety and/or cost.

Procedures for collecting clothing, underwear, and foreign material dislodged while undressing include the following:

- Place a clean hospital sheet on the floor as a barrier. Then place the collection paper on the barrier sheet. Be careful to prevent evidence transfer. Document all findings. Ask patients to disrobe (assisting them as requested and then draping them appropriately).²¹³ When disrobing, have patients remove shoes and then undress over the collection paper to catch any foreign material that is dislodged.²¹⁴ If someone assists, she/he should wear gloves.
- Collect clothing pertinent to the assault. First determine if patients are wearing the same clothes worn either during or immediately following the assault. If so, the clothing should be examined for any apparent foreign material, stains, or damage. When the determination has been made that items may contain possible evidence, those items should be collected. If it is determined that patients are not wearing the same clothing that they did either during or immediately after the assault, examiners should inquire as to the location of that clothing. If that clothing has not been brought to the exam site, information on clothing location should be provided to law enforcement (if involved) so that clothing can be retrieved and examined before any potential evidence is destroyed.²¹⁵ In addition to collecting underwear worn at the time of or immediately after the assault, it may also be important to collect underwear patients are wearing at the time of the exam (if relevant to the case).
- Be sensitive about how much clothing to take as evidence. For example, take patients' coats or shoes only if it is determined that there may be evidence on them. The exam site can coordinate with advocacy programs to ensure that replacement clothing is available for patients in a range of

Force. Should a jurisdictional lab not have a hair examiner but have the capability to analyze DNA, items requiring only DNA analysis should not be submitted. Items such as clothing that will be examined for both DNA and trace evidence should be submitted to the FBI Lab first. These items will be returned after processing for trace evidence and can then be sent along with DNA-only evidence to the jurisdictional lab. Do not submit items to the FBI Lab for trace evidence analysis after they have been previously examined by another lab. For more information or help submitting a case to the FBI Lab, contact your local FBI office or see the *Handbook of Forensic Services* at <http://www.fbi.gov/about-us/lab/handbook-of-forensic-services-pdf>.

²¹² Paragraph drawn from the *West Virginia Protocol for Responding to Victims of Sexual Assault*, 2008, p. 32.

<http://www.fris.org/Resources/PDFs/Books/WVProtocol.pdf>.

²¹³ If patients are concerned about disrobing in front of advocates and/or personal support persons, they can turn around, hold up a sheet to shield patients, or leave the room while patients disrobe.

²¹⁴ For patients with mobility impairments, put the foreign material collection sheet on the exam table and leave in place until the exam is completed. If patients prefer to disrobe in their wheelchairs, sheets can be tucked in around the wheelchair to catch debris. Avoid putting chairs on paper, as debris from wheels may contaminate evidence. (Commonwealth of Massachusetts *SANE Protocol*, 2002, p. 33.)

²¹⁵ Paragraph drawn from the *West Virginia Protocol for Responding to Victims of Sexual Assault*, 2008, p. 33.

<http://www.fris.org/Resources/PDFs/Books/WVProtocol.pdf>. In the course of the exam process, additional crime scene items that could be potential evidence may be identified and should be collected and preserved.

sizes. This clothing is critical in some instances (e.g., a patient may own only the clothing that is being collected).

- If female or transgender male patients are menstruating, collect tampons and sanitary napkins. Air-dry them as much as possible and then place them in a separate paper collection bag.
- Follow jurisdictional policy for handling and transporting wet evidence that cannot be dried thoroughly at the exam site (e.g., wet clothing, tampons, and sanitary napkins). Ensure that it is packaged in leak-proof containers and separated from other evidence when being transported. It is critical to alert involved law enforcement representatives and crime lab personnel about the presence of wet evidence and the need for its immediate analysis or further drying.²¹⁶
- After drying items according to jurisdictional policy, place each piece of clothing and collection paper in a separate paper bag, label, seal, and initial the seal. If additional bags are needed, use new grocery-style paper bags only. The barrier sheet is not submitted as evidence.
- Tape/seal bags closed; label, seal,²¹⁷ and initial the seal.

Collect debris.²¹⁸

- Collect obvious debris on patients' bodies (e.g., dirt, leaves, fibers, and hair) on a collection sheet—package, label, seal, and initial the seal.
- Fingernail evidence: ask patients whether they scratched the suspects' face, body, or clothing. If so, or if fibers of other materials are observed under patients' fingernails, collect fingernail clippings, scrapings, and/or swabbings, according to jurisdictional policy.²¹⁹ If fingernail scrapings are collected, package fingernail scrapings and tools used to obtain the sample, label, seal, and initial the seal. Cut broken fingernails at the remaining jagged edge for later comparison. If artificial fingernails or nail extensions are being worn by the patient, another nail should be enclosed as a known sample if one is missing. Package, label, seal, and initial the seals.
- If requested, assist patients in putting on exam gowns after clothing and debris are collected.

Collect foreign materials and swabs from the surface of the body. Carefully inspect the body, including head, hair, and scalp, for dried or moist secretions and stains (e.g., blood, seminal fluid, sweat, and saliva) and other foreign material. Use an alternate light source to assist in identifying evidence. Obtain swabs from any suspicious area that may be a dry secretion or stain, any moist secretion, any area that fluoresces with longwave ultraviolet light, and any area for which patients relate a history or suspicion of bodily fluid transfer (e.g., licking, kissing, biting, splashed semen, or suction injury). Also collect swabs from potentially high-yield areas (e.g., neck, breasts, or external genitalia) if the history is absent or incomplete.

- Use a moist swab to collect dry secretions, followed by a dry swab. Swab moist secretions with a dry swab. Separate swabs should be used for every sample area collected. Follow jurisdictional policies regarding the number of swabs required to collect each specimen.
- Swab bite marks. In some jurisdictions, an initial moist swabbing followed by a dry swabbing has been shown to result in full DNA profiles.
- Optional—smear swabs onto microscope slides, according to jurisdictional policy.
- Cut matted head, facial, or pubic hairs bearing crusted material (or flake off material if possible) and place in an envelope.
- According to jurisdictional policy, air-dry all specimens, package swabs and slides separately, label, seal, and initial the seals. Note that coding of evidence must allow the crime lab to know which swab was used to prepare which slide.
- If teeth are flossed prior to oral swab collection, package used floss (if available), label, seal, and initial the seal.

²¹⁶ Drawn from Connecticut's Video Training Program, Part 1, *The Examination: Sexual Assault Evidence Collection*, 1998.

²¹⁷ Do not use saliva to seal envelopes; rather, try using moistened gauze pads or paper towels. (Drawn from Connecticut's Video Training Program, Part 1, *The Examination: Sexual Assault Evidence Collection*, 1998.)

²¹⁸ Debris-containing evidence may be found on equipment, such as wheelchairs, scooters, canes, wheelchair pads, assistive communication devices, catheters, and service animals, used by some patients with physical impairments. Swab equipment and/or animals for evidence, if appropriate, according to jurisdictional policy. Always ask patients for permission to do so.

²¹⁹ Some jurisdictions routinely collect fingernail samples and photograph fingernail damage that may have been related to the assault.

Collect hair combings. Follow jurisdictional policy for collecting hair combings. The purpose of this procedure is to collect hair shed by suspects that may have been transferred to patients' hair. Hair combings may also reveal other foreign materials. It is important to examine head, facial, and pubic hair for secretions, foreign materials, and debris and collect as appropriate (see above for collection of debris and foreign materials). Pubic hair combings may be necessary if the assault involved the genital area of patients, according to jurisdictional policy. To collect pubic hair combings:

- Use the comb and collection paper provided for this procedure.
- Place the unfolded paper under patients' buttocks and comb hair toward paper (patients may comb).
- Fold comb with debris/hair into paper. Package paper, label, seal, and initial the seal.

Collect hair reference samples as needed.²²⁰ Follow jurisdictional policy for collection of hair reference samples.²²¹ Many jurisdictions do not routinely collect plucked head and pubic hair reference samples. Some will only collect these samples if the lab requests it at a later time. In other jurisdictions, both samples are collected routinely unless otherwise indicated or declined by patients.²²² Whatever the jurisdictional policy, patients should always be informed about the purpose of collection, procedures used to collect samples, discomfort that may be involved, and how these samples may be used during the investigation and prosecution. If hair reference samples are not collected at the initial exam, it is important to inform patients that there might be a need to collect these samples for crime lab analysis at a later date. They should be aware that hair evidence collected at a later date may not be as conclusive as if it is collected at the time of the initial exam (e.g., due to the fact that hair characteristics can change over time).

When these samples are collected, the indications, timing, and techniques vary. Jurisdictional policies should be in place and followed. Give patients the option of collecting samples themselves.

Collect oral and anogenital swabs and smears. Patients' consent, the medical forensic history, and exam findings should guide collection of oral and anogenital specimens. In general, specimens should be collected only from orifices and areas surrounding the orifices that patients report to be involved in the assault.²²³ Keep in mind that some patients may be vague about the type(s) of sexual contact that occurred. Examiners can help clarify which orifices were involved by asking appropriate questions. If there is uncertainty about involved orifices (e.g., because patients have little memory of the assault, were unconscious or incoherent, or do not understand what occurred), collection from oral, vaginal, and anal orifices (with patients' permission) may be appropriate. In some jurisdictions, policy calls for collection from all three orifices. Again, patients' consent is needed to collect these samples. Things to note when collecting these swabs and smears:

- Caution patients who use a bathroom prior to the exam that evidence may be present in pubic, genital, and anal areas and urge them not to wash or wipe away secretions until after evidence collection.
- When taking a swab, examiners should take care not to contaminate the collection with secretions or materials from other areas, such as vaginal to rectal or penile to rectal.

²²⁰ See footnote under hair combing regarding patients with limited mobility.

²²¹ Crime labs use reference samples to determine whether or not evidence specimens collected are foreign to patients. There is a lack of consensus across jurisdictions about whether to collect these samples routinely during the initial exam. Head and pubic hair reference samples from patients can provide a source of comparative information for forensic scientists, but these samples are not needed in many cases and can be retrieved from patients at a later date if necessary. If the samples are not taken at the time of the exam, however, patients may be reluctant to return later for collection. Also, hair characteristics may change over time. For patients, gathering these samples can be a painful and embarrassing procedure that follows the trauma of the assault. But, given the choice of having samples taken at the initial exam or at a later date, many opt to get it over with during the exam. Hair pulled or cut from patients is rarely used to prosecute a case. With the advent of DNA technology, the court's use of these reference samples declined. Yet, particularly in cases where DNA evidence is not available, hair reference samples could be useful evidence. SARTs (or involved responders) should ensure that their decisions about collecting hair reference samples reflect current best forensic practices, advances in technology, and the need for sensitivity to patients.

²²² Note that a patient may believe hair is sacred and thus may be reluctant or decline to have hair evidence collected.

²²³ It is important to note, however, that there is a lack of consistency across jurisdictions as to whether specimen collection from all orifices is routine or conducted on a case-by-case basis, based on the assault history and exam findings.

- Follow jurisdictional policy for collecting swabs (and the number of swabs used to collect a sample), smearing swabs on slides, and drying and packaging swabs and slides. Also, follow jurisdictional policy for timeframes in which samples should be collected unless otherwise indicated.
- Do not stain or chemically fix swabs or smears.
- When preparing slides, note that coding of evidence material must allow the crime lab to know which swab was used to prepare which slide.
- Document any foreign substance or material introduced by health care providers (e.g., lubricating jelly on a speculum or betadine prior to introduction of a catheter).

Oral sample²²⁴

- Place swabs together to collect specimen from oral cavity between gums and cheeks and under tongue. Remove dentures and swab with same swabs.
- Optional—smear swabs onto two microscopic slides.
- Air-dry swabs and slides.
- Package slides and swabs, place in envelope, label, seal, and initial the seal.

External genital sample²²⁵

- Swab external genital dry-skin areas with swabs (blind swabbing by protocol or history), at least one dry and one moistened with a drop of sterile, distilled, or deionized water, according to jurisdictional policy.
- Optional—smear swabs on two microscope slides.
- Air-dry swabs and slides.
- Package slides and swabs, place in envelope, label, seal, and initial the seal.

Vaginal/cervical sample

- Use swabs together to collect a sample from vaginal pool. It is prudent to collect swabs from both the vagina and cervix, regardless of time between assault and exam.
- Optional—smear swabs onto microscope slides.
- Air dry swabs and slides.
- Package slides and swabs, place in envelope, label (specifically indicating sampling site), seal, and initial the seal.

Wet-mount evaluation.²²⁶ Some jurisdictions require examiners to conduct wet-mount examinations of vaginal/cervical secretions for motile and nonmotile sperm in cases in which a male suspect may have ejaculated in a patient's vagina.²²⁷ Because sperm motility decreases quickly with time and removal from the vagina/cervix,²²⁸ wet-mount evaluation during the exam can provide the only opportunity to see sperm motility.²²⁹ The presence of motile sperm may help narrow the timeframe that the crime could have occurred.

²²⁴ One jurisdiction also collects a lip/lip area swab and smear and an oral rinse if there was oral contact.

²²⁵ Note that cleansing the area for catheterization and/or applying Lidocaine may dilute or contaminate the evidence. Therefore, when Lidocaine is applied to the perineal and anal areas to minimize the risk of autonomic dysreflexia, it should be done only after swabbing the external genitalia for evidence. If catheterization is required either for evidence collection or to empty the bladder for speculum examination, it should be done only after swabbing the external genitalia. (Commonwealth of Massachusetts *SANE Protocol*, 2002, p. 38.)

²²⁶ Note for clarity that this and the next paragraph discuss wet-mount evaluation for sperm. However, wet-mount evaluation of vaginal secretions for infection (e.g., yeast infection and STIs) may also be done during the exam if medically or forensically indicated. Hospital lab personnel usually analyze these samples.

²²⁷ If and when wet-mount evaluation for sperm is done, examiners should exercise discretion conducting this procedure in the presence of patients and be sensitive in explaining the implications of positive and negative wet mounts to patients (if they want to know). Examiners should remind law enforcement investigators that a lack of sperm does not mean an assault did not occur and that the crime lab will later examine prepared slides using stains and other techniques not available to examiners. Thus, if sperm is present, the lab's rate of identification will probably be higher than it was for examiners. Providing this information might help deter misinterpretation of results.

²²⁸ In most cases, sperm becomes nonmotile in the vagina within 10 to 12 hours after ejaculation. (Drawn from W. Green, M. Kaufhold, and E. Schulman, *Sexual Assault Evidentiary Exam Training for Health Care Providers*, Participant Manual, 2001, p. 39 of Module 7.) Both motile and nonmotile sperm may be found in the cervix for longer periods of time after the assault than in the vagina. Sperm may not be found after an assault for many reasons (see section in this chapter on the importance of semen evidence).

²²⁹ Drawn from W. Green, M. Kaufhold, and E. Schulman, *Sexual Assault Evidentiary Exam Training for Health Care Providers*, Participant Manual, 2001, p. 39 of Module 7.

In most jurisdictions, however, the crime lab is responsible for all analysis of evidence²³⁰ and examiners do not do the wet-mount evaluation for sperm.²³¹ Follow jurisdictional policy on whether wet-mount evaluation for sperm is needed and methods of evaluation. If it is required, examiners must be educated on use of the microscope, identification of sperm, and reporting their findings and have quality assurance mechanisms in place to assure the accuracy of their findings.

- If necessary, prepare a wet-mount slide according to jurisdictional policy. Dab one swab collected from the vaginal pool on a slide.²³² Typically, the slide is prepared by placing one drop of normal saline onto the “dab” of vaginal material just placed on the slide. Place a cover slip on the slide.
- View for presence of sperm under a microscope at 400x or by using a phase contrast or other optically staining microscope (within 10 minutes of preparing slide).²³³
- Air-dry this swab and slide (not removing the cover slip).
- Package swab and slide, place in envelope, label as “wet mount” (specifically indicating sampling site), seal, and initial the seal.

While the speculum is still in place and after all swabs and evidence have been collected, any necessary medical cultures may be taken, if medically indicated.

Penile sample

- Slightly moisten swabs with distilled water and thoroughly swab the external surface of the penile shaft and glans. Swab all outer areas of the penis and scrotum where contact is suspected. Avoid swabbing the urethral meatus.
- Gently roll the swabs over one of the microscope slides, according to jurisdictional policy.
- Air-dry swabs and slides.
- Package slides and swabs, place in envelope, label, seal, and initial the seals.

Immediately following this procedure, any necessary medical cultures should be taken.

Perineal area sample²³⁴

- If there was vaginal/anal contact, there may be leakage of semen in the perineal area. Use an alternate light source on the anal area and flake off or swab areas of dried secretions using a moist swab followed by a dry swab.
- Optional—smear swabs on microscopic slides, according to jurisdictional policy.
- Flaked dried secretions should be placed into the provided container. Air-dry swabs and slides and package them separately. Place in envelope, label, seal, and initial the seal.
- Avoid contaminating anal/rectal samples by cleansing the perianal area after external secretions and foreign materials have been collected.

Anal/rectal sample²³⁵

²³⁰ A possible exception may be toxicology analysis.

²³¹ While crime labs can reliably identify the presence of sperm on permanent stained slides, they cannot identify motile sperm due to time delays. Information about the presence or absence of sperm and motile sperm obtained at the time of the exam can impact the investigation and patients' decision making. One concern related to examiners doing wet-mount evaluations for sperm is that their findings may be different than those of crime labs (e.g., the examiner may not detect sperm, while the crime lab does).

²³² Alternate methods for obtaining materials for wet mounts: a sample may be collected from a vaginal aspirate or fluid from the lower bill of speculum after withdrawing it from vagina, or sperm are occasionally found on microscopic urinalysis. (W. Green, M. Kaufhold, and E. Schulman, *Sexual Assault Evidentiary Exam Training for Health Care Providers*, Participant Manual, 2001, p. 38 of Module 7.)

²³³ Examiners rather than hospital lab personnel should view these slides. Otherwise, delays between preparation of slides in the exam room and analysis in the hospital lab could cause a negative result (e.g., sperm present, but not motile). Also, those involved in the chain of custody of this evidence should be kept to a minimum.

²³⁴ See the next footnote for patients with spinal cord injury and/or history of autonomic dysreflexia.

²³⁵ Note that for patients with spinal cord injury and/or history of autonomic dysreflexia, collection of anal/rectal samples is performed only with the highest level of awareness of risks and with observance of precautionary steps. Possible triggers for autonomic dysreflexia are anxiety, pelvic exam (a cold speculum or the pressure of manipulating a speculum or manipulation of the cervix and pressure on the uterus), rectal exam or swabbing, impacted bowel, urinary retention, a kinked catheter, a bladder infection, and deep skin lesion. Some symptoms are highly elevated blood pressure, nasal congestion, sudden onset of headache, flushing, sweating, shortness of breath, and muscle spasm. Precautions against a possible attack requires an empty bladder or leg bag for the exam; application of lidocaine gel to perineum and/or anal area before exam; examination performed in a semi-supine position; slow insertion and minimal manipulation of a warm speculum; constant monitoring of blood pressure and “checking in” with patients; having rapid acting anti-hypertensive

- Collect swabs from the anal cavity.²³⁶ Avoid contact with external skin surfaces.
- Optional—smear swabs on microscopic slides, according to jurisdictional policy.
- Air-dry swabs and slides.
- Package swabs and slides, place in envelope, label, seal, and initial the seal.

At this time, any additional examinations or tests involving the anus should be conducted.

Known blood or saliva sample or buccal (inner cheek) swab for DNA analysis and comparison. Many samples collected during the exam contain a mixture of secretions. To interpret DNA profile results obtained from these swabs, it is essential to know the DNA profile of patients. Patients' DNA reference samples are used for this purpose. Follow jurisdictional policy regarding the type of samples accepted by the crime lab. Collection of a buccal swab or saliva sample is encouraged unless it is medically or forensically necessary to take blood. If a blood sample is collected, the most noninvasive method of collection should be used.

Buccal swabs: Decide on a case-by-case basis whether it is appropriate to collect a buccal swab reference sample for DNA typing rather than a blood sample. For example, a blood sample may not be needed or patients might not allow blood to be drawn. (Note that buccal swabs and saliva samples are not suitable for blood typing and serology.) If oral copulation is asserted or suspected, a buccal swab or saliva sample for patients' DNA reference may be contaminated. In those cases, blood is usually the better reference sample. However, examiners should consult local crime labs to ensure their collection methods reflect the lab's preferred method.

- Buccal swab: Have patients rinse their mouths with tap water and then expose the inner cheek area. Swab this area with gentle pressure. Air-dry the swab, package, place in envelope, label, seal, and initial the seal.

Dry Blood

- If drawn blood is not being collected for medical or toxicological purposes, consider dry blood collection because it is a less invasive method of blood collection and is easier to store.²³⁷
- Using a betadine swab, wipe the tip of the left or right ring finger.
- Using a sterile lancet, prick the finger.
- While holding the finger over the circles on the blood collection card, milk the finger, allowing two drops of blood to fall in a circle. Repeat procedure for any remaining circles as required by jurisdictional policy (it may not be necessary to fill all circles).
- Allow blood to air-dry according to jurisdictional policy. Fill out the patient's name on the first line. Package according to jurisdictional policy, then place in envelope, label, seal, and initial the seal.

Drawn Blood

- In order to minimize patients' discomfort, collect drawn blood needed for the reference sample at the same time blood is collected for medical or toxicological purposes.
- Blood for the reference sample may be collected in lavender-top and/or yellow-top blood drawing tubes. These colored tubes contain preservatives suitable for forensic blood typing. The color to use

medication on hand; and making health care staff aware of risks and on alert. Treatment for autonomic dysreflexia includes stopping the exam, bringing patients to sitting or semi-supine position, and involving emergency medical staff immediately who can administer a fast-acting anti-hypertensive medication. (Commonwealth of Massachusetts *SANE Protocol*, 2002, p. 40.)

²³⁶ If needed, an anoscope can be used to identify anal injuries and obtain anal swabs after perianal cleansing. These swabs should be obtained by direct visualization from the rectal mucosa visible above the tip of the anoscope. If patients are unable to tolerate a water-moistened anoscope or anal speculum, lightly coat the instrument with lidocaine jelly or use manual traction and obtain samples from the anal canal. If a lubricant (other than water or saline) or lidocaine jelly is used, document its use and the reason for it. (The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 48.) The examiner should use discretion in determining whether a case warrants the use of the anoscope for medical and/or forensic purposes, as well as obtain patients' informed consent for anoscopy. Particularly if a patient has been anorectally penetrated, that patient may be uncomfortable with the use of the anoscope and could possibly even feel revictimized by it. The discomfort this procedure may cause the patient should be weighed against its potential medical or forensic uses.

²³⁷ Several state protocols indicate dry blood collection is an acceptable method to obtain known DNA samples.

is typically specified by the designated crime lab.²³⁸ If tubes are included in the evidence collection kit, check expiration dates and replace if expired.²³⁹ Mix according to jurisdictional policy.

- Write the patient's name, date and time of collection, and the collector's initials on the tube. Package according to jurisdictional policy, then place in envelope, label, seal, and initial the seal.

Collect other evidence. Other evidence may be collected beyond what is needed for the sexual assault evidence collection kit. This could include toxicology samples or other evidence based on the unique facts and circumstances of the case.

Miscellaneous swabs may be collected, depending upon the area of contact noted in the medical forensic history. Some jurisdictions are collecting wet to dry swabs from the surfaces surrounding orifices that were penetrated or that had touch contact during an assault (e.g. area surrounding the mouth in the case of an oral assault, or the inner thighs in a vaginal penetration).

Toxicology samples. Make the decision about whether to collect toxicology samples for forensic purposes, what to collect, and collection methods according to jurisdictional policy. Do not put toxicology samples in the sexual assault evidence collection kit, unless otherwise indicated. Identify which forensic labs the jurisdiction has selected to analyze these samples, choose a lab, and follow transfer policies. (See C.7. *Alcohol- and Drug-Facilitated Sexual Assault* for more information on collecting toxicology samples.)

Dental floss. Use of dental floss is not recommended for additional evidence collection in cases with oral penetration. Flossing can create increased opportunity for infection through microtrauma to the gums.

Keep medical specimens separate from evidentiary specimens collected during the exam. Specimens collected for medical purposes should be kept and processed at the medical facility, and specimens collected for forensic analysis should be transferred to the crime laboratory or other specified laboratories for analysis (with patients' consent). It is not necessary to maintain the chain of custody on medical specimens—instead, follow exam facility policy for documenting medical care and storing medical records. Exam sites that perform exams for military installations should consider Memoranda of Understanding to address such issues as storage of evidence.

²³⁸ The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 52.

²³⁹ Drawn from Connecticut's Video Training Program, Part 1, *The Examination: Sexual Assault Evidence Collection*, 1998.

7. Alcohol and Drug-Facilitated Sexual Assault

Recommendations at a glance to facilitate response in suspected alcohol- and drug-facilitated sexual assault:

- Promote training and develop jurisdictional policies.
- Plan response to voluntary use of drugs and/or alcohol by patients.
- Be clear about the circumstances in which toxicology testing may be indicated. Routine testing is not recommended.
- Toxicology testing procedures should be explained to patients.
- Toxicology samples should be collected as soon as possible after a suspected drug-facilitated case is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement.
- Identify toxicology laboratories.
- Preserve evidence and maintain the chain of custody.

Promote training and develop jurisdictional policies. It is essential that examiners and other relevant health care personnel, 911 dispatchers, law enforcement representatives, emergency medical technicians, prosecutors, judges, and advocates receive training and information on alcohol and drug-facilitated sexual assault. They need to be educated on the use of drugs and alcohol to facilitate sexual assault, screening for alcohol- or drug-facilitated assault, and how to handle situations in which an alcohol- or drug-facilitated sexual assault is suspected. Both agency-specific and multidisciplinary policies should be developed to guide immediate response to a suspected alcohol- or drug-facilitated sexual assault.²⁴⁰

First responders must recognize that although Rohypnol and gamma hydroxy butyrate (GHB) are widely publicized as the “drugs of choice” in drug-facilitated sexual assault, assailants may use numerous other substances (including alcohol) to facilitate sexual assault.²⁴¹ They must understand the urgency of collecting toxicology samples, if it is medically necessary, or if an alcohol- or drug-facilitated sexual assault is suspected, as well as the importance of obtaining informed consent from patients prior to sample collection. They should also be aware that collection of toxicology samples is typically separate from the sexual assault forensic evidence collection kit, and procedures for toxicology analysis may be different from that of other evidence analysis.

Ideally, the first available urine sample should be collected in suspected alcohol- or drug-facilitated sexual assault cases. Law enforcement agencies and emergency medical services should develop procedures and staff training for collection in cases where patients must urinate before arriving at the exam site. Advocates and other professionals who may have contact with patients prior to their arrival at the exam site should also be educated to provide those who suspect that alcohol or drugs were used to facilitate the assault with information on how to collect a sample if they cannot wait to urinate until they get to the site.

Plan response to voluntary use of drugs and/or alcohol by patients. It may be revealed during the exam process or through toxicological analysis that patients voluntarily used drugs and/or alcohol shortly prior to the assault.²⁴² Voluntary drug and/or alcohol use by patients during this period should not diminish the perceived seriousness of the assault. Law enforcement officers and prosecutors should guard against disqualifying cases in which patients voluntarily used illegal drugs or used alcohol (whether legal or illegal use). Patients should understand that information related to voluntary alcohol or drug use may be used to undermine their credibility in court, but also that in some instances it might be helpful in prosecuting a case by documenting their vulnerability (see the following section on explaining procedures). Also, before pursuing

²⁴⁰ These policies should clarify that patients should not be responsible for costs related to toxicology testing. Testing done as part of forensic evidence collection is typically paid for by the involved government entity.

²⁴¹ For more information about use of Rohypnol and GHB in drug-facilitated cases, see American Prosecutors Research Institute, Violence Against Women Program, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, 1999.

²⁴² Health care personnel involved in sexual assault cases should adhere to facility policy regarding 1) asking patients about alcohol and drug use in the course of intake and treatment and 2) testing for alcohol and/or drugs if deemed medically necessary.

charges related to illegal drug or alcohol use by patients, prosecutors should give great weight to the impact that the threat of such charges may have on patients' willingness to report the sexual assault and be involved in subsequent criminal justice proceedings. Some jurisdictions have statutes protecting sexual assault victims regarding drug and alcohol testing.²⁴³

It is important to document patient voluntary use of drugs and alcohol between the time of the assault and the exam. Some patients may self-medicate to cope with post-assault trauma and require immediate medical treatment. In addition, ingestion of drugs and/or alcohol during this period may affect the quality of evidence and negatively impact patients' ability to make informed decisions about treatment and evidence collection.

SART/SARRT members should have training on alcohol and substance abuse and how it is not uncommon for victims to use drugs and alcohol to cope with past sexual assault experiences or trauma. It is important to provide referrals and resources for victims who may reveal that they have a chemical dependency.

Be clear about the circumstances in which toxicology testing may be indicated.²⁴⁴ Routine toxicology testing is not recommended. However, in any of the following situations, the collection of a urine and/or blood sample may be indicated:²⁴⁵

- If a patient's medical condition appears to warrant toxicology screening for optimal care (e.g., the patient presents with drowsiness, fatigue, light-headedness, dizziness, physiologic instability, memory loss, impaired motor skills, or severe intoxication).
- If a patient or accompanying persons states the patient was or may have been drugged.
- If a patient suspects drug involvement because of a lack of recollection of event(s).²⁴⁶

Toxicology testing procedures should be explained to patients. Seek informed consent from patients to collect toxicology samples. Patients should understand the following before agreeing to toxicology testing:²⁴⁷

- The purposes of toxicology testing and the scope of confidentiality of results.²⁴⁸
- The ability to detect and identify drugs and alcohol depends on collection of urine and/or blood within a limited time period following ingestion.
- There is no guarantee that testing will reveal that drugs were used to facilitate the assault.
- Testing may or may not be limited to drugs commonly used to facilitate sexual assault²⁴⁹ and may reveal other drugs or alcohol that patients may have ingested voluntarily.
- Whether any follow-up treatment is necessary if testing reveals the presence of drugs used to facilitate sexual assault.²⁵⁰

²⁴³ See Cal. Pen. Code Section 13823.11 which states that testing to determine if alcohol or other drugs were associated with an attempted or completed sexual assault as part of a forensic exam is not admissible against the victim in a civil or criminal proceeding and provides other immunity and confidentiality safeguards.

²⁴⁴ There is some controversy related to if and when to collect toxicology samples and test patients for drug and/or alcohol use. Some jurisdictions only collect these samples if drug-facilitated sexual assault is suspected or if a medical need arises. They seek to minimize patients' discomfort and avoid collecting unnecessary items. Other jurisdictions collect toxicology samples from every patient (with permission) and analyze these samples as case facts and jurisdictional policy dictate. In addition to cases of suspected drug-facilitated assault, some jurisdictions may request a toxicology sample if there is indication that patients voluntarily used drugs and/or alcohol prior to the assault. One rationale for such a policy is that prosecutors will want all information on drug and alcohol use to prepare for the case. When developing jurisdictional policy about when and if to collect toxicology samples, involved professionals should consider the perspective of patients and the criminal justice system and make thoughtful, victim-centered decisions.

²⁴⁵ Bullets drawn from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.

²⁴⁶ Often, drugs used to facilitate sexual assault are mixed with alcohol and other beverages to further incapacitate patients, usually without their knowledge. Once patients recover from the effects of drugs and/or alcohol, anterograde amnesia may make it difficult to recall events. Consequently, patients may not be aware of the assault or even of how they were drugged. (Drawn from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.)

²⁴⁷ List adapted partially from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.

²⁴⁸ If the patient authorizes the release of toxicology testing results to law enforcement and/or prosecution, this information will most likely be discoverable by the defense. If toxicology testing is done for purely clinical purposes and results are documented only in the patient's medical records, the results are typically more difficult, but not impossible, for the defense to discover.

²⁴⁹ In some jurisdictions, examiners may be able to request testing for specific drugs used to facilitate sexual assault. In others, tests for specific drugs are not done, rather, toxicology samples are screened for all ingested drugs and alcohol.

²⁵⁰ For example, patients with health conditions that may be affected by drug or alcohol intake may need information on possible impact of involuntary drug/alcohol ingestion and what to do to identify, treat, or avoid potential problems.

- Test results showing voluntary use of drugs and/or alcohol may be discoverable by the defense and used to attempt to discredit patients or to question their ability to accurately perceive the events in question (however, these results could also help substantiate that voluntary drug and/or alcohol use sufficiently impaired patients' consent and prevented legal consent).²⁵¹
- Whether there is a local prosecution practice of charging sexual assault victims with a crime for illegal voluntary drug and/or alcohol use revealed through toxicology screening.
- Declining testing when indicated by circumstances as described above may negatively impact the investigation and/or prosecution.²⁵²
- When and how they can obtain information on the results from toxicology testing.
- Who will pay for toxicology testing.
- If toxicology testing can proceed without a report to law enforcement.

Care should be taken when providing the above information to patients. In particular, they may need to hear repeatedly from examiners that voluntary use of drugs and/or alcohol, if any, does not reduce the seriousness of the assault. Under no circumstances should the medical forensic exam and treatment be conditioned upon patient consent to toxicology testing. Victims should be given access to the results of any toxicology screening performed and should be given information on how to obtain a copy of the results.

Toxicology samples should be collected as soon as possible after a suspected drug-facilitated case is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement. The length of time that drugs used for drug-facilitated assault remain in urine or blood depends on a number of variables (e.g., the type and amount of drug ingested, patients' body size and rate of metabolism, whether patients had a full stomach, and whether they previously urinated).²⁵³ Urine allows for a longer window of detection of drugs commonly used in these cases than does blood.²⁵⁴ The sooner a urine specimen is obtained after the assault, the greater the chances of detecting substances that are quickly eliminated from the body.²⁵⁵

Immediately collect a urine sample when appropriate. If patients may have ingested a drug used for facilitating sexual assault within 96 hours prior to the exam, a urine specimen of at least 30 milliliters but preferably 100 milliliters (about 3 ounces) should be collected²⁵⁶ in a clean plastic or glass container (follow jurisdictional policy). The urine sample does not have to be a clean catch (e.g., bacteria in the urine will not compromise test results). If patients cannot wait to urinate until their arrival at the exam facility, first responders should ask them to provide a sample and bring it to the facility, documenting the chain of custody. It is suggested that law enforcement officers and emergency medical technicians keep specimen cups readily available, according to agency policy.

Ideally, patients should not urinate until after evidence is collected. However, the number of times that patients urinated prior to collection of the sample should be documented.

Collect a blood sample when appropriate. If ingestion of drugs used to facilitate sexual assault may have occurred within 24 hours prior to the exam, a blood sample of at least 20 milliliters should be collected in a gray-top tube (contains preservatives sodium fluoride and potassium oxalate²⁵⁷) according to jurisdictional policy. A blood sample taken within this time period may pinpoint the time when drugs were ingested.²⁵⁸ If a blood sample is collected for toxicology screening, it should be accompanied by a urine sample. If blood alcohol determination is needed, collect blood within 24 hours of alcohol ingestion, according to jurisdictional

²⁵¹ The prosecutor can work to minimize the possibility that information about voluntary alcohol and/or drug use will be used against patients, particularly if patients are truthful from the start about their preassault drug/alcohol use and consent to testing.

²⁵² For example, if there is a suspicion that the assault was drug-facilitated and there were no toxicology tests, investigators and prosecutors may lack critical evidence, making it difficult to prosecute the case. Prosecutors might choose not to go forward with such a case. Refusal to get tested may also be used by the defense to discredit the patient and question the validity of the charges.

²⁵³ American Prosecutors Research Institute, Violence Against Women Program, 1999, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, Chapter 2, p. 1.

²⁵⁴ M. LeBeau, Toxicological Investigations of Drug-Facilitated Sexual Assaults, *Forensic Science Communications*, 1999, p. 3.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ American Prosecutors Research Institute, Violence Against Women Program, 1999, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, Chapter 2, p. 2.

policy. (If blood has already been taken due to suspected drug ingestion, that sample can be used to determine blood-alcohol level. An additional sample usually is not needed.)

Occasionally, patients of drug-facilitated sexual assault vomit. The analysis of the vomit may also be useful to an investigation.²⁵⁹ Collect and preserve according to jurisdictional policy.

Package samples as appropriate. Package each toxicology sample according to the policy of the lab doing the analysis, place in envelope, label, seal, and initial the seal.

Identify toxicology laboratories. Exam facility laboratories should not analyze toxicology samples in suspected drug-facilitated sexual assault cases. Instead, involved criminal justice agencies should identify forensic laboratories that can analyze these toxicology samples (they should have the capacity to detect drugs in very small quantities).²⁶⁰ Information about these labs (e.g., contact information, evidence collection and packaging procedures, and transfer procedures) should be provided to law enforcement representatives investigating these cases, exam facilities, and examiner programs.

If toxicology tests are needed purely for the medical evaluation of patients, the exam facility lab typically performs these tests. Lab results are recorded in patients' medical records, according to facility policy. If toxicology samples are needed for both clinical and forensic purposes, one sample can be collected for immediate evaluation by the exam facility lab and another for analysis by the identified forensic lab. Take samples at the same time to avoid more discomfort to patients than is necessary.

Preserve evidence and maintain the chain of custody. Involved health care personnel should be aware of the toxicology lab's requirements on collection, packaging, labeling, storage, handling, transportation, and delivery of specimens.²⁶¹ Policies should be in place for storage of these samples when patients are undecided about reporting. As with any forensic evidence, the chain of custody must be maintained.

Refer to the current *Forensic Toxicology Laboratory Guidelines* by the Society of Forensic Toxicologists, Inc., and the American Academy of Forensic Sciences for detailed guidance on proper collection, labeling, handling, submission, and analysis of toxicology samples.²⁶²

²⁵⁹ M. LeBeau, Toxicological Investigations of Drug-Facilitated Sexual Assaults, *Forensic Science Communications*, 1999, p. 3.

²⁶⁰ American Prosecutors Research Institute, Violence Against Women Program, 1999, Video supplement, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*.

²⁶¹ Refrigerate toxicology samples according to jurisdictional policy. In general, drawn blood should be refrigerated when it is stored. Urine should be refrigerated or frozen when stored.

²⁶² These guidelines are available at <http://www.soft-tox.org>.

8. STI Evaluation and Care

Recommendations at a glance to facilitate evaluation and treatment of STIs:

- Offer patients information in a language they understand.
- Consider the need for STI testing on an individual basis.
- Encourage patients to accept prophylaxis against STIs if indicated.
- Encourage follow-up STI exams, testing, immunizations, counseling, and treatment as directed.
- Address concerns about HIV infection.

Contracting a sexually transmitted infection (STI), also commonly known as a sexually transmitted disease or STD, from assailants is typically a significant concern of sexual assault patients. Because of this concern, it should be addressed as part of the medical forensic exam. Mechanisms should be in place in any setting where these patients are examined for STIs to ensure continuity of care (including timely review of test results) and monitor compliance with and adverse reactions to any therapeutic or prophylactic regimens.²⁶³

Offer patients information in a language they understand. Include information about the risks of STIs, symptoms and the need for immediate examination if symptoms occur, testing and treatment options (and the need for abstinence from sexual intercourse until treatment is completed), follow-up care, and referrals as needed.²⁶⁴ Referrals should include free and low-cost testing, counseling, and treatment offered in various sections of the community. Patients should be aware of the scope of confidentiality related to information in their medical records related to STIs.²⁶⁵ The level of detail needed when providing this information verbally varies (e.g., some patients may be aware of risks and want treatment, while others may not be as knowledgeable of risks or their options).

Consider the need for STI testing on an individual basis. Testing at the time of the initial exam does not typically have forensic value if patients are sexually active and an STI could have been acquired prior to the assault. Also, despite rape shield laws, there may be a concern that positive test results could be used against patients (e.g., to suggest sexual promiscuity). There may, however, be situations in which testing has legal purposes, as in cases where the threat of transmission or actual transmission of an STI was an element of the crime. Or, for nonsexually active patients, a baseline negative test followed by an STI could be used as evidence, if the suspect also had an STI.

Trichomoniasis, bacterial vaginosis (BV), gonorrhea, and chlamydial infection are the most frequently diagnosed infections among sexually assaulted women.²⁶⁶ Their presence does not necessarily indicate acquisition during the assault, since these infections exist among some sexually active women.²⁶⁷ The medical forensic exam presents an opportunity to identify preexisting STIs, regardless of when they were acquired, and for examiners to make recommendations for specific treatment. Testing for STIs at the time of the exam also gives examiners and patients the option of deferring treatment until it is needed.

Seek the informed consent of patients for testing, if indicated, following CDC guidelines. (For more information on this topic, see A.3. *Informed Consent*.)

²⁶³ Sexually Transmitted Diseases Treatment Guidelines, *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, December 17, 2010, 9(RR-12), p. 91. Available at <http://www.cdc.gov/STD/treatment/> (CDC general phone: 800-311-3435). Much of the information in this chapter was drawn from these guidelines. Note that the guidelines are updated periodically. In addition to the guidelines, the CDC Web site at <http://www.cdc.gov> offers information on related research, news, and Internet links.

²⁶⁴ Drawn partially from Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 92.

²⁶⁵ Laws in all states limit the evidentiary use of a patient's prior sexual history, including evidence of previously acquired STIs, as part of an effort to undermine the credibility of a patient's testimony. Evidentiary privilege against revealing any aspect of the exam or treatment is enforced in most states. In unanticipated, exceptional situations, however, STI diagnoses may later be accessed. (Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 90.)

²⁶⁶ Chlamydial and gonococcal infections in women are of particular concern due to the possibility of ascending infection. In addition, post-assault testing can detect hepatitis B virus (HBV) and human immunodeficiency virus (HIV) infection (Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 91).

²⁶⁷ The prevalence and incidence of STIs vary across societies and subpopulations defined by age, gender, race and ethnicity, and socioeconomic status (Fenton, Johnson, and Nicoll 1997)

Encourage patients to accept prophylaxis against STIs if indicated. If prophylaxis is accepted at the time of the exam, testing is usually not indicated medically. Routine preventive therapy after a sexual assault is often recommended because follow-up with these patients can be difficult.²⁶⁸ It also may reduce the need for more expensive/extensive treatment if an STI is discovered at a later time. Meet or exceed current CDC guidelines for STI preventive therapy for your geographic area.²⁶⁹ (The CDC suggests a regimen to protect against chlamydia, gonorrhea, trichomonas, and BV, as well as the hepatitis B virus.) If prophylaxis is declined at the time of the initial exam, it is medically prudent to obtain cultures and arrange for a follow-up examination and testing (it is recommended that all patients are reexamined—see the section on follow-up activities). Document patients' decisions and rationales for declining prophylaxis in their medical records.²⁷⁰

If patients' clinical presentation suggests a preexisting ascending STI, such as fever, abdominal or pelvic pain, and/or vaginal discharge, they should be evaluated and treated for the ascending infection. This treatment should be based on specific treatment options for sexually transmitted infections in the local community.

Hepatitis B virus (HBV) and postexposure prophylaxis (PEP). See CDC recommendations related to HBV diagnosis, treatment, prevention, postexposure immunizations, prevaccination antibody screening, postexposure prophylaxis, and special considerations.²⁷¹ Patients who have completed a full hepatitis B vaccination regimen prior to the assault are protected from HBV infection and do not need further doses. (See the CDC recommended regimen for adolescents and adults.) For those who were not fully vaccinated prior to the assault, the vaccine should be completed as scheduled. Patients unvaccinated prior to the assault or unsure of whether they have been vaccinated should receive active postexposure prophylaxis (e.g., hepatitis B vaccine alone) upon the initial clinical evaluation. Follow-up doses should be given 1 to 2 and 4 to 6 months after the first dose. Unless suspects are known to have acute hepatitis B, HBIG (hepatitis B immune globulin) is not required. (When HBIG is needed, use CDC recommended doses.)

Examiners must stress to patients receiving the HBV vaccine the importance of following up for administration of doses as scheduled for full protection. Advocates should also be educated about the possibility of patients receiving prophylaxis against HBV and encourage those who start the vaccine regimen to follow up for required additional doses.

Obtain informed consent from patients for treatment. (For information on this topic, see A.3. *Informed Consent*.) Patients should be aware of the benefits and toxicity associated with recommended regimens.

Encourage follow-up STI exams, testing, immunizations, counseling, and treatment as directed.²⁷²

Although patients may be reluctant to go for follow-up exams for STIs, such exams are essential because they provide an opportunity to detect new infections acquired during or after the assault, complete hepatitis B immunization, if indicated, and complete counseling and treatment for other STIs. Examinations for STIs for all patients should be repeated according to exam facility policy—the CDC recommends a follow-up appointment within 1 to 2 weeks of the assault. If patients tested negative at the time of the medical forensic exam and chose not to receive prophylaxis, follow-up testing should be conducted.²⁷³ The CDC recommends that in this case the follow-up exam be done within a week to ensure that positive test results are discussed promptly with patients and treatment is offered. The CDC recommends follow-up testing for patients who received treatment only if they report having symptoms consistent with an STI. (However, patients who were treated should be informed of the option of follow-up testing to confirm the presence or lack of infection.) The CDC recommends that testing for syphilis and HIV infection should be repeated 6 weeks, 3 months, and 6 months after the assault if initial test results were negative and if these infections are likely to be present in assailants (see the upcoming section on evaluating risk for exposure to HIV).

²⁶⁸ Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 91.

²⁶⁹ Antibiotic prophylaxes are updated periodically and are usually tailored to specific regions (because, for example, one part of the country may be resistant to a certain antibiotic).

²⁷⁰ Nonphysician examiners providing STI prophylaxis typically must operate within the boundaries of a protocol and have access to medical supervision, consultation, and review.

²⁷¹ Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 91. This section was drawn from this document.

²⁷² This paragraph is drawn from Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 91.

²⁷³ Infectious agents acquired through the assault may not have produced sufficient concentrations of organisms to result in positive test results at the medical forensic exam. (Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 91.)

It is important that follow-up communication with patients (particularly by examiners and advocates) include a reminder to go to follow-up exams and receive STI-related testing, immunizations, and treatment as directed. Advocates and health care personnel may be able to assist patients in making follow-up appointments, obtaining transportation to and from appointments, and determining how to pay for expenses involved with follow-up testing and care. Some jurisdictions may cover follow-up treatment as part of initial care through funds such as crime victims' compensation. In such instances, patients may be more apt to seek follow-up treatment. Advocates may also be able to accompany patients to these follow-up appointments.

Address concerns about HIV infection. Although the risk of human immunodeficiency virus (HIV) infection²⁷⁴ from a sexual assault appears to be low,²⁷⁵ it is typically of grave concern for sexual assault patients.

Provide information and referrals.²⁷⁶ Examiners should talk with patients about their concerns regarding the possibility of contracting HIV.²⁷⁷ Although a definitive statement of benefit cannot be made regarding Post Exposure Prophylaxis (PEP) after sexual assault, the possibility of HIV exposure from the assault should be assessed at the time of the examination. The possible benefit of PEP in preventing HIV infection should also be discussed with the patient if the details of the assault pose an elevated risk for HIV exposure. These particular factors may include: the likelihood that the assailant has HIV, the time elapsed since the event, the exposure characteristics, and local epidemiology of HIV/AIDS. A specialist consultation on PEP regimens is recommended if HIV exposure during the assault was possible and PEP is being considered. The sooner PEP is initiated after exposure, the higher the likelihood it will prevent HIV transmission if exposure occurred. The CDC recommends offering the patient a 2-5 day supply of PEP if the medication is judged to be necessary and the patient decides to utilize the treatment.²⁷⁸

As with other STIs, offer patients information about HIV risks, symptoms and the need for immediate examination if symptoms occur, testing and treatment options, and the need for abstinence or barrier use (condoms) during sexual intercourse until any treatment received is completed. Include local referrals for testing/counseling and comprehensive HIV services in the community and region. This information can help patients make decisions about testing and treatment based on facts rather than fear.²⁷⁹

Discuss testing options. Baseline HIV testing is not typically an exam component. However, if the assault is considered a high risk for HIV exposure, patients should establish their baseline HIV status within 72 hours after the assault and then be tested periodically as directed by health care personnel. However, even if the assault is not considered a high risk for HIV exposure, some patients may still wish to be tested.

HIV testing should be done in settings where counseling can be offered to explain results and implications. When providing testing referrals, let patients know whether testing services are free, anonymous, and/or confidential.²⁸⁰ Confidential and anonymous testing is recommended.

Assess the need to offer HIV postexposure prophylaxis.²⁸¹ In certain circumstances, the likelihood of HIV transmission may be reduced by postexposure therapy for HIV with antiretroviral agents. Postexposure

²⁷⁴ HIV refers to any of a group of retroviruses that infect and destroy helper T-cells of the immune system. AIDS (acquired immunodeficiency syndrome) can be triggered by infection with HIV. (Drawn from Arkansas' *Sexual Assault: A Hospital/Community Protocol for Forensic and Medical Examination*, 2001, p. B2.)

²⁷⁵ Although HIV-antibody seroconversion has been reported among individuals whose only known risk factor was sexual assault or sexual abuse, the risk for acquiring HIV infection through a single episode of sexual assault is likely low. The overall probability of HIV transmission during a single act of intercourse from a suspect known to be HIV-infected depends on many factors. In specific circumstances, the probability of transmission could be high. These factors may include the type of sexual intercourse (oral, vaginal, or anal), presence of oral, vaginal, or anal trauma (including bleeding), site of exposure to ejaculate, viral load in ejaculate, and presence of a STI or genital lesions in assailants or patients. (Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 92.)

²⁷⁶ A useful referral is the CDC's National HIV/AIDS Information Hotline at 800-342-AIDS. For Spanish speakers, call 800-344-SIDA. For Deaf and hearing-impaired persons, call the TTY/TDD Hotline at 800-AIDS-TTY. Also see the Revised Guidelines for HIV Counseling, Testing, and Referral, *Morbidity and Mortality Weekly Report*, CDC, September 22, 2006, 55(RR-14). This document is available through aidsinfo.nih.gov/guidelines/ or by calling the CDC's HIV/AIDS Information Hotline (see below footnote).

²⁷⁷ Some states statutes provide for mandatory HIV testing of suspected sex offenders upon arrest and/or conviction. Patients should be advised of the availability of such testing.

²⁷⁸ This paragraph is drawn from Sexually Transmitted Diseases Treatment Guidelines, 2010, p. 92.

²⁷⁹ L. Ledray, *SANE Development and Operations Guide*, 2000, p. 74.

²⁸⁰ Drawn from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Abused Patient*, 1999, p. 126.

therapy with zidovudine has been associated with a reduced risk for HIV infection and has become the standard of care for health workers who have percutaneous (e.g., needle stick) exposure to HIV, but whether these findings can be extrapolated to other exposure situations, including sexual assault, is unknown.

The use of antiretroviral agents after possible exposure through sexual assault must balance potential benefits of treatment with its possible adverse side effects.²⁸² Health care personnel must evaluate patients' risk of exposure to HIV and consider whether to offer treatment based on their perceived risk. Examiners unfamiliar with known risks associated with exposure or side effects of postexposure therapeutic agents should consult with a specialist in HIV treatment. Numerous factors may influence the decision to offer treatment, such as the time since the exposure occurred; the probability that the assailant is infected with HIV; the likelihood that transmission could occur from the assault; and the prevalence of HIV in the geographic area or institutional setting (e.g., a prison) where the assault occurred.²⁸³

Offer postexposure prophylaxis for HIV to patients at high risk for exposure, particularly when it is known that suspects have HIV/AIDS. If offered, the following information should be discussed with patients:²⁸⁴

- The unknown efficacy of postexposure prophylaxis for HIV in cases of sexual assault.
- The known side effects and toxicity of antiretroviral medications.
- The need for frequent dosing of medication and the follow-up care necessary.
- The importance of compliance with the recommended therapy.
- The necessity for immediate initiation of treatment for maximum effectiveness.
- The estimated costs of the medication and monitoring.²⁸⁵

When given following a sexual assault, postexposure prophylaxis is the same as for occupational exposure to HIV. Refer to CDC recommendations for postexposure antiretroviral therapy²⁸⁶ and consult with an HIV specialist where possible. Careful monitoring and follow-up by a health care provider or agency experienced in HIV issues is required. Patients should be alerted to symptoms of primary HIV infection (e.g., fever, fatigue, sore throat, lymphadenopathy, and rash) and seek care if these symptoms arise.

Seek informed consent of patients to administer treatment. The decision to begin or withhold treatment should be made by patients and health care personnel after patients have been adequately informed of the risks and benefits of treatment options. (For information on this topic, see A.3. *Informed Consent*.)

²⁸¹ The following two paragraphs were drawn from Sexually Transmitted Diseases Treatment Guidelines, p. 70, L. Ledray, *SANE Development and Operations Guide*, 2000, p. 74, and the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, pp. 93-4. See also Antiretroviral Postexposure Prophylaxis After Sexual, Injection Drug Use, or Other Non Occupational Exposure to HIV in the United States, *Morbidity and Mortality Weekly Report* 2005, 54 (RR-2).

²⁸² A table listing primary side effects associated with specific antiretroviral agents is provided in the CDC's Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis, *Morbidity and Mortality Weekly Report* 2001, 50 (RR-11), p. 13. Some examples of known shorter term adverse symptoms of antiretroviral medications include nausea, vomiting, diarrhea, and other gastrointestinal effects. Protease inhibitors may cause lipid abnormalities, diabetes mellitus, and hyperglycemia and lead to diabetic ketoacidosis in previously diagnosed diabetics. Combination therapy has led to some serious side effects, including hepatitis, nephrolithiasis, and pancytopenia. (The American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 125.)

²⁸³ Paragraph drawn from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Abused Patient*, 1999, p. 125.

²⁸⁴ Bullets drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 93.

²⁸⁵ Patients may be able to obtain reimbursement for some or all related costs through state crime victims' compensation programs. (L. Ledray, *SANE Development and Operation Guide*, 2000, p. 74.)

²⁸⁶ See aidsinfo.nih.gov/guidelines/ for the CDC's Guidelines for the following documents: *Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents* (July 14, 2003); the Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis, *Morbidity and Mortality Weekly Report* 2001, 50(RR-11), and Management of Possible Sexual, Injecting-Drug-Use, or Other Nonoccupational Exposure to HIV, Including Considerations Related to Antiretroviral Therapy, Public Health Statement, *Morbidity and Mortality Weekly Report* 1998; 47(RR-17).

9. Pregnancy Risk Evaluation and Care

Recommendations at a glance to evaluate and treat pregnancy:

- Discuss the probability of pregnancy with patients with reproductive capability.
- Administer a pregnancy test for all patients with reproductive capability (with their consent).
- Discuss treatment options with patients in their preferred language.
- A victim of sexual assault should be offered prophylaxis for pregnancy, subject to informed consent and consistent with current treatment guidelines. Conscience statutes will continue to protect health care providers who have moral or religious objections to providing certain forms of contraception. In a case in which a provider refuses to offer certain forms of contraception for moral or religious reasons, victims of sexual assault must receive information on how to access these services in a timely fashion.

Becoming pregnant from a sexual assault is a significant concern of sexual assault patients, and patients of different ages, social, cultural, and religious/spiritual backgrounds may have varying feelings regarding acceptable treatment options. Most programs offer pregnancy prevention or interception for sexual assault patients if they are seen within 120 hours of the assault. Examiners and other involved health care personnel must be careful not to influence patients' choices of treatment.

Discuss the probability of pregnancy with patients with reproductive capability. The risk of pregnancy from sexual assault is estimated to be 2 to 5 percent, similar to the risk of pregnancy from a one-time sexual encounter. The 2005 National Crime Victimization Study²⁸⁷ reported 64,080 female victims of rape; therefore, statistically speaking, up to 3,204 pregnancies could have resulted from the rapes. Any female of reproductive capability (Tanner Stage 3 and above, irrespective of menarche) can potentially become pregnant from any single exposure. Determination of the probability of conception also depends upon other variables, for example, the use of contraceptives, regularity of the menstrual cycle, fertility of the victim and the perpetrator, time in the cycle of exposure, and whether the perpetrator ejaculated intravaginally. Pregnancy resulting from sexual assault often is a cause of great concern and significant additional trauma to the victim, so victims' fears should be taken seriously.²⁸⁸ Although many transgender male individuals believe they are infertile as a result of using testosterone, cases have been reported of unexpected pregnancies. Therefore, if a transgender male individual has not had a hysterectomy, is still within childbearing years, and the nature of the assault suggests it, the possibility of pregnancy should be discussed, even if he has not been menstruating.

Administer a pregnancy test for all patients with reproductive capability (with their consent).²⁸⁹ An exception is if a patient clearly is pregnant. If a patient is pregnant, the pregnancy may affect what medications can be administered or prescribed in the course of or after the exam. Follow policies of the medical facility for pregnancy testing. Sensitive beta-HCG pregnancy tests can be utilized. Most commercially available urine pregnancy tests are sensitive to about 50 milli-international units/ml and will detect pregnancy 8 to 9 days after conception, before a menstrual period is missed. Blood pregnancy tests will detect HCG at very low levels. If the pregnancy test is positive, emergency contraception is contraindicated and decisions about other medications (e.g., STI prophylaxis) must be made in consideration of the pregnancy. If the test is negative and the patient has had unprotected intercourse within the last 10 days and would continue that pregnancy if conception has occurred, then she may be considered to be pregnant and emergency contraception would not be administered.

Discuss treatment options with patients in their preferred language, including emergency contraception.²⁹⁰ In cases of sexual assault, pregnancy is often an overwhelming and genuine fear. Therefore, discuss treatment options with patients, including emergency contraception. An immediate option

²⁸⁷ Bureau of Justice Statistics Bulletin, 9/2005 NCJ 214644.

²⁸⁸ L. Ledray, *SANE Development and Operation Guide*, 2000, p. 75.

²⁸⁹ Preexisting pregnancy may raise patient privacy issues. If the case is prosecuted, the prosecutor should work to address concerns such as this one.

²⁹⁰ The National Sexual Violence Resource Center (877-739-3895 or 717-909-0710) offers more detailed information about sexual assault and pregnancy on their Web site at <http://www.nsvrc.org/>.

is to offer hormone therapy (emergency contraception pills or EC).²⁹¹ Another option is to forgo immediate treatment and have the patient follow-up with their primary care provider. Discuss options with the patient and information regarding the timeframe for emergency contraception provision, so she can make an informed decision. Inform the patient that the provision of any emergency contraception will not prevent sexually transmitted infections. The conversation with the patient should include a thorough discussion, including mechanism of action for each treatment option, side effects, dosing, and follow-up. This information should also be provided in writing in the preferred language of the patient, if possible.

A victim of sexual assault should be offered prophylaxis for pregnancy, subject to informed consent and consistent with current treatment guidelines. Conscience statutes will continue to protect health care providers who have moral or religious objections to providing certain forms of contraception. In a case in which a provider refuses to offer certain forms of contraception for moral or religious reasons, victims of sexual assault must receive information on how to access these services in a timely fashion.

Offer/provide the patient with emergency contraception pills and anti-nausea medication if they are at risk, according to facility policy.²⁹² Emergency contraception is a hormonal method of preventing pregnancy that can be used after sexual assault. There are multiple products available for EC. It is recommended, however, that levonorgestrel,²⁹³ a synthetic hormone,²⁹⁴ be used.²⁹⁵ This option is recommended for its higher efficacy rate and ease of dosing, and the fewest number of side effects, particularly nausea and vomiting.²⁹⁶ Levonorgestrel will not end a pregnancy that is already in progress and is considered a safe and easy treatment for victims of assault in preventing a pregnancy. Levonorgestrel is *most* effective if used within 120 hours and can reduce the risk of pregnancy by up to 89 percent.²⁹⁷ Traditional dosing of levonorgestrel includes administering two doses of 0.75 mg taken orally 12 hours apart. However, some studies indicate that single dosing with 1.5 mgs of levonorgestrel are just as effective and better tolerated by the patient.²⁹⁸

Follow-up Care: The patient should be informed that following the use of EC, there may be a heavier or lighter menses than usual and the menses onset may not occur at the expected time. If no bleeding has occurred within three weeks, the patient should be reevaluated and a repeat pregnancy test performed. The patient must be advised not to have unprotected intercourse until after the menses has occurred, or the repeat pregnancy test is negative.

If the facility chooses not to provide EC on site, the patient should be given prescriptions for EC and anti-nausea medications, with a list of pharmacies that stock the medication.²⁹⁹

If the facility is not willing to provide EC or write the needed prescriptions, it is recommended that the patient be given local referrals to medical facilities that can *immediately* assist with alternative treatment.

If no referral is available, provide the patient with the following phone numbers: 1-888-not2late or the online reference: <http://not-2-late.com>.³⁰⁰

²⁹¹ Copper Bearing Intra-Uterine Devices (IUDs) may also be an option, however, they are much less recommended because of the risk of infection in certain cases, the potentially painful insertion procedure, and the need for follow-up care.

²⁹² CA Protocol

²⁹³ Task Force on Postovulatory Methods of Fertility Regulation. Randomized controlled trial of levonorgestrel versus the Yuzpe regimen of combined oral contraceptives for emergency contraception. *Lancet*. 1998;352:428-433.

²⁹⁴ FDA website: <http://www.fda.gov/cder/drug/infopage/planB/planBQandA.htm>.

²⁹⁵ Relative contraindications for birth control, caution must be exercised when providing any EC with estrogen. Plan B does not contain estrogen, but contraindications should still be noted. The only absolute contraindication for the use of Plan B is preexisting pregnancy.

²⁹⁶ H.B. Croxatto, L. Devoto, M. Durand, E. Ezcurra, F. Larrea, C. Nagle, et al. Mechanism of Action of Hormonal Preparations Used for Emergency Contraception; a Review of the Literature. *Contraception*. 2001; 63:111-121

²⁹⁷ <http://www.planbonestep.com/plan-b-prescribers/index.aspx>

²⁹⁸ Alternative dosing for Plan B includes administering the tablets together in a one time dose. A study done by WHO found that the effectiveness of administering single doses of levonorgestrel was as effective as administering the doses 12 hours apart. Helena von Hertzen, Gilda Piaggio, Juhong Ding et al. Low dose mifepristone and two regimens of levonorgestrel for emergency contraception: a WHO multicentre randomized trial. *The Lancet*: December 7, 2002; Vol 360 (9348):1803-10.

²⁹⁹ J.S. Gardner, J. Hutchings, T.S. Fuller, D. Downing. Increasing access to emergency contraception through community pharmacies: lessons from Washington state. *Family Planning Perspective*. 2001;33(4):142-175.

³⁰⁰ This hotline and website are operated by the Office of Population Research at Princeton University and by the Association for Reproductive Health Professionals.

10. Discharge and Follow-up

Recommendations at a glance to facilitate discharge planning and follow-up with patients:

- Address issues related to medical discharge and follow-up care.
- Advocates, law enforcement representatives, and other involved responders can coordinate with health care providers to discuss a range of other issues with patients prior to discharge.

Health care personnel have important tasks to accomplish prior to discharging patients, as do advocates and law enforcement representatives (if involved). These responders should coordinate their activities as much as possible to reduce repetition and avoid further overwhelming patients.

Address issues related to medical discharge and follow-up care. Health care personnel (preferably examiners) should address the following issues with patients prior to discharge:

Make sure patients' medical and mental health needs related to the assault have been addressed. Discuss with patients whether they have any other medical and/or mental health concerns related to the assault.³⁰¹ If injuries or trauma have not been treated yet, examiners should refer patients to exam facility clinicians (e.g., hospital emergency department staff) for care or provide the appropriate community referrals prior to discharge.

Provide patients with oral and written medical discharge instructions. Include a summary of the exam (e.g., evidence collected, tests conducted, medication prescribed or provided, information provided, and treatment received), medication doses to be taken, follow-up appointments needed or scheduled, and referrals. The discharge form could also include contact information and hours of operation for local advocacy programs.

Arrange follow-up appointments for patients. Follow-up may be indicated to document developing or healing injuries (for example, bruising) and complete resolution of healing. Forensic follow-up may also be indicated to further evaluate nonspecific findings (such as redness, swelling, or cervical abnormalities) that may be related to acute trauma or may be normal variants. (A jurisdictional policy describing the indications and procedures for follow-up for documentation purposes should be in place.) Appointments may also be needed to address ongoing medical concerns. If appointments are not scheduled, at least indicate to patients which appointments are needed and if sites are different than the initial exam. Make it clear that patients do not have to disclose the assault to receive follow-up medical care. Follow-up appointments may include:³⁰²

- For patients with evidence of acute trauma: A short-term follow-up appointment to reexamine and document the development of visible findings and photograph areas of injury; and an exam 2 to 4 weeks later to document resolution of findings or healing of injuries.
- For all patients: Repeat exams for STIs according to facility policy (see *C.8. STI Evaluation and Care*).
- Primary health care providers or other nonacute care providers can provide longer term care as needed (e.g., for HIV testing, STI testing, and administering doses of Hepatitis B vaccine).

Discuss follow-up medical contact procedures. Discuss with patients whether they would like health care providers to provide a follow-up call and, if so, the best method and time for this contact (maintaining patients' privacy and safety). The main purposes of such a call are to check on medical status and remind patients about the necessity of follow-up testing and care. An optimal time for a first medical follow-up contact is 24 to 48 hours following discharge. Personnel following up with patients should be familiar with the case, confidentiality issues, and potential medical needs.³⁰³

³⁰¹ Care should be taken to ensure that mental health professionals can appropriately and respectfully handle patients from minority and/or stigmatized groups such as specific cultural groups or transgender individuals.

³⁰² Bullets drawn partially from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 98.

³⁰³ When appropriate, advocates may assist health care personnel in encouraging patients to seek the follow-up medical care they need. They also may encourage patients to discuss with health care providers their concerns about initial and follow-up medical care.

Advocates, law enforcement representatives, and other involved responders can coordinate with health care providers to discuss a range of other issues with patients prior to discharge. Involved responders should come to agreement about who is responsible for each step below and where coordination is necessary. For example, while advocates usually explain advocacy services and law enforcement representatives explain the investigative process, each responder may have a role in helping patients plan for their safety and well-being. If health care personnel are the only responders involved, however, they may need to provide patients with much of the information below.

After the exam is finished, address patients' physical comfort needs. (For a discussion of this topic, see A.2. *Victim-Centered Care*.)

Help patients plan for their safety and well-being. Jurisdictional and exam site policies should be in place to facilitate this process. Assist patients in developing a postexam plan that addresses their physical safety and emotional well-being. Screen for domestic and dating violence and others forms of abuse. Assist patients in considering things such as:

- Where are they going after being discharged? With whom? Will these individuals provide them with adequate support? Is there anyone else they would like to contact? (Provide information about available community resources for obtaining support and help in making the contact if needed.)
- Will their living arrangements expose them to the threat of continued violence or harassment? Is there a need for emergency shelter or alternative housing options? (Provide options and help obtain if needed.)
- Are they eligible for protection orders? (Provide information and help obtain if desired.)
- Is there a need for enhanced security measures? (Discuss options and help obtain if desired.)
- If they feel unsafe, what will they do to get help? (Discuss options and help them develop a plan.)

Planning must take into account the needs and concerns of specific populations. For example, if patients with physical disabilities require shelter, the shelter must be accessible and staff able to meet their needs for personal assistance with activities of daily living.³⁰⁴ If patients living in institutional settings have been assaulted by another resident, a staff person, or person who has easy access to residents, the institution should offer alternative living arrangements and reduce the likelihood that patients have to come into contact with the assailant again. It should also ensure them access to services designed to promote their recovery.

Explain follow-up contact procedures of all responders involved. Coordinate follow-up contact of involved agencies as much as possible, keeping the number of responders contacting patients to a minimum. Explain if contact procedures are different for patients with limited English proficiency or specific communities or institutions (e.g., schools, military bases, prisons, or residential programs may have their own procedures). Consider offering patients prepaid phone cards they can use to call a contact person with concerns or questions.

Explain advocacy and counseling services. Sexual assault advocacy programs typically offer a host of services for victims and their significant others, in addition to those provided during the exam process. (For more information on services, see A.2. *Victim-Centered Care*.) Advocates can describe and offer patients, their family members, and friends these services, as well as explain options for counseling in the jurisdiction and offer referrals. Some advocacy programs provide professional mental health counseling, but many refer patients to community or private agencies. Before being discharged, advocates should ask patients if they can follow up with them. If they agree, they can determine optimal methods and times for the contacts. During follow-up contacts, advocates can help patients reassess their safety; offer support and crisis counseling; answer their questions and provide additional referrals and information; and help coordinate other advocacy services and counseling based upon identified needs.

Explain the investigative process. If law enforcement is involved, inform patients that investigators will request an interview with them, if not already done, explain the criminal justice process and victims' rights, reassess their safety and provide assistance as warranted, and then recontact them as needed as their case

³⁰⁴ Drawn from M. Nosek and C. Howland, *Abuse and Women with Disabilities*, 1998, p. 3.

progresses.³⁰⁵ Explain if contact procedures are different for patients with limited English proficiency or for specific communities or institutions. Patients should receive contact information of involved law enforcement representatives and agencies and a case report number. They should feel free to call their investigator with any new relevant information, if new signs of injuries appear, about suspects' compliance with protection orders or bond conditions, if suspects try to contact them, or with other related questions or concerns. They should be aware that they will be contacted by the prosecution office if their case goes forward. (Patients should be aware that it is their decision whether to report their case and talk with law enforcement officials and prosecutors.)

If evidence has been gathered and law enforcement is involved, the law enforcement representative can discuss with patients the possibility of a match being found through DNA analysis or of other victims of the same assailant being identified. Ask patients if they want to be contacted by law enforcement in these situations and, if so, determine the best contact method.

For patients who have not made a report and when law enforcement is not involved, patients should be given information on who to contact and how if they decide that they do want to make a report. They should also be given information on where the kit will be stored and how it will be tracked (for example if there is a tracking number, it should be provided).

Provide information. Offer patients clear and concise information, both orally and in writing.³⁰⁶ Information should be tailored to patients' communication skill level/modality and language. (For more information on the types of information that patients might find useful, see *A.2. Victim-Centered Care.*)

³⁰⁵ Some patients may want information, either during the exam process or after, about the amount of time it takes to process cases in the criminal justice system. It can be helpful for them to know the range of time it typically takes in that jurisdiction for evidence to be analyzed and for cases to be forwarded to prosecution or tried in court. This information may help them prepare for their justice system involvement. At the same time, they must understand that every case is different and typical time estimates from the past may not apply.

³⁰⁶ Many local sexual assault advocacy programs and state coalitions of sexual assault programs offer publications that speak to victims' concerns in the aftermath of an assault. However, any involved agency, SART, or coordinating council could develop such literature.

11. Examiner Court Appearances

Recommendations at a glance for jurisdictions to maximize the usefulness of examiner testimony:

- Encourage broad education for examiners on testifying in court.
- Promote prompt notification of examiners if there is a need for them to testify in court.
- Encourage pretrial preparation of examiners.
- Encourage examiners to seek feedback on their testimony to improve effectiveness of future court appearances.

It should be expected that examiners will be called on to testify in court as either fact and/or expert witnesses,³⁰⁷ even though in some cases, a plea bargain may be agreed upon, or the prosecuting attorney may decide not to try the case. Examiners should always conduct and document each examination knowing that legal testimony may ultimately be required.

Encourage broad education for examiners on testifying in court:³⁰⁸

- Provide them with information about courtroom proceeding basics (e.g., criminal justice process and terms, who typically is present,³⁰⁹ and prosecution and defense strategies).
- Educate them about different types of testimony (including what can and cannot be said during testimony). This information should assist examiners in explaining to patients during the exam their potential role as a witness should the case be prosecuted.
- Help them understand that testifying in court can be a difficult experience. In almost every case that is litigated, cross-examination after initial testimony will occur. Cross-examination is a part of our constitutional framework, but as defense counsel represent alleged offenders, their questions may be perceived by examiners as intimidating and hostile. It is critical that examiners are prepared to effectively handle such situations and have a support system in place to help them prepare for and deal with related stress they may experience.
- Provide them with pretrial preparation (see the section below on this topic).

Involve trainers from health care, prosecution, and the judiciary in trainings on court testimony. Also, include defense attorneys who can educate examiners on defense perspectives. In addition to attending trainings, examiners should stay abreast of cutting-edge practices and related case law (e.g., rulings that impact the scope of issues they can testify on in court).³¹⁰

³⁰⁷ An expert witness is person who has training, education, and experience on a particular subject and who is formally found to be qualified as an expert by a judge. Expert witnesses may give opinions in court on matters in which their expertise is relevant. Nonexpert witnesses normally cannot give opinions in response to questions in court, but can only testify to the facts (what has been observed, collected, or heard). (Drawn from San Diego County's *SART Standards of Practice*, 2001, p. 40.)

³⁰⁸ This section is partially adapted from the International Association of Forensic Nurses, *SANE Education Guidelines*, 1999. One useful resource for SANEs and attorneys who utilize SANEs for testimony is L. Ledray and L. Barry, Sexual Assault Clinical Issues: SANE Expert and Factual Testimony, *Journal of Emergency Nursing*, 24(3), June 1998, pp. 284–287.

³⁰⁹ The following may be present in the courtroom: the judge, prosecutor, defense attorney, jury, bailiff, clerk, court reporter, law enforcement investigator, victim, defendant, and victim advocate.

³¹⁰ This section focuses on preparing examiners for court testimony. Beyond preparing examiners, it is critical to encourage training for attorneys who try these cases on how to properly interpret and use the medical forensic examination. In addition, they need an accurate understanding about the education and clinical preparation, roles, and responsibilities of the forensic examiner. Like examiners, they can benefit from participating in mock trials and need ongoing education to stay abreast of the latest best practices and related case law. Prosecutors should be aware of and share related case law and protocol guides with judges as references to qualify examiners as expert witnesses. They can also share questions they plan to ask to establish credentials of these witnesses. Additionally, prosecutors must understand how to educate the jury about evidence that will be presented (e.g., a lack of physical injury does not equal lack of sexual assault). Similarly, it is important to encourage judicial education on issues related to examiner testimony. Judges may not understand all that occurs during the exam process or the full extent of examiner expertise. *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, Video Library I: Presenting Medical Evidence in an Adult Rape Trial*, 2002, is a useful resource for prosecutors and judges (for more information, see <http://www.legalmomentum.org/our-work/njep/njep-sexual-assault.html>). The National Judicial Education Program (NJEPP) offers this resource. It also offers a judicial curriculum on sexual assault trials.

Promote prompt notification of examiners if there is a need for them to testify in court. Examiners should be informed well in advance of a trial if they are being called as witnesses. It may be helpful for attorneys calling them (both prosecutors and defense attorneys) to first develop relationships with coordinators of examiner programs, if they exist, or staff that oversee examiners at the exam site. In some facilities, they may need to reach out to risk management departments, which oversee all potential areas of liability for the facility. The first time an attorney contacts the witness should not be through a subpoena. Unexpected subpoenas can cause examiners a great deal of anxiety.³¹¹

Attorneys should regard examiners they call as witnesses with respect for the knowledge and expertise examiners offer to the court. They also should work to minimize the amount of time examiners wait to testify, allowing them to return to their work as quickly as possible. Judges also should be aware of the need to give examiners priority in the scheduling of testimony.

Encourage pretrial preparation of examiners.³¹² Examiners should be prepared for both direct examination and cross examination. When preparing to testify, the following suggestions may be useful to examiners:

- Although the criminal justice record includes the medical forensic report, photographs, and the results of evidence analysis, medical records are confidential in most jurisdictions. Before examiners or other involved health care providers can talk with an attorney about information in patients' medical records, those records must be successfully subpoenaed. Health care facilities and/or independent examiner programs typically have procedures in place for handling subpoenas.³¹³
- It is critical that examiners meet in advance with the attorney(s) calling them as witnesses, in order to prepare for testimony in individual cases. Not only should they review and discuss the initial examination of the patient, but also any subsequent contacts between the patient and the examiner.
- Prior to testifying, examiners should review records of the exam and keep a log of materials reviewed.
- Expert witnesses should be prepared to educate the court, particularly jurors. They should consider terminology and descriptions that will most clearly advise lay persons in the courtroom.
- Examiners should keep in mind that anything they write about the case is potentially discoverable.
- Examiners should be prepared to prove qualifications and ready to discuss educational background, clinical experience, and prior experience as expert witnesses. They may also need to explain qualifications if they are testifying to facts in a case. They should keep a portfolio that lists education, experience, and previous appearances as a witness.³¹⁴
- Examiners should understand that they may not testify as to whether patients consented to sexual contact; that is for the jury to decide. However, some jurisdictions allow expert testimony that speaks to the consistency between patients' statements and injuries rather than attempting to draw conclusions about how injuries were caused or whether a sexual assault occurred.³¹⁵

During testimony, examiners should consider the following:

- The role of the examiner in court is to educate judges and juries.
- Business attire is appropriate for court appearances. Limit excessive jewelry and other accessories which can be distracting.
- Be sincere, polite, and appear in control. Being nervous is normal, even for examiners who have testified previously. Make eye contact with those doing the questioning as well as with the jury.
- Listen to the questions carefully. Allow time to compose answers before speaking. Be concise and correct in responses. Avoid terms such as "I believe" or "I think."

³¹¹ This paragraph was drawn from the video reference guide for *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, Video Library I: Presenting Medical Evidence in an Adult Rape Trial*, 2002, pp. 17–18.

³¹² Section partially adapted from Arkansas's *Sexual Assault: A Hospital/Community Protocol for Forensic and Medical Examination*, 2001, pp. L1–3.

³¹³ This bullet was drawn from the video reference guide for *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, Video Library I: Presenting Medical Evidence in an Adult Rape Trial*, 2002, pp. 17–18.

³¹⁴ See L. Ledray and L. Barry, Sexual Assault Clinical Issues: SANE Expert and Factual Testimony, *Journal of Emergency Nursing*, 24(3), June 1998, pp. 284–87, for more discussion on qualifying as an expert witness.

³¹⁵ This bullet was drawn from the video reference guide for *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, Video Library I: Presenting Medical Evidence in an Adult Rape Trial*, 2002, pp. 19–20.

- Avoid medical jargon to the extent possible. If it is needed, define its usage.
- Answer only questions that are asked. Ask the questioning attorney for clarification or to restate the question if needed.
- If the answer to a question is not known, say so. There is no reason for examiners to explain why they do not know the answer. They can ask to refer to records if their memories need refreshing.
- Let the attorney guide the questioning. Answer only questions that are asked. Ask the questioning attorney for clarification or to restate the question if needed. Do not elaborate unless the attorney or judge asks for more information.
- If it is realized that an error or omission occurred in testimony, acknowledge it politely.

Although it is most likely that examiners will be called by the prosecution, they may also be called by the defense. In either case, examiners are expected to give objective testimony. In addition to the previous tips, examiners should consider the following:

- Seek guidance from the prosecutor regarding appropriate interaction with the defense attorney prior to testimony.
- When disagreeing with the questioning attorney, do so without argument or interruption.
- Be aware of the phrasing of questions by the cross-examining attorney that may be designed to place doubt on examiner testimony. For instance, if a compound question is asked, the answer to one part may be “yes” and to the other part may be “no.” Be sure to divide answers as appropriate.
- If the questions of the cross-examining attorney include incorrect interpretation of previous examiner testimony or documentation, the erroneous information should be corrected.
- Be careful to provide consistent answers, especially if cross-examining attorneys ask the same question several times, using different wording.

Encourage examiners to seek feedback on their courtroom testimony to improve the effectiveness of future court appearances. For example, after the legal proceedings have been completed, examiners may wish to meet with prosecutors for feedback and evaluation of their testimony. Examiners might also want to observe other experts testify in these cases.

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Appendix A. Developing Customized Protocols: Considerations for Jurisdictions

Jurisdictions starting from scratch in developing their own exam protocols are encouraged to consider the recommendations in this national protocol in their entirety and tailor them to fit local needs, challenges, statutes, and policies. Jurisdictions that have existing protocols can consider whether any of the protocol recommendations or the tasks below could serve to improve their immediate response to sexual assault or address gaps in services or interventions.

Form a protocol planning team. At the least, this team should include those responders involved in the exam process, including health care personnel, exam facility administrators, law enforcement representatives, victim advocates, prosecutors, and forensic laboratory personnel. Organizations serving specific populations in the community should also be involved at some level to make sure the protocol speaks to the needs of victims of diverse backgrounds. Team participants should have authority to make policy decisions on behalf of their agencies. Bringing together such a team can be challenging, particularly in jurisdictions with multiple sexual assault victim advocacy programs, exam facilities, law enforcement agencies, prosecution offices, and court systems (or where several levels of government may be involved in investigation and prosecution of sexual assault cases). Although representation from all involved disciplines and agencies is encouraged, at some point the team assembled will have to move ahead with planning efforts. Try to keep those absent informed of team activities and offer them opportunities to provide feedback on protocol development and revision.

Assess needs.³¹⁶ Before initiating policy changes, it is important that the planning team assess the jurisdiction's current response to sexual assault, with a focus on the exam process. Some activities that may help:

- Compare statistics on sexual assault within the community as captured by represented agencies.
- Identify community demographics, including the various populations that make up the area.
- Review existing feedback from victims about their experiences and satisfaction with immediate response.
- Seek input from professionals involved in the exam process on current gaps, problems, and challenges.
- Evaluate the adequacy of policies pertaining to each aspect of immediate response.
- Review systemic breakdowns that have occurred in immediate response.
- Evaluate the capacity of each discipline to support a coordinated immediate response.
- Evaluate the effectiveness of response to victims from diverse backgrounds or in certain types of cases.
- Evaluate the adequacy of related trainings and resource materials.
- Identify related jurisdictional statutes and evaluate their adequacy in supporting effective response.

Devise an action plan. The protocol planning team can take what it learns through needs assessments and translate it into an action plan for improving the exam process and creating a protocol. The plan should clearly identify what needs to happen, who is responsible for coordinating or carrying out each action, possible resources,³¹⁷ desired outcomes, and how the effectiveness of the action will be evaluated. The plan can be revisited periodically to assess progress and evaluate outcomes.

³¹⁶ Section drawn from K. Littel, M. Malefyt, and A. Walker, *Promising Practices: Improving the Criminal Justice System's Response to Violence Against Women*, 1998, pp. 240 and 246, and American College of Emergency Physicians, *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 21.

³¹⁷ Funding under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Program may be used to cover costs related to protocol development and implementation. For more information, see <http://www.ovw.usdoj.gov/>.

Create a protocol. To promote an effective protocol development process, consider the following:³¹⁸

- Who should lead efforts to create and implement the protocol?
- What process will be used to facilitate decision making on protocol development or revision?
- What process will be used for facilitating adoption of the protocol by individual agencies or communities?
- How will protocol compliance be monitored and what mechanisms will be put into place to solve problems as they arise?

The planning team should review the national protocol to determine what it wants to cover in its customized protocol and the appropriateness of national recommendations for the jurisdiction. It must consider what jurisdictional statutes and policies need to be discussed and how to address community-specific needs and challenges. Once a draft has been developed, it should be made available to relevant professionals, agencies, survivor groups, and organizations serving specific populations across the jurisdiction. Their feedback should be solicited and then incorporated into the draft to the extent possible. Once a final protocol is created, the team should consider pilot testing and revising it based on feedback from the tests. Then the protocol should be implemented, as per recommendations of team members and others from whom input has been sought.

Distribute the protocol. The planning team should determine the most efficient method to disseminate the protocol to all professionals in the jurisdictions who are involved in the immediate response to sexual assault. The planning team needs an up-to-date contact list of these professionals, and it should agree upon a specific distribution plan (e.g., mailing or handing out hard copies and/or providing access to the protocol via the Internet). If the Internet is used to distribute the document, make sure that professionals who do not have Internet access get a hard copy.

Build the capacity of agencies to implement the protocol.³¹⁹ A protocol's effectiveness depends on individual agencies having adequate resources (e.g., funding, personnel, multilanguage capacity, equipment, supervision, training, professional development opportunities, and community partnerships) to carry out their responsibilities and coordinate efforts with other involved responders. Agencies can assist one another in building individual and collective capacity to respond to sexual assault and participate in coordinated interventions. For example, together they can seek opportunities for technical assistance, training, and grants and share costs, personnel, equipment, expertise, and information. Also, each jurisdiction most likely will encounter a variety of barriers and difficulties in protocol implementation. Overcoming such problems requires a willingness on the part of involved agencies to individually and collaboratively understand the unique needs of victims in their community and to think "outside the box" to identify solutions.

To help with implementation, consider asking responding agencies to supplement the protocol with interagency agreements or memorandums of understanding. Using the protocol as a basis, these agreements can outline roles and articulate how responders should work together to coordinate response. These documents should be jointly developed, agreed upon, and signed by agency policymakers. They can be revised and signed on a periodic basis to ensure all professionals involved in the response are aware of protocol changes and to reaffirm their commitment to carrying out agreements.

Promote training. Agency-specific and multidisciplinary trainings are crucial components of protocol implementation. Involved responders must be informed of any changes in how they carry out agency-specific responsibilities during the exam process and understand why these changes are needed. If they are being asked to coordinate their efforts formally with other agencies, they must understand their role in coordination, the benefits of a collaborative response, the challenges such an effort involves, and ways to overcome challenges.

³¹⁸ Bulleted section drawn from K. Littel, M. Malefyt, and A. Walker, *Promising Practices: Improving the Criminal Justice System's Response to Violence Against Women*, 1998, p. 242.

³¹⁹ Section drawn from K. Littel, M. Malefyt, and A. Walker, *Promising Practices: Improving the Criminal Justice System's Response to Violence Against Women*, 1998, p. 241.

Set up an evaluation system. The planning team should take the time to consider how to best compile data related to the exam process (while maintaining victims' anonymity) and how to use it to evaluate effectiveness of response and make improvements to the protocol as needed.

Revise the protocol periodically. Revisions may be based on feedback from responders and victims, evaluation recommendations, changes in laws, identification of new crime trends and prevention efforts, technology, research, and identification of new promising practices. The planning team should keep track of protocol areas needing improvement and meet periodically to discuss pertinent issues such as language to be used, how to resolve controversies, and, ultimately, to make needed changes.

Appendix B. Creation of Sexual Assault Response and Resource Teams

Create a SART/SARRT to facilitate coordination among involved disciplines.³²⁰ After identifying members and defining roles, members can plan how to operate their team to best serve community needs.

Determine how the SART/SARRT is activated. Activation procedures should take into account that victims enter the “system” at different points (e.g., through a call to 911 or a 24-hour advocacy hotline, arrival at an exam site, or disclosure to a community professional). The SART/SARRT must determine how to publicize its services to community professionals who may have frequent contact with individuals disclosing sexual assaults. These professionals might include, but are not limited to, private physicians, health clinic staff, mental health and social service program staff, personnel serving persons with disabilities, substance abuse treatment program staff, school personnel, personnel from faith-based communities, corrections and probation staff, and staff from residential living programs and emergency shelters. It also should publicize its services more broadly to the public, explain the dynamics of sexual assault, and encourage victims to seek help.

Plan SART/SARRT response to varying circumstances facing victims. The team should consider and plan for modifications to the exam process to address specific needs and concerns of victims. For example, in order to respond to non-English-speaking victims, team members must be able to speak their language or promptly arrange for certified interpretation. For victims thought to have cognitive disabilities, team members must know who to contact for assistance and ensure they receive the same access to services that other victims would obtain. Some victims may request advocates and other responders of a specific gender or from specific cultures. Procedures should be in place to ensure response to minors follows jurisdictional statutes. SART/SARRTs should be prepared to deal with multijurisdictional coordination issues that may arise when assaults occur on military sites or to soldiers in the field, school campuses, tribal lands, prisons, and residential programs. Involving relevant agencies as soon as possible according to agreed-upon procedures may help quickly determine who has jurisdiction over a case and how to best assist each victim.

Meet regularly. Outside of an immediate response, the SART/SARRT should meet regularly³²¹ for two distinct purposes. The first is to review immediate response in individual cases in order to improve overall team performance. These reviews allow team members the opportunity to give each other feedback on effectiveness of response during the exam process, problems needing resolution, and areas needing improvement. Cases are typically reviewed anonymously,³²² without using victims’ names or other identifying information.³²³ During these discussions, it is important that the team respect the confidentiality of information in patients’ medical records and shared with community-based advocates. Secondly, the SART/SARRT can utilize meetings of members to maintain and enhance the quality of the SART/SARRT. This task involves addressing system issues, such as creating and revising policies and procedures in response to local changes in governmental or community-based agencies, scientific or technological advances, and feedback

³²⁰ A more in depth discussion of SART development and maintenance than is provided is beyond the scope of this document. However, resources do exist on this topic. For example, numerous jurisdictions have published guidebooks on organizing a SART and/or protocols for SART response. Some sexual assault coalitions offer information, technical assistance, and training for communities interested in starting SARTs. Since 2001, a national SART training conference has been held biannually (see <http://www.sane-sart.com/> for information). More information, including a SART Toolkit, is available at <http://www.nsvrc.org>.

³²¹ “Regularly” is locally defined. Some teams meet monthly, while others meet every 6 weeks or quarterly. Teams might meet on a regular basis for case review and get together less frequently to discuss more systemic issues.

³²² In California, there is a law to protect discussions of individual cases during SART meetings. These discussions are technically characterized as medical quality-assurance activities.

³²³ Case reviews usually include only those SART members typically involved in immediate response. But, even if all or most SART members were involved in a particular case and were aware of victims’ identity, there is still no reason to reveal victims’ identity during SART case reviews. SARTs may choose not to take notes about cases reviewed to ensure that the case-related information is not shared with anyone outside of the meeting. In situations where victims’ identity might be easily deduced during a case review by members not involved in response (e.g., if there had only been one case handled during the time period being reviewed), comments should be kept as broad as possible and avoid case specifics. In communities where residents tend to know each other and news about crime travels quickly, it may be challenging to not inadvertently reveal victims’ identity during SART case reviews. SARTs in these jurisdictions should consider how to best approach case reviews in a way that reduces the likelihood of revealing victims’ identity.

from victims. It also involves sharing general information related to the SART/SARRT and facilitating the continuing education of the team.

Although it might be difficult to involve all relevant responders in SART/SARRT meetings (e.g., crime labs may be a considerable distance from the community and lack resources to respond to local inquiries), consider options such as teleconferencing to include their perspectives.

Encourage education for SART/SARRT members on coordinated response during the exam process.
For example:

- Discipline-specific training that advances responder skills and emphasizes a team approach is crucial.
- Multidisciplinary training sessions can describe the SART/SARRT process, stress the need for a prompt exam, explain the roles and challenges of each discipline, emphasize a victim-centered approach, and make clear where coordination among disciplines is needed and how it should occur. They can describe multidisciplinary policies, interagency agreements, standardized forms, and other related materials.
- Multidisciplinary training can also build members' understanding of needs, values/beliefs, and practices of specific populations in their community. They can raise awareness of how different populations respond to disclosures of sexual assault and work to build the capacity of involved professionals to be sensitive to the needs of victims from those populations.
- Cross-training sessions are useful to allow responders from one discipline to educate those from another discipline about the specifics of how they intervene in these cases and answer questions that may arise. For example, law enforcement investigators can educate examiners and advocates about what is involved in a thorough investigation, stressing that the forensic exam of the victim is but one part of the investigation. In jurisdictions that border Indian Country, federal prosecutors can educate other responders regarding federal Indian law and how it applies to sexual assault cases.
- Multidisciplinary trainings and cross-trainings can provide a forum for staff from different agencies to get to know and respect one another, build common goals, and increase their comfort in working together. Collaboration among agencies and individuals can provide responders with a broader network of support as they do this work. These trainings can also stress the difficulty of working on sexual assault cases and the secondary trauma that responders can experience. They can facilitate discussion among responders about self-care and preventing or coping with secondary trauma, so they in turn can provide optimal interventions and assistance to victims.
- There are more informal educational opportunities and tools that can foster coordination among SART/SARRT members. For example, all key responders, especially those newly involved in sexual assault cases, may find it useful to tour sites and offices involved in SART/SARRT response. Such tours and discussions with site/office staff can help build knowledge of what response by each discipline entails and the logistics of that response. Sharing related educational materials and literature is an easy way to continuously expand the base of common knowledge among SART/SARRT members. Tools such as flow charts and discipline-specific checklists that help SART/SARRT members understand the continuum of response and appropriately coordinate their interventions may also be useful.

Trainers. In addition to involving representatives from health care, advocacy, law enforcement, prosecution, the judiciary, and crime and toxicology laboratories as SART/SARRT trainers, include defense attorneys to educate participants on defense tactics. Utilize local agencies and leaders that serve specific populations to educate the SART/SARRT on the needs of residents and services they offer relevant to victims of sexual assault.

Outreach to rural, remote, and poor communities. It may be difficult for rural, remote, and poor communities to offer training for SART/SARRT members, due to lack of resources and/or expertise. States, Territories, and tribes may want to consider forming specialized teams that can offer multidisciplinary training consistent with cutting-edge practices across all of their jurisdictions. These teams can work with local responders to ensure that the training sessions they offer address unique community needs and challenges.

Appendix C. Impact of *Crawford v. Washington*, *Davis v. Washington* and *Giles v. California*

Crawford v. Washington and subsequent related court cases are only an issue when a victim is unavailable for cross-examination at trial, which occurs infrequently in sexual assault cases. A prosecutor will rarely be able to prosecute successfully a sexual assault of a competent adult victim without the victim's cooperation because of the difficulty in overcoming the consent defense. The term "competent adult" is used to describe an adult victim who is viewed by the legal system as able to understand and participate in the criminal proceedings, i.e., know the role of all the players. It is important to refer to state laws for definitions or interpretations of what constitutes a competent adult in a given jurisdiction.

In the rare instance in which a sexual assault of a competent adult is prosecuted without the victim's cooperation, examiners' testimony may be objected to as "testimonial" hearsay under *Crawford v. Washington*³²⁴ and *Davis v. Washington*³²⁵ under the theory that the examiner was acting as an arm of law enforcement. In *Crawford*, the Court held that testimonial statements of an unavailable witness could be admitted at trial only when the defendant has had a prior opportunity to cross-examine that witness. Although the *Crawford* holding offers examples of both testimonial and nontestimonial statements, it did not include a specific definition.

In *Davis*, the Court defined statements that are made to government agents for the primary purpose of receiving assistance in an ongoing emergency as nontestimonial. It defined as testimonial statements made under circumstances that objectively indicate there is no ongoing emergency and the primary purpose of the interrogation is to establish or prove past events potentially relevant to a later criminal prosecution. Forensic examiners who perceive their primary role as law enforcement and conduct their practice with law enforcement rather than medical goals risk having their statements excluded as testimonial under *Crawford* and *Davis*. Forensic examiners should be asked about and must be able to articulate a practice philosophy that is patient-centered and medically focused.

In cases in which it is established that the victim's lack of cooperation is the result of a defendant's actions that are designed to cause the unavailability of a victim in order to prevent that victim from testifying in a current or future prosecution, the prosecution may introduce a witness' hearsay statements in a prosecution based on the doctrine of forfeiture by wrongdoing.

For health-care providers, *Crawford* and its progeny do not change the priorities of the medical-forensic examination, which should continue to hold the health and well-being of patients of primary importance. The problem arises when clinicians are perceived to be investigators rather than health-care providers. Even in cases in which a victim is cooperating in the prosecution of the perpetrator, statements made to the examiner for the purpose of medical diagnosis and treatment may still be excluded as hearsay if it is established that the examiner is acting as an arm of law enforcement rather than acting primarily as a medical treatment provider.³²⁶

³²⁴ 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

³²⁵ 126 S. Ct. 2266 (2006).

³²⁶ *Giles v. California*, 128 S. Ct. 2678 (2008).