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National Protocol for Sexual Assault Medical Forensic Examinations *2nd Edition*
Major Updates

Introduction

This document summarizes the major categories of revisions made in the second edition of the *National Protocol for Sexual Assault Medical Forensic Examinations (SAFE Protocol, 2d).* 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.

In the ten years since the protocol was initially released, the "state of the art" for forensic medical examinations has improved. The revised edition of the protocol has the same emphasis and values as the original, but is updated to reflect current technology and practice. It is also updated to include additional information reflecting changes from the Violence Against Women Act of 2005. For this revision, OVW solicited input from technical assistance providers representing the relevant disciplines, such as doctors, forensic nurses, prosecutors, law enforcement, advocates, and civil attorneys, as well as the National Institute of Justice and experts in the field including physicians, nurses, law enforcement officers, prosecutors, forensic scientists, and experts on underserved populations.

Overview of Updates

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. Updated definitions are provided that better describe advocate and law enforcement duties and their role in the forensic medical exam process. The updated protocol provides an increased focus on addressing patients' health care needs and collecting evidence suitable for possible use in the criminal justice system. This version provides additional information on how victims can have a forensic medical exam completed without entering the criminal justice system and provides clarification on reimbursements for the exam. Updates on evidence collection times and techniques based on the latest scientific research are provided. This version also provides more information on issues related to confidentiality and special issues that arise when dealing with older, disabled, and military victims. More information was added on drug- and alcohol-facilitated sexual assault, including providers asking more questions about the use of drugs or alcohol during the altercation.

The following are significant improvements in the revised SAFE Protocol:

Medical Forensic Exam – The medical forensic exam is a single exam with an overarching purpose to address patients' health care needs and collect evidence when appropriate for potential use within the criminal justice system. (Section A, 1 – Coordinated Team Approach)

Quality Assurance – Review of both active and resolved cases provides opportunities to improve performance of individuals and of the team as a whole. (Section A, 1 – Coordinated Team Approach)

Medical Screening Exam – A thorough medical assessment is the first step upon approaching the sexual assault patient to determine if the patient is seriously injured or impaired. Acute injury, trauma care and safety needs must be addressed before evidence collection. If a patient is unconscious or has an altered mental status, the examiner should follow facility policy regarding such patients and delay the start of the exam. (Sections A, 2 – Victim-Centered Care and B, 2 – Triage and Intake)

Victims with Disabilities and Older Victims – People with disabilities may be victimized by caretakers, family members, or friends. 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. Do not mistake disabilities (such as hearing loss or aphasia) or acute stress reaction following assault for senility. If an older victim has limited capacity, evidence collection may be especially important because the victim may be unable to provide a statement or testify but the exam should not be done without their consent. (Section A, 2 – Victim-Centered Care)

Civil Attorneys Role – Civil attorneys protect the interests of sexual assault victims, address concerns that affect immediate everyday life and long-term wellbeing of victims, represent victims in civil legal matters, and ensure victims' rights are upheld during the criminal justice process. Civil legal matters may include: privacy, safety, immigration, education, housing, employment, and financial issues. (Section A, 2 – Victim-Centered Care)

Confidentiality Details – 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. The Protocol encourages practitioners to be aware of the difference between community-based victim advocates and system-based victim assistants (such as those in police departments or prosecutor's offices) in terms of the degree of confidentiality they can offer in your jurisdiction. In some jurisdictions, patients who are minors have fewer or more limited confidentiality rights than adults. (Section A, 4 – Confidentiality)

HIPAA Privacy Rule – With respect to disclosures to victim advocacy organizations, the Health Insurance Portability and Accountability Act (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. (Section A. 5-Reporting to Law Enforcement)

Polygraphs – Under the Violence Against Women Act of 2005, as a condition of STOP Violence Against Women 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.[1] (Section A, 5 – Reporting to Law Enforcement)

Alternative Reporting Procedures – Jurisdictions considering an alternative reporting procedure will need to decide whether to use anonymous reporting (meaning that the law enforcement would have no identifying information on the victim) or confidential reporting (meaning that law enforcement would have the information but not use it except in certain specified instances, such as to contact the victim if other victims of the same offender have come forward). Jurisdictions also need to decide under what circumstances they might contact the victim (if the victim consents) and who would make that contact and how. (Section A, – 5 Reporting to Law Enforcement)

Reimbursement for the Forensic Medical Exam – Under the Violence Against Women Act of 2005, states must certify, as a condition of receiving STOP Violence Against Women Formula Grant Program funds, that victims are not required to participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic exam.[2] States are permitted to use STOP Program funds to pay for the exams if they meet two conditions.[3] 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. If the state has mandatory medical reporting laws, they are still compliant with the VAWA requirement, but examiners should clearly articulate to patients what they are required to report prior to performing the exam. (Section A, – 6 Payment for the Examination under VAWA)

Military Exams and Confidentiality – In cases of victims associated with the U.S. Military Services, sexual assault forensic examinations may be covered under Tricare for service members. (Section A, 6 – Payment for the Examination under VAWA) The Military offers victims who are service members the option of Restricted Reporting or Unrestricted Reporting.[4] 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. Medical facilities that provide exams for military installations are encouraged to draft Memoranda of Understanding to address such issues as confidentiality and storage of evidence. (Sections A,2- Victim-Centered Care and A,4- Confidentiality)

1 42 U.S.C. 3796gg-8.

2 42 U.S.C. 3796gg-4(d). Please note that the Violence Against Women Act of 2013 amended the requirements for forensic exam payment to remove the option of reimbursing victims, instead they must provide the exams free to the victim or arrange for the victim to obtain the exams free of charge.

3 42 U.S.C. 3796gg-4(c).

DNA Evidence Success and Urine Testing – Many jurisdictions have extended the standard evidence collection cutoff time beyond the traditional 72 hours 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. In addition, urine may reveal traces of certain drugs up to 120 hours after ingestion. (Section B, 5 – Timing Considerations for Collecting Evidence) Biological 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. (Section B, 6 – Evidence Integrity)

Documentation by Health Care Personnel – 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.[5] 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. The overall medical forensic record kept by examiners and other clinicians follows a standard approach of addressing acute complaints, gathering pertinent historical data, describing findings as well as evidence collection procedures, and documenting 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. (Section C, 3 – Documentation by Health Care Personnel)

[5] 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.

Drug- and Alcohol-Facilitated Sexual Assaults – Examiners should ask for information such as whether there was memory loss, lapse of consciousness, vomiting, whether the patient was given food or drink by the suspect, 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. (Section C, 4 – The Medical Forensic History)

Evidence Collection Purposes and Techniques – 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. The Protocol is updated to encourage the use of a moist swab to collect dry secretions, followed by a dry swab instead of recommending to flake off dried secretions for collection. Other evidence may be collected beyond what is needed for the sexual assault evidence collection kit including toxicology samples and additional swabs depending on the area of contact noted in the medical forensic history.

Some jurisdictions are collecting wet to dry swabs from the surfaces surrounding orifices penetrated or that had touch contact during an assault. It should be noted that the use of dental floss is not recommended for additional evidence collection in cases with oral penetration because of the opportunity for infection. (Section C, 6 – Exam and Evidence Collection Procedures)

Access to Toxicology Results – 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. (Section C, 7 – Alcohol and Drug-Facilitated Sexual Assault)

Pregnancy Risk Evaluation and Care – The Protocol provides updated information on the possibility of pregnancy and the types of pregnancy tests that may be administered. It encourages the discussion of treatment options with patients, including emergency contraception (EC) options such as Plan B. It notes that most programs offer pregnancy prevention or interception for sexual assault patients if they are seen within 120 hours of the rape. It is recommended that all medical facilities that conduct medical forensic examinations of sexual assault patients should have policies in place regarding sexual assault and pregnancy prevention. This section includes a "conscience clause" to protect health care providers with religious or moral objections to contraception, while ensuring access for victims to timely care: "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." (Section C, 9 – Pregnancy Evaluation and Care)

Delayed Reporting Information – For patients who have not made a report and where law enforcement is not involved, patients should be given information on whom 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, how it will be tracked (for example, if there is a tracking number, it should be provided), and the length of the storage. (Section C, 10 – Discharge and Follow-up)

For more information on the National Protocol for Sexual Assault Medical Forensic Examinations 2nd Edition, contact IAFN's SAFEta project at: info@safeta.org or call the SAFEta Helpline at: 1-877-819-SART (7278).

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