

7. Drug-Facilitated Sexual Assault

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

- Educate examiners, 911 dispatchers, law enforcement representatives, prosecutors, judges, and advocates on issues related to drug-facilitated sexual assault. Develop policies to clarify first responders' roles in cases involving suspected drug-facilitated assault.
- Be clear about the circumstances in which toxicology testing may be indicated. Routine testing is not recommended.
- Informed consent of patients to collect toxicology samples should be sought. Prior to giving consent, patients should be aware of the purposes and scope of testing, potential benefits and consequences, any followup treatment necessary, how they can obtain results, who will pay for testing, and if they have any opportunity to revoke consent to testing.
- With patients' permission, immediately collect a urine specimen if patients may have been given drugs used for facilitating sexual assault within 96 hours prior to the exam. Also, collect a blood sample if these drugs may have been ingested within 24 hours of the exam. If a blood-alcohol level needs to be determined, collect a blood sample within 24 hours of alcohol ingestion, following jurisdictional policy.
- Make sure jurisdictional procedures are in place and followed for packaging, storing, and transferring these samples.

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 drug-facilitated sexual assault. They need to be educated on the use of drugs and alcohol to facilitate sexual assault, screening for drug-facilitated assault, and how to handle situations in which a drug-facilitated sexual assault is suspected. Both agency-specific and multidisciplinary policies should be developed to guide immediate response to a suspected drug-facilitated sexual assault.²³⁴

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 drugs (including alcohol) to facilitate sexual assault.²³⁵ They must understand the urgency of collecting toxicology samples, if it is medically necessary, or if a 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 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 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 just prior to the assault.²³⁶ 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

²³⁴ 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.

²³⁵ 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.

²³⁶ 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.

cases in which patients voluntarily used illegal drugs or illegally used alcohol. Patients should understand that information related to voluntary alcohol or drug use may be used against them in court, but also that in some instances it might be helpful in prosecuting a case (see the following section on explaining procedures). Also, before pursuing 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.

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 postassault trauma and require immediate medical treatment. In addition, ingestion of drugs and/or alcohol during this period may affect the quality of evidence and impede patients' ability to make informed decisions about treatment and evidence collection.

Be clear about the circumstances in which toxicology testing may be indicated.²³⁷ 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:²³⁸

- 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, decreased blood pressure, memory loss, impaired motor skills, or severe intoxication);
- If a patient or accompanying persons (e.g., family member, friend, or law enforcement representative) states the patient was or may have been drugged; and/or
- If a patient suspects drug involvement because of a lack of recollection of event(s).²³⁹

Patients should be questioned about involuntary drug/alcohol use only if determined to be medically necessary or if there is a suspicion the assault was drug-facilitated.

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:²⁴⁰

- The purposes of toxicology testing and the scope of confidentiality of results,²⁴¹
- 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 assault²⁴² and may reveal other drugs or alcohol that patients may have ingested voluntarily;
- Whether any followup treatment is necessary if testing reveals the presence of drugs used to facilitate sexual assault;²⁴³
- 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

²³⁷ 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.

²³⁸ Bullets drawn from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.

²³⁹ 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.)

²⁴⁰ List adapted partially from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.

²⁴¹ 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, to discover.

²⁴² 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.

²⁴³ 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.

question (however, these results could also help substantiate that voluntary drug and/or alcohol use sufficiently impaired patients' consent and prevented legal consent);²⁴⁴

- Whether there is a local prosecution practice of charging sexual assault victims for illegal voluntary drug and/or alcohol use revealed through toxicology screening;
- Failure or refusal to undergo testing when indicated by circumstances as described above may negatively impact the investigation and/or prosecution;²⁴⁵
- When and how they can obtain information on the results from toxicology testing;
- Who will pay for toxicology testing; and
- Whether patients have the opportunity to revoke their consent to toxicology testing.²⁴⁶

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.

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).²⁴⁷ Urine allows for a longer window of detection of drugs commonly used in these cases than does blood.²⁴⁸ The sooner a urine specimen is obtained after the assault, the greater the chances of detecting drugs that are quickly eliminated from the body.²⁴⁹

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 collected²⁵⁰ in a clean plastic or glass container (follow jurisdictional policy). The urine sample does not have to be a clean catch (e.g., blood 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 toxicology screening kits 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 oxalate²⁵¹) according to jurisdictional policy. A blood sample taken within this time period may pinpoint the time when drugs were ingested.²⁵² 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 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.)

²⁴⁴ 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.

²⁴⁵ For example, if there is a suspicion the assault was drug-facilitated and there was no toxicology testing, 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.

²⁴⁶ In one jurisdiction, sexual assault victims have 48 hours after giving samples to finalize or revoke their consent to testing.

²⁴⁷ American Prosecutors Research Institute, Violence Against Women Program, 1999, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, Chapter 2, p. 1.

²⁴⁸ M. LeBeau, Toxicological Investigations of Drug-Facilitated Sexual Assaults, *Forensic Science Communications*, 1999, p. 3.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² American Prosecutors Research Institute, Violence Against Women Program, 1999, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, Chapter 2, p. 2.

Occasionally, patients of drug-facilitated sexual assault vomit. The analysis of the vomit may also be useful to an investigation.²⁵³ 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).²⁵⁴ 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.²⁵⁵ 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.²⁵⁶

²⁵³ M. LeBeau, Toxicological Investigations of Drug-Facilitated Sexual Assaults, *Forensic Science Communications*, 1999, p. 3.

²⁵⁴ American Prosecutors Research Institute, Violence Against Women Program, 1999, Video supplement, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*.

²⁵⁵ 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.

²⁵⁶ These guidelines are available at www.soft-tox.org