

# 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'<sup>7</sup> 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 victims<sup>8</sup> 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.

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<sup>7</sup> 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.

<sup>8</sup> 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),<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> (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.

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<sup>9</sup> 42 U.S.C. § 3796gg-4.

<sup>10</sup> 28 C.F.R. § 90.14(a).

<sup>11</sup> 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.