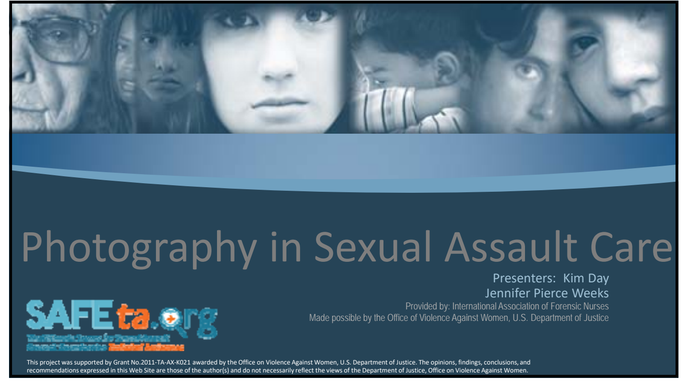

Photography in Sexual Assault Care
Presenters: Kim Day
Jennifer Pierce Weeks
Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
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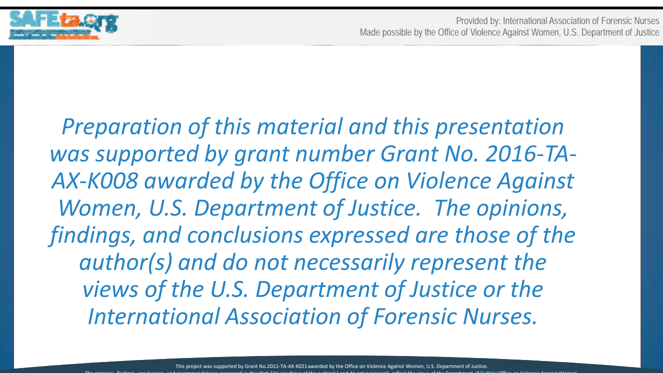

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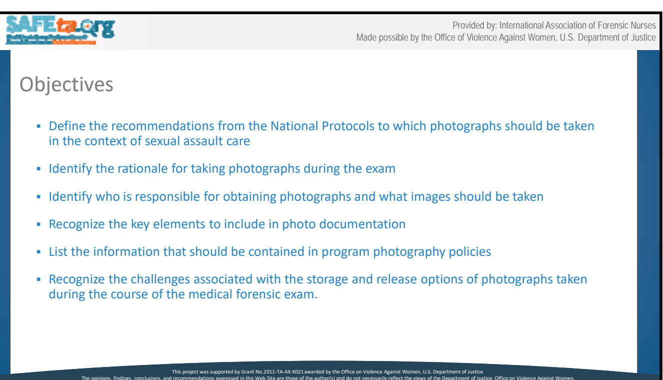

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Objectives
Define the recommendations from the National Protocols to which photographs should be taken in the context of sexual assault care
Identify the rationale for taking photographs during the exam
Identify who is responsible for obtaining photographs and what images should be taken
Recognize the key elements to include in photo documentation
List the information that should be contained in program photography policies
Recognize the challenges associated with the storage and release options of photographs taken during the course of the medical forensic exam.
This project was supported by Grant No.2011-TA-AX-K021 awarded by the Office on Violence Against Women, U.S. Department of Justice.
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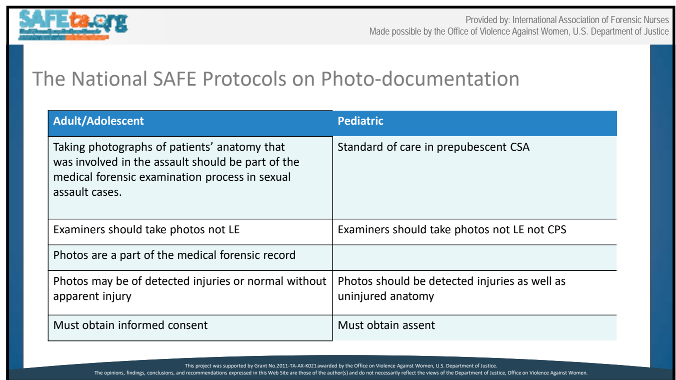
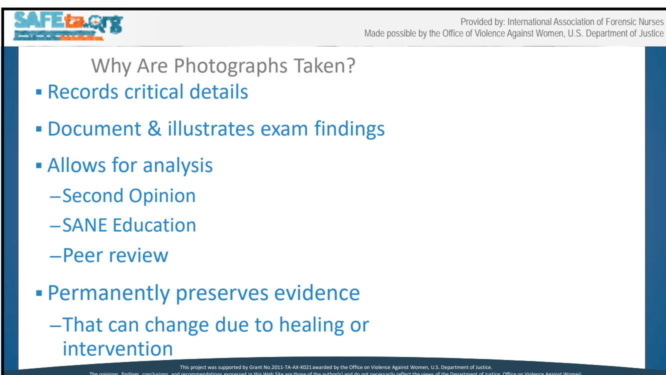
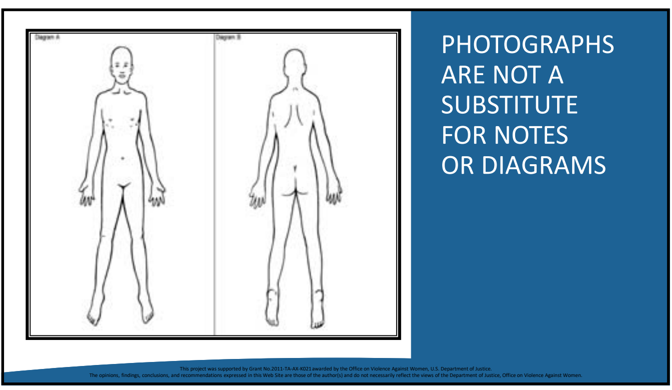
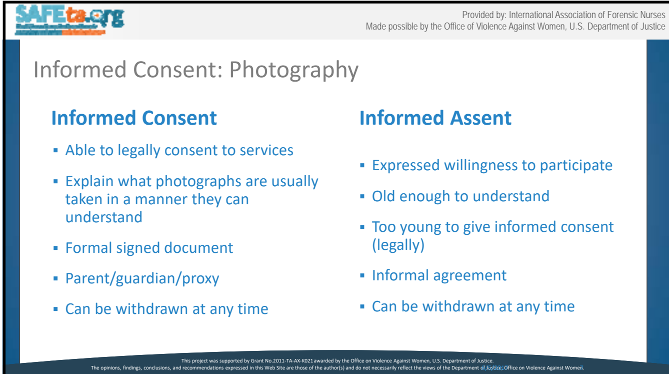
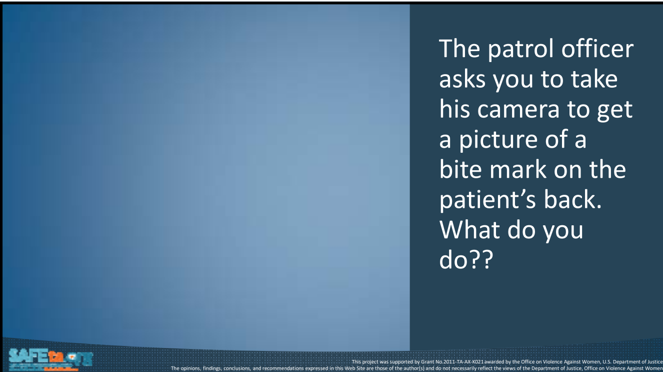


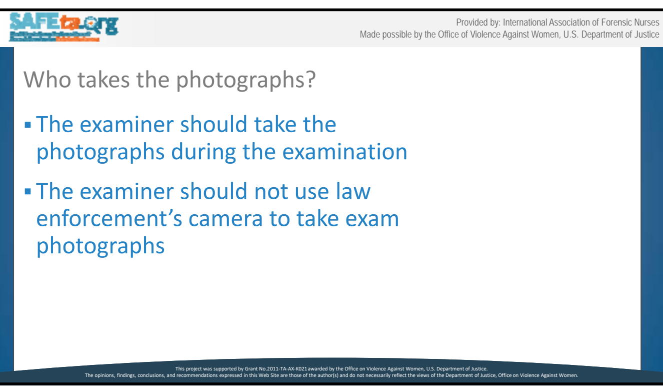
Adult/Adolescent	Pediatric
Taking photographs of patients' anatomy that was involved in the assault should be part of the medical forensic examination process in sexual assault cases.	Standard of care in prepubescent CSA
Examiners should take photos not LE	Examiners should take photos not LE not CPS
Photos are a part of the medical forensic record	
Photos may be of detected injuries or normal without apparent injury	Photos should be detected injuries as well as uninjured anatomy
Must obtain informed consent	Must obtain assent






Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
Informed Consent: Photography
Informed Consent
Able to legally consent to services
Explain what photographs are usually taken in a manner they can understand
Formal signed document
Parent/guardian/proxy
Can be withdrawn at any time
Informed Assent
Expressed willingness to participate
Old enough to understand
Too young to give informed consent (legally)
Informal agreement
Can be withdrawn at any time


The patrol officer asks you to take his camera to get a picture of a bite mark on the patient's back. What do you do??


Provided by: International Association of Forensic Nurses
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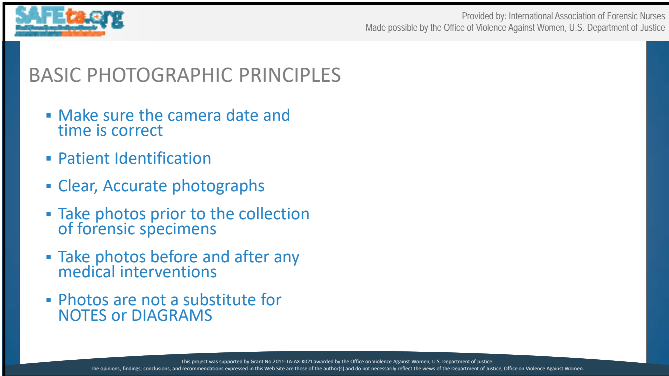
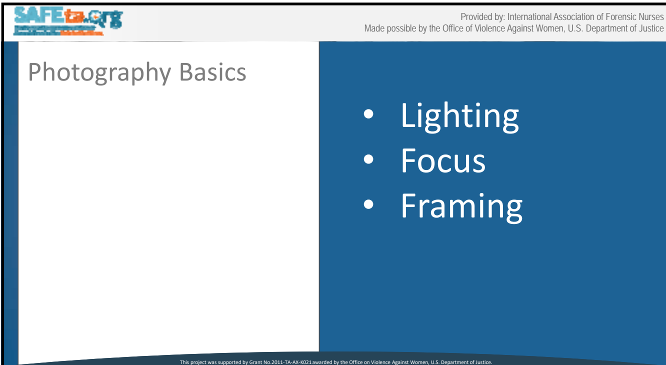
Who takes the photographs?
The examiner should take the photographs during the examination
The examiner should not use law enforcement's camera to take exam photographs





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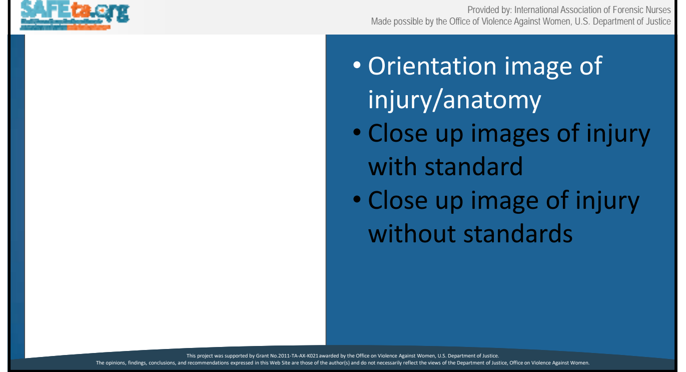
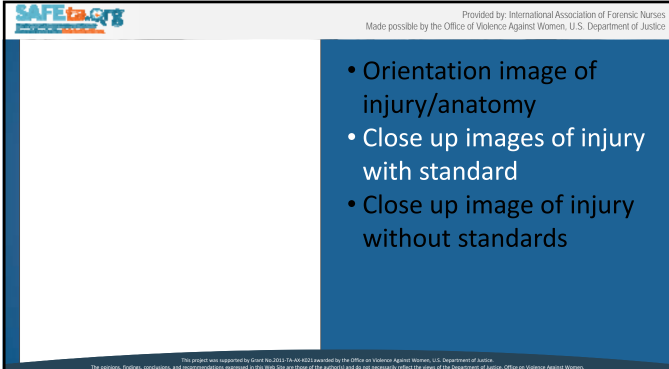
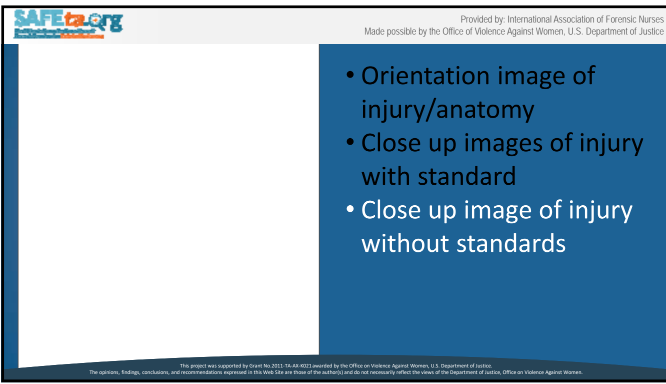
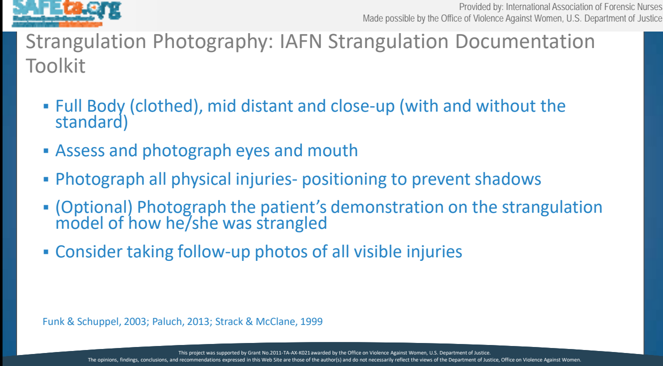
STANDARD SCALE

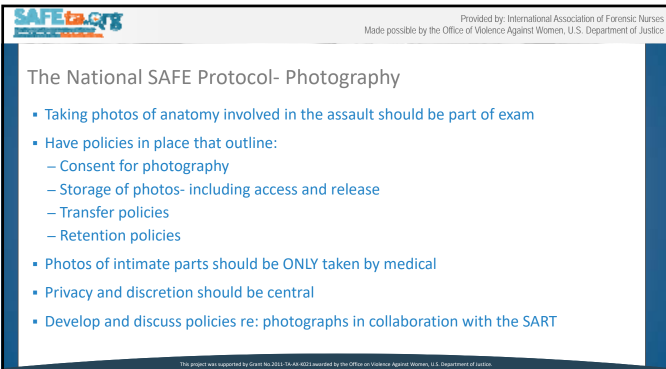
- ABFO #2 Scale
- Place scale on the same surface level with the injury
- Photograph parallel to the film plane
  - Camera at a 90˚ angle to the injury surface
  - Circles on the scale will be circular

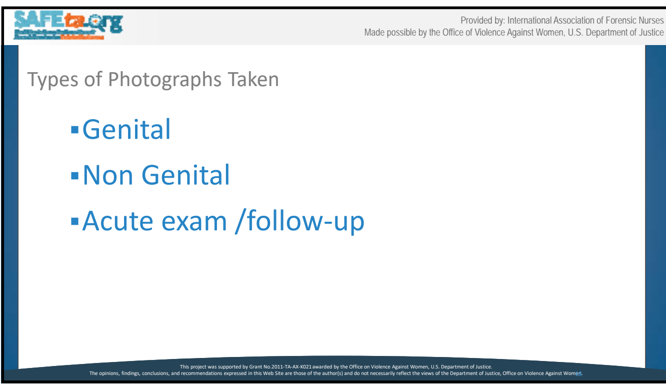

Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
• Orientation image of injury/anatomy
• Close up images of injury with standard
• Close up image of injury without standards


Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
• Orientation image of injury/anatomy
• Close up images of injury with standard
• Close up image of injury without standards


Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
• Orientation image of injury/anatomy
• Close up images of injury with standard
• Close up image of injury without standards


Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
Strangulation Photography: IAFN Strangulation Documentation Toolkit
Full Body (clothed), mid distant and close-up (with and without the standard)
Assess and photograph eyes and mouth
Photograph all physical injuries- positioning to prevent shadows
(Optional) Photograph the patient's demonstration on the strangulation model of how he/she was strangled
Consider taking follow-up photos of all visible injuries
Funk & Schuppel, 2003; Paluch, 2013; Strack & McClane, 1999


Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
The National SAFE Protocol- Photography
Taking photos of anatomy involved in the assault should be part of exam
Have policies in place that outline:
– Consent for photography
– Storage of photos- including access and release
– Transfer policies
– Retention policies
Photos of intimate parts should be ONLY taken by medical
Privacy and discretion should be central
Develop and discuss policies re: photographs in collaboration with the SART


Provided by: International Association of Forensic Nurses
Made possible by the Office of Violence Against Women, U.S. Department of Justice
Types of Photographs Taken
Genital
Non Genital
Acute exam /follow-up

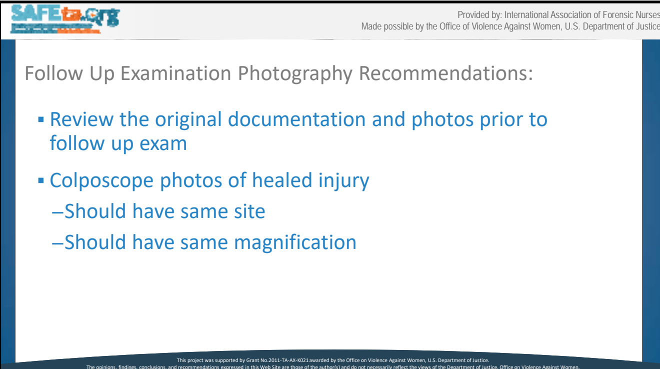
What Photographs should be taken?

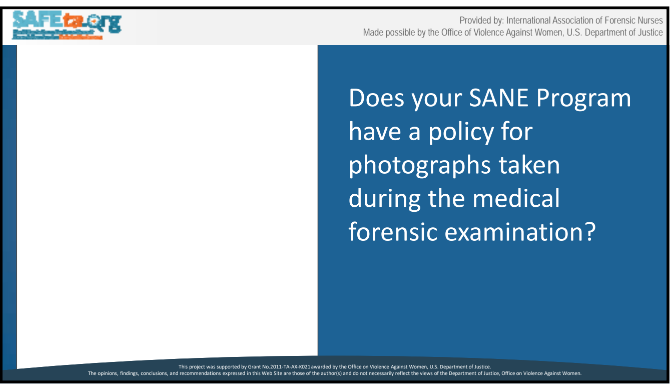
- FEMALE

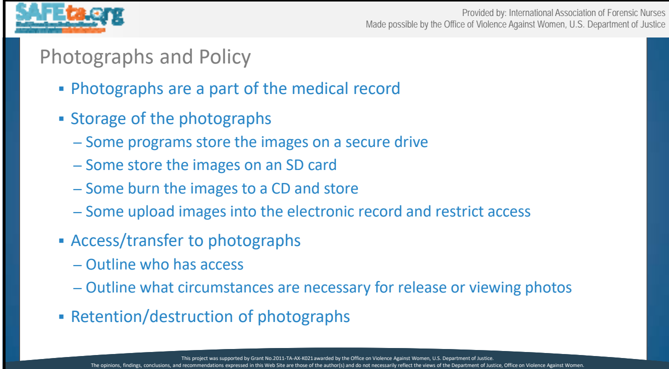
Mons
Bilateral labia majora
Perineum
Anus
Clitoral hood and clitoris
Bilateral labia minora
Posterior fourchette
Fossa Navicularis
Urethra and supporting structures
Hymen
Vaginal opening and walls (adolescent/adult)
Cervix (adolescent/adult)

- MALE

Mons
Perineum
Anus
Anterior penile shaft and glans
Urethra
Posterior penile shaft and glans
Scrotum







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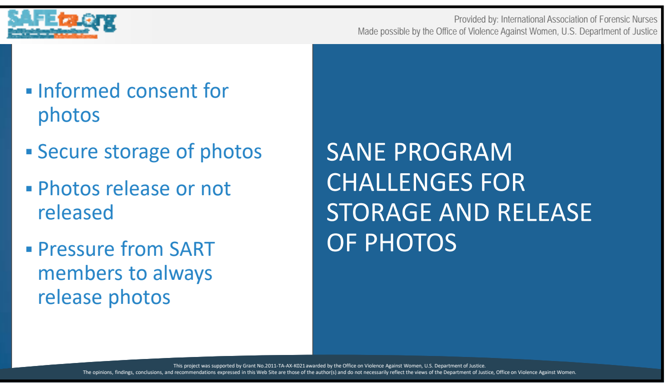
Privacy considerations with photographs and the medical forensic exam

- HIPAA
- HI Tech Act
- State laws protecting victim privacy
- Restricting access to records
- Restricting record release
- Clear education for staff on who/what/when/why the records are able to be released



Testimony Tips

Photographs

- Who took the photographs
- Type of Camera or Colposcope used
- Any special techniques that were used
- Date, time and place where photographs were taken
- What the photo is depicting
- Anatomical location of the photographs in lay terminology
- Consent obtained for photographs

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HOMEWORK

- Identify current program/facility policies and procedures for photographs
- Review jurisdiction's privacy laws
- Review and revise existing policies periodically
- If there are no policies in place- create them
- Educate team members and facility employees on policies

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Reach out for help:

Email

- Diane Daiber dianedaiber@forensicnurses.org
- Kim Day kimday@forensicnurses.org
- Jennifer Pierce Weeks jpw@forensicnurses.org
- SAFEta Helpline: 1866-819-7278

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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.

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[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.

B6. Photo-Documentation

These recommendations are for pediatric examiners related to photo-documentation during the examination.

Be aware that photo-documentation during the medical forensic examination is the standard of care in prepubescent child sexual abuse cases. In every case, examiners should take diagnostic quality still images or videos of detected injuries as well as normal, apparently uninjured anatomy. Note, however, that photographic images are not a substitute for detailed written documentation of exam findings (Adams et al., 2015).

Photo-documentation provides a record of visual forensic evidence findings at the time of the examination, before they are disturbed or collected (Green, 2013). "A good photograph is tantamount to stopping the clock" (Green, 2013). Photographic images are useful for: reassuring the child and caregiver regarding physical findings; avoiding additional examinations to confirm findings; allowing for later reviews for diagnostic, testimony preparation, quality assurance, or continuing education purposes; and creating a baseline for comparison to findings from follow-up visits or if other suspicions arise (Botash, 2009; Ricci, 2011).

Recognize that pediatric examiners—not law enforcement or child protective service investigators—should take these photographs during the examination, for several reasons: (1) Photographs taken during the medical forensic examination become part of the child's medical record. (2) Photographs taken during the examination are highly personal in nature. As with adult and adolescent patients,[176] if photographs of the child are taken by nonmedical personnel, images taken should include only the child's head and extremities and not the torso or anogenital region. Examiners are encouraged to seek training on photography techniques and procedures to use with child victims of sexual abuse.

Explain medical photography procedures to children and caregivers. The explanation should be developmentally appropriate for children, and linguistically appropriate for children and caregivers. Taking photographic images of children in the aftermath of sexual abuse can be traumatizing, especially if photography was a component of the abuse. In these cases, children might not be able to discern the difference between photography used in the sexual abuse and forensic photography. To help avoid traumatization and facilitate decision making, examiners should explain to children and caregivers: the purpose of the photography during medical forensic care; the extent to which photographs will be taken and the procedures that will be used; how photographs will be securely stored at the health care facility and to whom they can be released; potential uses of photographs during investigation and prosecution (especially anogenital images); and the possible need to obtain additional photographs following the examination. Explaining the process and welcoming questions helps to reduce reluctance to photo-documentation during the examination. In addition to being comfortable explaining this information to children and caregivers, examiners also should also be comfortable discussing sexual abuse that included still- and video-imaging, if that issue arises during the medical history or in the course of the examination.

[176] See OVW (2013).

Respect patient choices about photography. Consent to take photographs during the examination should be sought, as a component of the informed consent process. (See *B1. Consent for Care*) ***If children do not assent to all or any part of photography, their choices must be honored***. Note that if children or parents/guardians are hesitant or decline photography, it may be due to cultural beliefs and practices—anogenital imaging, in particular, may be highly embarrassing and unacceptable. For example, certain religious communities have strong mandates about exposure or imaging of the body in public or in a non-private arena. Children may also be reluctant to be photographed during the examination if photography comprised a component of the abuse. It can be useful in these instances to explore with the child and caregiver whether procedure modifications may make photography acceptable, while respecting their cultural practices and mandates. If modifications are not acceptable, the written record may have to suffice as exam documentation. Regardless whether photography is used, examiners should document examination findings on body mapping forms and diagrams.

Maintain the child's privacy. Strive to minimize the child's discomfort while being photographed. **Drape children appropriately while taking photographs**. Children differ in what will help them be more comfortable while being photographed: For those for whom it is developmentally appropriate, examiners can offer the opportunity to explore the photo-documentation equipment prior to its use, view images taken, and even to watch the examination if video-colposcopy is utilized (Ricci, 2011). It may be helpful for a caregiver and/or other supportive person to provide comfort for the child. (See *B7. Examination*)

Consider the photographic equipment. Examiners should be familiar with photographic equipment operation and be prepared to use it during the examination (e.g., camera supplies and instructions should be available and the equipment should be clean and in working order). If questions exist regarding what type of equipment to use, it may be helpful to consult with a professional photographer, outlining the type of photographs that will be taken. Alternatively, consult with other local examiner programs as they often have knowledge about photographic equipment used in these cases and the effectiveness in capturing images during the examination. Generally, any good-quality photographic equipment may be used as long as it can be focused for undistorted, close-up photographs and provide an accurate color rendition (California Office of Emergency Services, 2001).

Forensic photograph equipment can include many types of digital cameras or other still or video image capturing devices with magnification capabilities. Technological advances offer continuously new options for digital imaging. Advantages of digital imaging equipment is cost effectiveness, applicability for other patient care issues, and the quality of the image that can be obtained with a basic digital camera (Green, 2013). Digital single lens reflex (SLR) products offer setting options, such as image sensors and manual and automatic exposure settings, and should have at least 12 pixels for forensic evidentiary purposes (Staggs, 2014).

Take initial and follow-up photographs as appropriate in a case, according to facility policy. See below for basic photography principles. In addition to initial photographs taken in the course of the medical forensic examination, photography may be repeated as evolving injury or healing on patients' bodies occurs following the examination (e.g.,

bruising may appear days later). Create procedures that examiners, investigators, multidisciplinary response teams, and caregivers can follow to ensure that post-exam changes are documented. In addition to documenting evolving injury or healing, follow-up photographs can clarify findings of stable, normal variants in anatomy and nonspecific findings, like redness or swelling, that could be potentially be confused with acute injuries.

Basic Photographic Principles[177]

- ***Patient identification***. Link patients' identifying information to each photographic image, according to jurisdictional and facility policy. For example, include patient name, date, and time as the first image. Follow jurisdictional policy for whether to include an image of the child's face with this identifying information.[178] For identification purposes, this information should book end the digital images taken during the examination of this patient (at beginning and end of images). Digital imaging can automatically embed the date/time, camera settings, and a variety of other technical data in each image. This data can be accessed when images are downloaded onto the computer. A digital image log that records each image's file number, with a description of the image, may be included as part of the patient care record.
- ***Clear and accurate photographs***. Images taken that do not provide a clear and accurate depiction should be deleted. Note that this practice reflects a medical standard, as appropriate for pediatric examiners, rather than an investigative standard.
  - The examiner should strive to control every element in the photographic image to produce a clear, accurate representation of the injury or anatomy.
  - Assure adequate lighting, exposure, and that the image is in sharp focus.
- ***Standard***. Use a standard or ruler for size reference in photographs, in addition to those photographs that identify patients and anatomical locations being photographed.
- ***Take photographs of the child prior to the collection of forensic specimens and medical interventions***, such as cleaning or suturing, when possible. Do not alter or move forensic evidence before or during photographing.
- ***Orientation of shots***. Take at least three shots at different distances from the body:
  - In some jurisdictions, a full body photograph is taken as an identification photo. It may also be appropriate to show scope of injury or state of clothing. When taking full body photographs, ensure as much modesty and privacy for the patient as possible, through draping and other techniques. Photographs taken solely for the purpose of identification should be done with patients fully clothed or in a gown.
  - Take an ***overview image*** of the injury's location, including anatomic landmarks for orientation of the injury.
  - Take ***medium-range*** photographs of each injury, providing a wide enough view to identify the specific anatomical site being photographed (e.g., a photograph of a left forearm laceration at medium range would contain the left hand and left elbow of the patient, as well as the injury itself).
  - Take ***close-up images of injuries***, with and without the standard. The goal of the close-up images should be to capture subtleties in texture and color and any pattern injuries that may be observed.
- ***Photographing skin***. Close-up photographs of hands and fingernails may show traces of blood, skin, or hair. Look for damage to nails or missing nails. Photograph marks of restraint or bondage around wrists,

[177] These principles were adapted in part from Green (2013) and OVW (2013).
[178] Note the child's face should never appear in photographic images where genitalia is exposed. However, facility policy may call for a separate photograph of the child's face for identification. This image may be useful in cases where it is a long time before the child goes to court. The image of the child's face can help to show the child as she/he was when the abuse occurred.

Basic Photographic Principles[177]
ankles, or neck; they may be compared later with an 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 facility and jurisdictional policy. (See *B8. Evidence Collection*. Also see Riviello (2013))

Establish health care facility policies for storage, retention, and controlled release of photo-documentation in these cases. Secure storage and restricted access to photo-documentation is critical in general, but particularly important in small communities where exam facility employees may be acquaintances, friends, and family members of patients and/or suspects. The facility legal and risk management departments are sources for consultation regarding photo-documentation annotation, handling, storage, retention, and release practices.

- ***Photographic images taken during the medical forensic examination should be considered part of the patient's medical record maintained by the health care facility***. As mentioned earlier, examiners should not include photographic images in the evidentiary kit sent to the crime lab.
- ***Facility policy should clarify how photo-documentation in these cases will be securely stored***. Examiners should coordinate with facility information technology security, compliance, and legal departments to ensure compliance with privacy laws, rules, and regulations for storage of electronic records and images.
- ***Health care facility policy should allow release of photo-documentation only in certain situations to certain entities, as legally allowable, in order to prevent misinterpretation and misuse***.[179] Such policies should include mechanisms that allow examiners and/or medical records departments, in concert with facility legal counsel or risk management, to evaluate in each case whether release of the requested images is legally allowable and/or could be potentially harmful to the patient (Botash, 2009). Other health care providers treating the child typically do not need access to photographic images taken during the examination. Photographic images should not automatically be turned over to investigating agencies or the multidisciplinary response team. Instead, investigators or the investigating team should be guided by body maps and diagrams used in documentation in deciding which photographs to request. When photographs are released, the release should be done in a manner that limits the chance of misinterpretation by nonmedical professionals. One approach is that, prior to release, an examiner could review images with recipients so they understand what is significant about the findings.
- ***Facility retention policies for photo-documentation and other medical records must take into account the need for access to these records in criminal and civil proceedings***. These records must be retained indefinitely to accommodate cases of delayed reporting, delayed processing of evidentiary kits, CODIS hits, cold

[179] One concern is that routine release of photographic images in these cases, often of children's genitalia, to agencies that do not have strict methods in place for protection of these images can result in their release to people outside the investigative team, such as members of the press. Note that prosecution discovery obligations may require granting access to exam photographic images by defense/defense experts.

case investigations, conditions that extend the statute of limitations, and the appeals process. With this in mind, ***facility policies for medical forensic record retention should be based on justice standards rather than traditional medical record keeping, storage, retention, and destruction policies***.[180] Medical records in these cases should not be destroyed. (See *B4. Written Documentation*)

Contact staff at Kidsta.org to discuss specific issues related to establishing health care facility policies for storage, retention, and controlled release of photo-documentation in these cases.

It is helpful if exam facilities have policies and procedures related to digital imaging, including the following: procedures as part of medical forensic examination, image security and authorization for access, image enhancement details, duplication and release, storage, and a secure image back-up system. Digital images included in the medical record should be preserved in the original file format. If an image is to be enhanced, a new file should be created (original remains unchanged) and details of the enhancement recorded. The facility should make available, to those with legitimate access, image copies in an encrypted format.[181]

[180] This paragraph was adapted in part from AHIMA (2011).
[181] This information on the admissibility of digital imaging was adapted from Green (2013).