



## Chapter 8

### Health Advocacy for Sexual Assault Survivors

*In this chapter, you will find information on...*

- *The Advocate's Role in a Health Care Setting*
- *Collection of Evidence*
- *Follow-up Health Care*

Some programs may elect to have their health care advocacy provided by someone other than the legal advocate. Many programs, however, include health care advocacy within the scope of the legal or general advocates' responsibilities. Therefore, some advocates may accompany survivors to a sexual assault examiner (could also be called SAFE, SAE, SART) program or the emergency department of the local hospital. Before doing medical advocacy, the advocate should be familiar with the scope of the forensic exam, hospital policies, Department of Health (DOH) Protocol on the Acute Care of the Adult Patient Reporting Sexual Assault, Child and Adolescent Sexual Offense DOH, Minors Rights, and the procedures involved in evidence collection and handling of that evidence. It is important to relay this information to the survivor so she can make knowledgeable choices about the immediate and follow up care that can be provided to her. A supportive person at the hospital will help the survivor begin to regain a sense of control and empowerment. The initial response a victim receives when seeking services or reporting a crime has a profound influence on her or his recovery. If the survivor chooses to report the crime to the police, the advocate may want to remain

available to the healthcare facility and law enforcement.

## **The Role of the Advocate in a Health Care Setting**

Often, victims are in a crisis state immediately following a sexual assault. There are three primary coping styles people in crisis may display. All three styles are common for people who have just experienced a traumatic event:

1. **Expressive:** This person will be feeling and expressing intense emotions. She may be crying or laughing uncontrollably, trembling, wringing her hands and rocking back and forth, or storming angrily around the room shouting or cursing.
2. **Controlled:** This person has tight control over her emotions, and may have a calm, controlling, matter-of-fact attitude. Adolescents often adopt an “It’s no big deal” attitude, which is their way of coping with the crisis.
3. **Combination of Expressive and Controlled:** This person may appear dazed or stunned, may be experiencing mental confusion, and may have difficulty answering questions and understanding what is happening to her.

The advocate may see a combination of reactions from the survivor, such as periods of calm interrupted by crying or by outbursts of anger. Regardless of the coping style used or how a survivor acts, she is likely to be experiencing the “cognitive breakdown” typical of people in crisis. This syndrome is characterized by an inability to plan, make decisions or absorb information. Increased dependency and helplessness are also common signs of a cognitive breakdown, along with an increased susceptibility to the suggestions and attitudes of others. This is important to understand, especially when considering how you will interact with the survivor in the emergency department. Your role is to offer calm, knowledgeable support, not to make decisions for her.

With this in mind, the survivor who is in crisis may need any or all of the following while in the emergency department:

- feeling of safety
- supportive companionship
- privacy without isolation
- non-judgmental attitude from those around her
- restoration of control and decision making
- attention to physical and medical concerns
- accurate information

### **The Decision to Have a Medical/Forensic Exam**

The decision to undergo a medical examination rests firmly with the victim. The advocate, however, should stress how important a medical examination may be to the sexual assault victim's health and well-being. She can choose to go to a SAE Program, a hospital emergency department or to her own provider. In any case, an exam should be completed as soon after the assault as possible.

If a survivor of sexual assault has not received medical attention or is reluctant to go to the hospital when you, the advocate, have met or spoken with her, you should discuss with her the benefits of getting medical attention and address any concerns she may have. Seeking medical attention is a decision separate from the decision to report the crime. The survivor's health and well-being should be the primary objectives of the healthcare examination and should supersede concerns about the criminal investigation.

If the assault occurred within the past 96 hours, the survivor should go to a SAE or to the emergency department for the forensic exam, which includes a health assessment, a pelvic exam and evidence collection. If needed, medications or other treatment can be provided at this time, including: emergency contraception, sexually transmitted infections (STI) prophylaxis, HIV PEP, Hepatitis B initial immunization as well as injury

care. This is essential for her health and will be useful if the survivor is considering reporting to the police. Beyond 96 hours after the assault, depending on the circumstances of the assault and personal hygiene of the survivor, it is less likely that physical evidence will be present. However, it is impossible to give an actual cut off time when evidence should not be sought or collected. Injuries such as bite marks, or bruises, etc. may be visible well after the 96 hours mentioned in the Department of Health Protocol.

If the victim does not want to report the crime, or if it is more than 96 hours after the assault, it is still important that she receive medical attention. She can still contact a SAE program or emergency department or choose to go to her primary physician or family planning clinic as long as she realizes the time period for most prophylactic treatment has expired.

### **Benefits of a Forensic Exam**

1. The victim can be treated for any physical injuries. Some internal injuries may not be detected without a medical examination. Without treatment, these internal injuries could endanger the survivor's life.
2. The survivor can receive important information regarding sexually transmitted infections including HIV and hepatitis. The symptoms and prophylactic treatment choices for HIV, hepatitis, syphilis, gonorrhea, Trichomonas, herpes, and other STIs can be discussed with the survivor. The survivor will be instructed to avoid having sex or to use condoms until she is certain an STI has not been contracted. Untreated, STIs can cause permanent sterility.
3. If the nature of the sexual assault results in a health care professional's recommendation of HIV post exposure prophylaxis to counteract possible HIV exposure, the survivor can choose to initiate treatment immediately. Beginning

treatment within one hour after the sexual assault is the most effective; after 36 hours, treatment would in most cases not be effective.

It is the recommendation of the New York State Department of Health AIDS Institute that when treatment is initiated a follow up visit be scheduled within 24 hours to review the decision, reinforce the need for adherence to the regime, and arrange for follow up care. If the survivor is too distraught to engage in a discussion about the drug regime or make a decision about whether to initiate treatment within 36 hours of the assault, the provider should make arrangements for the patient to have a follow up appointment within the next 24 hours to reopen the discussion about initiation of treatment.

4. An examination allows health care staff to help the female survivor determine her risk of becoming pregnant and decide the action she wishes to take. If the female survivor of reproductive age was not already pregnant at the time of the assault, was not using birth control, or was in the fertile part of her period she should be informed about and offered emergency contraception. As of November 1, 2003, every hospital in New York State is required to give information regarding emergency contraception and have it available to dispense on site if requested by the patient.

Emergency contraception, sometimes referred to as the “morning after” pill, significantly decreases the chance of pregnancy if taken immediately after assault, and an IUD can prevent pregnancy if inserted up to one week following the assault. Recent studies have shown emergency contraception to be up to 50% effective as long as 120 days after unintended intercourse but are most effective if taken within 12 hours.

5. Even if the victim does not wish to report the crime to law enforcement at this time, a forensic examination will offer the opportunity to collect and store evidence in case the victim decides to report later. Hospitals are required to

retain evidence from the exam for **at least** 30 days (See Appendix M, Public Health Law 2805.1). The victim must sign a release form before evidence can be turned over to police. The survivor will be contacted after 30 days to see if they would like the evidence released, continued to be held (space allowing) or disposed of. (*See Appendix M for Public Health Law 2805-i. Treatment of sexual offense victims and maintenance of evidence in a sexual offense.*)

### **Concerns About the Medical/Forensic Examination**

One concern a survivor might have about a medical examination and evidence collection is that the process might be long and/or painful. Due to the nature of the exam, she may feel as though she is re-experiencing some of the trauma. These are valid concerns and underscore the need for examiners to be sensitive to the experience of sexual assault survivors. As an advocate, you can be present during the exam to offer support if requested by the survivor. Remember to position yourself at the head of the exam table so as to not interfere with the health care professional.

It is your role to act as the survivor's advocate in the health care setting. If the survivor is not being treated with respect and sensitivity, she has a right to say so, request to be cared for by someone else or file a complaint regarding the practitioner or hospital (*See Appendix U, Reporting Physician Misconduct, Hospital Non-Compliance, and Health Professional Misconduct*). Remember, a survivor has the right to make all decisions with respect to the healthcare treatment she receives. Whichever choice she makes should be respected.

## Overview of Care in the ER or SAE program

1. The survivor has the right to have a support person with her. In some cases, the survivor may have been accompanied by a family member, friend, or partner. The advocate should attempt to ascertain whether or not the survivor wants the person who accompanied her to remain with her during the interview and the examination. In some cases of incest or partner assault, the accompanying person could be the perpetrator. It is often recommended the friend remain in the waiting room, due to patient safety, limited space, the questions being posed, the intimate nature of the exam, evidence collection, and confidentiality concerns.
2. Intake forms will need to be completed prior to the examination. If needed or requested, the advocate may assist in the communication with staff, and request a private waiting area if not provided.
3. The inquiry into the survivor's medical history may include inquiries about a female's menstrual cycle and method of birth control. The survivor may also be asked about consensual sexual intercourse she may have had within the past 72 hours to determine the possibility of semen or pubic hairs being present from someone other than the perpetrator. These questions may be uncomfortable for some women. The advocate should make sure that the questions are asked in a sensitive and appropriate manner, such as "Do you use birth control?" rather than "What kind of birth control do you use?" Also, it should not be assumed that lesbians do not sometimes have heterosexual sex or that a heterosexual woman does not also sometimes have sex with women.
4. As noted above, there are many reasons that a survivor may be fearful of a medical exam. The advocate should gently ask the survivor about her fears or reluctance and provide as much information as possible to reassure the survivor that her feelings are important and that the health care professional will work towards the most effective treatment for her. It is critical that the survivor be

thoroughly examined for injuries. It is important not to rely solely on the survivor's answers to questions on whether or not she sustained any injuries or whether or not she feels pain anywhere. Many sexual assault survivors may not be aware of cuts, bruises, bite marks or other injuries. In addition, some internal injuries are only detectable upon a trained visual or colposcopic examination. If the survivor wants to be examined but is not given a complete physical assessment, the advocate should remind the health care provider of the need to conduct a comprehensive examination.

5. Questions by medical personnel regarding the details of the assault should be brief and direct. The personnel should only ask questions that are necessary for medical purposes, such as, "Did oral, anal or vaginal penetration occur?" "Did the perpetrator ejaculate?" "Where any objects used?" or "At what time did the incident occur?"
6. The examining health care professional should determine if the victim has ever had a pelvic exam. If she has not, someone should take the time to explain the pelvic exam procedure to her. In all cases, the examination and evidence collection procedure should be explained in detail. Whenever possible, the health care practitioner who is performing the examination should refrain from asking about the details of the assault during the exam. If this kind of questioning occurs, the advocate could remind the health care professional of the need to ask open ended questions in case a criminal case occurs or to gauge the most appropriate prophylactic and follow up treatment to recommend. However, this should not be done in the presence of the survivor.

A sexual assault survivor may experience the pelvic exam as another assault. She will be examined while lying on her back on a table, with her legs spread apart and her feet in stirrups. Some survivors are quite uncomfortable throughout the exam. The advocate should understand that this pelvic procedure may be very stressful and the survivor will need support. If the victim chooses to have

you remain in the room with her during this part of the exam, you should stand at the head of the table, near her head, and not at the foot of the table with the health care professional. You will be in a position to give comfort by holding her hand, touching her head, or just looking at her face. Remember the body is the scene of a crime: you must not introduce additional elements such as your hair or clothing fibers prior to full evidence collection, and you should never touch a victim without permission.

Survivors of sexual assault vary widely in what they want and need. You may be asked by a victim to distract her during the exam by talking to her the entire time. You may ask the victim if she wants you to stand beside the table, facing her, and lay a hand on or beside the table. She can then take a hand if she wants it.

7. If the health care examiner has determined that there is a possibility that the survivor may be pregnant, emergency contraception should be discussed with her. Emergency contraceptive pills are either a higher than usual dose of birth control pills or a specially formulated product that is taken as soon as possible after unprotected intercourse. Emergency contraception pills (EC) may be started up to 72 hours after unprotected intercourse according to the DOH Protocol. However recent studies have shown EC to be up to 50% effective if taken as long as 120 hours after an assault. Another option for emergency contraception pill is insertion of an IUD, which is effective up to seven days after unprotected intercourse. Emergency contraception prevents the possibility of implantation of an egg in the uterus; it does not abort an established pregnancy. The advantages as well as any possible side-effects of emergency contraception should be explained to her. If the health care professional does not discuss these options with the survivor, it should be brought to both parties attention since a 2003 law requires hospitals to provide information and have the medication available on site if the patient requests it (*See Appendix U for professional misconduct and hospital lack of compliance forms*)

If the survivor does not choose to go to the emergency department and wants to know how to obtain emergency contraception, she can call 1-888-NOT-2-LATE, for names of providers in your area. *\*In December, 2003, a recommendation was made to the FDA to allow Emergency Contraception to be available as over-the-counter medication; the recommendation may have taken effect after this manual was printed.*

Prophylactic treatment for the prevention of sexually transmitted infections should also be offered to every victim of sexual assault. Baseline testing is not currently part of the DOH Protocol but individual hospitals may offer it as part of the forensic exam. It will determine whether there was infection at the time of the assault, but not as a result of the assault. Antibiotics can be prescribed for the survivor to prevent Syphilis, Gonorrhea, Chlamydia, and Trichomoniasis. The survivor can decline prophylaxis treatment if she so chooses. She should be informed that it is important for her to be re-tested approximately two weeks after the assault. The advocate should be sure the survivor is provided with the information on local HIV test sites. The fear of being exposed to HIV is of great concern to many sexual assault survivors.

8. For centuries, offenders have used alcohol to sedate their victims. In addition a wide variety of substances may be used to commit sexual assault. Some substances are over the counter medications, e.g. Benadryl. Most perpetrators mask or dilute drugs used to facilitate sexual assault in the victim's drink. There has been considerable media attention given to Rohypnol (flunitrazepam) and other benzodiazepines, as well as Gamma Hydroxybutyrate (GHB). GHB is a central nervous system depressant being used to commit sexual assaults. Ketamine is another substance identified as used to facilitate sexual assaults and is used in veterinary medicine. Rohypnol is used as a sleeping medication that is only prescribed outside the United States. Rohypnol is sometimes referred to as Roofies, Roches, Ropes or Rib, is commonly used most often in combination with beer or marijuana in order to enhance those substances' effects. An individual on Rohypnol or one of the other benzodiazepines will exhibit the same symptoms as

someone under the influence of alcohol or sleeping pills. Specific symptoms can include slurred speech, impaired judgment, and difficulty walking. Other symptoms reported include feeling easily irritated and exhibiting angry outbursts with little provocation. Personality and behavior changes also occur where otherwise peaceful individuals under the influence of such drugs would participate in activities such as stealing or fighting. If you or the health care provider suspects that a survivor has been drugged, you may suggest for the provider to use the DFSA kit (drug facilitated sexual assault kit) to collect evidence regarding drug facilitated sexual assault. The survivor needs to give her full consent before the kit can be used. Signs that a survivor may have been drugged:

- remembers taking a drink and then fails to remember what happened for a period of time
- feels someone may have had sex with her, but can not recall any or all of the incident
- feeling more intoxicated than usual after consuming the same amount of alcohol
- waking up in a location she does not remember going to or how she got there
- if her clothes are on inside out, disheveled, or items of her clothing are missing

Note: A survivor must be made aware that in addition to testing for substances not taken voluntarily, the test results will also show the presence of prescription and or recreational drugs that were taken voluntarily.

9. Often, emergency department staff does not understand that they are **not** required to call the police when a sexual assault survivor presents at the hospital for care. If the police are called without the survivor's request it is a violation of their patient rights and could result in legal action against the facility. The advocate can help by reminding hospital staff of Public Health Law 2805.i and ask emergency department staff to contact the facility legal counsel for advice. The

patient is under no obligation to speak with law enforcement if contacted without their consent. The advocate can act as a liaison between the survivor and hospital staff or law enforcement personnel, if the survivor wishes. It is not unusual for rape victims not to want to report the assault to the police especially in the period immediately after the assault. The advocate may want to discuss with health care and law enforcement the many reasons why sexual assault victims are reluctant to report, including guilt, shame, fear of blame, fear of assailant, etc. Evidence will be retained by the hospital for **at least** 30 days in case the survivor decides to report later. Upon her consent, the records from the health care professional's assessment and findings, photographs and the evidence collection kit will be released to law enforcement.

## **Collection of Evidence**

The health care provider, whether a physician or a SAE, is the individual who will complete the evidence collection. The advocate's role in the collection of medical evidence will be to ensure that the survivor understands and gives her consent for all the procedures and the advocate should provide calm, knowledgeable support to the survivor. It is important in maintaining a chain of evidence in a potential legal case that at no time should the evidence collection kit be left alone with the advocate and/or survivor. It is the health care provider's responsibility to preserve the integrity of the evidence collection procedure.

### **1. Advocates should know where kits are stored**

Evidence collection kits should be stored in ample supply in a central location at the hospital facility, and should not be utilized unless the seal is intact. Ideally the extra kits are kept in the gynecological or designated exam room and are replenished on a regular basis.

### **2. Medical examination policy**

Once the survivor has been admitted, hospitals are required to offer to collect and store sexual offense evidence as well as do a full health assessment and treat

injuries. If the survivor does not wish to go through the evidence collection process, she must sign a statement to that effect. Be sure to inform the survivor that the collection of evidence would be important in the event that she later decides to report the crime to the police.

### **3. The process of evidence collection**

The health care provider should explain each procedure, helping to keep the survivor engaged. To minimize trauma to the survivor, blood samples should be taken for medical purposes such as VDRL, hepatitis B and pregnancy testing early in the procedure. Drawn blood is not longer required for evidence collection though.

The first step involves oral swabs/smears. Next, the survivor's clothing should be examined carefully for physical evidence, blood, semen, or other bodily fluids as well as evidence of struggle, such as tears, or debris.

### **4. Collection of clothing and trace evidence**

Clothing should be collected with the survivor's consent. If the survivor is wearing the clothing that was worn during the assault, all items of clothing may contain evidence. If the survivor has items such as sheets with her, the items may also be taken as evidence. The survivor will be asked to stand on a piece of examining table paper before the collection of the clothing, so that any debris from her clothing while changing may be preserved as trace evidence. Each item collected should be placed, sealed, labeled and initialed in separate paper bags by the health care provider. Even if the survivor is not wearing the same clothing at the time of the assault, some items of her current clothing may still contain evidence. A request may be made by the prosecutor or law enforcement to collect these items as evidence using the same procedure as listed above.

The survivor has the right to refuse clothing collection without refusing other evidence collection procedures. If the survivor has clothes collected, the hospital

or rape crisis program should have replacement clothing available for her.

## **5. General Physical Examination**

The health care provider will conduct a physical assessment to ascertain bruises, redness, lacerations, bite marks, and ligature rope marks. During the examination, each procedure should be explained to the survivor, helping to keep her focused on the process of collecting evidence. The survivor will be visually checked for injuries. Commonly injured sites are the scalp, neck, back, breasts, thighs, arms, and wrists. The examiner must document findings in the survivor's chart, noting locations of injuries and tenderness.

## **6. Photographs**

Photographs should be taken only in instances where the pictures would produce clear evidence of injury. Make sure each photo is identified with the patient's information. At least one photo should be of her face to verify identity and a reference measuring scale should be used to indicate measurements of injuries. Photographs can be subpoenaed into evidence. The photos should be placed in separate envelopes by the health care provider, labeled to identify the contents and initialed by all who handle them. Notation of the fact that photos were taken and what equipment was used to take the photos e.g. digital, 35mm, Polaroid, 1 to 1, video, and whether or not the photos were obtained using the colposcope should be made on both the kit and in the patient's medical chart.

## **7. Equipment/supplies included as part of a forensic exam:**

- Wood's Lamp - This allows the forensic examiner to identify areas where there are dried secretions (e.g., saliva, semen) which fluoresce under black light.
- Toluidine blue dye - A dye used to assist sexual assault examiners with identification and photo documentation of injuries. The technique of applying this dye is simple. It is applied to the posterior fourchette or rectal area with a cotton-tipped applicator and let dry. After some minutes, the dye is removed with lubricating gel and a 4x4 gauge. The scratch or abrasion becomes more visible

and more identifiable as an injury. The forensic examiner can then photograph the area. The dye is not systematically absorbed and is thus completely safe. It can be used on pregnant females for the same reason.

- Colposcope - A special microscope may be used to visualize the hymen, the cervix, and the vaginal walls. It can have a binocular or monocular magnification system that is fixed or adjustable with capability to document through video or still photography. The colposcopic images can be digitally preserved for injury documentation and later reproduction for introducing the injuries into evidence.

## **8. Specimen Collection**

Oral, anal and vaginal swabs are part of the specimen collection process. In addition, the health care provider will collect specimens of dried blood and semen found on her body. Each specimen should be allowed to air dry (many hospitals now have a dry swab box to more rapidly dry the sample), then placed inside the appropriate individual cardboard holder, placed in the appropriate envelope, and labeled.

Saliva, skin, hairs, soil and fibers from the offender may collect under the nails of the victim. The health care provider should collect this debris separately from each hand, package, and seal it in the appropriate left or right hand envelope.

## **9. Collection of head and pubic hair.**

Pulled hair samples may be requested as standards during the exam or requested at a later date. The step of pubic hair combing is not often completed. However, if the health professional observes a variety of hairs or other material in the patient's pubic hair, they may suggest for the area to be combed. The survivor may be asked if she wants to do the combing herself.

## **10. Pelvic Exam**

This is often the most stressful part of the process of evidence collection for the survivor. It is important for the health care provider to reassure and talk to the survivor since the area may be tender due to the recent assault and flashbacks are common.

Reassurance comes in the form of explaining each procedure as it is being performed. The specimens collected enable testing for the assailant's DNA, the presence of semen and provides physical corroboration of her statement.

The recommended speculum is a Pedersen speculum used for adult women. An adult sized speculum should never be used when examining a prepubescent or young adolescent female patient.

Remember that the survivor can refuse any of the individual steps of the evidence collection process. This does not relinquish her right to have other evidence collected.

## **11. Buccal Specimen**

DNA is now obtained by swabbing the inside of the patient's cheek to collect cells.

## **12. Consent**

Evidence cannot be released from a hospital without the written authorization and consent of the informed adult patient. It is the hospital's responsibility to obtain that consent. It is the survivor's decision whether or not the law enforcement agency should be contacted.

However, there are two instances in which the law mandates a report to police regardless of the patient's wishes:

- Suspected child abuse or neglect
- Bullet wounds, gunshot wounds, burn injuries, etc. (See Appendix Q, Penal Law 265).

## Follow-up Health Care

Whether the survivor chooses to report to the police or to have medical evidence collected, the advocate should explain the benefits of obtaining health care immediately after and during the months following the assault. Thorough health care will include: follow-up testing for sexually transmitted infections, pregnancy, and HIV prevention. The survivor will also be observed for physical trauma, and evaluated for psychological reactions. It is important that the victim be provided prophylaxis against sexually transmitted infections as there is a 5% probability of contracting some form of STI from a sexual assault. Tests done for STIs immediately after an assault will only determine whether the victim had an infection before the assault. Depending on local hospital policy though, she may be tested for gonorrhea, Chlamydia, trichomoniasis, syphilis, and hepatitis.

HIV baseline testing can be done in the emergency department with results sent to the local HIV clinic or primary provider for follow up. A patient is not required to be tested for HIV prior to being given HIV Post exposure prophylaxis. A follow up visit with an infectious specialist should be schedule within 24 hours of starting the regimen and regular visits scheduled during the 30 day period. If the hospital personnel are unsure as to the local specialist, consult the DOH AIDS institute list found at <http://www.hivguidelines.org/index.html> or by calling (800) 541-2437. The survivor should be provided with clear instructions for follow-up care by the HIV specialist.

- For more information on HIV Prophylaxis, please refer to the Department of Health's Protocol for the Acute Care of Adult Patient Reporting Sexual Assault (May 2002).  
[http://www.health.state.ny.us/nysdoh/sexual\\_assault/pdf/sexual\\_assault.pdf](http://www.health.state.ny.us/nysdoh/sexual_assault/pdf/sexual_assault.pdf).
- Additionally, Public Health Article 27-F, concerning HIV and AIDS Related Information, has been provided in Appendix T.

## **The Role of a SAE**

NYSCASA has supported development of Sexual Assault Examiner (SAE) programs since 1995 and was instrumental in their recognition in the Sexual Assault Reform Act of 2000. SAE programs use specially trained health care personnel, often nurses, working in collaboration with teams of rape crisis program advocates and law enforcement as a SART (Sexual Assault Response Team). This program works to ensure compassionate and expert health care assessment, treatment and evidence collection on behalf of sexual assault survivors.

The SAE is specifically trained to be knowledgeable about:

1. the experience of sexual assault survivor and
2. the sexual assault evidence collection process
3. what to expect when testifying, if needed

Because the SAE's sole focus is on the survivor, they are not subject to the pressures of a busy emergency department and can concentrate on providing efficient, careful, and thoughtful treatment. Their role as an objective fact finder makes them excellent witnesses in case of a trial.