

# Unit 8: Medical Advocacy

This unit is largely adapted from California Coalition Against Sexual Assault; Training Standards and the Crime Victims Treatment Center Sexual Assault and Domestic Violence Crisis Counseling Volunteer Advocate Manual. This manual is adjusted based on New York State Public Health Law, New York State Department of Health and Office of Victim Services guidelines.

## I. Role of the Advocate

- Responding to hospital calls can be some of the most intense work you will ever do as a rape crisis advocate. A person who goes to the Emergency Department after being sexually assaulted will have experienced trauma very recently. In the Emergency Department (ED), often the advocate has the first and most extended contact with the survivor. It is the responsibility of the advocate to assess the survivors' various needs and to do their best to meet those needs with clarity and compassion in a safe and respectful setting.
- When a person is sexually assaulted, control over their life is taken away by the person who harmed them. Your role as a rape crisis advocate in the ED is to begin to return a sense of control to the survivor. Basic steps to accomplishing this include:
  - **Give Information:** provide information to the survivor on their options; including a trauma-informed explanation (or ask the appropriate professional to explain) the steps to the physical exam, the collection of evidence, the interviews with examiner and police, the medication to be administered, etc. It's important that the survivor has all the information, including the potential benefits to each option, so they can make an informed decision and address any fears.
  - **Let Them Decide:** as much as possible, allow the survivor to decide if, and when, each event in the ED takes place.
  - **Relieve Guilt:** if the survivor expresses feelings of guilt or self-blame, stress that whatever their actions, they did not ask to be attacked. The person who assaulted them made that decision.
  - **Validate Strength:** stress that whatever the survivor did during the assault, it was the right thing to do in those circumstances. They survived a potentially life-threatening situation and are now taking good care of themselves by receiving care at the emergency department. Listen and affirm their choices.
- Beyond these simple yet essential responses, you have another responsibility: **to hear the concerns of the survivor**. Encourage them to tell you what has happened and to discuss with you whatever they feel most concerned about. It may be medical well-being, the apprehending of the person who assaulted them, or how or whether to tell family and friends. If you take your cues from the survivor, you can be more certain that you are meeting their needs.

## II. Rights of the Victim/Survivor

- Advocates should know the survivor's rights so they can advocate on behalf of the survivor and communicate their needs to the medical personnel and other service providers. New York State Sexual Assault Victim Bill of Rights indicates that survivors of sexual violence cannot be treated differently based on certain characteristics such as race, national origin, religion, sexual orientation, disability, age, source of payment, sex, gender identity, or gender expression. Immigration status or national origin cannot affect the survivors' emergency care or services. The survivor can ask for an interpreter if it is hard for them to understand or speak English. Minors under the age of 17 have certain rights to make their own decisions without a parent or legal guardian

### *Rights as Pertaining to Hospital Emergency Department*

- The survivor can have an advocate from a local rape crisis program stay with them during the medical exam. The survivor can have an exam in any hospital emergency department to collect evidence and provide certain medical care related to the sexual assault at no cost to them. If the survivor does not have health insurance, or they decline to use their health insurance, they can ask the hospital to bill the Office of Victim Services.
- Survivors have the right to obtain medicines to prevent pregnancy if they choose to do so. Advocates should pay attention to the fact that some cultural and religious groups might have tradition prevent them from accepting those medications. Survivors also have the right to obtain medication to prevent sexually transmitted infections (STIs, also known as STDs) for free. For HIV prevention, a 7-day pack of medicine can be started at the hospital.

## III. Religious and Cultural Issues Related to Medical Procedures

Different religious and cultural groups might have traditions that may conflict with the way parts of the medical exam are conducted, and it may affect their ability to accept various types of treatment. Based on the county you serve, some of these cultural and religious groups that may be more predominant than others. As an advocate, you need to familiarize yourself with specific groups in your county and their traditions so you can help survivors who identify with religious and cultural groups. However, the strictness of individuals from these groups may vary, you need to check in with the survivor and refrain from making assumptions about their practice before you ask them. This knowledge will help you explain the medical examination process to the survivor and allow them to make informed consent. Furthermore, this knowledge will help you clearly communicate those preferences with medical providers as part of your advocacy. Below are some examples of religious and cultural traditions for some groups.

- Some religious organizations accept medical treatment but do not accept a blood transfusion. They typically seek and accept medical care from among their members' nurses and doctors.

- Some religious organizations avoid medical treatment for illness and instead tend to rely exclusively upon faith healing.
- Some cultures will not permit an intrusive examination that would violate a female's hymen; and, others will not permit a female to be disrobed in front of a male who is not their husband. In this situation, there can be no examination of the genitals by a male provider.

## IV. Medical Examination and Evidence Collection

- Forensic Medical Exam is an examination provided to a sexual assault survivor by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law. Sexual assault survivors should receive the same intake and screening that any patient would receive in any Emergency Department. When immediate medical attention is received, the chances of physical evidence being found increase substantially.
- The medical exam includes:
  - Conducting prompt examinations.
  - Providing support, crisis intervention, and advocacy.
  - Obtaining a history of the assault.
  - Performing a complete assessment.
  - Documenting exam findings.
  - Evaluating and treating injuries.
  - Properly collecting, handling, and preserving potential evidence.
  - Providing information, treatment, and referrals for STIs and pregnancy.
  - Providing follow-up care for medical and emotional needs as well as further forensic evaluation
- Forensic examiners follow a protocol to treat survivors of sexual assault:
  - Administer prophylactic treatments to a survivor for an unwanted pregnancy, HIV, and STIs (typically for gonorrhea and chlamydia).
  - Treat other related and non-related illness, abnormalities, and injuries when discussed and approved by the physician.
  - Based on the survivor's history and the examiner and the physician agree upon the most appropriate treatments for the survivor. Some medications have time or medical constraints on them and can only be administered if the survivor meets certain criteria; this is to prevent complications related to treatments.
- The sexual assault evidence collection examination provided to the survivor in the Emergency Department is not only to ascertain whether any injury has incurred but also to collect evidence that will be sent to the Medical Examiner's office or given to the police if the survivor chooses to report the crime. Written consent by the survivor is necessary for evidence to be collected, including photographs, and for evidence to be released to law enforcement.
- It is not unusual for a person to feel ambivalent about reporting to the police. The more information the survivor is given, the more comfortable and in control, they will feel; therefore, you may want to review some of the procedures and questions they might expect to encounter. (see the unit on Law Enforcement for details).

## A. Evidence Collection

- The New York State Sexual Offense Evidence Collection Kit is the standardized evidence gathering kit used in cases of sexual assault. These kits are distributed to all hospitals by the New York State Division of Criminal Justice Services (DCJS). All hospitals have the capacity to complete the sexual assault evidence kit, and where available, Sexual Assault Nurse Examiners (SANE nurses) complete the evidence collection kits.
- Purpose of the evidence collection kit is to obtain a patient history to guide the examination, conduct a complete physical examination, collect and preserve evidence, photograph injuries, document evidentiary exam findings on the required state form(s), package and submit evidence in the Sexual Assault Evidence Collection Kit also called the “rape kit”.
- The Sexual Offense Evidence Collection Kit is collected at the hospital.
- The kit can be either released to the police (with written permission from the survivor) and taken to the State Police Crime Lab for analysis. The kit and its results are released to the county District Attorney’s (DA) office, where it is held through prosecution.
- Alternatively, the evidence kit can be kept in storage to allow or time for the survivor to decide what they want to do. New York State law mandates hospitals to store the evidence kit for up to 20 years from the date of collection. After 20 Years, the sexual offense evidence will be discarded in compliance with state and local health codes. The survivor’s clothes or personal effects will be returned to the survivor at any time upon request. The survivor shall be given the option of providing contact information for purposes of receiving notice of the planned destruction of such evidence after the expiration of the twenty-year period. The survivor must be notified that the evidence will be discarded at least 90 days prior to the 20-year storage period ending. When advocating for a sexual assault survivor, explain that the hospital is required by law to store the Sexual Assault Forensic Evidence (SAFE) kit for 20 years (with the consent of the survivor). This will give the survivor time to consider whether they want to report without losing their opportunity to gain valuable evidence.<sup>1</sup>

At no time will the survivor be contacted with “the results” of the testing. The survivor needs to contact the District Attorney for any information about the results they wish to obtain. It is important to know that evidence is tested for sexual contact and cannot make a definitive determination in regards to force. Any physical signs of force (abrasions, bruises, etc.) are important to document but are not in and of themselves proof of sexual assault. If the survivor has not made a police report, the kit will be stored for up to 20 years until the survivor makes a decision whether or not they want to make a police report and have the kit sent to the lab for analysis.

## B. Content of the Sexual Offense Evidence Collection Kit

- Oral swabs and smears – from inside survivor’s mouth.
- Clothing collection (this require the collection of all clothing unless the survivor objects)
- Debris collection – (dirt, leaves, hair, etc.)

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<sup>1</sup> Crime Victims Treatment Center. “Advocating in the Emergency Department,” in *Sexual assault and domestic violence crisis counseling volunteer advocate manual*, (2016), 11

- Dried secretions and/or bite marks.
- Fingernail scrapings; especially if the survivor says they scratched their assailant with their nails.
- Anal swabs and smears (if necessary.)
- Vaginal/penile swabs and smears.
- Buccal specimen (control sample) – a buccal swab of the survivor’s mouth is done after the survivor has rinsed their mouth, to collect a sample of their own DNA.

Some steps are not routinely collected anymore, specifically pulled pubic and head hair, and the scraping of fingernails, unless there is a reason for them to be collected. For example, if a foreign hair is found in the pubic area, the medical professional might be more likely to collect pubic hair samples from the survivor.

A survivor has the right to refuse any step of the Sexual Offence Evidence Collection Kit and still maintain its credibility.

## V. Victim/Survivor’s Consent

There are two separate consent processes, one for the overall medical evaluation and a second one for the evidence collection and release. Survivors should understand the full nature of these processes in order to make an informed decision. Survivor has the right to refuse an examination to collect evidence. The survivor may withdraw consent at any time or may choose to complete only certain parts of the health care exam, evidentiary exam, or health care treatment. Consent must be obtained for the collection and storage of sexual offense evidence, including forensic photography. Signed consent for release of information and privileged evidence to law enforcement is required. The survivor must also sign a release directing the hospital not to collect and keep privileged evidence if the patient chooses not to participate in an evidentiary exam.

It is the consenting survivor’s choice whether to involve law enforcement personnel or not. However, the health care provider has a legal obligation to report injuries including gunshot wounds or other injuries arising from the discharge of a firearm, or a wound that is likely to result in death and is actually or inflicted by a knife, ice pick, or another sharp instrument.

## VI. Payment for Expenses

### A. Forensic Medical Sexual Assault Examinations

New York State Executive Law provides for direct reimbursement by the Office of Victim Services (OVS) to providers of forensic sexual assault examination services. The law requires the medical provider to explain the survivor’s billing choices to them. survivors can either bill the survivor’s insurance or bill OVS directly for forensic rape exam related services.

When a survivor chooses to have the provider bill OVS directly for the forensic examination and its related charges, the provider shall use the Direct Reimbursement Program. Direct reimbursement from OVS to providers of forensic examination services ensures that a sexual assault survivor will not have to pay for their own forensic examination.

The forensic examination reimbursement fee is currently the amount of itemized charges not exceeding \$800, and is intended to cover the forensic examiner's services, facility services related to the forensic examination including the costs of equipment, materials and supplies required for the gathering of forensic evidence, as well as laboratory testing and pharmaceuticals related to a sexual assault forensic examination.

## B. Medical Treatment

Sexual assault survivor may be use their private insurance benefits, Medicaid, Medicare, HMO (Health Maintenance Organization) for medical care or services that are NOT related to the sexual assault forensic examination and not billed by the provider as part of the direct reimbursement claim.

## C. Prescription Medications

Forced sexual contact may result in **pregnancy** or exposure to human immunodeficiency virus (HIV), hepatitis, and **sexually transmitted infections (STIs)**. Proper care should be provided immediately. HIV Post Exposure Prophylaxis (PEP) Treatment: The danger of exposure to HIV is real and life-threatening. *When deciding whether to recommend the initiation of PEP following sexual assault, the clinician should assess and carefully weigh the following factors: (A3)*

- Whether or not a significant exposure has occurred during the assault as defined by direct contact of the vagina, penis, anus, or mouth with the semen, vaginal fluids, or blood of the alleged assailant, with or without physical injury, tissue damage, or presence of blood at the site of the assault.
- Knowledge of the HIV status of the alleged assailant
- Whether the survivor is ready and willing to complete the PEP regimen

HIV PEP should be initiated as soon as possible after exposure, ideally within 2 hours. Decisions regarding initiation of PEP beyond 36 hours' post exposure should be made on a case-by-case basis. If the survivor initiates treatment, a follow-up visit should be scheduled within 24 hours to review the decision, reinforce the need for adherence to the regimen, and arrange for follow-up care. In New York State, hospitals providing treatment to survivors of sexual assault must provide or arrange for an appointment for medical follow-up related to PEP and other care as appropriate.

New York State Public Health Law, Chapter 39, Section 2805-i requires hospitals providing treatment to survivors of sexual assault to have 7-day starter packs of medication available on-site for rapid initiation

of PEP following sexual assault. Arrangements should be made to ensure that the patient receives a continued supply of medication and an appointment is made with a clinician experienced in HIV PEP.<sup>2</sup> Medical provider should counsel the survivor about options for emergency contraception (EC) against pregnancy and the importance of timely action. Medical personnel should also provide survivors with written information prepared or approved by the Department relating to EC. Other types of prescriptions are paid by the patient's insurance or reimbursed by the Victim Compensation Program.

#### D. Follow Up Medical Treatment

Follow up medical treatment for injuries, wound healing, or sexually transmitted disease is paid for by the public or private insurance.

#### E. Crime Victim Compensation

Survivors are encouraged to file an application if other medical services (outside of the forensic exam) are needed. Sexual assault survivors should be advised that they may be eligible to recover reimbursement for loss of personal property, loss of earnings or support and expenses associated with counseling, in addition to medical care, if a regular application is filed.

### VII. Local Procedure and Coordination with Other Service Providers

See the national SART manual for collaboration framework could look like for rape crisis centers with collaborating with other actors such as law enforcement agencies, District Attorney's Officers, crime laboratory and victim/witness assistance programs

### VIII. Role of The Advocate During the Medical Examination

The advocate's primary role is to provide emotional support, crisis counseling, and information to survivors and their friends or family members (if applicable). The advocate coordinates the hospital experience for survivors, and advocates on their behalf. The advocate helps survivors to understand medical and legal procedures, and discusses each survivor's unique personal concerns.<sup>3</sup>

There are two ways in which a rape crisis advocate can be engaged to assist a survivor in the ED:

- 1) The survivor calls the rape crisis hotline/rape crisis center and accepts the offer of having an advocate go with them to the ED.
- 2) The hospital calls the rape crisis center and asks for the advocate on call for a survivor already in the ED.

*It is important to note that not every sexual assault survivor will choose to go to the ED following an assault. It is suggested that most sexual assault survivors should get medical attention, preferably immediately, to treat any physical injuries, and/or at least within 96 hours of the assault, in order to*

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<sup>2</sup> [http://www.hivguidelines.org/pep-for-hiv-prevention/after-sexual-assault/#tab\\_0](http://www.hivguidelines.org/pep-for-hiv-prevention/after-sexual-assault/#tab_0)

*preserve any evidence that might be present, should they decide to have a sexual assault medical forensic exam completed...*

**An advocate should do the following:**

- Help the survivor process the option of seeking medical attention; including the importance of addressing potential physical injuries and/or sexually transmitted infections.
- Explain the pros and cons of going to the ED to have a sexual assault medical forensic exam completed.
- Empower the survivor to make their own informed decisions regarding their care.
- Offer support and assistance; regardless of what the survivor decides.
- Offer the survivor the option of medical advocacy (the presence of an advocate) should they choose to have a sexual assault medical forensic exam completed at the ED.
- Provide information to the survivor about the New York State Office for Victims Services (OVS) Forensic Rape Examination (FRE) Direct Reimbursement Program and the Victim Assistance Program.

**Reasons a survivor might choose to go to the ED:**

- Physical Injury; external or internal
- Sexually transmitted infections (STI) testing and treatment
- Pregnancy prevention
- Sexual offence evidence collection (generally within 96 hours to 120 hours of the assault)
- Other medical concerns

**Reasons a survivor may choose not to go to the ED:**

There are many reasons, here are just a few:

- The survivor has no physical concerns
- The survivor does not want to complete the sexual Offense Evidence Collection Kit:
  - More than 96 hours to 120 hours have passed
  - The survivor knows that they will never press charges

**If the survivor agrees to go to the ED for a sexual assault medical forensic exam these are some additional instructions to go over with them.**

- Advise the survivor not to bathe, douche, urinate, defecate, eat, drink, brush teeth or change clothes.
- Encourage the survivor to bring a change of clothing since their clothing may be collected and held as evidence.
- Assure the survivor that the police will only be called if they request it.
- Inform the survivor that they will not be billed for any expenses directly related to the sexual assault medical forensic exam.

If the survivor is under 18 years of age, they may consent to the sexual assault medical forensic exam AND some medical treatment. However, a minor might need additional treatment as a result of injuries that would require parental consent. The minor is not required to provide their health insurance information for the sexual assault medical forensic exam. However, if they want to use their parents' medical insurance to pay for additional costs (HIV medications, x-rays, co-pays, etc.) the parent(s) will be notified by their insurance company. OVS doesn't require parent signature to process the hospital bill



for expenses related to the exam but they do require a parent's signature to process the OVS application for other medical expenses and compensation.

Another role an advocate can play is to discuss survivor transportation after their hospital visit.

- Discuss rape crisis center policies and procedures for transporting survivors to their home or to the residence of family or a friend. Options include: family member or friend provides transportation; rape crisis center advocate provides transportation, if the center has a liability policy for advocates; patrol officer waits on stand-by or another patrol officer is called to provide transportation; and cab vouchers.
- Watch: [The Role of Advocates within the Forensic Exam Process](#)