Forensic Exams for the Sexual Assault Suspect

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Organizational Features

Throughout this training bulletin, we use several tools to help explain key concepts, identify supplemental resources, and explore applications to practice. They are indicated with the following icons:

Resources and tools

Instructional video clips

Innovative and promising practices

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Introduction

In this training bulletin, I address one of the most common topics I am asked about – forensic evidence collection from the body and clothing of sexual assault suspects. I believe suspect exams are one of the most overlooked aspects of a successful sexual assault investigation. In my experience, most law enforcement agencies, and forensic nurse examiner programs, have failed to establish appropriate policies and procedures for obtaining comprehensive forensic examinations for sexual assault suspects.

The purpose of this training bulletin is to make the case for the importance of suspect examinations, to explore some of the reasons why they often are not done, and to provide concrete recommendations for overcoming these barriers and using suspect examinations effectively in your community. I also think it's important to note that suspect examinations can also be extremely valuable for many other types of crime such as homicide, child abuse, robbery, domestic violence, etc. Therefore, much of the information in this article will be equally relevant for those types of crimes as well.

Forensic Exams for the Sexual Assault Suspect

In contrast with the medical forensic examination of a sexual assault *victim,* the forensic examination of a sexual assault *suspect* generally focuses on forensic evidence collection and documentation, not medical purposes. The goal is to identify and document any injuries or anomalies, and to collect and document biological and trace evidence. There are exceptions, however, where the suspect examination may include medical interventions. For example, the suspect may have an injury resulting from the sexual assault, a medical condition (such as diabetes or hypertension), or an STI or another communicable disease that may put the victim, suspect, and the community at risk. How this is handled will depend on where the exam is being conducted and the pertinent medical-legal obligations and protocols.[1] However, for the purpose of this training bulletin, we are focused only on the *forensic purposes* of the suspect exam.

The Importance of Suspect Exams

When evaluating potential sources of evidence, law enforcement professionals often focus on anything that might have transferred *from the suspect to the victim;* thus, forensic examinations of the victim are seen as critically important. However, we need to keep in mind that evidence could just as likely be transferred *from the victim to the suspect.* Therefore, depending on the type of contact involved in a sexual assault offense, the suspect's body may actually be a better source of probative evidence than the victim's body.

[1] Suspects may be injured and require medical attention as a result of police contact (e.g., during an arrest or pursuit) or a defensive wound (although this is unusual). If this is the case, and the suspect needs emergency medical attention, law enforcement would typically call an ambulance or transport the suspect to an emergency department for evaluation and treatment. Many law enforcement agencies have contracts with county hospitals that provide emergency medical services for suspects in custody, or when a medical clearance is needed prior to booking a suspect in jail. In other words, a suspect would not be transported for a forensic examination prior to receiving any necessary medical treatment.

- For example, in the case of a digital penetration of the victim's vagina, the suspect's fingers will often be the best source of probative evidence. This can even be true if the suspect has bathed since the sexual assault.

- Similarly, if the suspect forced his penis into the victim's mouth during the sexual assault, his penis may be a richer source of evidence than the victim's mouth.

To highlight this point, consider a study conducted by Isaac T. Cain (2002), entitled: "The Use of Physical Evidence in the Investigation and Prosecution of Sexual Assault Cases."[2] The research was conducted while I was supervising the Sex Crimes Unit at the San Diego Police Department, and it involved analyzing the findings from 77 sexual assault cases that received laboratory analysis from our Forensic Biology Unit between 1998 and 1999. Results of this study revealed the following:

- In cases involving an *adolescent victim*, 44% of the suspect's evidence kits that were examined by a criminalist ultimately identified the victim's DNA. In fact, DNA analysis of epithelial cells found on penile swabs of the known suspect were the most common pieces of suspect evidence associated with victim identification.

- In the cases with an *adult victim*, as many as 30% of the suspect's evidence kits examined by a criminalist identified the victim's DNA. Again, DNA analysis of epithelial cells found on penile swabs of the known suspect were the most common pieces of suspect evidence associated with victim identification.

Clearly, any evidence from the suspect's body that establishes the identity of the victim will be important in the investigation and prosecution of sexual assault. It is therefore surprising that so few law enforcement agencies routinely collect such evidence..

In this 1-minute video, Sergeant Joanne Archambault (Retired, San Diego Police Department) emphasizes the value of suspect forensic examinations.

Suspect Clothing and Crime Scene Evidence Associated with the Suspect

Equally surprising is the frequent failure to seize the suspect's *clothing,* which again could be a valuable source of probative evidence. In many cases, the clothing worn by the suspect during the sexual assault is still available and – depending on the specific case history and the time since the assault – it is often a better source of evidence than the body or clothing of the victim. All these potential sources of evidence should therefore be considered when "thinking outside the box" during a sexual assault investigation. Turning again to the Cain study:

[2] Cain, I. (2002). *The Use of Physical Evidence in the Investigation and Prosecution of Sexual Assault Cases.* Master's Thesis in Forensic Sciences, National University, San Diego, CA.

- Of the 25 *adolescent cases*, when the suspect's clothing and other crime scene evidence associated with the suspect (such as condoms, bottles and tissues) were examined by a criminalist, 80% of the items included the victim's DNA profile and 20% included the suspect's DNA profile.

- Of the 51 *adult cases*, 17% of the suspect's clothing and other crime scene evidence associated with the suspect examined by a criminalist included the suspect's DNA profile and 50% included the victim's DNA profile.

Clearly, important evidence can often be obtained from the body and clothing of a suspect in a sexual assault case. This is especially significant because so many people think of sexual assault cases as *not having physical evidence* – that they are simply a question of "he said, she said." In many cases, however, physical evidence can be obtained if we look in the right place and appreciate that the evidence might either support or challenge the theory that the suspect is in fact the perpetrator.

It's Not Just About DNA Identification

Yet the importance of the suspect examination is not solely based on the potential for documenting the victim's DNA *for identification purposes.* Depending on where the victim's DNA is found on the suspect's body, it may provide a better idea of *the specific acts* that were involved in the sexual assault (e.g., penile-vaginal penetration, digital penetration, oral copulation). This type of evidence may be particularly helpful with very young victims, or with victims who are under the influence of drugs or alcohol, because they may not recall or may not be able to articulate exactly what happened to them.

Finding the victim's DNA on a suspect's body can also be important in cases involving multiple perpetrators, for example when the victim knows that a suspect participated in a sexual assault but is not sure if it involved penetration. Depending on the circumstances of the assault, DNA results can sometimes even indicate the order in which the suspects assaulted the victim. To illustrate, the second suspect could have DNA evidence from both the victim and the first suspect on their body, while the third suspect has DNA evidence from the victim, as well as suspects one and two on their body, etc.

EVAWI's OnLine Training Institute module, *Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations,* explores the complex role of DNA in a sexual assault investigation, including the alternative sources of DNA evidence and their potential significance or impact on a sexual assault investigation. A number of resources and tools are also provided, along with a series of complex and interactive case examples.

Even beyond DNA evidence, the suspect examination is important because it can provide documentation of the suspect's clothing, appearance (e.g., shaven or unshaven), physical anomalies, tattoos, piercings, and other characteristics that may

become important later on during the course of an investigation and prosecution.[3] It can also corroborate information that the victim provides about sensory experiences, such as the suspect's smell (e.g., aftershave, cigarettes, body odor, bad breath). Evidence from the suspect examination can also provide other types of information that "fill in pieces" of what happened before, during, or after the sexual assault. For example, debris from leaves could be found on the suspect's body that came from the bushes outside the victim's home, or paint chips could remain from the suspect's work earlier in the day. A thorough suspect examination certainly demonstrates diligence on the part of law enforcement investigators and establishes a critical focus on the suspect – both of which are important for juries considering the evidence in the case.[4]

Yet one of the most important reasons for conducting a suspect examination is to document evidence of force, resistance, and injury. As you probably know, most sexual assault cases result in a consent defense – even when the suspect is a stranger to the victim. Therefore, biological and trace evidence may not be as critical for establishing the *identity* of the suspect as one might initially think. Unfortunately, many investigators assume that this means a suspect examination will not be particularly useful, and that is not necessarily true. A suspect examination may still be extremely useful in a consent defense case because the evidence obtained may *corroborate* the victim's (and/or suspect's) account of events. The evidence may also *document force or injury*, which is obviously critical for overcoming a consent defense. In fact, any time a victim describes a great deal of force involved in their sexual assault – or when victims state that they bit, kicked, or scratched the suspect – injuries to the suspect might still be identified and documented days later.

Clearly, the decision to obtain a suspect examination should not be based solely on an understanding of how long trace and biological evidence might be available on the suspect's body. In the majority of sexual assault cases where consent is going to be the primary issue, any evidence that provides corroboration of the victim's account and documents force or injury is absolutely critical. As a result, the determination of whether or not to obtain a suspect examination can only come from a careful consideration of the case history. Investigators must think through the facts of the case and determine what kinds of evidence might prove useful – and for what purposes.

At a minimum, I can recommend that a forensic examination of the suspect should be conducted any time:

(1) The suspect is arrested shortly after the sexual assault;

(2) The law enforcement investigator believes that the suspect has not bathed since the sexual assault (however, keep in mind that depending on the type of assault, an exam may still be warranted even if the suspect has bathed), and/or;

(3) There is reason to believe there might still be evidence of injury to the suspect.

[3] Thanks to Assistant District Attorney Cathy Stephenson in San Diego, California for these ideas.
[4] Thanks to Senior Deputy Prosecuting Attorney Patti Powers in Yakima, Washington for these ideas.

Barriers to Suspect Exams

So, assuming for the moment that I've convinced you of the importance of suspect examinations, let's explore some of the reasons why they are not routinely conducted in many communities.

One of the barriers I see is that community professionals don't always appreciate how important forensic evidence is for the successful investigation and prosecution of sexual assault. In recent years we have seen increased understanding among many community professionals for the importance of forensic evidence gathered and documented during *the victim's examination.* However, this has not typically extended toward seeing the importance of *suspect exams.*

As you certainly know, most Sexual Assault Response and Resource Teams (SARRTs) have been established to provide victim-centered services, including appropriate medical care and the identification and collection of potential forensic evidence from the victim. This reflects an increased appreciation of the importance of forensic evidence gathered from the victim. Yet there were many times during my law enforcement career when I was frustrated with the lack of attention to the *forensic* part of the medical forensic examination.

Sexual assault victims who were examined by health care providers in my community typically received the most competent and compassionate medical care available. At the same time, I observed a serious lack of understanding among community professionals regarding how and when rape kits were processed by the crime lab. Many did not understand why there was and (in many jurisdictions still is) a backlog of DNA evidence in our property rooms and crime laboratories.

This makes it clear to me that we still have a long way to go before we fully appreciate the role that forensic evidence can play in these cases. If community professionals do not yet understand the role that forensic evidence gathered from the *victim's* examination can play in successful investigation and prosecution of sexual assault, it is unlikely that they will recognize the critical role that could be played by forensic evidence gathered from the *suspect's* examination.

Lack of Research

Further complicating matters, we are still waiting for the type of research that is needed to determine which types of evidence are typically found from which sources – and how long after the sexual assault it can be recovered. This research would need to be conducted by evaluating findings from the crime laboratory and comparing them with the unique characteristics of sexual assault cases. For example, this analysis would need to include the analysis of case variables such as:

- The type of assault (e.g., penile/vaginal rape, sodomy, oral copulation, penetration with a foreign object, digital penetration, and/or attempted sexual assault).

- The time delay between the sexual assault and the forensic examination.

- Hygiene activities of the victim and/or the suspect.

- The source of the probative evidence (e.g., crime scene evidence such as foreign objects, condoms, clothing, oral swabs, internal vaginal swabs, external vaginal swabs, or swabs taken from the victim's breast or neck based on the victim's verbal history of the activities involved in the assault). Or as is often the case in drug and alcohol facilitated sexual assault where the victim may have little or no memory, swabs may be routinely collected from common contact locations (e.g., breasts, neck, thighs, external genitalia, vaginal vault, anus).

Like the Cain study, the findings from such future research would help us to determine which types of evidence are found from which sources, and for what length of time after the sexual assault. With such research findings in hand, we would then be much better equipped to provide guidelines for the forensic examination (of both victim and suspect) that are relevant to the current state of forensic science.

In many communities, it is difficult to establish or revise policies regarding forensic evidence collection because we do not know the answers to these questions. Until such research is available, it is all too easy for communities to continue to collect forensic evidence "the way we've always done it." But my opinion is that we cannot wait until we have all the answers before we improve our collection procedures. We need to establish policies and protocols for conducting forensic examinations of the victim and the suspect – and seek feedback from our crime laboratories regarding what evidence they find, and from which sources.

Lack of Protocols

In addition to the lack of research and feedback, additional barriers also get in the way of routinely conducting suspect examinations in many communities. In many jurisdictions, for example, there are no protocols in place for trained forensic examiners to conduct suspect examinations. I believe there are a number of reasons for this, and a number of factors to consider when developing such policies and procedures.

First, the programs and facilities that were established to provide medical forensic examinations for victims were designed to be compassionate and victim-centered. As a result, their staff (e.g., SANEs, SAFEs) typically do not want to have suspects – often in handcuffs – within the same environment as sexual assault victims. Even if the suspect is not the suspect in the sexual assault victim's own case, just having suspects in the same location may be very upsetting to a crime victim. Therefore, while I recommend that suspect exams be conducted by trained examiners, it is not ideal to have these exams conducted at the same facility as the forensic examinations of victims. One possible solution is for the victim's exam to be conducted in the SANE facility or hospital, while the suspect's examination is conducted at the police department. We will discuss this in more detail later in the training bulletin.

In addition to the emotional distress it may cause victims, any facility that conducts both suspect and victim forensic examinations will significantly increase the potential for cross contamination of the evidence. Therefore, if the victim and suspect are examined in the same facility, or possibly even by the same examiner, policies and procedures must address the steps that will be taken to prevent such cross contamination. In fact, any community that is expanding the role of forensic examiners to conduct exams with suspects as well as victims will need to ensure that they receive sufficient training to do so. Clearly, many of the issues are very different for suspect exams, yet many forensic examiners have only received specialized training in how to conduct victim exams.

Another reason why comprehensive suspect exams are not routinely conducted in some communities is because law enforcement agencies often believe any potential evidence can (or must) be collected by crime lab personnel or law enforcement officers. In some jurisdictions, this has actually become a labor issue because officers and crime lab personnel do not believe it is appropriate for them to do such an intimate examination of the suspect. I actually share this concern. To obtain the best forensic evidence possible, I believe that suspect exams must be conducted by examiners with specialized training and clinical experience. In most cases, this will be a health care provider, not a law enforcement officer or employee of the crime lab.

Lack of Resources

Of course, some law enforcement agencies might be reluctant to use trained forensic examiners to conduct suspect examinations because it is more expensive than using their own personnel. This clearly reflects a concern with the prioritization of resources, and any law enforcement agency that is serious about investigating and prosecuting sexual assault must take a hard look at this question. While it is clearly less expensive to use law enforcement personnel to conduct suspect exams, the evidence that can be collected is extremely limited when compared to the documentation and evidence that can be collected by a trained forensic examiner with specialized expertise in this area.

Another barrier is that many communities are currently experiencing a shortage of nurses. As a result, they are often unable to provide forensic examiner coverage around the clock even for victims – let alone suspects. Having forensic examiners conduct suspect examinations would stretch these limited nursing resources even further. Any effort to conduct suspect exams must therefore consider alternative ways of addressing the reality of a nursing shortage that may exist in the community. For example, the City of San Diego Forensic Examiner program utilized both Licensed Vocational Nurses (LVN's) and paramedics for suspect exams. Both have the ability to check for vital signs, document injuries, collect hair samples, swabs, and draw blood. Clearly, protocols that are developed must be realistic and based on the resources that currently exist in your community.

In many communities, there are still debates about who is going to pay for forensic examinations – even with sexual assault victims. I believe this stems from a failure to recognize the victim's forensic exam as evidentiary (rather than solely medical). To the extent that the forensic examination of a sexual assault victim is an evidence collection procedure, I do not believe it should be treated differently than other law enforcement

evidentiary procedures. In other words, whoever pays for other evidentiary procedures (such as processing a bank following a robbery or conducting a traffic accident investigation) should also pay for the forensic exam of a sexual assault victim. In a sexual assault case, the body is a crime scene – whether it is the victim's or the suspects. However, any community that fails to see the victim's forensic exam as evidentiary will most likely also fail to recognize that the suspect's examination is evidentiary as well. Clearly, payment procedures should be in place to pay forensic examiner programs to conduct forensic exams with both victims and suspects.

Lack of Standardized Guidelines, Kits, And Forms

Beyond such philosophical issues, some of the barriers to suspect exams are more concrete. For example, the *National Protocol for Sexual Assault Medical Forensic Examinations (2013)* published by the Office on Violence Against Women, US Department of Justice, does not even address the topic of suspect examinations. In addition, very few states provide any sort of standardized guidelines regarding forensic examinations for suspects.

Even fewer states provide forms for documenting the suspect exam, similar to the ones used for the victim examinations. Clearly, statewide guidelines and standardized forms provide helpful guidance on how to handle suspect exams. They also offer the potential to increase consistency in the practices used from jurisdiction to jurisdiction.

California and North Dakota both offer standardized guidelines and a form that is used for forensic examinations of sexual assault suspects.

In addition to exam forms, very few communities have created *evidentiary kits* for the suspect forensic examination. Some exceptions include San Diego, California and the state of South Carolina, which have developed their own evidentiary kits for use with suspect examinations. The San Diego Police Department crime lab puts together their own kits whereas the South Carolina State Crime Lab contracts with a private company, Tri-Tech Forensics, Inc., to produce custom kits. Another private company that sells evidentiary kits for the suspect examination is Lightning Powder Company, Inc.

Some jurisdictions, like the state of North Dakota, use the same kit for both victim and suspect examinations. Unfortunately, one of the problems in some communities is the lack of communication between forensic examiners, law enforcement investigators, and crime lab personnel – so the kit that is used for suspect examinations may be missing elements necessary for thorough evidence collection.

Clearly, some of these barriers are easier to overcome then others. Some are more philosophical in nature and require cross-disciplinary dialogue and training to better appreciate the importance of suspect exams. Others are more concrete and can be addressed with collaborative effort to develop policies, protocols, and resources. As described above, these resources may include standardized guidelines, forms, and

evidentiary kits for suspect examinations. It is therefore important to take stock in your community, to see where the barriers lie, and then design a strategy for overcoming them.

Protocols for Suspect Exams

Law enforcement policies and SARRT protocols must ensure that a forensic examination is conducted as soon as possible in any sexual assault case where:

1. The suspect is arrested shortly after the sexual assault;

2. The investigator believes that the suspect has not bathed since the sexual assault, or;

3. The history suggests that there might be evidence of injury on the suspect, or physical anomalies that may corroborate the victim's statement.

In addition, the clothing worn by the suspect during the sexual assault is often still available at the time of the law enforcement investigation, regardless of how much time has passed. The suspect's clothing may be a better source of evidence than the forensic examination of the victim, depending on the specific case history and the time since the assault. As a result, community protocols can also highlight the need to collect this critical evidence without respect to any particular timelines. If the clothing that the suspect wore at the time of the sexual assault (and/or immediately afterward) is available, it should be collected as evidence.

For guidance on the collection and documentation of clothing as evidence, please see the Clothing Addendum / Documentation Form provided by Eisenhower Medical Center, Rancho Mirage, California.

Legal Authority for Suspect Exams

There are typically three ways a suspect examination may take place:

(1) The suspect may consent to a forensic examination;

(2) An examination may be conducted incident to an arrest, or;

(3) A search warrant or court order can be obtained.

Even in situations where a full examination cannot be conducted, law enforcement personnel can still often obtain a mouth (buccal) swab of a suspect.

Suspect Consent

First, let's talk about suspect consent. It is clear that law enforcement officers are allowed by law to use the consent of the suspect as a basis for obtaining a forensic examination. However, some law enforcement agencies have policies prohibiting this

practice. Therefore, law enforcement professionals must check with their own Department, as well as the prosecuting attorney's office, to learn about the protocol in their community.

The COVERSA program (Collection of Victim Evidence Regarding Sexual Assault) inn North Kansas City, Missouri developed this consent form for suspect exams.

Perhaps surprisingly, most suspects will in fact consent to a forensic examination when asked. Of course, investigators must be careful that the consent is not coerced as it may be challenged by the defense in court. If this option is chosen, I strongly recommend that the suspect's consent to the forensic exam be obtained in writing.

Other precautions can also be taken such as:

- Having an investigator offer the examination (rather than an officer in uniform with a visible weapon);
- Limiting the number of law enforcement officers present at the time of the request, and;
- Making sure that the suspect understands that *they are not in custody*, they are free to leave at any time, and they are free to stop the forensic examination or refuse any part of the forensic examination at any time.

All of these issues will be examined by a judge if the suspect's consent is challenged.

Incident to An Arrest

The second way that a suspect examination can be obtained is incident to an arrest. In some jurisdictions like California, law enforcement agencies are allowed to obtain a complete forensic examination of a suspect incident to an arrest. In these jurisdictions, the courts have allowed the practice based on exigent circumstances – because the evidence may no longer be available if too much time elapses. Although we rarely had a problem in California with suspects being combative during the forensic examination – in fact, most were quite cooperative – we were even allowed to use reasonable force to obtain the suspect examination.

Search Warrant or Court Order

In most of the jurisdictions I have trained in, however, law enforcement personnel are required to obtain a search warrant or court order to conduct a suspect exam; this is the third way it can be obtained. Although this clearly adds another step to the investigative process, and can sometimes be seen as unnecessarily time consuming, I do not believe it should be a barrier to obtaining a suspect exam. As I have said, the evidence obtained can be extremely valuable and therefore should not be overlooked when

conducting a sexual assault investigation. Therefore, in those jurisdictions where a search warrant or court order is needed, I recommend that all officers have a template available on their computers for easy access.

For more information, please see the Sample Affidavit and Search Warrant for Suspect Forensic Examination from San Diego, California.

Keep in mind, however, that any time a warrant is issued for the collection of forensic evidence from a suspect, the issuing judge typically sets applicable time limits. The investigator will then need to present the court order or search warrant to the forensic examiner.

The search warrant will also state exactly which samples have been authorized by the judge for the examiner to collect. The items explicitly stated on the search warrant are the only samples that can be obtained during the suspect examination. For this reason, the investigator should carefully articulate as many samples as possible that can be supported by the probable cause statement in the warrant.

Mouth (Buccal) Swab

Before concluding this section on legal requirements, I want to note that even in those cases where a full examination cannot be conducted with a suspect, it is often still possible for law enforcement personnel to obtain a mouth (buccal) swab for DNA. In fact, I believe that all law enforcement professionals should be encouraged to carry mouth swab kits in the field.

Remember that the collection of evidence from a mouth swab is governed by the same requirements and exceptions described above. Mouth swabs can be used to collect a DNA reference sample with suspects, and they can be used by any law enforcement professional who has received training in how to collect, store, and transfer them. They can be particularly useful because suspects often consent to providing mouth swabs to law enforcement personnel in the field, in order to avoid being transported to a medical facility. The procedure is also much less intrusive than drawing blood. As a result, many law enforcement agencies actually prefer mouth swabs over blood samples because medical personnel are not needed, and it is therefore less expensive and time consuming. On the other hand, a mouth swab can only be used to obtain a DNA sample and not the other types of forensic evidence I have talked about in this training bulletin, so I see it as a valuable tool – but not one that replaces the need for a full forensic examination of the suspect when appropriate.

For more information, please see the Instructions for the Collection of Reference Buccal (Mouth) Swabs, provided by the San Diego Police Department.

Components of a Suspect Examination

To address the issue regarding whether police personnel are qualified to conduct suspect forensic examinations, it is important for SARRT communities to first agree on what is to be included in a complete and thorough suspect examination. Clearly, agencies that use officers or evidence technicians to collect such evidence are only doing a superficial examination. As with the victim, a thorough forensic examination of a sexual assault suspect will include the following:

- Taking a limited medical history (based on the type of legal consent/authorization);
- Checking vital signs;
- Conducting a general and genital examination, and;
- Collecting any physical evidence such as clothing, hair samples, foreign debris, and swabs.

Typically, the forensic examination of a suspect is directly parallel to the victim examination (except of course, the genital examination may differ based on the gender of the victim and suspect). Another difference is that – unlike the victim examination – law enforcement personnel must remain present at all times during the forensic examination of a suspect. This must be clearly stated in any protocol that is developed. And although it is not a common problem, policies must also address how force or restraints will be used if it is necessary with a suspect who is combative or dangerous.

IACP Guidance

More information about the protocol for suspect examinations is discussed in the Concepts and Issues Paper on *Investigating Sexual Assault* that was released in 2005 by the National Law Enforcement Policy Center of the International Association of Chiefs of Police (IACP). It was designed to provide background discussion for their Model Policy on sexual assault investigation that was released at the same time. The following excerpt appears on page 12:

> *At the beginning of the forensic examination, the investigating officer should provide the examiner with a summary of the assault, including the acts reported, the location, any physical identifying information provided by the victim or witness(es), and any potential injuries that the victim described inflicting on the suspect. Because the forensic examiner is an agent of the investigating officer, a Miranda warning must be provided to any suspect who is questioned while in custody. This includes questioning the suspect about his medical history (since the information will be used to evaluate any possible findings).*
>
> *The examiner should then obtain a medical history from the suspect, if possible. This history should include recent information on any anal or genital injuries, surgeries, diagnostic procedures, or medical procedures that may affect the interpretation of the current findings. Such information*

can help to avoid confusing preexisting lesions with current injuries or findings. If the suspect invokes his or her right to remain silent, the examiner should bypass the medical history and continue the examination.

In addition to the collection of such biological and trace evidence, the forensic examiner should also record the suspect's vital signs and document (including through the use of body diagrams and photographs) any visible injuries or complaints of pain. Depending on the case history, urine and blood samples may be needed for toxicology or to counter potential defenses that might be raised by the suspect. DNA reference samples of blood and/or saliva should also be obtained.

During the forensic examination, all physical findings must be carefully documented, including any observable or palpable tissue injuries, physiologic changes, or foreign material (e.g., grass, sand, stains, dried or moist secretions). Unlike in the forensic examination of the victim, there should be no conclusion as to whether the findings are consistent with the history provided by the suspect. Both the examiner and attending officer should be prepared to document any spontaneous statements made by the suspect regardless of whether the suspect is in custody or provided with a Miranda warning.

For a detailed overview of the suspect examination, please see the Guidelines for the Suspect Examination from Palmetto Health Richland / Baptist SANE, in Columbia, South Carolina.

DNA Reference Sample

If a suspect is not arrested for several days following a sexual assault and the victim did not describe fighting or resisting, a full forensic examination of the suspect may not be recommended. However, a DNA reference sample should still be obtained in these cases, because evidence still may be recovered from the victim or the crime scene that will connect the suspect to the victim or the location of the crime. Depending on state and local protocol, this DNA reference sample might be obtained using blood or a DNA reference sample might also be obtained using a buccal swab, which could be done by law enforcement personnel or evidence technicians if they have the proper training to do so. This is especially important now that so many states are extending or abolishing the statute of limitations for sexual assault crimes. Even if the sexual assault being investigated today is not successfully prosecuted, a DNA reference sample should be obtained from the suspect in case there is another one in the future.

Exam Location and Logistics

As discussed previously, it is critical to ensure that suspect forensic examinations are conducted in a different location than medical forensic examinations of sexual assault victims. This is both to prevent additional trauma for the victim and to avoid cross contamination of the evidence. For example, the suspect exam might be conducted in the emergency room, while the victim's exam takes place in the area designated for medical forensic exams of victims.

If the suspect exam is being conducted at a medical facility, the suspect may be admitted as a patient to the hospital emergency room or clinic, and health care providers may offer a medical evaluation and possible treatment for an identified medical condition, if the suspect/patient consents. In this scenario, the suspect will have medical records associated with the contact, and the costs of any medical testing or treatment will be the responsibility of the suspect (or the suspect's private insurance). The medical records from the exam will follow standard medical facility's procedures.

If the suspect exam is conducted at a *non-medical facility,* such as a free-standing forensic examiner program, or at a police department (when the exam is conducted by a contracted forensic examiner), only the forensic evidence collection components will be conducted at the time of the exam. If the forensic examiner identifies any issues that might require testing or treatment (e.g., diabetes, hepatitis), the suspect will be encouraged to seek medical care. Keep in mind that a suspect would not be transported for a forensic examination if they had injuries requiring immediate treatment.

Regardless of where the suspect exam is conducted, and by whom, the cost of the forensic exam should be paid for by law enforcement, just like any other expense incurred as a result of a criminal investigation.

★ **One Model: San Diego Police Department**

Because the San Diego Police Department routinely conducts forensic examinations with sexual assault suspects who are contacted or arrested within a few days of the assault (depending on the case facts), the agency established a contract with an independent forensic examiner program to conduct suspect exams. Once the contract was established, smaller law enforcement agencies in San Diego County capitalized on the opportunity and followed the same procedures to conduct their own suspect forensic examinations.

The program ensured that two forensic examiners were on call to conduct suspect forensic exams 24/7/365. The forensic examiners performed the exams at the San Diego Police Department's Headquarters, the same location all suspects arrested by San Diego Police officers were transported to prior to booking a suspect in jail. This saved a great deal of time since the forensic examiners responded to the police department, and they impounded the evidence directly in the property room at Headquarters. This meant the officers did not have to wait for the forensic examiner to complete the paperwork or

package all the biological materials before transporting the suspect to jail. It also prevented the possibility of a suspect being examined in the same medical facility as the victim in the case, who might be having a medical forensic examination as well. This practice can add additional trauma to victims (even if it's not the suspect in their case, but another suspect in handcuffs), and it can also create an opportunity for cross contamination of forensic evidence.

Law enforcement agencies that contract with a forensic examiner program follow procedures that are similar to how they might contract with phlebotomists to be on call or available to draw blood for suspects arrested for driving under the influence or other criminal offenses. What is important is that SARRTs recognize the value of suspect forensic examinations, and they work together with law enforcement to establish protocols that meet the needs of law enforcement and prosecutors while respecting the role of health care providers.

Conclusion

I hope I have provided both the encouragement and the specific guidance you need to work together with other professionals in your community to ensure that suspect exams are conducted routinely and according to best practice. Evidence collected from a suspect exam can often be critical in a sexual assault investigation because suspects could potentially have probative evidence pertinent to the sexual assault on their bodies and/or clothing. They may have physical injuries, anomalies, or clothing damage that corroborates or refutes statements provided by the victim or suspect. Their statements, behaviors, and demeanor may also have value for the investigation. In other words, exam evidence might either support or challenge the theory that the suspect is in fact the perpetrator. A thorough suspect exam also demonstrates diligence on the part of the investigator, which is critical for juries considering the evidence.

For more information on suspect examinations, please see EVAW's OnLine Training Institute module *Forensic Examinations of Sexual Assault Victims and Suspects: Role of the Examination in Sex Crimes Investigations (Part 1: Types and Purposes of Evidence)*. It provides detailed information to improve the use of forensic examinations to collect evidence from the bodies and clothing of both victims and suspects during a sexual assault investigation.

The module goes beyond simply explaining the procedures that are used during victim and suspect forensic examinations. It also explores the different types of evidence that may be gathered during these examinations and describes how this evidence can be used to advance a sexual assault investigation. It also gives participants an opportunity to apply what is learned through case study activities. Ultimately, the goal of this module is to encourage professionals involved in these cases to push past traditional ways of thinking about evidence, to critically analyze how each piece of information gathered fits into the complicated puzzle of a comprehensive investigation.