

SYSTEM RESPONSE

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SYSTEM RESPONSE

Some sexual assault survivors suffer severe physical injuries, contract a sexually transmitted or other communicable disease or become pregnant as a result of the assault; many others do not. In each situation, however, survivors will experience varying degrees of psychological trauma, the effects of which may be more difficult to recognize than physical trauma.

An individual's perceptions of how sexual assault survivors should look, dress or act and the way those perceptions are conveyed will have a major effect upon the survivor's recovery process in the weeks and months following the crime. Each person has her or his own method of coping with sudden stress.



When severely traumatized, survivors can appear to be calm, indifferent, submissive, jocular, angry or even uncooperative and hostile toward those who are trying to help. All these responses are within the normal range of reactions. An inappropriate response to information about the circumstances surrounding the assault or a misinterpretation of a survivor's reaction to the assault may lead to further traumatization and hinder the interview or evidence gathering process.

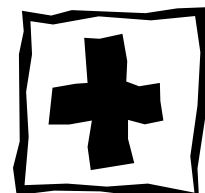
For some survivors, the problems of poverty and discrimination already have resulted in a high incidence of victimization, as well as inadequate access to quality hospital treatment. There may be a mistrust of medical and law enforcement personnel who play a vital role in the aftermath of sexual assault. This may be particularly true if there has been a history of negative experiences with these professionals.

Designated medical facilities serving specific or special needs populations should seek assistance of reliable community consultants, such as the local sexual assault program, to help develop procedures and counseling resources which will reflect the special needs of those populations.

Medical Protocol

Few other criminal offenses require as extensive an examination and collection of evidence as a sexual assault. Additionally, except for an occasional assault case, no other crime collects as much evidence from a live person.

While a potentially fatal object (e.g., bullet, knife, etc.) may be removed from someone and taken to the forensic lab for analysis, that person is not required to submit to the same intrusive exam as a survivor of sexual assault. So, it is



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not unreasonable to assume that having your person gone over with a fine tooth comb, your blood and saliva samples taken, your fingernails scraped and every orifice that has already been violated swabbed with cotton on a stick can be a devastating experience.

Traditionally, the prosecution of adult and child sexual assault cases has been difficult. The survivor often is the only witness to the crime. The examination, collection of physical evidence and the documentation of physical injury may be necessary either to substantiate an allegation or to help strengthen a case for court. Evidence from the offender and the crime scene often may be found on the body and clothing of the survivor. When immediate medical attention is received, the chances increase that some type of injury or physical evidence may be found. Conversely, the chances of finding injury or physical evidence decrease in direct proportion to the length of time which elapses between the assault and the examination.

The examination and collection of physical evidence in sexual assault cases has fallen to physicians and nurses in hospital emergency rooms and pediatric units. The role of medical personnel in this process often can be the key to successful prosecution and can help to promote early emotional recovery for the survivor.

FACILITY & PERSONNEL

It is advantageous for all survivors of sexual assault to seek both medical treatment and evidence collection from a health care facility. Physicians who work primarily in private office-based facilities usually do not have evidence collection kits on hand and may not be as familiar as hospital-based physicians and nurse examiners with the specific medical and evidence collection procedures relevant to sexual assault survivors. Additionally, many private medical offices are not open on a 24-hour basis, and may not have equipment available to make the necessary cultures. However, Texas has many areas in which no hospital is available for 100–200 miles. If that is the case, the facility used **MUST** have adequate equipment available to collect evidence and treat the injuries incurred. (See Reference section on Medical Protocol) The facility should be chosen in consultation with local law enforcement and the local sexual assault program.

The use of Sexual Assault Nurse Examiners (SANEs) to do the forensic examination and collection of evidence is encouraged as an alternative to a physician. SANEs are registered nurses who have completed special training in the forensic examination procedures and issues surrounding sexual assault.

Adults should be treated in medical facilities designated for such treatment. Children should be treated in a pediatrics unit, if available, because staff in these units are specially trained to treat them. The ideal situation is a local child advocacy center if your community has one. However, regardless of who examines and treats the survivor or where the examination occurs, he/she should be specially trained in the examination, recognition and collection of evidence and administering to the special needs of a sexual assault survivor. The Office of the Attorney General, Sexual Assault Prevention and Crisis Services Program can recommend training specifically for this purpose. (512) 936-1270.

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PAYMENT

Texas law (Texas Civil Statutes, Public Health Code, Article 4447m, 1979, 1983) requires that the law enforcement jurisdiction investigating the reported sexual assault is responsible for the payment of medical examinations and collection of evidence in connection with the investigation or prosecution of a sexual assault. As of June 17, 2001, Texas Crime Victims Compensation will reimburse law enforcement for the costs of forensic exams.

Medical facilities designated to provide sexual assault treatment should have 24-hour emergency ability with a staff trained in sexual assault examinations. The local sexual assault program should be called in to serve as an advocate for the survivor. The ideal situation would also include the on-call availability of a specialty physician if needed for consultation and contingency plans for cases requiring photographs and bite mark impressions.

TRANSFER

If a survivor of sexual assault arrives at a hospital that is not designated or equipped to provide a sexual assault examination, arrangements should be made to transfer the survivor to the nearest designated treatment facility. Keep in mind that every transfer and examination of the survivor can destroy evidence. Whenever possible, attempts should be made to preserve evidence when examining, treating or transferring the survivor. However, if there are acute medical or psychological injuries which must be treated immediately, this should be done at the initial receiving facility. A copy of all records, including X-rays taken, should be transported with the survivor to the designated treatment facility. All medical facilities receiving federal funds including Medicare and Medicaid payments are prohibited from refusing treatment or transferring any survivor whose condition is not stable. (Consolidated Omnibus Budget Reconciliation Act [COBRA]; Sections 9121, 1888 (a)(1)(i), 1866(a)(1)(1), 1867; 1985.)

Transfer plans should be developed in conjunction with other treatment facilities in the immediate and surrounding community, and the list of designated medical facilities should then be provided to all local law enforcement agencies and sexual assault programs. This action will greatly reduce the amount of confusion and additional trauma incurred by those survivors who are initially taken or referred to a non-treatment facility and reduce the loss of valuable evidence.

MEDICAL INTAKE

The treatment of victims of sexual assault should be considered a medical emergency. Although many survivors may not have visible signs of physical injury, they will, at the very least, be suffering from emotional trauma. A private location within the designated medical facility should be utilized for the preliminary consultation or admission with the survivor. This could be a room adjacent to the emergency department or a private office located nearby. In order to prevent others from hearing the conversation, it is recommended that this same type of facility be provided for any follow-up law enforcement interview at the conclusion of the examination.

While the survivor is being treated at the designated medical facility, the responding officer should wait some place other than in the examining room. In some jurisdictions, police pro-

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to call for the officer who accompanies the survivor to the hospital to also conduct the follow-up investigation. Officers in these departments should remain at the hospital until the examination is complete (or return to the hospital if they need to patrol) before making arrangements to conduct the more in-depth interview with the survivor.

Over the past several years, many hospitals have developed coding plans, such as “Code R” or “SA” which they use when referring to a sexual assault case. This eliminates the needless embarrassment to survivors and/or their families of being identified in the public emergency or examining room setting as the 'rape' or 'sexual assault' survivor. Other methods can be devised to avoid inappropriate references to sexual assault cases, and designated medical facilities are encouraged to develop their own sensitive coding plans to ensure privacy.

General guidelines for the medical history include the following:

- The history collection conducted by the examiner, must be held in a private setting which is free of outside interruptions.
- The presence of an advocate during this time is discretionary with the examiner, however, consideration should be given to the possible need or request by the survivor or by the advocate on behalf of the survivor for an advocate in the room.

REPORTING

The examiner should be empathetic and understanding of the survivor's trauma, while at the same time efficient in collecting all information necessary for effective treatment.

The examiner should establish rapport as an ally of the survivor and try to cushion the survivor from pressures by family, friends, and other medical personnel.

The survivor should be asked only those questions necessary to discover information that will assist the examiner in making a plan of care, diagnosis and treatment of the survivor which includes evidence collection.

Texas Civil Statutes has affirmed that the privacy and choice for the survivor is of paramount importance, therefore, there is no law in Texas that requires an adult sexual assault survivor to report the assault, (other than some disabled or elderly persons). If no report is made, law enforcement's payment for the procedures and Crime Victim's Compensation claims are invalid. Many hospitals have policies that direct emergency room staff to notify law enforcement whenever any person involved in criminal activity, as survivor or perpetrator, seeks treatment. If that is the case, adult sexual assault survivors shall be given the courtesy and choice of whether they wish to report.

When the survivor chooses not to report, sexual assault programs and law enforcement personnel might encourage the survivor to file an Information Report or Third Party Report. It is very important to the investigation of other cases that law enforcement have all available information even if the survivor does not choose to report the crime. In any event, the survivor should still receive medical treatment and the respectful and sensitive treatment accorded to those who do choose to report.

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If the survivor does report the sexual assault, the law enforcement jurisdiction investigating the case is responsible for the cost of the examination to collect evidence.

Texas law (Texas Civil Statutes, Texas Family Code, Chapter 34, Sections 34.01 and 34.02, 1994) does require that any person who suspects child abuse must report it to either Children's Protective Services of the Texas Department of Protective and Regulatory Services or the local or state law enforcement. The reports should be made to the local TDPRS office or by calling 1-800-252-5400. The report may be made in writing, by telephone or in person. Those reporting the incident or participating in an investigation or court proceeding are immune from civil or criminal liability, unless that person acts in bad faith or malice. Medical and social services organizations are bound by this statute.

Cases involving minors who are abused by someone other than a caretaker fall under the same procedures as adult survivors.

SUPPORT PERSONNEL

The importance of having a support person available to sexual assault survivors cannot be over-emphasized. Whenever possible, one person should be assigned to be available throughout the medical and evidence collection procedure visit and preferably the entire system.

Well-trained support persons can provide the immediate crisis intervention necessary when survivors first enter the designated medical facility for treatment; they can assist hospital medical staff in explaining the necessity of medical and evidence collection procedures; and they can advise family members or friends of the survivor who may be at the hospital. A support person can also help provide counseling referrals and other information, such as the existence and availability of Crime Victim Compensation or other types of assistance, emphasize the importance of follow-up testing for possible venereal disease or other medical problems, and answer additional questions survivors may have following their medical evidence collection examinations. They are also able to provide support for the survivor throughout the criminal justice process.

As a result of the dedication of women and men involved in the issue of sexual assault, hospitals have entered into working agreements with sexual assault programs. The Office of the Attorney General encourages all hospitals to incorporate the notification of sexual assault advocates into their treatment protocol just as they do law enforcement agencies. The survivor has the best chance at emotional recovery if he/she is able to establish a rapport early with an advocate. Crisis intervention is most effective when it is begun during the first few hours following a sexual assault.

PATIENT/SURVIVOR CONSENT

Obtaining a survivor's written consent prior to conducting a medical examination or administering treatment is standard medical practice. With the advent of evidence collection requirements and crisis intervention services, sexual assault survivors are expected to make a decision about consent to these procedures, as well.

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Informed consent should be a continuing process that involves more than obtaining a signature on a form. When under stress, many survivors may not always understand or remember the reason for or significance of unfamiliar, embarrassing and sometimes intimidating procedures. Therefore, all procedures should be explained as thoroughly as possible, so that the survivor can understand what the attending medical personnel are doing and why. A brochure that is designed to accompany this protocol is free and available from the Office of the Attorney General Sexual Assault Prevention and Crisis Services Division and should be distributed to every sexual assault survivor.

Although much of the examination and evidence collection process can be explained by the designated medical facility support person or advocate, this function is ultimately the responsibility of the attending medical personnel.

When written consent is obtained, it should not be interpreted as a blank check for performing tests or pursuing questions. If a survivor expresses resistance or non-cooperation, the medical personnel should immediately discontinue that portion of the process and consider going back to it at a later time in the examination, if the survivor then agrees. In either event, the survivor should have the right to decline one or more tests or to decline to answer any question. Having a sense of control is an important part of the healing process for survivors, especially at the early stages of examination and initial interviewing.

It is important to remember that consent to have a support person or advocate present must be given by the survivor prior to the introduction of that person. Also, at any time throughout the treatment and evidence collection process, the survivor should be able to refuse further interaction with the designated support person and/or request that the support person leave.

Consent to conduct a medical examination and collect physical evidence should be obtained from parents/guardians of all children under the age of 18. However, Texas law provides that an examination may be done in cases of suspected child abuse or suicide prevention with the consent of the minor only, court order or on the opinion of the physician in emergencies. Examination may not be done if the child is 16 or older and refuses to consent or if consent is refused by a court order. (Family Code, Sections 35.03 (g), 1985 and 35.04, 1975). Hospitals should follow their usual procedures for obtaining consent in extraordinary cases, e.g., for the severely injured or incoherent survivor.

SEXUAL ASSAULT EVIDENCE COLLECTION KIT (RAPE KIT)

The Texas Evidence Collection Protocol, as designated by Chapter 420, Government Code, requires sexual assault evidence collection kits to contain items to collect and preserve evidence of a sexual assault or other sex offense.

The Sexual Assault Forensic Examination Form should be stocked separately from the kit. There will be times when the form is used without the kit.

See Reference Section “Medical Protocol” for Required Kit Contents

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Packaging

Kits can be made from materials readily available at most medical facilities or purchased commercially. If a kit is purchased commercially, the cost should be between \$10.00 to \$20.00 each. Kits should be packaged in a crush proof box for transportation to the forensics lab.

In order to prevent the loss of hairs, fibers, or other trace evidence, clothing and other evidence specimens must be sealed in paper or cardboard containers because moisture remaining in the evidence items will be sealed in, making it possible for bacteria to quickly destroy biological fluid evidence. Unlike plastic, paper breathes, and allows moisture to escape. Biological evidence should never be packed in plastic. However, this does not mean that evidence may be packaged wet in paper. All items should be actively air-dried, without heat, before packaging.

Every item submitted to the forensic lab for analysis must be labeled as to site (e.g., vaginal, oral, rectal, penile, etc.), name of survivor, date and examiner's initials.

See Reference Section "Medical Protocol" for Recommended Equipment

EVIDENTIARY AND MEDICAL EXAMINATIONS

A physical examination should be performed in all cases of sexual assault, regardless of the length of time which may have elapsed between the time of the assault and the examination.

Some survivors may ignore symptoms which would ordinarily indicate serious physical trauma, such as internal injuries sustained by blunt trauma or foreign objects inserted into body orifices. Also, there may be areas of tenderness which will later develop into bruises but which are not apparent at the time of initial examination.

If the assault occurred **within the 72 hours prior to the examination**, then an evidence collection kit should be used. The time line of 72 hours is not absolute. It is a guideline. Medical and law enforcement should evaluate each case after that time individually.

If it is determined that the assault took place more than **72 hours prior to the examination**, the use of an evidence collection kit may not be necessary. It is unlikely that trace evidence would still be present on the survivor. However, evidence may still be gathered by documenting any findings obtained during the medical examination (such as bruises or lacerations), photographs and bite mark impressions (if appropriate) and statements about the assault made by the survivor. These observations and findings should be documented on the report form.

When a forensic examination is performed, it is important that the medical and evidence collection procedures be integrated throughout. This coordination of medical and forensic procedures is crucial to the successful examination of sexual assault survivors.

For example, in order to minimize trauma, blood drawn for medical purposes, if indicated (pregnancy, syphilis, HIV) should be done at the same time as blood drawn for evidence collection purposes. Also, when evidence specimens are collected from the oral, female

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sexual organ or anal orifices, cultures for sexually transmitted disease should be taken immediately following these collection procedures, when indicated.

Attending Personnel

The only people who should be with the adult survivor in the examining room are the examining medical personnel, any translator needed and, (with the consent of the survivor and attending medical personnel) a specially trained advocate. Every effort should be made to limit the number of people in attendance during the examination. Every person in the room can be considered a witness to the procedure and therefore called to testify in court.

It is not necessary for a law enforcement representative or child protective agency representative to observe evidence collection procedures to maintain the chain of evidence or custody. This is the function of the attending medical personnel.

Subjecting sexual assault survivors to the observation of law enforcement personnel during this process as well as having the law enforcement representative privy to the private communications between the survivor and the examining/support team is an invasion of the survivor's privacy and is an unnecessary practice.

Presence of Parent/Guardian

Since children many times will tell health professionals information they may not tell in the presence of parents or other adults, adolescents and older children should be encouraged to provide much of their own medical history, as appropriate. This interview should be conducted in a private area, and information regarding sexual history (of both males and females), menstrual history and use of birth control should be recorded. Encourage the child to be interviewed alone (without parent or guardian) if it does not cause too much stress for the child.

The child and the child's parents/guardians should be informed about and prepared for the physical examination by the medical personnel. They should also be told what specific lab tests will be done, the purpose of each test and when the results will be available.

If a parent or guardian is present, the purpose of the interview should be explained in a straight-forward manner, and cooperation should be elicited to reassure the child that it is safe to talk with the interviewer. The parent/guardian should also be told that any facial expressions of shock, disbelief or disapproval or any verbal or physical signals to the child could impede the investigation.

Under no circumstances should the interview be held in the presence of a parent/guardian who is suspected of perpetrating the abuse.

Preserving the Integrity of Evidence

The custody of any evidence collection kit and the specimens it contains must be accounted for from the moment of collection until the moment it is introduced in court as evidence. This is necessary in order to maintain the legally necessary chain of evidence; sometimes called chain of custody, or chain of possession. **Therefore, anyone who handles evidence items should label them with their initials, the date, source of the specimen, the name of the attending medical personnel and of the survivor. All outside containers should be sealed with an integrity seal.**

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DNA Examination of Sexual Assault Evidence

Research in the last few years has revealed new options for identification in criminal investigations. The analysis of cellular biological materials for DNA (Deoxyribonucleic Acid) has greatly enhanced identification possibilities of criminals. DNA (chromosomal material) contains the genetic code of an individual and if sufficient quantity of DNA exists in a given sample, that individual may be identified by DNA comparisons (e.g., comparing blood from a suspect with blood left at a crime scene, etc.). This is especially significant in cases where no witnesses were available to make identifications.

DNA is found in biological materials containing a cell nucleus; therefore, spermatozoa can be readily used for identification of an individual provided sufficient sample is available. This technique of identification can be helpful in a sexual assault investigation where the survivor cannot identify her/his assailant. DNA can also be identified in blood, saliva, hair (containing hair root with root sheath), tissue and bone marrow.

Many sexual assault offenders are sexually dysfunctional and do not ejaculate during the assault. Studies indicate that there is no ejaculation in up to 50 percent of sexual assault cases. Additionally, offenders may use a prophylactic, have a low sperm count (frequent with heavy drug or alcohol use), ejaculate somewhere other than in an orifice or on the survivor's clothes or body, or penetration could have been by an object other than a penis. There could also have been a significant time delay between the assault and the collection of specimens. The survivor could have inadvertently cleaned or washed away the semen, or the specimens could have been collected improperly. **Therefore, a lack of spermatozoa is not conclusive evidence that an assault did not occur it only means that spermatozoa may have been destroyed after being deposited or that it may never have been present.**

CLOTHING EVIDENCE

Frequently, clothing contains the most important evidence in a case of sexual assault. The reasons for this are as follows:

- Clothing provides a surface upon which traces of foreign matter may be found, such as the assailant's semen, saliva, blood, hairs and fibers as well as debris from the crime scene. While foreign matter can be washed or worn off the body of the survivor, the same substances often can be found intact on clothing for a considerable length of time following the assault.
- Drainage of ejaculate from the vaginal or anal cavities may collect on the panties/underwear, especially with a child survivor. Although bacterial action and breakdown does occur in this environment, it happens at a slower rate than in the body cavities. After 3–6 hours, usable semen evidence, if present, is more likely to be found on the survivor's undergarment than on vaginal or anal swabs. For a child, undergarments are very important, and parents should be encouraged to bring in the child's underwear.
- Damaged or torn clothing may be significant. It may be evidence of force and can also provide laboratory standards for comparing trace evidence from the clothing of the survivor with trace evidence collected from the suspect and/or the crime scene.

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Any item of clothing worn during the assault or prior to the examination may need to be collected.

In the process of criminal activity, different garments may have contact with different surfaces and debris from both the crime scene and the assailant. Keeping the garments separate from one another permits the forensic scientist to reach certain pertinent conclusions regarding reconstruction of criminal actions. For example, if semen in the female survivor's underpants is accidentally transferred to her bra or scarf during packaging, the finding of semen on those garments might appear contradictory to the survivor's own testimony in court of exactly what events occurred in the assault.

Therefore, each garment should be properly labeled and placed separately in its own paper bag to prevent cross-contamination from occurring.

Prior to the full examination, great care must be taken by the attending medical personnel to determine if the survivor is wearing the same clothing she/he wore during or immediately following the assault. If so, the clothing should be examined for any apparent foreign materials, stains or damage. When the determination has been made by law enforcement personnel that items may contain possible evidence related to the assault, **with survivor consent** those items should be collected.

If it is determined that the survivor is not wearing the same clothing, the attending medical personnel should inquire as to the location of the original clothing, such as at the survivor's home or at the laundry for cleaning. **This information should then be given to the investigating officer so that arrangements can be made to retrieve the clothing before any potential evidence is destroyed.** If this clothing was worn before and/or during the assault, trace evidence may be found. Semen may also be found if the assailant ejaculated outside the survivor's body. Any briefs, trunks, sanitary napkins, panty liners, diapers or tampons worn by the survivor for the period of up to 24 hours after the assault should be obtained as they may contain semen or other evidence.

See Reference Section "Medical Protocol" for Clothing Evidence Collection Procedure

SWABS AND SMEARS

Smears are made to allow the forensic analyst to test microscopically for the presence of spermatozoa. If they are present, the analyst will then proceed to use the swab(s) to identify the seminal plasma components and attempt to identify the donor population based on genetic markers.

Depending upon the type of sexual assault, sperm or sperm particles may be detected in the mouth, vagina and rectum. However, embarrassment, trauma or a lack of understanding of the nature of the assault may cause a survivor to be vague or mistaken about the type of sexual contact which actually occurred. Because of these reasons, and because there also can be leakage of semen from the vagina or penis onto the anus, even without rectal penetration, it is recommended that the survivor be encouraged to allow examination of all three orifices to determine the specimen collection indicated.

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When taking swabs, the examiner takes special care not to contaminate the individual collections with secretions or matter from other areas, such as vaginal to rectal or penile to rectal. Such contamination may unnecessarily jeopardize future court proceedings.

If survivors must use bathroom facilities prior to the collection of these specimens, they should be instructed to do so in a bedpan so that any evidence can be collected from the discharge, if needed.

See Reference Section “Medical Protocol” for Swabs and Smears Collection Procedures

BITEMARK EVIDENCE

Bite marks may be found on survivors as a result of sexual assault and other violent crimes and should not be overlooked as important evidence. Bite mark impressions can be compared to the teeth of a suspect and can sometimes become as important, for identification purposes, as fingerprint evidence. The collection of saliva and the taking of photographs of the affected area are the minimum procedures which should be followed in cases where a bite mark is present.

See Reference Section “Medical Protocol” for more information on Bite mark Evidence

HAIR EVIDENCE

During an assault, hairs may be transferred from one individual to the person or clothing of the other or to the crime scene. Other hairs transferred during an assault are pulled out by friction or other means of forcible removal.

These hairs can be microscopically compared to known hair samples from both individuals to determine the origin. Head and pubic hairs are the only hairs on the body that have enough individual characteristics for this type of analysis. Hair characteristics are affected by many factors including stress, diet and hair care products. Time delay in the collection of hair samples of the survivor may adversely affect future comparisons.



See Reference Section “Medical Protocol” for Hair Evidence Collection Procedures

FINGERNAIL SCRAPINGS

The purpose of collecting fingernail scrapings is to collect potentially useful evidence of cross-transfer. During the course of a physical crime, the survivor will be in contact with the environment as well as with the assailant. Trace materials, such as skin, blood, hairs, soil and fibers (e.g., from upholstering, carpeting, blankets, etc.) can collect under the fingernails of the survivor.

See Reference Section “Medical Protocol” for Fingernails Scrapings Collection Procedures

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WHOLE BLOOD SPECIMEN

Any semen found on the clothing or in the body cavities of the survivor is likely to be mixed with her/his body fluid (e.g., vaginal secretions, saliva, etc.). Therefore, a blood sample must be collected from the survivor to determine the contribution of her/his genetic markers to the mixture or unidentified stains.

Note that under certain rare circumstances a semen-free vaginal swab may have to be collected from the survivor at a later time in order for the laboratory personnel to interpret genetic marker results. This would entail the survivor abstaining from intercourse for one week then having a vaginal swab collected by a medical professional.

SALIVA SPECIMENS

In the ABO analysis of secretion mixtures, such as semen and vaginal secretions, the ABO type of the survivor must be identified in order to evaluate properly the blood type of the other contributor. A dried sample of known saliva and the known liquid blood sample are used to determine the ABO secretor status of the survivor.

Collection Procedures

It is important that this specimen not be contaminated by outside elements. Therefore, the survivor should not smoke or have anything to eat or drink for at least 30 minutes prior to this procedure.

See Reference Section “Medical Protocol” for more information on Saliva Specimens Collection Procedures

SEXUAL ASSAULT FORENSIC EXAMINATION

Throughout the examination, the attending medical personnel explains to the survivor why questions are being asked, why certain medical and evidentiary tests may need to be performed and what treatment, if any, may be necessary.

1. Vital signs and other initial information, such as the date and time of both the examination and the assault, is recorded.
2. A brief description of the details of the assault is recorded. This description includes any oral, rectal or vaginal penetration, whether the assailant penetrated the survivor with finger(s) or foreign object(s), whether any oral contact occurred, and whether ejaculation occurred (if known). The survivor's account of what happened is recorded accurately, briefly and in the survivor's own words.
3. Gynecological history information including menstrual history (last menstrual period, date and duration, menstrual cycle), pregnancy history (including evaluation of possible current pregnancy) and contraceptive history is evaluated and recorded. In survivors at risk for pregnancy, a pregnancy test is done to establish a baseline for possible pre-existing pregnancy.
4. During the general physical examination, all details of trauma are recorded, such as bruises, abrasions, lacerations, bite marks, blood or other secretions, with particular

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attention paid to the genital and rectal areas of both male and female survivors. Common sites and types of injury, even if not yet visible, include the breasts, the upper portion of the inner thighs, grab or restraining marks on the neck, side of the face, arms, wrists or legs, and injuries or soreness to the scalp area, back or buttocks as a result of being thrown against an object or onto the ground.

NOTE:

Information concerning sexually transmitted diseases is contained in Section 8, Special Concerns.

MEDICAL EXAMINATION DOCUMENTATION

Body Diagrams/Photographs

Photographs of sexual assault survivors **are not the only form of documentation**. Instead, a drawing of the human figure is used to show the location and size of the injury as well as a written description of the trauma. Drawings consist of adult, child and infant figures and contain genitalia for males and females.

Toxicology Blood/Urine Screen

Some hospital protocols include the routine procedure of testing for the presence of alcohol and other drugs in the systems of sexual assault survivors.

Blood/urine screens for determining toxicology are done in the following situations in cases of sexual assault:

- If the survivor or accompanying person (such as a family member, friend or police officer), states that the survivor was involuntarily drugged by the assailant(s),
- AND/OR if in the opinion of the attending medical personnel, the survivor's medical condition appears to warrant toxicology screening for optimal care.

Great care should be exercised to ensure that toxicology screens are not routine for survivors of sexual assault.

PROPHYLACTIC TREATMENT FOR SEXUALLY TRANSMITTED DISEASES AND PREGNANCY

All survivors should be given information about the possibility of contracting sexually transmitted diseases from the assault. Only a follow-up test at a later time will confirm any transmission. The survivor should be consoled with the fact that because a sexual assault has occurred does not necessarily result in the transmission of a disease or pregnancy. However, a follow-up exam and test six weeks after the assault should be encouraged. Prophylactic treatment for sexually transmitted diseases should be offered routinely at the time of the initial exam.

If the medical team determines that the female survivor of child-bearing years is at high-risk for pregnancy, prophylactic treatment for pregnancy is discussed and offered. A thorough history is taken to determine the survivor's method of birth control and whether it was in use during the assault. Should the medical facility have a policy that is philosophically opposed to "morning after treatment," the survivor should still be alerted to her risk for

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pregnancy, informed of her options and referred to a facility that will prescribe treatment if she chooses it.

PROCEDURES FOR RELEASE OF EVIDENCE

Preliminary Procedures

When all evidence specimens have been collected, they are placed back into the kit, making certain that everything is properly labeled and sealed.

The original copy of the sexual assault forensic examination form is to be maintained at the facility where the exam was completed. The second copy is for the law enforcement officer to take and the third copy is included in the kit. All copies should be legible.

All required information is filled out on the top of the kit just prior to sealing it with red or orange evidence tape at the indicated area. The completed kit and clothing bags are kept together and stored in a safe area. Paper bags are placed next to but not inside the complete kit.

All medical and forensic specimens collected during the sexual assault examination must be kept separate in terms of collection and processing. Those required only for medical purposes should be kept and processed at the examining medical facility, and those required strictly for forensic analysis should be transferred by law enforcement with the evidence collection kit to the crime laboratory for interpretation.

Transportation of Evidence

Under no circumstances should survivors be allowed or expected to handle evidence after it has been collected. Only a law enforcement official or duly authorized agent should transfer physical evidence from hospitals to crime laboratories for analysis. In order to inhibit deterioration and assure the best possible test results, kits should be refrigerated immediately and kept so until transported to the forensic lab by law enforcement personnel. Kits should be taken directly from the medical facility to the lab where the contents will be frozen until processed.

Release of Evidence

Evidence collection items should not be released from a medical facility without the written authorization and consent of the informed adult survivor, or an authorized third party acting on the survivor's behalf if the survivor is unable to understand or execute the release. An authorization for release of information and evidence form should be completed, making certain that all items being transferred are checked off. Besides obtaining the signature on this form, signatures must be obtained from the medical facility staff person turning over the evidence as well as the law enforcement representative who picks up the evidence.

One copy of the release form should be kept at the medical facility and the other copy given to the law enforcement representative. This representative should also print and sign her or his name on the cover of the collection kit and bags of clothing and fill in the time of transfer.

Non-authorization of Release

Although most sexual assault survivors consent to have their evidence specimens released to law enforcement subsequent to the medical examination and evidence collection process,

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there may be a few instances when a survivor will not authorize such a release. Medical facilities and/or law enforcement personnel should not react negatively to a survivor's initial decision not to release evidence. They should inform the survivor that the release of evidence is not a commitment to prosecute. Although the lack of authorization on the date of collection could later be questioned if the case goes to court, such reluctance can be explained easily and is not considered by prosecutors to be a serious problem.

If consent is not initially received, kits and clothing bags can be stored on a temporary basis in a locked, secure area. To retard spoilage, kits should be refrigerated for up to two weeks, if possible, before being destroyed. If refrigerated storage is not available, the evidence should remain sealed and be placed in a secure cool dry place. (Although some medical facilities have limited storage and/or refrigeration facilities, space should not present any major problem since the number of actual cases in which release is not authorized is very low). Hospital personnel and/or the survivor's advocate must inform survivor of the length of time the evidence will be held prior to destruction, thereby providing the survivor with an opportunity to reconsider authorization for release within a reasonable period of time after the initial hospital examination. It is the responsibility of the law enforcement agency to contact the survivor to inquire about any change of decision.

Although there have been instances where a parent or guardian, acting on behalf of the child, has refused to authorize the release of evidence to law enforcement, the actual incidence of this has been very low. Since child abuse must be reported, the parent/guardian does not have a choice in whether the evidence is released to the law enforcement agency.

POST-EXAMINATION INFORMATION

Information Brochures

The Office of the Attorney General has developed an informational brochure about sexual assault. These brochures can be helpful in explaining to survivors some of the common problems they may encounter, such as disturbances in sleeping or eating patterns, flashbacks of the attack, and post traumatic stress syndrome. They also provide reassurance to the survivor that sexual assault survivors are not responsible for the assault. Copies of the brochure are available from the hospital, local sexual assault program or Office of the Attorney General, Sexual Assault Prevention and Crisis Services Division.

Arrangements should be made to provide a copy of such publications to sexual assault survivors and their families when they leave the hospital. Many kits come with this prepackaged.

The discussion of follow-up services for both medical and counseling purposes is an important treatment aspect for sexual assault survivors. Before leaving the hospital, the medical facilities portion of the information booklet mentioned above should be completed. The type and dosage of any medication prescribed or administered should be recorded in the section provided.

Many medical facilities report that most sexual assault survivors do not return to the facility for these follow-up tests. Denial of the assault or of the need for follow-up testing, especially if no unusual symptoms are experienced and inadequate information provided by many medical facilities concerning the necessity for follow-up treatment are common reasons for a failure to return.

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Survivors should be encouraged to obtain follow-up tests, if needed or indicated, for possible pregnancy, sexually transmitted disease and urinary tract or other infections within four to six weeks after the initial hospital visit. It is vital that both written and verbal information be provided, including the locations of public health clinics or referrals to private physicians for medical follow-up if the survivor does not wish to return to the treating facility. Advocates can be helpful in explaining the need for a return visit and what types of tests should be performed.

After an acute assault, it is extremely important that children return for a follow-up visit within one week to re-evaluate any genital or other injuries and to perform follow-up cultures, if necessary.

This visit will also provide the examiner an opportunity to assess how well the child and/or family are handling the stress and whether counseling has been received or is necessary.

Another section of the booklet is used to record follow-up counseling information. While the survivor should be encouraged to seek follow-up counseling, the decision to do so must be voluntary. Some survivors may be reluctant to talk with a counselor; however, they are more likely to participate if counseling has been coordinated with the examination process.

Follow-up Contact

Any further contact with sexual assault survivors must be carried out in a very discreet manner. In an effort to avoid any breach of confidentiality or unnecessary embarrassment, it is recommended that survivors be asked, prior to leaving the medical facility, whether they may be contacted about follow-up services. If so, they should be asked to provide an appropriate mailing address and/or telephone number where they can be reached.

Clean-up/Change of Clothing

Many survivors would like to wash after the examination and evidence collection process. If possible, the medical facility should provide the basics required, such as mouth rinse, soap and a towel.

If garments have been collected for evidence purposes and no additional clothing is available, arrangements should be made to insure that no survivor has to leave the hospital in an examination gown. In those instances where police officers transport victims from their homes to the hospital, officers should be instructed to advise survivors to bring an additional set of clothing with them in the event any garments are collected. Some survivors may wish to have a family member or friend contacted to provide substitute clothing. When the survivor has no available personal clothing, necessary items could be supplied by volunteer organizations and/or the local sexual assault program. A list of agencies should be developed by the local task force.

This and other issues can be addressed by developing a community plan with local law enforcement agencies and sexual assault programs.

Transportation

Finally, transportation should be arranged when the survivor is ready to leave the hospital. In some cases this will be provided by a family member or friend who may have been called to

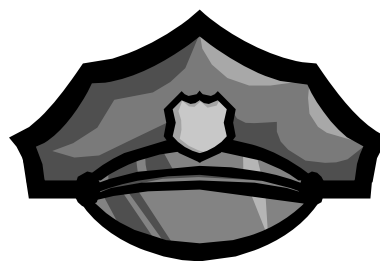
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the hospital for support. In other cases, transportation can be provided by the local law enforcement agency as a community service or by the local advocacy agency.

Law Enforcement

This information is provided to let you know a few of the ways that law enforcement is contacted.

Before the physical exam in the emergency room, the sexual assault survivor may have contacted law enforcement officers. If not, it is important for them to understand that most hospitals automatically contact law enforcement once a survivor enters the emergency room. **This does not mean that there is an obligation to make a crime report.**



A survivor is the only person who can decide whether or not to make an initial crime report and how to report the crime. In making this decision, the following facts might be considered:

ADVANTAGES:

- If the crime is reported and the suspected offender is caught and convicted, the survivor may have protected others from falling victim to this rapist. Also, by reporting they may be able to help substantiate another survivor's report.
- The survivor may be eligible for financial compensation provided by the state.
- The survivor may request assistance throughout the trial process from sexual assault advocates.

DISADVANTAGES:

- It may be difficult to repeat the history of the sexual assault so many times to law enforcement officers and in court.
- The prosecutor decides whether or not to proceed with the case, although the survivor is entitled to know why the case was not filed.
- Fewer than one out of five cases go to trial, and even fewer result in conviction. This does not mean that their particular case will not be filed, but the statistics are discouraging.
- Reporting the assault may be emotionally difficult because it may cause the individual to relive the experience.

If the decision is to report the sexual assault, the first step is a crime report which may be made before or after the physical exam in the emergency room. Within a few days after the

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initial report, law enforcement officers or special sexual assault investigators may call the survivor into the office or go to the survivor's residence for a follow-up report.

The survivor must be truthful in each statement made. If a survivor does not know something exactly, he/she must make every effort to describe it as accurately as possible. The officers are not there to judge survivors. They are there to obtain information about the crime, date, time, location, description of suspect, etc. Survivors will also be asked about their activities before and after the assault. Officers should not ask questions like “Did you enjoy it?” or “Did you climax?” etc. In some cases, they may ask questions about mental state in order to determine whether or not the survivor may need to be referred for counseling. They will also need to know whether any penetration occurred and what sexual acts were forced to determine what crimes can be charged.

The slightest penetration may result in an assault charge rather than an attempted assault charge. Remember, it is not the survivor who did these things but the assailant. The information provided is the basis for a legal proceeding and must be accurate. The survivor has the right to read over everything the law enforcement officers write on forms and to ask them to correct any misinformation. It is a good idea to get the **NAMES, SERIAL or BADGE NUMBERS** and **BUSINESS TELEPHONE NUMBERS** of the officers. Many people find that they remember more details of an event when they are written down. If a survivor finds that he/she have remembered something he/she might call the law enforcement agency with the information.

Third Party Reporting

Sexual assault survivors are able to report information anonymously about their assault and about their assailant(s) to the law enforcement through third party reporting.

The sharing of such information is a special benefit to law enforcement and the survivor. The law enforcement agency will add the third party report information to the other data they have collected concerning assaults and assailants. This compilation of information frequently reveals assault and assailant patterns which can lead to the arrest of the perpetrator(s) and/or the discovery of a serial rapist.



The survivor, who is the only person able to contribute this valuable information may do so without having to reveal his/her own identity if that is their choice. Also, making a third party report may be an important step in reclaiming a sense of decisiveness, personal power and integrity.

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SAMPLE THIRD PARTY REPORT

This is used only to supply information to law enforcement. This is not an official report. The survivor has agreed to provide this information: _____ (advocates initials).

Third Party Report

I.

Assault Information: Date:_____ Time:_____am/pm

Location: _____

Location of first encounter with assailant, if different: _____

Did the offender use a vehicle? Yes No

Year: _____ Make: _____ Model: _____ Color(s): _____

License Plate #: _____ State: _____

Special Features: _____

What were you doing before you were assaulted? _____

How did the offender approach you? _____

What happened during the assault? _____

Was a weapon used, what? _____

Were you physically injured, how? _____

Did you receive medical attention, where? _____

II.

Suspect Information: How many?_____ Name(s): _____

Address(es): _____

Description: Age(s): _____ Sex(es): _____ Race(s): _____

Complexion: _____ Eye color: _____

Height: _____ Weight: _____ Build: _____

Hair color: _____ Length: _____ Texture: _____

Did the offender say anything, what? _____

Description of voice: _____

Offender's clothing: _____

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Physical distinctions (beard, smell, physical impairments, tattoos, etc.)

Additional information about the sexual assault or any other information you feel is important: _____

Would you be willing for the sexual assault program to have your name and number on file so that we may contact you should law enforcement wish to talk with you more about this report? You would then be able to decide if you wanted to contact them. YES NO

Name: _____ Day Phone: _____

Address: _____

Pseudonym

On January 1, 1988, the state of Texas made available to sexual assault survivors the option of using a pseudonym. A survivor can fill out a form to choose a false name to be used on all legal and medical documents associated with the assault.

There are both advantages and disadvantages to using a pseudonym. It may help shield the survivor from unwanted publicity. (If the case goes to court, though the pseudonym will still be used, there may be enough information, including photographs, to identify the survivor anyway). A disadvantage, however, is that a survivor who chooses to use a pseudonym may be less credible in the eyes of the legal system than a survivor who reports or files a complaint in his/her own name.

If a survivor chooses to use a pseudonym, all people and agencies involved in her/his case must receive a copy of the pseudonym form—the hospital emergency room and registration, the police or sheriff's office, Crime Victim's Compensation, her/his therapist, sexual assault programs, etc.

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The intent of this legislation was to give survivors a choice in protecting their identity. For many victims, the greatest fear is that their name will appear in the press. It is intended that this option will encourage more survivors to file complaints and experience a sense of privacy when they do.

- Pseudonym forms are available from local sexual assault programs or the Office of the Attorney General—Sexual Assault Prevention and Crisis Services.
- Law enforcement agencies are encouraged to use the pseudonym form routinely and at first contact. If it is not proffered and the victim requests it later, all public records and court proceedings will need to be changed retroactively. The law was specifically designed to affect the General Offense Report since most news media obtain their information there first.
- The pseudonym can be used for children. It is not addressed as a requirement or prohibition in the bill.
- We suggest that the word "pseudonym" be used in place of the name on any public documents. Please advise survivors that the name they choose will follow them through the criminal justice system. Care should be taken in the choice. Also, the pseudo-address and phone number used should be that of the police department or sexual assault program or it should be left blank on the affected documents.
- A space is provided on the form for the survivor to give permission for release of information for specific purposes. This should help investigations, insurance payments and counseling referrals.
- Law enforcement should make an extra copy of the form to give to the victim.
- The form, or a copy of it, should follow the case file to court and probation or parole.
- All press releases or statements about a sexual assault case should include a disclaimer that a pseudonym is being used.
- A potential jury can be polled about whether or not they know the survivor by bringing her/him into the courtroom during voir dire (questioning of potential jury members).

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PSEUDONYM FOR SEXUAL ASSAULT SURVIVORS (All information will be kept confidential).

Law enforcement agency _____ Case # _____
PSEUDONYM* _____
Real Name _____
Real Address _____
Real Phone # (day) _____ (evening) _____
Alternate Contact person _____
Alternate Contact phone # (day) _____
(evening) _____

*This name will be used in all public files to take the place of your real name. Your correct address and phone number will also be protected. (Texas Code of Criminal Procedure Art. 57.01, Eff. 1/1/88)

RELEASE OF INFORMATION

To assist law enforcement with their investigation and obtain further assistance, I give permission for specific limited release of my real name, address and phone number. By checking the following, my real information may be released to these specified agencies:

- _____ Local sexual assault program
- _____ Law Enforcement Crime Victim Liaison
- _____ Crime Victims' Compensation
- _____ My medical insurance carrier
- _____ District Attorney Crime Victim Coordinator
- _____ Court ordered restitution office

Survivor Signature Date

Law Enforcement Officer Signature/Badge Number Date

FOR YOUR INFORMATION

The following services are available to you from your local sexual assault program: 24 hour hotline & crisis intervention, legal procedures advocacy and support, accompaniment and assistance with law enforcement

The following program is available to you:

(Program name and phone number to be filled in by the officer.)

Crime Victims' Compensation

A RESOURCE FOR VICTIMS

The Crime Victims' Compensation Act, passed in 1979, created the Crime Victims' Compensation Fund. The fund is supported by persons convicted of crime through payments of court costs and probation fees in amounts ranging from \$15 to \$45.



COSTS THAT MAY BE COMPENSATED

The Crime Victims' Compensation Fund can provide financial assistance for a variety of expenses related to a crime. For example, Crime Victims' Compensation can help pay:

- The medical bills associated with the injuries caused sexual assault;
- The counseling expenses of an abused child or a sexual assault survivor, and assist with counseling for members of the victim's immediate family;
- Compensation for lost wages and loss of support payments in certain situations. CVC can assist victims and their families with travel expenses associated with medical treatment and court appearances associated with the crime. All expenses must be for items that fall within the general categories listed below and are necessary and related to the crime.
 - Reasonable medical, ambulance, prescription and rehabilitation expenses
 - Mental health counseling
 - Burial and funeral expenses
 - Lost wages and loss of support
 - Travel associated with seeking medical treatment, or attending and/or participating in the criminal justice process
 - Reasonable attorney fees for legal assistance in filing the crime victims' compensation application and in obtaining benefits, if the claim is approved
 - Reasonable costs associated with crime scene cleanup
 - Reasonable replacement costs for items such as clothing or bedding taken as evidence or made unusable as a result of the criminal investigation
 - Some moving costs if the assault occurred at victims residence.
 - Reimbursement for property damage or loss is **NOT** an eligible expense.

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AMOUNT OF COMPENSATION

- Total recovery may not exceed \$50,000 unless the injury is catastrophic.
- Individuals who suffer total and permanent disability as a result of their victimization may qualify for an additional \$50,000 which may be used for expenses such as lost wages, prosthetics, rehabilitation and making a home wheelchair accessible.

RECOVERIES FROM OTHER SOURCES

The Crime Victims' Compensation Fund is regarded as "the payer of last resort." Other sources, such as health care insurance or Medicaid, must be considered first. The staff in the Crime Victims' Compensation Division will work with applicants to see that all available resources are coordinated to work in the best interests of the victim.

WHO IS ELIGIBLE?

- Victims who suffer bodily injury, emotional harm or death as the result of a violent crime.
- U.S. residents who become victims of crime in Texas, and other Texas residents who become victims of crime in a state or country without a compensation program.
- Immediate family members of a victim and people who legally or voluntarily assume expenses related to the crime.
- Public safety professionals and citizens who are injured or killed as the result of intervening on the behalf of a victim or law enforcement.

To be eligible, the victim and/or claimant cannot share responsibility for the crime. The crime must be reported to a law enforcement agency and the victim must cooperate with criminal justice authorities.

HOW TO APPLY

Applications are available from hospitals, law enforcement agencies and prosecutors' offices. The Crime Victims' Compensation Division also provides applications, brochures and posters. For more information, contact:

Office of the Attorney General
Crime Victims' Compensation Division
P.O. Box 12198
Austin, TX 78711
1-800-983-9933

The Crime Victims' Compensation Division Staff are available to help victims and their families access this program. Applications are available in English and Spanish; the toll-free number is staffed by both English and Spanish speakers. Applications and information are also available from the CVC website: <http://www.oag.state.tx.us>

Criminal Justice System

BASIC OUTLINE

I Defendant is charged with offense.

- A. State is charging party in complainant's name.
- B. D.A.'s office is survivor's attorney.
- C. Court is assigned at random to dispose of case.
- D. Bond is automatically set when defendant is charged.
Bond may either be raised or lowered. Conditions may also be set, such as no contact with survivor, etc.
- E. One of the Criminal Courts obtains jurisdiction of the case. Information as to the location of the case can be obtained by calling the District Clerk's office or the District Attorney's office, and giving the defendant's name. If one does not know the defendant's name, call the District Attorney's office anytime after the Preliminary Initial Appearance.
 - 1. **Preliminary Initial Appearance:** within 24 hours of arrest the defendant will appear before the judge.
 - a. The Court will see that the defendant is represented by counsel. If indigent, the court will appoint an attorney.
 - b. The Court will make sure that the defendant understands the charge against him.
 - c. The Court will make a finding if there is probable cause to send the case to the Grand Jury.
 - d. Survivor will not be needed at this stage.
 - e. Survivor can ask the D.A. to request conditions on bond.
 - 2. **Examining Trial:** Defendant may request examining trial; witnesses may need to be available. The D.A. attempts to circumvent this most of the time.
 - 3. **Grand Jury:** If the Court finds probable cause, the case is sent to a 12 person grand jury.
 - a. This body sits for a 3-month term.
 - b. The grand jury either issues a true bill (indictment) or a no bill usually within two weeks after preliminary initial appearance.

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- c. If a true bill, the case is sent back to the original court conducting the preliminary initial appearance giving the court jurisdiction over the case until disposition of the case is over.
- d. Normally the survivor is not needed to testify at this stage; however, the grand jury may want to hear testimony.

4. Arraignment

- a. Usually waived; the defendant does not verbally enter a plea at this time.
- b. This is a good time for the D.A. and the defense attorney to get together and discuss the case, usually for the first time, for several plea negotiations.
- c. Survivor should notify the D.A. that he/she wants to be involved in the plea negotiations.
- d. Case is usually reset a couple of weeks later for a non-issue reset.
- e. Survivor is not needed at this stage.

5. Non-issue Setting: There may be several of these to accomplish plea bargaining and discovery.

- a. Again, a time for the state and defense to get together and discuss the merits of the case.
- b. Survivor is not needed at this setting.

6. Disposition Setting

- a. Last reset date for discussion of the case.
- b. If plea bargain is not reached, the case will be set for trial.
- c. If plea agreement is made, the plea may be taken or reset.
- d. Survivor is not needed at this setting.

7. Plea

- a. Defendant may plead guilty, not guilty or no contest.
- b. Defendant may plead in exchange for the agreed punishment recommended by the State.
- c. Defendant may plead to the Court without an agreement with the State.

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1. The Court would order a pre-sentence investigation report before deciding upon the appropriate punishment.
2. The sentencing would be reset for approximately six weeks until receipt of the report.

8. Trial

- a. Defendant elects to have case tried by court judge or jury.
- b. If found guilty by a jury, the defendant also elects whether the judge or the jury would assess punishment.
- c. Procedure:
 1. Jury selection
 2. State's case presented
 3. Defense's case presented
 4. Both sides rest and close
 5. Judge charges the jury with the law
 6. Summation by the attorneys
 7. Deliberation

9. Punishment

- a. Class A Misdemeanor
 1. Fine not to exceed \$4000.00 and/or less than 1 year in jail
- b. Class B Misdemeanor
 1. Fine not to exceed \$2000.00 and/or less than 180 days in jail
- c. Class C Misdemeanor
 1. Fine not to exceed \$500.00
- d. Capital Felony
 1. Capital Felony: a person adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Corrections for life or by death. An individual adjudged guilty of a capital felony in a case in which the state

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does not seek the death penalty shall be punished by imprisonment in the institutional division for life.

2. In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that a sentence of life imprisonment is mandatory on conviction of the capital felony.
3. First Degree Felony Offense: 5 to 99 years, or life in the Texas Department of Corrections. Fine not to exceed \$10,000.
4. Second Degree Felony Offense: 2 to 20 years in the Texas Department of Corrections. Fine not to exceed \$10,000.
5. Third Degree Felony Offense: 2 to 10 years in the Texas Department of Corrections. Fine not to exceed \$10,000.
6. State Jail Felony: 180 days to 2 years. Fine not to exceed \$10,000.
7. If the defendant has not been convicted of a felony before or has not received a felony probation, the Judge or jury may recommend probation on the term of years not exceeding 10 years. (Probation is supervised by the Court during the term assessed.)

10. Sex Offender Registration/Notification

- a. Required for a person who has a reportable conviction or adjudication of a sexual offense under Chapter 62, Texas Code of Criminal Procedures.
- b. Informs:
 - c. Judicial System
 - d. Community Supervision
 - e. Juvenile Probation
 - f. Texas Department of Criminal Justice
 - g. Law Enforcement Agencies
 - h. Schools-both public and private

11. Victim Services

- a. Victim Lounge.

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- b. District Attorney Victim/Witness Program.
- c. Victim Assistance Program.

SUGGESTIONS FOR COURT ACCOMPANIMENT ADVOCATES

- Without speculation on the merits of the survivor's case, provide him/her with as much information as possible on the court system. It is much better to tell the survivor that you do not know the answer to a question than give incorrect information.
- Often the survivor is not as concerned about a particular legal aspect of their case, as they are afraid and frustrated by an unfamiliar set of circumstances or intimidated by the threats of the defendant. If the defendant threatens the witness she/he should contact the police and the victim witness office immediately.
- If the survivor does want to know about a particular problem in his/her case, call the victim witness office and the sexual assault coordinator will provide the information or will contact the prosecutor.
- Postponements are an inherent problem in the judicial system and the effect can be devastating to a witness. Regardless of the type of case, cases are given scheduling priority according to the amount of time the defendant is not in jail, and out on bond: how old the case is in relation to the others on the court's docket (unless the case is given a priority setting).
- Some courts, especially the older ones, have more of a backlog than others do, which further aggravates the problem. Postponing the case is also a standard defense tactic because the more frustrated the witness gets; the less likely the witness is to appear when the trial finally does begin.
- Assure the survivor that the postponement is not due to a frailty in the case. The victim witness office can work with her/him to place he/she ON-CALL for court appearances in conjunction with the prosecutor. That is, they will not have to come to the courtroom until called when the case is certain to go to trial.
- The Texas Penal Code requires the defense to inform the court (out of the hearing of the jury) prior to asking any question of the survivor concerning specific instances, opinion evidence, or reputation evidence of prior sexual conduct. After this notice, the judge will hold an IN CAMERA hearing to determine whether the proposed evidence is admissible and the limitations of such questioning. If the witness is concerned, advise discussion with the prosecutor.
- The most common defenses in a sexual assault case are either identity or consent. In an identity defense, the defendant does not deny that the witness was sexually assaulted, but asserts that he/she did not do it. In a consent defense, the defendant will claim that he/she did have intercourse with survivor, but it was consensual.

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- Assure the witness that the trial will be difficult to go through, but not impossible. Often it is beneficial to contact the victim witness office to find a scheduled trial for the witness to observe.
- Information on the Texas Crime Victims' Compensation Act is available through the victim witness office. The act provides payment of medical bills and counseling expenses for victims of violent crime less insurance benefits. For more information on Crime Victims' Compensation, you may contact the Crime Victims' Compensation Division at the Office of the Attorney General at 1-800-983-9933.
- Billing for the sexual assault forensic exam itself is covered under another statute. Other bills related to the collection of forensic evidence are paid by the law enforcement agency.
- Finally, you may be the first contact that the victim has. Your function is an invaluable one and much needed. Please feel free to call on the victim witness office to help you with any problems.

SUGGESTIONS FOR WITNESSES

- **Answer all questions directly**—Answer only the question that is asked. If you can answer with a "yes" or "no," do so. If you do not understand a question, **feel free to ask to have the question repeated or explained**
- **Speak clearly and distinctly**—The juror farthest from you should be able to hear you.
- **Be attentive**—Remain alert at all times so that you can hear, understand, and give a proper response to each question. Avoid trying to "second guess" the questioner. The prosecutor will develop the case by your testimony and will object to any improper questioning by the defense during cross-examination.
- **Do not be afraid to tell the truth**- Do not guess or make up an answer. If asked little details you do not remember, it is best to say, "I don't remember."
- **Do not lose your temper**—Losing your temper during cross-examination may mean losing your credibility. Anger will lessen your recall ability and may cause you to make incorrect statements.
- **Dress conservatively and be courteous**—The jury knows nothing about you, except for the impression that you make with your testimony and with your appearance. Wear clothing that will not distract the judge or jury from your testimony.
- **Bring friends and family**—You will only be present in the courtroom for your testimony and the closing arguments. This is to insure that the testimony of one

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witness will not influence that of another, and is called "invoking the rule." The support of friends and family is helpful at this time, although they cannot relate actual proceedings to you. A coordinator from the victim witness office or an advocate from the sexual assault program will also accompany you, if called.

- **Be aware that the defendant will be in the courtroom at all times and that you will be asked to identify him**—This is easier to deal with if you prepare beforehand. Remember that the defendant is on trial; you are not!
- **Take a positive attitude with you**—It is not a good idea to go into trial with revenge in mind as no amount of punishment for the defendant can atone for what you have gone through. By going through the ordeal of testifying you have shown a great deal of courage and concern for others by hopefully preventing this from happening to someone else.

BASIC LEGAL CONCEPTS

The following rights and privileges are accorded to those accused of crime by the Constitution and The Bill of Rights.

- The defendant is innocent until proven guilty: This concept is the foundation of our judicial system and influences every other legal principle.
- The defendant has the right to trial by jury: The sixth amendment to the Constitution guarantees that in all criminal proceedings, the accused shall enjoy the right to a speedy and public trial by an "impartial jury."
- The defendant has a right to counsel: This is an inherent right of any defendant and the State must provide counsel if the defendant cannot secure his/her own.
- The burden of proof belongs to the state: The State has the burden of proof and must show **BEYOND A REASONABLE DOUBT** that the accused committed the act charged. This phrase means that a member of the jury must have no reasonable doubts about the defendant's guilt. If the juror does have a reasonable doubt, the juror must vote "Not Guilty."
- The defendant has a right to confrontation of witnesses: The sixth amendment also guarantees that the accused shall be confronted by the witnesses against him. The defendant also has the right to cross examine any witnesses used by the State. For this reason, the defendant will always be present in the courtroom, while the witness will be present only for her/his testimony.
- The defendant does not have to testify: The jury cannot deliberate the issue of whether or not the defendant testifies. The full burden of proof lies with the State and it must supply the evidence.

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ELEMENTS OF A TRIAL

- **Pre-Trial Setting**—any court setting scheduled before a trial setting,
- **Non-Trial Setting**—any setting that is not a trial setting.
- **Motion Setting**—a requested setting by either the attorney for the defense or the state for the court to rule on a legal issue. Motions may be for continuances, suppression of evidence (such as prior sexual history or improperly taken confession), for speedy trial by the defendant, etc.

The trial is the most effective method that our society has devised to settle disputes among people. A trial is not a contest: there is not a winner or loser. A trial is a method of gathering facts and drawing a conclusion from those facts while operating under procedural code.

THE PROGRESS OF A TRIAL

- The defendant is read his charge by the judge and **pleads** "Not Guilty."
- The defense attorney and the prosecutor question prospective jurors and select those that will become jury members (**Voir Dire**).
- The prosecution, representing the State, makes the **opening statement** to the jury, outlining the case to be established.
- The **prosecution** calls its witnesses and offers evidence.
- The defense may **cross examine** the State's witnesses after the State has concluded the **direct examination**. The State may then take the witness on **re-direct examination** after the defense concludes the cross exam. The defense may take the State's witness on **re-cross examination** after the State concludes the re-direct exam, etc.
- When the state has concluded its case, or **rested**, the defense, representing the defendant, makes its **opening statement**, and puts on its evidence and witnesses.
- The prosecution and the defense then offer their **final arguments** to the jury. Usually, the witness may come back into the courtroom to hear this summation.
- The jury then retires to **deliberate** the guilt or innocence of the defendant.
- If the defendant is convicted by the jury then both the defense and the prosecution present in the **punishment** phase.
- Texas has a **bifurcated** trial system. That is, the trial is held in two stages: the guilt stage and the punishment stage.

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- The jury must be unanimous in their decision. If the jury cannot come to a verdict, a **mistrial** results in the form of a **hung jury**.
- The case may also result in a **mistrial** if the judge so rules on a procedural error.
- If the defendant is found **not guilty** there will not be a retrial. The rule of **double jeopardy** prohibits the accused from being tried twice for the same offense (with some exceptions).
- The defendant may waive his right to a jury trial and go directly to the judge in a **court trial**.
- If the defendant is found guilty some judges will order the probation department to complete a **pre sentence report** on the defendant before the judge will rule on punishment.
- **Portions of the above have been adapted from publications of the Chicago Women Against Rape. Chicago, Illinois.**

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