

7. Alcohol and Drug-Facilitated Sexual Assault

Recommendations at a glance to facilitate response in suspected alcohol- and drug-facilitated sexual assault:

- Promote training and develop jurisdictional policies.
- Plan response to voluntary use of drugs and/or alcohol by patients.
- Be clear about the circumstances in which toxicology testing may be indicated. Routine testing is not recommended.
- Toxicology testing procedures should be explained to patients.
- Toxicology samples should be collected as soon as possible after a suspected drug-facilitated case is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement.
- Identify toxicology laboratories.
- Preserve evidence and maintain the chain of custody.

Promote training and develop jurisdictional policies. It is essential that examiners and other relevant health care personnel, 911 dispatchers, law enforcement representatives, emergency medical technicians, prosecutors, judges, and advocates receive training and information on alcohol and drug-facilitated sexual assault. They need to be educated on the use of drugs and alcohol to facilitate sexual assault, screening for alcohol- or drug-facilitated assault, and how to handle situations in which an alcohol- or drug-facilitated sexual assault is suspected. Both agency-specific and multidisciplinary policies should be developed to guide immediate response to a suspected alcohol- or drug-facilitated sexual assault.²⁴⁰

First responders must recognize that although Rohypnol and gamma hydroxy butyrate (GHB) are widely publicized as the “drugs of choice” in drug-facilitated sexual assault, assailants may use numerous other substances (including alcohol) to facilitate sexual assault.²⁴¹ They must understand the urgency of collecting toxicology samples, if it is medically necessary, or if an alcohol- or drug-facilitated sexual assault is suspected, as well as the importance of obtaining informed consent from patients prior to sample collection. They should also be aware that collection of toxicology samples is typically separate from the sexual assault forensic evidence collection kit, and procedures for toxicology analysis may be different from that of other evidence analysis.

Ideally, the first available urine sample should be collected in suspected alcohol- or drug-facilitated sexual assault cases. Law enforcement agencies and emergency medical services should develop procedures and staff training for collection in cases where patients must urinate before arriving at the exam site. Advocates and other professionals who may have contact with patients prior to their arrival at the exam site should also be educated to provide those who suspect that alcohol or drugs were used to facilitate the assault with information on how to collect a sample if they cannot wait to urinate until they get to the site.

Plan response to voluntary use of drugs and/or alcohol by patients. It may be revealed during the exam process or through toxicological analysis that patients voluntarily used drugs and/or alcohol shortly prior to the assault.²⁴² Voluntary drug and/or alcohol use by patients during this period should not diminish the perceived seriousness of the assault. Law enforcement officers and prosecutors should guard against disqualifying cases in which patients voluntarily used illegal drugs or used alcohol (whether legal or illegal use). Patients should understand that information related to voluntary alcohol or drug use may be used to undermine their credibility in court, but also that in some instances it might be helpful in prosecuting a case by documenting their vulnerability (see the following section on explaining procedures). Also, before pursuing

²⁴⁰ These policies should clarify that patients should not be responsible for costs related to toxicology testing. Testing done as part of forensic evidence collection is typically paid for by the involved government entity.

²⁴¹ For more information about use of Rohypnol and GHB in drug-facilitated cases, see American Prosecutors Research Institute, Violence Against Women Program, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, 1999.

²⁴² Health care personnel involved in sexual assault cases should adhere to facility policy regarding 1) asking patients about alcohol and drug use in the course of intake and treatment and 2) testing for alcohol and/or drugs if deemed medically necessary.

charges related to illegal drug or alcohol use by patients, prosecutors should give great weight to the impact that the threat of such charges may have on patients' willingness to report the sexual assault and be involved in subsequent criminal justice proceedings. Some jurisdictions have statutes protecting sexual assault victims regarding drug and alcohol testing.²⁴³

It is important to document patient voluntary use of drugs and alcohol between the time of the assault and the exam. Some patients may self-medicate to cope with post-assault trauma and require immediate medical treatment. In addition, ingestion of drugs and/or alcohol during this period may affect the quality of evidence and negatively impact patients' ability to make informed decisions about treatment and evidence collection.

SART/SARRT members should have training on alcohol and substance abuse and how it is not uncommon for victims to use drugs and alcohol to cope with past sexual assault experiences or trauma. It is important to provide referrals and resources for victims who may reveal that they have a chemical dependency.

Be clear about the circumstances in which toxicology testing may be indicated.²⁴⁴ Routine toxicology testing is not recommended. However, in any of the following situations, the collection of a urine and/or blood sample may be indicated:²⁴⁵

- If a patient's medical condition appears to warrant toxicology screening for optimal care (e.g., the patient presents with drowsiness, fatigue, light-headedness, dizziness, physiologic instability, memory loss, impaired motor skills, or severe intoxication).
- If a patient or accompanying persons states the patient was or may have been drugged.
- If a patient suspects drug involvement because of a lack of recollection of event(s).²⁴⁶

Toxicology testing procedures should be explained to patients. Seek informed consent from patients to collect toxicology samples. Patients should understand the following before agreeing to toxicology testing:²⁴⁷

- The purposes of toxicology testing and the scope of confidentiality of results.²⁴⁸
- The ability to detect and identify drugs and alcohol depends on collection of urine and/or blood within a limited time period following ingestion.
- There is no guarantee that testing will reveal that drugs were used to facilitate the assault.
- Testing may or may not be limited to drugs commonly used to facilitate sexual assault²⁴⁹ and may reveal other drugs or alcohol that patients may have ingested voluntarily.
- Whether any follow-up treatment is necessary if testing reveals the presence of drugs used to facilitate sexual assault.²⁵⁰

²⁴³ See Cal. Pen. Code Section 13823.11 which states that testing to determine if alcohol or other drugs were associated with an attempted or completed sexual assault as part of a forensic exam is not admissible against the victim in a civil or criminal proceeding and provides other immunity and confidentiality safeguards.

²⁴⁴ There is some controversy related to if and when to collect toxicology samples and test patients for drug and/or alcohol use. Some jurisdictions only collect these samples if drug-facilitated sexual assault is suspected or if a medical need arises. They seek to minimize patients' discomfort and avoid collecting unnecessary items. Other jurisdictions collect toxicology samples from every patient (with permission) and analyze these samples as case facts and jurisdictional policy dictate. In addition to cases of suspected drug-facilitated assault, some jurisdictions may request a toxicology sample if there is indication that patients voluntarily used drugs and/or alcohol prior to the assault. One rationale for such a policy is that prosecutors will want all information on drug and alcohol use to prepare for the case. When developing jurisdictional policy about when and if to collect toxicology samples, involved professionals should consider the perspective of patients and the criminal justice system and make thoughtful, victim-centered decisions.

²⁴⁵ Bullets drawn from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.

²⁴⁶ Often, drugs used to facilitate sexual assault are mixed with alcohol and other beverages to further incapacitate patients, usually without their knowledge. Once patients recover from the effects of drugs and/or alcohol, anterograde amnesia may make it difficult to recall events. Consequently, patients may not be aware of the assault or even of how they were drugged. (Drawn from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.)

²⁴⁷ List adapted partially from Connecticut's *Interim Sexual Assault Toxicology Screen Protocol*, 2002.

²⁴⁸ If the patient authorizes the release of toxicology testing results to law enforcement and/or prosecution, this information will most likely be discoverable by the defense. If toxicology testing is done for purely clinical purposes and results are documented only in the patient's medical records, the results are typically more difficult, but not impossible, for the defense to discover.

²⁴⁹ In some jurisdictions, examiners may be able to request testing for specific drugs used to facilitate sexual assault. In others, tests for specific drugs are not done, rather, toxicology samples are screened for all ingested drugs and alcohol.

²⁵⁰ For example, patients with health conditions that may be affected by drug or alcohol intake may need information on possible impact of involuntary drug/alcohol ingestion and what to do to identify, treat, or avoid potential problems.

- Test results showing voluntary use of drugs and/or alcohol may be discoverable by the defense and used to attempt to discredit patients or to question their ability to accurately perceive the events in question (however, these results could also help substantiate that voluntary drug and/or alcohol use sufficiently impaired patients' consent and prevented legal consent).²⁵¹
- Whether there is a local prosecution practice of charging sexual assault victims with a crime for illegal voluntary drug and/or alcohol use revealed through toxicology screening.
- Declining testing when indicated by circumstances as described above may negatively impact the investigation and/or prosecution.²⁵²
- When and how they can obtain information on the results from toxicology testing.
- Who will pay for toxicology testing.
- If toxicology testing can proceed without a report to law enforcement.

Care should be taken when providing the above information to patients. In particular, they may need to hear repeatedly from examiners that voluntary use of drugs and/or alcohol, if any, does not reduce the seriousness of the assault. Under no circumstances should the medical forensic exam and treatment be conditioned upon patient consent to toxicology testing. Victims should be given access to the results of any toxicology screening performed and should be given information on how to obtain a copy of the results.

Toxicology samples should be collected as soon as possible after a suspected drug-facilitated case is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement. The length of time that drugs used for drug-facilitated assault remain in urine or blood depends on a number of variables (e.g., the type and amount of drug ingested, patients' body size and rate of metabolism, whether patients had a full stomach, and whether they previously urinated).²⁵³ Urine allows for a longer window of detection of drugs commonly used in these cases than does blood.²⁵⁴ The sooner a urine specimen is obtained after the assault, the greater the chances of detecting substances that are quickly eliminated from the body.²⁵⁵

Immediately collect a urine sample when appropriate. If patients may have ingested a drug used for facilitating sexual assault within 96 hours prior to the exam, a urine specimen of at least 30 milliliters but preferably 100 milliliters (about 3 ounces) should be collected²⁵⁶ in a clean plastic or glass container (follow jurisdictional policy). The urine sample does not have to be a clean catch (e.g., bacteria in the urine will not compromise test results). If patients cannot wait to urinate until their arrival at the exam facility, first responders should ask them to provide a sample and bring it to the facility, documenting the chain of custody. It is suggested that law enforcement officers and emergency medical technicians keep specimen cups readily available, according to agency policy.

Ideally, patients should not urinate until after evidence is collected. However, the number of times that patients urinated prior to collection of the sample should be documented.

Collect a blood sample when appropriate. If ingestion of drugs used to facilitate sexual assault may have occurred within 24 hours prior to the exam, a blood sample of at least 20 milliliters should be collected in a gray-top tube (contains preservatives sodium fluoride and potassium oxalate²⁵⁷) according to jurisdictional policy. A blood sample taken within this time period may pinpoint the time when drugs were ingested.²⁵⁸ If a blood sample is collected for toxicology screening, it should be accompanied by a urine sample. If blood alcohol determination is needed, collect blood within 24 hours of alcohol ingestion, according to jurisdictional

²⁵¹ The prosecutor can work to minimize the possibility that information about voluntary alcohol and/or drug use will be used against patients, particularly if patients are truthful from the start about their preassault drug/alcohol use and consent to testing.

²⁵² For example, if there is a suspicion that the assault was drug-facilitated and there were no toxicology tests, investigators and prosecutors may lack critical evidence, making it difficult to prosecute the case. Prosecutors might choose not to go forward with such a case. Refusal to get tested may also be used by the defense to discredit the patient and question the validity of the charges.

²⁵³ American Prosecutors Research Institute, Violence Against Women Program, 1999, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, Chapter 2, p. 1.

²⁵⁴ M. LeBeau, Toxicological Investigations of Drug-Facilitated Sexual Assaults, *Forensic Science Communications*, 1999, p. 3.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ American Prosecutors Research Institute, Violence Against Women Program, 1999, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*, Chapter 2, p. 2.

policy. (If blood has already been taken due to suspected drug ingestion, that sample can be used to determine blood-alcohol level. An additional sample usually is not needed.)

Occasionally, patients of drug-facilitated sexual assault vomit. The analysis of the vomit may also be useful to an investigation.²⁵⁹ Collect and preserve according to jurisdictional policy.

Package samples as appropriate. Package each toxicology sample according to the policy of the lab doing the analysis, place in envelope, label, seal, and initial the seal.

Identify toxicology laboratories. Exam facility laboratories should not analyze toxicology samples in suspected drug-facilitated sexual assault cases. Instead, involved criminal justice agencies should identify forensic laboratories that can analyze these toxicology samples (they should have the capacity to detect drugs in very small quantities).²⁶⁰ Information about these labs (e.g., contact information, evidence collection and packaging procedures, and transfer procedures) should be provided to law enforcement representatives investigating these cases, exam facilities, and examiner programs.

If toxicology tests are needed purely for the medical evaluation of patients, the exam facility lab typically performs these tests. Lab results are recorded in patients' medical records, according to facility policy. If toxicology samples are needed for both clinical and forensic purposes, one sample can be collected for immediate evaluation by the exam facility lab and another for analysis by the identified forensic lab. Take samples at the same time to avoid more discomfort to patients than is necessary.

Preserve evidence and maintain the chain of custody. Involved health care personnel should be aware of the toxicology lab's requirements on collection, packaging, labeling, storage, handling, transportation, and delivery of specimens.²⁶¹ Policies should be in place for storage of these samples when patients are undecided about reporting. As with any forensic evidence, the chain of custody must be maintained.

Refer to the current *Forensic Toxicology Laboratory Guidelines* by the Society of Forensic Toxicologists, Inc., and the American Academy of Forensic Sciences for detailed guidance on proper collection, labeling, handling, submission, and analysis of toxicology samples.²⁶²

²⁵⁹ M. LeBeau, Toxicological Investigations of Drug-Facilitated Sexual Assaults, *Forensic Science Communications*, 1999, p. 3.

²⁶⁰ American Prosecutors Research Institute, Violence Against Women Program, 1999, Video supplement, *The Prosecution of Rohypnol and GHB Related Sexual Assaults*.

²⁶¹ Refrigerate toxicology samples according to jurisdictional policy. In general, drawn blood should be refrigerated when it is stored. Urine should be refrigerated or frozen when stored.

²⁶² These guidelines are available at <http://www.soft-tox.org>.