Module 5: Procedures in Common Advocacy Situations

Time Required

2 hours, 45 minutes

Purpose

This module is intended to provide a more detailed look at procedures in common advocacy situations. It also will examine drug-facilitated sexual assault.

Lessons

1. Responding to a Crisis Call Reporting Recent Sexual Assault (15 minutes)
2. The Medical-Evidentiary Exam (1 hour)
3. Law Enforcement Statement Accompaniment (15 minutes)
4. Courtroom Accompaniment (35 minutes)
5. Drug-Facilitated Sexual Assault (40 minutes)

Learning Objectives

By the end of this module, participants will be able to:

- Respond appropriately to a caller on a crisis line who is reporting a recent sexual assault.
- Identify correct procedures during a medical-evidentiary exam.
- Create a list of “dos and don’ts” for law enforcement statement accompaniment and courtroom accompaniment.
- Differentiate the roles of advocates, SANEs, and other SART members.
- Identify special procedures and “red flags” for dealing with drug-facilitated sexual assault.

Participant Worksheets

- Worksheet 5.1, Medical-Evidentiary Exam Case Study
- Worksheet 5.2, Drug-Facilitated Sexual Assault

Equipment and Materials

- Red paper or index cards (three pieces of paper or cards for each of five groups). The red paper or index cards will be used in "Information Search and 'Red Flags'" activity.

Preparation

- Carefully review the medical-evidentiary exam case study described in this module.
- You should be aware of whether or not a system-based advocacy program exists in your local police department or prosecutor's office. If it does, you also should be aware of how this affects the role of the advocates in your training, particularly during law enforcement statement accompaniment and courtroom accompaniment. These roles should be clear to everyone involved in order to best serve the needs of the victim.
- Cut red paper or red index cards into small pieces (approximately 3" x 4") for the "Information Search and 'Red Flags'" activity.

☞ **Show Visual 5-1.**

Introduce the module.

☞ **Show Visual 5-2.**

Review the purpose and learning objectives for this module.

By the end of this module, participants will be able to:

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- Identify correct procedures during a medical-evidentiary exam.
- Create a list of "dos and don'ts" for law enforcement statement accompaniment and courtroom accompaniment.
- Differentiate the roles of advocates, SANEs, and other SART members.
- Identify special procedures and "red flags" for dealing with drug-facilitated sexual assault.

1. Responding to a Crisis Call Reporting Recent Sexual Assault (15 minutes)

☞ **Show Visual 5-3.**

Paraphrase:

One of the most common situations to which an advocate will respond is a crisis call reporting recent sexual assault. Many victims call rape crisis lines before they seek medical attention or involve law enforcement. Though specific procedures will vary from center to center, the following should be generally addressed with any crisis caller seeking assistance following sexual assault.

- **Identify immediate concerns.** Assess the reason for the call.
- **Establish safety**. Advocates will need to ask where the perpetrator is, and where the victim is. Take appropriate steps to establish safety.

- **Explain services.** Explain the medical, support, and legal services available to the caller. Explain the importance of a medical-evidentiary exam, and the option of reporting the assault to law enforcement. Explain to the victim that the sooner the medical exam is conducted the more effective the treatment may be and the more evidence may be found. While the victim can certainly take more time to decide to get a medical exam and to report to law enforcement, the delay may affect credibility.

- **Arrange transportation.** If the caller wants to have a medical-evidentiary exam, discuss transportation. Callers may arrange their own transportation, or they can be transported in an ambulance or by law enforcement. Explain their options.

☞ **Show Visual 5-4.**

- **Discuss evidence.** Explain that victims should not shower, bathe, douche, change clothes, or brush their teeth. If they need to urinate and drugs or alcohol are involved, victims should collect the urine in a clean jar with a lid and bring it with them to the medical facility. Let victims know the local guidelines for evidence collection (e.g., 72/96/120 hours after the assault); however, also emphasize that the sooner the exam is completed the more likely it is that evidence can be found.

- **Address practical issues.** Discuss any practical issues the victim needs to address, such as childcare or other responsibilities.

- **Arrange a time to meet.** If an advocate will be meeting the victim at the emergency department, it is best to arrange a time to meet. If possible, the advocate should be there first. Discuss how to identify each other.

- **Activate other first responders.** Depending on the needs and wishes of the caller, and procedures in their area, advocates may need to activate other first responders.

Ask participants for any questions about these issues.

2. Medical-Evidentiary Exam Accompaniment (1 hour)

☞ **Show Visual 5-5.**

Paraphrase:

Rape victims should receive a medical-evidentiary exam within 72/96/120 hours after the assault or longer. (The time will vary depending upon local policy.) The exam should be conducted as early as possible, since evidence is quickly lost. While DNA evidence has been collected 5-7 days after an assault, the likelihood significantly diminishes after 48 hours that the DNA can be linked to a suspect.

This timeframe also is important in terms of receiving medication to prevent pregnancy and some STIs. Emergency contraception can be provided for up to 5 days after unprotected sex, but the sooner it is given the more effective it will be in preventing a pregnancy. HIV post-exposure prophylaxis must be started within 72 hours of the unprotected sexual contact, but it too is more effective the sooner it is started.

In some situations, a medical-evidentiary exam is appropriate more than 72/96/120 hours after the assault; again, this may vary depending upon local policy. Examples include:

- **Hostage situations.** Victims who have been held hostage are more likely to have injuries or forensic evidence on their bodies. This evidence can be collected and used for prosecution.
- **Force resulting in injury.** These injuries should be treated and could be used as evidence.
- **Ejaculation without cleanup.** A medical-evidentiary exam also is appropriate after 72/96/120 hours if there is ejaculation without cleanup. Again, the ejaculate can be collected and used as evidence.

☞ **Show Visual 5-6.**

Introduce the Medical-Evidentiary Exam.

Read the descriptions below and on the visuals, and **ask** participants to determine whether a medical-evidentiary exam should be done.

- Sharon reported an assault that occurred 12 hours ago; there was no penetration or apparent injury.
- Jane reported an oral sexual assault that occurred 24 hours ago.

☞ **Show Visual 5-7.**

- Thomas reported a rape and robbery that occurred 5 hours ago.
- Maria reported a rape by two strangers that occurred 2 weeks ago.

☞ **Show Visual 5-8.**

Introduce the activity.

✍ ***Activity: Medical-Evidentiary Exam Case Study (45 minutes)***

1. ***Divide participants into groups of four or five. Tell the participants they will be working in small groups to study some detailed procedures related to medical-evidentiary exams, and they will then answer some questions based on a case study of a typical exam.***

2. ***The groups should spend 10 to 15 minutes reading, discussing, and clarifying the information about procedures during a medical-evidentiary exam on* Worksheet 5.1, Medical-Evidentiary Exam Case Study*, in the Participant Manual. They should then use this information to answer the questions based on the case. The group should brainstorm together for an additional 10 to 15 minutes in order to answer the questions.***

3. ***Ask for each group to report in turn. For example, ask Group 1 to provide a response to the first question, Group 2 to provide a response to the second question, and so on. Fill in anything the groups missed. Correct the groups' responses as necessary.***

Debrief the activity by **reviewing and paraphrasing** the following information, which reinforces the appropriate roles of advocates and other SART members during the medical-evidentiary exam.

☞ **Show Visual 5-9.**

Paraphrase:

The advocate and SANE should be called to the emergency department automatically; victims should not be asked if they want them to be called.

☞ **Show Visual 5-10.**

Paraphrase:

The SANE and the advocate might do some of the same things, but this does not diminish their roles. A SANE is a specially trained nurse who will provide crisis intervention and support, and normalize the victim's response, just as an advocate will. They should reinforce each other, remembering that having the support of two people in the emergency department can be invaluable for the victim.

However, a SANE should not be described as an advocate, and an advocate must be very aware of what a SANE does. While the advocate should be present when the SANE conducts the patient history of the assault, it's important that the advocate not participate in the interview or take notes. The advocate is there solely to support the victim. Any concerns or questions from the advocate should be addressed after the SANE completes the patient history.

Remind participants that an advocate must NEVER be involved in evidence collection.

☞ **Show Visual 5-11.**

Paraphrase:

Even when there is a SANE program, the victim may need to wait up to an hour in the emergency department because the department is so busy. If there is no SANE program, the wait can be even longer. If the victim is waiting for a SANE to arrive, it may be helpful to explain the SANE's role. If there are consistent delays and no reason is given, you should report this to your supervisor, who can speak to the emergency department or the SANE supervisor.

☞ **Show Visual 5-12.**

Paraphrase:

Never try to "fix" any issues with the SART yourself. Report any problems to your supervisor and allow them to address any issues.

3. Law Enforcement Statement Accompaniment
(15 minutes)

☞ **Show Visual 5-13.**

Explain that in addition to being present during the initial police report, the advocate usually offers to accompany the rape victim to the investigator's office at a later time when an official statement is given. There, the advocate provides support and encouragement during what may be an intimidating experience and helps the victim understand why certain questions are asked.

Paraphrase:

As with the SANE exam, you should not interrupt the law enforcement interview. Sit quietly during the interview and remember that you are there to support the victim, and to address any concerns when the interview is completed. Advocates function formally as members of the "response team," whether officially a SART or a community response team, or informally as members of separate community agencies. The "team" includes the law enforcement officer or investigator; *advocates are not advocating for the victim against the police.*

It is essential for advocates to have good working relationships with their police departments and sex crimes investigative units. Call the officer who will be taking the victim's statement to check the time and place, and let the officer know that you will be accompanying the victim. Ask if there is anything in particular you can do to prepare the victim.

It is important that victims tell the complete truth about what happened, even if it is embarrassing, they were doing something they were told not to do, or they were engaged in an illegal activity, such as underage drinking or smoking marijuana. Victims need to know that this information will likely come out anyway. Tell victims that if they lie about any part of the assault history, their credibility will be questioned, which could jeopardize the entire legal case.

It is important that the advocate know if the victim will be charged with illegal activities in connection with the rape, or as is the case in most jurisdictions, since the rape is the more serious crime it will be the focus, and the advocate can reassure victims that they can fully disclose without risk of being charged with a crime.

If you have developed a trusting relationship with the investigator, you should be able to stay in the room while the victim is interviewed. If that is not possible, you should wait outside.

☞ **Show Visual 5-14.**

In smaller communities, the investigator conducting the interview may be the same police officer who took the victim's initial statement; however, in larger municipalities, it will be someone from a separate department. The investigator will usually ask the victim to verbally go through the statement in specific detail, with the investigator asking additional questions for clarification. Recording varies from area to area: The entire process may be video- or audio-recorded or, once the victim is comfortable, a complete statement will then be recorded. The statement will usually be transcribed, and the victim will review and sign the transcript. This becomes the official account of the sexual assault.

☞ **Show Visual 5-15.**

Paraphrase:

Advocates should not participate in the interview nor interfere in any way. Even if you do not understand the rationale behind a line of questioning, you must not inquire about it during the statement.

Once the statement has been completed, you can talk with the investigator in private and ask about areas of concern. This will help you to better explain the process to the victim. For example, if the investigator asked why the victim was walking through a downtown area alone at 1:00 a.m. and the tone of voice sounded accusatory, you can explain to the victim that such was not the intent: the investigator likely needed to know why the victim was in a particular area. If you still feel uncomfortable after talking with the investigator, you should report the situation to your supervisor the next day.

4. Courtroom Accompaniment (35 minutes)

☞ **Show Visual 5-16.**

Paraphrase:

The advocate typically offers to accompany the victim to any attorney appointments as well as to the courtroom. In some areas, a separate, specialized advocacy program may be available to do this. Whatever the scenario, the goal is to familiarize victims with the process and the courtroom, including where they will sit and what they will be asked to do. If possible, have victims visit an empty courtroom or watch a criminal case at trial.

If cases are plea bargained, it also is important to work with victims so they can express their opinions. In a plea bargain or plea agreement, the assailant usually agrees to plead guilty to a lesser charge in return for a lighter sentence. While the ultimate decision rests with the prosecutor, many prosecutors will discuss their options with the victim before making the final decision.

The advantage of a plea bargain to victims is that they do not have to testify in court and they are certain of a conviction. In most areas, many more plea agreements occur than cases that go to trial. Most of these arrangements are accepted at the last minute; often the day the trial is scheduled to begin.

☞ **Show Visual 5-17.**

Paraphrase:

If the prosecutor decides not to charge the offender in a case, offering to go with the victim to the prosecutor's office to discuss the reasons why may be as important as accompanying the victim to trial. If the assailant is found guilty by trial, the victim may want you, as well as the victim's family and friends, to go to the sentencing and provide support when the victim reads the victim impact statement, if a statement is to be read. Victim impact statements allow victims the chance to make prepared remarks to the judge indicating how the sexual assault has affected their lives. This impact is taken into consideration by the judge when determining the sentence. Victims often express a sense of empowerment after having made such a statement.

☞ **Show Visual 5-18.**

Introduce the activity.

✍ ***Activity: "Dos and Don'ts" Demonstrations (25 minutes)***

1. ***Divide participants into groups of four or five.***

2. ***Refer them to* Lessons 3 and 4*, which were just covered, in the Participant Manual. Each group should spend no more than 5 minutes designing a 1-minute demonstration that illustrates one or more "dos or don'ts" related to law enforcement statement accompaniment or courtroom accompaniment.***

3. ***Encourage participants to use tear sheets, markers, and masking tape as needed to plan and prepare their presentations. Make sure at least one group is addressing an issue described in each paragraph in the sections on law enforcement statement accompaniment and courtroom accompaniment.***

4. ***Groups will then conduct their demonstrations; you should correct or augment, as needed, the information they present.***

5. Drug-Facilitated Sexual Assault (DFSA) (40 minutes)

☞ **Show Visual 5-19.**

Introduce the activity.

✍ ***Activity: Information Search and "Red Flags" (40 minutes)***

1. ***Divide participants into small groups of four or five. Refer participants to* Worksheet 5.2, Drug-Facilitated Sexual Assault*, in the Participant Manual.***

2. ***Ask participants to use* Lesson 5 *in the Participant Manual to locate information about drug-facilitated sexual assault in order to answer the questions on the worksheet. Allow about 20 minutes for participants to review the material and answer the questions.***

3. ***Review the answers as a group.***

4. ***Distribute three pieces of red paper or three red index cards to each group. Tell participants they are going to come up with their own "red flags" that might indicate a sexual assault was drug-facilitated.***

5. ***Ask the groups to write one issue on each of the three "red flags" (pieces of red paper/index cards) they received. Allow about 5 minutes. Review the answers and "red flags" as a class. Augment or clarify the information as required.***

Instructor Note:

Participants will use the following information to complete the preceding activity. You need not review this information if participants cover it in the activity.

Drug-Related Sexual Assault

Using drugs to make a woman more vulnerable to sexual assault is nothing new; alcohol has been used for this purpose for centuries and is still the most common substance used to facilitate sexual assault, involved in an estimated 75 percent of sexual assaults (Garriott and Mazayani 2001). What is different today is that inexpensive legal and illegal drugs are readily available that not only sedate the woman, facilitating the assault at the time, but also have an amnesic-like effect so that the victim has little or no memory of the rape when it is over. These drugs are commonly referred to as drug-facilitated sexual assault (DFSA) drugs, and their presence is quickly spreading.

These newer, memory-erasing drugs were first identified as a problem in the United States in the late 1980s and rapidly spread across the country during the 1990s. While drugs used to facilitate sexual assault are most often given to the potential victim without her knowledge – slipped into her drink, for instance – they also may be taken willingly by victims who are not fully aware of the effects, as is likely the situation at RAVE parties where "Ecstasy," GHB and its derivatives, and other legal and illegal drugs are readily available.

Uncertain of what has happened to her, and possibly blaming herself for underage drinking or illegal drug use, the DFSA victim is unlikely to report to law enforcement. When a report is made, it is often significantly delayed, making detection and investigation a challenge. As a result, this crime is seldom prosecuted, and conviction rates are believed to be substantially lower than for non-DFSA.

Drugs currently used to facilitate sexual assault include but are not limited to the following:

- Alcohol
- Antihistamines
- Benzodiazepines, including flunitrazepam (Rohypnol)
- Alprazolam (Xanex)
- Diazepam (Valium)

- Midazolam (Versed)
- Clonazepam (Klonipin)
- Temazepam (Restoril)
- Zolpidem tartrate (Ambien)
- MDMA/Ecstasy
- GHB (Gamma Hydroxybutyric acid) and its precursors
- GBL (Gamma Butyrolactone) sold as a dietary supplement (Blue Nitro and Renewtrient)
- Tranquilizers (Ketamine)

It is difficult to confirm most cases of DFSA because of significant underreporting, long delays before reporting, and multiple-drug testing problems, so the true extent of its prevalence remains vague. Data are now being collected to more accurately identify the number of suspected and confirmed DFSA cases nationally.

Related Federal Law

Hoping to facilitate prosecution and limit the widespread, illegal import and abuse of these drugs, Congress passed the Drug-Induced Rape Prevention and Punishment Act of 1996. An amendment to the Controlled Substance Act, it imposes up to a 20-year prison term for anyone who gives a controlled substance to another person without that person's knowledge with the intent of committing a sexual assault.

It also provides for a sentence of up to 20 years for the distribution and import of flunitrazepam into the United States. The law also required the federal Drug Enforcement Agency (DEA) to study the reclassification of Rohypnol from a Schedule IV to a Schedule I drug to provide for closer controls, and instructed the Attorney General to create educational materials for police departments (H.R. 4137).

Congress passed another law, the "Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000," which President Bill Clinton signed into law in 2000 (H.R. 2130). Among other mandates, this legislation made GHB a Schedule I controlled substance. The first prosecution under this law occurred in Miami within 2 weeks of its passage: A man on Florida's sexual predator list was charged with buying enough chemicals over the Internet to make 100,000 doses of the newly outlawed GHB.

Signs of Possible Drug-Facilitated Sexual Assault

To help a possible victim decide if a drug screen is indicated, you must be aware of the signs of drug use.

- The victim has a history of being out drinking, having just one or two drinks (too few to account for the high level of "intoxication"), then a moment when she recognized feeling strange, then suddenly "very drunk." She may have still looked normal and, while a little unsteady on her feet, may have been able to walk out of the bar with her assailant.
- The victim becomes very "intoxicated" very rapidly–within 5 to 15 minutes–especially after accepting a drink from someone or drinking one she left unattended.
- The victim wakes up 8 or more hours later, uncertain but believing she may have been raped because she has vaginal soreness or is naked. Or, she wakes up with a strange man and has no or a very spotty memory of what happened.
- The victim was told she was given "Roaches," "Roofies," "Mexican Valium," "R-2," "easy lay," or GHB.
- The victim has a history of feeling or being told that she suddenly appeared drunk, drowsy, dizzy, and/or confused, with impaired motor skills, impaired judgment, and amnesia.
- The victim experiences "cameo appearances" in which she remembers waking up, possibly seeing the assailant with her, but being unable to move and passing out again. These memories may be associated with pain or a loud noise.
- The victim is high school or college age, since GHB and Rohypnol abuse is more common within these populations.

What To Do

Whenever you suspect that a drug was used to incapacitate a victim within the previous 72 hours, ask the victim to not void and to go immediately to a local hospital for a sexual assault evidentiary exam. If she must void, have her save her first voided urine in a clean container with a tight lid. This urine will most likely contain metabolites of the drug she was given, which can be used to identify the drug. These metabolites are excreted from her system with each subsequent voiding, making it less likely that they will remain in sufficient quantity to be identified. The victim should bring this urine to the hospital and give it to the SANE or other medical personnel conducting her evidentiary exam.

What the SANE Will Do

With the victim's informed consent, the SANE will obtain blood and the first voided urine, maintaining chain-of-custody. She will inform the victim about any limitations in confidentiality, whether she can be identified only by a number, and what drugs will be tested for.

Because of the wide range of drugs used to facilitate sexual assault, a complete drug screen should be done and the urine or blood tested for more than just one or two substances. SANEs keep current on local testing options to determine the best resource. Options may include the state crime laboratory or a private laboratory. When specimens are sent to state crime labs in many states, too often they are tested solely for GHB or flunitrazepam.

With so many other similar derivatives, this limited testing may give a false negative. Most laboratories do not have the ability to test for the drugs used to facilitate sexual assault, although more are developing the capacity. Because a complete drug screen is necessary, private laboratory tests may cost in excess of $850.

Urine is used instead of blood because Rohypnol, GHB, and other commonly used drugs metabolize out of the bloodstream very quickly. Detection depends upon the dosage given and the procedures used by the laboratory in its analysis. Using current techniques, GHB can be identified up to 12 hours after ingestion and Rohypnol up to 36 hours. Identification is more likely when the sample is collected 8 hours after ingestion for GHB and 24 hours for Rohypnol.

The SANE also will take specimens to identify the presence of sperm or seminal fluid and will look for trauma. These too will help the victim determine if her suspicions of rape are valid.

Who Will Have Access to the Results?

It is always important to consider who will have access to the results of drug tests. Will access be limited to the legal system? In the case of an adolescent, will the parents be informed? What about the medical insurer or school? Will the victim be informed of the results of her drug screen? If so, who will report the information to the victim? The answers depend on who is ordering testing and where it is conducted.

The SANE program that collects the specimens should have access to the results. This feedback helps determine whether an appropriate clinical symptom picture and history are being used to determine when DFSA testing should be completed. A policy and procedure must be in place so the victim can access this information when deciding if she is willing to consent to testing.

While a urine, blood, or hair specimen obtained from the victim after a suspected DFSA is clearly the best evidence to lead to an arrest and conviction, the shortcomings inherent in today's techniques mean that positive specimens are often unobtainable. However, there is still valuable evidence that the SANE can obtain to help the investigation and help the victim determine whether or not she was drugged and raped.

Impact on the Victim

When drugs are used to facilitate a sexual assault, most victims never know for certain if they were raped or by whom. While recovery patterns vary greatly, some of these victims have considerable difficulty with the uncertainty, especially when the potential rape involved someone they know and may have trusted. Some victims recover and move on rapidly; others do not.

☞ **Show Visual 5-20.**

Review the learning objectives and **ensure** that these were met.

By the end of this module, participants will be able to:

- Respond appropriately to a caller on a crisis line who is reporting a recent sexual assault.
- Identify correct procedures during a medical-evidentiary exam.
- Create a list of "dos and don'ts" for law enforcement statement accompaniment and courtroom accompaniment.
- Differentiate the roles of advocates, SANEs, and other SART members.
- Identify special procedures and "red flags" for dealing with drug-facilitated sexual assault.

☞ **Show Visual 5-21.**

Ask if there are any final questions or comments before moving to the next module.