



# Achieving Justice: Understanding the SANE Approach for Effective Prosecution of Sexual Assault and Other Violent Crimes

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This project was supported by Grant No. 2019-MU-BX-K011 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the U.S. Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.



## Patricia D. Powers

Patti Powers, Senior Attorney Advisor, joined AEquitas as the lead Attorney Advisor on the SAKI project after serving as a Senior Deputy Prosecuting Attorney in Washington State for 27 years. She supervised the Sexual Assault-Domestic Violence Unit in Yakima County and prosecuted and tried a high volume of violent crimes—specializing in adult sexual assault, child sexual assault and abuse, sexual exploitation of minors, domestic violence, and related homicides (including complex litigation of high-profile cold and current cases). Patti served on the domestic violence and child fatality review committees and was a member of the Washington State Technical Assistance Committee for Child Death Review Guidelines. For five years, she was appointed as a Highly Qualified Expert for the United States Army, Criminal Investigation Division; in this role, she provided training for army criminal investigation agents and prosecutors at Fort Leonard Wood, Missouri, and in Germany.



# Dr. Julie L. Valentine

Dr. Julie L. Valentine will join the University of Utah on October 1, 2023 as a Senior Research Professor following her work as Associate Dean of Undergraduate Studies and Research at Brigham Young University. Dr. Valentine is a certified adult/adolescent sexual assault nurse with Wasatch Forensic Nurses. Her clinical specialty and research focus areas are sexual and gender-based violence. She conducts research to inform interdisciplinary practice and policy and improve criminal justice response in sexual assault cases. Dr. Valentine and her research team currently have multiple research studies utilizing their large, growing database of ~13,000 sexual assault cases. They are keenly aware that each sexual assault case represents an individual who suffered sexual assault trauma and strive to represent these survivors' voices. Dr. Valentine is primary author of three awarded federal grants since 2015 totaling 3.45 million dollars. Dr. Valentine has served in several leadership roles with the International Association of Forensic Nurses (IAFN). She has received several awards for her research work and impact on policy.



# Objectives



1 Explain the role of sexual assault nurse examiners (SANEs).

2 Prepare with expert witnesses to effectively present medical evidence.

3 Educate judges and juries about the significance of medical evidence.

# Role of Forensic Nurses

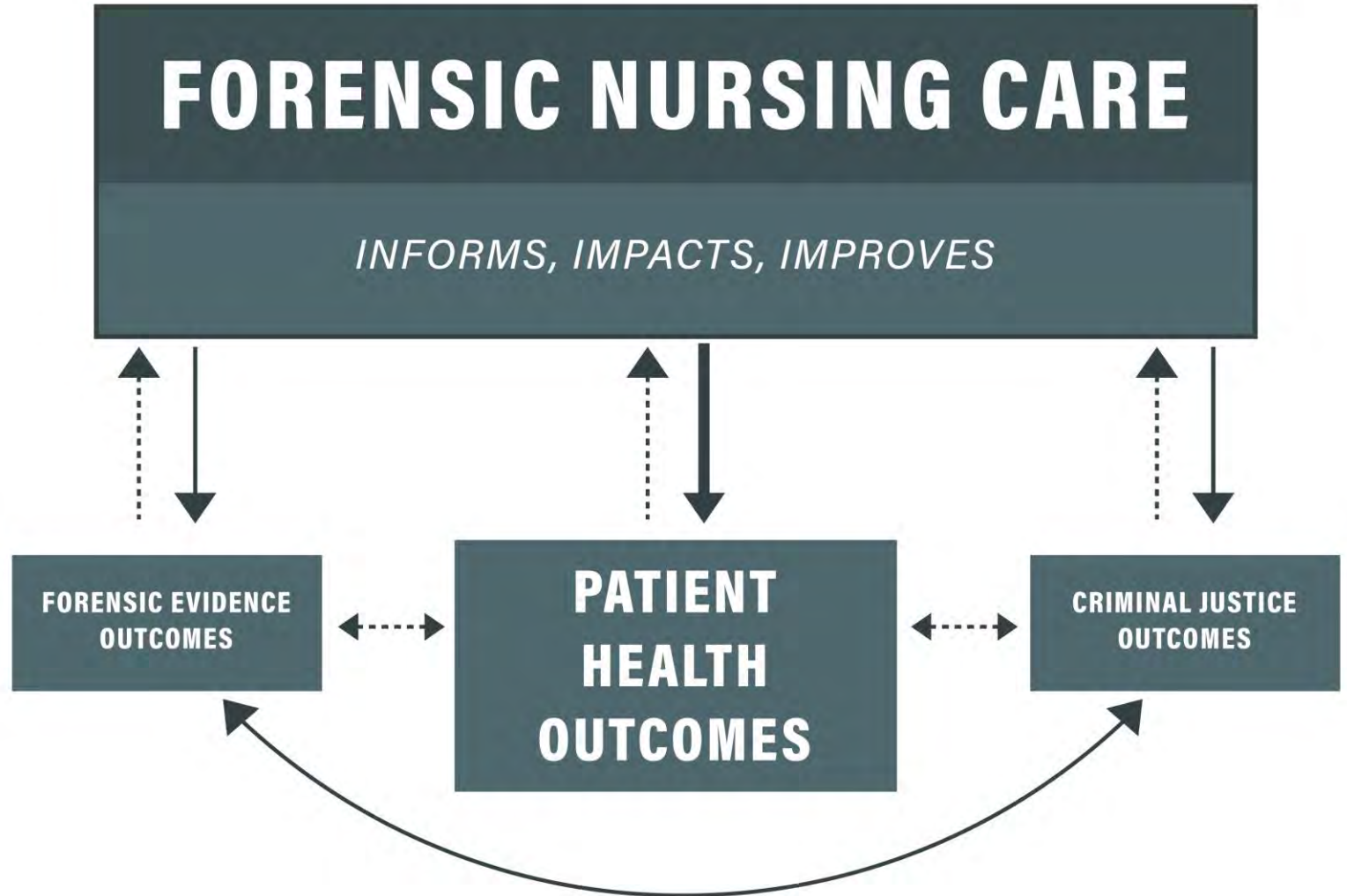


Forensic nurses provide “specialized nursing care that focuses on patient populations affected by violence and trauma — across the lifespan and in diverse practice settings.”

INT’L ASSOC. OF FORENSIC NURSES,  
FORENSIC NURSING: SCOPE AND  
STANDARDS OF PRACTICE (2017)

*THE CONSTRUCTED THEORY  
OF FORENSIC NURSING CARE*

**Role of  
Forensic  
Nurses**



# Forensic Nurses & SANEs/SAFEs

Registered nurses (RNs) with additional education (40-hour training) + supervised cases

Certified sexual assault nurse examiners, SANE-A and SANE-P



# Best Practices for Sexual Assault Medical Forensic Examinations

## **A National Protocol for Sexual Assault Medical Forensic Examinations**

Adults/Adolescents  
Second Edition

**U.S. Department of Justice  
Office on Violence Against Women**

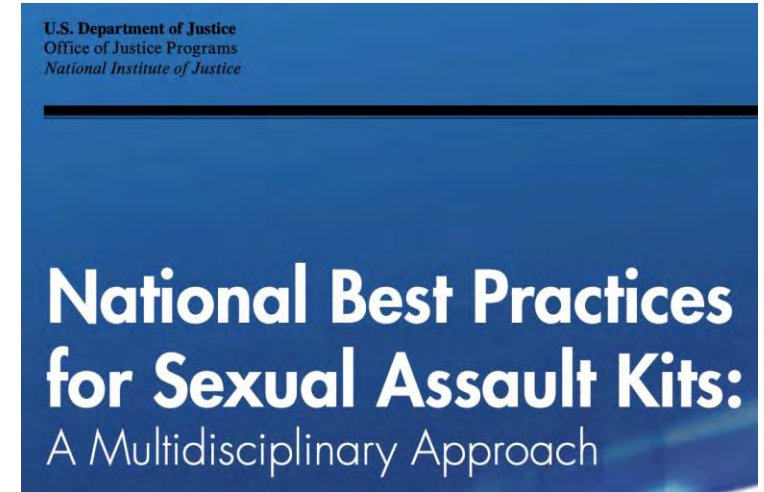
<https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>

## **A National Protocol for Sexual Abuse Medical Forensic Examinations Pediatric**

**U.S. Department of Justice  
Office on Violence Against Women**

April 2016

<https://www.justice.gov/ovw/file/846856/download>



<https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

# VICTIM'S CONSENT

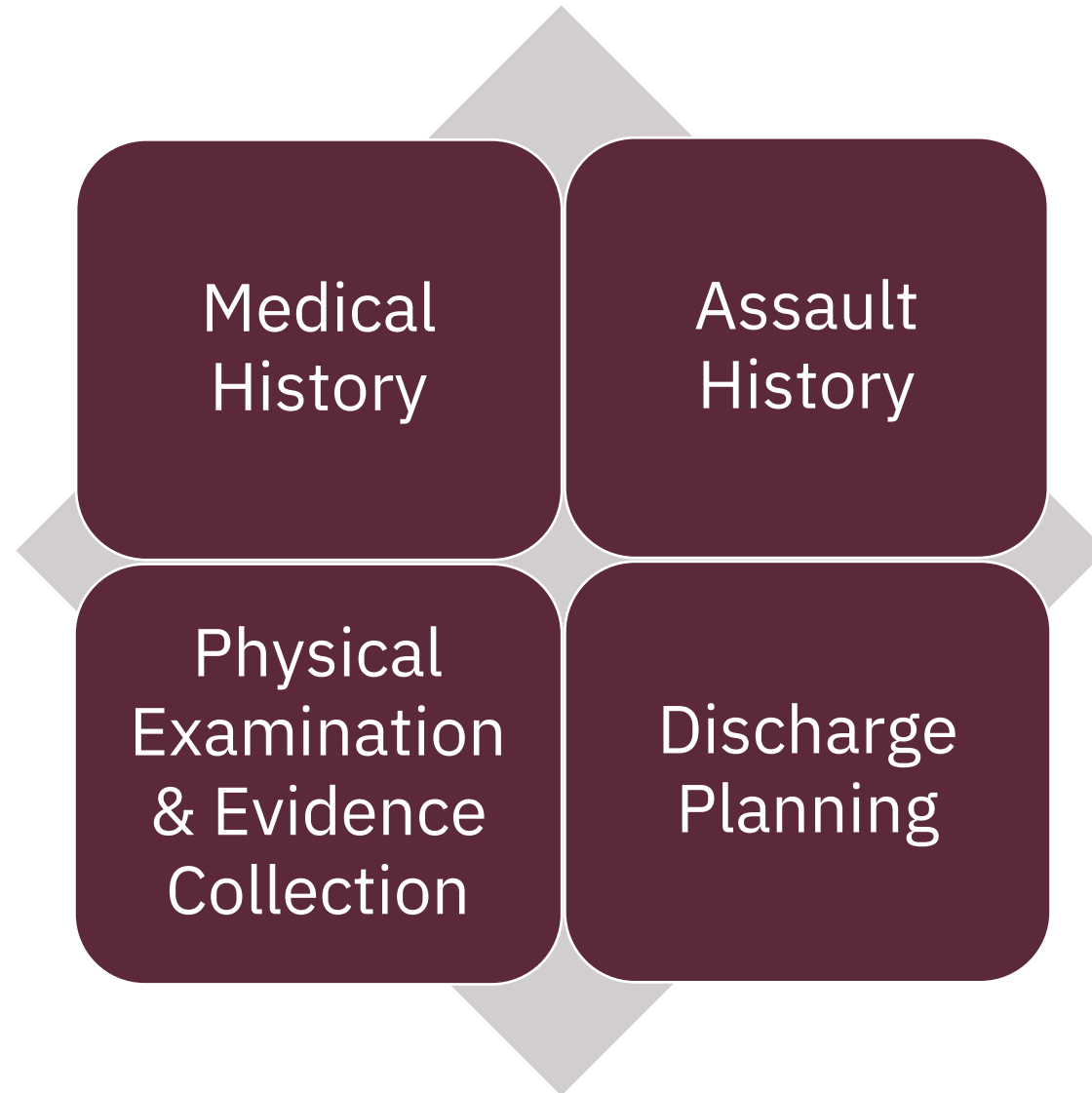




## Individualized Interventions

- Other assessments (IPV, strangulation, imaging, etc)
- Pregnancy prevention
- STI prophylaxis
- Referrals
- Follow up recommendations

# The Medical-Forensic Exam



# Step 1: Medical History

Should include the following:

- Current (chronic and acute) healthcare problems — physical/mental health
- Current medications
- Drug allergies
- Surgeries or procedures history
- Last menstrual period
- Pregnancy history
- Last consensual sexual encounter

# Prosecution Considerations



Carefully review medical history



Consult with SANE to determine the reason for requesting certain information



Consider whether certain information is necessary in testimony

## Step 2: Assault History

### Guides the medical-forensic examination

- What touched what
- Assailant's actions
- Victim's actions
- Areas/types of penetration
- Assailant relationship
- Post-assault actions by victim (showering/bathing, eating, use of tampons, etc.)

## Step 2: Assault History, cont'd

### Loss of consciousness or awareness

- Around 48% of cases (study by Valentine et al. of ~10,000 sexual assault cases)
- Evidence collection guidelines in *National Best Practices for Sexual Assault Kits: A Multidisciplinary Response*, page 25 (2017)



## Step 2: Assault History, cont'd

Consider there may be “unknown” answers to:

- “What touched what” questions
- Occurrence of ejaculation (56% answer “unknown”)

\*Valentine, J.L., Payne, S., Allen, C.,\* Hunter, E.B.,\* Stucki, D.,\* Johnson, L.,\* Evans, R.,\* Alder, C.\*, Miles, L.W., Asay, N.,\* Pugh, S.L.,\* Schlagel, L.,\* & Momberger, J.\*(2023). Development of Combined DNA Index System (CODIS) eligible profiles from sexual assault kits of female victims and associated victim and assault features. *Manuscript submitted.*

# Statement Made for Medical Diagnosis or Treatment

FRE 803(4)

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

[...]

(4) Statement Made for Medical Diagnosis or Treatment. A statement that:

(A) is made for--and is reasonably pertinent to--medical diagnosis or treatment;  
and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

# Prosecution Perspective



Lays foundation for admission of opinion testimony



Victim's disclosure to a trusted medical professional is evidence of its reliability



Statement and associated demeanor may also provide evidence of trauma

## Step 3: Physical Exam: For the Patient

External physical inspection



Physical evidence collection



Photography



Anogenital inspection

# Physical Examination Findings

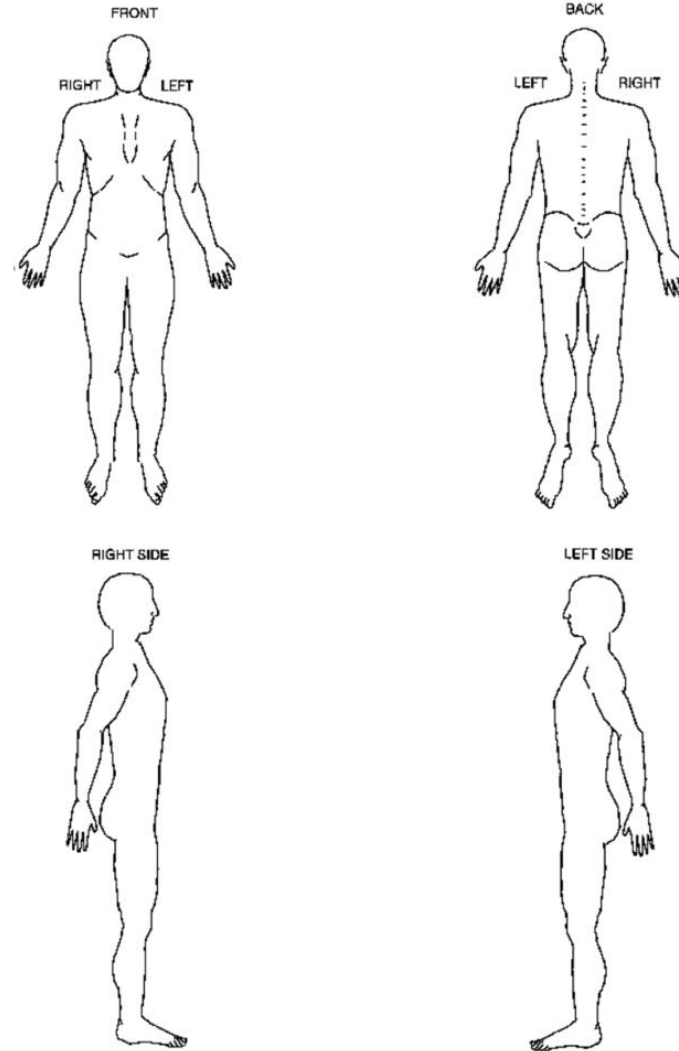
## Document Injuries

–Non-anogenital

■71%\*

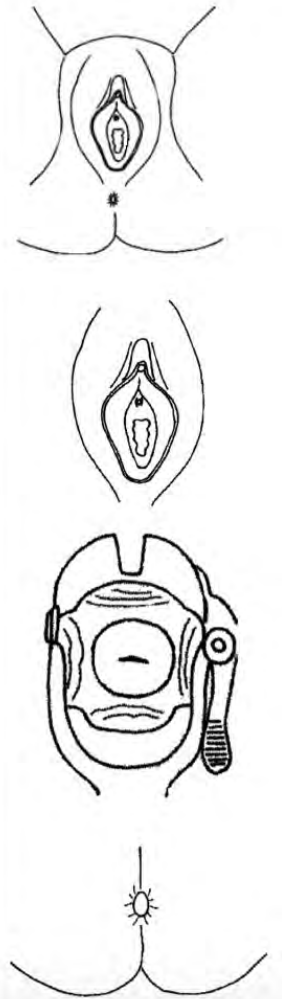
–Anogenital

■47%\*



FEMALE ADOLESCENT / ADULT ANOGENITAL EXAM

	Check if normal or no trauma	If not normal, describe abnormal/trauma findings (Use these body diagrams to document findings)
Inner Thighs	<input type="checkbox"/>	
Vulva	<input type="checkbox"/>	
Clitoral Hood/Clitoris	<input type="checkbox"/>	
Labia Major	<input type="checkbox"/>	
Labia Minor	<input type="checkbox"/>	
Periurethral Tissue and Urethra	<input type="checkbox"/>	
Perihymenal Tissue	<input type="checkbox"/>	
Hymen	<input type="checkbox"/>	
Vagina/ Cervix	<input type="checkbox"/>	
Fossa Navicularis	<input type="checkbox"/>	
Posterior Fourchette	<input type="checkbox"/>	
Perineum	<input type="checkbox"/>	
Anal/ Rectum	<input type="checkbox"/>	



\*Valentine, J.L., et al.\* (2023). Development of Combined DNA Index System (CODIS) eligible profiles from sexual assault kits of female victims and associated victim and assault features. *Manuscript submitted.*

## Sometimes No Injury is Found

- **No injury does not mean no rape**
- May mean that no injury was noted on gross visualization, but no further tools were used to assess for injury
- Injury was identified in 10-30% of cases where no colposcope was used vs. 72-87% with colposcope use
  - Colposcope: a surgical instrument used to examine the anogenital areas

L. Ledray in V. Lynch, Forensic Nursing (2005)

## Injury Is Not the Holy Grail

- Presence of genital injury may mean that recent sexual contact has occurred, not that forcible sexual contact has occurred
- Presence of genital injury ranges from 5-87% depending on visualization techniques, age of patient, and prior sexual intercourse

Marilyn Sawyer Sommers et al.,  
*Injury Patterns in Women Resulting from Sexual Assault*,  
2(3) TRAUMA, VIOLENCE AND ABUSE 240-58 (2001)

## The Exam Can NOT Tell You

If patient was  
raped

If victim consented

If non-specific  
anogenital injuries  
are from assault or  
consensual sex



# Documenting Patient Demeanor

Should be objective description

- Appearance: clothing, make-up, hair, body position
- Behaviors: crying, laughing, fidgeting with hair, etc.
- Voice description
- Demeanor at different times of examination
- Ability to answer questions

# Demeanor and Behavioral Evidence

Trauma

Timeline

Evidence of assault

Observations of secondary witnesses

# Photography

Photos of any bodily injuries, with and without scale

External genital photos

- Taken before and after use of any special techniques

Vaginal and cervical photos with colposcope or digital camera with magnification

# Thorough Physical Exam: Prosecution Considerations



SANE carefully explains physical examination to patient and obtains consent



SANE notes demeanor/ behavioral observations



SANE documents patient's statements

# Privacy Considerations for Criminal Case

01

Consider use of illustrations rather than colposcope photographs

02

Ensure the security of photographs while allowing defense and experts fair opportunity to view photograph

03

Ensure that context is provided for photos of external injuries

**SEXUAL ASSAULT EVIDENCE COLLECTION KIT  
VICTIM/SUSPECT**

FOR HOSPITAL PERSONNEL  
(Please Print)

VICTIM/SUSPECT'S NAME: \_\_\_\_\_  
PHYSICIAN'S NAME: \_\_\_\_\_  
HOSPITAL/CLINIC: \_\_\_\_\_  
KIT SEALED BY: \_\_\_\_\_  
PLACED BY: \_\_\_\_\_ TIME: \_\_\_\_\_ am/pm  
DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ am/pm

APRFX  
BIOHAZARD  
LABEL HERE  
AFTER SPECIMEN  
COLLECTION



FOR FORENSIC LABORATORY PERSONNEL ONLY

FOR LAW ENFORCEMENT COPIES OF FORMS  
1, 2 AND 12

This envelope is to be opened only if  
this kit is being used for Collection of Evidentiary Specimens from a

**SUSPECT**

**-Victim-**  
D.O.D. SEXUAL ASSAULT EVIDENCE COLLECTION KIT INSTRUCTIONS

**STEP 1** AUTHORIZATION FOR COLLECTION AND RELEASE OF EVIDENCE AND INFORMATION

**STEP 2** VICTIM'S MEDICAL HISTORY AND ASSAULT INFORMATION

**STEP 12** ANATOMICAL DRAWINGS

USED THE APPROPRIATE SETS OF ANATOMICAL DRAWINGS ABOVE AND IDENTIFY ALL PHYSICAL SUBSTANCES LOCATIONS, SITES AND STAGES

PHYSICIAN'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

PELVIC EXAMINATION: Male all signs of trauma, use non-sterilized specimen when possible.

**STEP 4** DEBRIS COLLECTION

**STEP 5** PUBIC HAIR COMBINGS

**STEP 6** PULLED PUBIC HAIRS

**STEP 7** VAGINAL SWABS

**STEP 8** RECTAL SWABS

**STEP 9** ORAL SWABS

**STEP 11** PULLED HEAD HAIRS

**KNOWN BLOOD SAMPLE**

VICTIM/SUSPECT'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

COLLECTED BY: \_\_\_\_\_

WAS SAMPLE COLLECTED? YES  NO

IF NO, WHY NOT? \_\_\_\_\_

**STEP 10** OUTER CLOTHING

**STEP 11** FOREIGN MATERIAL

**STEP 12** UNDERWEAR

**EVIDENCE**  
WARNING: POLICE DO NOT REMOVE

**EVIDENCE**  
WARNING: POLICE DO NOT REMOVE



**Rectal Swabs**

ORAL  RECTAL



# DNA Evidence Collection

## **+** RECOMMENDATION 8:

*Examiners should concentrate the collection of evidentiary samples by using no more than two swabs per collection area so as not to dilute the biological sample.*

### EXHIBIT 3: RECOMMENDED TIME FRAMES FOR EVIDENCE COLLECTION

Type of Assault	Collection Time
Vaginal	Up to 120 hours (5 days)
Anal	Up to 72 hours (3 days)
Oral	Up to 24 hours (1 day)
Bite marks/saliva on skin	Up to 96 hours (4 days)
Unknown	Collect respective samples within the time frames listed above

Note: For the references used to formulate this exhibit, see Appendix C. See also Scientific Working Group on DNA Analysis Methods, SWGDAM Recommendations for the Efficient DNA Processing of Sexual Assault Evidence Kits (Quantico, VA: Federal Bureau of Investigation, December 2016): [http://media.wix.com/ugd/4344b0\\_4daf2bb5512b4e2582f895c4a133a0ed.pdf](http://media.wix.com/ugd/4344b0_4daf2bb5512b4e2582f895c4a133a0ed.pdf).

**Skin (from bite wounds or oral contact)<sup>c</sup>**

Use two lightly moistened swabs, from each affected area, packaged per jurisdictional policy.<sup>d</sup>

Same in children.

**Skin (for touch DNA)**

Use two lightly moistened swabs across the affected area (as in cases of strangulation), packaged per jurisdictional policy.<sup>e</sup>

Same in children.

NAT'L INST. JUST, NATIONAL BEST PRACTICES FOR SEXUAL ASSAULT KITS: A MULTIDISCIPLINARY APPROACH, <https://www.ojp.gov/pdffiles1/nij/250384.pdf>

Avoid Cross-  
Contamination

**Masks and gloves!**





# DNA Evidence Results

Development of useful DNA evidence of foreign contributor

Factors that impact development of CODIS-eligible profiles

- Time between assault and exam
- Age
- Gender
- Showering/bathing
- Number of assaultive acts
- Suspect's actions
- Lack of consciousness of victim
- Regardless of circumstances, COLLECT DNA EVIDENCE!

*\*Valentine, J.L., et al. \*(2023).*

Development of Combined DNA Index System (CODIS) eligible profiles from sexual assault kits of female victims and associated victim and assault features. *Manuscript submitted.*

# DNA Chain of Custody Testimony

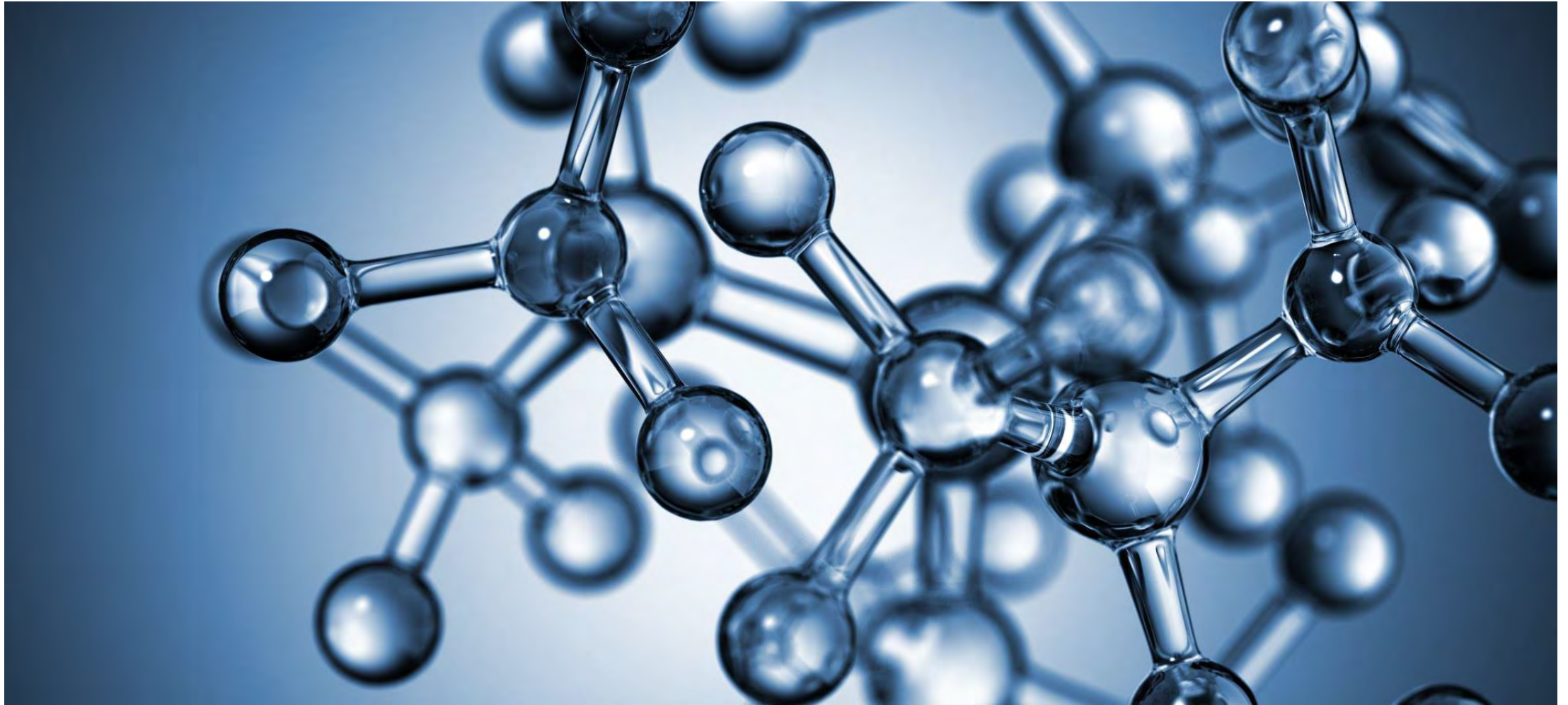
Focus on preserving the integrity of the swabs and packaging

Establish how the specimens were taken

Is the evidence stored or provided directly to law enforcement?

In cold/older cases if SANE is unavailable, establish hospital protocol for collection, packaging, storage during relevant period of time

# Advancements in DNA Testing



Identify changes/developments in science or policy.

Evidence may have not been previously submitted or tested based on:

Earlier, more restricted time frames for collection

Misconception that testing isn't needed in consent defense cases

Crime lab capacity for testing mixtures

# Case-Specific Matters

- Mixtures
  - Indistinguishable
  - Distinguishable
    - Deduced profiles
    - Major/minor contributors
  - Probabilistic Genotyping Software
- Direct to DNA Approach
- Y-STR
- Evidence storage / preservation / contamination
- Evidence consumption
- ***Absence of evidence is not evidence of absence***

## Y-STR Cases: Why Use “Y”

- Only reacts with STRs on Y-chromosome; doesn't react with female DNA
- Use when:
  - Failure to obtain male DNA profile using traditional STR technology, or
  - STR results are minimal or inconclusive, especially in presence of high levels of female DNA
- Current DNA quantitation technology provides ratio that estimates amount of male DNA vs. total human DNA in DNA sample
- Y-STR testing can be utilized when there has been a lapse of time between assault and DNA collection

## Y-STR Cases: Why Use “Y”, cont’d

- Trace amounts of male DNA:
  - Touch DNA
  - Sexual assault involving digital penetration, sterile or vasectomized male perpetrators, or when there is no ejaculation
  - Fingernail scrapings from sexual assault victims
- Resolve male – male mixtures

# Medication



Emergency contraception — Plan B or Ella



Antibiotics to prevent STIs — Chlamydia, Gonorrhea, Trichomoniasis



HIV prophylaxis



## Step 4: Discharge Planning

Patients' individualized care depends on health, crisis, safety needs.

Inform about the assault to complete exam; perpetrator identity to complete safety planning

Consequences of untreated sexual assault: PTSD, suicidal ideation, potentially homicidal

Medical and crisis follow-up, STI testing: sets health care providers apart from forensic technicians

"Forced sex in intimate partner relationships increases the risk for intimate partner homicide over and above prior domestic violence, the use of a weapon against the female partner and repeat physical violence. In other words, the man who not only physically abuses his partner but also rapes her is particularly dangerous."

Jacquelyn C. Campbell, PhD, RN, Johns Hopkins University

# Trial Preparation

Seeking Justice with Medical Evidence

# Types of Witnesses

## Fact Witness

- Called to provide info about care provided to patient or observations while conducting exam
- Not qualified as expert, but professional qualifications to perform work still discussed
- Hearing prior to trial testimony typically not required

## Expert Witness

- May include info about care provided to patient
- Requires opinion on care provided to patient or review of victims' medical records to form an **opinion** based upon expertise
- Requires qualification as expert and involves a prior hearing as well as trial testimony

# Possible Testimony

Preliminary Hearing

Grand Jury






Deposition

Pre-Trial Motions

Trial

Sentencing

## Preparation with Expert

-  Review qualification questions
-  Determine most effective direct examination questions
-  Discuss expected areas of cross-examination and possible responses
-  Review hypotheticals and foundation for opinion
-  Discuss any relevant pre-trial rulings

## Preparing with Expert, cont'd

Obtain CV from expert

Review report

Ask questions to inform direct examination at trial

Focus on case-specific challenges

Provide context as to how the expert's testimony fits in

Anticipate defense questions

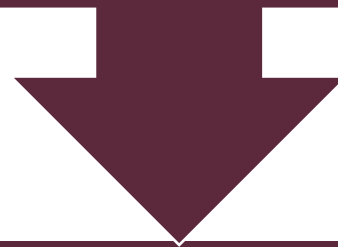
Discuss defense expert testimony

# Legal Analysis

Will testimony help trier of fact?

Understand evidence

Determine fact in issue



Is expert qualified?



# Educating Fact Finder

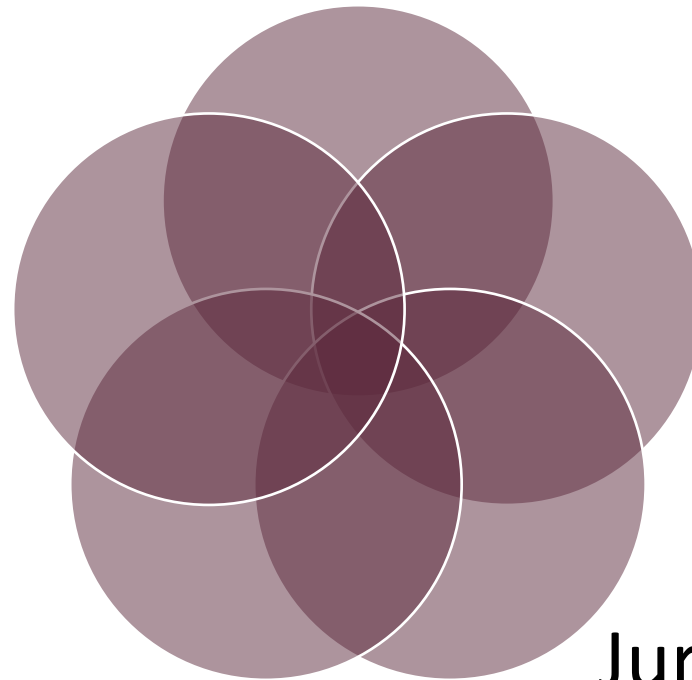
Victim  
Testimony

Argument

Witness  
Examination

**Expert  
Testimony**

Jury Selection



# Qualifications

*“A witness who is qualified as an expert by knowledge, skill, experience, training, or education...”*

Clinical  
experience

Direct victim  
service

Education

Knowledge of  
relevant  
articles

Authorship of  
articles

Prior  
qualification

# Testimony by Expert Witnesses

FRE 702

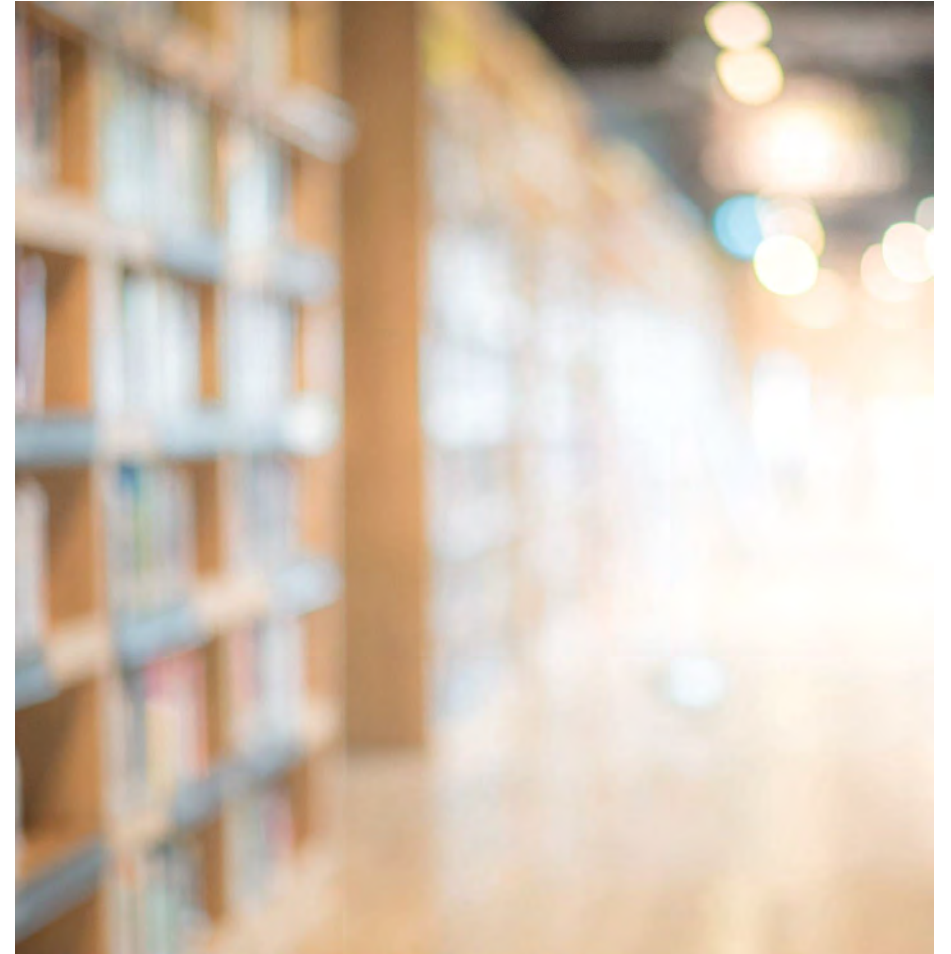
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- b) the testimony is based on sufficient facts or data;
- c) the testimony is the product of reliable principles and methods; and
- d) the expert has reliably applied the principles and methods to the facts of the case.

# Bases of an Expert

FRE 703

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.



# Qualification

If qualified  
outside  
presence of jury

- Prosecutor will likely repeat questions in presence of the jury

Once  
foundation  
established

- Prosecutor will ask basic questions

Connect with the Jury:

Bringing Patient Care into Focus at Trial

### DIRECT EXAMINATION

- *Voir Dire*/Qualifications as expert
- Conducted by party calling the witness
- Non-leading questions

### CROSS-EXAMINATION

- Conducted by opposing party
- Limited to scope of direct examination
- Leading questions

## EXPERT TESTIMONY

### REDIRECT

- Conducted by original calling party
- Limited to scope of cross examination
- Non-leading questions

### OBJECTIONS

- Stops testimony until judge rules on objection

# Foundation for Expert Testimony

Foundation is necessary for the court and the jury.

Qualifications are critical to foundation.

Present legally sufficient foundation in a persuasive manner.

Assume most jurors do not have expertise in subject matter of expert.

Develop questions to educate jurors on the science: "Can you explain to us.....?"



# Establish Expert Qualifications

## **ACADEMIC**

- Degrees achieved, institution, dates
- Additional courses/seminars/  
additional training/practicum or  
clinical

## **PROFESSIONAL**

- How long have you served as a  
medical professional/SANE?  
Certification?
- What are your responsibilities?  
Supervisory authority? Provide  
training? Peer review? Authored  
publications? Provide training?
- Ongoing professional training?
- Previous testimony as an expert?

# Overview of SANE Testimony

## Fact

- Explain role of SANE and medical-forensic exam
- Describe observed injuries, test results, medical care provided
- Refer to the patient's demeanor during all phases of exam
- Introduce admissible statements made by patient

## Expert

- Findings from medical exam and interpretations
  - “Were your findings consistent with the patient’s history?”
- Provide explanation/ research regarding lack of injury
- Describe various presentations of trauma

## Direct Examination

Foundation;  
qualification

Have CV  
available

Previous expert  
testimony

Nursing  
experience

Work with  
defense

Work with both  
female and  
male patients

# Focus of Direct Examination



Focus on patient care



Establish integrity and professionalism



Focus on history obtained, demeanor of patient



Discuss examination and findings



Detail collection of medical evidence



Discuss psychological and physical harm and/or health risks associated with assault

## Direct Examination Points

Discuss clinical background at length

Draw out the lack of “typical” in sexual assault patients

Discuss victim responses to trauma

Avoid statistics; ask about frequency in a SANE’s clinical experience instead

- Is it common to ... ?
- Is it your experience that ... ?

# Importance of Language

Patient-centered

Description of  
“forensic” role in  
professional  
standards is neutral

Collection of  
specimens is done  
for the patient

Chain of custody is  
part of the work,  
but is not the goal

# Physical Examination: Topics for Testimony

Illustration of genital anatomy

Penetration: legal and medical definitions

Injury location: depth of penetration

Explain photographs of any external injuries including medical terminology

Focus on SANE's care for patient, including evidence collection

# Overview of Trial with Medical Evidence

Medical History, History of the Assault, Physical Examination, Collection of Evidence

DNA:  
possible  
connection  
of  
perpetrator  
to victim:  
touch, trace,  
STR/Y-STR

Explore need for expert testimony during jury selection

Build the case with SANE expert testimony

Explain significance of findings or  
reasons for absence

Ensure that evidence is presented  
so that jury understands



## Going Forward

Identify role of sexual assault nurse examiners

Prepare with the expert or fact witness to effectively present medical evidence

Educate judges and juries about significance of medical evidence

## Contact Information



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