“Sexual violence continues to plague our Nation and destroy lives. All members of society are vulnerable to this crime, regardless of race, age, gender or social standing. When sexual assault does occur, victims deserve competent and compassionate care.”

- Foreword, National Protocol for Sexual Assault Medical Forensic Examinations for Adults and Adolescents (Sept. 2004)

One out of three women will be sexually assaulted in her lifetime. Prosecuting sexual violence effectively can ensure that perpetrators are held accountable and prevented from engaging in future violence. Effective prosecution is a major step in the fight to end sexual violence; however, prosecutors cannot stand alone in the battle against sexual assault. Instead, each prosecutor’s office must work with its community to ensure that its response to sexual assault is effective. A community’s response to sexual assault must have the capacity to hold offenders accountable while remaining sensitive to victims’ needs.

The sexual assault medical forensic examination is a major component of a community’s response to sexual assault. Congress recognized the importance of this specialized examination in the Violence Against Women Act of 2000 which directed the Attorney General to develop a National Protocol for Sexual Assault Medical Forensic Examinations (Protocol). The Protocol, which was released in September 2004, was developed by the Office on Violence Against Women (OVW) based on a review of existing protocols on sexual assault forensic examinations and consultations with sexual assault experts from across the country.

“The Protocol offers recommendations to help standardize the quality of care for sexual assault victims throughout the country,” (Protocol, p. 2) but it is not a list of requirements. (Protocol, p.1) It is intended to supplement and guide communities developing or revising protocols rather than to invalidate or replace existing protocols, policies or practices.

Prosecutors seeking to create an effective community response to sexual assault should review existing practices, policies and protocols to ensure that they are consistent with the Protocol. This article discusses the Protocol’s recommendations with respect to the following: (1) responses to sexual assault; (2) examination processes; (3) procedures for dealing with drug-facilitated sexual assault; and (4) training forensic medical examiners.

**The Response to Sexual Assault**

“Response to victims should be timely, appropriate, sensitive, and respectful.” (Protocol, p. 3) The ideal immediate response to sexual assault includes a sexual assault medical forensic examination. The Protocol describes the dual purposes of the examination process as simultaneously addressing patients’ and the justice system’s needs. (Protocol, pp. 23 - 26) It emphasizes the importance of a coordinated, multidisciplinary approach to sexual assault medical forensic examinations.
plinary, victim-centered approach to conducting sexual examinations.

“Victim-centered care is paramount to the success of the exam process.” (Protocol, p. 3) Health care providers and other responders can achieve victim-centered care by incorporating the following key components in their examination procedures (Protocol, p.27-37):

- Prioritize sexual assault patients as emergency cases.
- Provide the means necessary to ensure patients’ privacy.
- Recognize that the medical forensic exam is an interactive process that must be adapted to the needs and circumstances of each patient.
- Recognize the importance of victim services within the exam process and allow victim advocates to begin interacting with victims prior to the exam, as soon after disclosure of the assault as possible.
- Explain the purpose of the exam before beginning the exam and explain what is entailed in each procedure prior to conducting the procedure.
- Integrate medical and forensic exam procedures when possible.
- Address the patient’s safety concerns during the exam process.
- Address the patient’s physical comfort needs prior to the investigative interview and discharge. Patients should be given the ability to wash in privacy, brush their teeth, change clothes, get food and / or a beverage and make needed phone calls.(Protocol, p.37)
- Minimize the repetition of questions by examiners, police officers and prosecutors by coordinating medical forensic history taking and investigative interviewing when possible.(Protocol, p.8)
- Be aware of the scope and limitations of confidentiality related to information gathered during the exam process. (Protocol, p.5)

Although the Protocol recognizes the importance of prosecution, it encourages communities to adopt victim-centered reporting practices that allow patients, rather than health care workers, to decide whether to report a sexual assault to law enforcement when the law allows. It does, however, recommend that service providers encourage victims to report sexual assaults to law enforcement, “due in part to the recognition that delayed reporting is detrimental to the prosecution and to holding offenders accountable” (Protocol, p.5) The Protocol also emphasizes the importance of securing the patient’s informed consent for each exam procedure. (Protocol, p.4)

Patients should be advised of the potential impact of declining a procedure and the reasons for the refusal should be documented whenever the patient provides an explanation. (Protocol, p.4) Patients should never be examined against their will. (Protocol, p.5)

**THE EXAMINATION PROCESS**

Patients should be examined as promptly as possible to minimize the potential loss of evidence as well as to identify quickly their medical needs and concerns. (Protocol, p.67)

Although many jurisdictions have established 72 hours as the standard outside limit for obtaining evidence of a sexual assault, research and analyses indicate that some evidence may be available beyond the 72-hour time period. (Protocol, p.67)

Therefore, the Protocol encourages examiners and law enforcement officers to “[m]ake decisions about whether to collect evidence on a case-by-case basis, guided by the knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or the type of sample collected” (Protocol, p.67) “Some examples of situations where evidence may be found even after considerable periods of time include when patients complain of pain or bleeding, have visible injuries, have not washed themselves since the assault, or where there is a history of significant trauma from the assault.” (Protocol, p.67)

When the utility of the examination is in question, law enforcement should consult with forensic medical examiners and forensic scientists regarding potential benefits and limitations. (Protocol, p.67-68)

Prosecutors should be aware that the Protocol recommends that forensic details of the exam be described in a medical forensic report and that other medical information be described in a separate medical record. Additionally, it recommends that forensic examination records be stored separately from other medical records to avoid inadvertent disclosure of unrelated information and to preserve confidentiality. (Protocol, p.79)

If a prosecutor determines that the additional information contained in the medical record stored at the exam site is necessary, it is likely that the prosecutor will have to subpoena the records (Protocol, p.79).

**PROCEDURES FOR DEALING WITH DRUG- FACILITATED SEXUAL ASSAULT**

All allegations of sexual assault should be taken seriously, regardless of whether the patient was intoxicated. Indeed, the Protocol directs that “[v]oluntary drug and / or alcohol use by patients during this period should not diminish the perceived seriousness of the assault.” (Protocol, p.101) The Protocol does not recommend routine tox-
However, it notes that the collection of urine or blood may be indicated in the following circumstances: (Protocol, p.102)

• 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, decreased blood pressure, memory loss, impaired motor skills, or severe intoxication);

• If a patient or accompanying persons (e.g., family member, friend, or law enforcement representative) states the patient was or may have been drugged;

• If a patient suspects drug involvement because of a lack of recollection of events.

In addition, the Protocol instructs that “[t]oxicology samples should be collected as soon as possible after a suspected drug-facilitated sexual assault is identified and informed consent is obtained, even if patients are undecided about reporting to law enforcement.” (Protocol, p.103) “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 collected in a clean plastic or glass container (follow jurisdictional policy).” (Protocol, p.103) “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 oxalate) according to jurisdictional policy.” (Protocol, p.103) “If a blood sample is collected for toxicology screening, it should be accompanied by a urine sample.” (Protocol, p.103)

In cases where drug-facilitated sexual assault is suspected, criminal justice agencies should ensure that samples are tested by laboratories that have the capacity to detect drugs in very small quantities. (Protocol, p.104)
basics, including: the criminal justice process, witnesses, court staff and observers, typically present during a trial; and prosecution and defense strategies. (Protocol, p.117) 
Prosecutors should also encourage examiners to watch other experts testify when possible. (Protocol, p.119) Prosecutors can ensure future success by providing feedback to examiners after they testify. (Protocol, p.119)

In summary, prosecutors seeking to create an effective community response to sexual assault should review existing practices, policies and protocols to ensure that they are consistent with the Protocol. The response to sexual assault should be coordinated, multidisciplinary and victim-centered. To the extent possible, jurisdictions should attempt to standardize sexual assault evidence collection kits and ensure that they meet or exceed the recommended minimum guidelines for contents. The sexual assault medical forensic examination process should be comprehensive. It should also comply with jurisdictional policies regarding evidence collection and testing. When toxicology samples are taken, they should be collected properly, promptly and submitted to a lab with the capacity to detect drugs in small quantities. Finally, prosecutors should ensure that forensic medical examiners are well trained.

FOOTNOTES
1 National Victim Center, RAINN, 1992.
2 The Protocol can be found online at www.ncjrs.org/pdffiles1/ovw/206554.pdf. “This protocol generally focuses on the examination of females who have experienced the onset of menarche and males who have reached puberty.” (Protocol, p. 1)
3 “The national protocol recommends, rather than mandates, methods for conducting the medical forensic exam.” Protocol, p. 14. The Protocol clearly states, “This document is intended only to improve the criminal justice system’s response to victims of sexual assault and the sexual assault forensic examination process and does not create a right or benefit, substantive or procedural, of any party.”
4 Under the Violence Against Women Act (VAWA), a state, territory, or the District of Columbia is only entitled to funds under the STOP Violence Against Women Formula Grants Program if it, or another governmental entity, incurs the full out-of-pocket cost of medical forensic exams for victims of sexual assault.
5 Facilities must respond to acute injury, trauma care and safety needs of victims before collecting evidence. Protocol, p. 77.
6 Remember that health care records may have to be subpoenaed before the examiner is able to discuss the contents of a patient’s medical records with you. Protocol, p. 118.