

Discussion of the FTCOE's Guidance Document on Considerations for Photographic Documentation in Sexual Assault Cases

by Mikalaa Martin*

Among many other multidisciplinary forensic science topics, the FTCOE¹ provides resources related to sexual assault response. As part of these efforts, the FTCOE published a report, *Guidance Document on Considerations for Photographic Documentation in Sexual Assault Cases* in August 2022 [hereinafter FTCOE Guidance Document];² this SAR article discusses key topics within the FTCOE Guidance Document.

Synopsis of the Guidance Document on Considerations for Photographic Documentation in Sexual Assault Cases (2022 Guidance Document)

The FTCOE 2022 Guidance Document offers resources and considerations for photographically documenting a sexual assault survivor during a Sexual Assault Medical Forensic Examination (SAMFE). The FTCOE Guidance Document was informed by industry literature, journal articles, and national protocols and by interviews with various forensic science community collaborators, practitioners, educators, and researchers who offered insight on their experiences.

More specifically, it presents photographic documentation practices and techniques for

Sexual Assault Nurse Examiners (SANEs) to consider during a SAMFE. Additionally, the FTCOE Guidance Document provides — through a systems approach — considerations for adjacent criminal justice professionals who support survivors before, during, and after a SAMFE. These adjacent criminal justice professionals include victim advocates, law enforcement investigators, forensic science service providers (FSSPs), and prosecutors. The considerations highlight how these professionals' responses can potentially impact the photographic documentation of survivors and employ trauma-informed and victim-centered approaches.

Collectively, SANEs, victim advocates, law enforcement investigators, FSSPs, and prosecutors form a Sexual Assault Response Team (SART). SART member collaboration ensures that the sexual assault response, including the SAMFE and subsequent investigations, is trauma-informed and victim-centered. The critical roles and responsibilities of SART members include the following:³

SANES: Provide immediate medical care, conduct the SAMFE, and provide follow-up care to the patient as needed.

Victim Advocates: Serve in a liaison role for the sexual assault survivor by providing information, support, resources, and investigation updates.

Law Enforcement Investigators: Lead the sexual assault investigation by communicating with the survivor and SART members and through reviewing information and evidence gathered during the SAMFE.

FSSPs: Conduct forensic testing on evidentiary items related to the case (e.g., sexual assault kit [SAK] samples) and provide information on the impact test results may have on investigative advancement.

Prosecutors: Collaborate with the survivor and SART members to seek case advancement and resolution.

The FTCOE Guidance Document also highlights the role researchers and academics play in advancing (1) knowledge in

trauma-informed and victim-centered approaches and (2) research in technology approaches applied to SAMFEs.

Furthermore, the FTCOE Guidance Document provides an overview of photography techniques, including visible light photography and alternatives to conventional photography like the use of alternative light sources, ultraviolet light, and infrared light. It also provides a detailed review of digital camera technologies that can be used to document injuries and evidence associated with sexual assault cases such as digital single-lens reflex cameras, mirrorless digital cameras, converted cameras, integrated camera systems, colposcopes, and point-and-shoot cameras. Although the FTCOE Guidance Document provides insights central to the role of camera technology in SAMFEs, this article focuses on considerations that relate to the role various professionals assume in a SART.

The Importance of Photographic Documentation During SAMFEs

Following a sexual assault, survivors may seek medical attention for any physical injuries and psychological traumas sustained. This medical attention may include a SAMFE conducted by a SANE. Services provided by SANEs can include: (1) medical evaluation and treatment (e.g., the administration of general medical care, intake of the patient's medical forensic history; written documentation of SAMFE findings, photographic documentation of SAMFE findings) and evidence collection and release (e.g., collecting evidentiary items deemed potentially relevant to the sexual assault incident, releasing evidence and information to SART members and other criminal justice system personnel). Both medical evaluation and treatment and evidence collection and release require their own separate patient-provided informed consent process.⁴ If SANEs obtain patient-provided informed consent to photographic documentation of SAMFE findings, they may use photography to document their observations of injuries (e.g., fresh or aged bruising, visible surface injuries including

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abrasions, lacerations, incisions, and hemorrhages) or potential physical evidence (e.g., biological materials, hairs, fibers, debris) associated with a sexual assault.

Photographs taken during the SAMFE may include identification photographs, full-body photographs, mid-range photographs, and close-up photographs. Together, these photographs provide a holistic view of the patient and any notable findings observed by the SANE. Often, the first photograph taken is of a medical wristband or label prepared by the SANE; this identification photograph captures patient-related information (e.g., patient name, medical number). This type of photograph can also be taken at the end of the SAMFE as a bookend to create a logically ordered photography log. Following identification photographs, the SANE captures full-body photographs to provide an overall view of the patient. The SANE then captures mid-range photographs that orient any notable findings in relation to a landmark or fixed feature on the patient's body. Once the SANE captures mid-range photographs, the SANE captures close-up photographs, which document any notable findings in finer detail and higher resolution. Close-up photographs are taken using two main variations, including a close-up as is and a close-up next to a ruler or scale for sizing and comparison purposes. In addition to the photographs used to document the patient and any notable findings, the SANE may photograph any other potentially relevant or unusual findings noted during the SAMFE, such as biological materials observed on the patient's clothing.

Photographs taken throughout the course of a SAMFE or any follow-up examinations provide a permanent record of physical injuries sustained by the survivor or potential physical evidence resulting from the incident. It is important to note that even if a survivor does not present observable injuries or other findings deemed notable by the SANE at the time of the SAMFE, it is equally important to photograph the survivor as they appear during the SAMFE. Beyond providing a permanent record, photographs obtained from SAMFEs may be used for court proceedings for survivors who decide to engage with the criminal justice system.

Many best practice guidelines and protocols have been established⁵ to enable SANEs to provide high-quality SAMFEs, ensure survivors' needs are addressed properly through a trauma-informed and victim-centered manner, and promote a collaborative response from all allied criminal

justice professionals involved in a SART. Although many of these best practice documents offer guidance for photographic documentation and suggest using forensic-quality photography equipment for photographing survivors during a SAMFE, they typically do not recommend specific camera technologies. The FTCOE Guidance Document addresses specific camera technologies, thereby helping decision-makers identify and choose equipment that fits their needs.

An Emphasis on Trauma-Informed and Victim-Centered Approaches

It is important that SART members employ both trauma-informed and victim-centered approaches for all sexual assault responses. A trauma-informed approach recognizes the widespread impact, signs, and symptoms of trauma sustained by a survivor.⁶ Employing a trauma-informed approach enables SART members to avoid re-traumatizing a survivor while promoting recovery-oriented care. A victim-centered approach prioritizes a survivor's rights, needs, and wishes.⁷ Using a victim-centered approach can empower survivors, promote ongoing support and security during the recovery process, and help ensure the survivor can access high-quality health care, legal services, emotional and social services, and other resources.

Employing a victim-centered approach requires SART members to understand and obtain patient-provided informed consent. *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents* requires patient-provided informed consent to perform the SAMFE and to collect and release forensic evidence such as photographs.⁸ SANEs and other SART members (e.g., victim advocates) are responsible for informing survivors of the SAMFE procedures, which may include the photographs that will be taken; who will have access to them; and the way they will be used, stored, and secured.⁹ It is important that all information related to the SAMFE procedures is communicated in a way and in a language the survivor can clearly understand. A survivor reserves the right to decline any or all portions of the SAMFE or withdraw consent at any time.¹⁰ When a survivor does not provide or withdraws consent, the SANE or victim advocate is responsible for explaining how this action may impact the care provided, evidence collected, and subsequent criminal investigation or prosecution of the case.¹¹

SANEs and SART members must have policies, protocols, and procedures in place for using, storing, and securing these photographs

in accordance with their jurisdictional policies and their organizations' protocols and procedures. Storage and release protocols vary widely between agencies.¹² When developing or updating these protocols and procedures, it is important they align with trauma-informed and victim-centered approaches. Understanding the potential impact certain practices may have on survivors throughout their recovery process while staying within state policies, statutes, and regulations can assist with this alignment. For example, storing photographs separately as opposed to within the medical record potentially limits access to a protocol that requires survivor-provided consent to send photographs to law enforcement investigators versus a protocol that does not require; this consent process may impact how comfortable a survivor feels with consenting to photographs being collected. Regardless of the procedures in place, SART members should ensure survivors have a clear understanding of these protocols so a survivor can provide fully informed consent.¹³

Although trauma-informed and victim-centered approaches are central to the SAMFE, these approaches are critical for all SART members to use whether before, during, or after a SAMFE regardless of direct or indirect contact with a survivor.

The Critical Role of a Multidisciplinary Approach

Each sexual assault incident is unique. As such, there is no standard process for involving SART members in a case. A multitude of factors, including whether the survivor first engages with a victim advocate, reports the incident to law enforcement, or presents to a hospital can drastically change the order in which each SART member first engages with a survivor. This demonstrates the importance of each SART member employing trauma-informed and victim-centered approaches. It is important that each SART member emphasizes and promotes an awareness of the survivor's rights,¹⁴ ensures the survivor is always informed and comfortable, and encourages the survivor to be engaged throughout the process on their own time (i.e., that the process is led by the survivor).

A victim advocate who is the first point of contact for the survivor, will help the survivor make informed decisions regarding seeking and receiving care, completing a SAMFE, and seeking justice while ensuring their safety through the recovery process.¹⁵ If a survivor decides to obtain a SAMFE, a victim advocate is typically permitted to stay with the survivor throughout the SAMFE. During the SAMFE,

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a victim advocate can assist the survivor in multiple ways, including ensuring the survivor understands the process before providing consent; collaboratively determining the survivor's comfort with consenting to any element of a SAMFE; and empowering the survivor to stop, pause, or skip any portion of the SAMFE with which they are uncomfortable.¹⁶ Following a SAMFE, a victim advocate serves as a critical member of the SART by assuming a liaison role between all other SART members and the survivor. This may include communicating investigative updates if the survivor chooses to engage with the criminal justice system (e.g., new information or investigative leads in the case, communicating forensic testing results),¹⁷ connecting the survivor with follow-up resources, or providing the survivor with general and continual support throughout their recovery process.

If a survivor decides to engage with the criminal justice system by reporting the incident to law enforcement, whether before, during, or after the SAMFE, the law enforcement investigator(s) assigned to the case will conduct an initial interview with the survivor to obtain case details after ensuring the safety and health of the survivor and, if applicable, the surrounding area. If survivor safety is deemed at risk, law enforcement investigator(s) will collaborate with the victim advocate to identify a safe environment for the survivor. Depending on the impact of trauma sustained by the survivor and the point at which the survivor engaged with law enforcement, law enforcement investigator(s) may schedule the victim interview to take place a few days after the date the incident occurred or at a time when the survivor feels comfortable reaching out and moving forward with this process.¹⁸ During the interview, law enforcement investigator(s) should ask questions through a trauma-informed perspective¹⁹ and emphasize the right of the survivor to request that an advocate or loved one be present, take breaks when needed, or stop the interview at any point.²⁰ Following this interview, law enforcement investigator(s) will work collaboratively with the survivor's victim advocate to ensure the survivor is kept informed of any progress or case updates and feels empowered to participate in the investigative process.

If the investigation advances, a prosecutor will be brought in to serve as a key SART member. Prosecutors collaborate with the survivor and all other SART members to progress and seek case advancement and resolution in a manner comfortable to the

survivor. Like other SART members, prosecutors should ensure that the survivor feels empowered to be involved and to express thoughts and experiences throughout the prosecutorial process whether during pre-trial meetings or during the trial itself when providing a victim statement to the court. Importantly, all elements of the prosecutorial process should remain within the bounds of a survivor's comfortability and should not depend on the survivor (e.g., the evidence presented to the court in the case does not rest on the need for the survivor's testimony).²¹

Conclusion and Further Reading

Ensuring a sexual assault survivor has access to high-quality resources requires a multidisciplinary approach through the collaboration of many key SART members, including SANES, victim advocates, law enforcement investigators, FSSPs, and prosecutors — whether before, during, or after a SAMFE. To accomplish this, it is important that all SART members employ a trauma-informed and victim-centered approach when interacting, directly or indirectly, with a survivor. This approach also ensures survivors are constantly informed of their rights, feel empowered, and are treated in a way that promotes recovery and healing following a sexual assault.

To read more on the considerations highlighted in this article or to find additional content such as an in-depth review of photography techniques and available technologies and their application to SAMFEs, please see the FTCOE Guidance Document.²²

Note: *The Forensic Technology Center of Excellence (FTCOE) is supported through a cooperative agreement with the National Institute of Justice (NIJ) and led by global research institute RTI International. The FTCOE produces a variety of no-cost, publicly available, and evidence-based resources that support the transition and implementation of novel and innovative technologies and best practices by end-users.*²³ *The FTCOE is dedicated to elevating the status of forensic science by advancing technology, sharing knowledge, and addressing challenges within forensic disciplines to bridge the gap between the scientific and justice communities.*

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Endnotes

1. FTCOE. (n.d.). *Home*. Available at <https://forensiccoe.org/>.
2. Mikalaa Martin, Rebecca Shute, Shannon Krauss, Sara Gamaleldin, & Patricia Melton (August 2022). *Guidance document on considerations for photographic documentation in sexual assault cases* [hereinafter FTCOE Guidance Document]. Forensic Technology Center of Excellence, RTI International. Available at <https://forensiccoe.org/report-2022-guidance-photo-documentation/>.
3. Id. at 2.
4. Office on Violence Against Women [hereinafter OVAW] (2013). *A national protocol for sexual assault medical forensic examinations: Adults/Adolescents, Second Edition* (NCJ 228119) [hereinafter *National Protocol: Adults/Adolescents*]. U.S. Department of Justice [hereinafter USDOJ], Washington, D.C. Available at <https://nij.ojp.gov/library/publications/national-protocol-sexual-assault-medical-forensic-examinations>.
5. The following is a non-exhaustive list of best practice guidelines and protocols that may be helpful in augmenting local policies, procedures, and legislations: (a) OVAW (2013), supra note 4; (b) OVAW (April 2016). *A national protocol for sexual abuse medical forensic examinations: Pediatric* [hereinafter *National Protocol: Pediatric*]. USDOJ, Washington, D.C. Available at <https://www.justice.gov/ovw/file/846856/download>; (c) OVAW (August 2018). *National training standards for sexual assault medical forensic examiners, Second Edition*. USDOJ, Washington, D.C. Available at <https://www.justice.gov/ovw/page/file/1090006/download>; (d) International Association of Forensic Nurses (2018). *Sexual assault nurse examiner (SANE): Education guidelines*. Available at [content/uploads/2022/03/SANE https://www.forensicnurses.org/wp-content/uploads/2022/03/SANE_EdGuidelines_2022_Updated_Resources_-2.pdf](https://www.forensicnurses.org/wp-content/uploads/2022/03/SANE_EdGuidelines_2022_Updated_Resources_-2.pdf); (e) Office for Victims of Crime (OVC). (n.d.). *SANE program development and operation guide: Photo documentation*. Available at <https://www.ovcttac.gov/saneguide/identifying-essential-components-of-a-sane-program-photo-documentation/>; (f) Faugno, D. & Sievers, V. (December 7, 2020). *Anogenital photo documentation guidelines 2021. DV & VS Education Services*. Available at https://evawintl.org/wp-content/uploads/Anogenital_Guideline_Version_201207_00.pdf.

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6. Trauma-Informed Care Implementation Resource Center (2021). *What is trauma-informed care?* Available at <https://www.traumainformedcare.chcs.org/what-is-trauma-informed-care/>.

7. Virtual Knowledge Centre to End Violence Against Women and Girls (2013). *Survivor-centred approach*. Available at <https://www.endvawnow.org/en/articles/1499-survivor-centred-approach.html>.

8. *National Protocol: Adults/Adolescents*, supra note 4.

9. *Id.* supra note 4.

10. See 18 U.S. Code § 3772(a)(2)(1) Sexual assault survivors' rights. Available at <https://www.law.cornell.edu/uscode/text/18/3772>.

11. *National Protocol: Adults/Adolescents*, supra note 4.

12. Martin et. al, FTCOE Guidance Document, supra note 2.

13. *National Protocol: Adults/Adolescents*, supra note 4.

14. See supra, note 10.

15. The SAFE Alliance (2019). Sexual assault victim advocacy. Available at <https://www.safeaustin.org/our-services/face-to-face-support/sexual-assault-survivor-advocacy/>.

16. RAINN. (n.d.). *What is a sexual assault forensic exam?* Available at <https://www.rainn.org/articles/rape-kit>.

17. See supra, n. 10.

18. International Association of Chiefs of Police [hereinafter IACP] (n.d.). Sexual assault incident reports: Investigative strategies. Available at <https://www.theiacp.org/sites/default/files/all/s/Sexual-AssaultGuidelines.pdf>.

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[Successful%20Trauma%20Informed%20Victim%20Interviewing.pdf](#).

20. IACP. (n.d.). Sexual assault incident reports: Investigative strategies. Available at <https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>.

21. Office for Victims of Crime (June 6, 2023). Building a strong prosecution team. Office of Justice Programs, Bureau of Justice Assistance. Available at <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/54-landing-a-successful-prosecution/building-a-strong-prosecution-team/#:~:text=Likewise%2C%20in%20sexual%20assault%20matters%2C%20the%20best%20practices,rape%20shield%20statutes%2C%20specialized%20interviews%2C%20and%20other%20tools%29>.

22. Martin et. al, FTCOE Guidance Document, supra note 2.

23. FTCOE supra, n. 1. ■



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