Management of Sexual Assault

Keith Crook
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Texas Penal Code Title 5, Chapter 22, Section 22.011 – Adult

• Sexual Assault: A person commits an offense if the person:
  • (1) intentionally or knowingly:
    • (A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
    • (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
    • (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or
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    • (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or
Texas Penal Code Title 5, Chapter 22, Section 22.011 – Adult

Intentional penetration of Anus, sexual organ or mouth without consent, or causing another to contact or penetrate mouth, anus or sex organ of another
Texas Penal Code Title 5, Chapter 22, Section 22.011 – Child

2) intentionally or knowingly:
   • (A) causes the penetration of the anus or sexual organ of a child (under the age of 17) by any means;
   • (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
   • (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
   • (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
Texas Penal Code Title 5, Chapter 22, Section 22.011 – Child

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   (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
   (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
   (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
Texas Penal Code Title 5, Chapter 22, Section 22.011 – Child

Penetration of mouth, anus or Sex organ of a child (under 17) Or causing the child to contact The mouth, anus or sex organ of another

CONSENT IS NOT AT ISSUE
Without Consent

• (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

• (1) the actor compels the other person to submit or participate by the use of physical force or violence;

• (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

• (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

• (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

• (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault
(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

1. the actor *compels* the other person to submit or participate *by the use of physical force or violence*;
2. the actor compels the other person to submit or participate *by threatening to use force or violence against the other person*, and the other person believes that the actor *has the present ability to execute the threat*;
3. the other person has not consented and the actor knows the other person is *unconscious or physically unable to resist*;
4. the actor knows that as a result of *mental disease or defect* the other person is at the time of the sexual assault *incapable either of appraising the nature of the act or of resisting it*;
5. the other person has not consented and the actor knows *the other person is unaware that the sexual assault*
Without Consent

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**Use of or threat of force or violence**

- Actor knows other person unconscious or unable to resist
- Actor knows the other person mentally disabled and unable to consent
- Actor knows other person unaware of assault
Without Consent (cont.)

- (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
- (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
- (8) the actor is a public servant who coerces the other person to submit or participate;
- (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
- (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional
Without Consent (cont.)

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• (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

• (8) the actor is a public servant who coerces the other person to submit or participate;

• (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

• (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional
Without Consent (cont.)

**Drugged the victim without their knowledge (can include alcohol)**

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Without Consent (cont.)

Drugged the victim without their knowledge (can include alcohol)

Threatened another, i.e. a child

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Abuse of authority by government official, i.e. police, mayor, etc.

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Health care worker or clergy abusing position of trust

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Without Consent (cont.)

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- Threatened another, i.e. a child
- Abuse of authority by government official, i.e. police, mayor, etc.
- Health care worker or clergy abusing position of trust

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Without Consent (cont.)

Drugged the victim without their knowledge (can include alcohol)

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Abuse of authority by government official, i.e. police, mayor, etc.

Health care worker or clergy abusing position of trust

Worker at an inpatient facility or halfway house
Consent

- Shall not be deemed or construed to mean the failure by the victim to offer physical resistance
  - It is the victim’s belief that the actor will use violence, not the actuality of violence that is necessary

- Consent is not given when a person uses force, threat of force, coercion or when the victim is asleep, incapacitated, or unconscious, or unable to realize the nature of the act
Impact on nursing care

• First off, nurses must be aware of the medical hearsay exception:
  • Layman’s terms: Statements made to a health care provider for the purpose of seeking medical treatment are considered to be truthful, and may be introduced as evidence in a court of law.

• Secondly, nurses must be committed to thorough documentation
  • Verbatim reporting of the patient’s statement are essential to future legal action, as they WILL be introduced in court
  • Complete assessment of all body systems, particularly skin are vital to documenting the presence of injuries from the event
  • Photographic documentation is highly desirable

• Thirdly, nurses must be prepared to testify to their activity in a court of law
  • Standard operating procedures must be followed, or a reasonable explanation of why they were not must be provided

• This doesn’t apply only to Sexual Assault Nurse Examiners. ANY nurse who comes into contact with a participant in a sexual assault may find themselves testifying
  • Both victims and suspects may be examined– it is ALL admissible
Sex Assault Examinations

• A sexual assault forensic examination is a medico-legal examination for the purpose of identifying and treating any abnormalities (trauma, foreign material), providing for pregnancy and disease prophylaxis as well as identifying, collecting and preserving evidence for law enforcement.

• While the majority of sexual assaults are male on female, sexual assault can be male on male, female on female, or female on male, and may involve more than two persons.

• Law enforcement may require the suspect be examined also, but will generally stay in the room during the examination to ensure the safety of the examiner.
  • Law enforcement is responsible for providing search authority if suspect refuses to consent to the exam.
Nursing Interventions: Avoiding Cross-Contamination

• When possible, suspect(s) and victim should be examined by different persons, in different locations
  • Locard’s Principle: Two items coming in contact will exchange material (evidence)
• If that is not possible, the examiner should consider the use of personal protective equipment, such as a paper isolation gown, when examining the participants
  • As a final step, remove the gown and fold it so the outer surface is contained inside, bag it separately, then include it with the sexual assault forensic examination kit
  • Providing the gown aids in discounting the examiner as a source of cross-contamination
• Document measures taken to avoid cross contamination
  • Hand washing, donning gloves, PPE, cleaning of exam room between exams, linen changes, etc.
Nursing Interventions:
Victim Sensitivity
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- Do not evaluate the validity of the complaint
- Give control to the victim
- Explain the purpose of the examination
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- Do not evaluate the validity of the complaint
- Give control to the victim
- Explain the purpose of the examination
- Arrange for a change of clothing
PTSD and Sexual Assault

- Posttraumatic Stress Disorder (PTSD) involves a pattern of symptoms that some individuals develop after experiencing a traumatic event such as sexual assault. Symptoms of PTSD include repeated thoughts of the assault; memories and nightmares; avoidance of thoughts, feelings, and situations related to the assault; and increased arousal (e.g., difficulty sleeping and concentrating, jumpiness, irritability). One study that examined PTSD symptoms among women who were raped found that 94% of women experienced these symptoms during the two weeks immediately following the rape. Nine months later, about 30% of the women were still reporting this pattern of symptoms. The National Women's Study reported that almost 1/3 of all rape victims develop PTSD sometime
VICTIM Sensitivity

Discussion

• A trauma, such as rape can create overwhelming emotional responses:
  • Anger
  • Guilt
  • Betrayal
  • Fear
  • Panic
  • Helplessness
  • Terror
  • Horror
  • Shame
  • Alienation
  • Grief
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• Attempts to deal with this emotional flooding can result in varied responses:
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- Attempts to deal with this emotional flooding can result in varied responses:
  - Dissociation
  - Self-blame
  - Self-medication
  - Self-injury
  - Emotional constriction
  - Avoidance of triggers
  - Apparent behavior problems
  - Apparent work related problems
  - Asexual or Hypersexual behaviors
Common behaviors

- Diminished sense of self
- Loss of trust in others
- Confusion about the event
- Changes in religious beliefs or world view
- Inappropriate acting out
Some Biological Effects

• Massive neurohormonal release initiating a flight or fight response when triggered
• Hormones interfere with the creation of a normal narrative memory
  • Memories form sporadically
  • Context, meaning and flow are fragmentary
  • Increased vulnerability to flashbacks
• Increases sensitivity to threat stimuli
  • Increased vigilance
  • Increased fear
Possible Legal Impacts
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- Non-narrative recall with unexplained gaps in memory may decrease credibility
Possible Legal Impacts

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• Recall of events when triggered – not necessarily during the medical examination or the interview process
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- Patient may appear untrustworthy or scatterbrained
Possible Legal Impacts

- Non-narrative recall with unexplained gaps in memory may decrease credibility
- Recall of events when triggered— not necessarily during the medical examination or the interview process
- Patient may appear untrustworthy or scatterbrained
- Medical personnel and investigators may become easily frustrated
What to do?
What to do?

- Be patient and recognize the process the patient is undergoing
  - Focus on the patient, not the clock
- Absorb the information, identify the gaps in recall and gently attempt to explore them when appropriate
  - To best document the trauma, use a who, what, where, why, when, how approach
  - Do not be afraid to ask the patient if they remember anything else
  - Be aware the patient may be embarrassed or ashamed, and may deny such things as anal intercourse, fellatio, etc. Do not be afraid to re-question the patient if physical examination indicates injury in an area they had previously denied was affected
- Listen
- Ask open ended versus closed ended questions
  - Tell me about...
  - Describe what happened...
What is a SANE?

- Sexual Assault Nurse Examiner is an RN who has been specifically trained to:
  - Provide comprehensive care to sexual assault patients;
  - Demonstrate competency in conducting a medical forensic exam to include evaluation for evidence collection;
  - Have the expertise to provide effective courtroom testimony; and
  - Show compassion and sensitivity to survivors of sexual assault.

- For more information about Texas SANE’s and the Texas Office of the Attorney General