

Addressing Issues of Consent When Advocating for Victims with Intellectual/Developmental Disabilities During a Sexual Assault Forensic Examination Part 2

For a survivor with an intellectual/developmental disability the sexual assault forensic examination may be even more uncomfortable, embarrassing and traumatizing. In the Technical Assistance Bulletin “Advocating for Victims with Intellectual/Developmental Disabilities during a Sexual Assault Forensic Examination,” a number of techniques were outlined for creating a rapport with a survivor who has an intellectual or developmental disability. This bulletin will build on those techniques, outlining areas for focus around consent and guardianship.

An intellectual disability as defined by the American Association on Intellectual and Developmental Disabilities is a disability characterized by significant limitations in both intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. An intellectual disability originates before the age of 18.

1. The Federal definition of a developmental disability refers to a severe, chronic disability of an individual five years or older that:
2. Is attributable to a mental or physical impairment or combination;
3. Is manifested before the age of 22;
4. Is likely to continue indefinitely, and
5. Results in substantial functional limitations in three or more major life activities.

Issues around Consent

Consent Forms

At the beginning of a forensic examination the examiner or other hospital personnel typically will ask the survivor to sign a Consent for Collection and Release of Evidence and Information form. It is usually read to the survivor. The survivor is then asked if she/he has any questions and then the survivor is asked to sign the consent form.



- For a survivor with an intellectual/developmental disability there are two major concerns with the consent form. First, the survivor with an intellectual/developmental disability may not understand the importance of the forensic examination from either a personal health or law enforcement perspective. They may also not understand why they are being asked to sign it; they may be their own legal guardian, but have limited capacity to consent to the forensic exam.

It is recommended that the *Consent for Collection and Release of Evidence and Information form* be read at a typical conversation speed, and then repeat and clarify each section. Such as:

Original section:

I, _____, freely consent to allow _____ and his/her medical and nursing associates to conduct a forensic examination, which includes the collection of evidence. This procedure has been fully explained to me and I understand that I may refuse any part of the examination. Clinical observation for physical evidence of both penetration and injury to my person will be done. Collection of other specimens and blood samples for laboratory analysis may be done per the events reported.

Clarified:

What this means is, is it OK for _____ (name of person/s conducting the exam) to examine your body? _____ (The name of the person doing the examination) will look all over your body for any cuts or bruises, and if they find any cuts or bruises may take some pictures of them. These pictures will help the police. _____ (name of person doing the examination) will also need to look between your legs and look into your vagina for any cuts or bruises. Usually cuts and bruises are on the outside of the body, but sometimes they can also be on the inside of our body. You can say stop at any time during the examination, and _____ (name of person doing the exam) will stop.

Do you have any questions?

(Name of person doing the exam) will also swab the inside of your month. Swab is a silly word that means (person doing the exam) will take a very long Q-tip, [if possible show them the Q-tip and/or ask them if they know what a Q-tip is] and rub it on the inside of your month. It doesn't hurt. The Q-tip will be sent to the police lab as possible evidence.

Do you have any questions?

Each section on the consent form should be explained in this manner.

Legal Issues around Consent

It is important to note that there is a difference between *guardianship, medical power of attorney and capacity to consent*.

Guardianship is a legal term and is granted by a court. An attorney is required to establish a **medical power of attorney** over another person. It is not uncommon for parents to believe they are their adult child's guardian, when legally they are not. Residential program staff often are not certain if the person they are supporting is their

own legal guardian. When guardianship is in question, ask if the family member/staff can remember the date the court granted them guardianship. Generally, the response will be something like, “What do you mean, I’m Jane Doe’s mother/sister/brother/etc., and I’m her legal guardian.” If this is the case, the person is most likely not the person’s legal guardian. Therefore, the survivor with an intellectual disability should be given the same respect as a survivor without a disability.

Capacity is a bit different. Any survivor who is their own guardian, and most of us are our own guardians, may not have the capacity to consent due to their physical and/or mental status, as a result of injuries or trauma.

Environmental Suggestions

Make the survivor as physically comfortable as possible. Explain that the sights and sounds of an emergency department make many people feel uncomfortable and sometimes even a bit scared. But these sounds are really sounds of safety. Listen for some particular loud sounds and explain to the survivor what that sound is, and why it is a “safety” sound. Try to limit the number of people interacting with the survivor. Have only one person at a time ask questions.

- Ask for a private room, and if possible, that the room be located as far away as possible from the center of the emergency department.
- ‘Busy’ uniform tops, such as patterns with a lot of concentric circles, overlapping designs, etc., and items attached to stethoscopes, such as a small stuffed animal, bright colored chain, etc. may make it more difficult for the survivor to stay focused. It is easier for a person with an intellectual disability to stay focused if there are minimal distractions.
- Advocates may consider wearing solid color outfits and avoid patterns and a lot of jewelry when providing medical accompaniment at the hospital.

Final Thoughts

Advocating for survivors with or without intellectual/developmental disabilities during a sexual assault forensic examination is critical in providing the necessary medical services for the survivor, and for the collection of evidence to increase the likelihood that a perpetrator will be arrested.

Understanding how people with intellectual/developmental disabilities process information, conceptualize language and the influence their chronological age over their developmental age has had on their interpersonal skills and their ability to follow/obey rules is essential in providing the best circumstances for a successful sexual assault forensic examination.

People with intellectual/developmental disabilities are at a significantly higher rate of being victimized than people without disabilities, and research data tells us that they will be victims of sexual violence 10 or more times in their life.

(Sobsey, D. (1994).

Violence and Abuse in the Lives of People with Disabilities. Baltimore, Paul H. Brookes).

The information contained in this bulletin will not only benefit survivors with intellectual/developmental disabilities, but ALL survivors of sexual violence.

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Additional Resources

Pennsylvania Coalition Against Rape 800-692-7445

Institute on Disabilities, Temple University 215-204-1356 (voice/TTY)

The Arc of Pennsylvania 800-692-7258

Disability Rights Network 800-692-7443

PA Department of Health website for sexual assault forensic exam paperwork, including the consent form www.health.state.pa.us/saforms