

GLOBAL REVIEW OF THE ROLE OF MEDICO-LEGAL EVIDENCE IN SEXUAL ASSAULT CASES

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"Women's Worlds"
Madrid, Spain, July 8, 2008

SEXUAL VIOLENCE RESEARCH INITIATIVE

**The uses and impacts of
medico-legal evidence in
sexual assault cases:
A global review**

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Available from: <http://www.svri.org/>

Background

- High rates of attrition and the absence or poor quality of assembled medico-legal evidence have characterized the criminal justice processing of sexual assault cases
- In many parts of the industrialized world, and increasingly throughout developing regions, services have been established to improve medico-legal responses to sexual assault
- Generally believed that medico-legal evidence is crucial to the successful prosecution of sexual assault cases
 - but has been no systematic collation or scrutiny of globally available evidence to support this contention

Purpose of the Review

- To provide an international overview of the uses and impacts of medico-legal evidence in cases of sexual assault of adolescents and adults

Scope of the Review [1]

- Peer reviewed scholarly works and non-peer-reviewed and grey literature
 - journal articles, news articles, research reports, annual reports, discussion papers, and monographs
- Perspectives from criminology, law, medicine, nursing, psychology, public health, and sociology
- Materials written primarily in English (but also translated from Norwegian, Chinese, Portuguese, French, German, Swedish)
- Information from industrialized and developing nations, with particular focus on low and middle income countries

Scope of the Review [2]



Scope of the Review [3]

Special attention paid to:

- Studies that have evaluated the impact of medico-legal evidence on the legal resolution of sexual assault cases by tracking them through criminal justice systems

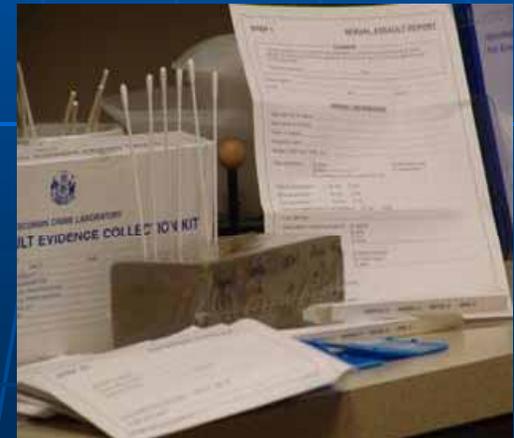
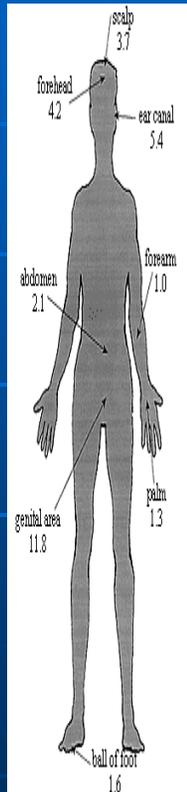
Scope of the Review [4]

- Describes professionals, protocols, and procedures involved in collecting and processing medico-legal evidence
- Presents findings from studies having evaluated the impact of medico-legal evidence on legal outcomes
- Highlights factors that create barriers to its use in criminal justice proceedings
- Concludes with salient knowledge gaps and research recommendations

Definition of Medico-legal Evidence

Medico-legal evidence refers to:

- documented
 - extra- and ano-genital injuries
 - emotional state
- collected samples and specimens from body or clothing, including:
 - saliva, seminal fluid
 - head hair, pubic hair
 - blood, urine
 - fibres, debris, and soil



solely for legal purposes

Purpose of Medico-legal Evidence

Used to aid the investigation and prosecution of an accused in order to:

- Determine the occurrence of recent sexual activity
- Identify the assailant
- Establish the use of force or resistance
- Indicate an inability to consent due to the influence of alcohol and drugs or an otherwise diminished mental capacity



Circumstances of Medico-legal Evidence Collection

- Services are *unevenly developed* and implemented across and within regions
- Settings, staff, and protocols *operate on different models*

Collection of Medico-legal Evidence [1]

Process:

Sexual assault victim/survivor

- Is not obliged to submit to a medical forensic examination (e.g., Canada)
- May go to a facility for a medical forensic examination of her own volition (e.g., parts of France) or upon referral by the police or another government body (e.g., Iraq)

Collection of Medico-legal Evidence [2]

Process *(continued)*:

Sexual assault victim/survivor must

- Undergo a mandatory medical forensic examination (e.g., the Russian Federation)
- First present to a police station to have the assault documented, complete a report, and/or obtain a medical form or sexual assault kit that is then to be taken to the facility where evidence is collected (e.g., Lesotho)
- Have authorization for an examination from law enforcement, prosecution representative or judge (e.g., certain parts of the Philippines)

Collection of Medico-legal Evidence [3]

Settings:

- Hospitals
- Forensic institutes
- Police stations

Staff:

- Doctors
- Police Surgeons
- Forensic Examiners
- Nurses
- Forensic Nurse Examiners



Collection of Medico-legal Evidence [4]

Protocols:

- None in place to guide the collection of medico-legal evidence in cases of sexual assault (e.g., Belize)
- Developed but not widely implemented (e.g., India, South Africa)
- Thoroughly institutionalized (e.g., parts of Canada)

Collection of Medico-legal Evidence [5]

Protocols *(continued)*:

- Commonly include history-taking, physical examination, laboratory investigations, medical care, and collection of evidence
- Some involve the use of sexual assault kits, which contain the materials needed to document and gather medico-legal evidence



Collection of Medico-legal Evidence [6]



Medical Forensic Examination:

- Examination is usually carried out within 72 hours of a sexual assault
- Comprises a number of key components including:
 - acquiring consent
 - taking the medical and sexual assault histories
 - documenting medico-legal findings
 - carrying out treatment guidelines



Findings: Medico-legal Services (7)

Processing of Medico-legal Evidence

- Following collection, specimens air-dried, sealed in separate containers to avoid cross contamination and labelled, signed and dated by person who gathered them
- Evidence may be stored or frozen while victim/survivor decides whether to prosecute

Processing of Medico-legal Evidence [2]

- Evidence handed over to a ***law enforcement*** official who may either take it directly to a forensic laboratory or store it at the police station until it is to be analysed
- Once submitted to a ***forensic laboratory***, the evidence is analysed and a report produced
- Laboratory findings and documented injuries, together with those who are sanctioned to testify to them, may be introduced in ***court***

Legal Outcome Studies Reviewed [1]

Those undertaken specifically to evaluate the association with legal outcome of distinct types of medico-legal evidence (e.g., anogenital injuries, sperm/semen)

- 13 retrospective reviews
- Conducted in Canada, Denmark, Finland, Norway, and the United States
 - drew on cases of sexual assault reported to hospitals and their related police and/or prosecution files



Legal Outcome Studies Reviewed [2]

Those intended to evaluate the relationship with legal outcome of other factors, but which included either "injury to the victim" or "physical or forensic evidence" as variables in their designs

- 31 studies
- Conducted in Australia, Canada, United Kingdom, and the United States
 - predominantly published in social science journals

Legal Outcome Studies Reviewed [3]

Those that have constructed medico-legal evidence as a single "yes, no" variable and examined its impact on legal outcome

- 5 descriptive studies
- Conducted in Brazil, Canada, and South Africa



TABLE 4.2**Summary of rates of medico-legal findings**

MEDICO-LEGAL FINDING	RATE IN PERCENT
<i>General physical injuries</i>	29–90
Minor	24–72
Moderate	57–59
Severe	2–24
<i>Ano-genital injuries</i>	9–67
<i>Biological samples</i>	
Sperm/semen	1–59
Seminal/saliva stains	13–21
Acid phosphatase	58–60
Male secretions	70
<i>Biological/non-biological samples</i>	82
<i>Emotional presentation</i>	
Expressed	35–44
Controlled	40–48

▼ BOX 4.1

Summary of relationship to legal outcome of medico-legal evidence by type

TYPE OF MEDICO-LEGAL EVIDENCE	RELATIONSHIP TO LEGAL OUTCOME
General physical injuries	44% of studies found a significant positive association with legal outcome (the apprehension and interrogation of a suspect; the decision to forward a case for prosecution, lay/file charges, fully prosecute; successful prosecution/conviction; imprisonment)
Ano-genital injuries	29% of studies found a significant positive association with legal outcome (the decision to found a case, lay/file charges; conviction)
Biological/non-biological samples	31% of studies found a significant positive association with legal outcome (the decision to refer a case for prosecution, return an indictment, lay/file charges, fully prosecute; conviction)
Biological samples	8% of studies found a significant positive association with legal outcome (the decision to lay/file charges)
Sperm/semen Sperm/semen/saliva	No study found a significant positive association with legal outcome
Emotional presentation	No study found a significant positive association with legal outcome

Summary of Descriptive Studies

- Medico-legal evidence appeared to be of minimal importance to the courts
- Positive medico-legal findings were not always necessary to secure a conviction

Limitations of the Studies

- Retrospective reviews
- Single jurisdictions
- Large urban centres
- Small sample sizes
- Attrition of cases
- Incomplete records and missing data
- Bivariate statistics
- Data is aged (some >than 30 years old)

Relationship to Legal Outcome of Non-medico-legal Factors

In many studies, attrition in the processing of sexual assault cases was associated with the victim/survivor's:

- Age (older)
- Socioeconomic status (poorer)
- Reputation (e.g., psychiatric history)
- Behaviour
 - prior to an assault (e.g., drinking)
 - during an assault (e.g., lack of resistance)
 - following an assault (e.g., promptness of report)

Sociocultural Context

- Male dominance, gender inequality, and anti-woman and rape-supportive attitudes can influence the allocation of resources for sexual assault services and, ultimately, the existence, quality and effectiveness of medico-legal evidence
- These forces may determine the availability of trained staff, adequate facilities for the collection of evidence and the effective interagency coordination necessary for its processing
- They may negatively influence the ways in which medico-legal protocols and technologies are constructed, as well as the practices of the professionals responsible for their use

Sociocultural Context [2]

- There are no formal rules related to corroboration of a sexual assault victim/survivor's testimony, but there is continued demand in legal practice for corroboration based in part on widespread distrust of women
- Staff are not adequately prepared to collect and testify to medico-legal evidence and specimens are mishandled leading to results usually being unreliable
- Post sexual assault professionals (e.g., police, prosecutors, judges) attack woman's character and use her prior sexual history to discredit her (even where clearly irrelevant or prohibited)

Key Gaps in the Literature

■ Impacts of medico-legal evidence:

- no international comparative research
- studies are limited to a few, mostly industrialized, nations
- much of the research available is methodologically flawed

■ Uses of medico-legal evidence:

- lack of available information from many areas
- little is known about the effects of professional practices

Recommendations [1]

There is a need for ongoing research focussed on medico-legal evidence in relation to sexual assault.

Questions to be addressed:

- What is the minimum amount of medico-legal evidence necessary to aid in the adjudication of a case?
- In which circumstances are particular types of medico-legal evidence most valuable?
- Are there differences between subgroups of individuals with respect to the relationship to legal outcome of medico-legal evidence?

Recommendations [2]

Questions to be addressed *(continued)*:

- What are the direct influences of sociocultural factors on the operations of services, the development of protocols, and the practices of sexual assault professionals?
- Does improved training of sexual assault personnel enhance the value of medico-legal evidence?
- Do medico-legal policies and protocols improve the efficacy of medico-legal evidence?
- What is the value and meaning of the medical forensic examination for sexual assault victim/survivors?

Recommendations [3]

Questions to be addressed *(continued)*:

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- Does improved training of sexual assault personnel enhance the value of medico-legal evidence?
- Do medico-legal policies and protocols improve the efficacy of medico-legal evidence?
- What is the value and meaning of the medical forensic examination for sexual assault victim/survivors?

Recommendations [4]

There is a need to further examine viable alternative measures for enhancing justice for victim/survivors of sexual assault. Questions to be addressed should include:

- How might such measures be prioritized in terms of resource allocation vis à vis existing criminal justice and medico-legal practices?