Successfully Investigating Acquaintance Sexual Assault:
A National Training Manual for Law Enforcement

The National Center for Women and Policing
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Drug-Facilitated Sexual Assault

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• "Date Rape Drugs; Suggested Techniques for Investigating and Prosecuting Drug-Facilitated Rapes." Produced by Bob Nichols, Assistant State Attorney, Broward County State Attorney's Office and Sergeant Dave Robshaw, Broward County Sheriffs Office, 1999.

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Drug-facilitated sexual assault is not a new phenomenon. Experienced law enforcement officers and advocates know that alcohol is the most common drug used to facilitate sexual assault. Alcohol has been used as a method to facilitate sexual assault for years and remains the most widely used drug today. As was discussed in the "Victim Dynamics" section:

- Most rapes involve alcohol

In one study of college students, 75% of men and 50% of women involved in a sexual assault had been drinking at the time. In another study, more than half of the male college students who admitted to sexually aggressive behavior (59%) said that they did so by giving drugs or alcohol in order to obtain sex from an unconsenting woman.

As we have already discussed, most sexual assaults involve known offenders who will typically raise a consent defense if the case goes to trial. Clearly, the use of drugs or alcohol by the victim thus poses a number of challenges to her credibility that will be used to support a consent defense. Even in cases of stranger rape, however, the challenges to victim credibility will be used to undermine her identification of the suspect. In both types of sexual assault crimes, we know that the cases are decided according to the victim's credibility, background, and whether she participated in "risky" behavior. The consumption of alcohol has always been seen as "risky" and thus a characteristic of the "bad girl." After all, we all know that "good girls" do not drink, do drugs, or flirt with men publicly.

What's New

The significance of alcohol as the most common drug used to facilitate sexual assault is often overlooked due to the appearance of new highly publicized drugs on the scene such as GHB, and flunitrazepam (Rohypnol). These drugs have been thrust into the attention of both the criminal justice system and the general public because of cases where women have been surreptitiously drugged and then sexually assaulted.

In other words "what's new" is the variety of drugs available for an offender to "spike the punch." We are all aware of the classic case of fraternity members who add liquor to a fruity drink in an effort to obtain sex from an unconsenting woman. Today, the same purpose is often met by surreptitiously administering GHB, Flunitrazepam or other drugs in an effort to sexually assault the victim when she becomes incapacitated.
The effects of these drugs are similar to those caused by consuming a large amount of alcohol. Depending on the type of drug and the amount ingested, the victim may experience signs of confusion, memory loss, drowsiness, impaired motor skills, impaired judgement, reduced inhibition, slurred speech, or a variety of other symptoms that complicate both the investigation and legal strategies involved in prosecution.

It is important that investigators understand the characteristics, street names, and effects of the many new drugs involved in sexual assault cases. However, what has been lacking in this discussion has been the focus on victims who voluntarily ingest a drug as opposed to victims who are surreptitiously drugged. This feeds into the societal stereotype of "real rape," by portraying the truly victimized woman who is surreptitiously given a drug as the "good girl," while the woman who is raped after voluntarily taking a drug is seen as the "bad girl" who is therefore not deserving of serious consideration.

Let us face the facts. We live in a drug culture where both juveniles and adults participate in voluntary drug use. The Rave culture has exploded in most major metropolitan cities and recreational drug use is prevalent.

Voluntary drug use should not be seen as a basis for questioning the validity of the victim's allegation. In fact, although drug use by the victim is typically seen as a strike against her credibility, it can actually be viewed as another piece of evidence to corroborate her story.

Clearly, a large percentage of sexual assaults involve alcohol or other drugs because they heighten the victim's vulnerability.

If the victim says that she voluntarily used alcohol or drugs and indicates that her assailant took advantage of her vulnerability, the successful investigator will therefore frame her use of alcohol, or other drugs, as corroborative evidence. This evidence should therefore serve as a way to support rather than challenge the victim's credibility.

It is essential to understand that these new drugs complicate investigation of a sexual assault case for many of the same reasons that any "risky" behavior by the victim does, especially when the defense is consent. Again, victim credibility is being questioned, and her behavior is first and foremost under the scrutiny of the criminal justice system. If law enforcement has a clear understanding of the societal misconceptions of sexual assault victims and drug use, than they can overcome many of the associated challenges. However, this can only be done by continually focusing the investigation on locating every avenue that supports the victim's credibility and corroborating her account of the assault.

Module Outline

This module is dedicated to the discussion of drug-facilitated sexual assault. The following is an outline of the topics that will be addressed.

- The purpose of this module will be to focus first on a discussion of alcohol as the most common drug used to facilitate sexual assault, and how the issue of victim credibility remains the key challenge in all sexual assault crimes that involve drug use.
- Next we will discuss how to investigate sexual assault cases that involve alcohol or other drugs. This discussion will focus on the various challenges to victim credibility that are
typically seen in these cases, and the specific investigative problems associated with certain date rape drugs.

• The module will conclude with information specifically designed to assist law enforcement officers in each phase of the investigation, including interviews conducted with the victim, evidence collection, investigative techniques with suspects and witnesses, and the importance of expert testimony.

• The issues discussed are unique to drug-facilitated sexual assault and thus supplemental to the information provided in the other sections (i.e. Victim Interview).

For a comprehensive presentation of the drugs used to facilitate sexual assault, especially those typically referred to as "date rape drugs" such as Flunitrazepam, GHB, and Ketamine, we suggest that you order a copy of "Drug Identification; Designer and Club Drugs Quick Reference Guide," by Detective Scott W. Perkins. This guide provides a more comprehensive look at both the toxicology of each of these drugs, drug schedules (in accordance with the Controlled Substance Act), drug identification and the rave subculture.

To order a copy of this manual contact:

Alliance Press
1527 Brighton Drive
Carrollton, TX 75007
1-800-970-1883

Alcohol and Drug-facilitated Sexual Assault

The use of alcohol can be traced back in human history for thousands of years as it has been used widely for religious, social and medicinal purposes. Today, alcohol continues to be the most popular and prevalent drug used for recreational purposes. Despite this fact, alcohol is not what most people think of when discussing the definition of drug-facilitated sexual assault. Because alcohol is so often a factor in sexual assault, however, its omission from this discussion leaves a large gap in how law enforcement understands these crimes.

This is not to discount the fact that Flunitrazepam and GHB (gamma hydroxy butyrate) have recently become dangerously popular and are being used to facilitate sexual assault. These more sophisticated drugs are widely available and will not only sedate a woman in order to facilitate a sexual assault, but also have an amnesic-like effect so that the victim has little or no memory of the rape when it is over. However, it is important for law enforcement to understand that these drugs are not the only, nor the most commonly used drugs to facilitate rape. Alcohol is still the primary drug of choice. The techniques being used to investigate these "date rape drugs" can also be applied to alcohol and any drug used to facilitate sexual assault.

What is alcohol?

There are different types of alcohol; some are used to produce household cleaning products. However, the only type of alcohol made to consume by people is ethanol; "Ethanol is a relatively small molecule that is easily and quickly absorbed into the body. Once a drink is swallowed, it enters the stomach and small intestine where a high concentration of small blood vessels gives the alcohol ready access to blood." Alcohol is a sedative and should never be dismissed by law enforcement as an insignificant drug. The dangers associated with alcohol are as serious as
many illegal drugs and it remains the most commonly used drug to facilitate sexual assault. In addition, young people in our society are heavily exposed to the idea that it is "cool" to drink.

"Nowhere is the alcohol advertising more targeted, or the peer pressure to drink more powerful, than on adolescents and young adults-particularly young men. Advertisements for alcoholic beverages take up eighteen times more space in college newspapers than do those related to books, and forty-eight times more space than those related to soft drinks."

The physical effects of alcohol depend on the amount consumed and the size of the person drinking. The following chart provides an outline of the effects of ethanol (alcohol) consumption on a person’s behavior and physical state depending on the amount ingested per hour.

<table>
<thead>
<tr>
<th>Ethanol Dose State (oz/hour)</th>
<th>Blood Ethanol (mg/100ml)</th>
<th>Function Impaired</th>
<th>Physical State</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>up to 100</td>
<td>judgement, fine motor coordination, reaction time</td>
<td>happy, talkative, boastful</td>
</tr>
<tr>
<td>4-12</td>
<td>100-300</td>
<td>motor coordination, reflexes, slurred speech</td>
<td>staggering, nausea, vomiting</td>
</tr>
<tr>
<td>12-16</td>
<td>300-400</td>
<td>voluntary responses to stimulation</td>
<td>hypothermia, hypothermia, anesthesia</td>
</tr>
<tr>
<td>16-24</td>
<td>400-600</td>
<td>sensation, movement, self-protective reflexes</td>
<td>comatose</td>
</tr>
<tr>
<td>24-30</td>
<td>600-900</td>
<td>breathing, heart function</td>
<td>dead</td>
</tr>
</tbody>
</table>

As you can see, although the risk of death is relatively low with alcohol when consumed in smaller amounts, when consumed in large amounts alcohol can be extremely dangerous. As discussed, if a significant amount of alcohol is ingested, the intoxicating effects are similar to many other more sophisticated drugs such as Flunitrazepam.

While alcohol is still the primary drug of choice, the use of Flunitrazepam, GHB and other drugs that can be slipped into the victim's drink without the woman's knowledge, has become a significant problem. The most evident danger results from the victim's ingestion of multiple drugs. The outcome has resulted in some cases in death or coma.

The importance in this discussion of alcohol is for law enforcement to understand the danger in limiting our definition of drug-facilitated sexual assault to specific types of drugs. It is essential that law enforcement understand that any drug used to sexually assault a woman is drug-facilitated sexual assault. By limiting our perception of drug facilitated sexual assault to only certain types of drugs, we cloud our vision to many of the techniques used by offenders and fail to overcome the unique challenges associated with drug-facilitated sexual assault. As
with any aspect of sexual assault investigation, law enforcement must make a continuous effort to keep an open mind.

To provide a more powerful image of how alcohol is used to facilitate sexual assault, the following excerpt is provided from an actual interview with an unincarcerated sexual offender. The interview was conducted by, Dr. David Lisak as part of his ongoing research on undetected sex offenders with a rapist referred to as "Frank."

**Frank:** We had parties almost every weekend. My fraternity was known for that. We would invite a bunch of girls and lay out the kegs or whatever we were drinking that night and everyone would get plastered.

We would all invite girls, all of us in the fraternity. We'd be on the lookout for good looking girls, especially freshmen, the real young ones. They were the easiest, it's like we knew they wouldn't know the ropes kind of, it's like they were easy prey. They wouldn't know anything about drinking, about how much alcohol they could manage, and they wouldn't know anything about our techniques.

**Interviewer:** What were those techniques?

**Frank:** We'd invite them to the party and we'd make it seem like it was a real honor, like we didn't invite just any girl, which I guess is true [laughs]. And we'd get them drinking right away. We'd have a bunch of kegs but we almost always had some kind of punch also, it was almost like our own home brew. We'd make it real sweet, you know, we'd use some kind of sweet juice and then we'd just throw in all kinds of alcohol. It was powerful stuff. And these girls wouldn't know what hit them. They'd all be just guzzling the stuff because it was just juice, right, and they were so nervous being there because they were just freshmen anyway.

**Interviewer:** When you say it was just juice, you mean the girls wouldn't know it was spiked with alcohol?

**Frank:** They would know, they knew that. At least the smart ones did. I mean, this was a party, not some kind of social tea, so I think they must have known, or most of them did anyway. The ones that didn't had to be real naive.

**Interviewer:** Did you count on them being naive?

**Frank:** Yeah, I guess in a way we did. The real young and naive ones were the easiest. They'd be plastered in minutes and they'd be our real targets.

**Interviewer:** What do you mean by "targets"?

**Frank:** That's what we called them. We'd all be scouting for targets during the week. We'd pick them out and work them over during the week, get them all psyched to come to one of our famous parties. And they'd be the ones we'd really work on.

**Interviewer:** What would happen once they were drunk at the party?

**Frank:** That's when one of us would make a move. By then each girl would be kind of staked out, meaning one of the guys would be working on her, getting her drinks, keeping the juice flowing so to speak. And you had to kind of pick your moment to make your move, you know, you basically had to have an instinct for it.
Interviewer: Can you describe what happened on the specific occasion you referred to in your questionnaire?

Frank: Yeah, sure. I had this girl staked out. I had picked her out in one of my classes and worked on her and she was all prepped. I was watching for her and as soon as she walked in the door at the party I was on her. She was a good-looking girl, too. We started drinking together and I could tell she was real nervous because she was drinking that stuff so fast.

Interviewer: What was she drinking?

Frank: It was some kind of punch we had made, the usual thing.

Interviewer: Did she know it was spiked with alcohol?

Frank: I don't really know, although she must have after awhile. She had to know because she was plastered in minutes, and I started making moves on her. You know, I kind of leaned in close, got my arm around her, then at the right moment I kissed her and then moved in closer. You know, the usual kind of stuff. It was no surprise to her, I'm sure she'd done it a thousand times before. After a while I asked her to come up to my room to get away from all the noise and she came right away. Well, actually it wasn't my room. We always had several rooms designated before the party that were prepared for this.

Interviewer: Designated rooms?

Frank: Yeah, we'd set aside a few rooms to bring these girls up to once they were ready.

Interviewer: What happened when you got to the designated room?

Frank: She was real woozy by this time and I brought up another drink for her and sat her on one of the beds and I sat next to her and pretty soon I just made my move. I don't remember exactly what happened first. I probably leaned her down onto the bed and started working on her clothes, feeling her up.

Interviewer: How did she respond?

Frank: I don't remember. I started working her blouse off and I think she might have said something, but I don't remember. I didn't expect her to get into it right away.

Interviewer: Did she say anything?

Frank: Yeah, at some point she started saying like she didn't want to do this right away or something like that. I just kept working on her clothes. And she started squirming but that actually helped because her blouse came off easier. Then I kind of leaned over her more and kept feeling her up to get her into it more, and then she tried to push me off of her with her hands and I pushed her down.

Interviewer: Were you angry?

Frank: Naw, but it did piss me off that she played along the whole way and then decided to squirm out of it like that at the end. I mean she was so plastered I don't really think she knew what was going on anyway, and maybe that's why she started pushing me. I just leaned on her and kept pulling off her clothes and at some point she stopped squirming. Maybe she passed out. Her eyes were closed.

Interviewer: What happened?
Frank: I fucked her.

Interviewer: Did you have to lean on her, hold her down when you did it?

Frank: Yeah, I had my arm across the top of her chest like this [demonstrates]. And that's how I did it.

Interviewer: Was she squirming?

Frank: Yeah, she was squirming, but not that much anymore.

Interviewer: What happened afterwards?

Frank: I got dressed and went back to the party.

Interviewer: What did she do?

Frank: She left.

This transcript is a perfect example of how the sex offender employs a drug to increase his victim's vulnerability. In addition, Frank defends himself by incorporating societal myths that blame the victim. For example he describes his sexual overtures as "no surprise to her" and continues to state that "she'd done it a thousand times." The victim is now depicted as the typical "bad girl." She drinks and is promiscuous and thus clearly available to Frank sexually--even if it did take a little "coercion." Thus, the victim's credibility becomes the key issue in the investigation and prosecution. The challenges associated with drug-facilitated sexual assault and ways to overcome them are discussed in depth in the following section, "Investigating Drug-Facilitated Sexual Assault."

Investigating Drug-Facilitated Sexual Assault

Simply because a victim of a drug-facilitated sexual assault may experience memory loss does not imply that she will experience an easier recovery than other rape victims. In fact, her recovery process may be especially difficult because she is left to her own imagination and may never know exactly what the perpetrator(s) did to her. This fact leaves the victim with a great sense of helplessness. Because she cannot remember what happened to her, the victim may feel that no one will believe her and that she will be unable to testify in court. In addition, if the victim voluntarily participated in drug use, she often feels intense guilt and responsibility for the assault. All of these facts intensify those symptoms that are associated with rape trauma syndrome and should not be overlooked when caring for the victim.

There are many challenges to investigating sexual assault crimes, especially when the defense is consent. We have discussed many of these challenges in detail in previous modules. For example in the Victim Interview module we discussed the following as common barriers:

- The victim's lack of physical resistance
- Inconsistent or untrue statements by the victim
- Delayed reporting

The heightened difficulty in investigating drug-facilitated sexual assault is due to the fact that these cases typically encompass all of these barriers. Because of the very nature of most drugs used to facilitate sexual assault (like alcohol, GHB and Flunitrazepam), the victim will display
symptoms such as impaired motor skills, reduced inhibition, drowsiness, and memory loss, all of which contribute to a victim’s lack of physical resistance, inconsistent statements and delayed reporting.

Therefore, when investigating cases of drug facilitated sexual assault, law enforcement must combine the many strategies discussed in previous sections to overcome these challenges. The critical issue is to document the victim’s statements, feelings, any time markers, and details about what she does and does not recall. It is imperative to the victim’s credibility that she tell her story from beginning to end in her own words in a safe and nonjudgmental environment.

Lack of Resistance

Investigators must understand that many drugs depress the central nervous system, which can result in multiple symptoms such as impaired motor skills, impaired judgement and the loss of consciousness. Each of these symptoms makes it increasingly difficult for a victim to physically resist her attacker by hitting, kicking and biting—actions that society has proscribed for victims of "real rape." In fact, a sex offender who employs drugs to facilitate a sexual assault is counting on these symptoms to make the victim more vulnerable. These offenders will then use the effects of the drugs as an alibi in their consent defense. For example, the offender might state:

• "We both had a lot to drink and neither of us knew what we were doing. We were both really messed up."

Or

• "She was into it. In fact, she was really wasted at the party and was flirting with me all night. We both had a good time."

These statements apply directly to the misconception society has of the "good girl" who is raped and the "bad girl" who must have wanted it. The victim’s inebriation and lack of physical resistance continues to be viewed with deep skepticism by the criminal justice system and is seen as an indication of a false report. In truth, a victim under the influence of drugs may not have the ability or consciousness to resist her attacker.

However, the ingestion of a drug is only one of multiple reasons for a victim's lack of resistance. As discussed in both the Victim Impact and Victim Interview modules, a victim of sexual assault may not resist due to confusion, fear, or because they experience dissociation or frozen fright.

It is common for the victim of a drug-facilitated sexual assault to explain the incident as if she was having an "out of body" experience.

Overcoming This Challenge

If a victim is sexually assaulted due to her vulnerability from the effects of a drug, this should only confirm a common pattern used by the offender in a drug-facilitated sexual assault, and thus corroborate the victim’s story.

One way an investigator can overcome the challenge of a victim’s lack of resistance is by effectively interviewing the victim. An effective interview allows the victim to tell her story in an environment free of blame in which she can give an honest and thorough account of the situation surrounding her assault. Her account can than be corroborated through witness interviews, the suspect interview, and evidence collection.
During the victim interview, never ask the victim questions that are either leading or blaming.

For example, do not ask the victim:

- "And did you feel like this....?"
- "Oh, maybe somebody put a drug in your drink...."
- So, how much were you drinking tonight...?
- What kind of drugs were you using...?

This type of questioning is harmful in two ways:

- First, it is embarrassing and blaming to a victim who may have voluntarily ingested a drug. This victim may feel she did something wrong by participating in drug use and therefore hide this fact from the investigator. Of course this will ultimately undermine the victim's credibility and hamper the investigation.
- Second, the victim of a drug- facilitated sexual assault whose memory is impaired may innocently and unconsciously seek details to fill in the gaps of her memory. Thus, by asking leading questions the officer might inadvertently cause the victim to make false or inconsistent statements. As discussed in the Victim Interview module, it is always better to ask the victim open ended questions.

It would be helpful for the officer to preface any and all questions that address the victim's use of drugs with a clear and informative explanation of why these questions are important to the victim's case.

For example, the officer might say:

"I know that this question is difficult to answer and I want you to know I am only asking you this question to get a clear picture of all the facts in this case. I am very sorry about what has happened to you and I do not think that you are responsible for what happened. Any questions I may ask regarding possible drug use by yourself and the offender serve only to better my understanding of what happened and will help me investigate and corroborate your case."

- It is also helpful for the officer to clarify what they have heard and summarize the information back to the victim. This will help assure the victim of the officer's understanding.
- In addition, officers must be careful to avoid interrupting the victim. Allow the victim to recall the events surrounding her assault to the best of her ability. Reassure her that she has plenty of time.

As the fact finder, it is imperative that the investigating officer asks all questions necessary to effectively corroborate the victim's account. However, many victims will become upset and frustrated by the officer's questions regarding her use of drugs. These questions, depending on how they are phrased, can appear victim blaming and can pose a barrier to victim cooperation. The investigating officer must do everything possible to create a nonjudgmental environment and allow the victim to feel comfortable in giving a thorough account of the sexual assault.
Inconsistent or Untrue Statements

We discussed in the Victim Interview module how inconsistent or untrue statements provided by the victim pose a particular challenge to the investigation. With respect to drug-facilitated sexual assault, this is especially true for inconsistent or untrue statements provided by the victim about her own drug use. For example, experienced sexual assault investigators should not be surprised if the victim denies taking drugs and then unexpectedly tests positive for alcohol, cocaine or other drugs. This may happen for a number of reasons.

- First, many victims will feel uncomfortable giving information about drug use to a police officer, for fear of both blame and arrest. It is imperative that the officer informs the victim that this inquiry is not to establish any kind of blame and that the officer is not going to arrest the victim for illegal drug use. This assurance will allow the victim to talk about her experience in an environment where she feels safe and free of judgement. The victim's cooperation is essential for investigating how a drug may have been used to facilitate the sexual assault.

- A second reason why a victim may unexpectedly test positive for drug use involves recent cases where victims are surreptitiously dosed with GHB or other depressants to get them out of a party or club environment, and then they are later given cocaine or methamphetamine by literally blowing it up their noses.

- In other cases, the victim may claim to have been surreptitiously drugged, but her toxicology test may in fact have a negative result. The investigator should not be discouraged. It is difficult to obtain a positive screen with many of the drugs used to facilitate sexual assault (i.e. Flunitrazepam and GHB) because these drugs are metabolized out of the blood and urine so quickly. Since the victim may be passed out (or in an ambulatory state) for several hours, a positive urine screen will be unlikely. The investigator must therefore be prepared to seek evidence to corroborate the victim's story with or without a positive toxicology test.

The bottom line is that the sex crimes investigator should not be surprised or discouraged by these developments, or inconsistencies. As discussed in the Victim Interview module there are many reasons why victims may give an inconsistent description of events, including trauma and disorganization, discomfort with sexual details and fear of doubt or blame. In addition, it is likely that any victim of a drug-facilitated sexual assault will come into the police station with an inaccurate chronology of events and a feeling of confusion. These symptoms are due to the nature of the drug involved.

Overcoming This Challenge

- Ask the victim to clarify her statements by explaining to her the importance of correct information and protecting her credibility.

- Make sure the victim understands that she will not be blamed or punished for participating in either legal or illegal drug use.

- Reassure the victim that her part in drug use does not make her any less of a "real rape" victim.

- If possible, the number of interviews should be kept to a minimum in order to reduce the chances of inconsistent statements made by the victim.
Officers should address inconsistencies or untruths in the victim's statement without becoming immediately skeptical of the victim's story. Instead, the officer should explore any issues regarding inconsistent statements with the victim in a nonjudgmental manner.

**Delayed Reporting**

Delayed reporting is another common challenge associated with drug-facilitated sexual assault. As discussed, victims of sexual assault typically do not report their assault for days due to many different reasons. The same reasons apply to the victim of a drug-facilitated sexual assault.

- In fact, many victims of drug-facilitated sexual assault feel physically disoriented or "hung-over" for several days after voluntarily or surreptitiously ingesting a drug; they are thus unable to report the crime for several days or weeks.
- The victim may also delay reporting because she blames herself for the assault. She may feel responsible because she participated in drinking or other drug use prior to the assault, and society has taught her that victims of "real rape" do not use drugs.
- Many victims may fear arrest for illegal drug use or retribution from a parent or family member for participating in underage drinking. For example, the victim may have lied to her parents in order to sneak out of the house to go to a party, and fears punishment if she comes forward with her story.

**Overcoming This Challenge**

The challenge of delayed reporting can be addressed with the victim of a drug-facilitated sexual assault in the same way any delayed report should be handled:

- Provide the victim with open-ended questions. Allow her to tell her story completely.
- Document everything.
- Assure the victim that you do not blame her and that delayed reporting is natural in sexual assault crimes.

In addition to these strategies to help investigators address delayed reporting, an officer should learn and understand the symptoms of various drugs and the physical patterns that contribute to the victim being unable to make a "timely" report to law enforcement. Investigators should view any reporting delays as a normal consequence of drug-facilitated sexual assault, and should not be discouraged from conducting a comprehensive and creative investigation. Instead, the officer can apply the commonality of delayed reporting to support the victim's story and further substantiate her credibility.

**Final Thoughts**

In conclusion, experienced law enforcement officers know that the challenges to investigating drug-facilitated sexual assault are similar to any sexual assault case, especially where consent is the defense. These cases are decided according to the victim's credibility. It is essential that law enforcement understand that the techniques being used to address the challenges associated with acquaintance rape can also be applied to drug facilitated sexual assault.

The officer's strongest tool in addressing the challenges associated with drug-facilitated sexual assault is through meticulous evidence collection and documentation. This includes physical evidence from the victim, witness interviews, the crime scene(s), expert testimony, and a complete investigation of the suspect.
Evidence collection in a drug-facilitated sexual assault crime should focus on corroborating the victim's account of drug use, either voluntarily or surreptitiously, and the events surrounding the sexual assault. Because a consent defense will be used in the majority of these cases, evidence collection provides a reliable source for supporting the victim's credibility in a drug-facilitated sexual assault.

For example, if the victim states that she voluntarily ingested alcohol and cocaine, the investigator can seek to corroborate this with a toxicology test and evidence of these drugs at the crime scene(s). Evidence of the drugs ingested by the victim and the offender can serve to support the victim’s account of the events surrounding her assault, and her vulnerability under the influence of a drug. The following section examines the type of evidence that is essential when investigating a drug-facilitated sexual assault.

**Evidence Collection**

**What are the indicators of a Drug-Facilitated Sexual Assault?**

Law enforcement must be aware of the signs of a drug-facilitated sexual assault so that they can properly document evidence and help the victim decide if a "full drug screen" is necessary. This is particularly essential in cases where GHB, Flunitrazepam, Ketamine and other "date rape drugs" may have been surreptitiously given to the victim.

A complete discussion of the advantages and disadvantages of a "full-drug screen" and the concerns of the victim advocacy community are discussed later in this module.

The following are indicators that the victim may have been drugged to facilitate a sexual assault:

- The victim reports that she was under the influence of a drug during the sexual assault (either a legal or illegal drug).
- The toxicology test indicates that the victim was under the influence of a drug.
- The victim reports drinking with friends and having just one or two drinks, too few to account for the high-level of intoxication the victim experienced.
- She recalls feeling "strange," then feeling suddenly "very drunk."
- The victim reports becoming heavily intoxicated, very rapidly within a time period of five to fifteen minutes.
- Waking up eight or more hours later, uncertain about what happened, but believing she may have been raped because she is experiencing vaginal soreness, or other signs of sexual activities.
- Being told she was given Roaches, Roofies, Mexican Valium, R-2, GHB, or easy lay.
- The victim reports that witnesses told her she suddenly appeared drunk, drowsy, dizzy, confused with impaired motor skills, and impaired judgement.
- The victim reports symptoms of amnesia.
- She remembers a sequence of "cameo appearances" in which she recalls waking up, possibly seeing the assailant having sex with her, but being unable to move, and then passing out again. These memories may be associated with a loud noise or pain.
The Role of the 911 Operator and First Responding Officer

Due to the nature of drug-facilitated sexual assault, many victims may not have a recollection of the events necessary to explain the crime or identify the offender. Thus, both the 911 Operator, and the First Responding Officer must be skilled in identifying the victim of a drug-facilitated sexual assault.

The following is a list of the procedures the 911 Operator and/or the First Responding Officer (depending on the procedures of your jurisdiction) should consider if they suspect a drug-facilitated sexual assault has occurred:

- If the 911 Operator suspects the victim may have been drugged to facilitate a sexual assault, an officer should be immediately dispatched to the victim’s location.
- If either the 911 Operator, or the First Responding Officer, suspect that the drug was ingested within 96 hours, the victim should be advised not to urinate.

Urine and Blood Collection

- The period of time Flunitrazepam, GHB, or other rape drugs will remain in the urine or blood depends on a number of variables, including the amount ingested, the victim's body size and rate of metabolism, whether the victim had a full stomach, and whether she previously urinated. A urine specimen is preferable to a blood specimen because the drugs and their metabolites can be detected in urine for a longer period of time (LeBeau, 1999).

- Drugs Remain in Blood
  - Benzodiazepines (e.g. Rohypnol): 4-12 hours
  - GHB: 4-8 hours

- Drugs Remain in Urine
  - Benzodiazepines (e.g. Rohypnol): 48-96
  - General Rule: Benzodiazepines are not typically detected in the urine after 48 hours!
  - GHB: up to 12 hours

- If she must urinate, tell her to save her sample in a clean container with a tight fitting lid. It is important to get her first voided urine sample because it will most likely contain metabolites of the drug she was given, which can be used to identify the drug.

- With each subsequent urine sample the metabolites are excreted from the victim's system and it is less likely that they will remain in sufficient quantities to be identified.

- The First Responding Officer should secure a urine sample for toxicological testing if it is suspected that a drug was ingested within 96 hours. If the drug was ingested within 12 hours, the victim should also be transported to the nearest medical facility to obtain a blood sample.

It should be noted that the reason blood is drawn from the victim, is to test for the level of ethanol in the body. The date-rape drug itself may not have caused the victim’s symptoms. It is possible
that the victim’s symptoms are a result of the synergetic effect of alcohol in conjunction with the
drug(s) used to facilitate the sexual assault.

**The Victim**

As we have discussed, the ingestion of drugs by the victim (either voluntarily or surreptitiously) is often used against the victim by the criminal justice system. Her apparent association with "risky" behavior lessens her credibility and increases her perceived culpability while diminishing the suspect's.

An additional challenge in investigating drug-facilitated sexual assault is the loss of evidence due to the very nature of the drugs used. As discussed, many of these drugs metabolize so quickly in the body that it becomes difficult to detect them in the victim. Because most victims delay reporting, this compounds the challenge of corroborating the use of a drug to facilitate the sexual assault.

The investigator must carefully deduce from the types of drugs used to facilitate the sexual assault, the effects these drugs had on the victim, and an account of the events surrounding the actions of everyone involved. The following is a list of the types of evidence an investigator should process from the victim.

- The investigator may be the first to suspect the victim was drugged to facilitate a sexual assault. As we have discussed, if the ingestion of a drug may have occurred within the last 96 hours (4 days), the victim should be advised not to urinate until a urine specimen can be collected. If the victim has to urinate prior to a collection sample being taken in a medical facility, the victim should be requested to urinate in a CLEAN jar or container with a tight fitting lid.

- If urine samples were obtained at a medical facility prior to your arrival, the officer should determine if any amount of the specimen is leftover beyond what is needed for the hospital lab work.

- Because there could be a need for multiple toxicology tests, it is important to obtain as much urine as possible (100 ml if possible).

- If the assault may have occurred within 8 hours of the report, obtain a 30-ml blood sample (in a gray top tube) as well as urine. This should be conducted at the nearest medical facility.

- Have the victim's urine and blood screened as soon as possible for traces of Flunitrazepam metabolites, GHB, Ketamine and any other possible drugs.

- Ideally, urine samples should be frozen although refrigeration should suffice.

- Treat vomit as a supplemental specimen for forensic toxicology purposes—in other words, vomit should be collected in addition to the urine and blood specimens. Collect as much of the liquid and solid portions of the vomit as possible by using a spoon, an eyedropper-type suction device, or other tools that are consistent with biohazard procedures. The vomit should be placed in a urine collection container or other appropriate container that has a lid with a tight seal. Then immediately place the container in a freezer. However, if the vomit will be submitted to a toxicologist within five days, it is acceptable to refrigerate the container. If the vomit is on clothing (or on a sheet), put the clothing (or sheet) in an appropriate
container (i.e. a paper bag) to prevent leakage and contamination and then immediately freeze the clothing (or sheet) while it is packaged.

Do not make the critical mistake of sending a fluid sample to a lab before you have determined whether the lab is equipped to do the specific types of testing necessary. Consult a toxicologist in your local or state forensic/crime laboratory about where to send blood and urine specimens for a forensic toxicology analysis to detect single dose levels of drugs used to facilitate sexual assault.

- Most laboratories cannot test for many of these drugs (i.e. GHB and Flunitrazepam), and private laboratories that conduct this testing can be very expensive. Options may include the state crime laboratory, or a private laboratory.
- In most SANE programs and in the newly developed American College of Emergency Physician (ACEP) Best Practices Protocol, urine toxicology screens are not recommended beyond 72 hours because the chance of obtaining a positive toxicology result is extremely slim. However, for the purposes of this curriculum it is still recommended that law enforcement collect urine samples from the victim up to 96 hours for a toxicology screening.

In jurisdictions where 72 hours is the limit for the evidentiary exam to be paid for by the county, any charge for a urine toxicology screen may be billed to the victim. A victim who consents to this testing after 72 hours should be made aware of this potential expense. (Refer to the Victim Advocate module for a complete discussion of victim compensation).

- To assist the toxicologist, the officer should be diligent in properly documenting their case. For example, always note what drugs-voluntarily or involuntarily were ingested in the last five days—that might have incapacitated or contributed to the incapacitation/vulnerability of the victim. Keep in mind that in a drug-facilitated rape case, more than one drug may have contributed to the incapacitation/vulnerability of the victim. The date and time when the drug was probably ingested—and the date and time that the specimen(s) are collected should be properly documented. This documentation is essential to corroborating the victim’s own account of drug use, thus supporting her credibility.
- As discussed, the victim may not have been comfortable telling law enforcement about her participation in either legal or illegal drug use. In addition, due to intoxication she may not remember taking a specific drug. Any inconsistencies between the victim’s statement and the toxicology exam should be clarified with the victim as soon as possible in a nonjudgmental environment. It is important that the investigator explain to the victim the significance in clarifying any discrepancies without making the victim feel she is being blamed.
- The victim should be thoroughly examined at a Sexual Assault Treatment Center. Make sure that the nurse does not overlook taking swabs from areas that may show "no signs of trauma." For example, the nurse should always swab the area of the breast and neck for saliva.

**Advantages and Disadvantages to a "Full-Drug Screen"**

In some cases of drug-facilitated sexual assault the necessity to detect a low level of a specific drug indicates that the toxicologists target their testing on only one drug at a time. However, this type of drug screening is most helpful when the toxicologist is looking for a specific drug, like GHB or Flunitrazepam. When the toxicologist must look for multiple drugs, or is unsure of
what drugs the victim ingested, a "Full-Drug Screen" is more appropriate. A "Full-Drug Screen" tests for multiple drugs, including the following:

- Conducting A Full-Drug Screen
- When conducting a "Full Drug Screen," confirm that the laboratory is testing the urine and blood samples for:
  - Benzodiazepines,
  - Amphetamines,
  - Muscle relaxants,
  - Sleep aids,
  - Antihistamines,
  - Cocaine,
  - Marijuana,
  - Barbiturates,
  - Opiates,
  - Ethanol,
  - and any other substance that depresses the central nervous system.

When deciding to conduct a "full-drug screen" both the investigator and the victim should review the possible ramifications of this testing. This is a very controversial issue and can greatly affect the outcome of the victim's case. As with any sexual assault case, the elements of a drug-facilitated sexual assault vary and the issue of whether to conduct a full-drug screen should be addressed on a case-by-case basis.

Advantages

- One advantage to conducting a full-drug screen is to corroborate the victim's account of her own drug use. In other words, if she said she took the drugs and the toxicology screen shows she used the drug, than this is another piece of evidence that supports the victim's account of events. This piece of evidence also serves to corroborate the victim's vulnerability to a drug-facilitated sexual assault by confirming both the physical and mental effects associated with specific drugs.

- A second advantage to a full-drug screen is to help law enforcement identify a drug that may have been surreptitiously given to the victim to facilitate a sexual assault. This is especially important when the victim can not fully recall the events surrounding her assault. Some victim's may wake up with the "feeling" that they had sex, but have little memory of the offender(s) or the specific details of what happened. A full-drug screen can help law enforcement identify how the assault was facilitated and thus how to identify the offender.

- A third advantage to a full-drug screen is that is provides law enforcement with a tool to strategize for a successful prosecution. If the victim chooses to prosecute, any testimony about the victim's drug use prior to the sexual assault will eventually come out at the trial and inevitably be used by the defense to discredit the victim. If a full-drug screen is done
properly, prosecution may be able to subvert this defense tactic and actually use the evidence of drug use to support the victim's credibility.

**Disadvantages**

Although these advantages of a full-drug screen can be essential to a successful prosecution, the sexual assault advocacy community has valid concerns about conducting a full-drug screen and the disadvantages that may result for both the victim and the investigation.

- First, depending on the outcome, the results of a full-drug screen may be used against the victim. For example, if the toxicology test is positive for specific drugs not indicated by the victim during her interview, the defense may use this to discredit the victim. In other words, if the victim lied about past or present drug use, jurors and others may believe that she must have lied about the rape.

- Second, any proof of illegal drug use, whether voluntarily disclosed by the victim or not, could be used against the victim during the trial and therefore harm the potential for successful prosecution. In other words, evidence of drug use by the victim could be used by the defense to indicate that she participates in "risky" behavior and therefore she could not have been the victim of a "real rape."

- A third disadvantage when conducting a full-drug screen on the victim is the limited ability of many laboratories to test for low doses of specific drugs used to facilitate sexual assault, such as GHB and Flunitrazepam. A negative test result may cause the victim severe emotional trauma as she struggles to come to terms with the events precipitating her assault. In addition, a negative test result could harm the victim's credibility and thus hinder the possibility of a successful investigation and prosecution. Again, jurors or others may believe that if the victim lied about being surreptitiously drugged she is probably lying about being raped. Careful thought must obviously be given to the possibility of conducting a full-drug screen with the victim, as with any other investigative procedure that may harm the ability to successfully prosecute.

It is not the purpose of this curriculum to dissuade law enforcement from conducting a full-drug screen, however it is essential that the investigator along with an advocate explain to the victim the advantages and disadvantages associated with this type of testing so they can make an informed consent.

Give the victim the opportunity to ask questions and express her concerns. The victim should be fully informed about what drugs will be tested for and that certain drugs can be difficult to detect. The victim should be assured that a negative test result does not indicate that she was not raped and that a drug could still have been used for these purposes. In addition, the negative ramifications of disclosing voluntary drug use, including past drug use, should be discussed with the victim. Many victims fear public disclosure of drug use; these concerns should be addressed and considered carefully in each individual case.

**The Crime Scene and Evidence Collection**

In the case of a drug-facilitated sexual assault, there are at least three potential crime scenes:

- The site where the drug was ingested
- The site where the drug may have been bought or manufactured
- The site where the victim was sexually assaulted
In many cases, these may all be the same place, or there may be multiple crime scenes. It is essential that the investigator check the location where the victim last remembers being present for any evidence and or witnesses. The following is important information to help investigators locate the crime scene(s) and collect evidence at the crime scene(s) related to a drug-facilitated sexual assault.

Identify the location at the crime scene where the sexual assault took place. Look for:

- Invitation lists (hard copies or e-mail) which will identify other witnesses
- Standard sexual assault crime scene evidence (sheets, etc.)
- Phone messages indicating witnesses or details of the event
- Objects that may have been used to penetrate the victim

Semen and blood stains - use an alternate light source to locate stains (a Luma-Lite or Polylight, or Luminol for blood, and a Woods lamp for semen)

What to look for at the crime scene and/or the suspect's car or residence:

- Packages of Flunitrazepam and other drugs
- Empty bubble packages and other material in which drugs could be packaged
- Precursors/Reagents (chemical ingredients of GHB)
- Prescriptions from the U.S. and other countries, especially sleeping aids, muscle relaxants, and sedatives
- Liquor bottles, margarita salt, mixers, punch bowls-look for drug residue
- Visine bottles, sports bottles (containers for GHB)
- Glasses, soda cans and bottles...any containers-look for any residue of drugs
- Possible vomit from the victim-may be a source of drug residue
- Video/camera equipment
- Videotapes, photographs, and CD ROM's of sexual assault victim
- Pornographic literature containing suggestions of drugging women to facilitate sexual assault
- Internet information/pamphlets on Flunitrazepam and GHB and on using these and other drugs in the commission of sexual assaults or for other purposes
- Computers and computer discs
- If robbery is suspected, the victim's possessions and/or the defendant's pawn shop slips evidencing sale of the victim's possessions.

Do not overlook the obvious --- many offenders will use drugs that are readily available to them. Look in his medicine cabinet for prescription drugs, especially sleeping aids, muscle relaxants and sedatives. In addition to Flunitrazepam, search for any drug that could have been used to incapacitate the victim. It is important to know all of the drugs the suspect had access to, including those that can be legally obtained in the United States.

The majority of these types of cases are consent defense cases. Securing evidence that the victim was incapacitated by a drug is the first priority. If hair, semen, and fingerprints are collected,
the focus of the investigation should be on proving lack of consent, not on identifying the defendant.

This is not to say that identification evidence is not important; it is, because of the possibility of mistaken identification or a possible change of defense tactic by the offender from consent to identification. Identification evidence is also important to detect the possibility of multiple defendants or a "gang rape" situation. Identification evidence should always be collected in every case even if the offender's identity is not an issue. However, especially in non-stronger rapes, evidence providing lack of consent must be collected and is vitally important to a successful prosecution.

The Suspect

Historically, the sexual assault investigation has focused primarily on the victim and her credibility. Unfortunately, this often leads to a lack of solid evidence associated with the suspect that may discredit him and thus support a successful prosecution. Investigators continue to struggle to prove the validity of the victim's story and to justify her behavior, including voluntary or involuntary use of drugs. Because we spend all of our time trying to prove to the criminal justice system that the victim is not a "bad girl," we forget to exhaustively investigate whether the suspect is a "bad guy" and indeed a "real rapist."

As with most sexual assault cases, the defense is usually consent. In the case of a drug-facilitated sexual assault the offender may admit to having sex with the victim and even admit that she was under the influence of a drug, however he will defend himself by claiming that both he and the victim were "messed-up," or "buzzed" and that the sex was therefore consensual.

Investigators can overcome this challenge by thoroughly investigating the suspect and by collecting evidence that discredits the suspect's account of the events surrounding the sexual assault, thus supporting the victim's credibility. The following information explores the different tools essential to investigating the offender of a drug-facilitated sexual assault.

(Refer to the Offender Dynamics and Interview Techniques module for a complete discussion on investigating the suspect in a sexual assault crime.)

Background Information of Defendant

Establish the general "dating" background or practices of the defendant. Try to uncover whether the defendant had made any preparations in order to secure a date for the evening. Consider using the following questions as a starting point in your investigation.

- What is his "reputation" among his friends/school/office? Is he known as a "ladies man"?
- Does his fraternity/apartment complex/group of male friends have a reputation for sexual conquests?
- Does he boast about his sexual exploits?
- Does he routinely bring different women home?
- Does he have a steady girlfriend? If so, does he date other women on the side?
- Have any prior "conquests" ever accused him of rape or other sexual misconduct?
- Have roommates or friends seen women leaving his room crying/distraught?
• Does he talk about taking pictures or filming videos during sexual acts? If so, does his sexual partner know of the picture taking or the filming?
• Does he use pornography, e.g., magazines, movies, Internet sites?
• Does he go to adult bookstores, adult theatres, or to nude bars?
• Had he talked about plans of making a "conquest" that evening, e.g., trying to get his intended "target" drunk?
• If so, had he made any preparations, e.g., devising a special punch recipe designed to get women drunk?

In gathering this background information, the investigator can begin to uncover what actually occurred prior to, during, and after the sexual assault. The investigator can use this information not only to further his/her investigation, but also to provide the prosecutor with the "texture the background details of the events surrounding the sexual assault.

Suspect Forensic Examination

• Depending on the case and its facts, a suspect forensic examination ("suspect exam") for evidence of the crime should be considered.
• Performing a suspect exam is sometimes disregarded in drug-facilitated sexual assault cases because the report of the assault is delayed and no evidence is likely to be found on the suspect after several days have passed since he committed the sexual assault.
• The examiner and investigator should be mindful, though, that in many drug facilitated sexual assault cases, there may not be any indications of force or defensive injuries on the suspect, e.g., scratches, because the victims are incapacitated and unable to resist the attack.

Search Warrants for Defendant's Home

Items to include in the search warrant:

• Packages of Flunitrazepam and other drugs
• Bubble Packages and other packaging that indicate receipt of shipment of drugs
• Cooking utensils (for GHB)
• Precursors/Reagents (chemical ingredients of GHB)
• Prescriptions from the U.S. and other countries, especially for sleeping aids, muscle relaxants, and sedatives.
• Liquor bottles, margarita salt, mixers, punch bowls (where GHB or other drugs may have been mixed with other liquor)
• Glasses, soda cans and bottles...any containers-look for any residue of drugs
• Video/camera equipment
• Videotapes, photographs, and CD ROM's of the sexual assault victim
• Pornographic literature containing suggestions of drugging women to facilitate sexual assault
• Internet information/pamphlets on Flunitrazepam and GHB "recipes" and on using these and other drugs in the commission of sexual assaults
• Computers and computer discs.
• If robbery is suspected, the victim's possessions and/or the defendants pawnshop slips evidencing the sale of the victim's possessions.
• Standard sexual assault crime scene evidence (sheets, etc.)

Using "Controlled Buys" can be very effective in trying to identify the drug that was used.

• Setting Up a Controlled Buy
  • The Assault Detective should get together with the Street Narcotics Officers to determine which potential "dealers" could have supplied the drug to the suspect.
  • The suspect's friends or just school or neighborhood kids could also provide information as to who is selling drugs in the area.
  • If the suspect is the dealer, a successful controlled buy identifies the drug and provides evidence that the suspect had access to the drug.
  • If the suspect is not the dealer, then locating the local/neighborhood dealer will help identify the drug and show access. The dealer may also "flip" in exchange for a shorter sentence and identify the suspect as one of his "clients" and purchaser of the drug.
  • PIGGY-BACK WARRANTS: If any drugs can be purchased from the suspect, a search warrant may be obtained to search for the purchased drug and the suspected rape drug, as well as any other such evidence.

A thorough investigation of the suspect is essential for obtaining complete evidence to successfully prosecute a drug-facilitated sexual assault. Not only should law enforcement concentrate on investigative tools that help in supporting victim credibility, they must focus on investigative tools that may discredit the suspect. The suspect forensic exam, background information, and controlled buys are essential focal points for law enforcement in developing key evidence in drug-facilitated sexual assault.

Witness Interviews

Thoroughly interviewing witnesses is essential to the evidence collection. Witness interviews often provide important information for corroborating the victim's account of the events surrounding her assault.

For example, if partygoers and friends tell law enforcement that the victim had two drinks and smoked marijuana on the night of the assault, and this is the exact account given by the victim, then this evidence corroborates the victim's account. In addition, if witness interviews confirm that the victim was intoxicated and appeared to have multiple symptoms related to drug use, this evidence can also be used by law enforcement to confirm the vulnerability of the victim to the drug-facilitated sexual assault.

• In addition to interviewing any individuals who may have witnessed any aspect of the assault, the investigator should also interview as many friends, enemies, and acquaintances of the suspect as possible. Often suspects have either secretly drugged women in the
presence of others, or bragged openly about sexual conquests of women under the influence of alcohol or other drugs.

- When questioning the suspect(s) and his friends, remember that these people often operate in a group and display a type of "group mentality." Each individual may tend to justify his actions based upon the actions of the group as a whole. Thus, by later isolating the suspect from his support group and highlighting the immoral nature of his actions, he can no longer rationalize his actions as a group activity and therefore becomes much more vulnerable later during the suspect interview.

- Interview any waitresses, patrons, bartenders, parking lot attendants, security officers, neighbors, or partygoers who may be able to confirm the victim's account of the events surrounding the sexual assault.

- The investigator should also determine whether security videos are available. This must be done quickly since most tapes are eventually copied over and valuable information will be lost.

- In the case of the victim who has been surreptitiously drugged, it is important to ask witnesses if they may have noticed anything unusual about the victim's departure or arrival. This could be very important in establishing routine behavior on the part of the victim or her account of what happened.

- Always identify the person(s) with whom the victim first discussed the incident. If the victim discussed the incident with friends or others before reporting the crime to police, carefully interview those persons and document what the victim said to them. The victim's statements to these persons may be admissible at trial under an exception to the hearsay rule and may corroborate the victim's trial testimony.

Keep in mind that most drugs used to facilitate rape can cause the victim to become passive. During the investigation, witnesses may report that they observed the victim and the suspect leave the party together or go into a private room, and that the victim appeared to accompany the suspect voluntarily. This should not serve to discredit the victim's credibility.

- First, a victim's cooperation to go "somewhere private" with the suspect is not an invitation to rape her and should never be viewed by the criminal justice system as an indication of consent.

- Secondly, investigators should keep in mind that many drugs like GHB and Flunitrazepam sedate the victim and often cause confusion and disorientation. Thus, while the victim may have appeared to voluntarily accompany the suspect, the victim's actions may have been the result of "drug submission" or some other effect of the drug on the victim and her capabilities.

**Pretext Phone Calls**

Another very useful strategy for investigating these types of cases is the pretext phone call between the victim and the suspect. The pretext phone call is usually initiated by the victim under the supervision of the investigator. The call is taped without the suspect's knowledge. The purpose of the call is to solicit incriminating statements from the suspect because the suspect may talk to the victim about the sexual assault, if he thinks she is alone and no one else can hear the conversation. Interviews of the suspect's friends should be postponed until after the phone call to avoid "tipping off" the suspect. An investigator should be realistic when
conducting a pretext phone call and not expect a confession. However, many statements made by the defendant could be used to corroborate the victim's or witnesses' testimony, put the defendant at the scene, or "lock in" the defendant to a specific defense.

It is important to speak to the victim in detail about how she feels about making the phone call because speaking to the suspect directly may heighten the trauma she is experiencing. A victim advocate should be present when explaining the pretext phone call to the victim and after the call to help the victim deal with any emotional distress caused by contact with the suspect.

A complete discussion on how to conduct a pretext phone call, is included in the module on Offender Dynamics and Interview Techniques.

Law enforcement officials should understand that the victim's actions-actions that the defense may argue support a consent defense-are, in fact, consistent with evidence that the victim was under the influence of a drug and in fact a victim of a drug facilitated sexual assault.

The Use of Expert Testimony

The usefulness of expert testimony in drug-facilitated sexual assault cases cannot be underestimated. Chemists, toxicologists, and pharmacologists historically have testified in drug trials about their analyses of the particular drug or drugs involved in the case at trial. In a drug-facilitated sexual assault trial these experts will also testify about their analyses of the drug used to rape the victim. In addition to that testimony, these experts can testify how the particular drug affects the body in general, how the victim's symptoms are typical of someone who has ingested this drug, and can explain the lack of a positive toxicological result in the case. For example, at the trial, the toxicologist will be able to testify to the analysis of the sample and the methods used to test for the drug. A toxicologist will also be able to testify to possible reasons for a negative result, such as the lapse of time between ingestion and collection of the sample.

To explain the properties or effect of the drug, testimony from a scientist with a pharmacological background, who will know more about how the drug works in the body, may be necessary. Testimony from a pharmacologist is always important, but this testimony is key when there is no urine sample, because the pharmacologist will be the only expert testifying to the effects of the drug on the victim. The pharmacologist, or a scientist with a pharmacological background, can explain to the judge and jury what the drug does and how it affected this particular victim. This type of expert can supply critical information about why the victim does not remember the assault and/or does not have any injuries. Where there is no urine sample or no positive toxicology result, the pharmacologist can explain that the symptoms experienced by the victim are "consistent" with being drugged with a drug such as a benzodiazepine.

The toxicologist or pharmacologist can also neutralize potential weaknesses of the prosecutor's case by discussing any absence of physical trauma; the victim's intoxicated appearance and seeming willingness to leave with the suspect; the victim not knowing how she got home; the victim's inability to recall facts; the victim's impaired spectrum of memory versus impaired quality of memory (for example, she may not remember the events of the entire night, but she has a clear memory of the segments that she does remember); the victim's recall of only bits and pieces of the incident; the lowering of inhibitions, disorientation, and loss of motor control; and the fact that the effects of the drug sometimes do not wear off for days, thus preventing the victim from making a report.
Qualified toxicologists and Pharmacologists can be helpful to both the prosecution and the investigation. The investigator may want to take the time to locate an expert in their area regarding the effects of certain drugs used to facilitate sexual assault. The expert may be extremely helpful in strategizing the investigation and in framing the evidence gathered, thus providing essential support to the victim’s credibility. He/she may be able to highlight apparent weaknesses in the investigation and may have critical suggestions to strengthen the case. A team effort is essential for both a successful investigation and a prosecution.

**Conclusion, or The Good News**

The challenges presented in drug facilitated sexual assault crimes are not insurmountable. Law enforcement has a variety of investigative techniques available in deconstructing these difficult crimes. Most of these techniques are not "new" to sexual assault. It is simply a matter of conducting a thorough and creative investigation. Law enforcement must keep an open mind, understand the patterns associated with sexual assault crimes, and use these patterns to strategize the most effective course of investigation.

To order a copy of the APRI Manual and Video:
"The Prosecution of Rohypnol and GHB Related Sexual Assaults"
Contact: Tamara Kitchen
American Prosecutors Research Institute
99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
(703) 519-1695

**References**


**Sample Search Warrant**

IN THE MUNICIPAL COURT, ______________ JUDICIAL DISTRICT
COUNTY ____________, STATE ______________
SEARCH WARRANT
Case No._________________

The People of the State of ____________, to any sheriff, constable, marshal, police officer, or any other peace officer in the County of ________________:

Proof, by affidavit, having been this day made before me by (Officer Name), a peace officer employed by the (Law Enforcement Agency Name), that there is substantial probable cause for the issuance of the search warrant pursuant to Penal Code section (1524), you are therefore, commanded to make search at any time of the day, good cause being shown therefor, the premises, including all rooms, safes, storage areas, containers, surrounding grounds, trash areas, garages and outbuildings assigned to or part of the residence located at XXXX Bimly Avenue, Doway, California, County of San Diego, 9000; the residence is contained in a single story single family dwelling having a primarily light blue stucco exterior with avocado color wood trim, having the numbers "XXXX" located on the upper right corner of the attached garage; all rooms, desks, safes, storage areas, containers, and lockers assigned to the employee known as John XXXX at the business known as "XXXXX" located at XXXX Lera Street, Poway, California; the building is a white in color multi-story commercial building with the "XXXXX" written in orange on the north side of the building; and the vehicle, including the passenger compartment, trunk, engine compartment, living areas and all parts and containers therein or part of the vehicle described as an approximately 1990 Toyota automobile; the vehicle is primarily tan in color and bears California license plate number XXXXXXX, and is believed to be parked at or near the above described residence; for the following property, to wit: controlled substances, tranquilizers and other drugs including Rohypnol (also known as Flynitrazepam), and Gamma Hydroxy Butate (also known as GHB); any containers or packaging for the described drugs; to seize and analyze any glassware for the presence of such substances; clothing, including undergarments; jewelry including a gold bracelet; handwritings, fingerprints, papers, documents and effects which tend to show possession, dominion and control over said premises including keys, photographs, taped voice and/or video images, computer tapes or disks, pagers, anything bearing a persons' name, social security number, drivers' license number or other form of identification, including the interception of incoming calls during execution of the warrant, and if you find the same, or any part thereof, to bring it forthwith before me at the Municipal Court of the ______ Judicial District, County of __________, State of ________________, or to any other court in which the offense in respect to which the property or things is triable, or retain such property in your custody, subject to the order of this Court, pursuant to section (1536) of the Penal Code.

Given under my hand and dated this____ day of_____________, 200___

Time______________

_______________________________
Judge of the Municipal Court
County of_________________________

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