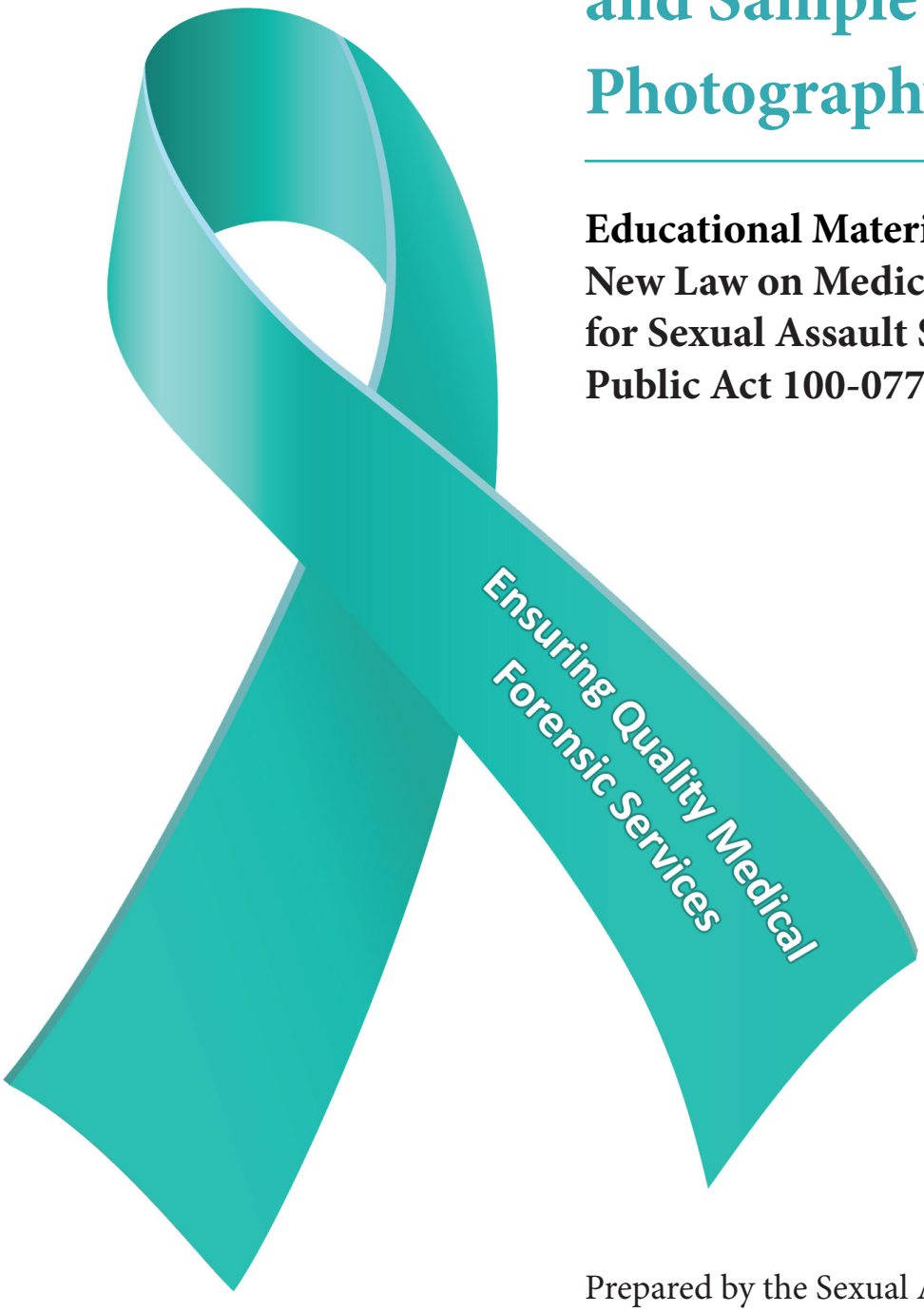
Photo Documentation and Sample Digital Photography Policy

Educational Materials Regarding New Law on Medical Forensic Services for Sexual Assault Survivors Public Act 100-0775



Prepared by the Sexual Assault Medical Forensic Services Implementation Task Force

Office of the Attorney General
State of Illinois

Illinois Department of Public Health
IDPH
Protecting Health, Improving Lives

Photo Documentation Required by a New Law on
Medical Forensic Services for Sexual Assault Survivors

Prepared by the Sexual Assault Medical Forensic Services Implementation Task Force

Public Act 100-0775 expands the Sexual Assault Survivors Emergency Treatment Act (SASETA) to ensure that all survivors of sexual assault are treated in a timely manner by health care professionals who are specially trained to conduct medical forensic examinations of sexual assault survivors. The Act is the product of a yearlong collaboration among the Department of Public Health, the Office of the Attorney General, child abuse pediatricians, sexual assault nurse examiners, and other medical providers, rape crisis advocates, children's advocacy centers, hospitals, state's attorney's offices, and state agencies.

Public Act 100-0775 established the Sexual Assault Medical Forensic Services Implementation Task Force (Implementation Task Force) and set forth numerous goals to accomplish before December 31, 2023. One of the goals is "to identify photography and storage options for hospitals to comply with the photo documentation requirements in Sections 5 and 5.1 [of SASETA.]" [410 ILCS 70/9.5(c)(3)]

This document contains information about the new law's photo documentation requirement, information about photography and storage options for hospitals, and a sample protocol on photo documentation. This document was prepared by the Implementation Task Force to satisfy its statutory mandate. Hospitals and Approved Pediatric Health Care Facilities are not required to use the photo documentation policy and may modify it to meet the needs of their organization and community. Please email sane@atg.state.il.us to request a Microsoft Word version of the sample photo documentation policy and attachments.

Please note this document is not a complete summary of P.A. 100-0775. The full text of the new law can be found at *http://www.ilga.gov/legislation/publicacts/100/100-0775.htm*.

The full text of SASETA can be found at:
http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1531&ChapterID=35&Print=True.

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Photo Documentation Requirement

Beginning July 1, 2019, Qualified Medical Providers and health care providers performing medical forensic examinations at facilities with approved sexual assault treatment plans must offer photo documentation of the examination to the sexual assault survivor and obtain the survivor's consent to take photos. [410 ILCS 70/5(a-5)(5)]

"Qualified medical provider" means a board-certified child abuse pediatrician, board-eligible child abuse pediatrician, a sexual assault forensic examiner, or a sexual assault nurse examiner who has access to photo documentation tools, and who participates in peer review. [410 ILCS 70/1a]

"Photo documentation" means digital photographs or colposcope videos stored and backed-up securely in the original file format. [410 ILCS 70/1a] If the sexual assault survivor consents to photo documentation of the medical forensic examination, Qualified Medical Providers and heath care providers should photograph the sexual assault survivor's injuries, anatomy involved in the assault, or other visible evidence on the sexual assault survivor's body. The photos and videos supplement the medical forensic history and written documentation of physical findings and evidence. Photo documentation does not replace written documentation of the injury and is part of the patient's medical record. [410 ILCS 70/5(a-5)(5)]

Consent

- A sexual assault survivor age 13 years old or older has the option to consent to or decline the collection of photographic evidence as part of the medical forensic examination. This is reflected on the Illinois State Police Patient Consent: Collect and Test Evidence or Collect and Hold Evidence form, which is part of the Illinois Sexual Assault Evidence Collection Kit. If the sexual assault survivor is under 13 years old, consent may be obtained from a parent or guardian. [77 Ill. Adm. Code 545.60(c)(2)]

- A sexual assault survivor may verbally withdraw consent for photographs and images to be taken at any time. The withdrawal of consent may apply to the rest of the examination or to a portion of the examination. If consent is withdrawn, the health care professional should document in the patient's medical record that consent was withdrawn and specify the scope of the consent withdrawal (e.g. the remainder of the examination, photos of the genitalia, or photos of a specific injury).

- A sexual assault survivor who consents to photo documentation, may, but is not required to report the sexual assault or sexual abuse to law enforcement. A survivor may allow a qualified medical provider or other health care professional provide information related to the sexual assault to law enforcement. [725 ILCS 203/30]

Storage

- Photo documentation is part of the sexual assault survivor's medical record and must be stored and backed up securely in its original file format in accordance with the facility's protocol. [410 ILCS 70/5.1]

Retention

- Records and photo documentation of sexual assault survivors 18 years of age or older must be retained by the Treatment Hospital, Treatment Hospital with Approved Pediatric Transfer (APT), or Approved Pediatric Health Care Facility (APHCF) for a period of 20 years after the date the record was created.

- Records and photo documentation of sexual assault survivors under the age of 18 must be retained by the Treatment Hospital, Treatment Hospital with APT, or APHCF for a period of 60 years after the sexual assault survivor reaches the age of 18 (i.e. until the date the survivor reaches or would have reached the age of 78).

Dissemination

- Photo documentation of the sexual assault survivor's injuries, anatomy involved in the assault, or other visible evidence on the sexual assault survivor's body may be used for peer review, expert second opinion, in a criminal proceeding against a person accused of sexual assault, a proceeding under the Juvenile Court Act of 1987, or in an investigation under the Abused and Neglected Child Reporting Act. [410 ILCS 70/5(a-5), 5.1. and 6.5]

- Records and photo documentation of medical forensic services may only be disseminated in accordance with Section 6.5 of SASETA and other State and federal law. A Treatment Hospital, Treatment Hospital with APT, or APHCF must not release information about the sexual assault to law enforcement unless the survivor consents to the release or law enforcement has a court order. [410 ILCS 70/5(a-5), 5.1. and 6.5]

Protocol

- Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, Out-of-State Hospitals and Approved Pediatric Health Care Facilities must develop and implement a protocol addressing the storage and backup of photo documentation and limiting access to photo documentation obtained during the provision of medical forensic services. The protocol must be included in treatment plans submitted to the Illinois Department of Public Health. [410 ILCS 70/5.1]

- The Implementation Task Force recommends Hospitals and Approved Pediatric Health Care Facilities work with State's Attorney Offices in their service area on the protocols related to photo documentation and dissemination to ensure that the sexual assault survivor's privacy is protected to the greatest extent possible and that the prosecutor has

sufficient access to photo documentation to hold the offender accountable. Sample stipulations used in criminal cases can be found on pages 22 and 24 of the Educational Materials for State's Attorney's Offices Regarding New Law on Medical Forensic Services for Sexual Assault Survivors at *http://www.illinoisattorneygeneral.gov/victims/saimplementationtaskforce/states_attorneys_office.pdf*.

Title: **Forensic Photography and Colposcope Videotaping for Sexual Assault Medical Forensic Examination Documentation**

I. **Purpose:**

To take and preserve digital photographs or colposcope videos to archive and maintain documentation of injuries and visible evidence findings before they are disturbed and collected. Digital photograph and colposcope video images are also useful for: reassuring the patient and/or caregiver regarding physical findings; avoiding additional examinations to confirm findings; allowing for later reviews for diagnostic, testimony preparation, quality assurance, or continuing education purposes; and creating a baseline for comparison to findings from follow-up visits or if other suspicions arise.

II. **Definitions:**

A. "Chain of Custody" means a formal, chronological documentation of the custody and possession of evidence. It is used to establish the integrity of the evidence collection in a court of law.

Note: Since chain of custody can greatly affect what happens in the court of law, contact your local State's Attorney's Office with any questions or guidelines on how to perform this process correctly.

B. "Forensic photographer" means a health care provider who has been trained in forensic photography. This training should include competency to ensure their ability to perform this skill.

C. "Identification Card" means any document which may be used to identify a person or verify aspects of a person's personal identity. This should include the following: patient's name, date of examination, medical record number, law enforcement report number (if known) and forensic photographer's name.

D. "Photo documentation" means digital photographs or colposcope videos stored and backed-up securely in the original file format.

E. "Qualified Medical Provider" means a board-certified child abuse pediatrician, a sexual assault forensic examiner, or a sexual assault nurse examiner who has access to photo documentation tools, and who participates in peer review.

III. **Policy Statements:**

A. All sexual assault patients, as part of the patient consent form, must be offered forensic photography as part of their medical forensic exam (Mandated by July 1, 2019 or sooner) (410 ILCS 70/5).

B. Forensic photographers, not law enforcement, should perform photo documentation due to the highly personal nature of the photography involved. Forensic photographers are responsible for forensic photography during the exam because patients are often more comfortable and less traumatized when forensic photographers take photographs.

C. Digital photos or colposcope videos taken during a medical forensic examination are considered part of the patient's medical record.

D. Each non-genital injury should have a minimum of three images: mid-range, close-up and close-up with a standardized measurement instrument to indicate the size of injury. Additional images may include a macro image and an image with the use of an alternative light source.

E. Images of genital injuries should be taken unless patient declines.

F. Any images of bodily injuries or genital injuries should also be indicated on the body map or genital diagrams located on the medical forensic documentation paperwork. Photo documentation complements written documentation of injury. Photo documentation does not replace written documentation of the injury.

G. The forensic photographer who has completed the medical forensic exam should ensure that the digital images or videos are preserved in the original file format and backed up in a secure image back-up system (see Attachment C for Photo Documentation Storage Options). Original files are never altered.

H. No image should ever be deleted.

I. The forensic photographer will ensure chain of custody until images can be stored properly.

J. Images should not be transferred to the law enforcement officer with the sexual assault evidence collection kit or other evidence collected by the healthcare provider during the medical forensic exam.

   1. Non-genital images may be released with a patient’s release for medical records or court order. Patients age 13 and older are

allowed by law to provide this release. For patients under the age of 13, release can be obtained from a parent or guardian. 77 Ill. Adm. Code 545.60(c)(2)

2. Genital images will only be released to the prosecutor or defense counsel in a criminal case with a patient's release for medical records or court order**.**

   Note: It may be beneficial to discuss with counsel if the photos can be sent directly to an expert instead of to counsel or if counsel is willing to meet to discuss the photographs prior to release due to the sensitive nature of genital images.

3. Refer to hospital medical release policy for any other questions related to medical records.

4. For patients age 13-17, the medical record may only be released with the consent of the minor or court order.

K. Any photographs taken by nonmedical personnel should include only the head and extremities and should not document findings on the torso or genital region.

IV. Standards:

A. Personnel

1. Forensic Photographer or Qualified Medical Provider

B. Equipment (See Attachment B)

1. Digital single lens reflex camera or equivalent, and/or colposcope
2. Camera and/or colposcope manual and/or quick reference guide
3. Extra batteries and battery charger (if appropriate)
4. Tripod/Monopod
5. Off Camera Flash or ring flash
6. Memory or media storage device (i.e. hard drive, flash drive or cd)
7. Card reader or cord to transfer images from device to compute
8. Computer

9. Measurement instrument (i.e. ABFO #2 Ruler or forensic scale)

10. Identification Card (bookend) including the patient's name, date of examination, medical record number, law enforcement report number (if known) and forensic photographer's name

11. Cleaning supplies

C. **Process**

1. Explain photo documentation procedures to patients. Taking photographs of patients in the aftermath of an assault can be retraumatizing. To help reduce the chances of retraumatization, help patients understand the purpose of photography in forensic evidence collection, the extent to which photographs will be taken and procedures that will be used, potential uses of photographs during investigation and prosecution (especially anogenital images if taken), and the possible need to obtain additional photographs following the exam.

2. Written consent must be obtained prior to digital photography or colposcope videotaping. Consent should address subsequent use of the images including court/criminal proceedings, peer review, expert second opinion and the use of photography for education or training purposes.

   Note: If you do not have assent from the patient for all or part of the imaging, their choices must be honored.

3. Perform "pre-shoot" checklist of equipment including: clean lens/LCD/view finder, check initial digital camera or colposcope settings and ensure necessary equipment and supplies are available.

4. Respect the patient's need for modesty and privacy. Drape them appropriately while taking photographs. Shield uninvolved face, breast and genital areas whenever possible.

5. All images should be taken at 90° (perpendicular) to the patient or the injury.

6. Initial image should be of an identification card (bookend) including the patient's name, date of examination, medical record number, law enforcement report number (if known) and forensic

photographer's name. The identification card should be the only image in this photo (i.e. do not ask the patient to hold the card).

7. The second image should be a full body digital image including the patient's face for identification purposes. The patient should be photographed in the clothing that they arrived in whenever possible. If they were already changed into a gown, then photograph the patient in their gown.

8. For non-genital injuries, start with a mid-range photo identifying the area to be photographed. Second obtain a close-up photo with a standardized measurement instrument where the area fills the frame. Finally, take a close-up photo without a standardized measurement instrument again with the area filling the frame. The standardized measurement instrument should be on the same plane and adjacent to the injury to indicate the size of injury.

9. Take images of genitalia with patient's consent. Genital images should include an overall image prior to any manipulation and additional images of injuries including the technique utilized to identify the injury.

10. Throughout the exam take as many images as needed to accurately document the presence or absence of injury and additional findings.

11. The final image should be of the same identification card (bookend) used at the beginning of photos including the patient's name, date of examination, medical record number, law enforcement report number (if known) and forensic photographer's name. Again the identification card should be the only image in this photo (i.e. do not ask the patient to hold the card).

12. Digital images or videos must be preserved in the original file format and backed up in a secure image back-up system (see Attachment C for Photo Documentation Storage Options). Original files are never altered. The forensic photographer will ensure chain of custody until images can be stored properly. **(INCLUDE YOUR SPECIFIC HOSPITAL POLICY FOR IMAGE STORAGE HERE)**

13. Only authorized individuals should access photo documentation. Any person without authorization who accesses the photo documentation should be administratively disciplined according to facility policy.

14. If an image is to be altered for peer review, education or testimony, create a new file so that the original image remains unchanged and record all details of the changes or additions.

    Note: If you are unfamiliar with how to do this step without altering the original image, please do not make any alterations as the integrity of the original image is the priority.

15. Make available image copies in “read-only” format.

16. Photo documentation should be stored to comply with the requirements of the Sexual Assault Survivors Emergency Treatment Act (410 ILCS 70/5.1).

    I. Photo documentation shall be stored and backed up securely in its original file format in accordance with facility protocol.

    II. Photo documentation of a sexual assault survivor under the age of 18 shall be retained for a period of 60 years after the sexual assault survivor reaches the age of 18.

    III. Photo documentation of a sexual assault survivor 18 years of age or older shall be retained for a period of 20 years after the record was created.

D. **Documentation**

1. Documentation in the patient’s medical record should indicate consent for digital photography or colposcope videotaping.

2. Indicate maintenance of chain of custody for images.

3. If photos are stored separate from the patient’s medical record, document where photos can be obtained with a patient’s release of medical records or a court order.

4. Document equipment used to perform forensic photography and number of photos taken.

V. References:

A National Protocol for Sexual Abuse Medical Forensic Examinations Pediatric. U.S. Department of Justice Office on Violence Against Women, April 2016. *https://cdn.ymaws.com/www.safeta.org/resource/resmgr/protocol_documents/national_pediatric_protocol_.pdf*

A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents, Second Edition. U.S. Department of Justice Office on Violence Against Women, April 2013. *https://c.ymcdn.com/sites/iafn.site-ym.com/resource/resmgr/Docs/SAFE_PROTOCOL_2012-508.pdf*

Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient, Second edition. American College of Emergency Physicians, January 2013. *https://www.acep.org/globalassets/new-pdfs/sexual-assault-e-book.pdf*

ICASA Law Book
http://ftp.icasa.org/docs/fy18%20documents/law%20book%202018%20-%20through%201-1-2018%20-%20final.pdf

Sexual Assault Survivors Emergency Treatment Act (410 ILCS 70)
http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1531&ChapterID=35

VI. Attachments:

A. Optional Photo Documentation Consent (This should be considered if your general hospital consent does not cover peer review, expert second opinion and the use of photography for education and training purposes.)

B. Equipment Options

C. Photo Documentation Storage Options

D. Identification Card

Facility Signature: _____

Date Effective:

Revision Date:

Date Approved:

Attachment A

(HOSPITAL NAME) **Consent to Photograph**

I, _____ authorize (HOSPITAL NAME) to take photographs of my body as a patient at (HOSPITAL NAME).

(Any patient 13 years old or older may provide consent for photography. Any patient under the age of 13, consent may be provided by the parent or guardian (410 ILCS 70/5.5).

I understand that:

a) The consent is given with the knowledge that there will be no opportunity to review or approve the finished product before use.
b) These photographs or video recordings may only be used for the purpose of medical diagnosis, treatment and evaluation and /or medical education and legal investigation. I waive ownership rights in such photographs, video recordings and images used for those purposes.
c) All images taken will be protected and stored securely
d) Genital photographs are highly sensitive and will only be released pursuant to a validly issued subpoena, court order or with consent from the patient/parent/guardian.

In addition to the above:

Initial if applicable

☐ I authorize such pictures to be published and republished in professional journals or medical books or used for any other purpose in which the staff of (HOSPITAL NAME) may consider proper in the interest of medical education, knowledge or research.

Although I have given permission to the publication of all details and pictures concerning my case, it is especially understood that I shall not be identified by name or facial features.

Date: _____ Time:_____ Signature:_____
Patient or Legally Authorized Representative

Date: _____ Time: ____ Signature:_____
Witness

This document has been created by the Sexual Assault Medical Forensic Services Implementation Task Force pursuant to 410 ILCS 70/9.5(b)(3). The sample photo documentation policy and attachments are templates provided as a resource for hospitals and approved pediatric health care facilities. Use of these documents is not required and they may be modified to meet the needs of the facility

Attachment B

Equipment Options:

Photographic documentation of injury or other visible evidence on the patient's body can supplement the medical forensic history and the written documentation of physical findings and evidence. Clear, accurate and undistorted photographs are necessary. Therefore, digital photography equipment should have:

1) The ability to clearly document the level of injury;
2) A good-quality macro lens to capture subtleties in texture and color and improve identification of microscopic trauma that may not be detected visually by qualified medical providers or other health care professionals;
3) Adjustable shutter speed and lens aperture to control exposure;
4) Flash including a ring flash to ensure the best quality of orifice images;
5) Sharp focus and the ability to keep the camera steady by the use of a tripod;
6) The ability to embed the date/time and a variety of other technical data in each image (commonly referred to as metadata).

Consultation with local qualified medical providers and local criminal justice agencies regarding the types of equipment that should be used is encouraged because they are often knowledgeable regarding photographic and video equipment and their effectiveness in capturing images.

Suggested Equipment:

- Digital Single Lens Reflex (DSLR) Camera: Uses a large image sensor which improves image quality, ability to use multiple lenses including a lens with a built-in ring flash and depth of field that improves focus.
- Colposcope: Enhances viewing microscopic trauma, may be more difficult for clinicians to use without regular practice, may be cost prohibitive.
- Ring Flash (either built in or an attachment): Ring flash is needed to improve the ability to photograph body orifices like the oral cavity and cervix. Without a ring flash, a standard flash inhibits the cameras ability to correctly photograph these areas.
- Tripod: Image stability and ability to capture images while performing specialized examination techniques.
- Memory Card
- Foot pedal or remote (Camera specific): Allows clinicians to have a hands free ability to take photographs.
- Extra Batteries (Camera specific)
- Battery Charger (Camera specific)
- Scale for photography and injury documentation (ABFO #2): Use a forensic scale or ruler for size reference in photographs.

Digital Single Lens Reflex (DSLR): Uses a large image sensor which improves image quality, ability to use multiple lenses including a lens with a built-in ring flash and depth of field that improves focus.

DSLR: Canon EOS M5 Body (must also purchase a separate lens): Used by the OAG SANE Program: Jaclyn Rodriguez jrodriguez@atg.state.il.us 	Macro lens with built in ring flash: EF-M 28mm f/3.5 Macro IS STM (must also purchase a camera body) Used by the OAG SANE Program: Jaclyn Rodriguez jrodriguez@atg.state.il.us
Secure Digital Forensic Imaging: SDFI The system includes the software that securely stores the images, camera, tripod, foot pedal, ring flash, batteries, etc. SDFI has a secure portal for image transferring. When images are sent to others they are password protected with a time limit for when they can be accessed. Used by Advocate Aurora Health: Ann Adlington ann.adlington@advocatehealth.com 	Cortexflo The system includes the software that securely stores the images, camera, tripod, voice activated commands, foot pedal, ring flash, batteries, etc. When images are sent to others they are password protected with a time limit for when they will destruct. Used by • AMITA Health St. Mary's Hospital Kankakee: Christy Alexander christy.alexander@amitahealth.org • OSF St. Francis Medical Center; Stefanie Clarke stefanie.k.clarke@osfhealthcare.org

Colposcope: Equipment with a magnifying lens ranging from 4x to 30x power and can have a 35mm camera or video camera attachment. Forensic photographers can use the colposcope to obtain magnified images of the oral pharynx, genital, and rectal areas.

Lutech: LT-300 HD Digital Video Colposcope Options for straight wheeled stand, swing arm stand and cart for attaching computer for capture/storage of images. 	Welch Allyn Video Colposcope or MedGyn Video Colposcope Per Welch Allyn site, no longer for sale, but widely available from medical supply and re-furbish re-sale sites.
Leisegang Optik Model 2 Photo/Video Colposcope: Options for embedded camera or connection to image management software 	Mobile ODT: EVA SANE Combines the capabilities of a video colposcope and a digital camera.

Additional Supplies (dependent on initial system purchase)

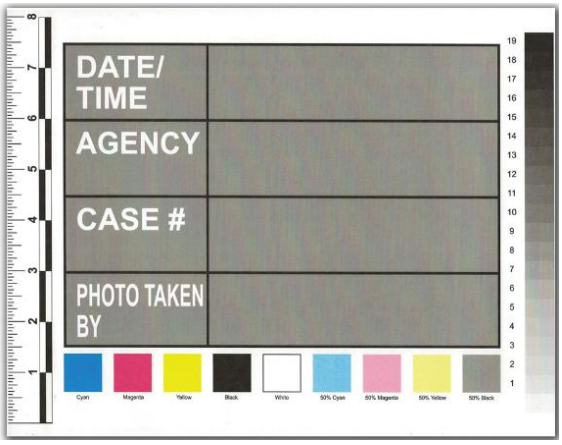
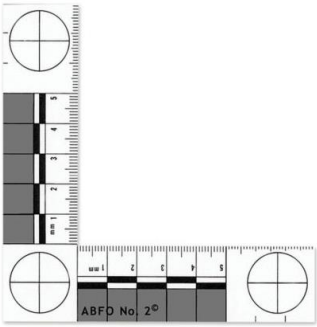
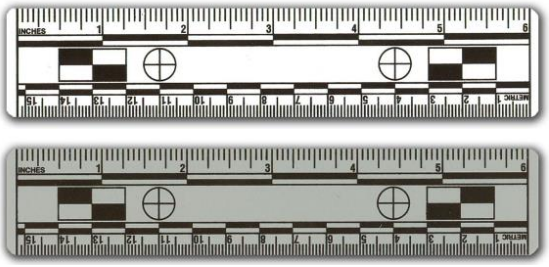
Separate ring flash: May be required to add onto a camera that has already been purchased that does not have this capability (check compatibility with your camera type)

Memory card with sufficient storage capacity

Adjustable tripod with quick release

Foot pedal: Necessary for hands free photography (check compatibility with your camera type)

Wireless remote: Necessary for hands free photography (check compatibility with your camera type)

Hand Map Available for free from SDFI 	Identification Card (bookend) Available for free from SDFI **Date:** **Name:** **Case #:** **Photographer:** **_____:** **D.O.B:**(mm/dd/yy) or **Age:** Available for purchase from ShopEVIDENT 
Scales for photography and injury documentation ABFO #2 	Scales for photography and injury documentation Straight scale 

Attachment C

Photo Documentation Storage Options

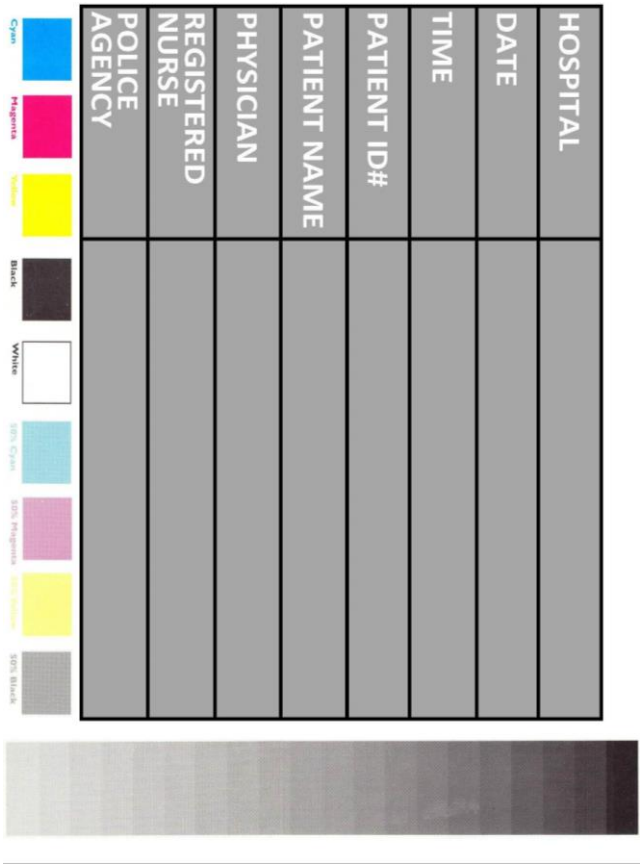
Digital images or colposcope videos must be preserved in the original file format and backed up in a secure image back-up system to ensure that there is an original image available for legal purposes. In addition, if one image is altered or destroyed, a second image in original file format will still exist.

Pick 2 of the storage options below:

1) Original file storage in original file format **and**
2) Backed up in a secure back-up system

- Store securely in the patient's medical record: You must be able to ensure that the image is stored in original file format and not compressed
    - Password protected or some other type of security to ensure **very limited** access to these photos
    - Set-up education for medical records department regarding the release of images, including additional protections for genital images
    - Before releasing photos related to a sexual assault, contact the SANE Program or Risk Management for release
- Hard drive (internal or external): Where the photos can be accessed by more than one authorized user
- Each patient's images get their own memory card or flash drive. The card or flash drive is labeled with the patient's info and stored in a locked box/cabinet in the SANE office, manager's office or medical records. When copies are requested they are placed on an encrypted password protected flash drive and given to the requestor. (If this option is chosen for both original file storage and secure back-up, then the two memory cards or flash drives must be stored in separate locations within the facility.)
- Burn a CD. Encryption of the CD is strongly recommended. Label CD with patient's information including date of exam, number of photos and name of the individual that created the CD. Store in a secure location with limited access.
- Equipment options: SDFI and CortexFlo (these two systems have the capacity to store images)

Attachment D



HOSPITAL	
DATE	
TIME	
PATIENT ID#	
PATIENT NAME	
PHYSICIAN	
REGISTERED NURSE	
POLICE AGENCY	

SEXUAL ASSAULT MEDICAL FORENSIC SERVICES IMPLEMENTATION TASK FORCE MEMBERSHIP

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Representing child abuse pediatricians providing medical forensic services in rural locations

Monika Pitzele, M.D., Ph.D.
Attending Physician, Mount Sinai Hospital, Chicago
Representing emergency physicians

Polly Poskin
Executive Director, Illinois Coalition Against Sexual Assault
Representing sexual assault survivors and rape crisis centers

Senator Sue Rezin
Representing the Illinois Senate

Jaclyn Rodriguez, BSN, BS, RN, SANE-A
SANE Coordinator
Representing the Office of the Illinois Attorney General

Karen Senger, Task Force Co-Chair
Division Chief, Division of Health Care Facilities and Programs
Representing the Illinois Department of Public Health

Representative Mike Unes
Representing the Illinois House of Representatives