

Alcohol and Drug Facilitated Sexual Assault

The purpose of this fact sheet is to outline the issues that arise in seeking justice through civil litigation. It is important to remember, however, that the only way for a survivor to know for certain whether she has a viable civil legal claim against the perpetrator or any another party is to contact a lawyer to discuss the specifics of the case. Non-lawyers should not give legal advice. See also the MNCASA Fact Sheet on the Minnesota Child Victim Act for more information about civil litigation in cases of childhood sexual abuse.

<p>What is drug facilitated sexual assault?</p>	<p>Drug facilitated sexual assault (DFSA) is taking advantage of the use of alcohol or other drugs that render a victim incapacitated or physically helpless in order to accomplish a sexual assault. DFSA can occur when an offender "slips a Mickey" to the victim - or secretly drugs a victim. It can also occur if the victim knowingly ingests alcohol or other drugs but does not consent to sexual assault.</p>
<p>Does DFSA really happen?</p>	<p>Advocacy programs and medical personnel around Minnesota report victims describing intoxication and/or blacking out. In 2008, out of 760 criminal sexual conduct cases, alcohol was present in 69% of cases; cocaine was present in 8% of cases; and THC was present in 6% of cases. The most common drug used to facilitate sexual assaults is alcohol because the perpetrator does not have to convince the victim to "try it," and it enhances the effects of other depressant drugs (e.g. Benadryl). GHB may also be used but is less prevalent. Statistics from the Minnesota Bureau of Criminal Apprehension (BCA) (state crime lab).</p>
<p>Why are DFSA cases so difficult for prosecutors and law enforcement to address?</p>	<p>Numerous factors can work against the investigation of a suspected DFSA case. Initially, the victim was likely blacked out and has no memory of the events during, or even before the sexual assault. S/he may be groggy for a long period of time after waking up, and may thus delay reporting the incident.</p> <p>The drugs commonly used to secretly incapacitate a victim eliminate very quickly from the body, some as quickly as eight hours from ingestion. Thus,</p>

	<p>they may not be present if the victim reports to the emergency room a day after the assault.</p> <p>Finally, without evidence of drugs or the quantity of alcohol in a victim's system, juries may have a difficult time knowing just how helpless the victim may have been when she was assaulted, making a consent defense by the offender more likely to succeed.</p>
What can be done to improve the collection of the vital evidence of drugs or alcohol in the victim's system?	The BCA is now recommending that a urine and blood sample be collected from <i>every</i> person who is given a sexual assault forensic exam, regardless of a report of DFSA symptoms. The samples should be collected at the very beginning of the exam, and refrigerated until a decision can be made to have them tested for the presence of drugs
What if a victim has voluntarily ingested alcohol or drugs?	It is imperative that victim advocates work with their local law enforcement and prosecution to gain an agreement that minors who use alcohol or people who use recreational drugs will not be prosecuted for those violations of the law. These will help ease the concerns of victims that their drinking or drug use detected in the urine sample will not be used against them. For best practices protocols for system agencies, contact SVJI.
What can victim advocates do to assist victims in these circumstances?	<ul style="list-style-type: none"> • The most important thing for advocates and volunteers to know is that the first bladder void is crucial. Thus, in speaking with victims who have been recently assaulted, encourage them to either wait to urinate at the ER, or collect the first bladder void in a jar to bring in with them. This urine sample may be the only thing which contains the evidence to show that they were drugged. • Discuss concerns the victim may have regarding the urine sample. Remember that the victims' concerns are valid and you are there to assist them in making an informed decision. The victim may refuse the urine or blood sample all together. • Support the victim and their decisions. You are there to assist the victim, not make decisions for them. It is crucial that you explain the importance of a urine sample in the investigative process. In doing this, make sure not to instill unnecessary fear in the victim. If the victim does not feel they were drugged, explain it as standard procedure for the forensic exam.

What can victim advocates and programs do to educate the community about the need for immediate collection of this evidence?	<p>Victim advocates can do much in their communities to educate on the issue of DFSA and the importance of the first bladder void. For example:</p> <ul style="list-style-type: none">• Emphasize the importance of the first bladder void in cases of DFSA to volunteers in the initial advocate training process. Revisit the issue during follow-up trainings. Also, check with crisis line volunteers periodically about the issue and reiterate the importance of discussing the issue of DFSA with victims on the crisis line.• When doing local sexual violence presentations/trainings to schools, churches, or other organizations stress the frequency of DFSA.• Make pamphlets, brochures, posters, or stickers with your program information and information on DFSA and make them available at schools, medical facilities, law enforcement agencies, bars, etc. It may be especially useful to put them in or near restrooms.• When training local professionals include discussions regarding the importance of collecting this evidence.
---	---

The Sexual Violence Justice Institute
Minnesota Coalition Against Sexual Assault
161 St Anthony Ave Suite 1001
St Paul, MN 55102
651.209.9993
www.mncasa.org

Updated July 2018