



## Sexual Assault Forensic Examination (SAFE) Best Practices Advisory Group

### MEETING NOTES

Wednesday, March 20, 2024 12:00 – 2:30 p.m. PDT

1.	<b>Call to Order &amp; Establishment of Quorum</b> <ul style="list-style-type: none"><li>• Quorum established, see member attendees on page 3.</li><li>• The meeting agenda was adopted.</li></ul>
2.	<b>Legislative Session Debrief</b> <ul style="list-style-type: none"><li>• <a href="#">Senate Bill 5937</a> (Sen. Dhingra): SAFE recommendations on crime victim’s compensation, statewide SANE coordination, access to forensic exams for minors.</li><li>• Senator Dhingra thanked Maggi Qerimi and SANE nurses for their input on the bill.</li><li>• <a href="#">House Bill 1999</a> (Rep. Orwall): Fabricated intimate images</li><li>• Representative Orwall thanked Senators Peterson and Mullet, Representative Mosbrucker, and Leah Griffin for their help.</li><li>• <a href="#">House Bill 2076</a>: (Reps. Orwall/Mosbrucker) trafficking and sexual exploitation.</li><li>• <a href="#">House Bill 2048</a>: (Rep. Mosbrucker) Supervision of DV in criminal sentencing loophole.</li><li>• <a href="#">House Bill 1618</a> (Rep. Farivar): SAFE recommendation on eliminating the statute of limitations for child sexual abuse.</li><li>• Rep Orwall praised Rep. Farivar for bringing this bill forward.</li><li>• <a href="#">House Bill 1958</a> (Rep. Berry): SAFE recommendation on stealthing.</li><li>• Leah Griffin commented on the transformative impacts of the bills on the statute of limitations and stealthing.</li><li>• Nicole Stephens expressed appreciation for the momentum behind sexual assault work.</li><li>• Heather McLeod mentioned <a href="#">Senate Bill 6127</a>, sponsored by Senator Liias, which will require hospitals to provide HIV post-exposure prophylaxis drugs for survivors.</li><li>• Rep. Orwall also mentioned the trafficking components of Senator Dhingra’s bill, <a href="#">SB 6006</a> and the <a href="#">fertility fraud bill</a>. She noted that the <a href="#">Student Bill of Rights</a> didn’t pass, but she learned a lot and may engage in a listening tour.</li></ul>
3.	<b>Updates: Member share</b> <ul style="list-style-type: none"><li>• Sara Owen, rural advocate and prevention program manager of Beyond Survival, which serves a large, sparsely populated county, Grays Harbor. The program serves 30 schools and has found that it is very difficult to teach prevention curriculum in schools due to a vocal minority of parents. Beyond Survival has tried creative approaches, including teaching at-risk freshman girls about sexual assault, participating in resource fairs, and sending resources to school counselors. Sara noted that half of the schools opted out of questions on the statewide Healthy Youth Survey that pertain to LGBTQ issues, survival sex, and unwanted touching from adults. The program’s goal is to educate youth so they know where where to go if inappropriate behavior occurs, such as being pressured to provide nude photos. Beyond Survival has also teamed up with NW Justice Project on training for</li></ul>

law enforcement and prosecutors on best practices to avoid re-victimization when interacting with trafficking survivors.

- Co-Chair Mosbrucker offered to reach out to Erin ([of Erin's law](#)) on tips for getting into schools.
- Co-Chair Orwall mentioned a potential bill next year supporting survivors in the K-12 system and also noted that she is looking at mandatory reporting.
- In regards to the Healthy Youth Survey, participants asked who determines which questions to ask. Sara Owen explained that in her experience, some counselors and administrators are supportive, but they are concerned about the School Board and parents.
- Carlyn Sampson shared similar experiences with getting into the schools and asked what can be done if they send out informational packets and receive no response or limitations on what information they can provide.
- Co-Chair Mosbrucker indicated that she will follow-up. Schools can opt-out of certain aspects.

#### 4. **Presentation and Discussion: Drug-facilitated Sexual Assault (DFSA) and Toxicology Testing**

*Reference PowerPoint slide deck attached*

- Co-Chair Mosbrucker asked if we do enough education on checking drinks. She emphasized that people should not have to check their drink, but if it is convenient for them to do so, it may help avoid a negative experience.
- Leah Griffin noted that checking a drink may protect that individual, but the perpetrator will go on to predate. She recommended not putting the onus on the victim at all. Sara Owen also recommended putting the onus on the perpetrator.
- Annette Simpson stated that it is important to remember that most of the time, alcohol is used, so a test strip won't help. Jo Shelton added that as much as 70 percent of DFSA involves alcohol only.
- Megan Allen noted that drugging in bars is also being used to rob people. Engaging these establishments and the community may present an opportunity to reach more people than would be interested in sexual assault issues.
- Riddhi Mukhopadhyay added that there is a lot of interest in bystander training in the nightlife/bar community. Some are afraid of facing liability for kicking people out. Sexual Violence Law Center did training in several counties prior to the pandemic. There is also a program in New York.
- Brian Capron of the toxicology lab explained that timing for DFSA is complex as it involves blood and urine. If it is longer than 48 hours, there is no need to send blood specimens, but otherwise, send both blood and urine.
- The standard drug screening covers 100+ substances, including benzodiazepines, opioids, stimulants, anti-depressants, hallucinogens and amphetamines. They do not test for GHB. Brian stated that they have not seen much use of Ambien or Rohypnol.
- Annette Simpson shared that she heard that the lab prioritizes overdoses and car accidents over sexual assault.
- Brian Capron explained that the lab works on each case as it comes in. On occasion, they expedite a case, such as the recent crash that killed Trooper Gadd. Agencies can also make a rush request related to a severely violent felony and the lab will determine if the case meets criteria for a rush. Even rush cases are not turned around in 45 days.
- Brian Capron explained that the lab is facing a significant backlog. The lab only has 10-11 toxicologists for 17,000 cases. Typically cases increase 4 percent per year; however, last year, case numbers increased by 13 percent and they are on track to do the same this year.
- The turnaround time for DUI cases is 6-9 months, while sexual assault cases run 12-18 months.

	<ul style="list-style-type: none"> <li>• The lab is in the process of hiring, but it takes 12-18 months of training before people can work cases. Getting qualified staff in the door is hugely challenging. Finding people with experience is particularly challenging; the pay is a factor.</li> <li>• Brian Capron noted that temporary employees won't help because of the training process. The lab can send specimens to outside labs for \$476. There is also the added cost of calling a witness from the outside lab to testify, which can run in the thousands.</li> <li>• Participants discussed that there isn't one solution to the problem.</li> <li>• Brian Capron posited that turnaround times of 45-60 days for DUIs and 60-90 days for sexual assault may be possible. He would need to talk to his leadership about the resources that would be needed.</li> </ul>
5.	<p><b>Group Discussion: Draft 2024 Work Plan (All)</b></p> <ul style="list-style-type: none"> <li>• Co-Chair Mosbrucker expressed interest in work on the neurobiology of trauma and underreporting.</li> <li>• Co-Chair Orwall stated that she was happy to revisit the Survivor Bill of Rights and is interested in a Campus Bill of Rights.</li> <li>• Trauma-informed training for the courts also came up.</li> <li>• Members interested in providing additional feedback on the work plan can contact staff.</li> </ul>

<i>Advisory Group Affiliation</i>	<i>Name</i>	<i>Present</i>
Washington State House of Representatives	Rep. Gina Mosbrucker, Co-Chair	Yes
Washington State House of Representatives	Rep. Tina Orwall, Co-Chair	Yes
Washington State Senate	Sen. Manka Dhingra	Yes
Washington State Senate	<<Vacant>>	
Survivor Representative	Leah Griffin	Yes
Survivor Representative	Nicole Stephens	Yes
Washington State Patrol (WSP)	Kristina Hoffman	Yes
Washington Association of Sheriffs and Police Chiefs (WASPC)	Assistant Chief Michael McNab	Yes
Washington Association of Prosecuting Attorneys (WAPA)	Maggi Qerimi	Yes
Washington Defender Association (WDA)	Sarah Hudson	Yes
Office of the Attorney General (AGO)	Laura Twitchell	Yes
Association of Washington Cities (AWC)	Flora Diaz	Yes
Washington Association of County Officials (WACO)	Timothy Grisham	No
Washington Coalition of Sexual Assault Programs (WCSAP)	Blanche Barajas	No
Office of Crime Victims Advocacy (OCVA)	Mikah Semrow	Yes
Washington State Hospital Association (WSHA)	Jacqueline Barton True	Yes
Sexual Assault Nurse Examiner (SANE)	Annette Simpson	Yes
Criminal Justice Training Commission (CJTC)	Andrea Piper-Wentland	No
Law Enforcement Officer, Rural	Det. Steve Evitt	Yes
Law Enforcement Officer, Urban	Sgt. Katie Savage	No
Prosecuting Attorney, Rural	Anita Petra	No
Community-Based Advocate, Rural	Sara Owen	Yes
Community-Based Advocate, Urban	Carlyn Sampson	Yes



# Drug-Facilitated Sexual Assault (DFSA)

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SEXUAL ASSAULT FORENSIC EXAMINATION (SAFE) BEST PRACTICES ADVISORY GROUP MEETING

MARCH 20, 2024



# Defining what we mean by DFSA

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- Drug-facilitated sexual assault (DFSA) occurs when alcohol and/or drugs are used to compromise an individual's ability to consent to sexual activity
- "Drugs" include illegal substances, prescription drugs, over-the-counter medications, or alcohol
- DFSA scenarios could look like:
  - Initiating sexual contact with someone because they are intoxicated and less likely to resist
  - Coercing or pressuring someone beyond their comfort zone
  - Ignoring or refusing to help someone who says they've had too much to drink or is having a negative drug experience and needs help
  - Refusing to tell someone what is in their drink or the dosage of drug they are ingesting

(Alotaibi et. al, 2023; U.S. Dept. of Justice Drug Enforcement Administration, 2017; RAINN, 2019)



# Signs and symptoms of DFSA

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- Unexplained soreness or injuries
- Waking up in an unexpected place
- Recollection of the assault is patchy
- Remembering the assault but unable to speak or move at the time
- Intoxication level did not correlate with the amount of alcohol consumed
- Waking up feeling “fuzzy” or overly hungover
- Memory lapse, time that can’t be accounted for
- Dizziness, disorientation
- Confusion
- Lack of muscle control, vomiting, diarrhea

# Myths and misconceptions surrounding DFSA



MYTH or MISCONCEPTION	REALITY
DFSA happens infrequently	<ul style="list-style-type: none"><li>• At least 50% of all sexual assaults, and as many as 62%, involve drugs and/or alcohol (Teravskis et al., 2022)</li><li>• Of college students, as many as 90% of all sexual assaults involve drugs and/or alcohol (Thompson, 2021)</li><li>• DFSA has been increasing nationwide since the mid-1990s, in part due to the availability and variety of drugs (Alotaibi et al, 2023)</li></ul>
Rohypnol (AKA a “roofie”) or GHB are most commonly used	<ul style="list-style-type: none"><li>• Alcohol is the most commonly used substance. However, a wide range of drugs are often used including but not limited to marijuana, cocaine, ketamine, ecstasy, cough syrup, allergy medications, opioids, and benzodiazepines (e.g., xanax, valium) (Fiorentin and Logan, 2020; Anderson et al., 2017)</li></ul>
DFSA is often reported	<ul style="list-style-type: none"><li>• Victims of DFSA are less likely than other sexual assault victims to report and can experience higher rates of PTSD and emotional trauma (Kilpatrick et al., 2007)</li></ul>



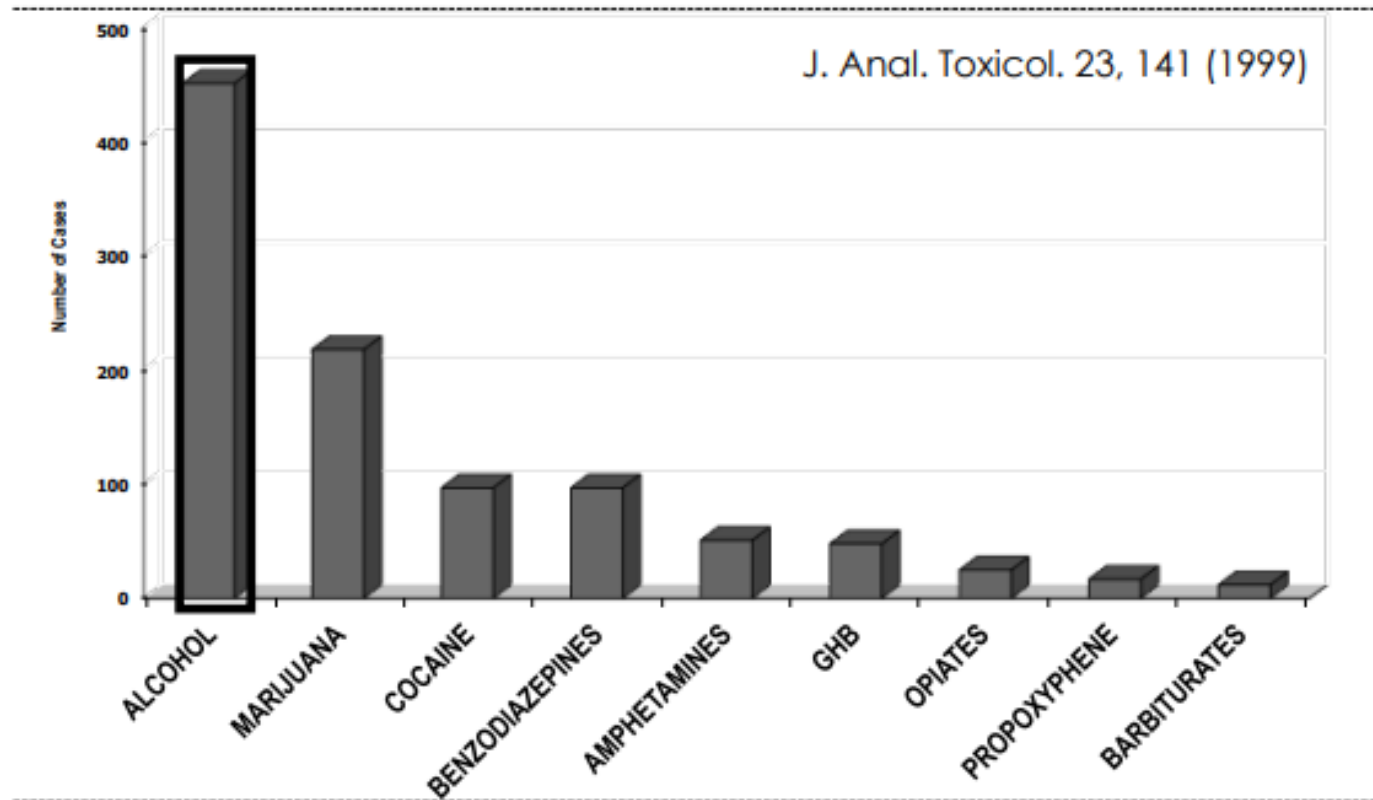
# Myths and misconceptions continued...

MYTH or MISCONCEPTION	REALITY
DFSA is not “real” if the victim was voluntarily intoxicated	<ul style="list-style-type: none"><li>Perpetrators are solely responsible for a sexual assault. Placing too much emphasis on “protecting your drink” can perpetuate victim-blaming and make survivors feel responsible for what happened to them (Winstock &amp; Aldridge, 2019)</li></ul>
Perpetrators are often strangers	<ul style="list-style-type: none"><li>Perpetrators are known to the victim in an estimated 80% of all cases (Negrusz, 2013 pg. 290; Kilpatrick et al., 2007)</li></ul>
The law clearly defines DFSA	<ul style="list-style-type: none"><li>Laws addressing DFSA <u>across the U.S.</u> vary and do not consistently define the level of intoxication, or the method of intoxication, that prevents a victim from consenting (SAKI TTA &amp; AEquitas, and Teravskis et al., 2022)</li></ul>





# Prevalence of drugs used in DFSA



AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



# Washington's criminal statutes

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- A victim is incapable of consent due to either voluntary or involuntary intoxication
  - Consent is defined as “at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact” (RCW 9A.44.010(2))
  - Mental incapacity is defined as a “condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.” (RCW 9A.44.010(7))
  - Physically helpless is defined as “a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.” (RCW 9A.44.010(12))
- Indecent Liberties, RCW 9A.44.100(1)(b)
- Rape in the Second Degree, RCW 9A.44.050(1)(b)
- Rape in the First Degree, RCW 9A.44.040: Senate Bill 5937 (2024), expanded the definition to include “when a perpetrator knowingly furnishes a victim with drugs without their knowledge, rendering the victim incapable of consent”



# Survivor and advocate perspectives

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*Contributions provided by the WA State Sexual Assault (CSAP) Working Group (cont'd on next slide)*

- Many survivors contact community sexual assault programs each year seeking resources for rapid toxicology screens as they suspect DFSA
- Survivors express significant fear of criminal recourse, system shame, or dismissal of their case if there is history of voluntary drug or alcohol use
- Criminal justice barriers include toxicology testing/results timeline, law enforcement disbelief/bias, and inconsistent toxicology result interpretation by prosecutors, impacting charging decisions
- Voluntary vs. involuntary drug/alcohol use should not determine legitimacy of DFSA claim - just the applicable toxicology screen to determine consent
- Broader public safety concern with drug/alcohol used to facilitate robberies



# Sexual assault advocate priorities

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- 1. Explore how access to rapid drug/alcohol testing can be improved, in addition to a shorter timeframe for state toxicology lab results:** consider a public health model that offers multiple avenues for victims to test, compare DFSA with DUI investigations
  - Increased access to rapid results can support survivors' pursuit of a criminal protection order, in addition to criminal investigations
  - Many just want to know toxicology results for their own health/wellness
  - For some, it's a first step to determining if they will report
- 2. Expand protections:** survivors hope for immunity from disclosure of voluntary drug/alcohol use and would benefit from expanded rape shield laws prohibiting admission of past use
- 3. Collect data to inform policy**
  - Consider a DFSA mapping project: CSAPs can attempt tracking; Hospitals? Law Enforcement?
  - UW had a research dept. focused on alcohol and sexual assault, connect for support
- 4. Increase training to law enforcement and prosecutors** on interpretation of toxicology results

# Considerations for investigation & prosecution of DFSA

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- Toxicology
- Capacity to consent
- Overcoming a consent defense
- Offender conduct
- Victim responses to trauma
- Probative evidence of the crime

(SAKI TTA & AEquitas; IACP Drug/Alcohol-Facilitated Sexual Assault Webinar)



# Q&A on DFSA toxicology in Washington

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Q: What is the current timeframe for DFSA toxicology test results?

A: On average, 12-18 months

Q: Why isn't toxicology part of the standard sexual assault kits (SAK)?

A: No single reason was found but some of the context provided: toxicology is not required for every case, toxicology is sent by law enforcement to a different lab than SAKs for testing and there are strict refrigeration guidelines which are not the same for SAKs, law enforcement is required to initiate toxicology testing unlike for SAKs, which a survivor can initiate without contacting law enforcement.

Q: What can toxicologists offer as expert witnesses?

A: Generally, they can provide information regarding the testing performed and compounds detected, the effects of each compound and/or the combination of the compounds detected. Discussion of metabolism and half-lives is also routine for testimony. There are limitations in providing information/testimony related to when or how a substance was consumed.

Q: What drugs are the state toxicology lab testing for?

A: All cases are tested for ethanol/volatiles and undergo a [general drug screen](#). Additional screening may be performed based on information provided. The time elapsed between the incident and the sample collection may dictate what testing is performed.

(OVW model SANE protocol, 2013; WSP Toxicology Lab)



# Policy Considerations

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1. Toxicology testing timeframes
2. Offering “Point-of-care”/rapid toxicology tests
3. Expand rape shield protections to prohibit admission of past drug/alcohol use, medical records unrelated to DFSA
4. Enhance training on DFSA for responding disciplines
5. Improve data collection to inform future policy decisions
  - DFSA mapping project
  - Connect with research institutions for support

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