End Violence Against Women International
(EVAWI)

The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance

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May 2013
Last Updated March 2017

This module is part of EVAWI's OnLine Training Institute (OLTI), which is available at no cost, and includes review exercises, practical applications, and an end-of-course test. Participants can download a personalized certificate of completion to use for continuing education or other purposes. For more information, please see the EVAWI website.

This project is supported by Grant No. 2013-TA-AX-K045 awarded by the Office on Violence Against Women, US Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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Learning Objectives

The purpose of this module is to increase understanding of the forensic compliance provisions in the federal Violence Against Women Act (VAWA). This module is primarily directed at criminal justice and allied professionals who address sexual assault within their community, region or state. This module will address the following questions:

- What is VAWA and why does it matter?
- What are the forensic compliance provisions of VAWA? What is the *letter of the law* vs. the *spirit of the law?*
- Who must adhere to the forensic compliance provisions?
- What was the intent of the forensic compliance provisions? How does this aid the criminal justice system? How does it benefit victims?
- What are the practical implications for:
    - Paying for the medical forensic exam.
    - Coordinated collaborative response.
    - Components of the exam.
    - Evidence collection and storage, including photographs.

  - Evidence analysis and the crime lab.
  - Medical mandated reporting.
  - Alternative reporting methods.
  - Information for victims and follow-up contact.
  - Case numbers and tracking systems.
  - Evidence destruction and victim notification.
  - Policy development.
  - Data collection and evaluation.
  - Public education.

- Where do we go from here?

Introduction

Forensic compliance refers to the two specific provisions within the federal Violence Against Women Act that first appeared in the 2005 reauthorization (and remain in place under the most recent reauthorization of VAWA 2013) regarding medical forensic exams for victims of sexual assault. This module is designed to increase understanding of these *forensic compliance provisions* and provide guidance on how to achieve the intent of the law through the design and implementation of model policies and practices. The information is intended for criminal justice system personnel, allied professionals and other agencies or individuals who address sexual assault within their community, region or state. However, because forensic compliance was initiated by federal legislation, state legislators and other government officials are also important stakeholders.

Letter of the Law vs. the Spirit of the Law

This module will provide information on forensic compliance that addresses both the *letter of the law* as well as the *spirit of the law.* That is, the clear legal parameters set forth within VAWA will be outlined (i.e., the *letter of the law*). Yet the document will further note the critical elements of policy or practice necessary in order to achieve the intended outcomes of VAWA, or the *spirit of the law*.

The forensic compliance provisions of VAWA were initiated at the federal level, which means that the specific manner in which each state, territory and Indian tribal government will approach compliance is not outlined within the legislation. As a result, there is significant variation in the implementation of the forensic compliance provisions from state to state and even community to community. Thus, this document will seek to provide as much concrete information as possible, while also noting considerations or implications that are based on the laws, policies, administrative rules, or practices within an individual jurisdiction.

Best Practices and Successful Variation

Every effort will be made to clearly note when there is a recommended practice associated with the forensic compliance provisions. Yet while there may be a *best practice* that is recognized as the ideal, there may also be alternative practices that achieve the desired outcome. Thus, the hope is to establish the highest standard, but also to note creative and successful variations. Indeed, not all states will be in a position to completely overhaul their state laws, administrative rules or agency practices and therefore it is also important to provide opportunities for success through the process of improvement.

In addition to providing information on forensic compliance, this module will also reference a vast array of resources intended to assist jurisdictions with their own process for achieving the spirit of the law in VAWA. These

resources will be referenced throughout the module and are intended to provide readers with more detailed information, alternative explanations, sample documents and examples of policies, guidelines, protocols, state laws, administrative rules, and community practices. In other words, this module will not be able to note every variation between jurisdictions and the framework from which they have individually addressed forensic compliance. However, examples from other jurisdictions and sample resources can provide further guidance on how to address the specific challenges confronted in your own community. Indeed, each state, territory and Indian tribal government is ultimately responsible for developing a context-specific method for achieving these goals.

Resource: Technical Assistance on the EVAWI Website

Please note that most of the resources referenced in this module are posted on the EVAWI website, in the section dedicated to providing technical assistance in the area of forensic compliance. In this module, we have sought to integrate those resources into a single document, in order to make the information more accessible and user friendly.

Involved Professionals

As noted previously, the intended audience for this module includes first responders such as health care providers,

law enforcement personnel, and victim advocates, as well as other criminal justice and community professionals, and elected officials on the state or local level. However, it is also important to consider what additional agencies and individuals may also have a stake in the design and implementation of forensic compliance. For example, local and state government agencies may play a role in medical billing or payment. Communications personnel such as 911 call takers are likely to be an initial point of contact for some victims and will therefore need to be involved. Social service professionals often receive disclosures of sexual assault from their clients, so they will also need to be aware of the issues affecting medical forensic exams and reporting. Other involved professionals could include crime scene technicians, crime lab personnel, and staff members within the police department property room – depending on who is responsible for storing and tracking evidence. Indeed, collaboration and coordination are required at both the state and local level to successfully design and implement forensic compliance protocols.

What is VAWA and Why Does It Matter?

In 2005, the Violence Against Women Act (VAWA) was reauthorized with several landmark changes particularly affecting the response of law enforcement agencies and health care facilities to victims of sexual assault. These provisions remain in place with the most recent reauthorization of VAWA 2013, with a few specific revisions that will be noted.

This legislation is important because it provides over 25 billion dollars in formula grant funding through the STOP (Services Training Officers Prosecutors) program. While the specific amounts vary, an average of $2,380,552 was awarded to each of 56 states and territories in 2012.[1] STOP grant funds are initially awarded by the Office on Violence Against Women (OVW) within the US Department of Justice, using a formula that requires 25% of the funds be allocated to law enforcement, 25% to prosecutors, 30% to victim services and 5% to state and local courts. This money is an essential resource in the state and local response to violence against women. In some cases, this money may fund the entirety of a position(s) or program. For example, STOP funds may support all or part of:

- Salaries for detectives specializing in domestic violence or sexual assault.
- Salaries for prosecutors within specialized units.
- Salaries for victim advocates in community or government agencies.
- Specialized training for police, prosecutors, court officials and advocates.
- Specialized training for sexual assault forensic examiners (SAFEs).

[1] For information on the grants awarded by the Office on Violence Against Women (OVW) during fiscal year 2012, please visit their website.

- Restraining order clinics at the courthouse or prosecutor's office.
- Domestic violence or sexual assault crisis lines.[2]

In short, STOP grant funding is critical for improving the response to crimes like domestic violence, sexual assault, dating violence and stalking. Law enforcement agencies, prosecutor's offices, county courts and victim services often depend on this funding for the continuation of basic response services within the community. In order to receive STOP funding, states, territories and Indian tribal governments are required to comply with all of the provisions associated with VAWA.

States, territories and Indian tribal governments were originally given four years after the VAWA 2005 reauthorization – until **January 5, 2009** – to certify their compliance with the forensic compliance provisions. However, compliance is not simply a one-time event; states, territories, and tribal governments must remain in compliance in order to retain their eligibility for ongoing STOP grant funding.

[2] For more information, see the *Frequently Asked Questions on STOP Formula Grants* updated by the Office on Violence Against Women in January, 2013.

The Office on Violence Against Women (OVW), within the US Department of Justice, is the only entity monitoring which states are or are not in compliance with VAWA.[3]

However, simply being in compliance, or following the *letter of the law,* may still fall short of achieving the intent or *spirit* of the legislation. In this module, we seek to guide communities to think beyond the minimum requirements and evaluate how their services, programs and collaborative efforts can meet the intent or spirit of the law.

Resource: VAWA Legislation and Frequently Asked Questions

The complete text of VAWA 2005 is available online, and the specific language on forensic compliance can be found on page 15, section (f), AVAILABILITY OF FORENSIC MEDICAL EXAMS. The original deadline for compliance was January 5, 2009. The complete text is also posted for the most recent reauthorization of VAWA 2013.

The US Department of Justice, Office on Violence Against Women has also posted a number of Frequently Asked Questions on VAWA 2005 and forensic compliance.

[3] The Urban Institute, with funding from the National Institute of Justice and in partnership with George Mason University and the Pennsylvania Coalition Against Rape's National Sexual Violence Resource Center, is currently conducting a study of policies and practices related to payment of medical forensic exams. The report will be available sometime in 2013 and will address issues around the implementation of VAWA 2005 requirements for free exams regardless of the victim's participation in the criminal justice system.

Other documents addressing Frequently Asked Questions in the area of forensic compliance are also posted on the EVAWI website, in the resource section on FAQs. EVAWI also offers answers in the section of the website dedicated to forensic compliance FAQs.

What are the Forensic Compliance Provisions?

As noted, *forensic compliance provisions* refer to two specific provisions within VAWA addressing a sexual assault victim's access to a medical forensic exam. These provisions read as follows:

> *Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a medical forensic exam, reimbursement for charges incurred on account of such an exam or both* (42 USC.A § 3796gg-4(d)(1) (2005)).

Thus, there are two dictates associated with forensic compliance. VAWA legislation states that victims of sexual assault must be provided with access to a medical forensic examination:

- Free of charge, and

- Without requiring them to cooperate with law enforcement or participate in the criminal justice system.

Under the 2005 version of VAWA, it was acceptable for victims to pay out-of-pocket for the medical forensic exam as long as they were fully reimbursed. However, in the most recent reauthorization of VAWA 2013, this is no longer allowed. States, territories, and tribal governments must now certify that medical forensic exams are available to victims free of charge. (However, this provision still does not extend to all aspects of medical testing and treatment, to be discussed later. VAWA specifies which components must be included in the exam that is offered for free).

Resource: Article on Forensic Compliance Provisions of VAWA 2005

In an article originally published in *Sexual Assault Report*, the primary provisions of VAWA 2005 are summarized. The article also clarifies how the issues of forensic compliance interact with questions of medical mandated reporting and law enforcement authorization of exams. However, readers must keep in mind that the article was originally written in 2006 and therefore more up-to-date resources are now available than those cited at the time.

Who Must Adhere to the Forensic Compliance Provisions of VAWA? What is the Deadline for Compliance?

All states, territories and Indian tribal governments were required to certify compliance with VAWA 2005 by January 5, 2009 in order to continue receiving STOP funding. VAWA has since been reauthorized, with the most recent version enacted on March 7th, 2013. This version – often referred to as VAWA 2013 – includes some new provisions, and the deadline for compliance is three years from that date. Therefore, communities had until March 2016 to be in compliance with all of the changes in VAWA 2013. They must then remain in compliance to retain their ongoing eligibility for STOP funds.

Thus, to avoid jeopardizing what can amount to millions of dollars of needed funding to support criminal justice and community responses, all states, territories and Indian tribal governments of the United States are obliged to adhere to the VAWA forensic compliance provisions. In effect, this means that a victim of sexual assault within any city, town, or rural area in the US – or in its territories or on Indian tribal lands – should have access to a medical forensic examination free of charge and without an obligation to participate in a law enforcement investigation. The question is this:

> *Can a sexual assault victim in your community access a medical forensic examination both: (1)*

> *free of charge and (2) without participating in the criminal justice process?*

Again, keep in mind that compliance is not something that states, territories, and tribes can certify once and then move on. Rather, they must remain in compliance in order to retain their eligibility for STOP funds. In other words, they must ensure that they continue to meet these two provisions in an ongoing way, so victims have access to exams for free and without any obligation to cooperate with law enforcement or participate in the criminal justice system.

What was the Intent of the Forensic Compliance Provisions?

The intent of the forensic compliance provisions can be understood as a broad attempt to *improve the response to sexual violence* within the US, including states, territories and Indian tribal lands. More specifically, the provisions integrate both a:

> **Justice Philosophy:** To increase opportunities for victims to report sexual assault and participate in the criminal justice system, with improved outcomes; and a
>
> **Healthcare Philosophy:** To increase victim's access to healthcare and improve their physical and psychological outcomes in the aftermath of a

sexual assault (The Violence Against Women Act Forensic Compliance Project, 2008).

Victims benefit when they have prompt and unobstructed access to a medical forensic exam – which provides both medical care and social services at the moment when they are most needed and when they are most likely to facilitate physical and psychological healing. By eliminating barriers such as payment considerations and the immediate pressure to decide whether or not to talk with law enforcement, victims are more likely to feel they have real and meaningful access.

Improved access to an exam also increases the possibility of collecting and documenting evidence while it is available. This can, in turn, improve criminal justice system outcomes, which offers benefits not only for victims but their communities as well. Ultimately the hope is that jurisdictions will enact victim-centered policies that take into account the reality of how few victims disclose their sexual assault to professionals and encourage victims to report in a way that may be more comfortable (Gonsalves, 2011, p. 25).

Resource: Articles Explaining Forensic Compliance

The September 2010 issue of *Police Chief* magazine features an article by Joanne Archambault and Kim Lonsway addressing these complicated issues. The article explains the forensic compliance provisions of VAWA 2005 and outlines some of the challenges related

to implementation. Most notably, it depicts the realities faced by sexual assault victims, with the goal of helping law enforcement executives understand why so many victims decide they are unable to report the crime and participate in the police investigation. Also highlighted are the consequences of non-reporting, which often deny victims access to community services and give perpetrators a free pass to continue offending with impunity.

The issues and challenges of forensic compliance are further explored by Lonsway and Archambault in a 2011 article published in the *Journal of Forensic Nursing*. This article was written in response to a previous one in the same journal by author Bonnie Price. In it, Price describes how complex and challenging the issues of forensic compliance are for communities and emphasizes the critical role that forensic nurses and multidisciplinary collaboration play in achieving this goal. Given the significance of this topic, the reply was written to clarify a few issues. The reply also explores implications for the criminal justice and community response system, and highlights TA resources that are available, including those offered by EVAWI.

How does Forensic Compliance Benefit Victims?

If the broad goal of the VAWA forensic compliance provisions was to *improve the response to sexual violence,* then the specific intent is to allow victims to

decide whether to participate in the criminal justice process and to ensure they receive timely medical treatment. Indeed, the purpose of the forensic compliance provisions is an attempt to provide all victims in the US, its territories and on Indian tribal government lands with access to prompt medical forensic care in the aftermath of a sexual assault. This is designed to provide a variety of benefits for victims.

Improve Access to Medical and Social Services

One such benefit is to improve victim's access to medical care and social services. Prompt medical care in the aftermath of a sexual assault may reduce the risk of chronic health problems such as depression, eating disorders, and alcohol/substance abuse, as well as pelvic pain experienced by many victims of sexual assault.[4] Yet there is ample anecdotal evidence that victims are often deterred from seeking health care services for fear of having to speak with law enforcement or being required to report the assault (Gonsalves, 2011, p. 23).

Victims therefore benefit from health care in the aftermath of a sexual assault, but there are additional benefits for

[4] For an overview of chronic health conditions that may complicate a victim's short and long-term mental and physical health, see *By the Numbers, Emotional and Physical Effects of Sexual Assault* created by the Illinois Coalition Against Sexual Assault. Dr. Rebecca Campbell has also conducted numerous research studies documenting the chronic health consequences of sexual assault and examining how medical screening and other interventions can thwart the development of these chronic conditions (e.g., Campbell, Lichty, Sturza, & Raja, 2006; Campbell, Sefl, & Ahrens, 2003). In addition, the findings of the "ACE" study of adverse childhood experiences document improvements in patient outcomes and reduced societal costs when primary care physicians conduct a biopsychosocial evaluation that encourages disclosures of victimization and helps patients explore the impact of these experiences on their lives (Felitti & Anda, 2010).

those who obtain a full medical forensic exam – rather than seeking medical treatment only for specific health care concerns (e.g., pregnancy, sexually transmitted infections). For example, victims who obtain a full medical forensic exam will be provided with information and referrals for psycho-social support providers in the community; this may not be the case with a more general health care provider. Victims will also frequently be offered the services of a victim advocate when they present for a medical forensic exam; this is less likely to be the case for victims who seek more general health care.

When victims present for a medical forensic exam, an advocate can provide immediate crisis intervention, information on reporting to law enforcement and direct referrals to any additional services or assistance that may be needed. The importance of such support should not be understated, as research has consistently shown that sexual assault victims who receive a supportive and compassionate response have lower rates of post-traumatic stress (Campbell et al, 1999, p. 847-858). In particular, victims who work with an advocate experience less distress and exhibit less negative outcomes than those who do not, and they are also less reluctant to seek further help (Campbell, 2006; Wasco, Campbell, Barnes, & Ahrens, 1999). Therefore, by accessing the services of one professional (such as an advocate), this can increase the likelihood that victims will reach out to others.

Receiving the services of an advocate can also increase the likelihood that victims will engage the criminal justice system. For example, Ménard (2005) found in one sample of victims who were seen at a sexual assault treatment center, over 70% reported to police. Support is key to helping victims report their sexual assault and remain engaged throughout the difficult process of a police investigation and criminal prosecution (Campbell, Bybee, Ford, & Patterson, 2009; Campbell, Greeson, Bybee, Kennedy, & Patterson, 2011). Thus, eliminating as many obstructions to the medical forensic exam, and by default, psycho-social services, can have a significant impact on the recovery and well-being of sexual assault victims. It can also increase victim engagement in the criminal justice process, to aid in holding offenders accountable. For all of these reasons, we recommend the following best practice: **When victims present for a medical forensic exam, an advocate should be called as a matter of routine protocol.**

Moreover, best practice is to involve advocacy services as soon as possible for victims who are initially unsure about whether or not to participate in the criminal justice process. This ensures that they have the information and support they need to make an informed decision, and if they do later decide to participate, an advocate can assist them throughout the process of case conversion. Thus, any protocol for the community-wide response to sexual assault will need to include outreach to the local community-based advocacy organization, regardless of

what agency the victim initially contacts (e.g., a medical facility or law enforcement agency).

Resource: Community Protocols for Initiating Advocacy Services

As noted, best practice is for advocates to be contacted as a routine matter of protocol, so they can personally describe their services to the victim before the victim is asked to make a decision about whether or not to access their services. For more information, please see the **training modules** offered in the OnLine Training Institute by EVAWI on the topic of victim advocacy: *Effective Victim Advocacy within the Criminal Justice System* and *Breaking Down Barriers: The Role of Community-Based and System-Based Victim Advocates*. Information is also available in the *Oregon SART Handbook*, Version II, 2009 (p. 17).

Offer Time to Make an Informed Decision

Another benefit of forensic compliance is that it offers victims time to make an informed decision about whether or not to participate in the criminal justice process. In the immediate aftermath of a sexual assault, victims are not often in a good position to make such a decision.

It is also important to keep in mind that a victim's decision is made within the context of any medical mandated reporting requirements that are spelled out in state law.

- In states with medical mandated reporting, healthcare providers are required to report any sexual assault that is disclosed to them by a patient, regardless of the victim's wishes. However, it is the victim's decision whether or not to talk with a law enforcement officer or participate in the criminal justice process.

- In states without medical mandated reporting, victims may access health care and obtain a medical forensic exam without any report being made to law enforcement or otherwise being asked to participate in the criminal justice system.

With the forensic compliance provisions in place, victims are given time to make a decision regarding their own participation in the criminal justice process, regardless of whether or not there is a medical mandated report. This provides victims the opportunity to receive medical care, access support and gather information before deciding whether or not they want to personally talk with a law enforcement officer.

Help Overcome Barriers to Reporting

A third benefit of forensic compliance is to overcome some of the barriers that exist for victims to reporting their sexual assault. This decision is often very difficult for victims, due to a number of factors. As described in the *SART Handbook* published by the Oregon Attorney General's Office (2009, p. 35) there are many influences that might make a victim reluctant to report a sexual assault and

participate in the process of an investigation and potential prosecution:

> **Internal Influences:** Sexual assault victims often feel embarrassed, ashamed, and even unsure of what happened to them. Victims may fear that law enforcement and other professionals will not believe them if they do report. Many victims want to get back to "normal" and "put the assault behind them." They may therefore avoid focusing on the assault, repeating their account, and answering questions from law enforcement professionals and others. Some fear being confronted by the perpetrator in court, even at this early stage in the criminal justice process.
>
> **External Influences:** Victims also frequently feel pressure from their friends, family, or community (cultural, religious, etc.) to report or not report. Victims may even encounter professionals who have victim-blaming attitudes or believe a variety of myths and misconceptions related to sexual violence. Victims may also fear being threatened or harmed by their perpetrator (or by his/her family and friends) if they report their assault and participate in the process of an investigation and potential prosecution.
>
> **Socio-Cultural Influences:** Victims may feel particularly uncomfortable with specific or humiliating facts about the assault, such as oral

> or anal penetration. Victims may also feel protective about private information, such as drug use or sexual history. Finally, victims with a criminal record or other entanglements with the criminal justice system may fear this will prevent them from receiving justice. In some communities, the stigma attached to sexual assault may simply be too overwhelming for victims to consider reporting (National Victim Center, 1993).

Based on all of these factors, it is not surprising that only a small number of victims ever come forward to report their sexual assault to law enforcement. In fact, research has consistently documented that as many as 80-95% of sexual assaults are never reported to law enforcement.[5]

Additionally, research has shown that victim disclosure of sexual assault is a *process*, not a one-time, all-or-nothing event (Ullman, 2010). So, while many victims do not report their sexual assault to law enforcement, most do disclose to someone in their life, whether it is a friend, family member, or a professional. Sometimes these individuals put pressure on victims, either to report the assault or not to report. However, **when a professional or other support person receives such a disclosure, best practice is to provide victims with a supportive and**

[5] The research literature suggests that only about 5-20% of victims report their sexual assault to law enforcement (Fisher, Cullen, & Turner, 2000; Frazier, Candell, Arikian, & Tofteland, 1994; Kilpatrick, Edmunds, & Seymour, 1992; Kilpatrick, Resnick, Ruggiero, Conoscenti, & McCauley, 2007; Tjaden & Thoennes, 2000).

informative response, rather than pressuring them to engage the criminal justice system.

The hope is that more victims will ultimately report the assault to law enforcement if they receive a supportive response after "testing the waters" with such a disclosure. In short, if victims are required to talk with law enforcement in order to access an exam, many will simply forgo the exam. This reality was one of the primary factors motivating the creation of the forensic compliance provisions.

Encourage Criminal Justice Participation

One benefit that seems counterintuitive to many people when they first hear it, is that the forensic compliance provisions were also designed to encourage reporting – by not requiring it as a condition for accessing a medical forensic exam. As previously noted, as many as 80-95% of sexual assaults are never reported to law enforcement. With the VAWA forensic compliance provisions, the *letter of the law* requires communities to provide victims access to a medical forensic exam without requiring them to pay for it or participate in the criminal justice process.

The *spirit of the law* goes even further, however, by encouraging communities to put into practice greater care and flexibility in relation to when, how and under what circumstances victims are able to participate in the criminal justice process. It stands to reason that eliminating as many barriers as possible (like requiring a

victim to pay for an exam or talk with law enforcement) will, at the very least, encourage more victims to obtain a medical forensic exam. The evidence suggests that this will, in turn, lead to more reporting and greater participation in the criminal justice process.

Currently, there is only limited data on the number of victims who are initially unsure about participating in the criminal justice system but ultimately decide to do so. This is a process often described as “converting” Published data from the US military indicate that approximately 14% of service members who initially filed a restricted (confidential) report in 2008 later converted to an unrestricted (standard) report (US Department of Defense, 2008). (However, at least some of these reports were not converted voluntarily by the victim, as we will discuss later).

In civilian agencies, the data suggest that the number of cases that convert may be smaller. For example, one statewide assessment conducted in Texas found that 228 “non-report evidence kits” were stored by the Department of Public Safety between June 2010 and May 2011. As of that date, a total of 11 (4.8%) converted to standard reports and were returned to local law enforcement for investigation. A second study was conducted with 496 professionals registered to participate in a webinar on the topic of forensic compliance. Of these, most indicated that fewer than 10% of the victims in their community who had a medical forensic exam but were unsure about criminal

justice participation ultimately converted to full participation (Archambault, Lonsway, & Day, 2012). In other words, the estimates for how many victims convert to a standard reporting process range from approximately 5 to 15%.

The authors of the Texas report also noted that the average amount of time it took for "non-reporting" victims to convert to a standard report was 9.6 weeks. The time period ranged from as little as one week to as much as eight months (Busch-Armendariz & Cook Heffron, 2011).

Yet these statistics do not take into account the unknown number of victims who enter the health care system to obtain a medical forensic exam precisely because they have been given the option of taking their time to decide about criminal justice participation. Surely some of these victims would not have agreed to have an exam if they were forced to make the decision about criminal justice participation at the same time. Moreover, many practitioners have described an organic process of conversion that often occurs with victims who begin the exam feeling unsure about criminal justice participation but decide by the end of the exam that they are willing to do so. Such cases clearly represent "conversions" that are made possible by the environment of forensic compliance, but they will not show up in the type of statistics that are cited above; these statistics record the number of victims who leave the exam still feeling unsure about whether or not to participate in the criminal justice process. It is

therefore logical to believe that by increasing victim access to a medical forensic exam and allowing victims to take their time to decide about participation in the criminal justice process, we will actually increase victim reporting and participation, sometimes in ways we will not see reflected in our statistics.

Resource: Survey of Professionals on Forensic Compliance Practices

The slides from this conference presentation given by Joanne Archambault and Kim Lonsway of EVAWI, in conjunction with Kim Day, SAFE Technical Assistance Coordinator at the International Association of Forensic Nurses (IAFN). It was adapted from an earlier version presented as a series of webinars (which are archived here), and it presents the results of a survey of multidisciplinary professionals regarding the practices they have implemented to achieve compliance with the forensic compliance provisions of VAWA 2005. Topics address exams and evidence, payment mechanisms, victim information and options, documentation and case tracking, data collection, and victim notification.

Improve Criminal Justice Outcomes

A related benefit is to improve the criminal justice outcomes for sexual assault cases once they are reported. Both social scientific research and crime reporting data indicate that most sexual assault reports are not reported

immediately; they are only reported to law enforcement after a period of time has elapsed.[6] Victims often take days if not weeks and sometimes months to decide they are ready to speak with law enforcement – a period of time that makes it impossible to collect and document many forms of evidence. With this in mind, it is easy to see the value of capturing and documenting evidence as soon as possible following the sexual assault. When this is done without pressuring victims to make a decision about criminal justice participation, it provides them with an opportunity to gather information and consider their options, so they can make a truly informed decision – because this decision will have a very significant impact on their life. Indeed, for victims:

> *Evidence is more than bags, boxes and body fluids, it may be [their] only opportunity to seek justice…* (Price, 2010, p. 84).

Equally important is the documentation of any injury or pain. Such documentation can be critical in a sexual assault case, but injuries may be difficult to see by someone other than a health care professional (e.g., genital injury and micro-tears), and pain may not be documented unless it is officially noted on the examiner's form. Moreover, the health care professional performing the exam will also collect the victim's account of the assault, or the "assault history." This assault history recorded by the health care provider is often very

[6] For example, in the National Women's Study (NWS) conducted by Kilpatrick, Edmunds & Seymour (1992), only one-quarter of sexual assault victims reported the crime within 24 hours.

important for corroborating the details of the assault. For all of these reasons, it should be not surprising that victims who have had a medical forensic examination are more likely to see their case successfully investigated and prosecuted than those who have not had an exam (Campbell et al, 2009).

It is important to remember, however, that evidence collection and documentation is not limited to the medical forensic exam. Nor is it limited to physical or biological evidence that can be washed away or that deteriorates over time. Other types of evidence could potentially be available at a later date, including the following:

- Photographs.
- Clothing and bedding.
- Witness statements.
- Text messages.
- Social media (e.g., Facebook, MySpace, Twitter).
- Admissions during a pretext/monitored phone call.
- Testimony and evidence from prior victims.
- Crime scene evidence (e.g., condom, lubricant, and any items used to clean up).

The forensic compliance provisions can therefore be critically important in increasing the likelihood that victims will have evidence collected and documented in the aftermath of a sexual assault. However, we do not want

victims to have the sense that it is "now or never" for reporting their assault and participating in the investigation. The passage of time might certainly make the investigation and prosecution of a sexual assault more difficult, but if we convey the sense that it is "now or never," many victims will choose "never," simply because they are not ready "now."

Resource: Protocols for Sexual Assault Medical Forensic Exams

Detailed information on best practices and model policies for health care providers can be found in *A National Protocol for Sexual Assault Medical Forensic Examinations, 2nd* (2013) (adults/adolescents), published by the US Department of Justice.

Additionally, SAFE-TA is a project of the International Association of Forensic Nurses that provides technical assistance in support of the *National Protocol,* including quality assurance measures for sexual assault medical forensic exams.

Eliminate Financial Barriers

A final benefit of forensic compliance for victims is the removal of financial barriers to accessing an exam. While VAWA outlines that victims should not be charged for a medical forensic exam, the legislation does not provide guidance on who is responsible for the cost of the exam. It is therefore the responsibility of states, territories and

Indian tribal governments to establish an appropriate payment mechanism. More information is available in the section on billing and payment for medical forensic exams. However, given that the purpose of the forensic compliance provisions was to increase victim reporting and access to the criminal justice system, it is clear that eliminating any financial barriers for victims can go a long way toward meeting the spirit of the law in VAWA.

How does Forensic Compliance Benefit the Criminal Justice System?

Collect and Document Evidence

In addition to benefits for the victim, forensic compliance also offers a variety of benefits for the criminal justice system. However, this can again seem counter-intuitive at first. Many criminal justice professionals and others have asked the following question:

> *What the point is of offering a medical forensic exam for victims who do not want to participate in the criminal justice process? The exam is specifically designed for the purpose of evidence collection and documentation!*

In fact, this is the wrong question, because forensic compliance was not designed for victims who *do not want to* participate in the criminal justice process; it was designed for those who are *unsure about it.* Ultimately, the purpose is to increase the number of victims who elect to

report and participate in criminal justice process – and also to increase the likelihood that this process will be successful. Thus, by providing victims access to a prompt exam, unobstructed by fees or any requirement that they personally talk with law enforcement, the goal is that more cases of sexual assault will have evidence and documentation collected during a medical forensic exam and that this evidence will then be used to support successful investigation and prosecution.

Criminal justice officials and allied professionals alike recognize the many difficult challenges associated with investigating and prosecuting sexual assault. One of these is the demand for physical evidence to prove or at least corroborate an assault. Juries have come to expect, if not insist, on the presentation of forensic evidence as a result of popular television crime series like *Law and Order* and *Crime Scene Investigation.* As described above, a prompt exam increases the chances of collecting and documenting various forms of time-sensitive evidence. Such evidence (particularly biological evidence that can yield DNA profiles or toxicology results) generally increases the likelihood of successful prosecution in criminal cases (Shelton, 2010). As Patterson and Campbell (2012) concluded on the basis of their literature review:

> *The presence of medical forensic evidence significantly predicts sexual assault cases being*

prosecuted and ending in a guilty verdict (p. 2261).

This is not just a question of DNA evidence. While most sexual assaults do not result in physical injury to the victim,[7] any evidence and documentation of injury can be very important. Furthermore, the assault history in combination with other forms of physical and biological evidence collected by a health care provider can go a long way toward corroborating the victim's account of events. For example, a victim might disclose that the perpetrator kissed or licked her in several locations. If swabs collected from those locations contain the suspect's saliva, this could have a powerful impact on jury members who can now "see" the experience of the victim through the presentation of evidence. Thus, increasing the number of sexual assault cases with medical and forensic evidence could increase the criminal justice system's opportunities for successful prosecution

Resource: Online Training on Sexual Assault Investigation and Prosecution

Although much of the evidence collected in a sexual assault case (such as biological and trace evidence) is

[7] For example, in the National Violence Against Women Survey (NVAWS), about 1 of 3 female victims (31.5%) and 1 of 6 male victims (16%) sustained physical injuries as a result of an attempted or completed sexual assault (Tjaden & Thoennes, 2000). Similar findings were reported in the National Women's Study (NWS), which reported that 70% of victims sustained no physical injuries as a result of the sexual assault, 24% reported minor physical injuries, and only 4% involved serious injuries (National Victim Center, 1992). These findings are contrary to the stereotype that "real rape" involves a great deal of physical violence and visible injury.

traditionally used to identify the assailant, some of it can also be used to establish the presence of force and overcome a consent defense. For example, both the victim's and suspect's clothing should be examined for biological and trace evidence, as well as tears, missing buttons, or other signs of force. Similarly, blood can be analyzed to identify the donor, but it can also be used to corroborate the use of force. For more information, see the training modules offered in the OnLine Training Institute (OLTI) by EVAWI, on the topics of *Preliminary Investigation: Guidelines for First Responders* as well as *Law and Investigation Strategy: What Kind of Sexual Assault is this?*.

Increase Victim Participation

A third goal of forensic compliance is to increase the participation of sexual assault victims within the criminal justice process. Most criminal justice and community professionals hope that victims of sexual assault will report to law enforcement immediately after the assault. As previously described, however, the vast majority of sexual assault victims will never report the crime to law enforcement, and even if they do report, it will typically be after a period of days, weeks, months or years. This suggests that even those victims who do report are often initially unsure about doing so. This begs the question:

> *What if victims were provided the opportunity, through prompt medical forensic intervention, to*

> *gather information, get support, and have their questions answered so they could make informed decisions – in their own time and on their own terms?*

When victims are forced to make a decision about criminal justice participation – in other words, when the choice is "now or never" – many decide not to. They choose "never," only because they are not ready "now." Yet some of these victims might have participated, if they were given time and support, and allowed to have evidence collected and documented *just in case.*

Another goal is to ensure that victims get the support they need. Criminal justice professionals have long known that *stronger victims make stronger cases.* It therefore stands to reason that even victims who are initially reluctant to participate in the criminal justice process will be more inclined to do so after experiencing a positive and supportive response from professionals and others. We have already highlighted the research documenting the key role that professionals and other support people play in helping victims to become engaged – and remain engaged – in the criminal justice process. Similar findings are found with respect to evidence. Research has shown that victims are more likely to participate in the investigation and prosecution of their sexual assault when there is forensic evidence to corroborate their account (Kerstetter, 1990; Spohn, Rodriguez, & Koss, 2008). By providing victims with the opportunity to gather

information, solidify their support system and establish rapport with first responders – as well as collecting and documenting time-sensitive evidence while it is available – the goal is to create an environment that encourages criminal justice participation even for those victims who initially feel unsure about it.

Enhance Community Safety

The ultimate goal, however, is to increase the safety of all of our communities. Research on sexual assault perpetrators illustrates some of the most significant – and indeed alarming – consequences of non-reporting. For example, the pioneering research conducted by Drs. David Lisak and Paul Miller on "undetected rapists" suggests that the relatively small number of men who rape are likely to do so repeatedly, in addition to committing other acts of interpersonal violence. In their study, the 120 men who perpetrated behaviors that met the legal definition of rape had actually committed a total of 439 rapes – nearly six (5.8) per rapist (Lisak & Miller, 2002). Similar findings were reported in a replication by McWhorter and colleagues (2009) with a sample of newly enlisted male Navy personnel. Using methodology similar to Lisak and Miller, these researchers surveyed 1,146 men – 13 percent of whom had committed an act of completed or attempted rape since the age of 14. Yet again, the total number of rapes they had committed averaged to six (actually 6.4). Taken together, this means that only a small percentage of the rapes committed by these men (5-9%)

were one-time incidents; as many as 91% of the rapes committed by the men in the first study and 95% in the second were serial rapes. Given this reality, it clearly aids the criminal justice system – and ultimately our communities – to do everything we can to support victims, so they can participate in the criminal justice process and hold offenders accountable, to stop this pattern of repeat perpetration.

Resource: Article Addressing Benefits of Forensic Compliance

For more information on the consequences of non-reporting (including the research on rape re-perpetration) and the many benefits for forensic compliance – for both victims and the criminal justice system – please see the previously cited article in *Police Chief* magazine.

What are the Practical Implications of Forensic Compliance?

VAWA outlines the two forensic compliance provisions that states, territories, and tribal governments are expected to implement. However, the legislation does not provide guidance on how to address the specific elements of practice that will necessarily be affected by the provisions. The lack of guidance is both a challenge and an opportunity. It is a challenge because each state, territory and Indian tribal government will have to assess their own pertinent laws, administrative policies, and

operational procedures to identify gaps – and then to address those areas of need. This requires collaboration between a multitude of stakeholders – from the medical profession, victim advocacy, law enforcement, prosecution, and social services as well as other professionals within the criminal justice system (e.g., crime labs, property rooms).

Once stakeholders have been galvanized to work together, they will face the challenge of creating and solidifying a consistent response for victims, regardless of how they enter the system and which services they choose to access. This offers professionals an unprecedented opportunity to ensure that *all* victims receive a consistent response that is designed to meet their needs as well as the objectives of the criminal justice system.

Paying for the Medical Forensic Exam

When the topic of forensic compliance is discussed, one of the first questions is often: *Who will pay for the exam?* As previously noted, VAWA outlines that victims should not be charged for a medical forensic exam, but it does not provide guidance on who is responsible for the cost of the exam. States, territories and Indian tribal governments must therefore establish an appropriate payment mechanism.

Crime Victim Compensation

In response to VAWA 2005, some states began using crime victim compensation (CVC) funds to cover the cost of a medical forensic exam when the victim has not yet decided whether to participate in the criminal justice process. This option was not available before VAWA 2005, so victims were often faced with the decision of participating in the criminal justice system to have the exam costs covered – or personally bearing the costs of the exam.

CVC programs are available in all 50 states, the District of Columbia and three US territories, yet their eligibility requirements can be problematic for meeting the goals of forensic compliance. For example, federal CVC guidelines require that programs "must promote victim cooperation with the reasonable requests of law enforcement authorities" (Newmark et al, 2003, p. xiii). To meet this objective, most states require victims to report the crime to law enforcement within 72 hours to be eligible for reimbursement through the CVC program. Additionally, all state requirements say that victims are ineligible for CVC funds if they *contributed* to their injury or victimization through *wrongful conduct* or *provocation* (Newmark et al., 2003). Given how frequently victims are drinking underage or using recreational drugs at the time of the sexual assault, this may disqualify many from CVC eligibility. Another example is the victim who is sexually assaulted by an intimate partner who is also physically abusive. If the

victim engaged in defensive or even retaliatory physical violence, this may similarly preclude CVC eligibility.

Given these concerns, states that utilize CVC funds to pay for medical forensic exams must evaluate their statutory and administrative rules governing eligibility and, at the very least, make exceptions for sexual assault victims who obtain a medical forensic exam. If these eligibility requirements disqualify payment for exams, either because victims are not initially participating in the criminal justice process or are seen as having "contributed" to their sexual assault, this is not compliant with the forensic compliance provisions of VAWA. As stated at the outset, VAWA requires states, territories and Indian tribal governments who receive STOP funding to provide a medical forensic exam to victims *at no cost.*

Of course, CVC programs are also often used to compensate victims for financial losses resulting from crimes. This can include the costs of medical care (beyond the forensic exam), counseling fees, and lost earnings. These issues are largely outside the scope of the VAWA forensic compliance provisions, which pertain only to medical forensic exams. Therefore, these eligibility requirements could remain in place for this aspect of the CVC program and not create a compliance problem with VAWA. However, this is another example where the letter of the law may be met while not honoring the spirit of the law. Given that the purpose of the VAWA forensic compliance provisions was to increase victim reporting

and access to the criminal justice system, eliminating such financial barriers can go a long way toward meeting the spirit of the law and improving both access and outcomes for victims.

Additionally, there is a legitimate concern that accessing CVC in cases where the victim has not yet elected to participate in the criminal justice system could compromise their anonymity. It is therefore critical for professionals involved in sexual assault response to identify whether CVC is used as a payment mechanism for medical forensic exams and if so, what specific statutes, eligibility requirements and administrative procedures are associated with the program.

Also note that – while the eligibility requirements and administrative procedures for CVC programs vary from state to state – all state statutes designate the fund as the "payer of last resort" (Newmark et al, 2003, p. xiii). This means that CVC programs may require that the victim's insurance (or other potential source of payment) is billed **before** covering the cost of the medical forensic exam. As previously noted, OVW has indicated that this kind of system may be considered compliant with VAWA, as long as **victims have access to a free medical forensic exam, regardless of their decision to participate in the criminal justice system**.

Private Insurance

VAWA 2013 also clarified that victims cannot be required to pay any out-of-pocket costs to obtain a medical forensic exam. Under the previous authorization of VAWA (2005), jurisdictions were allowed to bill victims for the cost of the exam as long as they were fully reimbursed. However, this option was eliminated in VAWA 2013.

This means that insurance billing can still be used for medical forensic exams, but it will be administratively complicated because victims cannot be charged for any co-pays, deductibles or any out of pocket costs. Insurance billing is also another example of a practice that may meet the letter of the law for VAWA forensic compliance, but clearly fails to achieve the spirit of the law – which is to provide victims with prompt and unobstructed access to a medical forensic exam.

Law Enforcement Agencies

Other states may require individual law enforcement agencies to cover the cost of a medical forensic exam. Historically, this meant that law enforcement agencies had to authorize the exam before it could be conducted; however, this cannot be the case in the wake of VAWA 2005. To be compliant, either law enforcement agencies must authorize all exams regardless of whether or not the victim has yet made a decision regarding criminal justice participation – or there must be an alternative path for victims to access a medical forensic exam without law

enforcement authorization. Moreover, authorization would still need to be accomplished in a way that does not require victims to speak directly with an officer. Please note that in some jurisdictions, law enforcement agencies are required to pay for the exam, but they can bill a third party (such as a state fund) if the victim is unsure about criminal justice participation.

Medical Testing and Treatment

One concern in this area is that the agency covering the costs of a medical forensic exam may only pay for the collection and documentation of forensic evidence and not cover medical testing and treatment such as emergency contraception and prophylaxis for sexually transmitted infections. These costs may be submitted by the victim to the state's Crime Victim Compensation (CVC) program, but there are a variety of additional concerns with this process, as previously discussed. This is therefore another area where payment procedures may be in *compliance with the letter of the law* but does not achieve the larger spirit of the law.

Example: Oregon SAVE Fund

In 2003 the Oregon legislature, at the request of the Oregon Attorney General and the Sexual Assault Task Force, passed an administrative rule to create the Sexual Assault Victims Emergency Medical Response (SAVE) Fund. The SAVE Fund covers the costs of a medical forensic exam for victims of sexual assault, regardless of

whether they report the assault to law enforcement or otherwise cooperate with the criminal justice system. It is funded with a combination of punitive damages and restitution levied against convicted offenders, as well as donations and federal matching funds. The SAVE Fund pays for the following services:

- Medical examination – with or without the collection of forensic evidence using the Oregon State Police SAFE Kit.
- Emergency contraception (including urine pregnancy test).
- Sexually transmitted disease prophylaxis.

An additional payment will be made to eligible medical services providers who can document that the medical examination, as part of either a partial or complete medical assessment, was conducted by a SANE certified nurse.

The SAVE Fund further specifies that victims may have a SAFE kit collected up to 84 hours post-assault while a medical exam and corresponding testing and treatment is available up to 7 days (168 hours) post-assault. More information on the Oregon SAVE Fund is available online, including the Oregon Administrative Rule, information for victims, and the billing form.

Individual Counties

Still other states may require individual counties to pay for the exam. These costs could come out of the county's general fund or be covered by a specific county agency (e.g. public health department, social services, etc.). Yet one important consideration for states that do not use a statewide, single payer system is the issue of consistency. Questions arise, such as the following:

- Are medical facilities charging different amounts across the state for the same services?
- Are individual law enforcement agencies or county agencies authorizing different payment amounts?
- Are billing procedures (e.g. billing the victim's private insurance) different between locations within the same state?
- Do "complete" medical forensic exams include different services from area to area (e.g. emergency contraception, STI treatment, minor injury treatment, etc.)?

VAWA forensic compliance provisions provide an incentive for each state to develop or refine a system where victims can access a medical forensic examination – without unnecessary delays or barriers – no matter what community they live in or where they present for services. **If the victim's access to a medical forensic exam**

depends on which community they present in, with variations across the state, then the spirit of the law has not yet been achieved.

Indeed, the need for consistency cannot be over-stated. Consistency of policy, consistency of practice, and consistency of services will not only improve the response to victims, but it will also provide responders with the ability to better assist victims as they navigate our complex systems. It will even provide the criminal justice system with a more reliable process that can be defended in court if necessary. For comparison, just imagine the legal problems that would result if there were community-based rules of evidence and court procedures, rather than a statewide or federal standard. Clearly, a consistent policy is necessary for ensuring access, fairness, justice and accountability.

Resource: Map of SAFE Payment Mechanisms

Many professionals have questions about the laws in their own state or territory, pertaining to forensic compliance and payment for sexual assault medical forensic exams. Answers can be found in a statutory compilation entitled, *Summary of Laws and Guidelines with Charts: Payment of Sexual Assault Medical Forensic Examinations.* This document was created by AEquitas: The Prosecutors' Resource on Violence Against Women, in collaboration with EVAWI. The entire 228-page document includes laws and guidelines for each US state

and territory, as well as a number of charts summarizing the provisions. For an overview, there is also a 13-page summary. Alternatively, there is an interactive map posted on the EVAWI website, to "click" on a particular state or territory and see the relevant laws.

Coordinated Collaborative Response

A coordinated collaborative response is a necessity for communities to meet the spirit of increased access enacted in the VAWA forensic compliance provisions. While the provisions only specifically reference the scope of work for healthcare providers and law enforcement personnel, there are additional stakeholders who play critical roles in the first response. For example, advocacy organizations offer one of the most common access points for victims of sexual assault. It is therefore crucial that advocates are able to accurately inform victims of their options and the associated benefits, disadvantages, and processes involved with a variety of potential decisions. Also, while prosecutors are not usually involved in the early stages of sexual assault response and investigation, they are the ones who ultimately make decisions about whether or not to pursue charges. Their insights, expectations and functions within the criminal justice system are therefore critical to increasing access and improving outcomes.

The core disciplines required to develop a coordinated response consistent with the forensic compliance provisions of VAWA thus include the following:

- Law enforcement.
- Prosecution.
- Victim advocacy (both system-based and community-based).
- Sexual Assault Forensic Examiners (SAFEs).
- Other health care providers (Emergency Department staff, etc.).

Yet there are other disciplines that may also play a role. For example:

Communications Personnel / 911 Call Takers / Dispatch Operators may inform victims of their options for law enforcement and/or medical response during a call.

Crime Scene Technicians / Crime Lab Personnel may be responsible for storing and/or processing evidence that was originally collected without law enforcement involvement and/or evidence that is anonymous or de-identified.

Police Property Room staff may be responsible for developing a storage and tracking system for

evidence that was originally collected without law enforcement involvement and/or is anonymous or de-identified.

Billing Department staff (at the hospital or in the city, county, or state government) will need to identify the process and documentation necessary for exam costs to be covered, so victims are not required to pay for a medical forensic exam. They will also need to be involved to ensure that the system is designed to be as simple and easy as possible for victims. Of course, identifying the appropriate billing department(s) will depend on which type of system the jurisdiction has in place to cover the cost of a medical forensic exam, when the victim has not (yet) decided to talk with law enforcement.

Resource: Community Self-Assessment Tool for Forensic Compliance

In order to support a coordinated response to implement forensic compliance, a self-assessment tool was developed by EVAWI and posted on the website, for communities to evaluate their current practices. Conducting the self-assessment requires the participation of professionals from a range of disciplines who are involved in sexual assault response. It therefore

offers an ideal opportunity to initiate stakeholder participation.

The self-assessment tool addresses policies and practices regarding:

- Medical forensic exams conducted without law enforcement involvement.
- Medical mandated reporting requirements.
- Information to offer victims regarding their reporting options.
- Procedures for documentation, records retention and case tracking.
- Evidence processing and destruction, as well as victim notification.
- Anonymous reporting procedures.

To be clear, the letter of the law does not require stakeholder collaboration or community coordination. However, in the absence of collaboration, the forensic compliance provisions would be meaningless – exams would be performed, and the costs covered but there would be no connection to the criminal justice system. Conversely, the spirit of the law requires stakeholder collaboration and community coordination in order to:

- Increase opportunities for victim reporting and victim access to the criminal justice system, as well as improved outcomes; and

- Increase victim access to healthcare professionals in order to improve physical and psychological outcomes in the aftermath of sexual assault.

For these reasons and many others, **a coordinated collaborative response represents best practice for criminal justice and community professionals who respond to sexual assault.**

Collaboration strengthens the response of individual agencies and unites them into a coordinated team approach. No one agency can successfully handle all aspects of a sexual assault. Each agency is important and has its strengths and limitations. Effective multi-disciplinary teams generate a stronger response and produce more effective outcomes for the victim and the criminal justice system (CCFMTC, 2001, p. ix).

Resource: Online Training on Coordinated Collaborative Responses

For more information on a coordinated community response to sexual assault, please see the training modules in the OLTI entitled, *Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams* and *Sexual Assault Response and*

Resource Teams: a Guide for Rural and Remote Communities.

Initiating or Authorizing the Exam

Implementation of forensic compliance will inevitably involve an evaluation of the specific procedures for initiating or authorizing a medical forensic exam, because this differs between states, territories, and tribes. It is also influenced by other factors, including state laws that require medical mandated reporting and/or law enforcement authorization of exams. As previously noted, VAWA specifies that victims shall not be required to cooperate with law enforcement or participate in the criminal justice system.

So, while a state statute or administrative rule may require law enforcement authorization for the initiation or payment of a medical forensic exam, **it cannot require the victim to personally talk with a law enforcement officer in order for the exam to be authorized;** this would not be considered compliant with VAWA. In fact, requiring the victim to talk with law enforcement in this situation would even violate the law, because victims cannot be detained against their will unless there is probable cause that they have committed a criminal offense.

Depending on existing legislation, policies, and regulations, this means that forensic compliance may require that victims have access to a medical forensic exam **without**:

- Notifying law enforcement;
- Obtaining law enforcement authorization for the exam;
- Providing identifying information in the report; or
- Triggering an investigation or evidence processing (Lonsway & Archambault, 2010, p. 52).

Remember, the intent of forensic compliance is to improve the response to sexual assault and preserve options for victims and the criminal justice system – including the option for victims to make a decision regarding criminal justice participation *after* they have gathered information and secured support. In fact, the hope is that by providing victims with the time and space needed to make an informed decision, they will ultimately decide to fully participate in the criminal justice process. What is critical is for stakeholders to identify their state's existing laws and other relevant policies and procedures that address the process of:

- Initiating;
- Authorizing; and
- Paying for a medical forensic exam.

Once relevant procedures are identified, stakeholders can determine what, if any, modifications or adjustments are needed to implement forensic compliance to the highest standard possible. In some cases, this may present an

excellent opportunity to promote legislative change on a statewide level that will further efforts to improve the criminal justice and community response to sexual assault.

Example: Models for State Legislation

A number of states have addressed the issue of forensic compliance through new legislation. A number of examples of state laws are provided in the section of the EVAWI website dedicated to forensic compliance resources, under the tab for Sample Legislation. As these examples highlight, comprehensive laws address a broad range of critical issues, including specifying who pays for exams and clearly identifying what treatments, medications, and other services (i.e. follow up medical or psychological care) are covered with this cost. Ideally, laws can also provide guidance on other critical issues such as:

- State and national protocols for medical forensic examinations.
- State specific guidelines for investigation and collection of evidence.
- Evidence storage location.
- Timelines for destruction.

It is also helpful for such laws to include a clear, affirmative statement that victims are not required to

report and/or cooperate with law enforcement in order to have the exam costs covered.

What does a Medical Forensic Exam Include?

Whenever the subject of payment is discussed, the question is often asked regarding what components are included in a medical forensic exam. Generally speaking, VAWA requires that sexual assault forensic exams include, at a minimum:

- Examination of physical trauma;
- Determination of penetration or force;
- Patient interview; and
- Collection and evaluation of evidence (28 C.F.R. § 90.2(b) (1)).

However, the legislation does not require states, territories, or tribes to cover the cost for medical testing or treatment (e.g., for injuries, pregnancy, sexually transmitted infections, etc.). In this regard, VAWA 2005 states that:

> *…the inclusion of additional procedures to obtain evidence may be determined by the state ... in accordance with its current laws, policies, and practices* (§90.2(b)(2)).

In other words, VAWA does not specifically require that the cost of medical testing and treatment be covered, in

order to remain compliant with the letter of the law. However, meeting the spirit of the law would encourage it. After all, medical testing and treatment is a critical component in the *National Protocol on Sexual Assault Medical Forensic Examinations* (2004, see below). It therefore furthers the goal of providing victims with prompt and unobstructed access to a medical forensic exam, which is the intention of the forensic compliance provisions. Thus, **best practice is for communities to include medical testing and treatment in the exam costs that are covered for victims (e.g., for pregnancy, sexually transmitted infections).**

Keep in mind that even with standardized guidance provided in documents such as the *National Protocol* (2013), the specific components included in a medical forensic exam varies from state to state depending on relevant statutes and administrative regulations as well as community practices. It is therefore important for stakeholders to identify what, if any, state statutes or administrative regulations exist that provide guidance on what a medical forensic exam must (or may) include. It is also important to identify what protocols are being followed across the state, territory, or tribe that may not be as a result of legal guidance, but rather local practice.

Example: Health Care Providers Reporting Without a Legal Mandate

One example of a practice that is often based on local policy rather than state law is when health care providers report patient disclosures of sexual assault to law enforcement when there is no legal requirement to do so. Some SAFE programs and other health care facilities have a written policy, or an unwritten rule, that they will do this. However, this practice clearly violates the spirit of the VAWA 2005 provisions, which were designed to increase access to medical forensic examinations for victims who are unsure about whether or not to participate in the criminal justice process.

More importantly, this practice of reporting a patient's disclosure of sexual assault to law enforcement constitutes a violation of HIPAA unless: (1) the report is required or expressly authorized by state law, OR (2) the patient has consented to this report being made. For more information, please see the template materials for anonymous reporting policies specifically designed for Sexual Assault Forensic Examiners in states without medical mandated reporting. It is posted on the EVAWI website, in the section on forensic compliance resources, under the tab for Anonymous Reporting.

Evidence Collection Time Frame

While most communities already have policies in place that provide guidance on *when* to conduct a medical forensic exam (i.e., how many hours following the sexual assault), the forensic compliance provisions provide an opportunity to revisit those policies and determine whether they are up to date with national standards. The *National Protocol* (2013) recommends that **cases be evaluated on an individual basis** because viable evidence often exists well beyond the standard time frame of 72, 96, or 120 hours that is used in many jurisdictions as the cutoff for conducting an exam. For example, in 2010, the Society of Forensic Toxicologists recommended that the time frame for collecting toxicological evidence be extended to 120 hours, and the FBI has also adopted that guideline (Weaver, 2012, p. 67).

While the standard of 120 hours can therefore be used as a general guideline, best practice is for each sexual assault to be evaluated on a case by case basis. The question of whether or not to conduct an exam should be based on the facts of the case, the victim's history, the likelihood of recovering evidence, and the types of evidence that will be needed for successful prosecution. To illustrate, evidence may be available beyond 120 hours in cases where:

- The victim did not bathe or washed minimally.
- Multiple assailants were involved.

- The victim was seriously injured or describes a great deal of force.
- The victim reports pain and discomfort.
- The victim reports inflicting serious injury on the assailant(s), or
- The victim is a child, dependent adult or was unconscious or physically helpless during the assault.

There may be other circumstances in which it is prudent to conduct an exam beyond the standard timeframe that is used as a cutoff in a particular jurisdiction; however, these examples illustrate the need for greater flexibility when making the determination. In fact, it is worth noting that the 72-hour cutoff that was historically used in many jurisdictions was originally established by the medical community as a window of opportunity for successfully treating sexually transmitted infections (STI's) and pregnancy (Silverman & Silverman, 1978). Thus the 72-hour time frame for conducting an exam was originally developed based on medical considerations, not forensics; it generally had nothing to do with the likelihood of recovering forensic evidence.

Once again, VAWA does not specify the timeline or corresponding circumstances when evidence should be collected – there is no "letter of the law" on this topic.

However, the spirit of the law is to follow the current recommendation for best practice, which is to:

> *Make decisions about whether to collect evidence on a case-by-case basis, guided by the knowledge that outside time limits for obtaining evidence vary due to factors such as the location of the evidence or type of sample collected… It is important to remember that evidence collection beyond the cutoff point is conceivable and may be warranted in particular cases* (US Department of Justice, Office on Violence Against Women, 2004, p. 67).

In other words, **best practice is to collect evidence whenever it is available**. It is not a good idea to adhere to a rigid time frame that will inevitably limit the collection and documentation of valuable evidence.

Resource: Timelines for Evidence Collection

For more detailed information on the timelines for evidence collection, and considerations for best practice, please see the e-newsletter for Sexual Assault Training & Investigations (SATI), dated May 19th, 2005. The article was later reprinted in *Sexual Assault Report* (Volume 10, Number 3, January/February 2007, p 33-47), and it is now posted at the EVAWI website.

These issues of evidence collection timelines are also discussed in the following resources:

A National Protocol for Sexual Assault Medical Forensic Examinations (2013) (adults/adolescents). US Department of Justice, Office on Violence Against Women.

Care of the Adult Patient after Sexual Assault. Written by Judith A. Linden, and published in the *New England Journal of Medicine,* September 2011, Volume 365, Number 9, p. 834-841.

Fact Sheet: Drug-Facilitated Sexual Assaults. Published by the Society of Forensic Toxicologists. Also relevant is their guidance on the Recommended Maximum Detection Limits for Common DFSA Drugs and Metabolites in Urine Samples.

Evidence Tracking and Storage

Similarly, compliance with the "letter of the law" in VAWA does not specifically mandate the development of a system to track and store evidence from a victim who has not yet decided to participate in the criminal justice process. However, to not do so would defeat the purpose of the provisions. In order to meet the spirit of the law, states, territories and tribes need to develop a process whereby victims can access a medical forensic exam **AND have their evidence appropriately tracked and stored for possible future use by the criminal justice system**.

Indeed, if the goals of forensic compliance include increasing reports to law enforcement and improving criminal justice system outcomes, then tracking and storing evidence in a manner that is consistent with criminal justice system standards is crucial to achieving this outcome.

Resource: Article on Evidence Tracking and Storage

As previously noted, the June 2011 issue of the *Journal of Forensic Nursing* features an article by Lonsway and Archambault (2011) addressing forensic compliance. However, it deals extensively with the issue of evidence tracking and storage and can therefore provide additional guidance on this particular subject. It was written in response to an earlier article by Bonnie Price (2010), also published in the *Journal of Forensic Nursing*, which is another excellent resource on this topic of evidence tracking and storage.

There are many possible variations on who tracks and stores evidence, but it is worth remembering that evidence falls within the domain of the criminal justice system. As a result, there are many practical and legal advantages to having law enforcement agencies expand or modify their existing tracking system and evidence storage process to include cases where the victim has not yet decided to participate in the criminal justice process. It is not recommended that health care facilities hold evidence for longer than the immediate short-term, before transferring

them to a law enforcement agency or crime lab for longer-term storage. Thus, it is a **best practice that evidence be stored by the law enforcement agency with presumed jurisdiction over the sexual assault**.

When developing an appropriate protocol for tracking and storing evidence, a number of questions must be addressed. For example:

- Beyond the sexual assault kit, what other types of evidence can be stored? For example, what if the victim provides clothing or bedding? Will urine and blood be collected for toxicological testing?

- Where will the evidence be stored? How will evidence integrity be protected (e.g., temperature controls, security protections)? Is the facility designed to meet accepted standards for evidence in a criminal case (e.g., by the American Society of Crime Laboratory Directors, Commission on Accreditation for Law Enforcement Agencies)?

- Is the storage location secure? Is access to the location extremely limited to designated staff, and all access documented?

Are there comprehensive procedures to protect and document chain of custody? Has everyone who handled, transported and viewed the evidence been noted on the chain of custody log?

Example: Templates for Evidence Tracking and Storage

In the state of Texas, the Texas Department of Public Safety stores evidence collected during medical forensic exams for victims who have not yet decided to participate in the criminal justice system. Sample documents that might be useful for other jurisdictions include instructions for packaging and mailing the evidence and releasing it to law enforcement. Forms are also provided to submit evidence to the crime lab (without analysis), bill the state agency for specific services, and release evidence to law enforcement. These documents can easily be adapted for use in other communities.

Evidence Storage Duration

Existing policies and protocols may already determine the period of time that evidence in criminal cases is stored. They can therefore be used to provide guidance for storing evidence in cases where the victim has not yet decided to participate in the criminal justice system. In other words, the practices can be consistent regardless of whether or not the victim has made the decision to participate in the criminal justice process.

Indeed, while the letter of the law does not require that evidence be held for any period of time, again it would defeat the purpose of the forensic compliance provisions if it were not held long enough to give victims time to make a

decision. It is therefore **best practice to store evidence for as long as possible, up to the statute of limitations or even indefinitely**. Logic would suggest that the longer evidence is stored, the longer victims have to come forward and thus the longer the criminal justice system has to address the crime. Moreover, it is **a best practice for evidence that has been collected in a possible criminal case to be stored in a manner that is consistent with criminal justice system needs and standards**. Again, it clearly fails to achieve the intent of the legislation if evidence is stored in a way that does not meet accepted standards and cannot be admitted into evidence – making it useless for the purpose of prosecution.

Some considerations for developing a policy on the duration of evidence storage include:

- Looking at the **statute of limitations**[8] for charging sexual assault and determining whether this can be used as a basis for developing an evidence storage policy that meets the needs and standards of the criminal justice system.

- Evaluating the future **utility of evidence**, particularly in light of the continuously evolving **technological advancements**. The longer evidence is stored, the

[8] The statute of limitations refers to the time limit for prosecuting a crime. It is established by state or federal law, and it is based on the nature of the offense and the date it occurred. In essence, it limits the time frame during which criminal legal proceedings may be brought.

more possibilities exist for advancing technology to make use of it.

- Working with victim service providers to identify key time markers for victims. Some advocates have indicated that the **anniversary of the assault** is often a triggering event (Gonsalves, 2011, p. 71). It may therefore be useful to keep evidence for a period of at least 15 or 18 months, to provide victims time to experience the anniversary of the sexual assault and consider participating in the criminal justice process.

At this point, many jurisdictions have implemented a storage period of 18 months to 2 years for evidence in these cases, where victims have not yet made the decision to participate in the criminal justice process. Others are pushing the bounds of evidence storage even longer, for the statute of limitations and beyond. This is particularly true in jurisdictions that have extended or eliminated the statute of limitations for sexual assault, either as a matter of law or by using the practice of issuing a “John Doe” warrant with a DNA profile rather than a name to identify the suspect. Of course, it is best if the period of time for evidence storage is stated in a way that is clear and consistent for victims. Otherwise, there can be concerns related to consistency, selectivity, and a lack of fairness.

Example: Storage Period Established by Legislation

Some states have established the storage period for evidence by statute. For example, Iowa law states that evidence in a sexual assault case "must be stored by the law enforcement agency for a minimum of ten years" (Iowa Code § 709.10 Sexual Abuse – Evidence (2004). The law also states that the evidence can be stored without the victim's name recorded, with a case number or other identifying information assigned to the evidence in place of the victim's name.

Resource: Evidence Storage and Retention:

For more information, please see the Model Policy Materials Evidence Retention and Disposition and/or Removal for law enforcement agencies to adapt for their own use. This policy provides sample language for an agency policy, as well as instructional commentary and supplemental materials. It can therefore be used as an educational tool as well as a resource to assist in the development of policies, protocols, and training materials.

An additional resource is the 2014 report published by the Urban Institute, entitled *Sexual Assault Medical Forensic Exams and VAWA 2005: Payment Practices, Successes, and Directions for the Future* (Zweig et al., 2014). This research study explored several important questions of evidence storage and retention. It was

funded by the National Institute of Justice (NIJ) and conducted by the Urban Institute in partnership with George Mason University, and the National Sexual Violence Resource Center (NSVRC). The study included four research briefs:

- VAWA 2005 and Sexual Assault Medical Forensic Exams Policy Implementation and Impacts.
- VAWA 2005 and Sexual Assault Medical Forensic Exams: Kit Storage Issues.
- Accessing Sexual Assault Medical Forensic Exams: Victims Face Barriers.
- Who Pays for Sexual Assault Medical Forensic Exams? It Is Not the Victim's Responsibility.

The full report is available along with the research briefs on the Forensic Compliance Resources section of the EVAWI Website, under the tab for Exam Payment.

Photographic Evidence

There is no specific guidance on photographic evidence within the VAWA forensic compliance provisions. Nonetheless, they present an important opportunity to carefully consider the policies regarding where to store photographs of both genital and non-genital injuries. In cases where a victim has not yet decided to participate in the criminal justice process, it is clear that **best practice**

is to store any photographs (of genital or non-genital injury) within the patient's medical record, rather than with the rest of the evidence and documentation gathered during the medical forensic exam (i.e., in the "kit"). This is true regardless of whether the evidence and documentation is stored by the health care provider or by law enforcement. Then for victims who convert and decide that they are able to participate in the process, investigators and prosecutors can work directly with forensic examiners to obtain the necessary release – on a case by case basis – to review and use any of these photographs. In these cases, photographs should not be stored by law enforcement, although this may be different than the standard policy recommendation for cases where the victim is participating in the process. In these more typical cases, the photographs of non-genital injuries are needed by law enforcement to build their case for successful prosecution by corroborating the element of force. It is also worth noting that photographs should not be submitted to the crime lab under any circumstances.

Evidence Analysis – The Crime Lab

The forensic compliance provisions bring yet another issue to the forefront – the *analysis of evidence* in cases where the victim has not yet decided to participate in the criminal justice process. While the letter of the law does not specifically prohibit the evaluation or testing of evidence, the lack of language on this subject is not intended to condone this practice. That is, compliance with

the spirit of the law is clear – to preserve victims' option of engaging the criminal justice system if and when they choose to actively participate. On this basis alone, **best practice is to refrain from evaluating or testing evidence until the victim has elected to participate in the process of an investigation and prosecution.**

Department of Justice Policy

In fact, this position is clearly stated by the US Department of Justice, Office on Violence Against Women (OVW), in their white paper entitled, *Sexual Assault Kit Testing Initiatives and Non-Investigative Kits:*

> Submitting non-investigative SAKs to a forensic laboratory for testing, absent consent from the victim, should not be standard operating procedure for a law enforcement agency (OVW, 2017, p. 4).

Three reasons are given for this position:

- *Testing a kit before the victim has made a report to law enforcement undermines the victim's prerogative to decide if and when to engage with the criminal justice system.*
- *Testing a kit without the victim's express consent either to submit the kit or to report the assault to law enforcement is not an advisable way to cultivate community trust.*

- *Funding for testing SAKs is not unlimited, and grant funds should be directed to activities that promote accountability for offenders and justice and healing for victims* (OVW, 2017, p. 5, 7 & 8).

CODIS Eligibility

Beyond the issues of forensic compliance and victim consent, there is also the question of CODIS eligibility for DNA profiles. According to Anthony J. Onorato*, Chief of the FBI Nuclear DNA Unit,* the evidence in a sexual assault kit could potentially be tested by a forensic laboratory without victim consent, but any DNA profiles that result will not be eligible for CODIS. Chief Onorato made this point at a conference hosted by NIJ:

> *Without victim consent, we can do the testing, the laboratory can do the testing, but that is not going to be eligible for inclusion in the National DNA Index System [CODIS]. Short and sweet. We can certainly have discussions about how even testing it's not even appropriate. But certainly, what is not going to happen, is that profile will not – or any potential perpetrator profile from that kit – is not going to go into the National DNA Index System* (Onorato, 2016).[9]

As Chief Onorato explained, two key criteria must be met for CODIS eligibility. First, is it reasonable to believe that a

[9] The symposium was entitled, *Looking Ahead: The National Sexual Assault Policy Symposium*. It was hosted by the National Institute of Justice on September 8-9, 2016. This presentation was made during Panel 7, entitled "In the Lab – Testing Sexual Assault Evidence." An archived recording is available.

crime occurred? Second, is there reason to believe that the item being tested has something to do with that crime and that it is linked to the perpetrator of that crime? In forensic compliance cases, these criteria are not met.

For one thing, the elements of a criminal offense have not been established in a crime report documented by law enforcement. It is beyond the scope of the role of a health care professional to determine whether or not a crime occurred. Second, law enforcement cannot document a reasonable belief that the DNA belongs to the perpetrator(s), because no steps have been taken to exclude any consensual partners.

Resource: Evidence in Non-Investigative Reports

For more information, please see the archived recording of Chief Onorato's presentation at the NIJ conference, taking place September 8-9, 2016. The symposium was entitled, *Looking Ahead: The National Sexual Assault Policy Symposium*. His presentation was included on Panel 7 entitled "In the Lab – Testing Sexual Assault Evidence."

Also please see our OnLine Training Institute module, *Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations.* In addition, we offer a Training Bulletin addressing the question: *Should We 'Test Anonymous Kits?*

OVW's position paper is entitled *Sexual Assault Kit Testing Initiatives and Non-Investigative Kits*, and it offers a great deal of helpful guidance in this area.

To help implement this Policy, the Texas Department of Public Safety offers a variety of template materials, including a form to submit evidence to the crime lab for non-investigative sexual assaults reports. Instructions and other forms are also available.

Example: Templates for Submitting Evidence with No Analysis

As previously indicated, Texas Department of Public Safety stores evidence collected during medical forensic exams with victims who have not yet decided to participate in the criminal justice system. The template materials include a form to submit evidence to the crime lab for non-reported sexual assaults, as well as other instructions and forms.

Medical Mandated Reporting

The issue of medical mandated reporting can be a complicated one, especially as it intersects with the implementation of forensic compliance. The phrase refers to any legal requirement that health care professionals may have to report to law enforcement when a patient discloses that they have been the victim of a certain crime – or they otherwise have a reasonable basis to believe

that a patient has been the victim of a certain crime (e.g., they observe indicators that a sexual act has been committed against a child).

First, it is important to understand that all states mandate medical professionals to report sexual assault when the victim is a child (as defined by state law). In addition, most states require medical professionals to report sexual assault when the victim is a dependent adult.

The majority of states do not require health care professionals to report sexual assault of a competent adult, however they may still require a report if the victim presents with certain types of injury including those that are non-accidental, result from violent crime, or involve the use of a weapon that is either described as “deadly” or specified in some other way (e.g., firearm, knife). In states with such a requirement, health care professionals are obliged to notify police that a patient has presented to them with the specified injury, but they may not be obliged to say that the patient was also sexually assaulted.

Finally, a few states have medical mandated reporting for intimate partner violence. In these states, if a patient discloses that a sexual assault occurred within the context of intimate partner violence then the responding medical professional will be obliged to report the assault to law enforcement.

Resource: State Laws on Medical Mandated Reporting

Many professionals have questions about the laws in their state pertaining to medical mandated reporting for sexual assault. Answers can be found in the compilation of laws prepared in 2010 by the National District Attorneys Association. This 66-page document is entitled, *Mandatory Reporting of Domestic Violence and Sexual Assault Statutes*, and it includes any relevant laws for all US states and territories.

A similar compilation was also completed in 2010 by AEquitas: The Prosecutors' Resource on Violence Against Women. While it pertains exclusively to domestic violence, this will of course cover sexual assault that is perpetrated within the context of intimate partner violence. The document is entitled, *Reporting Requirements for Competent Adult Victims of Domestic Violence.*

The amount of information required in a mandated report also varies by state. Some states do not require that the victim's name or other identifying information be provided, while other states require not only the victim's name but also detailed information about the suspect (e.g., name, age, location) and the nature of the sexual assault (e.g., date, location, basic description).

Clearly, health care professionals must provide the information that is legally mandated. In some states, however, health care providers may be able to meet their legally mandated duty to report a sexual assault disclosure to law enforcement without providing identifying information for the victim (and/or suspect, for example, if the victim does not want this information released due to safety concerns). In these states, the health care professional may use a standard report form but write the phrase "declined by patient" (or other similar phrase) in the spaces for the patient's name, address, and telephone number. Such a phrase may also be used in place of the suspect's name. A non-identifying address can then be used for the location of the assault (e.g., the address for the health care facility, or the 100-block of the assault location). The goal of medical mandated reporting is to provide law enforcement with information about the criminal offenses being committed, to best guide their efforts to protect the safety of the entire community. However, this goal can arguably be met without providing identifying information on the victim.

To be clear, however, just **because a medical professional is mandated by state law to report a sexual assault it does not mean that the victim is required to personally talk with law enforcement**. This would be inconsistent with VAWA forensic compliance provisions.

The Office on Violence Against Women (OVW) has indicated that medical mandated reporting is not contrary to forensic compliance so long as victims are not *required to participate in the criminal justice system or cooperate with law enforcement*. While the letter of the law does not specify what constitutes "participation," in this context:

> *…common sense would suggest this means that victims cannot be required to personally talk with an officer or actively participate in the law enforcement investigation in order to access a free medical forensic exam* (Lonsway & Archambault, 2011, p. 80).

It is therefore critically important for professionals involved in implementation to identify any state laws or administrative regulations that require medical professionals to report sexual assault. It is then possible to determine whether any medical mandated reporting requirement interacts with the implementation of forensic compliance. It may even be possible to work to modify or repeal existing law or develop new legislation to meet the goals of forensic compliance. For example, states that require a victim's name and other identifying information to be included in a medical mandated report could pursue legislative change allowing medical providers to meet their reporting requirement without providing such information, in order to protect the victim's anonymity.

Example: Sample Form for Medical Mandated Report

The **State of California** requires medical professionals to report cases of sexual assault, even for competent adults. Thus, a form was developed to provide medical professionals with a method to meet the medical mandated reporting requirement in cases where the victim has not yet elected to personally engage the criminal justice system. The links below are for the alternative reporting form and corresponding instructions.

- Medical Mandated Reporting Guidelines
- Medical Mandated Reporting Form

Alternative Forms of Reporting

VAWA does not specifically require jurisdictions to offer a system for victims to:

- report the assault to law enforcement without providing identifying information; or
- have their de-identified medical forensic exam and corresponding evidence tracked and stored.

However, the implementation of such a system can help to meet the intent of the law. That is, the forensic compliance provisions create a strong legislative incentive for states (or communities) to develop a medical-legal response that allows victims of sexual assault to take the process of reporting to law enforcement “one step at a time.” This

could potentially include procedures for victims to access alternative procedures such as anonymous reporting and third-party reporting, as well as others that are referred to as restricted reporting, confidential reporting, "Jane Doe" reporting, etc. Because these terms are used in different ways in various jurisdictions, we will define them here. The goal is not necessarily to insist that everyone use the terms the way we do in this module; it is simply to ensure that we are "on the same page" when we describe these alternative mechanisms.

Resource: Alternative Reporting Methods

For more information on this topic, please see the OLTI Module entitled: *Reporting Methods of Sexual Assault Cases*, as well as the EVAWI Webinar: *Opening Doors: Alternative Reporting Options for Law Enforcement and VAWA Forensic Compliance*.

Also, EVAWI offers a glossary in the forensic compliance resources section which explains how various terms are defined and used in different jurisdictions.

Anonymous Reporting

An anonymous reporting procedure offers victims or other third parties an opportunity to provide information about a sexual assault to law enforcement without identifying the victim (and/or the suspect). These are also sometimes referred to as "blind reports" (although this term is also used to refer to other alternative reporting procedures as

well). In either case, the information provided by the victim is recorded by law enforcement, in a manner that is generally similar to a standard reporting procedure. It may be recorded as an informational report or a crime report, depending on departmental policy and whether the information gathered at the time is sufficient to establish the elements of a sexual assault offense. However, the report is assigned an anonymous identifier to be used instead of the victim's name (e.g. Jane/John Doe).

- With **direct anonymous reporting**, the victim provides information about the sexual assault directly (but anonymously) to law enforcement. However, law enforcement does not record the victim's name with the documentation.

- On the other hand, a **third party anonymous report** is made on behalf of the victim by a third party, such as an advocate, a Sexual Assault Forensic Examiner (SAFE), Sexual Assault Nurse Examiner (SANE), or other health care provider – or even a friend, family member, or other professional. Again, it does not include the victim's name (i.e., anonymous).

Resource: Expert Interview

In this video interview, Debra Holbrook describes blind reporting as an alternative reporting option.

Resource: Developing a Community Protocol for Anonymous Reporting

EVAWI has developed a set of template materials to help communities implement a multidisciplinary protocol for victims to anonymously report their sexual assault to law enforcement. These documents are available on the EVAWI website, in Word format so they can be easily modified for individual use. To adapt the templates, however, a variety of questions will need to be addressed (they are highlighted throughout the document). Specific wording will also need to be revised to reflect the unique structure of any community protocol. In other words, the materials represent a starting point and are intended to be tailored to the needs and context of the specific community in mind.

The materials are also available for jurisdictions *with* medical mandated reporting as well as those *without* medical mandated reporting.

Of course, just because victims do not provide their name or other identifying information doesn't mean that law enforcement couldn't identify them. Therefore, the critical question is what happens to these reports. If the victim has not yet decided to participate in the criminal justice process – or perhaps has even decided *not* to participate – will police and prosecutors pursue the case anyway? This question can only be answered if there are policies

and protocols in place, supported by training and agency climate. Such protocols are best developed with multidisciplinary cooperation among all the partner agencies involved in sexual assault response. As described in the *Journal of Forensic Nursing,* concerns are particularly likely to arise in two types of cases:

> *In particular, two types of cases are probably most likely to be pursued against the wishes of the victim. These include: (1) Cases of intimate partner violence, and; (2) High profile cases, such as those involving a celebrity or a political figure, or a series of stranger sexual assaults. Best practice is therefore to acknowledge this possibility and prepare for it. Part of the required strategy will be to provide accurate information for victims, with language such as the following: "I realize that law enforcement can still conduct an investigation of this report, even if I do not provide my name or participate in the process. However, I understand they generally do not, except in extreme circumstances (for example, in cases with a serial stranger rapist, when the sexual assault is committed by an intimate partner, or when the victim is severely injured)." This issue must also be discussed proactively among the multidisciplinary professionals involved in the criminal justice and community response to sexual assault – before the issue arises in an actual case. Ideally, this discussion*

> *will lead to a written protocol, documenting a good faith agreement among community professionals that a sexual assault will not generally be investigated or prosecuted when the victim has not yet made a decision to participate in the criminal justice process – or when the victim has decided not to do so* (Lonsway & Archambault, 2011, p. 83).

Resource: IACP Supplemental Reporting Form and Guidelines

When victims are given the option to report anonymously and/or through a third party, it will be necessary to develop a form for them to use. One recommendation is to adapt the Supplemental Reporting Form developed by the International Association of Chiefs of Police (IACP). It is posted in the forensic compliance section of the EVAWI website, under the tab for Reporting Methods.

This form is also posted on the IACP website, along with corresponding guidelines for successfully investigating sexual assault cases. These tools are based upon national best practices regarding sexual assault investigations and were developed in collaboration with local, state, and federal law enforcement, prosecutors, advocates, medical, and forensic professionals. The goal is to support officers and departments in preparing sexual assault cases for successful prosecution through detailed case documentation and thorough

investigations. (Note: These guidelines are not intended for use when the victim is a minor).

While the evidence does not yet exist to support the assertion, common sense suggests that anonymous reporting can increase the number of victims who come forward and participate in a law enforcement investigation. It therefore represents a best practice for meeting the noble spirit of the law in VAWA legislation.

Restricted Report / Medical Report

Terms such as “restricted report” or “medical report” are often used to describe the collection of evidence during a medical forensic exam from a victim who has not yet decided to participate in the criminal justice system. The term highlights the fact that the evidence has the potential to be connected to an active sexual assault investigation. Therefore, the evidence that is collected and documented during the exam will need to be tracked and stored in a manner that ensures it can be used by investigators and prosecutors if the victim later decides to participate in the criminal justice process. Restricted reports or medical reports are different from anonymous reports, because the victim has not yet interacted with law enforcement officials.

Other terms are also used to describe this type of report/evidence, including the term “non-report” or “delayed report.” We do not believe such terms represent best practice, because the victim has in fact disclosed and engaged the process, thereby “reporting” with an

alternative mechanism. Moreover, the research documents that delayed reporting is seen by many people as a reason to suspect the legitimacy of a sexual assault disclosure (e.g., Ellison & Munro, 2008; Frazier & Borgida, 1988; Lonsway & Fitzgerald, 1994). This is unfortunate, so it may be best to use alternative terminology that does not fuel any such unwarranted skepticism. This connotation can be avoided to some extent with alternative terminology, such as "restricted report" or "medical report," which helps to reframe the disclosure process:

While 'reporting' is typically used to describe disclosures made specifically to a police officer, we do not have to fuel the perception that this is the only type of disclosure that matters. Prosecutors have long used other types of disclosures to demonstrate that victims did not in fact delay reporting – but rather to show that they discussed their options with family members, friends, or other support people before contacting law enforcement (Lonsway & Archambault, 2011, p. 82).

Example: Template for Anonymous, Third Party Reporting

Community professionals in Duluth, Minnesota have implemented a fully functioning protocol they describe as anonymous, third party reporting. Their multidisciplinary team, led by the Program for Aid to Victims of Sexual Assault (PAVSA) developed the following materials to

implement the protocol, so they can be used as a starting point to adapt for use in other communities.

- General procedures for anonymous reporting
- Information for victims about the anonymous reporting option
- Flow chart for assisting victims in reporting to law enforcement
- Form for authorizing release of evidence in anonymous reports

Restricted Reporting in the US Military[10]

It is worth noting that the five-armed services also use the term "Restricted Reporting," but their definition is somewhat different. As described in DOD Directive Number 6495.01 (which includes Air Force, Army, Navy, Marines) or Coast Guard policy (COMDTINST M1754.10D), a restricted report can be made by any sexual assault victim who chooses to disclose their sexual assault to a Victim Advocate (VA), Sexual Assault Response Coordinator (SARC), or a health care provider (HCP). Some limited information about the sexual assault will be provided to the installation commander even with a restricted report, but this will not include personal identifying information for the victim. Within the military, only chaplains have full confidentiality; they do not have a

[10] Thanks to Ms. Shawn Marie Wren, Sexual Assault Prevention and Response Program Manager, US Coast Guard (USCG), as well as the Coast Guard Investigative Service Sex Crimes Program, for their helpful contributions to this section.

legal obligation to report any disclosure of a sexual assault committed by or against a service member.

While a report remains restricted, victims in the military can now obtain all of the following services **without triggering the investigative process:**

- Medical testing and treatment.
- Medical forensic examination.
- Advocacy services.
- Counseling assistance.

This is the primary advantage of restricted reporting – accessing these services without automatically triggering the formal investigative process. On the other hand, there are a variety of disadvantages including the fact that the victim cannot obtain a military protective order and may have continued contact with the offender. The victim also cannot discuss the sexual assault with anyone affiliated with the military, other than the personnel listed above, because service members generally have an obligation under military regulations to report any such disclosure to their commander. In other words, if a victim tells his or her best friend who is also serving in the military that he/she was sexually assaulted, the friend is mandated to report it to a superior, and an investigation will ensue even if it is against the wishes of the victim. Moreover, if someone in the victim's chain of command learns about the incident from another source, they are also obligated to report the

sexual assault to the proper authorities who will then initiate an investigation.[11]

Of course, victims can still talk about the assault with their friends and family members who are not affiliated with the military, as long as those support people do not pass the information along to someone who is in military service. However, the bottom line is that victims in the military have no guarantee of confidentiality and no promise that a restricted report will stay that way.

Confidential – Undecided – Blind – Graduated – Jane Doe Reports

There are a number of other terms used to describe medical forensic exams where evidence is collected, documented, tracked and stored for future use by the criminal justice system with or without a participating victim. Some of these terms are even used to describe anonymous reporting. The terms therefore have different meanings in various locations, and this presents both advantages and disadvantages. An advantage is that the variety of terms highlights the range of options available for creating a response system that is compliant with VAWA; it also allows flexibility for communities to adapt language to meet their own needs and realities. Of course, the primary disadvantage is the confusion that is caused when professionals use the same terms to refer to different things. What is most important, therefore, is not

[11] Investigative authorities would include the Naval Criminal Investigative Service (NCIS), the US Army Criminal Investigation Division (CID), and Coast Guard Investigative Service (CGIS).

the specific term that is used in any community, but rather the fact that the term selected for use is reflective of the process and context in a particular place; and that professionals have worked together in a multidisciplinary process to evaluate the associated advantages and limitations of each term.

Converted Case / Converted Report

This is a term used to describe the victim-initiated process of changing an anonymous/blind report or a restricted/medical report to a direct/standard report to law enforcement. Thus, the case is being "converted" to a direct/standard report to law enforcement by the victim. This term has been used by many practitioners in the field, and as described by Sara Thome Gonsalves (2010), it was chosen to minimize some of the negative connotations associated with "non-reporting" or "delayed reporting," to more accurately convey the reality of the process as unfolding over time. It is also the term that is used within the US military, to describe reports that convert from being restricted (i.e., confidential) to unrestricted (i.e., including the victim's name and other identifying information, and thus triggering the formal investigative process).

Case Conversion: Reporting Directly to Law Enforcement

The actual process for case conversion – changing an anonymous/blind/restricted/ medical report to a standard

report to law enforcement – is yet another area where concrete guidance is critically needed yet not provided through the law. That is, the forensic compliance provisions do not specifically mandate the implementation of a system for victims to change from initially not participating with the criminal justice system to full and active engagement. Yet, it is clear that this is the very essence of the forensic compliance provisions. It is therefore necessary to implement the procedural elements involved in the process of victim-initiated case conversion.

> The first consideration is this: *Who will victims contact to convert their case from an anonymous/blind/restricted/medical report to a standard/direct report?*

While many states and communities might assume this contact, person will be the law enforcement agency with jurisdiction over the assault, this may not be the case when the evidence has been tracked and stored by a hospital or exam facility. In either case, **best practice is to have an agency with the ability to respond to a victim's call 24 hours a day and seven days a week.** It is further recommended that a *position* rather than an *individual* be designated as a point of contact in procedures that require one.

Resource: Case Conversion Instructions and Forms

EVAWI's template materials for anonymous reporting include instructions and forms to document a victim's

choices among a variety of options for the response of health care providers and law enforcement officials. Language and documentation are therefore included to guide victims through the process of case conversion. Similar language is provided in the Minnesota Model Policies for Forensic Compliance. Both are posted at the EVAWI website.

Sample forms are also available for documenting a victim's consent to release evidence from a medical forensic exam to law enforcement for use in a standard investigative process. Examples are provided from (1) the Texas Department of Public Safety, (2) Duluth, Minnesota, and (3) the Trauma Recovery Center at the University of California, San Francisco.

If the ultimate hope is for more victims to obtain a medical forensic exam AND subsequently make a standard report to law enforcement, then it stands to reason that every effort must be made to make the process easy and accessible. Consider the following questions:

- Who will victims contact to convert to a standard report? It could be the forensic examiner program, law enforcement agency, and/or victim advocacy agency. Regardless, victims will need to be provided with specific contact information that will remain accurate and up-to-date even with turnover in individual staff.

- If victims are required to contact law enforcement to convert to a standard report, how will they know which

law enforcement agency to contact? The information may be the same for all victims or tailored individually, but it must be correct.

- How will the evidence associated with an *anonymous, restricted, or medical report* be linked to the standard report to law enforcement, for victims who decide to convert? What do victims need to know about this process?

- What information will the victim need in order to initiate a standard report to law enforcement? For example, will they need a case number, date of the exam, etc.?

- When and how will victims be connected with advocacy services?

It is important to remember that victims may lose or misplace information that is given to them in the immediate aftermath of the assault, including a card with information about how to convert to a standard report and link it to the evidence collected during their medical forensic exam. Thus, keeping it simple – and making it logical for victims – is important.

As previously noted, it is also **a best practice to involve advocacy services as soon as possible to ensure that victims are supported throughout the process of case conversion.** Thus, any protocol will need to include outreach to the local community-based advocacy

organization, regardless of what agency the victim initially contacts – either a medical facility or law enforcement agency.

Information for Victims

Ideally, victims will be provided with some kind of written information at the time of the medical forensic exam. To ensure that this information is comprehensive, accurate and reflects policies and procedures established in the community, it will need to be developed in coordination with medical professionals, victim advocates, law enforcement officials and prosecutors. For guidance, it is recommended that the information include the following:

- Contact information for the local victim advocacy agency, whether it is a rape crisis center, or dual service agency serving victims of intimate partner violence as well as sexual assault.
- Contact information for the victim to initiate the process of case conversion.
- The date the victim received a medical forensic exam, and the name of the facility where the exam was provided.
- The name of the medical professional who conducted the exam.
- The location where evidence collected and documented during the exam will be stored.

- The length of time the evidence will be stored;
- Information about when the evidence will be destroyed, and whether the victim can expect to receive a reminder prior to that date.
- A brief description of what the case conversion process involves.

Example: Sample Information for Victims on Case Conversion

The State of Maine has developed a notecard for victims who receive a restricted exam. It was adapted by the Minnesota Model Policies for Forensic Compliance, which reads (in part):

Deciding to report a sexual assault to the police can be a difficult decision. If you decide to change your case to a standard report, please be aware that it may be more difficult to investigate the assault as more time goes by. If you decide to report the assault to law enforcement, we are ready to hear your concerns, and every effort will be taken to ensure a complete investigation is conducted. For more information on reporting the assault to law enforcement, we encourage you to contact your local advocacy program at…

Follow-Up Contact

To achieve the goal of increasing access to the criminal justice system for victims of sexual assault, it is critically important that they receive the support they need to make that decision and follow through with their participation. For victims who are initially unsure about whether or not to participate in the criminal justice process, it may be unlikely that they would later convert to full participation if they do not receive any follow-up contact and support.

There are a number of possibilities for assigning follow-up responsibilities. In many communities, a victim advocate has primary responsibility. For example, the community protocol might specify that an advocate will try to reach the victim within 72-96 hours of the examination. This may be especially likely in communities where forensic examiners are available only on a callout basis with no administrative time that could be used to make follow-up contact with victims. Of course, all follow-up contact requires documented consent from the victim. In their follow-up, advocates have the opportunity to contact victims to check on their well-being, offer services, and provide referrals for other community agencies.

If no advocate provides services to the victim at the time of the exam, the health care provider who conducted the medical forensic exam will likely have the primary responsibility for follow-up. Again, an example would be for the health care provider to contact the victim within 72-96 hours of the medical forensic examination. The health

care provider could then take this opportunity to check on the victim's general well-being and offer referrals for services. The health care provider may also need to follow up with victims based on their medical needs. In some situations, this may require checking the victim's physical well-being and follow-through on medical recommendations (e.g., medications, testing). In other situations, the victim may be asked to return to the health care facility for a follow-up appointment, to evaluate medical treatment and possibly examine any injuries for signs of healing. As a secondary purpose, the health care provider might also take additional photographs showing the evolution of any injuries for forensic evidentiary purposes.

The informational form that is created for victims should describe the options for follow-up, and document whether victims want to be contacted for various purposes and/or at different times. Victims can also record on the form their preferred method(s) of being reached (e.g., phone, letter, email). For example, victims may be given the option of whether they want to be contacted if further information becomes available about their assault or perpetrator (e.g., another victim names the same suspect, or describes the same M.O. in a future disclosure of sexual assault). This contact could be made either by the advocate or by the health care provider.

Resource: Alternative Protocols for Follow-Up Contact

For information and language to support alternative protocols for follow-up contact, please see the template materials for anonymous reporting posted on the EVAWI website. Particularly relevant are the materials designed specifically for Sexual Assault Forensic Examiners (SAFEs) as well as community-based Victim Advocacy Agencies (VAAs).

Evidence Destruction

VAWA does not provide direction on the process or timeline for evidence destruction, as well as any related victim notification. If a victim does not ever convert to a standard report, however, it is necessary to properly destroy the evidence that was collected and documented in association with a restricted/medical report. Law enforcement agencies already have existing policies in place to provide guidance on how to properly destroy various categories of evidence. The same policies pertain to evidence in these cases, to ensure that standard protocol is followed in terms of protections for confidentiality, sensitive information and bio-hazardous materials. Victims must be advised of the process, and the same policies for evidence destruction must be followed consistently, regardless of the victim's decision regarding criminal justice participation.

It is also important to keep in mind that any language regarding the timeline for evidence destruction will need to be stated as a *minimum time period* – not an absolute. For example, if the general timeline for evidence destruction is 2 years, the written information given to victims should describe it as a time period of "at least 2 years" or "a minimum of 2 years." This is more realistic, because evidence destruction protocols are very unlikely to be implemented on the specific date that this timeline expires. The process may take a while, and in fact it might take quite a while, depending on the policies and practices for evidence destruction and the scheduling timelines of the storage facility. This type of language also allows for increased storage capacity that might allow a facility to store evidence beyond the originally specified timeline. In addition, it builds in some flexibility for advances in the law or technology that might make it appropriate to store the evidence for a longer period of time.

For example, if a community works to extend the period of time that they can store evidence in these cases (i.e., where the victim has not yet decided to participate in the criminal justice process), they may decide to keep the earlier kits longer as well. However, this means that the information given to these earlier victims may no longer be applicable. As an illustration, perhaps a community has been storing evidence for 1 year, but the multidisciplinary professionals worked hard to extend this time period to 2

years. This is an excellent development, and it can represent a positive advance for victims. However, professionals in the community are now faced with the decision of what to do with the evidence that was originally planned for only one year of storage. Do they destroy it after one year, consistent with the information that was given to victims at the time of the exam? Or do they store the evidence for the newly established period of 2 years? There are no easy answers, and professionals must weigh the pros and cons of all the various alternatives. Another example would be if the statute of limitations for sexual assault were extended or eliminated. This might represent another scenario where professionals would be faced with the question of whether or not to hold onto the evidence in these cases for longer than originally planned.

These examples illustrate possibilities to be weighed by multidisciplinary professionals in each community during the process of crafting protocols and developing informational materials for victims. However, by using the type of language recommended here, it protects against any unrealistic expectations victims may have about the specific date of destruction.

Victim Notification

Because the protocols for evidence destruction should be generally the same in all cases, the primary question for the purpose of forensic compliance is whether or not to notify victims as the deadline approaches for their evidence to be destroyed. Some community protocols

require that the victim be notified when their evidence will be destroyed – typically some period of time before the actual destruction (e.g., 30-90 days before the scheduled destruction). Other communities have developed a protocol where victims are notified of the timelines for evidence storage upfront, so they are not notified at the time the evidence is destroyed. There is no clear standard for best practice in this area, as both options have advantages and disadvantages.

Resource: National Center for Victims of Crime Research

The National Center for Victims of Crime is currently undertaking research to gather information from sexual assault survivors regarding their experiences with the criminal justice system. Particular attention is focused on the issues of notification, including "cold cases" that have not been actively investigated for some time. The findings have implications for notification in these cases, where victims were initially unsure about participation in the criminal justice system and the deadline for destroying the evidence from their exam is approaching.

There are several considerations that can aid in making this determination for a particular state or community. For example, the *Minnesota Model Policies for Forensic Compliance* aptly note that some jurisdictions have decided against contacting victims due to the potential risks associated with re-stimulation of the traumatic event

(Gonsalves, 2011, p. 75). In contrast, other communities have decided that the benefits of reaching out to a victim and providing them with information that creates another opportunity for contact out-weigh the risks. Either way, **best practice is for professionals from a variety of disciplines involved in sexual assault response to collaboratively consider the issues and identify a position.**

Other questions pertain to logistics, and these must also be considered by professionals who are creating policies and protocols in this area. For example:

- What is the feasibility of contacting victims prior to evidence destruction?
- How would notification be conducted and who would be responsible for it?
- Would victims be given a choice of how to be notified (phone, letter, email)?
- How will notification be conducted in a way that ensures there is no breach of confidentiality or anonymity? This is particularly relevant in situations where an agency other than the medical facility is the one providing the notification.

- Is it necessary to obtain a release from the victim at the time of the exam in order to enable future notification by another agency?
- What specific information would this notification include?

Example: Sample Notification Language

Sample language for providing instructions and documenting the victim's choices and consent to various notification procedures appears in the template materials for anonymous reporting at the EVAWI website. Another example of such language can be adapted from the Minnesota Model Policies for Forensic Compliance (Gonsalves, 2011, p. 76), which reads:

Dear Client:
We are contacting you in order to notify you of an important deadline. On M/D/Y, you were provided with some assistance from our agency. On that day, you were told that you would have until M/D/Y to decide whether to move forward. We have not heard from you. If we do not hear from you before M/D/Y, the information related to that visit will be destroyed. For more information about your options, please contact us at the following number.

Policy Development

As previously noted, the forensic compliance provisions of VAWA 2005 were initiated at the federal level, which

means that each state, territory and Indian tribal government will approach compliance in a unique way. Across the country, there is a great deal of variation in the implementation of the forensic compliance provisions – from state to state, and even community to community. However, regardless of the unique approach taken in any particular community, policies and protocols must be developed to address the various legal, administrative and procedural considerations that will arise. The only way to do this is with the active participation of a broad group of professionals – from a variety of disciplines – who respond to sexual assault within the community. Representatives from all of the involved disciplines must be at the table; they must all be engaged in creating the solution. Best practice is therefore to use this process to create a written document outlining the roles and responsibilities of each professional discipline involved in the community-wide response system. Only with a written protocol can victims be assured that there will be some measure of uniformity and fairness in the response they receive.

Resource: State Protocols and Guides for Forensic Compliance

A number of state protocols and guidelines are available at the EVAWI website, in the section dedicated to providing resources for forensic compliance. They offer a number of excellent models for developing similar resources in other states. Models are available from **Virginia, Maryland, New Hampshire**, and **Minnesota.**

Example: Comprehensive Local Protocol for Sexual Assault Response

One excellent example of a comprehensive local sexual assault protocol is found in **Cambria County, Pennsylvania.** The protocol was the result of dedicated effort, over a long period of time, by professionals in a variety of disciplines who respond to sexual assault. It also includes a well-designed procedure for anonymous reporting (for victims age 18 and over). This protocol is thoughtfully designed and crafted with meticulous attention to detail. It is also beautifully written, making it an excellent model for other communities seeking to implement a similar protocol in their community. The final document includes a consent form for victims who report anonymously, authorizing the collection, documentation, and release of evidence (to be stored by the municipal police department). The form offers a brief explanation of key issues for victims, including the fact that they will not be billed for the exam, that their medical records will remain private, and that their evidence will be stored for 2 years. Victims can choose whether or not they would like to be contacted 3 weeks before the evidence will be destroyed. If so, the form documents their preference and various methods of contacting them.

Letter of the Law vs. Intent (Spirit) of the Law

While creating such a community-wide protocol, the limited guidance offered by VAWA in the area of forensic

compliance offers both a challenge and an opportunity, as previously noted. While the intent of the legislation is to provide a national framework to improve the response to sexual assault – by increasing access for victims to the criminal justice system and community resources – simple compliance with the letter of the law can fall short of this ideal. It is therefore recommended that the professionals involved consider what it would look like to meet the *letter of the law* versus the *spirit of the law,* and see what can be done to achieve the latter. The following chart was designed to assist in this process.

Letter of the Law	Intent/Spirit of the Law
States, territories and Indian tribal governments may not require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a medical forensic exam.	Victims have access to a prompt, unobstructed and high-quality medical forensic exam that includes the full range of services necessary to promote healing and ensure the integrity of the evidence collected.
	Victims are not required to speak with a law enforcement officer or otherwise interact with the criminal justice system until such time as they choose to do so.
	Victims have access to reporting options that provide them with the ability to provide as much or as little information to law enforcement as they wish and at the time of their choosing.

States, territories and Indian tribal governments may not charge victims for the cost of a medical forensic examination. Medical forensic exams include: • Examination of physical trauma • Determination of penetration or force • Patient interview; and • Collection and evaluation of evidence	Evidence and documentation from an exam is collected, transported, tracked and stored in a manner consistent with proper chain of evidence and storage security to ensure the utility of the evidence for future use in court.
	Victim privacy and/or anonymity is maintained throughout any billing procedures, as well as evidence tracking and storage.
	Victims who are required to use their own private insurance to cover the cost of a medical forensic exam cannot be charged for any co-pays, deductibles, or other out of pocket costs.
	Victims are not confronted with complicated billing procedures that make it difficult to access a free medical forensic exam.
	The entity responsible for payment of the medical forensic exam reimburses at a rate that reflects the true and consistent cost of the services provided.
	Health care providers conducting medical forensic exams have the specific training and knowledge necessary.

	DNA or other physical evidence is not forwarded to CODIS or other forensic laboratories for testing and evaluation until such time as the victim decides to participate in the criminal justice process.
	Any victim who is not eligible for alternative reporting options (e.g., minors) are not provided information that misleads them into believing they are, and victims who may see their case pursued against their wishes are provided realistic information and referrals for advocacy and other resources. This may include victims who are sexually assaulted by an intimate partner or a serial stranger rapist as well as those who are seriously injured.

This chart was adapted with permission from Minnesota Model Policies for Forensic Compliance (2011), written by Sara G. Gonsalves, J.D. and published by the Sexual Violence Justice Institute (SVJI), Minnesota Coalition Against Sexual Assault. SVJI was awarded a grant from the State of Minnesota, Department of Public Safety, Office of Justice Programs (OJP) to improve the quality and management of the medical forensic examination process for victims of sexual assault, in response to the VAWA 2005 forensic compliance mandates.

Need for Evaluation: Data Collection

It is also worth noting that we need to know a great deal more about how often medical forensic exams are conducted with victims who have not yet made a decision regarding criminal justice participation – and what happens to those cases from that point forward.

> *For example: How often are charges filed, and how many of these cases are successfully prosecuted? How might these trends change across time, and how are they influenced by differences in procedural components, such as whether, when, and how victims receive follow-up contact? Are victims notified at the time the destruction of their evidence is pending? Are they contacted if corroborative information later emerges, such as another assault committed by the same suspect? Once again, these issues must be addressed in a multidisciplinary community protocol, and data must be tracked so we can understand unique patterns based on local practices* (Lonsway & Archambault, 2010, p. 85).

Data collection conducted to address these questions could allow community professionals to immediately identify which communities are conducting more (versus fewer) of these exams, and which are seeing more (versus fewer) victims convert to a standard report. This, in turn, could help to identify best practices in those communities

that are encouraging victim participation in the investigation, even if they were initially unsure or unwilling to do so. Additional information that could be included in such a data collection effort would be documentation of the reasons given by victims for being unable to report at the time of the forensic exam and factors that helped them to re-engage with the process by converting to a standard report. It could also include documentation of those cases where victims "convert" during the course of the medical forensic exam. Specific quotes from victims would also be important to document, to enliven the documentation of factors affecting their decision making.

Example: Texas Report on Forensic Compliance Implementation

An outstanding example of such evaluation is found in a report summarizing the results of a statewide assessment of forensic compliance in the state of Texas. Researchers in the School of Social Work at the University of Texas (Austin) conducted hundreds of in-depth interviews and web-based surveys with: Sexual Assault Nurse Examiners (SANEs), medical personnel, rape crisis center advocates, law enforcement officers, prosecutors, and state agency personnel. Results suggest that the "non-report program" has been successful, yet challenges remain. Interview quotes enliven key findings. Lead authors are Dr. Noël Bridget Busch-Armendariz and Laurie Cook Heffron (2011).

Public Education

In a critical advance, the most recent reauthorization of VAWA 2013 states that a governmental entity (such as a US state, territory, or tribal government) will only be eligible for STOP grant funding if it:

> "coordinates with regional health care providers to notify victims of sexual assault of the availability of rape exams at no cost to the victims."[12]

This new provision has the potential to create a sea change in public awareness.

Many communities have already developed innovative ways to reach the public with information about their options – particularly the fact that sexual assault victims can obtain a medical forensic exam free of charge and without being required to make a decision about criminal justice participation. Some have approached this issue through public service announcements, others through media campaigns, and still others through agency websites. All of these approaches can be effective in informing the public, and thus increasing access for victims of sexual assault.

Given that the whole point of forensic compliance is to increase access for victims of sexual assault – both to the medical forensic exam as well as the criminal justice

[12] H.R. 4970--112th Congress: Violence Against Women Reauthorization Act of 2012. (2012). In www.GovTrack.us. Retrieved March 15, 2013, from http://www.govtrack.us/congress/bills/112/hr4970.

system as a whole – creating a VAWA-compliant system is only half the battle. The other half is ensuring that community members are aware of their options, to increase the likelihood that they will engage the system when they or someone they love has been sexually assaulted.

Example: Innovative Public Education Efforts

On the EVAWI website, in the section dedicated to forensic compliance resources, there are a number of innovative public awareness initiatives highlighted. These include websites, public service announcements, and a sample press release and newspaper editorial. All of these examples can be used to inspire similar public education efforts in other communities.

To highlight just one example, the 911 call center in **Missoula, Montana** offers a website for their program, "It's Your Call." Focused specifically on sexual assault, the website offers information about the services offered by the 911 call center and other resources in the community, including law enforcement agencies, health care facilities, and victim advocacy agencies. University resources are also provided, and links offer more information on topics such as risk reduction, bystander intervention, and the role of men in preventing sexual violence. With respect to forensic compliance, the website states:

When you call 911, it does not obligate you to file a police report. It does, however, help you open doors to services available in the community.

Such examples clearly point the way to achieving the true spirit of increase access for victims.

Conclusion

As previously stated – and as made clear from the complexity of this document – the development of a community protocol that truly achieves the spirit of the law in VAWA 2005 requires both careful thought and hard work. This is because it involves very complicated processes that are unique for each state, territory and Indian tribal government.

For inspiration, we therefore conclude this module by shining a spotlight on a community that is on the leading edge of this issue. By creating a unique program called "You Have Options," the Ashland (Oregon) Police Department is leading the way toward truly increasing the access of sexual assault victims to the criminal justice system as well as other community resources. We commend this agency for creating such an innovative program, and recognize the community partnerships that made it possible, including the Jackson County Sexual Assault Response Team (SART), Community Works, and Women's Resource Center Southern Oregon University.

The field will surely benefit from the lessons learned through this innovative and inspiring program.

As of January 1st, 2013, victims in **Ashland Oregon** now have the option of reporting their sexual assault in a variety of ways. These options are described as:

- Information Only.
- Partial Investigation.
- Complete Investigation.

Detailed information on these options can be found on the police department's webpage, and links are provided to an even more extensive website that offers background on the program and its purpose.

As described on the department's webpage, the immediate goal of the program is *to increase sexual assault reporting by eliminating as many barriers to reporting as possible.* The long-term goal is *to increase the identification and prosecution of sexual predators in our community, thereby decreasing sexual assault victimization.*

This is exactly the type of program that can help to achieve such a goal, as highlighted in one example provided by Ashland Police Department's Deputy Chief Corey Falls:

> We had a teenage *victim come forward and disclose about a sexual assault that occurred*

three years ago based on the premise we would not tell her parents. She had already been working with advocacy when she came in on her initial contact, so we did not need to put that in place. On her second contact with us she brought her mother and had informed her of what happened. She is now an active participant in our investigation. We identified the suspect and have identified a second victim. This case is now going forward and looks to be a strong case.

Resource: Alternative Reporting Options

For more information on alternative reporting options, please see the OLTI module entitled: *Reporting Methods for Sexual Assault Cases.*

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