The Earthquake in Sexual Assault Response: Police Leadership Can Increase Victim Reporting to Hold More Perpetrators Accountable

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When the Violence Against Women Act was reauthorized in 2005, it included some briefly worded provisions that triggered an earthquake for those who respond to sexual assault. Specifically, it says that states and territories 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 forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.” In the past, states were required by previous versions of the Violence Against Women Act to offer such exams to victims free of charge or with full reimbursement, but police could require that victims cooperate with the investigation in order to do so. The 2005 reauthorization (often referred to as VAWA 2005) was designed to change that. VAWA 2005 seeks to ensure that all victims of sexual assault have free access to a forensic exam, regardless of whether they report the crime to police and participate in the investigation.

Yet implementing this type of protocol requires addressing many complex issues with respect to evidence collection, storage, anonymous reporting, medically mandated reporting, records retention, retrieval, and collaboration with hospitals and other community agencies. For example, what will happen to the evidence collected? How will it be stored and how will a chain of custody be preserved? How long will evidence be stored? How will it be retrieved if the victim later decides to participate in the investigation? Will the evidence be sent to the crime lab? Will it be submitted to the Combined DNA Index System (CODIS)? If so, what happens if there is a hit? Remember that at this stage of an investigation, law enforcement has not established that a crime has been committed, consenting sexual partners have not been identified and eliminated, and victims have expressed a desire not to have contact with police.

These are difficult questions, so it is no surprise that few law enforcement executives are currently prepared to provide answers, much less comply with this provision. For many states and territories, the changes that are required have been described as monumental. In this article, the authors provide information to help law enforcement personnel and other community professionals design a response system that goes beyond simple compliance with the “letter of the law” and actually creates a model for best practices that achieve the honorable “spirit of the law” enacted with this VAWA 2005 provision. Accomplishing this goal will require considerable coordination extending beyond the traditional first responders to include a far wider range of stakeholders. It also will necessitate a realistic assessment of the laws in each state and the local context of resources that are available to professionals in each community.

What’s at Stake: STOP Grant Funds

As of January 5, 2009, all states and territories had to certify that they are in compliance with all provisions of VAWA 2005 in order to remain eligible for Services, Training, Officers, Prosecutors (STOP) grant funds. These funds are originally distributed by the Office on Violence Against Women (OVW), U.S. Department of Justice. The funds are awarded to states and territories and are administered to programs using a formula ensuring that 25 percent of the money is allocated for law enforcement, 25 percent for prosecutors, 30 percent for victim services, and 5 percent for state and local courts. Funds are used to support core services, training, and other programs addressing violence against women. Domestic violence shelters and rape crisis centers are particularly reliant on STOP grant funds; in fact, some programs may need that money to keep their doors open.

Two Prongs: Payment and Reporting

The VAWA 2005 provision regarding forensic compliance actually has two prongs. First, victims of sexual assault must have access to a medical forensic examination without paying for it, or with full reimbursement if they do pay out-of-pocket costs. VAWA 2005 does not specify, however, what agency or entity will cover these costs. The legislation requires only that states, territories, and the District of Columbia certify that it or another governmental entity “incurs the full out-of-pocket costs of forensic medical exams” for victims of sexual assault. In other words, the state or territory must ensure that these exams will be paid for through some mechanism, or at least they must do so if they want to continue to receive STOP grant funds.

To comply with this first prong of the VAWA 2005 provision, some states have enacted legislation or taken other steps to ensure that there is a centralized source of payment for these examinations. Payment mechanisms include the attorney general’s office, state police agencies, or crime-victim compensation programs. Other states have designated that these expenses will be...
localized, paid for by a county government unit, the public health department, or the law enforcement agency with jurisdiction over the assault location. Not surprisingly, the payment mechanisms administered by states and territories appear to be operating more consistently than those that are localized; there is tremendous variability in the effectiveness of local payments.

The second prong of forensic compliance requires that victims of sexual assault have access to a medical forensic examination without being required to “participate in the criminal justice system or cooperate with law enforcement.” Initially, there was some question whether this provision would conflict with state laws mandating medical providers to report to law enforcement when a patient discloses that a sexual assault has occurred. Yet OVW has declared that this is not the case. In a document responding to several frequently asked questions, OVW clarifies that states with medical-mandated reporting requirements can be compliant with this provision of VAWA 2005 “as long as the victim retains the ability to choose not to cooperate with law enforcement or the criminal justice system and receives a forensic examination free of charge or with full reimbursement.”

The Victim’s Decision

One of the most frequently asked questions from law enforcement professionals and others who hear about the new requirement is: why bother? Why should sexual assault victims go through the ordeal of a medical forensic examination if they do not want to report to law enforcement or participate in the investigation? There is a long version and a short version of the answer to this question. First, the short one: law enforcement hopes that victims will change their minds. Victims who initially come into contact with the community response system but who are unsure about participating in a law enforcement investigation may later decide to participate in an investigation. If so, it may be critical that forensic evidence was documented and collected early in the process.

The longer answer requires a bit more background. As anyone who works with victims can attest, many victims simply do not know what they want to do in the aftermath of a sexual assault. Imagine for a moment the trauma of being sexually assaulted. Immediately afterward, there is no time to make sense of what has happened, let alone figure out what to do about it. Many victims feel afraid, ashamed, and confused. They are probably not sure whom to tell. But regardless of whom they tell, they are likely to be confronted with the question of whether or not they will report the incident to police and press charges. This question is asked not only by community professionals (including victims’ advocates, forensic examiners, and law enforcement professionals), but also by friends and family members. In some cases, it is the first thing people ask when victims say they have been sexually assaulted.

Unfortunately, this question is all too often framed as if it were an all-or-nothing, now-or-never decision. Victims often feel intense pressure to report their sexual assaults to police, frequently with well-meaning friends and family members as well as community responders. Yet by reporting to police, many victims fear that they are boarding a train that is inevitably headed toward an invasive police investigation, scathing media coverage, and the horror of being cross-examined by a hostile defense attorney at trial. After all, that is what they have seen on television.

Visitors rarely have a realistic understanding of their choices or adequate support to evaluate them. They often feel confused, overwhelmed, and terrified of what will happen if they report their sexual assaults to police. Is it any wonder, then, that so many victims decide to remain silent? Unfortunately, victims all too often are given the impression by everyone they talk to that this is a decision they must make immediately. Because of the intense pressure to make an immediate decision, their answer is usually “no.”

Consequences of Nonreporting

Research clearly documents that most sexual assault victims do not report the crime to police. Estimates from large-scale national studies suggest that only about 5 percent to 20 percent of American women who are sexually assaulted will notify law enforcement. When they do report, moreover, it is often after a delay of days, weeks, or years. Even those who are physically injured do not typically report the assault or receive medical care. One study cosponsored by the National Institute of Justice and the Centers for Disease Control and Prevention found that only about 36 percent of sexual assault victims with physical injuries contact a health professional for assistance.

By not reporting a sexual assault, however, a number of tragic consequences unfold. Obviously, if the crime is not reported, no time-sensitive evidence is collected from the victim, suspect, or crime scene. No information is documented by law enforcement, so there is little or no opportunity to prosecute the crime. Victims may not be offered access to forensic medical care, victim advocacy, or other services because they do not connect with the community response system. Moreover, because they do not qualify for crime-victim compensation in most states, they will not be reimbursed for any financial loss or receive help to pay for medical care, counseling, and lost wages. No investigation occurs, and, as a result, perpetrators are free to offend again. Nothing changes for the next victim, so the cycle repeats.

Perhaps nowhere is this reality more vividly illustrated than in the research by Dr. David Lisak at the University of Massachusetts in Boston, Massachusetts, and Dr. Paul Miller at Brown University School of Medicine in Providence, Rhode Island. These researchers surveyed a sample of 1,882 men with an average age of 26.5 years. These men were employed and attending college part-time; they were demographically representative of the diverse American population. Of these 1,882 men, 120 (6.4 percent) admitted to having committed acts that meet the legal definition of rape against women they knew. Yet none of these rapes were ever reported. Of the 120 rapists, slightly more than one third (36.7 percent) committed a single act of rape. Almost two-thirds (63.3 percent) committed multiple rapes; in fact, they committed a total of 439 rapes, which translates to an average of nearly six (5.8) rapes per rapist. Altogether, the 120 rapists were responsible for 1,225 separate acts of interpersonal violence, including rape, battery, and physical and sexual abuse of children.

Perhaps most important for the present discussion, Dr. Lisak and Dr. Miller calculated the percentage of rapes that were committed by these repeat perpetrators and found that the figure was an astonishing 91 percent. In other words, the vast majority of rapes—more than 90 percent—are committed by serial rapists as compared to those perpetrating a single incident. These findings were recently replicated by Stephanie K. McWhorter, Naval Health Research Center, San Diego, California, and colleagues with a sample of newly enlisted male Navy personnel. Using a similar methodology as Dr. Lisak and Dr. 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 most critical point for the present discussion is the fact that 95 percent of these rapes were committed by a serial rapist; the percentage of rapes that were committed as a one-time incident constituted only a small fraction (5 percent) of the total number of rapes.

Spirit of the Law

The forensic compliance provision of VAWA 2005 was designed to confront this reality by encouraging victims of sexual assault to report the crime to law enforcement and access other community services that could help them to heal. Victims vary widely with respect to their initial thoughts about reporting. When they first come into contact with a community agency, whether that is a hospital emergency room, a forensic examiner program, or a victim advocacy agency, some victims already know that they
want to report the crime to law enforcement and actively participate in the process of an investigation and criminal prosecution. On the other hand, some victims absolutely refuse to talk to police. Most victims range between these two extremes: they may feel that they want to talk with police about the sexual assault, but also express a range of questions and concerns about what will happen if they do. These are the individuals who can benefit most from the forensic compliance provision.

Try to imagine an alternative scenario. But first, a question: what if a community response system was designed based on a realistic understanding of how victims react to being sexually assaulted? What would it look like? For example, what if victims were allowed time to rest, think, clean up, eat, drink, sleep, smoke, sober up, and do all the things they need to do to feel human again? What if they were offered the opportunity to gather the information and support they need to make good, solid, well-educated decisions? In the meantime, what if law enforcement collected and properly stored any time-sensitive evidence to preserve the victim’s option of reporting for later? And what if law enforcement connected victims with forensic health care, victim advocacy, and other services that could help them to recover from trauma?

This is the scenario communities would experience if law enforcement implemented the “letter of the law” for VAWA 2005 forensic compliance. To comply with these provisions, criminal justice and community professionals must work together to create a response system that allows victims to obtain a medical forensic examination free of charge or with full reimbursement, regardless of whether they report to police or otherwise participate in a law enforcement investigation. The hope is that this will allow victims time to decide what they want to do, while law enforcement collects and documents forensic evidence and victims have the opportunity to access medical care and other services.

But let’s take the scenario even further. What if law enforcement offered these victims the opportunity to talk with an officer anonymously? In some cases, this wouldn’t necessarily mean that the victim’s identity is truly unknown to the responding officer. For example, in small communities, the officer may know who the victim is as soon as they see each other. However, an anonymous report would allow victims the opportunity to talk with an officer without identifying information being formally recorded as part of an official crime report. The victim may also make the decision to not identify the person who sexually assaulted them—at least, not initially. In this scenario, victims would have the opportunity to establish rapport with the officer, getting to know the officer personally and finding out more about what an investigation would entail. Victims could ask the officer questions and make a decision based more on realistic information and less on a fear of the unknown. OVW is clear that practice is not required for agencies to be compliant with VAWA 2005. States do not have to certify that victims can report sexual assaults to law enforcement anonymously. However, End Violence Against Women International, in Addy, Washington, believes that this represents the best practice in achieving the noble “spirit of the law” for VAWA 2005.

What do you think? Would this anonymous reporting option increase the number of victims who come forward and participate in a law enforcement investigation? Both common sense and emerging evidence suggest that it will. As described in the OVW document Frequently Asked Questions on forensic compliance,

Many victims refuse to undergo examinations because they are not ready to report the sexual assault to the police. Advocates for sexual assault victims maintain that the VAWA 2005 forensic examination requirement will encourage more victims to undergo examinations directly following the crime, thereby preserving forensic evidence for future prosecutions when victims are ready to cooperate with law enforcement. Jurisdictions that have implemented anonymous reporting, including the U.S. Military, have found this to be true.8

Meeting Victim Needs and Serving Justice

Not surprisingly, prompt evidence collection increases the likelihood of improved outcomes in the criminal justice system.9 In other words, victims who report sexual assaults to law enforcement and who participate in the process of forensic evidence collection as soon as possible are more likely to see their cases successfully investigated and prosecuted. Perhaps more importantly, victims who report sexual assault to law enforcement are far more likely to receive medical care for any injuries they sustain.10

The primary motivation for victims to have a forensic exam is typically to meet their own physical and medical needs, not to facilitate the evidence collection process.11 However, in this context at least, victims’ motivation matters less than their behavior. By contacting a forensic examiner, victims can meet their own treatment needs while pursuing justice. Once in touch with a competent and compassionate health-care professional, victims have the option of receiving medical care, accessing supportive services, and participating in forensic evidence collection that can be used later if the case is investigated and prosecuted.

The rest of this article will focus on some of the specific questions of policy and protocol that must be addressed to implement a community response system that is compliant with the spirit of the VAWA 2005 legislation. The conclusion will detail some resources that can be used by law enforcement personnel and other community professionals seeking to design a response system for forensic compliance.

Initiating a Medical Forensic Examination

Depending on the type of response system implemented by each community, achieving forensic compliance may require a system for victims to obtain a forensic exam, without

• notifying law enforcement,
• obtaining law enforcement authorization for the exam,
• providing identifying information in the report made to law enforcement,
• violating the victim’s confidentiality or wish to remain uninvolved in the criminal justice process, and/or
• triggering the process of an investigation and processing of evidence.

The specific procedures will differ depending on whether or not the state has a mandated requirement for medical professionals to report to law enforcement if they have patients who have been sexually assaulted. Protocols will also vary if law enforcement agencies are required to authorize and pay for forensic examinations, or if these exams can be conducted without any initial police involvement.

For example, most states have no requirement for medical professionals to report sexual assaults to law enforcement. Others have mandated reporting requirements that allow forensic examiners to notify law enforcement of the sexual assault without identifying the victim or suspect (that is, anonymous reports). Still others spell out in their state laws that medical mandated reports must include identifying information for the victim and the suspect if known. Finally, some states have statutory requirements that forensic examinations will be authorized and paid for by the law enforcement agency with jurisdiction over the assault.

Clearly, the protocol for initiating a medical forensic examination must be carefully crafted to meet such statutory requirements, as well as the unique context of the community. It will certainly involve multidisciplinary collaboration among a wide range of professionals, including communications personnel (that is, dispatch); responding and investigating officers within local law enforcement agencies; forensic examiners; victim advocates;
and administrative staff (for example, the billing department of the medical facility).

**Generating a Case Number and Developing a Tracking System**

Regardless of whether or not law enforcement is involved in the initial response, a tracking number of some kind will need to be generated for each medical forensic examination. This number is needed to track the evidence collected and link it to the information that is available about the case, so it can be retrieved if the victim later decides to participate in a police investigation. This tracking number could potentially be generated by various professionals involved in the initial response system, and it may differ from formal case numbers that are typically generated by law enforcement agencies. Achieving forensic compliance may therefore require developing a new tracking system that can incorporate cases where a forensic exam was conducted but the victim did not report to law enforcement, provide identifying information, or participate in the investigation.

Additional questions pertain to the type of report that will be generated. For example, the report may be “informational” rather than a crime report. These types of reports go by a variety of different names, including an incident report, an informational report, or an officer’s report, among others. Regardless of the terminology, informational reports are typically used to document incidents that do not yet meet the elements of a crime; they will also likely be used by most law enforcement agencies to document reports in which the victims remain anonymous. If informational reports are used to document these medical forensic exams that are conducted with a victim who is not participating in a law enforcement investigation, procedures must be developed to ensure that they are linked to the evidence being stored and retained for a sufficient length of time—not just for a year, which is typical for informational reports.

**Paying for the Medical Forensic Exam**

As previously described, the specific payment mechanism differs across communities, but a response system honoring the spirit of VAWA 2005 must ensure that victims are not billed and do not pay for their forensic exams, regardless of whether or not they report to law enforcement or participate in an investigation. Some communities require victims to pay for exams or bill victims’ insurance companies first before reimbursing them for any out-of-pocket costs. According to OVVW, this type of procedure can be compliant with VAWA 2005 as long as two conditions are met. First, victims must be fully reimbursed for any out-of-pocket costs, regardless of their decision to participate in the criminal justice process. Second, victims or their private insurance companies cannot be billed by any state or territory that uses STOP grant funding to pay for forensic exams. This type of procedure can be used only by states or territories using other funds to cover these costs.

However, this type of procedure clearly does not represent best practice if the goal is to increase reporting and victim access to forensic medical exams. Best practice is for these exams to be paid for without victims or their private insurance carriers being billed first. Just try to imagine a scenario in which victims of any other crime were asked to pay for evidence collection.

Even when the payment mechanism is administered at the state level, protocols require coordination at the local level between first responders and those involved in the billing and payment process. As a result, a model system will require collaboration among health-care providers and administrative staff within health-care facilities; billing departments; state agencies (for example, the STOP grant administrator, the Department of Health, a crime victim compensation program, and the attorney general’s office); victim advocacy agencies; police departments; prosecutors’ offices; and legislators or other policy makers.

**Storing, Transporting, Processing, and Destroying Evidence**

Again, the specific model for each community may differ, but extensive coordination will be required to address all relevant questions regarding evidence storage, transportation, processing, and destruction. These issues are complex and have implications for staff within law enforcement agencies (especially those in records and property departments), as well as staff at health-care facilities, crime labs, and prosecutors’ offices. Policies and protocols must be developed that protect both the interests of victims and the integrity of evidence for victims who decide at a later point to proceed with an investigation. Questions include who will store the evidence, how long it will be retained, what will happen if the victim wants the evidence returned, whether or not evidence will be submitted to CODIS, and how to respond if the evidence returns from CODIS with a “hit.” Again, it is critical to keep in mind that law enforcement may not have established that a crime has occurred in these cases, that consenting sexual partners may not have been eliminated, and that the victim may not want police contact.

**Providing Victims with Information**

Finally, a model response system will include careful attention to the information that is provided to victims. There may be numerous options regarding who will provide victims with the information they need during the initial response and any later stages of the criminal justice process. However, professionals tasked with this responsibility must be educated on the issues involved in forensic compliance. Coordinated protocols must address the initial information that is provided to victims to explain their options and rights. However, these protocols must also outline what happens to the evidence that is collected during a forensic exam and clarify what will happen in situations in which evidence is processed or a suspect is identified without the victim’s participation or consent.
Need for Leadership

In conclusion, at right are a few resources that may help communities achieve forensic compliance. However, it is critical to note that the reforms needed will involve many units and functions within a given police agency. They will also require establishing collaborative protocols with hospitals and other agencies in the community (for example, crime labs, prosecutors’ offices, and victim advocacy agencies).

Pursuing the vision of forensic compliance thus requires leadership from within law enforcement—not just by command staff but also by others working throughout the agency to successfully implement these challenging reforms. Without law enforcement leaders working in a multidisciplinary context in each community, this vision will remain a false promise. But with law enforcement at the table and even leading the way, the United States can perhaps begin to change the stark realities of nonreporting for sexual assault victims and hold more perpetrators accountable.

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Notes:

2. Ibid. at § 3796gg-4(a).
3. Ibid. at § 3796gg-4(d).

Chief of Police

The City of Hot Springs is seeking a proven law enforcement professional to become Chief of Police replacing the retiring chief. This position reports to the City Manager and heads a progressive department with a staff of 133, including 105 sworn officers. A bachelor’s degree in criminal justice, business administration or related area from an accredited institution; at least 7 years of experience in management or administration in a law enforcement agency; must meet the requirements of applicable state and local laws regulated by the civil service; any combination of education and experience required; starting salary is negotiable with excellent fringe benefit package available. Request for information may be directed to Minnie Lenox, Human Resources Director, 501-321-6840 or email mlenox@cityhs.net. Submit cover letter and resume by October 1, 2010 to City of Hot Springs, Human Resources Department, P.O. Box 700, Hot Springs, AR 71902. Minorities and women are encouraged to apply. The City of Hot Springs is an Equal Opportunity Employer.

Resources

Office on Violence Against Women (OVW), U.S. Department of Justice. For more information on OVW, the Violence Against Women Act, forensic compliance, and contacts for the STOP grant administrators in states and territories, visit http://www.ovw.usdoj.gov.

End Violence Against Women (EVAW) International. In May 2009, EVAW International was awarded a grant from OVW to help professionals implement a community response system that is compliant with the forensic examination requirements of VAWA 2005. As a result, EVAW International can offer information, resources, and guidance as needed in this complex and challenging area. Contact the authors of this article or others at EVAW International by e-mail, telephone, or fax; contact information is provided at http://www.evauinternational.org. Resources also are posted in the special section of EVAW International’s website, which is dedicated to providing technical assistance on the topic of forensic compliance.

Sexual Assault Prevention and Response Office (SAPRO). Many professionals have questions about the laws in their states pertaining to mandated reporting of sexual assault and payment for medical forensic examinations. Answers can be found on the webpage for SAPRO of the U.S. Department of Defense, which has posted a summary of state laws compiled by the American Prosecutors Research Institute and the National Center for the Prosecution of Violence Against Women. By clicking on a state, a document appears that summarizes relevant laws pertaining to mandated reporting, payment for forensic examinations, and other reporting statutes that may impact rape victims (for example, injuries). However, the materials were last updated in January 2007, so they may not reflect recent changes in state statutes to comply with the VAWA 2005 provisions governing sexual assault medical forensic examinations. It is available at http://www.sapro.mil/index.php?law-and-dod-policies/civilian-sexual-assault-reporting-law.