



End Violence Against Women International
(EVAWI)

Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates

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March 2013
Last updated October 2018

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. 2015-TA-AX-K015 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

- Review a brief definition of victim advocacy and the general role of victim advocates.
- Recognize similarities and differences in the professional role of victim advocates who work in a community-based organization or system-based organization.
- Explore the complex issues surrounding confidentiality.
- Examine the role of victim advocates during the medical forensic examination, various stages of the law enforcement investigation, and the process of criminal prosecution.
- Define the existing rights of crime victims on the state and federal level.
- Clarify crime victim compensation and how it benefits victims.
- Identify other opportunities for advocacy, including assisting with civil legal remedies and expert witness testimony.
- Explore the common concerns community professionals often have regarding advocates and discuss strategies to help overcome these concerns.

Please note: This module is a condensed version of the OnLine Training Institute module entitled: [Effective Victim Advocacy within the Criminal Justice System: A Training Course for Victim Advocates](#). While that module was created specifically for advocates, this module is intended for other professionals who may, in the course of their duties, work with victim advocates. This course will provide you with information that will help you to better understand the roles and responsibilities of the victim advocate. If you have already signed up for or completed the course work for [Effective Victim Advocacy within the Criminal Justice System: A Training Course for Victim Advocates](#), you do not need to complete this module as the course material is essentially the same.



Introduction

What is Advocacy?

Before we go any further, it may be helpful to define the term “advocacy.” *Webster’s Dictionary* defines advocacy as “active support, as of a cause” (p.17).

The definition goes on to state that an advocate is:

- “One who supports or defends a cause” <*an advocate of equal rights*> and/or
- “One who pleads on another’s behalf “(*Webster’s New College Dictionary*, 2001, p.17).

Individual vs. Systems Advocacy

Individual advocacy refers to an advocate who works directly with victims of sexual assault, providing supportive services to help them navigate the healing and/or criminal justice process. Individual advocacy includes providing direct services to victims of sexual assault, such as:

- Crisis intervention and emotional support.
- Information, resources, and referrals.
- Assistance in problem solving.
- Accompaniment.
- Safety planning.
- Assistance securing orders of protection.
- Assistance accessing crime victim compensation.
- Emergency shelter and/or financial assistance.
- Counseling and case management.

Systems advocacy refers to advocates addressing systemic issues that impact victims. While systems advocacy may be used to help a specific victim (such as advocating on behalf of a victim who has not received the appropriate response from a professional within the health care, criminal justice, or community response system), it is also used as a strategy for improving the overall response or outcomes for all victims of sexual assault. Examples of systems advocacy may include:

- Advocate on behalf of a victim to improve the response by another professional.

- Meet with members of the police department to discuss their approach to investigating sexual assault and helping to craft questions to yield the best information.
- Collaborate with other criminal justice professionals to ensure that all victims can have an advocate present throughout the criminal justice process if they want one.
- Collaborate through community Sexual Assault Response and Resource Teams (SARRTs).
- Engage in legislative advocacy to enact laws that protect victims and their rights, such as rape shield laws and statutes prohibiting the use of the polygraph.
- Advocate for legislation to grant victims the right to an advocate, or to allow testimony regarding the trauma response to sexual assault during court proceedings.

It should also be noted that systems advocacy goes beyond the criminal justice system and legislative change. Victims of sexual assault work within a number of systems, including but not limited to: health care, housing, mental health, and other social service systems.

In order to provide comprehensive support throughout the healing and criminal justice process, both forms of advocacy – individuals and systems – must be provided by victim advocacy organizations. Yet advocates should always let victims drive the agenda for systemic change, meaning they should listen to the challenges and ideas victims share and then act upon them. This also means that advocates should consult with victims to get their opinions on potential changes in policies or law. One way to accomplish this is to invite victims to be active members of community SARRTs, as they can inform the participating professionals who are seeking to improve their response to sexual assault.

Benefit of Victim Advocates

Advocacy organizations often promote the benefits of having an advocate work with victims who are participating in the criminal justice process. They suggest that the support of an advocate can help victims to participate throughout the criminal justice process and provide more (and better quality) information to assist with their case. Victims may also have an increased likelihood of connecting with other professionals and successfully healing from the trauma when they have the assistance of an advocate.

Though research is somewhat limited on the benefits of advocates, the consistent conclusion is that advocacy services facilitate victim recovery and increase access to

other services in the community response system; this includes the criminal justice system as well as other social services.

- For example, in one statewide study of rape crisis center services, Wasco et al. (2004) “found that survivors consistently rated advocates as supportive and informative” (Campbell, 2006, p. 32).
- In another study, Wasco, Campbell, Barnes, and Ahrens (1999) found that victims who worked with an advocate experienced less distress after contacting the legal and medical systems.

“Taken together, the results of these studies suggest that rape victim advocates are beneficial” (Campbell, 2006, p. 32).

More specific evidence also addresses the question of exactly how advocates facilitate victim recovery by increasing their access to other services in the community response system.

With respect to law enforcement, results indicated that when an advocate was involved:

- Victims were more likely to have a police report taken (59% vs. 41%).
- The case was more likely to be investigated further (24% vs. 8%).

Regarding medical services, a similar pattern of increased service delivery was also seen when advocates were involved:

- Victims were more likely to receive information on STDs (72% vs. 36%) and HIV (47% vs. 24%), as well as prophylactic treatment for STDs (86% vs. 56%).
- Victims were more likely to be tested for pregnancy (42% vs. 22%) and receive emergency contraception to prevent pregnancy (33% vs. 14%).
- Victims were less likely to be treated “impersonally or coldly” (36% vs. 69%).
- Medical professionals were less likely to refuse to conduct the examination because the assault occurred “too long ago” (24% vs. 36%).

This is particularly significant because none of the sexual assaults were “too long ago” based on accepted standards; all of the sexual assaults in the study were reported within 96 hours.

As a result of their sexual assault, as well as their contact with police officers and physicians, most of the sexual assault victims in this study experienced considerable distress (Campbell, 2006). However, some responses were seen less often among

those victims who worked with an advocate (e.g., feeling bad about themselves, guilty, depressed, or reluctant to seek further help). In other words, victims who worked with an advocate were less likely to blame themselves for the sexual assault and less reluctant to seek further help from community response systems. As a result, they received more services from community professionals and had better recovery outcomes.

Resource: Expert Interview

In this [expert interview](#), Dr. Kim Lonsway describes the benefits to law enforcement when the victim has an advocate present.

Role of Victim Advocates

The role of the advocate is to support the victim and to assist in the healing process. Most victims will never report their sexual assault, so they will not interact with criminal justice professionals or require the assistance of an advocate during that process. Therefore, in most cases the primary focus of victim advocacy is on the physical safety, health, emotional well-being, and rights of sexual assault victims. Individual advocacy in these areas includes making sure that victims and their support people have all the information they need to make decisions – and that they receive all the services to which they are entitled.

Yet quality advocacy goes beyond simply providing services. Advocates must also spend time talking with victims to better understand who they are, what their situation is, and what their needs are. This, as well as listening and validation, help an advocate form a connection to the victim as a person. By taking the time to connect with and understand the victim, the advocate involves the victim in identifying the services he or she will eventually receive from the advocate – rather than the advocate making this important decision without input from the victim.

Resource: Expert Interview

In this [video interview](#), Judy Benitez describes the benefit of involving victim advocates in the investigation and prosecution of sexual assault.

Quality advocacy also means tailoring services to the uniqueness of each victim. To the extent possible, services should therefore be culturally-relevant and designed so that all victims have access to them. For example, victims with disabilities may require certain accommodations, such as using assisting devices or working with personal care attendants. Non-English-speaking victims will need an interpreter, both for participating in the criminal justice process and for utilizing advocacy services if the advocate does not speak the victim's primary language. The responsibility of finding and paying for an

interpreter falls upon the advocacy organization, health care facility, law enforcement agency, or prosecuting attorney's office – not on the victim.

Advocates also ensure that victims are equipped to provide truly informed consent, to ensure they are aware of the risks and benefits associated with making decisions (e.g., disclosing certain information). For example, when a teen calls a 24-hour crisis line and discloses a sexual assault, the advocate who answers will need to inform the caller if she/he is a mandated reporter. Ideally, the advocate will explain this fact before the teen divulges identifying information. Sometimes this requires interrupting the victim when the advocate senses this is about to happen. By providing the information that a victim needs to make such decisions, the advocate has set the stage for an open, helpful connection between advocate and victim.

Example: What to Say

"Before you go any further, I need to let you know that I am a mandated reporter and if you give me any identifying information, like your name and address, I may have to report this to the authorities. But I can still talk with you even if you don't want to give me your name..."

Crisis Intervention

Perhaps the most important service that advocates can offer is crisis intervention and emotional support, by providing victims with the opportunity to recount their experiences, vent their feelings, and receive validation and reassurance that their responses are normal. Crisis intervention includes actively listening, validating feelings, dispelling myths, identifying needs, supporting choices, and providing information that is accurate and helpful.

Crisis Intervention is not counseling and should not be confused as being a form of therapy or counseling. Crisis intervention is short-term in nature, it focuses on a specific need or issue, and it is primarily provided by an advocate. Many community-based advocacy organizations will offer both advocacy and counseling services, although these services are typically provided by different individuals.

Example: What to Say

"First, let's get your body checked out and have evidence collected. After that, we can talk about filing a police report."

Problem Solving

Though problem solving is actually a component of crisis intervention, it is such a critical step that it deserves its own discussion. Advocates often help victims with the many decisions that need to be made after a sexual assault occurs, offering accurate information so victims can provide informed consent along the way. Unfortunately, victims are required to make a number of difficult decisions in the aftermath of a sexual assault. For example, reporting the sexual assault can be extremely overwhelming for victims. Many are asked immediately if they intend to “prosecute” or “press charges,” which can frighten some victims out of participating in the criminal justice process, because they are unable to think long-term at this stage. Advocates can help victims by breaking this decision (and others) down into smaller, more manageable steps.

Advocates can also assist victims with problem solving by helping them to evaluate the “*pros and cons*” of various courses of action, providing accurate and realistic information, listening to their feelings and helping to make sense of them, raising issues or presenting options that the victim may be too fearful or embarrassed to consider on their own, and assisting victims while they create a realistic plan of action.

Once a victim has made a decision, it is then the responsibility of an advocate to support that decision. This role sometimes demands that advocates help the victim to enact a decision with which they personally disagree. This is true regardless of which “type” of advocate they are (e.g., community-based or system-based).

During the process of problem solving, advocates can encourage victims (e.g., by offering moral support and validation of their feelings), but they should not influence a victim’s decision-making process. Problem solving is not telling the victim what to do. It is critical for advocates to remain neutral, so victims feel they are in control of the process and have the power to make their own decisions.

Accompaniment

A key service offered by victim advocates is accompaniment to criminal justice and non-criminal justice related activities. Criminal justice accompaniment includes responding to health care facilities to be with the victim during the medical forensic examination, attending law enforcement interviews and other investigative procedures, and being present for the victim during interviews with the prosecutor, at court, and even at post-conviction proceedings. Accompaniment to non-criminal justice related events may include follow-up medical appointments and meetings with various professionals, such as civil attorneys, school professionals or employers, and case managers from other social service agencies.

In many situations, particularly during law enforcement accompaniment, advocates serve as a compassionate, emotional presence, meaning there is little interaction between advocate and victim. During others, such as accompaniment to the medical forensic exam, advocates often take a more active role – talking with victims and

helping to increase their comfort level by obtaining food, beverages, clothing, toiletries, or prescriptions. No matter what the type of accompaniment, however, advocates must always follow the lead of the victim in determining how active they should be. For example, some victims may want to talk, while others wish to remain silent. Some victims may want physical contact from the advocate, whereas others will avoid it. Some victims will simply want to be left alone.

Serve as a Liaison Between Other Team Members

Advocates also help to coordinate other services that victims receive from the various health, legal, and social service agencies within the community. By serving as a communication link and a central point of contact between these agencies, advocates can ensure that victims receive the best information and treatment possible. For example, advocates can relay information to the victim, provide updates on the status of their case, and give reminders of upcoming appointments.

Develop a Safety Plan with Victims

Many victims face immediate safety issues in the aftermath of a sexual assault, especially if the perpetrator is still at their home, school, or office – or if the trauma puts them at increased risk for abusing substances or potentially harming themselves. In these situations, victims may need help in planning for their safety, and advocates can assist in this process by considering both their expertise in the dynamics of sexual assault and the individual factors in the victim’s current living and working situation. However, advocates must not make assumptions about what safety means to the victim, or what specific measures will increase the victim’s safety – only the victim can make these decisions.

Example: What to Say

“I’d like to talk with you about your safety when you leave the hospital. Do you know where you want to go? Do you have any concerns about that location? Is there someone you trust that you could stay with – or someone who might be able to stay with you?”

Safety planning typically includes assessing home, work/school, and social environments to help victims be as safe as possible in all those situations. However, only focusing on physical safety is not enough, so advocates must also discuss with victims their emotional safety, financial safety, safety when using technology, and the safety of their children.

Resource: Safety Planning

The Victim Rights Law Center created a [guide](#) for advocates and attorneys to use when safety planning with sexual assault survivors.

The National Network to End Domestic Violence has compiled numerous [resources](#) on technology and safety.

Obtain a Protective Order

One option for increasing safety for victims is obtaining a protective order. A protective order is intended to prohibit abuse, intimidation, or harassment of a victim of domestic violence, stalking, or sexual assault. Advocates should be well-informed on protective orders, so they can discuss the benefits and limitations with victims. In some states, it may be difficult for a victim of sexual assault to meet the criteria for an order of protection – for example, if they are designed only for intimate partner violence. However, some states do have orders of protection that are specifically designed for victims of stalking or sexual assault, regardless of their relationship (if any) with the perpetrator.

Advocates can provide assistance to victims both by explaining the availability of any protective orders and assisting victims in obtaining one. In the best-case scenario, protective orders may serve as a tool for enhancing victim safety. However, as the National Crime Victim Law Institute (2005b) cautions, the worst-case scenario may be when they “serve as a trigger for continued violence” (p. 22). Victims must be advised of this possibility and provided assistance for prevention and response in such a situation.

Resource: Protective Orders

Two documents offer detailed information on protective orders:

[Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence](#) provides information on protective orders that are available for victims of sexual assault in each state.

In addition, a summary of [protective orders](#) available in each state is posted by the American Bar Association Commission on Domestic Violence.

Penalties imposed for violating these orders vary considerably. Depending on the jurisdiction and the original crime that was charged, an individual who violates a provision of a protective order may be found in contempt of court (either civil or criminal), charged with a felony or misdemeanor crime, fined, ordered to obtain counseling, or punished with other related penalties such as “bail forfeiture; bail, pretrial

release, or probation revocation; imposition of supervision; and incarceration” (OVC, 2002b, p. 2; see also NCVLI, 2005b).

Because of this variability, advocates must inform victims that a protective order is merely a piece of paper and only as powerful as the person who holds it wants it to be. This means the victim must document each attempt at contact, as well as refusing to engage with the offender when those attempts are made and notifying authorities when they occur.

Of course, protective orders are only effective “when the restrained party is convinced the order will be enforced” (OVC, 2002b, p. 1). The primary challenge for community professionals is therefore to ensure that protective orders are enforced by punishing violations.

Resources and Referrals

Advocates often provide victims and their support people with resources and referrals to other community-based programs. This may include written materials such as brochures and books, to help victims and their loved ones better understand the dynamics of sexual assault and to assist them in their healing process. Referrals to other social services in the community are also provided by advocates, so it is important for advocates to maintain current, accurate referral directories. For example, some common referrals that advocates might provide to victims include:

- Domestic violence agencies (for counseling, shelter, etc.)
- Mental health agencies (for counseling needs and other services)
- Emergency assistance programs (for rent and utility assistance, clothing, and food)
- Community-based health care agencies (for victims who are under-insured or un-insured)
- Legal resources (for civil attorneys to assist with legal issues pertaining to privacy, housing, education, employment, immigration, family court, financial losses, etc.)
- Transportation assistance (for bus or taxi vouchers)

Types of Advocates

The two types of advocates we will discuss throughout this module are community-based advocates and system-based advocates. Communities may be fortunate to have both types of advocates providing services, but some may only have one, and some communities may not have either type of advocacy organization. In order to understand



the role of the advocate in the criminal justice system, it is essential to discuss the important similarities and differences between both types of advocates, as well as exploring how they might work together to better serve victims of sexual assault.

Both types of advocates will provide the supportive services previously listed, but they may provide them in slightly different ways. With limited resources, it is more important than ever that these two types of advocates coordinate service delivery, to make sure the needs of the victim are met, and to ensure that the victim has support throughout the entire process, from the medical forensic exam to the trial (if there is one).

Community-Based Advocates

Community-based advocacy refers to advocates who work for a community-based agency such as a non-profit rape crisis center, a dual services agency for sexual assault and domestic violence, or a program based in a YWCA or similar organization. Community-based advocates may be volunteers or paid staff, and they may describe themselves as rape crisis counselors, rape crisis advocates, or victim advocates.

Community-based advocates have an exclusive focus on the interests of the victim (and their support people). To the community-based advocate, it does not matter if victims report their assault or participate in the criminal justice process. Their role is to assist victims in dealing with the impact of the sexual assault in all areas of their life, not just their interactions with the criminal justice system. Unfortunately, with limited resources and lack of sufficient funding for staffing, some community-based advocates are so overwhelmed with the needs of victims who are participating in the criminal justice process that the needs of the victims who choose not to participate are left unmet.

Other qualities of community-based victim advocates include the following:

- Agencies may offer a 24-hour sexual assault hotline, short-term or long-term counseling/therapy, support groups, systems advocacy, community awareness programs, and/or prevention education.
- They typically have minimal restrictions or requirements on who is eligible to receive services.
- They usually encounter victims because the victim has sought out their services.
- They typically first come into contact with victims via a 24-hour crisis line (prior to reporting or having a medical exam) or when responding to provide accompaniment during a medical forensic exam.
- Agencies may offer services that allow an advocate to maintain communication with the victim throughout the entire criminal justice process.

- They might be able to assist victims in scheduling appointments and making arrangements, such as transportation to and from counseling appointments.

While many community-based advocacy organizations offer quality training for both staff members as well as volunteers, paid staff members often have more consistent long-term training and supervision.

System-Based Advocates

In contrast with community-based advocates, system-based advocates are employed by a law enforcement agency, office of the prosecuting attorney, the military, or some other entity within the city, county, state, or federal government. Their roles and responsibilities will vary based on their host or governing agency, as will the specific term they use to describe themselves. For example, these professionals may describe themselves as Victim Advocates, Victim-Witness Assistance Coordinators, or other similar terms.

System-based advocacy programs are a component of a governmental structure, so their primary focus is typically on assisting victims in their role as witnesses to a crime. In other words, the victim's needs and interests are balanced to some extent with the interests of the criminal justice system. System-based advocates will often encourage victims to participate in the criminal justice system, and they will typically be able to provide services that are directly related to assisting victims in their role as witnesses during the investigation and prosecution of the sexual assault.

A few other qualities of system-based advocates:

- Their first contact with a victim will vary, as well as the length of that contact. For example, advocates working in a police department will often make initial contact with victims immediately, but only work with them during the law enforcement process, whereas advocates working in a prosecutor's office may not have contact with victims until their case has been referred to the prosecutor's office.
- They may be able to respond to crime scenes to provide immediate support to victims of sexual assault, depending on their policies and procedures.
- Agencies typically have strict requirements for who is eligible to receive services. Thus, sexual assault victims will usually be eligible to receive services from a system-based advocate only if they report the crime to law enforcement and/or participate in the process of a law enforcement investigation and criminal prosecution.
- Advocates often reach out proactively to victims of sexual assault in order to offer their services. The advocate may be provided contact information for victims

when their sexual assault is reported to law enforcement or referred to the prosecutor's office.

- They may assist law enforcement investigators or prosecutors during victim interviews by helping to frame the issues, craft the questions, or facilitate communication with the victim.

Resource: Expert Interview

In this [video interview](#), Judy Benitez describes the benefits of involving a system-based advocate.

In this [expert interview](#), EVAWI Director Aurelia Sands Belle discusses the difference between community-based and system-based advocates.

Advocacy and Confidentiality

One distinct difference between the two types of advocates is confidentiality.

System-Based Advocates

While the level of privilege varies for community-based advocates in different states, system-based advocates typically do not qualify for the counseling privilege, with only a few noteworthy exceptions. In other words, nothing that a victim says to a system-based advocate will typically be protected as confidential. If a system-based advocate is called to testify, this information will usually need to be shared – with the prosecution and then the defense through discovery. The same is true for anything the system-based advocate observes or learns about the victim or case, not just what the victim says in their private communications. This is because system-based advocates are employees of the government when they work for a law enforcement agency, prosecutor's office, or other governmental unit). As a result, anything they do is considered a product of their employment and is discoverable.

Resource: Legal Privilege

Most system-based advocates do not have legal privilege protecting the confidentiality of their private communications with victims. One notable exception is the state of Arizona, which offers privileged communications between "crime victim advocate and victim" ([A.R.S. 13-4330](#)). A crime victim advocate is defined as "a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims" (A.R.S. 13-4401), which clearly includes system-based advocates. For more information, the Arizona Coalition Against Domestic Violence offers a document entitled, [Confidentiality: FAQ](#).



Community-Based Advocates

On the other hand, community-based advocates across the country have varying levels of confidentiality. Some states protect communications between community-based advocates and victims of sexual assault, meaning advocates cannot divulge information without a written, time-limited release of information from the victim. Advocates can increase the likelihood that information shared will remain confidential by maintaining appropriate documentation. This means documentation should reflect services that were provided to the victim, as well as some general demographic information, rather than detailed accounts of conversations between the victim and advocate.

Another aspect that causes considerable confusion among community professionals is the fact that even in states where community-based advocates have legally protected confidentiality in their communications with victims, this protection does not extend to communications that take place in the presence of a health care provider, law enforcement officer, or other third party. This would obviously include anything that was said, observed, or learned while the advocate was present during a law enforcement interview, medical forensic examination, or other investigative procedure such as a line-up or pretext phone call.

When community-based advocates are in situations where they need to share the victim's name or personal information to advocate on the victim's behalf, they must first get a signed release of information. The information to be released should be stated very clearly on the written release form, as well as a listing of specific people to whom the information may be released and a specific time frame during which the information may be released. Before any victim signs such a waiver, the advocate must first explain the implications associated with releasing information. This is because a signed waiver may inadvertently waive all communications and all records, involving any employee of the agency and pertaining to any topic (National Crime Victim Law Institute (2005c). The information may then be available to the defense and part of the public record in the case. Advocates can ensure this doesn't happen by encouraging the victim to specifically state what information may be released, and how long the advocate has permission to release that information.

Example: What to Say

"In order for me to talk with the prosecutor about your case, I first need you to complete a release of information. Be specific in what information I can discuss and designate if this is for the duration of your case, or if it is limited to this conversation."

Because many community-based advocates offer follow-up services to victims after the medical forensic exam – including contact with law enforcement on the victim's behalf – community-based advocates should request that victims sign an authorization to specifically permit this communication. This is important because the advocate will be required to release personally identifying information, such as the victim's name, as well

as confirm the victim is utilizing advocacy services. The advocate should explain the risks and benefits associated with releasing identifying information, so the victim can decide whether or not to give informed consent.

Exceptions to Confidentiality: Responding to a Subpoena

Regardless of what level of confidentiality advocates have in their private communications with victims, this does not mean they can ignore a subpoena or other legal request for information or documents pertaining to a sexual assault victim. When advocates are called to testify in a deposition, hearing, or trial, they must always respond to the subpoena – regardless of any laws providing legal privilege in their communications with victims.

If it is a criminal case, the prosecuting attorney can respond to a subpoena by filing a motion for the judge to consider, arguing that the information is protected and therefore confidential. The argument for this motion would be based on any relevant legislation or case law addressing confidentiality. The final decision, however, will be made by the judge. As the National Crime Victim Law Institute (2005c) states, any agency providing advocacy services “should have policies in place regarding how to respond to a subpoena” (p. 28) as well as policies to respond to a warrant to search the premises or obtain certain records. It may also be helpful in some situations for the advocacy agency to have the assistance of their own civil attorney during the process of responding to a subpoena or warrant.

Exceptions to Confidentiality: Mandated Reporting

Even in those states where the communications between community-based advocates and victims are legally protected as confidential, an exception is typically made if the disclosure triggers a mandated report for child abuse, elder abuse, or harm to self or others. State laws regarding mandated reporting vary. In some states, for example, advocates are included in mandated reporting statutes, whereas in others they are not included as part of the statute. However, even if the advocate is not legally mandated, it may still be part of the agency’s protocols for advocates to report suspected abuse.

Example: What to Say

“I am sensing you’re about to tell me something I might have to report to the authorities...”

Advocates should inform victims prior to full disclosure of identifying information so victims are aware of their status as mandated reporters. This gives victims the opportunity to decide what, if anything, they want to disclose to the advocate.

Consequences of Violating Confidentiality

Any community-based advocate violating the victim's confidentiality could be sanctioned professionally, sued by the victim in civil court, and/or prosecuted for a misdemeanor offense. These sanctions are serious, and they could have a number of very damaging consequences, including the following:

- Private information about the victim that is shared in violation of confidentiality protections could become part of a discovery order and shared in open court.
- For sexual assaults occurring in the context of intimate partner violence, any information revealing the current location of victims could leave them vulnerable to further violence by the perpetrator.
- The information may also damage the prosecution's case against the perpetrator.
- This could then have a chilling effect on victims in the community who might otherwise seek services from the agency (Hagen, 2003).

As if these consequences were not serious enough, there is even the chance that advocates who disclose confidential information "may also inadvertently compel disclosure of the entire content of communications the victim intended to keep confidential" (CALCASA, 1999). In other words, by violating the confidentiality of communications with one victim, the advocate may jeopardize all of their communications and written records. This may also constitute a violation of the agency's own policies and a breach of obligations to funders and/or contractors (NCVLI, 2005c, p. 29). Again, advocates can avoid this by not disclosing personally identifying information without a written, time-limited release of information that specifically states what information can be shared, with whom, and for how long.

However, even if a violation of confidentiality does not result in such severe official sanctions, the more likely (and immediate) consequence is that the advocate has betrayed the trust of the victim and jeopardized the connection between the two. This can have a negative effect on the victim's recovery process and instill skepticism and mistrust that prevents the victim from accessing other services.

Confidentiality and Victim Advocates Within the Military

Advocates working for the military would most likely be considered system-based advocates. The role and responsibilities of advocates working with victims of sexual assault in the military have changed in the past few years, in light of a policy on "restricted reporting" enacted by the US Department of Defense.

This policy now allows confidential reporting, which is a dramatic change as advocates and health care providers previously had no confidentiality with victims and also had a

legal obligation to report it through the chain of command. Any such disclosure would then have resulted in the notification of law enforcement authorities and the initiation of a full investigation.

Resource: Sexual Assault in the Military

Centralized information on the military response to sexual assault can be found at the US Department of Defense website regarding [Sexual Assault Prevention and Response](#).

In contrast, the policy now being implemented in all the branches of the US military allows for confidential reporting (referred to as “restricted reporting”) by victims of sexual assault. A restricted report can be made by disclosing the sexual assault to a Victim Advocate (VA), Sexual Assault Resource Coordinator (SARC), health care provider, or chaplain. This allows the victim to receive medical treatment, a medical forensic exam, advocacy, and counseling services regardless of their decision to report the sexual assault.

Advocates can provide information to victims to help them understand the benefits and risks associated with restricted reporting. Advocates can also explain that choosing restricted reporting gives victims time to fully decide what they want to do, though any delay in reporting could have drawbacks such as: lost or deteriorated evidence, difficulty contacting witnesses, or repeated contact with the perpetrator (particularly if they work together).

Example: What to Say

“You have the option of restricted reporting, which means you can still receive medical care and a forensic exam without reporting to your chain of command. Some information, such as your age and gender, will be collected. If you choose this, you need to know that any delay in initiating an investigation could make prosecution more difficult later on, and also that command staff may hear about the incident and launch an investigation anyway...”

As with any sexual assault, victims in the military must also be informed that there are limitations to confidentiality; advocates may be required to report child abuse, elder abuse, and threats to the victim’s or another military member’s safety. Victims should also know that an investigation can be initiated if command staff has learned of the assault on their own. This is actually quite common in the military as information (and misinformation) travels quickly among the ranks. Advocates can inform victims that every person they disclose the assault to is a potential threat to their privacy – meaning, the person they tell could turn around and tell someone else.

Advocates also need to explain that certain information (such as age, gender, grade, etc.) will be collected and reported for statistical purposes. Victims will also be asked to read and sign a victim preference statement, which explains the options, risks, and benefits of restricted reporting. This is a form the advocate should review with victims in detail prior to asking for their signature.

Resource: Confidentiality

For more information on the topic of confidentiality, please see the technology and confidentiality resources [toolkit](#) developed by the National Network to End Domestic Violence. As described on the website, the toolkit “provides an overview on questions that commonly come up concerning confidentiality releases, US Federal Laws on confidentiality, record retention and deletion, mandatory reporting, the use of surveillance cameras, answering subpoenas and much more. For ease, this section is set up in an easy-to-read question and answer format.” The toolkit includes a number of helpful resources, including templates for variety of confidentiality releases.

Victim Advocacy and the Criminal Justice System

Advocates may be called upon to work with victims of sexual assault at any stage of the criminal justice process. The advocate is there to help the victim navigate this complicated, challenging, and sometimes discouraging process. Each community utilizes advocates differently; in some community’s advocates are routinely activated to respond to the hospital or police department, whereas other communities only use advocates for a part of the process or not at all. Either way, advocates and other community professionals must clearly understand each other’s roles throughout the criminal justice process.

Vertical Advocacy

Vertical advocacy refers to the ability to have the same advocate work with a victim as long as the victim needs it, to maximize the potential for rapport and minimize the disruption that takes place when victims are “handed off” from one advocate to another. This is a worthy goal. However, it is important to keep in mind that 100% vertical advocacy is impossible, because no single advocate can be on-call 24 hours a day, 7 days a week. The ideal is more easily achieved by system-based advocates working within criminal justice agencies (usually a police department or prosecutor’s office), because they have a more limited role working with victims specifically in relation to their case within the criminal justice system. They may even play a role in scheduling interviews and meetings, so they take place at times when the advocate is working. For community-based advocates, there is no way to ensure that all of the points at which a victim may need services will coincide with a time when they are scheduled to work.

Role of the Advocate During the Criminal Justice Process

This section will review the advocate's role during the medical forensic exam, law enforcement investigation, and prosecution, as well as describing common needs or concerns victims may have when participating in this process.

Verbal Support and Encouragement

Advocates often take an active role with victims, showing their support and offering encouragement along the way. At times, the process can be very challenging for victims and they need to know that someone is on their side. Supportive and encouraging statements might include: "I know this is hard for you, but you're doing great," or "We're almost done now, hang in there."

Advocates also frequently help victims use relaxation techniques to calm them down, for example by breathing slowly or unclenching their muscles. Many advocates are also trained in basic grounding techniques, which can be used when the victim experiences a flashback. These techniques are designed to stimulate particular senses, such as touch or sound, in order to help the victim, refocus on the present. A few examples include asking victims to stomp their feet on the ground, clap their hands together, or grip the rails of the chair.

Example: What to Say

"I know that last question was really hard for you to answer. Let's take a minute to help you relax. If you are comfortable, I'd like for you to close your eyes and breathe. I want you to focus on the air coming in and coming out. Just feel each breath. When you feel ready, you can open your eyes and we'll begin again."

Monitoring the Victim's Well-Being

Another part of the advocate's role is to monitor the victim's verbal and nonverbal responses for signs of distress. In many cases, this distress is inevitable, due to the difficulties of disclosing a sexual assault and participating in a medical forensic exam or law enforcement investigation. When victims experience such distress, the best response for an advocate is often to suggest taking a break and then addressing any questions or concerns in private.

In some situations, however, directly asking victims if they need to take a break may not be the best strategy because they may decline simply to be polite or cooperative. In these situations, advocates can indicate to the other professional (e.g., using a hand signal) that they want to take a break to discuss something with the victim. Sometimes it is difficult for forensic examiners and law enforcement investigators to sense when victims need a break because they are attending to so many complex demands.

Clarifying Questions

Sometimes, an appropriate role for advocates is to provide a prompt for the victim, with the goal of clarifying communication with the forensic examiner or law enforcement investigator. To illustrate, if it is clear to the advocate that the victim has misunderstood or misinterpreted something that the forensic examiner or law enforcement investigator has said, the advocate may provide the victim with a neutral prompt to help clarify, such as: “Would you like the nurse/officer to explain that again?”

Victims might need clarification simply because they are overwhelmed and struggling to process information. Sometimes, the need for clarification stems from questions that are necessary but may sound judgmental. For example, it is appropriate for forensic examiners to ask about recent consensual sexual contact and for law enforcement investigators to ask about the clothes the victim was wearing prior to the sexual assault. Both of these questions have a legitimate purpose, but they can sound to victims as if the professional asking the question doesn’t believe them or blames them for the sexual assault. It might therefore be appropriate in this situation for the advocate to ask the professional if he/she would mind explaining the reason for the question.

Example: What to Say

“Would you mind explaining that questions for Sarah? It might help her if she understands why that question is being asked...”

These verbal prompts should be neutral, designed only to assist the victim and the examiner or investigator in communicating clearly. It is also worth noting that such prompts should generally be used sparingly by advocates and only in situations where they believe there is a risk of serious miscommunication or victim distress arising from a particular question or procedure.

Advocating on the Victims’ Behalf

A more difficult situation arises when the advocate decides that some intervention is needed to address distress that is being caused by the forensic examiner, law enforcement investigator, or other community professional. Again, some of this distress is inevitable, given the difficulty of reporting a sexual assault and participating in an exam or interview. No matter how competent and compassionate community professionals are, victims will typically experience distress during these procedures. However, victims often forget that they have rights during the process – and that they are the ones in charge of making important decisions. Often, victims feel that the process has a life of its own, and they are simply being swept along without any control or decision-making ability. It is therefore appropriate for advocates to remind victims of their rights throughout the process.

Advocates must also remember to take their own personal feelings out of the situation. For example, an advocate may sense insensitivity or judgmental questioning when the victim does not have any concerns of their own. Advocates can, at times, be overly sensitive to the way victims are being treated. It is appropriate for an advocate to ask a victim how he or she is doing, and if the victim doesn't share any concerns, the advocate should not press any further.

In situations where the victim has expressed concern, it is appropriate to remind victims they have the right to ask for a break, to speak up for themselves, or have the advocate speak on their behalf. Victims may also need to be reminded that they have the right to refuse any part of the medical forensic exam or to decline answering questions that make them uncomfortable.

This can be a difficult balancing act for advocates – to intervene as needed to make sure that a victim's rights and interests are being protected – but not disrupt the process unnecessarily or discourage the victim from participating in certain aspects of the exam or interview. For advocates, the best response is often to suggest taking a break and then privately discussing any issues of concern with the victim, law enforcement investigator, or forensic examiner.

It is also important to avoid any confrontation between advocates and other community professionals in the presence of the victim; this should be done privately if needed. Victims are typically experiencing a great deal of trauma and disorganization after reporting a sexual assault, and the last thing they need is to witness conflict between professionals in the community who are there to respond and assist them.

Responding to a Victim's Concerns

Victims usually have a number of concerns and special needs that impact their ability to participate in the criminal justice process. The following section provides a few common examples and suggestions on how advocates might respond to these concerns and needs. In general, advocates should focus first on connecting personally with victims, to better understand them and their unique situation prior to making any recommendations.

Immediate Concerns

For some victims, their immediate concern may not be the assault, but rather who is picking up their children from school, who will take care of their pet, or whether their parents or partner will find out what happened. The initial response of some advocates may be to downplay these concerns in an attempt to help the victim focus on the assault, but this is a mistake because it does not validate the victim's current state of mind. Rather, advocates should talk with victims about their immediate concerns, and help them identify friends, family members, or other people who can be called upon to help.

Example: What to Say

“I understand you’re worried about missing work today. Have you let your boss know you won’t be in? What did she say? Would you like me to call her for you?”

Fear of Reporting

Fear of reporting is likely to be one of the victim’s primary concerns, although others might include: fear of not being believed, fear of being blamed for the assault, fear of getting in trouble with their parents (e.g., for sneaking out, drinking), or fear of the criminal justice system. Advocates can help victims work through their concerns, in order to make informed decisions about reporting and other options.

Not surprisingly, it can be very difficult for victims to report their sexual assault when they are concerned about getting in trouble – or even arrested – either for prior criminal behavior or for illegal behavior committed at the time of the sexual assault (e.g., prostitution, drug use). Advocates should have a general sense of how these situations are handled in their community, so they can provide victims with realistic information about possible consequences and outcomes.

Example: What to Say

“I understand you’re concerned about telling the investigator you were drinking before the assault. I also know you don’t want your parents to find out. It is actually really important for law enforcement to know, and it will only create problems if they find out later. I can also tell you that the detectives are here to help you, and they want to know what happened.”

Financial Concerns

Victims may be concerned about the costs associated with the medical forensic exam, missing work, getting counseling, and/or replacing clothes or bedding that might have been taken as evidence. Again, advocates should address these concerns with the victim and provide information specific to their community. That means advocates must understand the policies in their community regarding billing for the exam. Each state has different laws, regulations, policies, and procedures surrounding who pays for the medical forensic exam (and, what specific components of the exam are covered).

Example: What to Say

“If you have the exam at this hospital, the evidence collection part is paid for by the county. You will also receive medications to prevent pregnancy and some STI’s, but these will be billed to you (or your insurance).”

Resource: Violence Against Women Act

The [Violence Against Women Act](#) includes a provision to ensure that victims of sexual assault have access to a medical forensic exam free of charge (or with full reimbursement for any out-of-pocket costs) regardless of whether they talk with law enforcement or participate in the criminal justice process. This legislation affects many aspects of the criminal justice system and the community response to sexual assault, including payment for medical forensic exams. EVAWI offers a great deal of detailed information on this topic (often referred to as “forensic compliance”), in a special section of the [website](#).

Information is also available in the OnLine Training Institute module entitled: [The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance](#).

Impact on the Victim’s Life

Victims typically want to return to “normal” as soon as possible. Unfortunately, “normal” for the victim before the assault will not be the same thing as afterward, because – to some extent – the victim will be a different person as a result of the assault. Victims are frequently concerned about how participating in the criminal justice system will impact them in the long-term. For example, will they have to take excessive time off work to meet with detectives and prosecutors or to go to court? Many victims also worry that having detectives talk to their friends or classmates will alienate them. These concerns are often the reason why victims do not return phone calls or show up for interviews, because they just want to “forget” what happened and move on with their lives.

Advocates can help to identify these concerns from the beginning and talk with victims about how to manage them. Sometimes, it might be helpful to refer the victim to talk with a therapist if the victim expresses thoughts or feelings that are outside the scope or expertise of the advocate. This would include victims who express difficulty coping with daily routines, depression, or suicide ideation.

Example: What to Say

“People at school will probably find out what happened. How do you feel about that? Do you have some good friends you can rely on, some that will support and protect you? I am not going to pretend that high school isn’t hard – I know it is – and this will only make

it harder. But I also know that everything is easier when you have the support of good friends.”

Victim Privacy

Yet another major concern of victims is privacy after the assault. Victims may ask advocates, “Who will find out about this?” Clearly, advocates must address this concern with victims, and give them a realistic response on how information may get out and steps the victim can take to protect their privacy.

Understandably, victims seek privacy after the assault. Advocates can work with victims to help them understand the risks associated with disclosure, not only to criminal justice professionals but also to friends, family, co-workers, or classmates. Listed below are some potential threats to victims’ privacy:

- Being transported home by a police officer or having a patrol car parked outside their home.
- Talking to law enforcement in the waiting room or lobby of a hospital or other facility.
- Billing their private insurance or sending a bill to their parents or partner.
- Law enforcement interviewing other people about events before, during, or after the assault.
- Having to talk to employers and take time off work to go to interviews, hearings, and trial.
- Receiving mail or phone calls from investigators, prosecutors, and advocates.

Resource: Victim Privacy

Privacy rights are different in each state. For more information on victim privacy, see the document entitled: [Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions](#).

Rural communities present many challenges to privacy. It may seem as if information (and misinformation) travel twice as fast in a small town, making it more likely that people will find out about the sexual assault. Also, the victim has an increased likelihood of knowing the responding officer, advocate, or health care professional in a community that is rural or remote. Advocates should validate these concerns and talk with victims

about any alternatives that may be available (such as calling out a second advocate if the victim is uncomfortable with the first advocate who initially responded).

The Medical Forensic Exam

For those victims who contact health care providers or law enforcement authorities within days of the sexual assault, they may be asked to consent to a medical forensic examination conducted by a health care professional.

The purpose of this medical forensic examination is to:

- Meet the medical needs of the victim, through medical testing and treatment;
- Document a basic history of the assault and the physical examination of the victim, and
- Identify, collect, package, and document any forensic evidence.

Resource: Expert Interview

In this [video interview](#), Debra Holbrook defines what a forensic nurse is, explains their role, and describes how a forensic nursing program works.

How Advocates Get Involved in the Exam Process

Advocates often make their initial contact with victims when a medical forensic exam is initiated. Typically, this will be a community-based advocate, but in some communities, it may be a system-based advocate working out of the police department or even the hospital or other agency. Many advocacy organizations have agreements with health care facilities and law enforcement in their communities that offer medical forensic exams to be routinely activated as part of the initial response. Some programs require health care providers to ask victims first if they would like to have an advocate present, but many victims will decline, simply to be polite, appear self-sufficient, or to avoid causing anyone inconvenience, and/or because they do not truly understand what advocacy services are or how they might benefit from them. It is therefore best practice to make the notification of an advocate routine procedure and to have the advocate arrive prior to the start of the exam. That way, the advocate can greet the victim, explain the role of an advocate, and describe how the victim may benefit from the support and encouragement that are provided as a part of advocacy services.

Example: What to Say

“Hello, I am Sheela and I am an advocate. Did the nurse let you know I’d be coming? I am here to help you; to talk with you and answer any questions you have. Are you comfortable with that?”

Once the advocate has been called out and is introduced, most victims will at least talk with the advocate before deciding whether to accept or decline their services. Of course, victims can always decline the services of an advocate at any point they wish.

Example: What to Say

“Would it be ok if I leave this information for you? I’d like to take just a minute to point out our 24-hour crisis line number, which you can call if you have any questions or would like to talk with an advocate...”

However, even when victims do not want to work with an advocate, the advocate may still be able to provide information, support, or other services to family members or friends who are present at the exam facility. If the victim has declined advocacy services, some advocates have policies stating they will remain in the waiting room of the exam facility in case the victim changes his or her mind. Yet many advocacy organizations do not have sufficient resources to do this, so advocates can simply ask the health care professional to call them back out if the victim changes his or her mind.

Resource: Right to the Presence of an Advocate

A few states have laws explicitly providing victims with a right to the presence of an advocate or other support person during the medical forensic exam. As described in a [statutory compilation](#) published by AEquitas: The Prosecutors Resource on Violence Against a total of six states had such a law as of July 2010 (California, Texas, Florida, Iowa, Oregon, and Washington). However, statutes vary regarding whether or not health care providers are required to notify victims of this right.

Does Notification Violate HIPAA?

Health care professionals and others have asked whether routine notification of advocates violates the privacy protections outlined in [HIPAA](#) (the Health Insurance Portability and Accountability Act of 1996). Some professionals argue that it does not violate HIPAA, if the patient’s name is not revealed when an advocate is called out to respond to offer services to a patient who has disclosed a sexual assault. Yet others contend that the physical face-to-face contact that is made between the patient and an advocate means that the patient is no longer anonymous, and their identity has not

been protected by the hospital. Many programs have struggled with this issue, to avoid violating HIPAA yet also ensuring that patients have real and meaningful access to advocacy services.

There are a variety of ways to address this issue, and the first step is to find out whether there is any state law explicitly requiring or allowing health care providers to notify a victim advocacy agency when a patient discloses sexual assault victimization.

Resource: Advocates and HIPAA

Fortunately, there is a [compilation of state statutes](#) that was prepared by [AEquitas: The Prosecutors' Resource on Violence Against Women](#) in collaboration with the [National Sexual Violence Resource Center \(NSVRC\)](#). It is current as of March 2011.

Other guidance suggests that health care facilities have a general authorization to notify advocacy agencies. For example, in a series of [fact sheets](#) and other materials created by the [Office of the Attorney General](#) in Texas, in conjunction with the [Texas Association Against Sexual Assault](#) (TAASA), the argument is made that such a notification of an advocate does not violate HIPAA – and indeed, that this notification can include basic information about the victim, including gender, ethnic/racial background, age, and primary language. Another strategy is therefore to seek similar legal guidance within your own state or territory.

For More Information

The New Jersey standards of care include routine notification of victim advocates. The standard states that all sexual assault victims “will be afforded the opportunity to speak privately with a rape care advocate prior to investigative and sexual assault medical forensic interviews or procedures. The rape care advocate will explain the advocate’s role and the services of the rape care program” (New Jersey Office of the Attorney General, 2004, p. 2).

However, a third strategy is to implement a protocol where the victim advocacy agency is notified by an entity other than the hospital or exam facility. For example, many if not most sexual assault victims access a medical forensic examination as a result of contacting law enforcement. In these situations, it makes sense that law enforcement personnel would notify the advocacy agency to minimize delays and ensure that the advocate can respond to the exam facility as quickly as possible. Alternatively, the notification could be made by a dispatcher, communications personnel, switchboard operator and/or hotline worker, depending on the response protocol in a particular community – and the particular agency that serves as the initial access point for an individual victim.

Resource: Advocate Notification

Information is available in a [webinar on Victim Privacy](#) from the Sexual Assault Forensic Examination Technical Assistance (SAFEta). This webinar, presented by *Jessica Mindlin and Kelsey Worline from Victims' Rights Law Center* offers practical solutions to difficult situations around privacy, confidentiality and consent.

General support for the notification of advocates can be found in the [position statement](#) of the IAFN regarding the need for advocacy services to assist patients who disclose sexual assault victimization. The chapter on Victim-Centered care in [the National Protocol for Sexual Assault Medical Forensic Examinations \(Adults/Adolescents\)](#) also strongly supports the need for advocacy services (p.35).

Community-Based and System-Based Advocates

Usually, community-based advocates become involved with a victim when the victim calls the crisis line, contacts law enforcement, or has a medical forensic exam. If the case is referred for prosecution, the victim will typically continue to receive services throughout the process of prosecution.

The victim may also have access to the services of a system-based advocate, depending on the resources that are available in the community. The point at which the victim comes into contact with system-based advocates will depend on the agency where they are located. For example, if there are advocates working out of the police department (e.g., Victim Services Unit), this contact will begin at the point when the sexual assault is reported to police -- or as soon afterward as possible. If the system-based advocacy program is located in the prosecutor's office (e.g., Victim Witness Assistance Unit), advocates might contact the victim at the point the police report is made, or they may not be connected with the victim until the case is referred for prosecution. Either way, the relationship generally ends when the process of the investigation and/or prosecution is complete.

In some cases, victims may transition from working primarily with a community-based advocate to a system-based advocate once the case is reported to police and/or referred for prosecution. This is particularly likely to be the case if the community-based advocacy organization does not have the resources to work with victims past the medical forensic exam and preliminary law enforcement interview.

However, in communities that are fortunate enough to have both types of advocacy services available, victims will often work with both types and it is critical that they work together collaboratively to provide the best service for victims. Often, the community-based advocate has a longer-term relationship with the victim, but the system-based advocate has an "inside track" on the court process (particularly when they are employed by the prosecutor's office). Both areas of expertise are critical for the victim.



Yet system-based advocacy organizations also have limited resources, and they may have responsibility for working with a broad range of crime victims. This may make it difficult if not impossible for system-based advocates to provide comprehensive services for adult victims of sexual assault. Again, the best situation is when both types of advocacy services are available, and victims can benefit from their collaborative efforts to take advantage of their unique strengths and compensate to some extent for the limitations of each of their specific roles and resources.

Reporting the Assault

When victims have a medical forensic exam, law enforcement may become involved in a variety of ways. Victims may call the police first, and if that is the case, they are often transported by law enforcement to the exam facility. Alternatively, they may go directly to a hospital or other health care facility, or they may call a crisis line. When victims go directly to a hospital or other health care facility, it may be the responsibility of medical personnel to notify the advocacy organization as soon as possible. Alternatively, the advocates may be notified through a switchboard or hotline. If the victim has not reported to law enforcement, the decision regarding whether or not to notify law enforcement depends on whether state law requires medical mandated reporting. Even when state law does not require mandated reporting, some health care facilities call law enforcement regardless of the victim's wishes. However, this is not considered best practice. If there is no such legal mandate, the health care professional should only report if this is what the victim wants.

Resource: Medical Mandated Reporting

The issue of medical mandated reporting can be a complicated one, especially as it intersects with the implementation of VAWA forensic compliance. For more information on medical mandated reporting, please see the [FAQ's](#) on Best Practices on the EVAWI website, as well as our OnLine Training Institute module entitled: [The Earthquake in Sexual Assault: Implementing VAWA Forensic Compliance](#). We also offer a [training bulletin](#) and [webinar](#) in our archives on the topic of medical mandated reporting for sexual assault. Additional resources, tools, and FAQ's are also available on the topic of [forensic compliance](#).

For information about any laws regarding medical mandated reporting in your state, please see the document entitled: [Mandatory Reporting of Domestic Violence and Sexual Assault Statutes](#), created by the National District Attorneys Association. It is a compilation of the laws pertaining to medical mandated reporting for all US states and territories (current as of 2010).

For states with medical mandated reporting requirements, we offer a few tools that could be useful to assist with implementing alternative reporting procedures. For example, in the [Forensic Compliance Resources](#) section of our website, we provide a sample form with reporting instructions for the state of California. In California, most

medical forensic exams are conducted with a victim who personally talks with law enforcement in connection with the report, so the mandated reporting requirement is met when the forensic examiner submits the [standard medical forensic examination form](#) (known as the OES-923). This form is used to document evidence from an adult victim of sexual assault. However, when a medical forensic exam is conducted with a victim who does not personally talk with law enforcement, health care providers must still meet their requirement for mandated reporting. This is accomplished by submitting a [Suspicious Injury Report](#), which is available along with the corresponding [Instructions](#). These materials can thus be adapted for use in other communities.

For professionals in **states without medical mandated reporting requirements**, we offer template materials for anonymous reporting, which include relevant procedures for health care providers. These documents are posted in the Forensic Compliance Resources, under the tab for [anonymous reporting](#).

When victims call a sexual assault crisis line before going to a health care facility or reporting to law enforcement, the crisis line advocate will discuss these options with the victim. It is generally a point of agreement among community professionals that victims should be encouraged to seek medical treatment in the aftermath of a sexual assault, because even if they are not aware of any physical injuries themselves, they still need to discuss health related issues (such as sexually transmitted infections and pregnancy) and the patient could still have injuries that are apparent to a trained medical practitioner. On the other hand, the decision to report to law enforcement or participate in a medical forensic examination must remain with the victim. While law enforcement personnel and health care providers may encourage victims to report and participate in the process, the role of an advocate is to remain neutral and provide victims with the information and support to make their own decisions. The ultimate decision must be made by the victim and then respected by community professionals.

Even if the assault happened days or weeks ago, advocates can inform the victim that some types of evidence may still be available. This can include clothing, bedding, photographs, etc. In fact, although delayed reporting means that some types of evidence may be lost (e.g., forensic evidence collected from the body of the victim and/or suspect), other evidence will actually be gained, such as a longer-term description of the victim's behavior in the aftermath of the sexual assault. This explanation is often helpful because victims may believe that reporting to law enforcement is a question of "now or never."

Alternative reporting methods have been developed by a number of progressive law enforcement agencies – in collaboration with community partners – to reduce barriers and increase victim reporting and participation with the criminal justice process. Implementation of a real, meaningful, and well-functioning program for alternative reporting methods will require a significant investment of time and effort on the part of a number of professional disciplines. Strong leadership is obviously needed from within the law enforcement agency, but collaborative work and leadership will also be needed

by professionals in other disciplines, including victim advocacy, health care, and prosecution. Benefits are likely to be seen, not only for individual victims, but also for law enforcement agencies and the communities they are sworn to protect and serve.

For example, in Cambria County, Pennsylvania, criminal justice and community professionals worked together collaboratively for over three years to develop a comprehensive [sexual assault protocol](#) that includes anonymous and non-investigative reporting (for victims age 18 and over), including those who participate in a medical forensic examination. By briefly discussing some of the factors that discourage victims from engaging the criminal justice system and other community resources, the goal for the protocol is clearly described as increasing victims' access to improve their well-being.

Resource: Expert Interview

In this [video interview](#), Debra Holbrook describes blind reporting as an alternative reporting option.

Resource: Alternative Reporting Methods

For more information on this topic, please see the OnLine Training Institute 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](#).

In addition, EVAWI offers a program called [Seek Then Speak](#), a digital platform where victims of sexual assault can gather information, explore their options, and take action if they choose. Victims are even offered the option to connect with a victim advocate, or to begin the process of reporting the assault to authorities. To learn more, please visit the [Seek Then Speak](#) website.

Presence of Support People

Some victims want a support person of their choosing present – along with, or in place of, an advocate – during the medical forensic exam, law enforcement interview, and/or other criminal justice procedures. Sometimes having a support person, such as a friend or family member, in the room can help a victim provide better information and otherwise participate during the process – as long as that support person was not a witness to any critical events related to the sexual assault. In some states, there is even legislation protecting the victim's right to have a support present during the medical forensic exam and/or criminal justice proceedings (with some exceptions).

Because these support people are very important for the victim's emotional well-being and their ability to participate in both the exam and the criminal justice process, it is

critical that they also have their questions and concerns addressed -- as well as the victim's. Only then will they be able to provide adequate support for the victim throughout the entire process. While advocates typically have a good understanding of the investigative process due to cross-training with law enforcement professionals -- support people will most likely not have this information or training.

Example: Oregon Personal Representative Law

In Oregon, state law ([OR 147.425](#)) provides all victims of person crimes who are at least 15 years old with a legal right to have a "personal representative" present with them during most phases of a law enforcement investigation, including the medical forensic examination. The statute (known as the "personal representative law") states the following:

- The victim may choose anyone 18 years or older (advocate, friend, or family member) to be their personal representative.
- The personal representative may not be a suspect in the criminal case, or a witness or party to the criminal case.
- The personal representative's role is to provide emotional support for the victim.
- The personal representative may not be prohibited from accompanying a victim unless a health care provider, law enforcement agency, protective service worker, or court believes the personal representative would compromise the process.

Other states can draw from this example to protect the rights of victims.

Excluding Support People

Prior to the exam and police interview, the law enforcement professional, health care provider, and advocate will assess how supportive this person actually is to the victim. At times, the people who accompany a victim may not be supportive, either because they are blaming the victim or attempting to control the victim (as in a situation of intimate partner violence or parental control). When this issue arises, the law enforcement professional may make a determination that a support person cannot be in the room. Alternatively, victims may communicate to the advocate or health care provider that they do not want the support person in the room, once they are allowed the opportunity to express their concerns in private. For this reason, it is important for advocates and/or health care providers to briefly separate the victim from the support person before the exam is conducted, in order to evaluate whether or not they want the support person in the exam or interview.

When victims privately say that they would like a particular person present during the exam and/or interview, it is typically best to allow this whenever possible. However, if the victim does not want a particular person present it is absolutely critical that this be addressed. In terms of the exam, if the victim simply has a preference that a support person not be present, the health care provider may be able to address it simply by explaining to the support person that he/she needs to wait outside the exam room and provide a general reasoning that it is best for the exam process -- without conveying that this was the victim's stated wish. Similarly, for the police interview, a victim's preference to exclude a support person will be implemented by the law enforcement professional, with a general explanation rather than any indication that this was the victim's stated wish. Often, support people understand that they cannot be present during the exam/interview (and are in fact relieved), but if they insist on being present, this can be a "red flag" that there may be control issues involved. It may even be an indication of abuse in the relationship. If the support person resists and insists on being in the room with the victim at all times, the situation will likely need to be handled by law enforcement to ensure that the victim's wishes are respected, and the support person is not allowed into the exam room or interview.

Support People as Potential Witnesses

It is also important to keep in mind that anyone who could potentially serve as a witness in the case should be excluded from the exam and interview. This concern is not limited to eyewitnesses who may have seen or heard events related to the assault. It also extends to the people who received a disclosure from the victim -- they are witnesses to the behaviors, demeanor, and statements of the victim in the aftermath of the sexual assault. This may include information about the assault and statements about the suspect that will be critical to the investigation and prosecution of the case. There are two reasons why these people need to be excluded from the exam and interview. First, it could compromise the credibility of the victim's testimony, because jurors may not view the victim's statement as equally reliable if they are present in the room. Second, because they are in a position to be an important witness in the case, the presence of these support people during the exam or interview may taint the credibility of their own testimony. When the law enforcement professional has determined that a support person is going to be excluded from the exam or interview because of his/her role as a potential witness in the case, this will need to be communicated by the law enforcement professional.

Role of the Advocate During the Exam

The overall role of the advocate during the medical forensic exam is to provide emotional support to the victim during the process, which will take roughly 2-4 hours, depending on the complexity of case. During the medical forensic exam, the advocate will:

- Make sure the victim is well-informed.

- Provide emotional support as the victim describes the sexual assault to the health care professional.
- Sit with the victim during the collection of evidence and offer a hand to hold and reassuring statements.
- Address the victim's comfort needs, by offering a warm blanket, something to eat or drink (when appropriate), a change of clothing or toiletries, etc.
- Attempt to distract the victim during particularly challenging parts of the exam by talking about other topics such as movies, hobbies, etc.
- Listen to the victim.
- Talk about the assault, if initiated by the victim, and validate feelings and concerns.
- Provide accurate information about sexual assault and address common misconceptions.
- Respect the victim's desire for silence.
- Ensure the victim has access to emergency contraception (EC), either at the medical facility where the exam was conducted or at other locations where arrangements have been made.
- Remain with victim until the exam is complete, unless the victim has declined advocacy services.
- Ensure the victim understands what can and cannot be concluded from the exam.

Another aspect of the advocate's role is to ensure that the victim is well-informed, specifically with respect to what is happening during the exam as well as their right to refuse components of the exam. Specifically, the advocate will ensure that the following is explained to the victim:

- The importance of forensic evidence and the need to collect it as soon as possible.
- The importance of waiting, if possible, to have something to eat or drink or go to the bathroom.

- The dual purpose of the medical forensic exam: (1) addressing the medical and emotional needs of the victim, and (2) identifying, collecting, and documenting forensic evidence.
- How the costs of the exam will be covered, and whether there are any limitations based on state law and/or victim compensation program criteria.
- General information regarding the process of forensic evidence collection, including the fact that both genital and non-genital photographs will be taken.
- The role of each professional involved in the medical forensic exam process, including the law enforcement investigator, medical personnel, and the advocate.
- The fact that the victim's clothing may need to be collected if it was worn during or immediately after the assault, and whether an extra set of clothing is available.
- Addressing concerns, the victim might have about possible toxicological findings, such as a positive result for illegal substance use or even prescription medication that could be used to undermine the victim's credibility.
- The fact that blood samples may be submitted for toxicological analysis, to determine if any alcohol or drugs are present in the victim's system.
- The policies for HIV testing for the victim, and possibly the suspect.
- The victim's right to refuse to participate in any of the medical or evidentiary procedures, and the right to revoke consent at any time during the examination.
- The specific types of information that will remain confidential or shared with other community professionals.
- The process for obtaining a copy of any written reports resulting from the exam.
- The importance of follow-up medical care.

Although some aspects of the medical forensic examination are likely to be difficult and possibly even painful, victims are likely to be more comfortable and feel more in control if they have a detailed understanding of the process (National Protocol, 2004).

Potential Challenges in the Exam Process

Advocates can face many challenging situations when providing advocacy during the medical forensic exam. The following examples include just a handful of those situations, with suggestions on how advocates may respond.

Victim has Presented at a Facility Without a Trained Sexual Assault Forensic Examiner (SAFE)

Ideally, all sexual assault victims would have access to a facility with specially trained Sexual Assault Forensic Examiners (SAFEs) near where they live. The reality is that this is not always the case. In rural areas, for example, victims may have to travel a long way to obtain an exam from a trained SAFE. In large metropolitan areas, victims may present at the Emergency Department that is closest to them, regardless of whether or not they have a SAFE program. When this happens, the victim may not be willing to go to a different health care facility or may be unable to be transported due to physical injuries as a result of the sexual assault. While every Emergency Department should have the ability to offer a medical forensic exam, the ideal is for victims to have an exam conducted by someone with specialized training, and it is not realistic for every Emergency Department to support a SAFE program.

Advocates should seek to connect with all Emergency Departments in their area, regardless of whether or not they offer a SAFE program, so they can still be called out to provide advocacy for victims who present there. When a victim presents at a non-SAFE facility, the advocate can discuss the option of going to a SAFE program if the victim is medically stable. The advocate can inform the victim of the benefits of receiving the medical forensic exam from a SAFE. However, the final decision should be left up to the victim, without pressure from the advocate or non-SAFE health care professional.

If the victim does decide to transfer to a SAFE facility, the advocate may need to assist with transportation, and these resources must be identified in advance. This transportation resource may be a community volunteer who has received specialized training in issues surrounding sexual assault, a law enforcement officer, or an individual associated with the medical facility at which the victim presented. It could even be the advocate, but this is typically only a last resort for communities with no other options. Regardless of who is actually driving, the advocate will typically accompany the victim in the same vehicle, offering an opportunity to connect and provide emotional support during the long drive.

When the victim chooses to remain at a non-SAFE facility, advocates can help ensure that the victim receives appropriate medical care, such as screening and treatment for any injuries, medication to prevent sexually transmitted infections (STI's), emergency contraception (EC), etc. The advocate can also help the health care professional describe the forensic components of the exam to the victim, explain why certain evidence is collected, and help to understand what happens with the evidence.

Victim is Unsure Whether or Not to Have the Exam

When a victim presents at a health care facility, it would seem that consent for the medical forensic exam would not be an issue. Unfortunately, this is not the case. In fact, many victims show up at the exam facility, only to walk away soon after. Therefore, part of the role of an advocate is to assist victims in the decision-making process regarding

participation in the medical forensic examination, by providing accurate information and helping the victim evaluate the implications of choosing to have the exam or not, including the impact on any future prosecution.

Advocates should also clearly communicate to victims that the decision to decline a medical forensic examination does not revoke their right to report the sexual assault to law enforcement and have that report taken seriously and investigated as thoroughly as possible. All too often, there is a sense that the medical forensic examination will “make or break” the investigation of a sexual assault, and this can place undue pressure on the victim to participate. Yet it can be helpful to remember that the medical forensic examination is only one component of the investigative process, and few cases are decided solely on the basis of the exam findings.

In addition, victims may consent to the exam, but decline certain components that make them uncomfortable. For example, some SAFE programs continue to require plucked pubic hair as part of the exam process. This is often very difficult for victims, and many want to refuse this step. Yet for a variety of reasons, health care providers may want the victim to participate in the entire exam, and this can lead the forensic examiner to pressure victims, either subtly or more explicitly, to go along with a component of the exam they are not comfortable with. Sometimes, this is because the health care provider simply believes it is in the victim’s best interest to complete all exam components. Other times, the examiner may feel pressure from the prosecutor’s office or crime laboratory to complete all of the exam components, so there is no modification to the standardized procedure. Either way, it is important to keep in mind that sexual assault victims have been violated in a physical and very intimate way, so pressuring them into cooperating with unwanted procedures – especially those that might be physically uncomfortable or invasive (such as plucking pubic hairs), only further reinforces the sense that they are not in control of their bodies. It can therefore be very damaging for victims, and we believe such modifications of the standardized exam protocol can simply be explained using common sense.

Example: What to Say

“It is your decision whether or not you want to have the exam. You can still report to law enforcement if you want, the exam is not a requirement. It may, however, make a prosecution more challenging in the long run.”

Another area in which victims might feel pressure is when they are asked to hand over clothing items, such as jeans, boots, coats, etc. Some law enforcement professionals and health care providers conducting medical forensic exams have been trained to “take everything” when it comes to the victim’s clothing, even though some items are unlikely to have evidentiary value (e.g., coat, shoes). Victims are often very reluctant to let go of such items, either because they are favorites or because they would cost a lot of money to replace. This is an issue best addressed in the law enforcement policy and/or a multidisciplinary protocol for responding to sexual assault, which can offer

guidance for professionals weighing the potential evidentiary value of such items in comparison with the level of sacrifice required by the victim. However, in the absence of a written policy, advocates can help defuse such pressure by clarifying that the victim does not have to consent to every single request by the officer or examiner. The exam can still be meaningful, and the evidence valuable, even if the victim declines to participate in specific components or to hand over certain items of clothing such as a coat or shoes.

If victims are being pressured to consent to the exam by any of the responding professionals, advocates must address the issue immediately – primarily with the victim, but also perhaps with the other professional (outside the victim’s presence). Then for those victims who decline any aspect of the medical forensic examination, their reasons for doing so must be respected by all of the community professionals involved. It should go without saying that no medical forensic examination should ever be conducted against the wishes of a sexual assault victim (*National Protocol*, 2004).

Advocate is Asked to Assist the Health Care Professional

Community-based advocates are the only members of the sexual assault response team that are not connected to the criminal justice process, meaning their entire purpose is to be there for the victim. Sometimes, health care professionals will ask the advocate to help with parts of the exam rather than call in another health care professional to assist when necessary. This is inappropriate as it puts the advocate in an awkward position. The advocate doesn’t want to seem unhelpful to either the examiner or the victim, but it impedes the advocate’s ability to focus solely on the needs of the victim. It also compromises the role of the advocate and could undermine their right to privileged communications down the road. Advocates may help address the comfort needs of the victim by adjusting pillows and gowns, getting additional blankets, turning lights on or off, etc.

Victim Will Not Be Leaving the Health Care Facility

Sometimes, victims cannot leave the health care facility when the exam is complete. This happens when the victim has sustained serious injury, expresses suicide ideation, or needs medical care. Advocates should have policies that clearly define their role in such a situation, including how long they may remain with victims. Advocates are not social workers, therefore when a victim is in any of these situations, a social worker should be called in to assist. Advocates may use their judgment to decide whether they will remain with the victim until the social worker arrives.

Similarly, advocates will sometimes be called out to be with the victim prior to the exam while injuries are being treated. Again, advocacy organizations should have an agreement in place with the health care facility so both advocates and health care providers know how to handle these situations.

Issues Surrounding Emergency Contraception

Some health care facilities will not dispense emergency contraception (EC) to victims of sexual assault, most commonly due to the religious affiliation of the health care facility (e.g., Catholic hospitals). For those victims who want this option, advocates can help victims access EC by providing local resources such as Planned Parenthood or local pharmacies that dispense it over-the-counter. This means the advocacy agency must do research in advance – ideally in partnership with other criminal justice and community agencies -- to find out which local pharmacies dispense EC over-the-counter at all times, and which ones either refuse to dispense EC or allow individual pharmacists to refuse. Advocacy agencies will need to work particularly closely with the health care providers who conduct medical forensic exams for sexual assault victims, to ensure that a policy is in place to ensure access to EC. Advocates in rural communities may struggle with identifying these resources, and victims may be forced to travel great distances to obtain EC.

Example: What to Say

“Unfortunately, this medical facility can’t give you EC. I have some resources for you on how to get it if you want it.”

Another issue related to EC is that the health care facility may dispense it to victims who are unsure whether or not they want to take it. Many times, this is due to a misunderstanding of how the drug works. Advocates can help ensure that health care professionals clearly explain EC to victims, and perhaps address any fears that are based on misinformation. Advocates and health care professionals must then support the victim’s decision regarding whether or not to take EC, regardless of their own personal opinions on the issue.

It is worth noting that some health care providers do not distribute EC due to ideological beliefs. In this situation, the health care professional may have an agreement to have another professional explain and provide the drug to the victim. This presents another opportunity where advocates can help explain the reasoning to the victim and address any questions or concerns the victim may express.

Law Enforcement Response

Often, advocates have contact with victims well before law enforcement becomes involved. This typically happens either because the victim called a 24-hour sexual assault crisis line, or because the victim presented at a medical facility and is unsure about reporting the assault to police. In situations where law enforcement has not yet been notified, advocates can discuss the option of involving law enforcement with the victim, and sometimes assist in determining the appropriate jurisdiction to notify. The agency responsible for responding to and investigating the sexual assault is typically the

one with jurisdiction over the location where the assault occurred. This may be the city police department, county sheriff's office, or state or federal agency. At times, jurisdiction may be difficult to establish, particularly in large metropolitan areas.

Victims typically first come into contact with a responding officer or detective, depending on the policies of the responding law enforcement agency. A preliminary investigation may take place, to gather information through an initial interview, establish the elements of a crime, and identify and secure the crime scene(s). The suspect may also be identified, along with any witnesses. Following the preliminary investigation, victims are typically asked to participate in at least one additional detailed follow-up interview and possibly other investigative procedures (such as constructing a composite sketch, viewing a photographic lineup, and/or conducting a pretext/monitored phone call).

How Advocates Get Involved with the Law Enforcement Response

For some system-based advocates working within a police department, notification may be almost immediate, with an advocate called out along with the responding officer when a report is received. Notification of community-based advocates, on the other hand, varies widely. If the victim contacts law enforcement before going to a health care facility, the officer may wait to notify the advocate until after the initial interview has taken place and the determination is made that an exam will be conducted. Other times, the officer may notify the advocate as soon as the victim is contacted, so the advocate can be present during the initial interview. If the victim presented at a health care facility first, the advocate may respond before law enforcement is notified, and then remain with the victim during the exam as well as the initial interview with law enforcement.

Though routine activation of community-based advocates is common among health care facilities, it is less common with law enforcement agencies. In many communities, advocates are not notified when a victim is being interviewed by law enforcement, which deprives them of the opportunity to access advocacy services such as accompaniment during the interview. Advocates are also frequently excluded from the law enforcement interview. All too often, an advocate has already established a rapport with the victim during the medical forensic exam only to be sent to the waiting room while the victim is interviewed by law enforcement. As discussed previously, victims are often best able to participate in a law enforcement investigation when they have an advocate present to offer support and assistance.

Please Note: Right to an Advocate

In some states, victims have a legal right to have an advocate present during any follow-up investigative procedures such as a law enforcement interview. If so, this will need to be clearly explained to victims. For example, in California, state law gives victims of sexual assault the right to have an advocate present during any stage of the investigation and prosecution. An advocate cannot be excluded by law enforcement professionals or prosecutors if the victim wants the advocate to be present. California

law also gives victims the right to have an additional support person of their choosing present at all interviews and other investigative procedures, unless the law enforcement professional or prosecutor deems that the support person is (or is going to be) disruptive.

A similar law is in place in Oregon, where victims have a right to have an emotional support person or advocate with them during legal and medical interviews and procedures. Washington also has a law explicitly providing sexual assault victims with the right to have an advocate or other support person present during law enforcement interviews.

Where Advocates Can Provide Law Enforcement Advocacy

Each advocacy organization will have their own policies regarding where advocates are permitted to respond during law enforcement procedures. Systems-based advocates may be more likely to respond to crime scenes or the victim's home for interviews. Community-based advocates are more likely to have a policy prohibiting them from responding to locations other than the health care facility or law enforcement agency. This is yet another example of why it is so important for community- and system-based advocates to work together, to ensure the victim is supported throughout the entire criminal justice process, in all of the locations where critical events and interactions may take place.

Presence of an Advocate During the Law Enforcement Response

Law enforcement advocacy is often quite different from advocacy provided during the medical forensic exam because advocates are typically less actively engaged with the victim. Advocates usually provide an emotional presence to the victim during law enforcement procedures – for example, by periodically offering a reassuring statement or a hand to hold. System-based advocates, on the other hand, may take a more active role by helping investigators craft questions prior to the interview, or by helping the victim to understand questions during the interview. Community-based advocates should not ask questions, answer questions, interrupt the victim or officer, or comment on the victim's responses. Exceptions include the type of clarifying questions and encouraging comments described in the beginning of this module.

Advocates should make sure they remain neutral during any law enforcement procedure, meaning they should not make any comments or exhibit any facial expressions or other nonverbal behaviors that are overtly positive or negative. Such actions are inappropriate because they can be seen as "leading" the victim or influencing the victim's responses. Advocates should also remember that victims have their own feelings and responses to situations. Often times, advocates are highly sensitive to the way victims are treated and forget to focus on how the victim is actually responding to the situation. If the victim does not show any reaction, the advocate should not try to influence the victim by commenting in an overly negative way – such

as by saying, “I can’t believe how long you’ve been here! It is ridiculous to question you over and over as if you were the suspect!” It is more appropriate for an advocate to suggest taking a break, and then checking in with the victim about how he or she is feeling.

Role of the Advocate During the Law Enforcement Response

Ideally, law enforcement advocacy starts well before the actual interview takes place. Advocates can help the victim prepare for the interview by reviewing what types of questions may be asked, as well as explaining the reasons behind some of those questions. Advocates can also inform the victim that it is important to tell the officer all the details of the assault, including details that may be embarrassing or humiliating for the victim to disclose. If the victim does not know the answer to a question asked by the officer, advocates should encourage the victim to say “I am not sure” or “I don’t remember” rather than trying to guess what happened or “filling in” the details.

Example: What to Say

“You’ve been going at it for a while now; do you need to take a break?” (Also ask: Detective, would that be ok with you?) Then on the break: “Are you feeling okay with how the interview is going? Is there anything you need from me?”

Advocacy during the law enforcement response can include accompanying victims during the preliminary interview, detailed follow-up interviews, and any other investigative procedures. With the victim’s signed (and time-limited) consent, it can also include making follow-up contact with law enforcement to check on the status of the case and asking any questions on the victim’s behalf. Other specific responsibilities of the advocate during the law enforcement response may include the following:

- Explain the process of the police investigation, answer any questions the victim might have, and address any concerns related to the investigation.
- Provide victims with a realistic expectation of what will happen during the course of the investigation, and what possible outcomes might be.
- Explain the services that advocates can provide throughout the process, including accompaniment during law enforcement interviews and other investigative steps (e.g., constructing a composite sketch, viewing a photo lineup, or conducting a pretext/monitored phone call).
- Help victims to identify and articulate their preferences regarding the presence of an advocate or any other support people during investigative or prosecutorial procedures.

- Ensure that victims have the information they need to make decisions and protect victims from any coercion by community professionals or support people.
- Work with law enforcement professionals handling the case to finalize a safety plan and determine how victims should respond if they feel threatened by the suspect, or the suspect's family members or friends.
- Work with law enforcement professionals to ensure that victims have all the necessary and appropriate information in a timely manner, without compromising the integrity of the case. This could include:
 - Notifying the victim of the status of the investigation, including if and when the suspect might be arrested.
 - Providing information about the detention and location of the suspect.
 - Informing the victim of any changes in the suspect's detention status, including the location and any bail provisions.
- Signal to the law enforcement investigator when a victim appears to need a break from an interview or other investigative procedure.
- Help victims to obtain a copy of their police report, if they want one. This may be more challenging in some communities than others.

Potential Challenges in the Law Enforcement Response

Unfortunately, not all victims are treated equally and fairly by law enforcement, as with other professionals in the criminal justice and community response system. Many victims share stories with advocates about how they were mistreated by officers and investigators. On the one hand, advocates must take in this information with some degree of caution, because victims may have one perspective while law enforcement could have a completely different one. Yet it is also true that victims are sometimes poorly treated by law enforcement. Because of this, advocates should always tread very carefully when advocating on a victim's behalf, in an effort to maintain the advocacy bond with the victim but also preserve the professional relationship with colleagues in law enforcement.

Advocate Isn't Allowed in the Interview Room

As discussed previously, advocates aren't allowed in the interview room in every community. While this is primarily a systemic issue that can be addressed with reform efforts, there are still supportive things the advocate can do to help the victim in an individual situation. Advocates can still accompany the victim to the interview just in case the investigator decides to invite the advocate into the interview room – for example, if the victim begins to struggle or obviously needs support. The advocate can

also talk with the victim before the interview to help increase her/his comfort level, as well as encourage the victim to request breaks, at which point the victim can check in with the advocate to get additional support before resuming the interview. The advocate can also talk with the victim after the interview is concluded, to answer questions or concerns that may have come up throughout the process.

Resource: Expert Interview

In this [expert interview](#), Dr. Kim Lonsway offers suggestions on how to respond to situations where the advocate is not allowed in the interview room.

Victim was Traveling When Assaulted

Sadly, a victim's primary memory of a vacation or work trip may be the sexual assault that took place. In such a situation, victims may report to the local authorities before leaving town, or they can wait until they get home to report the assault. In either situation, advocates can help victims connect with the law enforcement agency in their home community. The law enforcement agency in the victim's hometown may be able to assist the agency with jurisdiction over the assault, by taking a courtesy report and/or conducting the victim interview. In addition, advocates can help connect the victim with the law enforcement agency and advocacy organization in the community where the assault took place. That way, if the victim does have to return, the connection will already be established.

Resource: Courtesy Reports

For more information, please see the article on [The Need for Courtesy Reports by Law Enforcement: Sexual Assault in the Wake of Hurricane Katrina](#). Courtesy reports are taken by one law enforcement agency on behalf of another. They were used, for example, for the victims of Hurricane Katrina who were sexually assaulted in one community but reported the crime after evacuating to another. This document was designed to provide concrete assistance and address frequently asked questions. However, this is not just an issue of disaster response. Courtesy reports are commonly taken by law enforcement agencies that have a high volume of cases involving transient populations like tourists, students, or military personnel. There may now be a heightened need for courtesy reports in some communities, as they implement forensic compliance - - because it may be impossible to determine the jurisdiction of a sexual assault for victims who have a medical forensic examination conducted without talking with law enforcement. If a police report is filed or evidence stored by law enforcement, it may need to be handled as a courtesy report.

Victim has a Criminal History

Victims who have previously been in trouble or have had a bad experience with law enforcement will likely have concerns about participating in the criminal justice process. This is especially true if the victim has a warrant out for her/his arrest. It is helpful for advocates to be well-informed on how these situations are typically handled in their community, so the victim understands what will happen if the sexual assault is reported to law enforcement. Advocates should also be prepared to inform victims who were drinking underage, using drugs, or who were involved in prostitution what the possible reaction might be from law enforcement and other professionals. These challenges may be even more pronounced for victims who live in a rural area as they will probably know the responding officer. In fact, they may have been arrested by that very same officer.

Example: What to Say

"I understand you've been in trouble before, but the officer is here about the sexual assault, not because of what you've done in the past. It is really important that you try, as much as possible, to focus on this issue and not what happened before. He'll be trying to do the same..."

Victim does not Return Phone Calls or Show Up for Interviews

One of the biggest frustrations law enforcement investigators express is working with victims who do not want to work with them. A victim may consent to the initial interview, for example, but then not answer their phone, return the investigator's phone calls, or show up for scheduled interviews. Both system- and community-based advocates can assist investigators in trying to make contact with the victim in such a situation. Sometimes, victims are feeling guilty about telling the investigator they want to withdraw from the process, so it is easier for them to just ignore the phone until the investigator gives up as well. Advocates can help communicate this message to the investigator and provide victims with information about how to re-engage with the criminal justice process if they decide to, at some future point in time.

Sometimes, even when victims have withdrawn from the investigation, they may still remain in communication with a community-based advocate. For example, the victim may utilize other agency services such as therapy or group counseling. In this situation, the advocate can encourage the victim to either inform the law enforcement investigator that she/he is no longer interested in participating in the criminal justice process or ask the victim to sign a release of information, so the advocate can inform the law enforcement investigator of the victim's wishes. This can be helpful for everyone involved, so the victim does not have to feel guilty about not returning phone calls, and the investigator can move on to the next case.

Example: What to Say

“The Detective called me today, wondering why you haven’t called her back. Do you want to talk with her? I can be there with you if you do. If you don’t, it’s probably time to let her know so she can move on, and so can you. If you want, I can give her a call back and let her know your preference.”

Victim Would Like to Postpone the Detailed Interview

Each community has a different policy on when the detailed follow-up interview will take place. In some communities, the follow-up interview is conducted immediately after the assault has been reported, whereas in others the follow-up interview is scheduled a day or two later. A delay is typically best practice since it can provide victims with the opportunity to rest, process what has happened, address immediate needs, take advantage of supportive services within the community, and make any necessary arrangements for transportation or child care during the interview. It also allows victims to provide law enforcement with more detailed information than they can offer in the immediate aftermath of the sexual assault, including details that they may not have recalled until later. In those communities where law enforcement conducts the detailed interview immediately, this can sometimes present a challenging situation for advocates if the victim wants to do it later. First, advocates should acknowledge the reasons for this policy, and recognize that this decision is up to the discretion of law enforcement. However, if the victim is concerned about participating in the interview immediately, the advocate may – with the victim’s permission – discuss the option of postponing the interview with law enforcement. In the end, advocates must respect the decision of the law enforcement investigator and explain the rationale to the victim if the interview will not be postponed. However, if this is a problem it is probably an issue that the advocate will want to raise later, for discussion and training, to determine whether advocacy work on a systemic level can move toward changing this policy.

Example: What to Say

“Hey Detective Jones, Jim was wondering if it would be possible to postpone the interview until tomorrow? He is really worn out and still under the influence of alcohol. He believes he could give you better information if the interview took place tomorrow. Would that be okay?”

When the Facts “Just Don’t Add Up”

There are times when a law enforcement professional might begin to suspect that a victim of sexual assault is filing a false report or not telling the truth about other details in her/his statement. This is a suspicion that is often shared by other professionals in the community, as well as friends, family members, and other people in the victim’s life. All

too often, victims are faced with skepticism or outright disbelief when they disclose that they have been sexually assaulted. Yet when this suspicion is expressed by a law enforcement investigator, it often involves questioning victims in a way that feels more like an interrogation of a suspect than an interview with a victim.

Resource: False Reports

For more information on this topic, please see the OnLine Training Institute module entitled, [False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault](#).

When questioned or challenged on this practice, law enforcement investigators will often say that it is their responsibility to “get to the truth.” This is true, because their professional mission is to serve as a neutral fact finder. Yet the suspicion is often misplaced. In fact, there are a number of reasons why the facts might “not add up” in a victim’s statement, and most of these have nothing to do with the possibility of filing a false report. The reality is that many victims provide details in their statement that are inconsistent or incorrect. This is typically due to memory impairment resulting from trauma and disorganization, but it can also stem from the fear that victims won’t be believed or that they will be blamed for their own sexual assault. As a result, they may add or revise details to make the statement sound more like the stereotypical “real rape” (e.g., with a stranger, weapon, physical resistance, injury).

In this type of situation, the immediate response of an advocate will depend on a number of factors. For example, it may involve stepping outside with the law enforcement investigator and asking where he or she is going with the interview. If the investigator expresses concern that the report is false, the advocate should then ask if the victim is now being considered a suspect. This question may be enough to call attention to the fact that the sexual assault is no longer being investigated and cause the investigator to at least think about the purpose of the interview being conducted. Whether or not the investigation is conducted appropriately beyond that point, at least the “interrogation mode” of the interview has not gone unquestioned and the advocate can advise the victim of what is happening and what the possible implications are. Victims can then make an informed decision regarding their ongoing participation in the law enforcement investigation.

In some cases, advocates can help law enforcement by acknowledging the gut reaction that we all have when we suspect someone is lying to us and remind them that their professional obligation is to investigate through that gut reaction. Advocates can help law enforcement investigators understand the many reasons why victims often provide information that is inaccurate or inconsistent and challenge the investigator to think about the consequences of being wrong. That is, if the investigator does not believe the victim and the suspect walks away, he may very well go on to assault someone else. Investigators can also be reminded that a determination about the facts cannot be made solely on the basis of a victim interview; the victim interview is only one piece of an

investigation, which also includes collecting and documenting evidence and conducting interviews with the suspect and witnesses to events before, during, and after the sexual assault. Only after a thorough investigation has been conducted will there be enough facts to make a final determination in the case.

If the investigator states that charges might be pursued against the victim for filing a false report, this indicates a dramatic turn of events in the investigation. At this point, the advocate will need to explain this situation to the victim, as well as provide information on the victim's rights, including the right to legal representation. It is a tragedy when a proper law enforcement investigation is not conducted when a sexual assault is reported, but when it does happen, the role of an advocate is to provide the victim with information, emotional support, and community resources to make informed decisions and to assist in implementing those decisions. Any longer-term strategies for problem solving must wait and be addressed on a different day – with strategies designed to create change on a systemic level.

Case Will Not be Referred for Prosecution

When the investigation is concluded, the investigating officer will make a number of important decisions, including whether or not to arrest a suspect, refer the case for prosecution, and clear or otherwise close the case. Regardless of the specific outcome, advocates can provide assistance to victims by ensuring that they are provided with timely information about the outcome of their case and helping them to deal with their emotional reactions.

When the case is closed by the law enforcement investigator without referring it for prosecution, victims may feel a range of strong emotions, including anger, disappointment, betrayal, and frustration. At the same time, however, they may also experience some sense of relief. Advocates can help victims work through these complicated emotions and assist victims in contacting the investigator or prosecutor assigned to their case to discuss the outcome and the rationale for declining to refer their case.

Prosecution

The time and emotional toll the criminal justice process takes on victims can be overwhelming, so it is not surprising that many victims of sexual assault either choose not to participate in the process or withdraw their participation at some point. Advocates can provide victims with the support and encouragement they need to survive the ups and downs of the criminal justice process.

How Advocates Get Involved During Prosecution

As previously described, community-based advocates typically become involved long before the prosecution phase, when the victim calls the crisis line, contacts law enforcement, or has a medical forensic exam. If there is also a system-based advocacy program located in the prosecutor's office (e.g., Victim Witness Assistance Unit), advocates might contact the victim at the point the police report is made, or they may not be connected with the victim until the case is referred for prosecution.

Presence of an Advocate During Prosecution

Advocates may or may not be allowed in the room while the prosecutor conducts an interview with the victim. Some states have laws protecting the victim's right to have an advocate or support person present during this interview. However, others do not. Therefore, even when advocates are not present during this interview, they may provide accompaniment for the victim during other interactions, such as meetings to prepare the victim for testimony and actual court proceedings. In some communities, victims may not be allowed to enter the courtroom until they testify. The prosecutor may ask victims to remain outside the courtroom, so the jury can see them during breaks. This is another opportunity for advocacy. An advocate may be able to stay with the victim, to provide support and encouragement, until the victim is allowed into the courtroom to testify.

Role of the Advocate During Prosecution

The advocate's role during the prosecution phase is to ensure that the victim's voice is heard, and he/she feels connected to the process. Advocates serve as a communication link for victims within the court system, making sure that they are included in the decision-making process and consulted about important decisions such as plea negotiations or sentencing. Victims often feel frustrated by this complex process and do not understand why it takes so long. The advocate can validate these concerns and help victims better understand how the system works in order to reduce this frustration.

Advocates should routinely check in with the victim, to encourage dialogue on how the victim is feeling about the process. This check-in also allows the advocate to notify the victim (if known) of the time and place of any meetings with the prosecutor, court proceedings, the arraignment, hearings, court appearances, etc. Other specific responsibilities of the advocate during the prosecution phase include the following:

- Ensure that victims have the correct contact information for the prosecutor's office.

- Accompany victims to any interviews, meetings with the prosecutor, and court proceedings. In some cases, advocates can even help victims arrange transportation.
- Explain the nature and status of each of the court proceedings to victims.
- Help prepare victims for testimony, not in terms of content, but rather by preparing them with information about the process, visualization practice, and emotional support.
- Help victims write their impact statements and prepare to speak at sentencing hearings, in order to convey the impact of the sexual assault on their life.
- Inform victims about options other than filing a report, such as seeking a protective order or pursuing other civil legal remedies.
- Facilitate a meeting between the victim and prosecutor to discuss the outcome of the case, including the decision not to move forward with prosecution or to seek a plea agreement.
- Ensure that victims fully comprehend the terms of any plea agreement, and advocate on their behalf when necessary and appropriate.
- Work with the victim to identify any special conditions of the suspect's bail, or the offender's parole or probation, such as no-contact orders.
- Accompany the victim to hearings regarding the offender's probation or parole.

For system-based advocates who work within the prosecutor's office, they are typically informed of meetings and court dates as a routine course of their duties, and it is often their responsibility to notify the victim of these appointments and other events. Sometimes, the prosecutor or system-based advocate may also notify a community-based advocate. If not, community-based advocates may be able to access this information independently, but otherwise they may need to rely on the victim to notify them when there are meetings, court dates, or other developments in the case.

Example: What to Say

"I heard from the prosecutor... She wanted to talk with you about your case and next steps. Would you like to meet with her? She said it's not a strong case, so it's possible it won't move forward. Would you like me to go with you?"

Potential Challenges During Prosecution

Prosecution of a sexual assault case is extremely complex. As a result, advocates face many potential challenges during the process, but one of the biggest is simply explaining it to victims. Advocates working with victims during the criminal justice process must have a strong, foundational understanding of how the system works and how decisions are made. This requires more training than what is offered in the initial training provided to community-based advocates.

Yet there are a range of other challenges advocates may face when providing services to a victim throughout the process of a criminal prosecution.

The Case Won't Move Forward

Because only a small percentage of cases ever make it to court, many victims who report their sexual assault to police and participate in the investigation will see their case declined by the prosecutor – often due to “insufficient evidence” or because the case is perceived as “unwinnable.” The advocate’s role in this situation is to help the victim understand why this decision was made. The advocate may also help the victim arrange a meeting with the prosecutor in order to better understand the decision. This is another place where it is important for the advocate to remain as neutral as possible, as it can be extremely frustrating to see this happen over and over again. While it is clearly part of an advocate’s role to validate the concerns and frustrations that are expressed by victims, advocates must be careful to avoid assigning an emotional response to victims by projecting their own personal response.

Responding to Defense Counsel

During the process of a criminal prosecution, victims may receive a request from the defense attorney for an interview. This person may or may not clearly identify him- or herself as the defense attorney in order to secure the interview; therefore, it is important for victims to notify the advocate of all meeting requests, so the advocate can help identify the prosecutor versus the defense attorney. If the victim does in fact receive a request from the defense attorney, the advocate can also help the victim notify the prosecutor assigned to the case to discuss the best way to respond.

Responding to the Media

Victims may also be contacted by the media, particularly in high profile cases or when a case reaches the prosecution phase. Members of the media will almost certainly identify themselves, but this is another area where the support of an advocate is critical. Victims are often unprepared for the impact of media coverage in their case, and advocates can help victims decide whether or not to participate in such a media interview, and if so, they can help victims prepare for the process. This can involve a detailed explanation of the process, assistance in preparing to answer questions, and even opportunities for

practice. Victims may also need help in thinking through what the impact of the media coverage will be, and advocates can help them prepare for the response of family members, friends, co-workers, etc.

Resource: Media Guides

More information is available in media guides published by the [California Coalition Against Sexual Assault](#) and the [Michigan Coalition Against Domestic and Sexual Violence](#) and the [National Resource Center on Domestic Violence](#). However, most of the information in these media guides are focused on general media outreach by an advocacy organization, rather than specifically focusing on preparation for survivors to handle press interviews. Another resource is a [brochure](#) developed by a variety of agencies in San Diego to provide sexual assault survivors with information about the media and their rights.

An additional resource is titled [Reporting on Rape and Sexual Violence: A Media Toolkit for Local and National Journalists to Better Media Coverage](#), published by the Chicago Taskforce on Violence against Girls and Young Women.

Explaining Rape Shield Laws

The interpretation and application of rape shield laws continues to evolve over time. The original intent of rape shield laws was to ease the emotional burden for rape victims who testified in court, by limiting the types of questions that could be asked about their prior sexual behavior and other unrelated aspects of their lifestyle, personality, and reputation. However, this type of evidence is often still admitted, either because of exceptions to the rape shield law, loopholes, discretionary decisions of judges, or because the information is needed to provide the history of what happened. Advocates can help inform victims that their personal information may come out in court and be documented in transcripts that could be released in print even to the media. Advocates may therefore be needed to help victims prepare for the consequences of their loved ones (and many others) having access to that information.

Example: What to Say

"I can't guarantee what personal information will or will not be admitted in court. Is there information you are worried about that may come out? Do you want to talk about it? Maybe by talking about it, we can prepare for the worst."

Resource: Rape Shield Statutes

For a summary of [rape shield statutes](#) in each state, please see the chart compiled by the National Center for the Prosecution of Violence Against Women at the National District Attorneys' Association.

For information on whether and how to appeal a court decision regarding the admissibility of such evidence, see [A Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence](#), published by the National Crime Victim Law Institute.

Cross-Examination

The testimony of the victim can be one of the most compelling, yet difficult moments of the trial. Regardless of how well the prosecutor, advocate, and others have prepared the victim, it is impossible for victims to truly imagine what it will feel like to be on the stand, answering deeply personal questions in front of strangers whose job is to decide whether or not they are being truthful. Victims can never fully be prepared for what questions the defense attorney will ask, or how much blame will be put upon them for choices they made in the past or how their credibility might be attacked. The advocate, as well as the prosecutor, can explain this to the victim prior to taking the stand. Most effective, however, may be the presence of an advocate in the courtroom, so the victim has a focal point while testifying. Advocates can also offer nonverbal encouragement and reassuring expressions during the victim's testimony, as well as debriefing with the victim afterwards.

Testimony Surprises

A very challenging situation arises when the victim discloses information that the prosecutor did not know before the victim testified, such as drug use or a prior or continued relationship with the defendant. This can cause the prosecutor to get frustrated with the victim, as well as create problems for the case. The advocate may need to step in to help the prosecutor focus on recovering the case, rather than expending energy being angry with the victim. The advocate can also comfort the victim and express an understanding of the reasons why a victim might withhold information but explain that in order to move forward and for trust to be restored, all information must be shared with the prosecutor.

Other Opportunities for Advocacy

This section presents opportunities for victim advocacy beyond the traditional role within the criminal justice process, including: ensuring that victims' rights are protected, providing information about crime victim compensation, helping to pursue civil legal remedies, and testifying as an expert witness.

Crime Victim Rights

Federal and state legislation affords legal protection to victims through a variety of rights; most of these pertain to the process of investigating and prosecuting a criminal case. It is therefore the responsibility of victim advocates to be familiar with these rights and to work to ensure that they are protected throughout the legal process. While the specific rights afforded to victims vary by jurisdiction, they typically include the following:

- The right to notification of all court proceedings related to the offense.
- The right to be reasonably protected from the accused offender.
- The right to have input at sentencing (in the form of a victim impact statement).
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.
- The right to an order of restitution from the convicted offender.
- The right to notice of these rights.
- The right to enforce these rights (quoted verbatim from OVC, 2002a, p. 1).

Resource: Crime Victim Rights

Detailed information on [crime victim rights](#) in each state as well as federal jurisdictions is provided by the National Crime Victim Rights Law Institute.

Additional rights vary from state to state; therefore, advocates must remain updated on the current status of crime victim rights and how they are implemented and enforced locally.

Notification of Crime Victim Rights

States also vary regarding how victims will be notified of their rights. In some states, verbal notification is sufficient, whereas other states require notification to be in writing. Some states even have requirements as to when notification must take place. For example, the statute may specify that victims must be notified of their rights as soon as they report the assault to law enforcement. Yet even with specific laws regarding notification of crime victim rights, the reality is that many victims are still not informed of their rights. This further reinforces the importance of advocacy services, as advocates can provide information on crime victim rights to victims during their first contact and help to ensure that their rights are protected throughout the criminal justice process.

Invoking Crime Victim Rights

Even more frustrating, states with specific crime victim rights may not have any individual or agency specifically tasked with the responsibility for enforcing those rights. For example, even though crime victims may have the right to be informed about conviction, sentencing, imprisonment, and release of the offender, there might not be a designated individual specifically tasked with the responsibility of providing victims with this notification. Again, this is another aspect where contact with an advocate can benefit both victims as well as community professionals, by providing these notifications for victims. The advocate can also provide information on sentencing, such as whether or not the offender has been sentenced to jail/prison or probation and when the offender will be released. While community-based advocates may provide these notifications in some communities, system-based advocates will often have better access to the information, given their role within a governmental structure.

Enforcement of Crime Victim Rights

When a sexual assault victim has had a particular right violated that is not legally enforceable, the best option is typically to attempt to resolve the situation with the person or agency involved. Advocates can be invaluable for victims as they attempt to resolve such an issue. If this attempt fails, however, it may become more of a systemic advocacy issue, which is best handled by the advocate's supervisor.

In some states, crime victim rights are more stringent than others because specific agencies are tasked with the responsibility of honoring and enforcing those rights. In these situations, advocates can help victims to protect their rights by notifying the individual or agency with this responsibility – and working to pursue any available remedies.

Although most crime victim rights pertain to the victim's rights during court proceedings, it is critical to keep in mind that the vast majority of sexual assault victims never make it to this stage. It is therefore equally important for law enforcement personnel, advocates, and other community professionals involved in sexual assault response to work together to ensure that the rights of all victims of sexual assault are protected – regardless of whether the crime is ultimately prosecuted.

Example: Colorado

Crime victim rights are particularly strong in the state of Colorado, so it is highlighted here as an example for other states pursuing potential legislation in this area. In Colorado, specific responsibilities for honoring crime victim rights are spelled out in the law for: law enforcement agencies, the District Attorney, the Court, the Department of Corrections, the Division of Youth Corrections, the Juvenile Parole Board, state hospitals, private and public community corrections agencies and Probation.

Colorado's statute also contains a provision that allows for victims of crime to file a complaint, if they believe their rights have been violated, with the Governor-appointed Victims' Compensation and Assistance Coordinating Committee. The process for insuring that a crime victim's rights are protected is described in similar detail. As described on the website for the Colorado Department of Public Safety, the agency in which Colorado's Victim Rights Act (VRA) compliance program is housed, victims are encouraged to first "attempt to seek compliance at the local level," with the type of strategies that have already been described (e.g., contacting the person involved or a supervisor or chief administrator of the agency).

Victims are further advised that:

Contacts may be verbal or in writing. Accurate records of your efforts to seek compliance at the local level will be helpful to you and to the Coordinating Committee should you decide to file a formal request for compliance with the Victim Rights Act.

If a victim's attempt to resolve the issue locally fails, victims in Colorado may contact the Victim Rights Act Specialist at the Colorado Department of Public Safety, Division of Criminal Justice (DCJ). It is the responsibility of this specialist to provide victims assistance with the resolution of their concerns. The victim may elect to file a formal VRA complaint with the Victims' Compensation and Assistance Coordinating Committee. Colorado's formal VRA complaint process is described on the [DCJ website](#), and victims can print out a formal complaint form and the policies and procedures for filing a complaint. This type of detailed guidance constitutes a best practice for ensuring that crime victim rights are meaningful. You may view the full document on crime victim's rights in Colorado by visiting their [website](#).

Crime Victim Compensation

As indicated above, one of the rights typically afforded crime victims is the right to be compensated for some crime-related financial losses. Therefore, one important role for advocates is ensuring that victims are aware of state crime victim compensation programs. These programs typically provide financial reimbursement to victims of crime to replace some out of pocket costs, such as counseling expenses, medical expenses, loss of earnings, and funeral expenses. Crime victim compensation funds may even cover the replacement of clothes and bedding that are taken by law enforcement as evidence.

Advocates can help victims by describing the type of expenses that are eligible for compensation, outlining eligibility requirements, and offering appropriate referrals for the victim to receive assistance in the application process – if the advocate does not provide this assistance her- or himself. Assistance with crime victim compensation is often a primary activity of system-based advocates, but more and more community-based advocates are receiving training to assist with this as well.

Resource: Crime Victim Compensation

For an excellent review of crime victim compensation, please see the [document](#) prepared by the National Association of Crime Victim Compensation Boards.

Where the Money Comes From

Financial compensation is available for victims of crime in all 50 states, the District of Columbia, the Virgin Islands, and Puerto Rico. All of these jurisdictions have statutes providing for crime victim compensation, with programs administered by the state (or territory or district), with funding from both state and federal sources (OVC, 1998).

- Most of these jurisdictions generate the majority of the money for their crime victim compensation program from fees and fines levied against convicted offenders. Most programs use no tax revenue at all, either for administration or awards (Herman & Waul, 2004).
- These state funds are also supplemented with money that is provided by the federal government and allocated through the Victims of Crime Act (VOCA) by the Office for Victims of Crime (OVC). For every \$100 distributed for crime victim compensation at the state level, OVC supplements it with an additional \$40 to spend. VOCA only allows 5% of their funds to be used for program administration; states thus bear most of the administrative costs (OVC, 1998).
- To be eligible for VOCA funds, the federal government requires that states must cover all US citizens – regardless of their residency – through their crime victim compensation program based on the location of the crime. States must also cover all US citizens who are the victim of any crime committed in a federal jurisdiction such as a national park, military base, or on tribal lands (OVC, 1998).

Eligibility Requirements

Crime victim compensation programs are available to sexual assault victims who resided in the US at the time the crime was committed. They may also be available to US residents who were sexually assaulted outside the US. With a few exceptions, programs will even cover foreign residents who become victims of crime while visiting the US. Because these issues are complicated, however, advocates who assist victims in applying for crime victim compensation should be familiar with the availability of benefits for non-citizens and US citizens who live in other countries.

Advocates must also be well-informed about the restrictions to eligibility, as these restrictions often mean that sexual assault victims are disqualified from receiving any reimbursement for their financial losses. For example, many states require that victims report the crime to law enforcement promptly. In fact, most states have a specified

timeline, stating – for example – that the crime must be reported within 72 hours for the victim to be eligible for compensation. Yet delayed reporting is in fact the norm for victims of sexual assault who may wait days, weeks, months, or even years before contacting law enforcement – if they do at all.

Example: What to Say

“I understand why you waited to report the assault. But, if you want to qualify for crime victim compensation, we need to make it very clear on your application. Let’s talk about how you might frame it, so it makes sense to the board too.”

This requirement for reporting within a specified timeframe would disqualify many victims of sexual assault from eligibility for crime victim compensation. Many states include a possible exemption from the reporting requirement – or the timelines for reporting – if the victim can demonstrate good cause for not reporting or not reporting within the specified timeline. Advocates can be extremely helpful during the application process for crime victim compensation by helping victims to articulate why they had good cause for not reporting their sexual assault within the specified timeline.

Another common requirement is that victims cooperate with criminal justice professionals during the investigation and prosecution of their case. Again, this is often particularly difficult for victims of sexual assault and may serve to disqualify them from eligibility for crime victim compensation – if they choose not to report the assault to law enforcement or withdraw their participation after making the initial report. In situations where the advocate and victim are discussing the option of reporting to police and participating in the criminal justice process, the advocate can inform the victim of this requirement, so she/he can make a truly informed decision.

A third requirement that disqualifies many victims of sexual assault from eligibility for crime victim compensation is if they were involved in any criminal activity at the time of the assault. The truth is, many victims of sexual assault are engaged in unlawful activity at the time of the assault – typically misdemeanor offenses such as underage drinking or illegal drug use – but sometimes more serious offenses such as driving under the influence or involvement in the sex trade. In some states, such behavior may even be seen by administrators within the crime victim compensation program as contributing to the commission of the crime (e.g., their own sexual assault).

Therefore, many programs will view such behavior as an automatic basis for disqualifying the victim from eligibility. In other states, victims may be able to provide documentation to obtain an exemption from this requirement, and again, advocates can provide assistance in this way. In many cases, advocates are able to use knowledge gained from previous experiences in assisting with the application process in order to assist victims in completing their application and supporting the argument for an exemption. Advocates can also help victims to appeal decisions made by the crime victim compensation board, which could include working with the law enforcement

investigator, if this person is supportive and will provide information that would assist in the appeal. If the victim still does not qualify for compensation after appeal, the advocate may be able to provide resources and referrals for free or low-cost counseling and medical care as well as the replacement of personal items such as bedding and clothing.

Under-Utilization of Crime Victim Compensation Funds

Unfortunately, these restrictions have led to the under-utilization of crime victim compensation funds. Many victims are also unaware of crime victim compensation programs, which further contributes to their under-utilization. Advocates can ensure that this notification takes place by providing victims with literature the first time they come into contact; this is often during the medical forensic exam or preliminary interview with law enforcement.

Many victims are under extreme stress in the aftermath of their sexual assault, which can make it difficult to complete paperwork correctly and meet filing deadlines. Advocates may support victims during the application process to ensure that the paperwork is completed correctly and sent in on time.

Resource: Crime Victim Compensation

Other documents that are particularly useful on this topic include the following:

[*Crime Victim Compensation: New Directions from the Field. Victims' Rights and Services for the 21st Century.*](#) Bulletin available from the Office for Victims of Crime.

[*Repairing the Harm: A New Vision for Crime Victim Compensation for America,*](#) Available from the National Center for Victims of Crime.

Civil Legal Remedies

Another evolving area of advocacy is the current effort to expand the services that are available to help victims meet their civil legal needs. This can include increasing access to civil attorneys who can assist victims in areas such as:

- Physical safety
- Housing
- Employment
- Education
- Immigration
- Financial loss

- Privacy

Examples are provided by the National Crime Victim Law Institute (2005b):

- In the area of physical safety, victims may need assistance in identifying, obtaining, and enforcing civil protective orders.
- With respect to housing, victims may need assistance increasing the security of their residence, relocating, or avoiding eviction.
- In the employment context, victims may need assistance in avoiding termination or quitting, improving their safety in the workplace, obtaining leave, addressing confidentiality issues, or securing financial reimbursement for those who do leave or lose their jobs. If the sexual assault was committed at work or by a co-worker, the victim's civil legal needs in the employment arena are compounded.
- Students who are sexually assaulted in an educational setting may need civil legal assistance to obtain a number of remedies, including a leave of absence (without losing academic standing), the removal or suspension of a teacher or student who committed the crime (pending an investigation), adjustment of their academic schedule or living arrangements, obtaining and enforcing a no-contact order, or transfer to another school.
- The issues pertaining to immigration are particularly complex. Information and resources are available from the [Immigrant Women Program at Legal Momentum](#).

Filing a Civil Lawsuit

Some victims also file a civil lawsuit as a result of their sexual assault. A court decision can only award financial damages, yet an out-of-court settlement may also yield a variety of creative remedies, including opportunities for the victim to confront the offender, require that the offender take medications or participate in training, etc. Advocates must therefore advise victims that they can file a civil lawsuit either instead of or in addition to reporting the crime to law enforcement. Because the standard of proof is lower for civil cases as compared to criminal cases, it is possible for victims to win a civil case even after the criminal case results in an acquittal.

Sexual assault victims often have a number of wide-ranging civil legal needs, which remain unmet even though an increasing number of community-based victim advocacy agencies (such as rape crisis centers) now have civil attorneys on staff providing pro bono services for their clients. Even with this promising trend, the resources in this area are nowhere near sufficient to meet the needs of victims. Historically, community-based advocates have only had the resources to focus on assisting the victim with the criminal justice process, meaning victims had to navigate the civil legal system on their own.



Also, many advocates don't have the training to fully understand how the civil legal system works. Yet even with limited resources and a lack of specific training in this area, advocates can still offer emotional support and encouragement, as well as resources and referrals, for victims seeking civil legal remedies.

Resource: Civil Lawsuits

Victims may be allowed to have a civil attorney present during any criminal proceedings (including meetings with the prosecuting attorney), as a matter of due process (NCVLI, 2005). Civil attorneys may also provide assistance for victims requesting a protective order. However, they are not typically allowed to be present in Grand Jury proceedings without an order from the presiding court. For more information, see the document entitled [Rights and Remedies: Meeting the Civil Legal Needs of Sexual Violence Survivors](#) published by the National Crime Victim Law Institute.

Also, the Illinois Coalition Against Sexual Assault published a helpful [guidebook](#) for victims on civil lawsuits.

Advocates as Expert Witnesses

Based on the widespread and powerful rape myths in society, members of the public often have certain expectations about the dynamics of sexual assault, including stereotypes about victims and perpetrators. When they serve as jurors, these expectations can be carried into the criminal justice system. As an example, many jurors expect the victim of a sexual assault to be extremely emotional or hysterical after the incident and then immediately report it to police. When presented with a victim who does not fit this stereotype, these jurors may doubt the credibility of the victim and the veracity of the case. This is why it can be extremely helpful for jurors to have a sexual assault expert explain the realistic dynamics of the crime and common reactions of victims. One important – but often overlooked – role that victim advocates can play is to serve as an expert witness in cases involving sexual assault.

Advocates can address the general dynamics of sexual assault, including empirically documented characteristics that differ from the stereotype of “real rape” (Benitez, 2001). By reconstructing who the victim was before, during, and after the assault, prosecutors can later convey to the judge or jury the entire context of the victim's behavior. Prosecutors can even utilize an advocate to help demonstrate the similarity of these behaviors with other common reactions to sexual assault – and to contrast these reactions with the behavior of someone who engaged in consensual sexual activity. The admissibility of this type of information is well established in most jurisdictions.

Advantages and Disadvantages of Advocates Serving as an Expert Witness

Benitez (2001) has discussed several advantages and disadvantages of using a victim advocate as an expert witness in a case involving sexual assault. Some of the advantages of using a victim advocate are that they are generally accessible and cooperative and may not expect to be paid for their services. Victim advocates are typically qualified to testify regarding their own personal observations and conclusions, as supported by the length of the time in the field and number of victims assisted. Their testimony can therefore be extremely effective.

Unfortunately, one of the disadvantages of using victim advocates in the role of expert witness is that their testimony can sometimes be tarnished with cross-examination regarding the reputation of the individual and/or the rape crisis agency (Benitez, 2001). Because victim advocates have the stated mission of working on behalf of victims, this is sometimes used to undermine their credibility by suggesting that their testimony is biased. An advocate might also inadvertently harm the victim's credibility or case when questioned by the defense, due to a lack of experience with expert testimony and other courtroom procedures.

There are even more critical disadvantages when the advocate serving as an expert witness has provided direct services to the victim. First, this advocate is too closely involved in the case to be an effective expert witness, because the testimony can be easily characterized as biased. More important, advocates cannot protect the confidentiality of any privileged communications with the victim if they are serving as an expert witness in the victim's case. In fact, the rule on witnesses observed in most jurisdictions dictate that the victim advocate cannot provide direct services to the victim once subpoenaed to testify in the victim's case. When both the victim and advocate are serving as witnesses in the case, they are also prohibited from discussing any evidence or testimony, reviewing trial developments, and even processing emotional reactions. This can serve to further isolate the victim from much needed support (Roger Canaff, personal communication, June 14, 2004).

Recommendations for Advocates Serving as an Expert Witness

For all of these reasons, it is recommended that a victim advocate serving as an expert witness should not be the advocate who worked with the victim personally (Bayliff, 2000; Roger Canaff, personal communication, June 14, 2004). Ideally, the expert witness should be drawn from another agency entirely. This strategy is likely to increase the effectiveness of the advocate as an expert witness, by decreasing the perception of bias in the case. More important, this will protect the confidentiality of privileged communications and allow the advocate to continue providing direct services throughout the litigation process. By designating certain advocates as potential expert witnesses, these individuals will also be able to develop specialized expertise in providing courtroom testimony.

Resource: Expert Witnesses

For more information on this topic, please see the document entitled: [The Use of Expert Witnesses in Cases Involving Sexual Assault](#), which is posted by the Minnesota Center on Violence Against Abuse (MINCAVA) electronic clearinghouse.

Also, detailed information on the use of expert witnesses in cases involving domestic violence or sexual assault can be found in the [manual](#) published by the National Center for the Prosecution of Violence Against Women at the National District Attorneys' Association.

For an online training course, please see [How to be a Good Expert Witness](#) from RTI International.

Changing Perceptions of Advocacy

Most professionals responding to sexual assault cases have similar goals, which are to help the victim heal from the trauma of victimization and to hold offenders accountable. Each professional may have a different agenda and role, but the overall goal is still generally the same. Law enforcement officers and prosecutors want victims to follow-through with the initial report, meaning they want them to continue to participate in the criminal justice process. As this module has shown, advocates play a critical role in helping to meet this goal by helping victims navigate this complex and often overwhelming process.

Still, advocates continue to be under-utilized in many communities. This section will examine some of the reasons why and explore strategies to overcome any existing barriers, so advocates can be fully integrated as valuable members of the team responding to the needs of sexual assault victims.

Reluctance to Integrate Advocacy Services

As we discuss the role of advocates in the criminal justice system, it is important to recognize that some criminal justice and community professionals are reluctant to involve advocates in the investigation. This reluctance may simply be due to personality differences if advocates and other professionals cannot achieve the level of trust or respect required to work together productively. The reluctance is also sometimes based on conflicts that arose between the disciplines in the past – perhaps as a result of a misunderstanding or lack of mutual respect.

Sometimes though, the reluctance is not based on actual past conflicts. Sometimes it is simply based on the expectation that conflicts will arise if advocates are “allowed” to work with sexual assault victims within the criminal justice system. This is unfortunate

for victims, as well as other professionals who could ultimately benefit from the presence of an advocate.

Strategies for Overcoming Reluctance to Working with Advocates

Fortunately, there are steps that advocates, and other community professionals can take to overcome the reluctance to work together. This might require advocates to “prove” themselves by not getting “in the way” of the medical forensic exam or police interview. Sometimes, it seems as if people assume training is the answer to all issues that arise. Training is important, but it isn’t the only option.

Seek a Better Understanding

The most important thing advocates and other professionals can do to improve their working relationship is to seek a better understanding of each other. This is not necessarily referring to who they are as individuals (although that can certainly be valuable), but rather a better understanding of their role within the criminal justice process and a perspective on how their role frames their work.

For example, advocates and law enforcement officers operate in two very different organizations. Each organization has its own policies and procedures that instruct the individual on how to do their job. Some of these stem from local, state, or federal guidelines. Advocates can show respect for health care professionals, law enforcement personnel, and prosecutors by seeking a better understanding of the policies and procedures that dictate how they perform their duties, as well as exploring the resources available to them. This is likely to be more productive than simply assuming that they are not doing their job because they lack sensitivity.

Example: What to Say

“I was hoping to get a better sense how cases are assigned, and the steps you typically take to investigate a case. This will give me a better understanding of your role, which will help me to prepare victims.”

Understandably, advocates, as well as victims, can get frustrated by the criminal justice process. This frustration can stem from how long the process takes, as well as not understanding how and why certain decisions have been made (especially regarding whether or not to move forward with a case or to accept a plea agreement). Advocates can take the first step by initiating conversation with criminal justice personnel to seek a better understanding of how these decisions are made, which will then help them provide accurate information to victims.

Address Conflict Proactively

In general, any past and present conflicts should typically be addressed head-on. Wherever possible, the conflict should be analyzed by the professional disciplines that were involved – and potentially by others (such as members of the Sexual Assault Response and Resource Team) – to discover what went wrong, why, and how to fix it. For example, if the conflict arose as a result of a misunderstanding or misinformation, it is critical that the professionals clear it up quickly, so the problem does not become bigger than it actually was to begin with.

Conflicts might arise during interactions between victims and criminal justice personnel as well as other community professionals. When such a conflict occurs, the advocate's first step should be to ask the victim what she/he would like to see happen as a result.

For example, the advocate could ask whether the victim feels comfortable sharing his or her feelings with the professional. If so, the advocate can help the victim to prepare for this conversation by planning and even practicing it. If the victim does not feel comfortable raising the issue personally and would like the advocate to speak on his or her behalf, the advocate should only initiate this contact once the victim has signed a written, time-limited release of information. This release must specifically outline what information the advocate may divulge and to whom. During the conversation with the professional, the advocate must then focus on the feelings of the victim – and not allow personal, private reactions to interfere.

As an opening to such a conversation, it is often best for the advocate to first seek a better understanding of the other professional's memory of what happened and go from there. Advocates must refrain from being accusatory in their tone, and they should also recognize that the other professional may become defensive – just as the advocate might be if the situation was reversed.

Regarding expectations of future conflicts, advocates can also be proactive in addressing them. For example, advocates can ask other professionals in advance what concerns they have, before they are engaged in any specific interaction with a sexual assault victim. This can be helpful to begin the dialogue and break down misperceptions. Often, solutions to these issues are best addressed on a systemic level, so they are not left to the individual professionals to negotiate when they are responding to a case.

Example: What to Say

“Hi Officer Jones, I am calling about Gita’s case. I was wondering if you could give me an update on how it’s going... Thanks, that actually helps clarify what I am calling about. Gita had shared a concern with me and I told her I’d try to get some clarification. I’ll let her know this information, so she feels more comfortable.”

Provide Cross-Training and Seek out Training Opportunities

Yet another strategy for proactively addressing conflict is to provide professional training. This can include skill-based training for advocates on how to manage difficult situations. However, it can also include cross-training, with advocates providing information for criminal justice and other community professionals – and also with advocates participating in training opportunities offered by professionals in these other disciplines.

As an illustration, it can be extremely beneficial for advocacy organizations to provide training to criminal justice professionals and others on the role of the advocate. Advocacy organizations can also offer professional training in their substantive areas of expertise, such as the trauma related to sexual assault victimization. This will help professionals understand how victims may respond after the assault and how this trauma response will affect their interactions with the criminal justice and community response system. Advocacy organizations can also benefit from inviting other professionals to provide training on their own role and substantive areas of expertise.

This will help advocates to better understand the role of health care professionals, law enforcement personnel, prosecutors, and others. It can also help advocates to understand how the criminal justice system works, which equips them to provide better information and services for victims. In fact, advocates are best served by seeking opportunities to attend any training for law enforcement professionals, prosecutors, and health care providers addressing the needs of sexual assault victims. The more cross-training opportunities advocates take advantage of, the more informed they will be, which allows them to provide optimal service for their clients and to work collaboratively with the other professionals who are involved.

Recognize Contributions of Various Professionals

As one illustration of how cross-training can help to increase collaboration and address these challenges, we would like to briefly describe the results of a survey conducted by the Institute of Public Health at San Diego State University with almost 1,000 professionals who attended training conferences hosted by End Violence Against Women International (EVAWI). Participants represented the disciplines of law enforcement, prosecution, forensic medicine, and victim advocacy (both system-based and community-based), and the goal for each conference was to improve the investigation and prosecution of non-stranger sexual assault. After participating in training, the vast majority of professionals stated that they expected the criminal justice response to improve “moderately” or “greatly” in a number of areas, including the quality of law enforcement investigations and the number of successful prosecutions. Most also said that they expected to see changes in their relationships with professionals in other disciplines, including an increased understanding of their perspectives, better appreciation for possible role conflicts, greater likelihood to reach out for collaboration, and increased willingness to explain a colleague’s perspective when others are critical

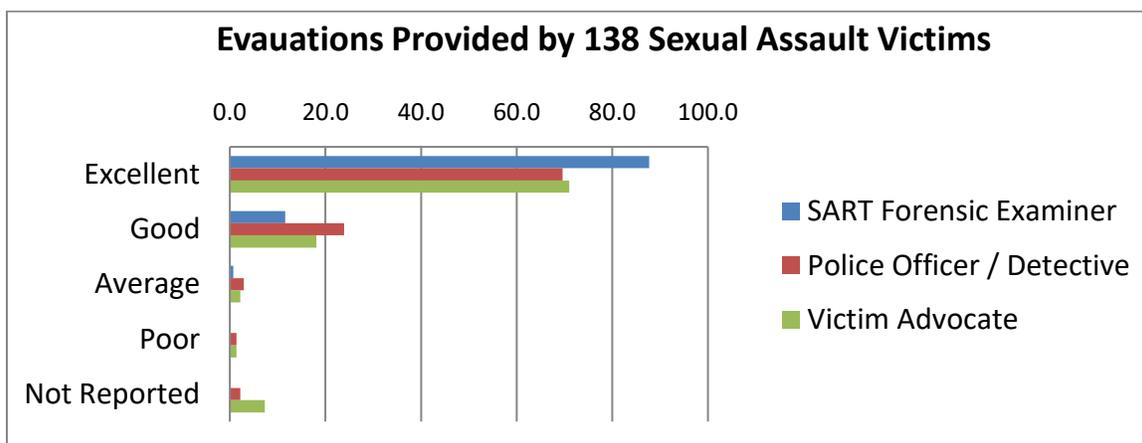
of them (Lindsay et al., 2007). These findings encourage optimism regarding the positive impact of such cross-training opportunities.

In that same survey, training participants were also asked to rate the effectiveness of services provided by professionals in each of the different disciplines. Results indicated that “the largest percentage of conference participants rated community-based victim advocates as effective in the services they provide to sexual assault victims” (Lindsay et al., 2007, p. 21). The percentage rating the services they provided as “moderately” or “very” effective was 92%. However, ratings for other professionals were also quite high: 87% for both system-based advocates and medical professionals / forensic examiners, 76% for law enforcement, and 73% for prosecutors (Lindsay et al., 2007). In other words, almost all of these professionals involved in the criminal justice and community response to sexual assault viewed the services provided by the various disciplines as rather effective, but this was especially true for the two forms of victim advocacy (both system-based and community-based).

Resource: Expert Interview

In this [video interview](#), Dr. Wendy Patrick explores the question of whether rapport between first responders and the victim can influence juror perceptions.

Perhaps even more powerful, this favorable evaluation of the various professional disciplines is shared by victims in at least some communities. In a victim satisfaction survey administered by the San Diego Sexual Assault Response Team (SART) in 2002-2003, a sample of 138 sexual assault victims were asked to evaluate the services provided by the health care provider who conducted the medical forensic exam, the police officer or detective who conducted the interview, and the victim advocate who provided services. Overall, 88% rated the forensic examiner as “excellent,” compared with 71% of the victim advocates and 70% of the police officers or detectives (San Diego SART Evaluation Survey, 2002-2003). By building on the mutual respect that is documented in this survey and emphasizing the shared value of victim advocates, we hope that community professionals can find a way to overcome any reluctance that exists and provide all victims of sexual assault access to advocacy services.



Advocacy organizations can also seek to better prepare advocates who may face challenging situations with health care professionals, law enforcement personnel, prosecutors, and others. Historically, advocacy organizations have primarily provided training focused on philosophical underpinnings and information. Over the past few years, however, many organizations have been shifting to more skill-based training, including strategies for responding to the many challenges that advocates face when providing services. Some examples include group exercises to discuss situations that may arise while providing advocacy, role-plays, and other activities to brainstorm a plan of action for responding to challenging situations.

Common Concerns of Other Community Professionals

Criminal justice and other community professionals may have concerns about working with an advocate (particularly a community-based rather than a system-based advocate). Again, some of these concerns might be based on previous interactions or conflicts, while others stem from their fear that certain problems will arise if advocates are involved. This section will examine a few common concerns in depth, as well as providing information on how to respond to these concerns.

Advocates Talk Victims Out of Reporting (Or into Being “Victims” in the First Place)

One common concern of criminal justice professionals is the belief that community-based advocates try to talk victims out of reporting their sexual assault or discourage them from participating in the investigation and prosecution of their case. It can therefore be helpful to point out that the role of a community-based advocate is not to encourage or discourage victims from a certain course of action, but rather to help the victim make informed decisions by providing factual, realistic information.

Example: What to Say

“The officer will need to ask you a number of questions, and some of them may be embarrassing or hard for you to answer -- but you only need to answer what you can at this time. It is important to tell the officer the truth and let him know if you aren’t able to answer a particular question. Just say you don’t know, rather than guessing the answer.”

“After that, you will have a medical forensic exam that usually takes a couple of hours. You’ll probably have to provide law enforcement with your clothes, and the nurse will collect evidence from your body. I want you to know that the nurse is very good, and I can be with you throughout the process if you would like.”

When it comes to reporting and participating in the criminal justice system, it can certainly appear to other professionals that advocates are providing information that is overly negative or designed to convince them not to report. Advocates can help change this misperception by sharing what information they typically provide to victims, but also by reminding criminal justice professionals that their job is to provide victims with information that is realistic – not to “sugar coat” reality or to “sell” any particular option to the victim.

In some communities, community-based advocates might believe that the criminal justice agencies will not respond appropriately. This may be based on their perception of how previous victims have been treated by criminal justice personnel, or because they believe that very few cases are thoroughly investigated and successfully prosecuted. As a result, the information provided to victims may serve to discourage them from reporting or participating in the investigation – even if the advocate is not explicitly or implicitly expressing such an opinion. The facts may speak for themselves. However, it does not serve the longer-term interest of victims to respond to problems by “working around” one of the core disciplines involved in the criminal justice and community response system (e.g., by advising victims not to report to the police). Such a strategy does not lead to positive change, but only entrenches conflict and hostility. This is therefore another example of a systemic issue, which is best handled by addressing the issue within a multidisciplinary protocol or MOUs between the various agencies involved in responding within a Sexual Assault Response and Resource Team (SARRT).

Ironically, there is another common belief that advocates talk their clients into seeing themselves as “victims” in the first place. While it is true that advocates will often help victims to make sense of what happened to them (by providing a definition of sexual assault and an explanation of common dynamics of victims, perpetrators, and assault characteristics), it is not the advocate’s role to define the victim’s experience, especially in a legal sense. Rather, the advocate’s role is to provide information and support while helping victims make their own decisions and implement them by pursuing a particular course of action. In fact, the more common scenario is that the victim describes an experience that meets the legal definition of rape or sexual assault yet is unsure how to define it.

Example: What to Say

“Would you mind stepping outside with me briefly? I want to get a sense of what you were thinking – I am beginning to sense you don’t think she is telling the truth and I just wanted to be informed so I don’t jump to any conclusions.”

In the aftermath of trauma, victims often have not had time to process what happened to them, let alone label it as a “sexual assault” or a crime and report it to law enforcement. They often have difficulty making sense of what happened to them, partly because they have been exposed to the same myths and misconceptions as everyone else regarding what constitutes “real rape.” So, if their own sexual assault does not look like the stereotype of “real rape,” victims often do not recognize what happened to them as a crime and do not report to law enforcement. The research is clear that many women who have experienced behaviors that meet the legal definition of sexual assault will say “no” when asked if they have been raped. In fact, “research has consistently found that a large percentage of women – typically over 50% – who have experienced vaginal, oral, or anal intercourse against their will label their experience as something other than rape (Kahn, Jackson, Kully, Badger, & Halvorsen, 2003; also, Littleton, Rhatigan, & Axsom, 2007).

Advocates “Get in the Way”

Some investigators express concerns that advocates have disrupted their interviews, either by interrupting, asking the victim questions, or answering questions on behalf of the victim. System-based advocates may be more involved during the interview than a community-based advocate; therefore, it may be appropriate for them to help ask the victim questions or help the investigator shape questions during the interview. However, community-based advocates should never ask the victim questions of substance about the case during a law enforcement interview, nor should they respond on behalf of the victim.

It should be noted, however, that “disrupting the interview” is not the same thing as asking the victim whether it would be helpful to take a break and regroup before continuing with difficult questions. Advocates should, when necessary and appropriate, ask and sometimes encourage victims to take breaks. Sometimes a break allows victims an opportunity to collect themselves, and it gives the advocate an opportunity to express support and encouragement.

Addressing this concern typically requires systems advocacy, to develop multidisciplinary standards of practice, a community-protocol, and/or Memorandum of Understanding (MOU) between the agencies involved in responding to sexual assault cases and victims. These issues are too important – and too complicated – to be addressed by the individuals who respond to a particular call. In the community protocol or MOU, it can be explained that advocates are specifically trained not to disrupt an interview, and their actual role described (as it is in this module). It can also be made

clear that a supervisor within the advocacy agency is to be informed if this type of situation arises, so it can be addressed appropriately. Advocates can then “prove” to investigators they will not become involved by doing just that, by being in the room and providing support for the victim while not disrupting the interview. This information is best balanced with similar types of explanations regarding the role and boundaries of the other professionals as well. Again, this is the best way to take such issues out of the individual realm, where they could be viewed as a conflict of personalities and clarify them as being a function of professional roles and boundaries.

Advocates as “Watchdogs”

Another source of concern stems from the fact that advocates serve as “watchdogs” for the treatment of sexual assault victims within the criminal justice and community response system. This is partly because their professional role includes ensuring that the victim’s rights and interests are protected at all times. Therefore, it is a proper part of an advocate’s role to seek redress when they believe the rights or interests of a victim have been violated. However, there are certainly more and less effective ways of fulfilling this role. As mentioned previously, any confrontation should be done privately (outside the presence of the victim) and without personal emotion. Advocates should always refrain from telling another professional how to do their job, because this is almost never an effective strategy for change. Rather, advocates can inquire about how decisions were made, or ask why a particular situation was handled in the way it was. This can help the advocate to better understand where the professional was coming from. Yet sometimes an advocate may need to provide another professional or agency with information (e.g., about trauma response, victims’ rights, or other topics). This is a delicate business, but it is based on the reality that part of an advocate’s role is to stay abreast of research, legislation, and other developments in the field of sexual assault response. This information may not be known by other professionals who respond to sexual assault victims and cases, because their training and responsibilities extend far beyond sexual assault. While it is not always easy, part of the advocate’s role is in fact to be a specialist in the area of sexual assault response, and therefore a resource to criminal justice professionals and others in the community response system. The challenge is to balance this role with a truly open mind for information flowing in from others.

One example of this is that advocates should expect feedback on how they did, as well as providing such feedback for others. In a healthy response system, feedback should go both ways between professionals, although it can sometimes feel uncomfortable or even embarrassing. It shows mutual respect and a desire to continue to improve the relationship and work together in the future.

Example: What to Say

“I’d like to know if any of our advocates interrupt or do something they are not supposed to do during an interview. We provide extensive training on their role when present during an interview, and if something happens we will address the concern with that advocate.”

Advocates Withhold Important Information and are Not “Really” Part of the Team

Another common concern of criminal justice professionals is the belief that advocates will withhold information that would be important for the investigation and prosecution of the sexual assault. There is often a perception that victims tell advocates “everything,” but advocates choose not to disclose this information to criminal justice professionals for ideological (or other) reasons. Underlying this issue is a fundamental sense that advocates aren’t “really” a part of the team. It is important to note at the outset that this situation does not arise as often as some criminal justice professionals believe.

In fact, advocates often have much less information about the actual sexual assault than criminal justice professionals do. This is particularly true for community-based advocates, because it is not their role to ask the victim any questions about what happened. They also do not typically learn any information about the assault from other professionals – other than the information that is disclosed by the victim in the presence of the advocate (e.g., during an interview or exam). Rather, the advocate’s role is to focus on the victim’s physical and psychological well-being. Much more typical is the situation where the forensic examiner and law enforcement investigator know a great deal more about the sexual assault than the advocate does.

Nonetheless, it certainly happens in some situations that an advocate learns information that the victim has not shared with criminal justice professionals or sexual assault forensic examiners – and the advocate knows that this information could be important for those professionals to assist in the victim’s treatment or in the investigation or prosecution of the sexual assault. How advocates respond in this situation will vary, depending on a number of factors, including the legal protections they have (or do not have) regarding the confidentiality of their communications with victims.

Example: What to Say

“I know that you are telling me this privately because you don’t want the investigator to find out. Unfortunately, she is going to ask me about our conversation after we are done – and I am required to share anything I learn due to the nature of my role within the police department. Would you like to tell her with me?”

For system-based advocates, this particular concern is not as relevant, because they do not have legal privilege to protect the confidentiality of their private communications with victims. This concern can thus often be addressed by simply clarifying that it would violate their role to withhold important information regarding the case and victim. If they are asked directly about the case by a police investigator or prosecutor, most system-based advocates are required to divulge what they know, even if the information was learned during a private conversation with the victim. If they are not asked directly about the case, however, the question of whether or not to provide the information proactively is realistically left in the hands of the system-based advocate. They must personally decide how to respond based on their understanding of their professional role, relationships and legal obligations. This is yet another issue that should be addressed in policies and cross-training, so everyone is clear about what to expect in such a situation.

Example: What to Say

“I understand you’re unsure of whether or not you want to tell the investigator that you were drinking before you were sexually assaulted... I do need to let you know that this could be an important piece of information for his investigation. However, it is your choice whether or not to tell him, and I will support whatever you decide.”

For community-based advocates, it must be clear to everyone involved in the community response system that they cannot share confidential information, because it violates their professional role and mission. (Whether they may ultimately have to divulge the information if they are served with a subpoena to testify is a more complicated question and depends on the specific laws and court decisions in their state.) When a community-based advocate has information that they know could be important for the investigation and prosecution of the sexual assault, the most appropriate response is to explain this fact to victims – privately – and provide them with the information they need to make their own decisions regarding what to do. For example, if the victim has decided to report the sexual assault and participate in the investigative process, an advocate can point out that the information in question would be useful for the law enforcement investigator and/or prosecutor handling the case. The advocate can also explain that the information is likely to come out anyway, and it will be used to damage the victim’s credibility if the victim tries to hide it. This type of explanation is an appropriate role for advocates because it helps victims to follow through on a decision they have already made. On the other hand, if the victim decides not to share the information with criminal justice professionals, community-based advocates just have to accept that fact as one of the more difficult parts of their professional role.

Conclusion

It is important to remember that every community is different; each jurisdiction has a unique set of resources that are available, and different policies and procedures based on those resources. It is probably safe to assume that all of the professionals involved in responding to sexual assault cases want to see more offenders held accountable for their crimes. Yet this can only be accomplished when victims are able to successfully participate in the process of a law enforcement investigation and criminal prosecution. This, in turn, will only happen when victims are supported by friends, family members, advocates, and other professionals. In other words, to hold more offenders accountable we must provide all victims of sexual violence (and their loved ones) with as much support as possible.

One-way communities can ensure this happens is by participating in the Start by Believing campaign. Start by Believing is the global campaign developed by EVAWI that seeks to change the way we as a society respond to disclosures of sexual assault. But Start by Believing is more than a campaign, it is a philosophical stance that should guide our responses to sexual assault. It “flips the script” on the message victims have historically received from professionals and support people, which is: “How do I know you’re not lying?” to the understanding that all reports have merit.

Advocates often play an integral role in bringing this campaign, and the overall philosophy, into their communities. Community-based and system-based advocates have a unique ability to bring criminal justice professionals together to unify in a single message for survivors – we support you and we will Start by Believing.

For more information, please visit the [Start by Believing website](#).

For More Information

Just Detention International’s [Hope Behind Bars: An Advocate’s Guide to Helping Survivors of Sexual Abuse in Detention](#) provides an excellent manual to help advocates provide support to survivors of sexual abuse in detention.

EVAWI offers a number of resources to support law enforcement in conducting victim interviews that are “trauma-informed.” EVAWI offers a training bulletin entitled: [Understanding the Neurobiology of Trauma and Implications for Victim Interviewing](#), written by Dr. Chris Wilson, Dr. Kim Lonsway, and Sgt. Joanne Archambault (Ret.), with contributions by Dr. Jim Hopper. This training bulletin provides basic information about the brain and explores the impact of trauma on behavior and memory. It then highlights the implications for law enforcement interviews conducted with victims of sexual assault and other traumatic crimes.

The following webinars on the neurobiology of trauma and trauma-informed interviews are available:

- [Forensic Experiential Trauma Interview: A Trauma Informed Experience 2-Part Webinar Series](#). Training is provided by Russell Strand. In Part 1, [Overview of the FETI](#), Mr. Strand discusses the history of victim interviews and the criminal justice system, the need for change, and an overview of the FETI. In Part 2, [Practical Applications of the FETI](#), he continues with practical applications of the FETI, reframing questions, and how to close a FETI interview. Mr. Strand also addresses how FETI can be applied to both preliminary and follow-up interviews.
- A two-part series on the *Neurobiology of Sexual Assault* presented by Dr. Jim Hopper of Harvard University. In [Part 1](#), Dr. Hopper focuses on the topic of Experience and Behavior, while [Part 2](#) emphasizes Experience and Memory.
- Another good webinar on this topic is: [The Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution, and Victim Advocacy](#), with Dr. Rebecca Campbell, and hosted by the National Institute of Justice.
- Finally, we offer an archived webinar on [Effective Victim Interviewing](#), by prosecution expert Roger Canaff and EVAWI's Sergeant Joanne Archambault. While it does not specifically address the impact of trauma on neurobiology, valuable guidance is provided for how to plan and conduct successful interviews with sexual assault victims.

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Additional Acknowledgements

Some content of this module may have been adapted (with permission) from material in the following sources:

- “Police Response to Crimes of Sexual Assault: A Training Curriculum.” Written by Sharon M. Hunter, Bonnie R. Bentley Crewe, and Jamie L. Mills. Produced by the Connecticut Sexual Assault Crisis Services, Inc. Funded by Police Officer Standards and Training Council and STOP Violence Against Women Grant #VAW9606.
- “Model Guidelines and Sex Crimes Investigation Manual for Illinois Law Enforcement.” Produced by the Illinois Law Enforcement Training and Standards Board and Illinois Coalition Against Sexual Assault.
- “Developing a Coordinated Community Response to Sexual Assault and Domestic Violence.” Produced by the Ending Violence Against Women Project of Colorado. Funded by the Bureau of Justice Assistance of the US Department of Justice (Grant #95-WF-NX-0008).
- “Looking Back, Moving Forward: A Guidebook for Communities Responding to Sexual Assault,” produced by the National Victim Center (now the National Center for Victims of Crime). Supported by a grant from the Office for Victims of Crime and Bureau of Justice Assistance of the US Department of Justice.
- “Promising Practices: Improving the Criminal Justice System’s Response to Violence Against Women.” Written by Mary B. Malefyt, Kristin M. Littel, and Alexandra H. Walker. Edited by Joan Kuriansky. Produced by the Technical Assistance Project of the STOP Violence Against Women Grant Program.

The following individuals provided expert feedback to an earlier version of this module:

- Heather J. Huhtanen, Director of Programs for the Oregon Attorney General’s Sexual Assault Task Force, Eugene, OR.
- Melissa A. Atwood, Supervisor, Victim Services Unit, Austin Police Department, Austin, TX.
- Debra A. Bright, National Technical Assistance Project Director, VAWA Forensic Compliance Project, Maryland Coalition Against Sexual Assault, Arnold, MA.
- Jennifer Adams, Executive Director, Sexual Assault Recovery and Prevention Center, San Luis Obispo, CA.



- Vickie Smith, Training Consultant, National Center on Domestic and Sexual Violence, Austin, TX (now Executive Director of the Illinois Coalition Against Domestic Violence, Springfield, IL).
- Aurelia Sands-Belle, Executive Director, Durham Crisis Response Center, Durham, NC.
- Undersheriff Betty Royse (Ret.), County Sheriff's Office of Colorado, Ending Violence Against Women Project, Golden, CO.
- Beverly Brakeman Colbath, Associate Director, Connecticut Sexual Assault Crisis Services, East Hartford, CT.
- Lyn Schollett, J.D., General Counsel, Illinois Coalition Against Sexual Assault, Springfield, IL.
- Erin Thornley, Executive Director, Wisconsin Coalition Against Sexual Assault, Madison, WI.
- Gail Abarbanel, Director, Rape Treatment Center, Santa Monica, CA.
- Marte McNally, Rape Awareness and Assistance Program, Denver, CO.
- Roberta Baldini, Assistant Trial Attorney, International Criminal Tribunal for Rwanda, ICTR), Arusha, Tanzania.
- Lieutenant Sue Welch (Ret.), EAW International, Coeur d'Alene, ID.
- Alexandra Walker, formerly of the Pennsylvania Coalition Against Domestic Violence, Harrisburg, PA.
- Liz Flowers, Executive Director, Georgia Network to End Sexual Assault, Atlanta, GA.

