

VAWA 2005 and Sexual Assault Medical Forensic Exams

Policy Implementation and Impacts

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SEXUAL ASSAULT MEDICAL FORENSIC EXAMS AND VAWA 2005 BRIEF 4
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The Violence Against Women Act (VAWA) of 1994 required that, as a condition of program eligibility for the federal STOP (Services*Training*Officers*Prosecutors) grant program, the state or another entity—not the victim—must bear the full cost for sexual assault medical forensic exams. These exams serve a dual function:

1. to provide victims with necessary medical care to treat minor injuries, test for sexual transmitted infections, test for possible pregnancy, and make referrals for additional medical services that may be necessary; and
2. to collect forensic evidence to build a criminal case by documenting sexual contact and the identity of the offender through biological samples, and to document injuries suggestive of force or the use of coercion through drugging. Victims may also be linked to counseling and advocacy services at the time of the exam.

In many jurisdictions, states were providing free exams, but only to victims who reported the crime to law enforcement—as allowed under VAWA 1994. When an immediate decision of police reporting is required in order to get a free exam, victims who decided not to participate in the criminal justice system, or who are unsure about this decision, may forgo receiving the exam. The reauthorization of VAWA in 2005 specified that the state is required to ensure the exam is paid for, regardless of whether the victim reports to law enforcement or participates with the criminal justice system. The intent of providing victims with access to free exams regardless of police reporting was to increase victims' access to exams and referrals to supportive services, and to increase victim participation in the criminal justice system by collecting evidence when it's still available, while also providing victims with time to make the decision on whether to report the crime to the police.

States were given until January 5, 2009, to meet the federal requirement for free exams regardless of police reporting. In 2010, the National Institute of Justice funded the Urban Institute, George Mason University, and the National Sexual Violence Resource Center to study how this provision was being met by states, and the issues that arise in its implementation. The study included national online surveys of state victim compensation fund administrators, state STOP administrators, state-level sexual assault coalitions, and local sexual assault service providers. We also conducted case studies in six states and 19 local jurisdictions across these states to examine the state-level and local-level implementation and impact of these policies. The case studies included focus groups with victims, observational data collection methods (e.g., tours of examining facilities and crime labs), and interviews with medical, advocacy, law enforcement, and prosecution personnel. These interviewees have considerable experience and expertise in the issues, and the data provided represent their professional opinions and perceptions.

Three major conclusions on the implementation and impact of VAWA 2005 are as follows:

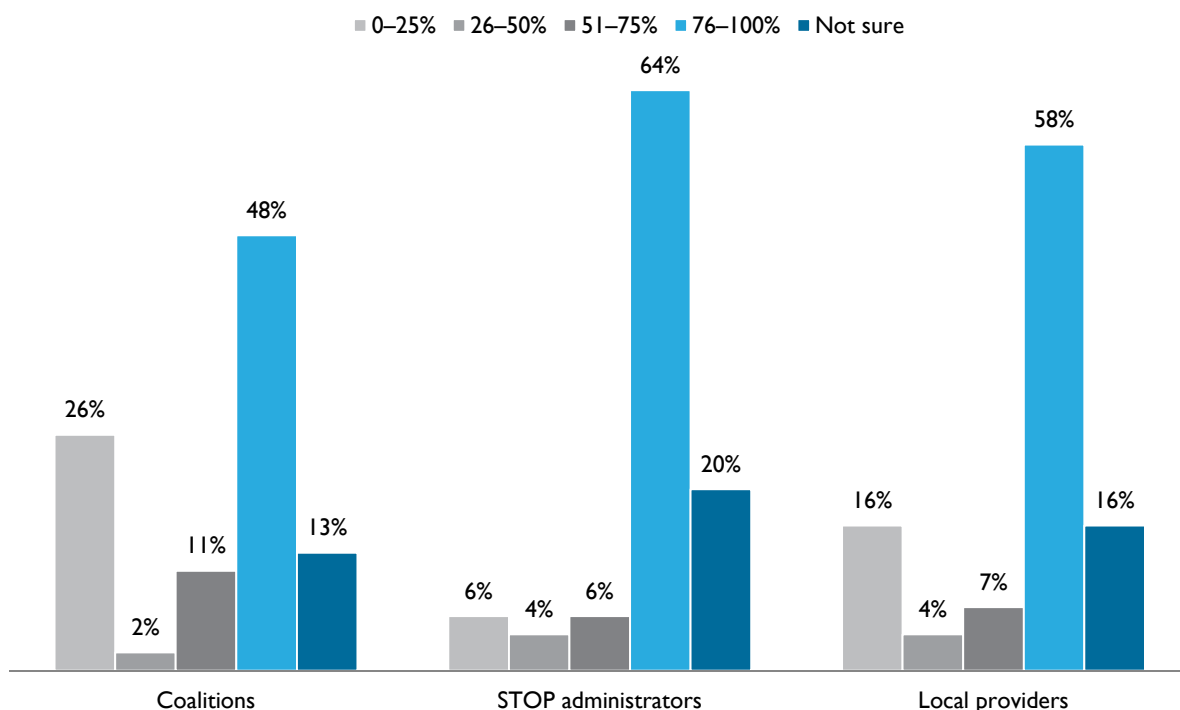
- The majority of victims are able to receive free exams without having to report to law enforcement.
- The majority of victims who get exams report the assaults to the police at the time of the exam.
- Among the few victims who get exams but do not report at the time of the exam, few file an official report to law enforcement at a later date.

Our work found that, in general, free exams are available to victims, including those who have not reported the assault. However, few victims seem to get an exam without also reporting to police at that time. Personnel in the communities we visited estimated that only about 5 to 10 percent of victims who get exams do *not* report to law enforcement. The public may not be aware that exams no longer require a police report, so those who have not decided to report may bypass urgently needed medical services. For the few cases in which nonreporting victims have exams, only a small handful of those (estimated around 5 percent) convert to a reporting status at some point after the exam.

Are Victims Able to Receive Free Exams Regardless of Police Reporting?

We asked respondents to our national surveys of state sexual assault coalitions, state STOP administrators, and local service providers for their perceptions of what percentage of the victims in their state could receive a free exam, regardless of police reporting. The most common response (from 48 percent to 64 percent of respondents) was that more than three-quarters of the victims in their state were able to get a free exam without reporting to law enforcement (figure 1). The pattern of responses was consistent across respondents, except that more coalitions (26 percent) than local service providers (16 percent) and STOP administrators (6 percent) reported that fewer than one-quarter of the victims in their state were able to get a free exam, regardless of police reporting. About 13 percent to 20 percent of respondents were not able to provide an estimate.

Figure 1. Perceptions of the Percentage of Victims Who Have Access to Free Exams without Having to Report to Law Enforcement



Note: N = 46 valid responses from state-level sexual assault coalitions; N = 50 valid responses from state STOP administrators; N = 406 valid responses from local providers.

A number of sites, however, identified several but infrequent incidents where participants appeared to be unaware of the program change. It was noted that some medical staff, particularly at hospitals that do not have SANE programs, may still be automatically calling law enforcement when a victim presents for an exam, without asking the victim if she/he wants the police involved. At least one victim reported that it was her understanding that the hospital required police involvement. This may be a training issue; medical staff may not be aware of the change in federal and state laws and policies. It may also be related to confusion regarding the application of mandatory reporting laws (typically, only for child victims or vulnerable adults, such as the elderly or disabled), so that medical staff may believe that all sexual assaults must be reported to law enforcement. One health care provider discussed an incident in which the victim had previously talked to the police and then gone to the hospital for an exam. The police contacted the hospital and told the staff not to provide the exam because they felt the allegation was unfounded, so the nurse refused to perform the exam. These actions are not in the spirit of providing exams on demand,

regardless of justice system participation. While these examples are troubling, from all reports, they seem to occur fairly infrequently.

Voices of Victims: Voluntary Reporting to Law Enforcement

“It was straightforward—there was a choice [on reporting to the police].”

“My biggest point I would like to make to people is: Don’t go home, don’t go shower, go straight to the police, or go to a center to get yourself help, or go to the ER. Just go to the ER. They can do it all confidential. You can get a card, doesn’t even have your name on it. It has your case number. Once you have your case number, you can open that back up anytime you want. So, just to go and get that information collected, just to have it is going to be huge. It’s going to be in your favor, and you can take your time from then. It doesn’t have to be all thrown into a day.”

“They’re really good at the [victim service program] about not pressuring you on this. They say it’s your choice whether you decide to press charges or not, and you have a time frame...They emphasize in case you change your mind in a day or two or in a month or so within the time frame. It’s something you can do now to go through with the exam just in case. Even if you don’t press charges, but if you change your mind, it’s there.”

Despite this policy change and its implementation, victims may still feel pressured to report to police, which may come from first responders, friends, or family. Some victims in focus groups and interviews felt pressured into reporting to the police, resulting in varying outcomes. The “Voices of Victims: Pressure to Report” box provides thoughts from one victim who did report under pressure, while another was pressured, but did not report.

Voices of Victims: Pressure to Report

“It just seemed like [nurses] were taking photographs and stuff, and they were like, ‘Have you talked to the cops yet? Did you call the cops?’ I kept telling them, ‘No, we didn’t.’ And then all the people that were close to me, my parents, they were talking to them about how I should because I was underage. And so they made me go do it, because I wasn’t going to.”

“It just seemed like it was the only option, you know, like, ‘Why won’t you?’ ...It was asked so many different times by so many different people that I just kind of felt like, ‘Well, should I just give in and do it?’ ... But I just felt like I needed to at least stand up for myself on that part, you know...They said that they would keep [the exam evidence] for six months, the evidence itself, and there would be a report made and the report on the evidence would be kept on file for a year. So, I have up to a year to report it.”

Do Victims Receive Free Exams without Justice System Participation?

Sexual assault is one of the most underreported crimes, with many victims choosing not to participate in the justice system; police reporting rates have been estimated from 12 percent to 50 percent.¹ This means that there are at least as many unreported assaults as there are reported assaults. Now that victims who do not report to the police can also receive free exams, are these victims accessing them?

There was considerable agreement among respondents from the case-study sites that few nonreporting victims receive medical forensic exams or even medical exams. The personnel we interviewed estimated 5 to 10 percent (with one state estimating 2 percent to 4 percent) of exams were provided to victims who did not report to the police. Only a few localities estimated higher percentages of exams provided to nonreporting victims: 13 or 14 percent in two cities, 25 percent in two cities, and an unusually high estimate of 50 percent in one city. Still, some victims in our study did have exams without having reported to law enforcement.

Voices of Victims: Exam without Police Reporting

“I got options on what I can do. And six months to come back. [Exam evidence] was in a sealed envelope with no identification on it.”

“The hospital said they’d hold [exam evidence] for six months.”

Why Do So Few Nonreporting Victims Get Exams?

One common hypothesis our respondents had was that the public is simply unaware that police reporting is not required to receive an exam. Several victims from one state indicated that they did not get the exam because they thought they would have to report the assault to law enforcement to do so. Those who have not decided to involve the police may stay away from medical services completely. This means that many victims may be forgoing necessary medical services and connections to advocacy services and counseling, from a misunderstanding about the link between medical services and the justice system. So, while it appears that most places we visited had effective systems in place to ensure victims could access the exam without a police report, the general public may not be fully aware of this freedom of choice. While conducting public education around this information might be challenging, given that few people may think about exams unless they are in a situation where they need one, some type of outreach might be helpful to ensure victims come forward for help regardless of their interest in reporting the assault to the criminal justice system.

Do Nonreporting Victims Who Receive Exams Later Choose to Report?

The hope behind the VAWA 2005 requirement that all victims have access to free exams regardless of police reporting, including forensic evidence collection, is that, with time, more victims will decide to file police reports and there will be greater access to needed medical care. We asked personnel in our case-study sites how often nonreporting victims who had the exam later made an official report (converting from a nonreporting to a reporting status). Some did not have access to statistics, so they reported that “few or none,” “few,” or “a small handful” of nonreporting victims with exams later reported. Others estimated subsequent reporting rates from 3 percent to 5 percent, with one respondent estimating a 15 percent follow-up reporting rate.

Some interviewees speculated that follow-up reporting rates are low because victims tend to know right away whether they want to involve the justice system. Several people said that the few conversions that do occur tend to occur quickly, within days or weeks of the exam, although one person said that the first anniversary of the assault may be a trigger that can lead to follow-up reporting.

Several personnel we interviewed said that victims need more than just time to make the decision; they need to believe that involving the justice system will be beneficial for them. They need to believe that the system will treat them well and will achieve the outcomes they desire—punishing the offender and preventing additional assaults. A few of the victims we spoke with had received an exam without having reported to the police and were still considering filing an official report to initiate a criminal case. One victim eventually converted to a reporting status, after working with an advocacy agency.

Voices of Victims: Conversion from Nonreporting to Reporting

“[The advocates] told me I could come and not have to contact the police, but if I wanted they would release the records. And actually later, they did end up releasing that. They kept the file, and I would call them every month and tell them to keep the file because I didn’t know what I was going to do. And so then it was eventually released to the police...with my consent. Yeah, I called them, but there was never any pressure.”

When victims receive follow-up support and information, they may be more willing to convert to a reporting status. They may feel stronger and more empowered to become involved in the justice system. They may also have better access to the mechanisms necessary to initiate a criminal case. For example,

staff in one site said that nonreporting victims must sign a consent form to release their exam evidence to law enforcement, and that this is much more feasible when staff take the form to the victims rather than require the victims to come to the office. Although it is difficult for some communities to provide an on-scene advocacy response to victims even at the time of the exam, it might increase the overall rate of reporting victims if advocacy resources were available for post-exam follow-ups (though increasing reporting is not necessarily a goal of community-based advocacy). This follow-up might provide emotional support to victims, information not otherwise available about the justice system and what initiating a criminal case would entail, information on the storage timeline for the exam evidence and when the date for destruction of their nonreported kit is approaching, and easy access to the steps needed to officially report if a victim so chooses.

Law enforcement can address victims' concerns about the justice system while still leaving the option of filing an official report open to the victim. Officers can offer victims informational interviews in which they establish rapport with the victims, inform them about how the system works, what being involved in a criminal case would require of them, and answer their questions and concerns. This contact should be either off the record or summarized in an anonymous report, if documentation is required.² We found that some agencies or officers will provide this service, while most have a policy that any contact with a victim constitutes an official report that initiates a criminal investigation. Some advocates in communities where the police offer this consultation service felt that it can be helpful to victims as they make the reporting decision. A police officer also observed that, even if it does not lead to a criminal case, this procedure at least gives law enforcement a fuller picture of crimes occurring in the community.

Speaking to law enforcement to help make a decision about reporting may help victims make well-informed decisions that they can remain comfortable with. We heard from a few victims who chose not to report to the police that these decisions have stayed with them, and they have regretted not initiating a criminal case that might have initiated a justice system response that would have stopped the perpetrator from committing another rape.

Voices of Victims: Reflections on the Choice Not to Report the Assault

"I'm sure he's done it before and will again, and I feel guilty for that. But there was no evidence, and because it was a 'he said, she said' case..."

"On bad days [not reporting] does come up, and I do regret not going to the police, mostly because I feel like this guy could be doing the same thing to other women. And I wish that I would have been the one to be able to prevent that. But I didn't, and we're moving past it."

"I think, to this day, I could've gotten the police involved because who knows if he's done that again. And that's still something that's on my mind... but I think I did the best that I could at that time."

What Should Be Done?

Our work found that the 2005 VAWA requirements for free exams regardless of law enforcement reporting are being widely implemented. However, there is little evidence that the goals of this requirement—increasing the number of exams for nonreporting victims and increasing conversion from nonreporting to a reporting status—are being widely achieved. To better achieve these goals, several steps may be important:

- *Consider public awareness campaigns on access to free exams regardless of reporting.* While progress has been made in setting up systems to provide exams free of charge and without victims having to report to law enforcement, the general public might not be aware of this option. Public outreach to inform people of such options is important for increasing exams for nonreporting victims.
- *Link advocates to victims during the exam process.* Though many places we visited reported that advocates were often present at exams, it might be important to assist with funding and resources to ensure advocates are a part of all exams (with the victim's consent), to further efforts to improve victim well-being and offender accountability. If an advocate is present at the exam, she/he can

provide an important link to legal advocacy, counseling, and other services. Advocates can play a valuable role in helping victims to make the reporting decision and facilitating the reporting process for those who choose to report.

- *Allow victims, if they choose, the chance to talk with law enforcement “off the record” as part of their reporting decisionmaking process.* Contact with police officers before a victim decides to make an official report might give the victim the chance to ask important questions and realistically assess her/his options to make more informed choices about reporting. However, such a practice must not be considered lightly and would need to be implemented with the utmost care and compassion. Training the officers who provide this service would be essential; if victims encounter resistance or a lack of compassion during this informational interview process, then it may have the opposite effect of *discouraging* victim reporting. In addition, rigorous evaluation of the success of this approach is warranted.
- *Increase victim confidence in the criminal justice system response.* This can be done by improving arrest, charging, and conviction rates. If victims believe that something will happen after they go through the invasive process of getting an exam and reporting to law enforcement, then perhaps they would be more likely to get exams and report assaults.

Notes

1. See Dean G. Kilpatrick, Heidi S. Resnick, Kenneth J. Ruggiero, Lauren M. Conoscenti, and Jenna McCauley, J., *Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study* (Washington, DC: US Department of Justice, National Institute of Justice, NCJ 219181, 2007); Marcus Planty, Lynn Langton, Christopher Krebs, Marcus Berzofsky, and Hope Smiley-McDonald, *Female Victims of Sexual Violence, 1994–2010* (Washington, D.C.: Bureau of Justice Statistics, 2013); and Jennifer L. Truman, *National Crime Victimization Survey: Criminal Victimization, 2010* (Washington, DC: US Department of Justice, Bureau of Justice Statistics, NCJ 235508, 2011).
2. , Kimberly A. Lonsway, and Joanne Archambault, “The Earthquake in Sexual Assault Response: Police Leadership Can Increase Victim Reporting to Hold More Perpetrators Accountable,” *The Police Chief* 77 no. 9 (2010): 50–6.

