



## Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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When victims of sexual assault present to a health care facility, such as a Sexual Assault Forensic Examiner (SAFE) Program, they vary in their intentions to report to law enforcement. Some victims fully intend to report and actively participate in the process of an investigation and criminal prosecution. Others are absolutely unwilling to talk with law enforcement personnel. However, most victims range between these two extremes and express a range of questions and concerns about reporting. Yet U.S. states and territories are now required by the Violence Against Women Act to certify that victims have access to a medical forensic examination *regardless of their decision regarding criminal justice participation*. This requirement was set forth in a provision in the law's 2005 reauthorization (known as VAWA 2005).

Specifically, VAWA 2005 declared that states and territories may not “require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a medical forensic exam, reimbursed for charges incurred on account of such an exam, or both” 42 U.S.C. § 3796gg-4(d). Before this, prior versions of VAWA required states to offer such exams to victims free of charge or with full reimbursement, but victims could be required to cooperate with the law enforcement investigation. VAWA 2005 was designed to change that. This issue is commonly referred to as “forensic compliance.”

One frequent question about VAWA 2005 is whether it requires communities to offer victims an option of anonymous reporting. The answer is “no.” As described in the *Frequently Asked Questions* about forensic compliance posted by the Office on Violence Against Women (OVW):

*States are not required to institute anonymous reporting. Some states are instituting it voluntarily. Under VAWA 2005, states are only required to ensure that a victim receives access to a forensic examination free of charge regardless of whether the victim chooses to report a sexual assault (for any reason) to law enforcement or cooperate with the criminal justice system.<sup>1</sup>*

Because this is the type of program described in the article by Linda Rossman and Heather French in Grand Rapids (Michigan), we wanted to take this opportunity to provide background information on the topic. Our goal is to provide concrete guidance

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<sup>1</sup> The document with *Frequently Asked Questions* about forensic compliance posted by the Office on Violence Against Women is available at <http://www.ovw.usdoj.gov/ovw-fs.htm#fs-faq>.



# Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

---

for those seeking to implement a protocol for direct anonymous reporting, clarify some common misconceptions, and help to avoid frequent pitfalls.

We also want to recognize the community of Grand Rapids for their pioneering work in this area. We know it took years of careful planning and cross-disciplinary collaboration to implement their protocol for anonymous reporting. Throughout the process, they worked hard to engage the wide range of community partners involved in sexual assault response, including all of the local law enforcement agencies as well as the local prosecutor's office. While their article highlights a challenge they faced once the protocol was implemented, their commitment to victims is evident in the fact that the barrier did not cause them to abandon this alternative reporting option. Rather, they turned once again to their multidisciplinary partners and re-engaged in the difficult work of further refining the protocol and improving it for future victims. We would like to congratulate the authors and their community partners for this accomplishment.

## Direct Anonymous Reporting

In general, the purpose of direct anonymous reporting is to allow victims of sexual assault to take the process of reporting to law enforcement "one step at a time." By providing victims with the opportunity to gather information, solidify their support system, and establish rapport with first responders, the hope is to create an environment that encourages reporting. As many of those working in the field can attest, victims are often overwhelmed by the prospect of a reporting decision that is viewed as "all or nothing" and "now or never." This barrier can be reduced when victims experience firsthand the competence and compassion of responding professionals. Equally important, such a protocol can ease the path for victims to take advantage of other available community resources. Returning to the *Frequently Asked Questions* by OVV:

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

## Definitions and Philosophy

As we define it here, direct anonymous reporting allows victims to provide information about a sexual assault to a law enforcement officer without formally identifying themselves or committing to participate in the process of an investigation. Information about the sexual assault can then be recorded by law enforcement, in a manner that is generally similar to a standard reporting procedure. It may be recorded as an informational report or a crime report, depending on whether the information gathered at

# Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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the time is sufficient to establish the elements of a sexual assault offense, and in accordance with departmental policy.

Of course, the officer receiving an anonymous report directly from a victim may already know who the victim is, especially in communities that are small or somewhat insular (such as a campus, tribe, or military installation). If not, they are typically able to find out quite easily. Yet a protocol for direct anonymous reporting will require that the written report will *not* include the victim's name or other identifying information. Instead, it should be assigned an anonymous identifier (e.g., a unique tracking number) to be used instead of the victim's name.<sup>2</sup>

There is nothing in the general philosophy of direct anonymous reporting that would limit it to victims who have a medical forensic examination, although this is the context in which it is most frequently discussed. This is partly due to the overlap with issues of forensic compliance. It is also because protocols for direct anonymous reporting need to address the more complex issues that arise when an examination has been conducted. For example, the protocol must resolve questions regarding evidence collection, storage, documentation, and recordkeeping -- and these issues inevitably become more complicated when they involve more than one agency (e.g., a health care facility and a law enforcement agency).

This article will therefore focus on the issues of direct anonymous reporting, as they arise in the context of a medical forensic examination. However, this does not mean that any such protocol should be limited to that context. In fact, a protocol for direct anonymous reporting should also include procedures for victims who have not had a medical forensic examination. The bottom line is this: Any community offering direct anonymous reporting should make it available for all victims of sexual assault, regardless of whether or not they have had an exam.

## Information for Victims

If victims express that they are unsure, unwilling, or unable to participate in the standard reporting process to law enforcement, a first step in any community protocol will be to provide them with information about their options. This information will also need to be recorded in an informational form for victims to describe their various options, and help them weigh the advantages and disadvantages of each. This will likely include the following topics:

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<sup>2</sup> Information about a sexual assault may also be provided to law enforcement by a third party, such as a Sexual Assault Forensic Examiner (SAFE) or another health care provider – or even by a friend, family member, or other community professional. However, this information cannot be used to create a crime report until the elements of the offense are met, based on an interview with the victim and/or other evidence. Rather, such information will be recorded as an informational report (sometimes referred to as an “officer’s report” or “information-only report”). Because the issues pertaining to third party reports are complex, they are beyond the scope of the present article. We focus here on the topic of anonymous reports that are made directly by victims to law enforcement. For more information on this topic of anonymous reports, including those made by third parties, please see the section of the EAWW International website devoted to forensic compliance: [www.evawintl.org/ForensicCompliance.aspx](http://www.evawintl.org/ForensicCompliance.aspx).

## Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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- Concerns about reporting to law enforcement and possible prosecution
- Advantages of reporting to law enforcement
- Basic procedures for standard reporting and direct anonymous reporting
- Types of evidence stored with a standard versus direct anonymous report
- Where the evidence will be stored for each type of report
- Whether evidence is truly stored anonymously, or if it includes the victim's name (along with specific protections for the confidentiality of that information)
- How long the evidence will be stored for each type of report
- Whether victims will be notified as the deadline for evidence destruction approaches
- How long direct anonymous reports will be retained by law enforcement agencies
- How to convert a direct anonymous report to a standard report
- How to have clothing and other evidence returned (if possible)
- How and when victims will be contacted for follow-up (if at all)
- Payment issues for medical and/or forensic components of the exam
- Whether or not the victim will be eligible for future Crime Victim Compensation claims, if she/she reports anonymously to law enforcement

The victim will also need to be provided with the name, phone number, and ID or badge number for the officer who responded to the report, as well as the tracking number used by the agency as a unique but anonymous identifier.

### Clarify Victim Rights to Evidence (if any)

Community protocols will also need to clarify what rights (if any) victims have for returning clothing or other evidence associated with a direct anonymous report (e.g., bedding). This information can then be incorporated into the informational materials that are developed for victims. In communities where evidence associated with a direct anonymous report is stored by law enforcement, it may be difficult for victims to have anything returned to them, because some form of identification is typically required before evidence can be returned to its lawful owner. However, if the victim has met with law enforcement once to file a direct anonymous report, it is possible that the officer can make the necessary arrangements to have certain items returned to the victim if requested. This would likely require the victim to show proper identification, with the understanding that the victim's identity will not be recorded as part of the report.

When the evidence is stored by a SAFE program or other health care facility, it may be easier to return some items to the victim if requested. However, this will likely pertain only to items such as clothing or bedding. Serious concerns would arise if victims were offered the option of requesting other types of evidence (e.g., biological samples

# Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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collected during a medical forensic examination). For example, this might create an opportunity for suspects to intimidate victims into requesting to have evidence returned, in order to obstruct the investigation and potential prosecution. Best practice is therefore to clarify that any biological evidence collected does not belong to the victim; no process should exist for victims to request access to this evidence or have it returned to them.<sup>3</sup>

## Establishing Jurisdiction

For victims who choose to file a direct anonymous report, the professional who is assisting the victim will need to contact law enforcement if they have not already been notified. This will require first asking the victim where the sexual assault occurred, and then contacting the law enforcement agency with jurisdiction over that location. However, the professional providing assistance to the victim (e.g., advocate, SAFE, other health care provider) can only be expected to do their best in determining the presumed jurisdiction for a direct anonymous report, based on the information received. Many victims have a hard time specifying exactly where their sexual assault took place. If the victim later converts a direct anonymous report to a standard report, the law enforcement agency conducting the investigation will need to determine the proper jurisdiction and may have to transfer the case to another jurisdiction if necessary.

Victims also frequently present to health care providers for an examination miles from where the assault took place, crossing international borders, as well as state and county lines. For example, a police department near a college campus may receive reports from students who were sexually assaulted while they were home.

Best practice in such a situation is for law enforcement personnel to meet with the victim and document the information provided in a “courtesy report.” Unfortunately, victims are all too often turned away and told they must report their sexual assault to the agency with jurisdiction. In many cases, this agency could be hours away – so sending the victim to report there is essentially the same as telling him/her not to report. A far better response is for the law enforcement agency receiving the disclosure to take a report and then assist with the transfer of investigative responsibility to the appropriate agency with jurisdiction. Courtesy reports can even be taken for law enforcement agencies in foreign countries. The San Diego Police Department Sex Crimes Unit frequently works with the Department Liaisons to Mexico to transfer courtesy investigations of sexual

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<sup>3</sup> As noted in the *National Protocol for Sexual Assault Medical Forensic Examinations (2004)*: “Patients from certain cultures or religious backgrounds may view hair as sacred and decline collection of hair evidence” (p. 91). The same could be true for other types of biological evidence. While this may be a very serious concern for some victims, we believe the time to address it is during the process of evidence collection (as described in the *National Protocol*). Once the evidence is collected, best practice is to clarify that the evidence no longer belongs to the victim and should not be returned even if requested, for the reasons identified here (e.g., potential intimidation). This highlights how critical it is to ensure that victims are given the information they need to weigh their options and truly consent to evidence collection procedures. For more information, please see: Office on Violence Against Women (2004, September). *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults / Adolescents*. Washington, DC: U.S. Department of Justice (NCJ 206554).

## Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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assaults (as well as other crimes) of American citizens assaulted in Mexico. This type of situation frequently arises near popular tourist destinations.

Once the law enforcement agency has been notified, an officer might respond directly to the SAFE program or health care facility in order to meet with the victim. Other agencies might have a policy stating that officers will schedule another time to talk with the victim.

### Medical Mandated Reporting

Frequently, discussions of anonymous reporting become intertwined with questions of medical mandated reporting. In all 50 states, health care providers are legally required to report a disclosure of sexual assault perpetrated against a child, and most mandate reporting for victims who are dependent adults. Mandated reports are also required in some states when health care providers see certain types of injuries, including those that are non-accidental, result from violent crime, or involve a specified weapon (e.g., firearm, knife, “deadly weapon”). Yet reporting requirements for intimate partner violence and sexual assault (of competent adults) vary.

The Office on Violence Against Women (OVW) has determined that states with medical mandated reporting can be compliant with VAWA 2005, as long as victims are not required to participate in the criminal justice process.<sup>4</sup> While the definition of “participation” is not explicitly defined, common sense suggests it means that victims cannot be required to personally talk with an officer. In some communities, there is a policy or practice of having an officer personally meet with victims if a mandated report has been filed – even if the victim has not yet decided whether or not to participate in the criminal justice process. We believe this does not represent best practice, which would be to conduct the medical forensic exam first and then offer the opportunity to talk with an officer only when the victim has decided to do so.<sup>5</sup>

### States with Mandated Medical Reporting

In states with medical mandated reporting for sexual assault, victims do not have the option of choosing whether or not a report will be filed with law enforcement once they have disclosed to a health care provider. Victims can, however, decide whether or not they want to talk with an officer about the report. It is critical that law enforcement officers understand victims cannot be detained or forced to submit to an interview or a medical forensic examination.

In this situation, victims must be informed that the SAFE or other health care provider will need to submit a mandated report to law enforcement. This report will include

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<sup>4</sup> *Facts about the Office on Violence Against Women Focus Areas*, United States Department of Justice, <http://www.ovw.usdoj.gov/ovw-fs.htm>.

<sup>5</sup> For a compilation of statutes addressing mandatory reporting of domestic and sexual assault statutes, please contact the National Center for the Prosecution of Violence Against Women, at the National District Attorneys Association ([http://www.ndaa.org/ncpvaw\\_home.html](http://www.ndaa.org/ncpvaw_home.html)).

## Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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specific information as outlined in the legal statute. Often a standard report form has been developed by the state to be used for this purpose, although reports may also be made via telephone (typically in addition to the written form). Because a state-recognized report form is likely to include only basic information about an incident, health care providers often retain a more detailed report documenting their exam findings as part of the medical records at their own health care facility. Again, this can be carefully explained to victims so they understand exactly what will happen.

### Can Medical Mandated Reports be Anonymous?

An important distinction must be made for states where mandated reports include a name and other identifying information for the victim and/or suspect. In these states, health care providers must provide this information to law enforcement, so the reports cannot be anonymous. It should go without saying that *this must be made very clear to victims*.

In other states, health care professionals may be able to meet their mandated reporting obligation without providing identifying information for the victim. For example, the SAFE or other health care professional may use a standard report form, but write the phrase “declined by patient” in the space for the patient’s name, address, and telephone number. The same phrase might also be used in place of the suspect’s information. In addition, a non-identifying address may be used for the location of the assault. For example, if the assault was committed in the victim’s own home (or the victim is unsure where it happened), the address for the police department could be used. Alternatively, the 100-block of the assault location could be used to avoid listing a specific address that would identify the victim.

### States Without Medical Mandated Reporting

For states *without* medical mandated reporting for sexual assault, the decision regarding whether or not to file a report with law enforcement can generally be left to the victim. In this situation, the SAFE or other health care provider can provide information for victims about their reporting options. This information can also be offered by an advocate, who can help the victim to weigh their options and make an informed decision regarding criminal justice participation. However, it is critical to keep in mind that *victims are not able to make the decision about reporting their sexual assault to law enforcement if a report has already been made*.

### Cases Pursued Against the Victim’s Wishes

This brings us to issue in the case described by Linda Rossman and Heather French. In that case, a neighbor called 911 in response to an incident of domestic violence. The sexual assault had taken place within this context. As a result of the call, the police responded to the house, made contact with the victim, and generated a police report to document this call for service. Meanwhile, the victim had a medical forensic examination and stated that she was unsure about whether or not she wanted to report

## Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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her sexual assault to police. She was offered the option of anonymous reporting, because it was newly introduced within the community.

Later, she decided she did *not* want to participate in the investigation or prosecution of her sexual assault (and presumably the domestic violence as well). Like many victims, she said she did not want to see her intimate partner incarcerated. However, because of the police response to the domestic violence incident, the decision was already out of her hands.

Whether a neighbor calls 911 or a health care provider files a mandated report, cases involving domestic violence will often come to the attention of law enforcement through some means other than the victim's own decision to report. These cases are also more likely to be pursued without the victim's cooperation, because many jurisdictions have adopted policies of prosecuting intimate partner violence on the basis of the evidence. Because a medical forensic examination yields evidence that is relevant for domestic violence charges as well as sexual assault, prosecutors will frequently use the evidence to pursue charges of domestic violence, even if they decide not to file or pursue any charges related to the sexual assault. In many cases, this will happen regardless of the victim's wishes. Therefore, the victim may not be able to withdraw from the criminal justice process in a case of sexual assault, if it was committed within the context of intimate partner violence.

It is clear that criminal justice personnel have the legal authority to investigate and prosecute any felony crime that comes to their attention, regardless of the victim's wishes. This will not typically happen in a sexual assault case, because most communities use a victim-centered approach in these cases and honor a victim's wishes regarding prosecution. In addition, police officers and prosecutors typically have a full caseload with victims who *want* to participate in the process. It is hard to justify expending resources to pursue cases without the victim's cooperation, especially because they are unlikely to result in successful prosecution.

However, this case highlights the fact that victims of intimate partner violence will often *not* have a realistic option of anonymous reporting. An appropriate response therefore requires that we acknowledge this reality and prepare for it, by engaging in the type of multidisciplinary policy discussions Rossman and French describe. As in Grand Rapids, communities must develop a written protocol, to ensure that all of the professionals involved in the community response system share an understanding of the process. Ideally, this written protocol will include documentation of a good faith agreement on the part of criminal justice professionals that sexual assault will not generally be investigated or prosecuted without the victim's consent and active participation, except in certain circumstances.

Victims also need to be informed of this possibility. Community professionals must therefore develop simple language that victims can read and sign, indicating that they understand that their sexual assault may be investigated and prosecuted regardless of their wishes. For example: "I realize that law enforcement may still conduct an

# Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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investigation of this report, even if I do not provide my name and I do not want to participate. However, I understand they generally do not, except in certain circumstances (for example, in cases with a serial stranger rapist, when the sexual assault is committed by an intimate partner, or when there are severe injuries).”<sup>6</sup>

## ***Storing Evidence***

When a health care provider reports a sexual assault to law enforcement, and the victim wishes to be anonymous, a decision must be made regarding where to store the evidence. Most communities choose between two primary options. First, some communities have developed a protocol where the evidence will be stored by the SAFE program or other health care facility where the medical forensic examination was conducted. In other communities, law enforcement stores the evidence (usually the agency with presumed jurisdiction over the assault location).

We recognize that evidence is being stored by health care facilities in some communities, because law enforcement might be resistant to developing an anonymous reporting procedure. However, we believe this does not represent best practice. Instead, we recommend that evidence should be stored by law enforcement. This recommendation is based on a number of factors. First, evidence storage clearly falls within the role of law enforcement, so police departments have already developed policies and procedures for properly addressing issues such as evidence integrity, chain-of-custody, and destruction of hazardous materials. Law enforcement agencies have also developed the necessary record-keeping systems, so evidence can be properly identified, retrieved, and linked with other information in the case (e.g., police reports, documentation from a medical forensic examination, photographs). Equally important, the integrity of these policies and procedures are continuously tested, when law enforcement personnel are cross-examined by defense attorneys in criminal cases.

For health care providers to store evidence, a number of policies and procedures must be implemented to protect against possible challenges. Maintaining the chain of custody is of paramount concern, so storage facilities must be properly secured. This applies to facilities for dry storage as well as refrigerated storage. Access to these storage facilities must also be strictly limited to a very small number of people with a legitimate need. Whenever a person accesses materials in storage, this must be meticulously documented to preserve the chain of custody.

## ***Consent for Evidence Procedures***

Before an exam begins, victims are provided with a wide range of information and asked to document their consent to various procedures. In this context, victims who participate in the standard reporting process will need to sign a form releasing their evidence to law enforcement. For victims who elect to report anonymously, they will

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<sup>6</sup> This text is drawn from the template materials for anonymous reporting developed by EVAW International and available at: <https://www.evawintl.org/ForensicCompliance.aspx>.

## Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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similarly need to consent to the established procedures for evidence storage and timelines for destruction. Of course, if prosecution is pursued against the wishes of the victim, and a court issues a subpoena, the SAFE or other health care provider will be required to turn over the evidence as well as the records or other documentation from the medical forensic examination as ordered by the court.

### Converting from an Anonymous to a Standard Report

Victims who have reported anonymously should be advised that they can decide at any time to convert to a standard report and participate in a law enforcement investigation. However, they should also be informed that the longer they wait, the more difficult it may be to conduct an investigation and pursue prosecution. Victims should thus be notified of the statute of limitations for sexual assault crimes within the state where the crime occurred.<sup>7</sup> If evidence is transferred from the SAFE program or other health care facility to law enforcement when victims convert, the form that victims sign will need to document their authorization for this release.

When it comes to converting a direct anonymous report to a standard report, victims can be presented with two options: contacting either the law enforcement agency or the SAFE program (or other health care facility conducting the medical forensic examination). However, some community protocols might designate one of the two options as preferable, and victims can be provided with this information. For example, many SAFE programs operate on a callout basis without any administrative time, which means that – most of the time -- no one will be available to respond when the victim calls. Community protocols might therefore advise victims that the preferred method for converting an anonymous report is to contact the law enforcement agency and provide the tracking number to locate and retrieve their information.

### Follow-Up Responsibilities

To achieve the goal of increasing access to the criminal justice system for victims of sexual assault, it is critically important that they receive the support they need to make that decision and follow through with their participation in the process. For victims who are initially unwilling, unable, or unsure about reporting to police, it may be unlikely that they would decide to participate in a police investigation without receiving any follow-up contact. The informational form can be used to describe the options for follow-up, and document whether victims want to be contacted for various purposes and/or at different times. Victims can also record on the form their preferred method of being reached (e.g., phone number, email). Considerations must include the victim's safety and privacy, as well as access and convenience.

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<sup>7</sup> For a compilation of statutes and case law regarding sexual assault offenses across the country, please contact AEquitas: The Prosecutors' Resource on Violence Against Women (<http://www.aequitasresource.org>).

# Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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## Evidence Destruction

The determination must be made whether a community protocol will require victim notification when the evidence associated with their direct anonymous report will be destroyed. This notification will likely be made some period of time before the actual destruction of evidence (e.g., 30-90 days before the scheduled destruction). Other communities have developed a protocol where victims are informed of the timelines for evidence storage upfront, so they are not notified at the time the evidence is destroyed. In either situation, it is critical that victims understand the timelines for evidence storage and the procedures for notification (if any).

## Tracking Information and Contacting Victims

A primary purpose of direct anonymous reporting is to provide information to law enforcement about sexual assaults being perpetrated in the community that they would not otherwise know about. Therefore, best practice is to implement a system for tracking information on suspects who are named by more than one victim – or unidentified suspects whose descriptions match multiple cases. The specific details of how to implement such a protocol is beyond the scope of this article. However, it is sufficient to note that a number of ethical and practical questions must be carefully addressed when devising a system for tracking this information and contacting victims if a match is found.

## Collect Data on Anonymous Reports and Conversions

Before concluding, we would like to highlight the critical importance of collecting data once a protocol for direct anonymous reporting has been implemented. Information is needed to document how often victims convert from a direct anonymous report to a standard report, and how long it takes them to reach that decision. Other information that would be helpful for monitoring policy implementation would include: any problems with evidence collection, documentation, transfer, storage, and retrieval; the extent and quality of the law enforcement investigation for reports that convert from anonymous to standard; case dispositions and prosecutorial outcomes for converted reports; and levels of victim satisfaction with the process and services provided by various responding professionals.

With such information, we will truly be poised to achieve the goals that enlivened the VAWA 2005 provision regarding forensic compliance. Like the authors of this critical legislation, we would like to see a world where victims of sexual assault can access the criminal justice system and community resources in a way that makes sense to them. We want to design a system that is truly based on our understanding of how the trauma of sexual assault affects victims, and what they need to pursue justice and healing in its aftermath.

# Direct Anonymous Reporting: Multidisciplinary Protocols Offer Alternative Option for Victims

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## For More Information

For more information on tools that can be used to assist in the process of designing and implementing a protocol for anonymous reporting, please see the website for EVAW International at [www.evawintl.org](http://www.evawintl.org). Particularly relevant is the section devoted to technical assistance on forensic compliance (<https://www.evawintl.org/ForensicCompliance.aspx>). Among the resources offered in this section are templates that can be used by community professionals to create a multidisciplinary protocol for anonymous reporting.

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