



End Violence Against Women International  
(EVAWI)

# Reporting Methods for Sexual Assault Cases

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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.

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## Course Objectives

- Examine the benefits of alternative reporting methods for sexual assault victims.
- Review the Cambria County Anonymous Reporting Protocol and the Ashland Police Department's *You Have Options Program*.
- Identify the terminology and concepts of various alternative reporting options.
- Explore the key components for successful implementation of alternative reporting methods for sexual assault victims.
- Explain mandated reporting, courtesy reports, restricted reporting in the US military, and the use of pseudonyms on public records.
- Analyze recommendations for best practice in this area.



## Introduction

Many people seem to believe that anyone who is 'really' sexually assaulted will immediately contact law enforcement to report the crime. Yet the reality is that most sexual assault victims do not report, and when they do, it is typically only after some period of time has elapsed.

- For example, large-scale national research studies suggest that only about 5-20% of sexual assault victims report to law enforcement (Fisher, Cullen & Turner, 2000; Frazier, Candell, Arikian, & Tofteland, 1994; Kilpatrick, Edmunds & Seymour, 1992; Kilpatrick, Resnick, Ruggiero, Conoscenti & McCauley, 2007; Tjaden & Thoennes, 2000).
- Of these, only one-quarter report the crime within 24 hours (Kilpatrick et al., 1992).

In fact, non-reporting is the single biggest point of attrition for sexual assault cases within the criminal justice system. Estimates suggest that anyone who commits a forcible rape has less than a 3% chance of being convicted and incarcerated for it (Lonsway & Archambault, 2012).

*Sexual violence cases require special handling. Victims may be hypersensitive to real or perceived threats to their safety or their confidentiality. At the same time, investigation and prosecution invite threats to confidentiality and the physical and emotional safety for the victim, and victims who disclose their experience open themselves up for additional violations. As a result, many victims choose to focus on their own healing rather than on trying to achieve justice in systems that historically have not been supportive of victims of sexual violence. To overcome the threat that reporting represents to victims, officers have to work harder to make the reporting process feel safe.*

Sabrina Garcia & Margaret Henderson (1999). Blind reporting of sexual violence. FBI Law Enforcement Bulletin, 68 (6), 12-16 (at p.16).

## Funnel of Attrition for Sexual Assault Cases

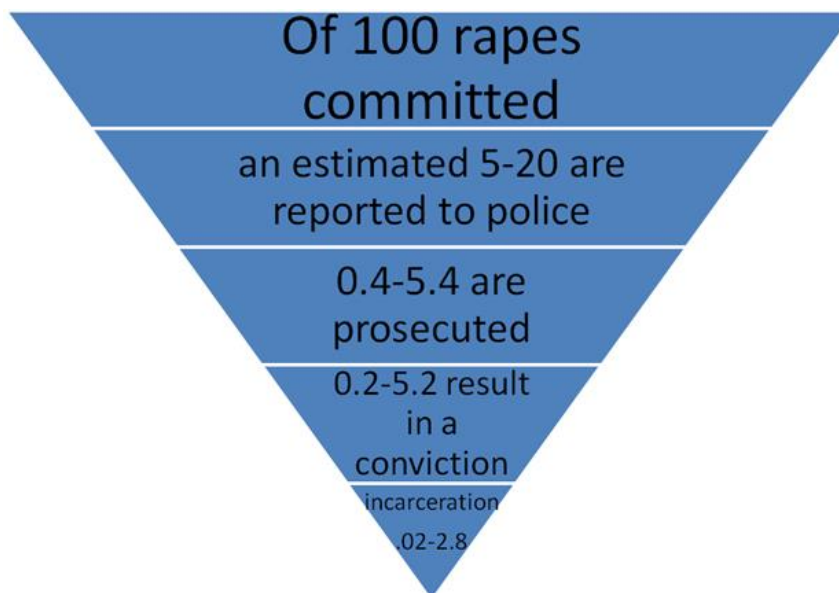
The process of investigating and prosecuting sexual assault can be seen as a funnel of attrition within the criminal justice system. At each step of the process, there is a chance that a sexual assault report will drop out. For example, victims typically first make contact with a patrol officer who takes the initial report. Yet it is estimated that only about one-quarter to one-half (24-52%) of these contacts will result in a written report being recorded by law enforcement (Campbell, 1998; Campbell, 2005; Campbell et al., 2001; Tjaden & Thoennes, 2006). Less than a third of those reports (16-27%) will then be investigated (Campbell, 2005; Koss, 2006), and less than a half (18-50%) will result in an arrest (for review, see Frazier et al., 1994; Koss, Bachar, Hopkins, & Carlson, 2004; Lonsway & Archambault, 2012). It is less clear how many sexual assault reports are



referred to the prosecutor's office, because this is often an informal process that is not officially documented in any way. However, once a crime is filed and prosecuted, it very often results in a conviction and incarceration even if for a lesser charge (Bureau of Justice Statistics, 2008; Perez, 1994; Reaves & Smith, 1995).

Taken together, this means that:

*Of 100 forcible rapes that are committed, approximately 5-20 will be reported, 0.4 to 5.4 will be prosecuted, and 0.2 to 5.2 will result in a conviction. Only 0.2 to 2.9 will yield a felony conviction. Then an estimated 0.2 to 2.8 will result in incarceration of the perpetrator, with 0.1 to 1.9 in prison and 0.1 to 0.9 in jail (Lonsway & Archambault, 2012, p.157).*



Source: Lonsway, K.A. & Archambault, J. (2012). The 'justice gap' for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18 (2), 145-168, p.157.

## Barriers to Reporting and Participation

Clearly, barriers to reporting exist, and research has been conducted to find out what they are.

- In one study by Kilpatrick et al. (1992), the most common reason for non-reporting given by female rape victims was fear of the perpetrator (22%).
- However, other reasons that were given were because they did not see the incident as serious enough, or they did not view it either as a crime or as a police matter (18%).

- Similarly, 13% of the female rape victims in this sample believed that the law enforcement agency could not do anything about their sexual assault.

The other most common reason for not reporting is **fear of how others will react**. For example, in the study conducted by Kilpatrick et al. (1992), 18% of the female rape victims said they did not report to law enforcement because they were too embarrassed or ashamed, and 12% were concerned that police officers would not believe or would blame them (Kilpatrick et al., 1992).

*Too often and too accurately, victims delay or avoid reporting the crime because the perpetrator has convinced them that no one else will believe or care (Garcia & Henderson, 2010, p.4).*

Even if they do report their sexual assault to law enforcement, additional factors prevent many victims from **actively participating in the investigation**. As many as one-third to one-half of all sexual assault victims withdraw their participation from the law enforcement investigation at some point after initially reporting – and this is especially likely when the victim and offender know each other (Frazier et al., 1994; Spohn, Rodriguez & Koss, 2008); Tellis & Spohn, 2008). There are many reasons for this, but it is clear that a sexual assault case is extremely unlikely to be prosecuted without a participating victim.

In other words, there are a number of critical fears, doubts, and other concerns that prevent victims from reporting their sexual assault to law enforcement – and many of these same factors get in the way of victims remaining engaged with the criminal justice process. They also deter many victims from reaching out for help by accessing other community services (Campbell, 2008).

## Philosophy of Alternative Reporting Methods

Alternative reporting methods have been developed by a number of progressive law enforcement agencies – in collaboration with community partners – to reduce such barriers and increase victim reporting and participation with the criminal justice process. This philosophy is described by the Ashland (Oregon) Police Department in materials for their *You Have Options* Program:

*The traditional law enforcement response to sexual violence tends to discourage sexual assault victims from seeking assistance through the criminal justice system. As a result, law enforcement often doesn't receive the information necessary to hold sexual offenders accountable, and those offenders go on to victimize additional persons.*

*The You Have Options Program focuses on changing two fundamental elements in the law enforcement response to sexual violence: Increasing the number of victims who report to law enforcement, and thoroughly investigating identified offenders for serial perpetration.*

### Resource: Expert Interview

In this [video interview](#), Detective Carrie Hull and Sheriff Corey Falls explain the benefits of offering victims a variety ways of reporting a sexual assault.

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

Alternative reporting options can include anonymous reporting, third party reporting, and non-investigative reporting, all of which are described using a variety of terms; in fact, the terms are often used interchangeably. They are also sometimes described as graduated reporting options.

We will provide more detailed information on these and other concepts in a later section. However, we want to begin by highlighting some of the benefits that can be seen by implementing alternative reporting options. Regardless of what they are called or exactly how they operate in a particular agency, the goal is simply to increase the number of ways a victim can provide information to law enforcement. On some level, this represents more of a philosophy than a procedure – although implementation of this philosophy will certainly require a number of changes in policies and procedures, as well as collaboration with other agencies.

In fact, 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. The task is significant; it is only likely to succeed if undertaken by a well-organized, motivated and truly collaborative Sexual Assault Response and Resource Team (SARRT). Yet the benefits are even more significant. 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.

### Resource: Training Module on SARRT

For detailed information on Sexual Assault Response and Resource Teams (SARRTs), please see the two OLT modules entitled, [Sexual Assault Response and Resource Teams \(SARRT\): A Guide for Rural and Remote Communities](#) and [Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams \(SARRT\)](#).

## Benefits of Alternative Reporting Options

*In the immediate aftermath of a trauma, a victim simply may not have the emotional or physical capacity to make a commitment to a full*



*investigation and a court trial. The victim may equate talking to an investigator with losing control again, a repeat of what happened during the sexual assault. Having evidence collected, risking a breach of confidentiality, being disbelieved or criticized by others, or enduring a cross-examination by a hostile defense attorney all may blend together as one potential threat to the victim. Yet, if the process feels safe to victims, they will be more likely to cooperate with a formal investigation (Garcia & Henderson, 1999, p.13).*

## Reducing Barriers for Victims

The prospect of a law enforcement investigation and potential prosecution can be terrifying to victims, and this can prevent them from reporting at all (Garcia and Henderson, 1999). This is particularly true because the reporting decision is often framed as ‘all or nothing’ and ‘now or never.’ This barrier can be reduced when victims experience firsthand the competence and compassion of responding professionals, and they are not required to immediately commit to the entire process of reporting and participating in an investigation, prosecution, and trial.

### Resource: Expert Interview

In this [video interview](#), Detective Carrie Hull and Sheriff Corey Falls explain that the approach to investigating sexual assault cases must be focused on the victim, and tailored to be appropriate for someone who has experienced a significant trauma.

Alternative reporting options can give victims a chance to try out the criminal justice system, taking the process ‘one step at a time.’ By providing victims with an opportunity to gather information, solidify their support system, and establish rapport with first responders, the hope is to create an environment that encourages reporting. Victims can take the time to ask a police officer questions, get a clear explanation of both the reporting process and investigative procedures, and receive informational materials they can take home to review later.

*These endeavors provide a venue for victims to satisfy their need to notify others of the potential for harm, gain faith in a complex process unknown to them, and receive the response they deserve (Garcia & Henderson, 2010, p.5).*

Such personal contact can help confirm for victims that the incident truly is a matter of interest to the police. This, in turn, can help to build the victim’s confidence in the system and establish a trusting relationship with the investigator. It may even help the victim decide to convert to a standard reporting process and take part in a complete investigation (Garcia & Henderson, 1999).

- In Ashland, Oregon, for example, the police department saw the number of sexual assault reports double from 2009 to 2014, as they implemented the *You Have Options Program*. It is not yet clear how many of these reports converted to complete investigations.
- The Chapel Hill, North Carolina Police Department does have data on the number of conversions; they found that 22% of the 'blind reports' they received over 10 years developed into formal investigations (Garcia & Henderson, 1999).

For victims who initially choose an alternative reporting option and later convert to full participation in the standard reporting process, the fact that an alternative reporting procedure was employed may help to overcome the perception that the report was 'delayed' and therefore dubious. It is only the investigation that will be delayed, not the initial outcry and report.

### **Resource: Seek Then Speak**

[Seek Then Speak](#) is a digital platform where victims of sexual assault can gather information, explore options, and take action if they choose. It's available on a desktop computer, mobile phone, even a landline – and it can be translated into a number of different languages for increased accessibility. By guiding survivors through a series of questions, they can figure out what options are right for them. They can connect directly with a victim advocate, who can help them through this process, and they can begin the process of reporting to law enforcement – but only when they're ready. They can provide as much, or as little, information as they choose, and they can do it at their own pace. Meanwhile, they can remain anonymous as long as they want. To learn more, please visit the [Seek Then Speak](#) website.

### **Building Community Trust**

Alternative reporting options offer law enforcement agencies the opportunity to document information on the full range of sexual assaults being perpetrated in their community. To take advantage of this opportunity, officers should document whatever information the victim offers at the time and also record details about the victim's response and demeanor. The result is a more comprehensive picture that can be used to allocate agency resources as well as improving prevention programs and community education. The information can also be used to assist in other investigations and identify serial perpetrators.

Yet the process of building trust in alternative reporting options will take time. Agencies that implement alternative reporting options as a way to increase successful investigations and prosecutions must therefore recognize that it will take a while to realize such gains.

### Resource: Expert Interview

In this [video interview](#), Detective Carrie Hull and Sheriff Corey Falls describe the impact of offering alternative reporting options in their community. In this [interview](#), they explain how it can also help the law enforcement agency itself.

## Preventing Negative Outcomes

Alternative reporting methods are designed to provide options that are more in line with victims' needs and capabilities during a time of trauma. As a result, the hope is that they can help to prevent a host of negative consequences that could otherwise unfold.

In most situations, victims who do not have any contact with law enforcement will not have time-sensitive information or crime scene evidence collected or documented. The exception is if the victim obtains a medical forensic examination without law enforcement involvement. (This scenario will be discussed in a later section on forensic compliance). Of course, with no report to law enforcement, no investigation can be conducted, and prosecution of the offender is therefore impossible.

This is alarming, given the well-established rates of re-perpetration. Research demonstrates that sexual assault perpetrators who remain undetected by the criminal justice system have committed, on average, as many as six rapes (Lisak & Miller, 2002; McWhorter et al., 2009). When victims are not able to report their sexual assault, offenders remain unaccountable for their crimes, victims are left with unresolved trauma, and law enforcement is unaware of the full range of sexual violence being perpetrated in their communities (Garcia & Henderson, 1999).

*The perpetrator is free to offend again, and nothing changes for the next victim. So, the cycle repeats.* (Lonsway & Archambault, 2010, p.51).

## Encouraging Victim Participation

Alternative reporting methods can help to break this cycle, by encouraging victims to access the criminal justice system in a way that is manageable for them. For example, victims who have a medical forensic exam are frequently motivated by their need for health care, not evidence collection (DuMont, White & McGregor, 2009). Yet when they are greeted with a competent and compassionate response, they may decide they are able to engage the criminal justice process.

Prompt evidence collection also predicts greater success in criminal justice outcomes (Campbell, 2004; Campbell, Patterson, Bybee & Dworkin, 2009). Even if the victim's own case is not prosecuted, the information recorded through an alternative reporting mechanism may be used to help prosecute another case with the same suspect. In fact, many victims who feel unable to participate in a prosecution of their own sexual assault may be willing to act as a witness when there is another victim who is able to move

forward with an investigation and prosecution. The information or testimony victims provide can be extremely helpful for investigators and prosecutors, because they help establish a pattern of behavior by the suspect. Building a case against an offender becomes much easier when officers have information about three incidents instead of one (Garcia & Henderson, 1999, p.15).

As a result, alternative reporting methods can offer a safe haven for victims at the same time they eliminate any such refuge for perpetrators (Garcia & Henderson, 2010).

### **Connecting with Community Resources**

Even beyond the goal of successful prosecution, victims who access alternative reporting options can also be connected with resources to help improve their physical and emotional well-being and promote their healing. To illustrate, sexual assault victims who report to law enforcement are far more likely to receive medical care (Rennison, 2002). Victims are also more likely to have a medical forensic examination if they report to law enforcement. They may even be able to access Crime Victim Compensation for financial losses resulting from the sexual assault. In fact, the process of reporting to law enforcement may have a direct impact on victim recovery, by helping them to regain a sense of control and personal autonomy (Garcia & Henderson, 1999).

There are thus many reasons for agencies to have an effective procedure in place for receiving, recording, and responding to alternative reporting methods. In the long run, this can have significant benefits for individual victims, law enforcement agencies, and larger communities (Garcia & Henderson, 1999). Two examples of innovative programs illustrate this point.

### **Cambria County Protocol for Anonymous Reporting**

One such example is seen in seen in Cambria County, Pennsylvania, where 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. Victim needs are placed at the center:

*It is the expectation of our community that all sexual assault victims will be treated with respect and appropriate attention will be given to their emotional and physical needs, regardless of their decision whether or not to participate in the criminal justice process.*

The protocol then goes on to provide detailed information in the following areas:

- Statement of Purpose.



- Guiding Principles.
- Initiating Collaborative Responses.
- Overview of Anonymous Reporting.
- Roles and Responsibilities of Responders.
- Protocol Checklist.
- Role of Law Enforcement with Regard to Anonymous Reporting.
- Law Enforcement Protocol with Regard to Anonymous Reporting.
- Victim Advocacy Protocol with Regard to Anonymous Reporting.
- SANE Protocol with Regard to Anonymous Reporting.
- Response Contact Phone Numbers.

When we turn our attention to implementation in a later section, we will discuss many of these aspects in more detail. For now, it is sufficient to note that the protocol provides clear expectations for all of the professionals involved in sexual assault response stating that all victims of sexual assault are to be treated professionally and with dignity. The goal is both to promote their recovery and improve their ability to participate meaningfully in the criminal justice process. This is particularly true for victims who are unsure about whether to participate in the criminal justice process. In fact, this is the fundamental rationale for the program:

*It is for this reason that our protocol includes an option of anonymous reporting giving victims, **18 years of age and older**, needed time to decide if and when they are ready to engage in the criminal justice process. The objective is to promote better and more victim-centered care, support, and evidence collection and documentation, in order to increase reporting and ultimately hold more offenders accountable.*

## Ashland Police Department's You Have Options Program

A second example of alternative reporting methods can be seen in the *You Have Options Program* created by Ashland, Oregon Police Department. As in Cambria County, this program was designed to expand the options available for sexual assault victims to contact the Ashland Police Department, thereby increasing access to the criminal justice system as well as other community resources. Also, like Cambria County, the development of this program took years of work and required extensive collaborative effort between the police department and other professionals involved in responding to sexual assault. The program launched January 1, 2013.

As described on the Police Department's webpage, the immediate goal of the program is to "increase sexual assault reporting by eliminating as many barriers to reporting as



possible.” The long-term goal is then “to increase the identification and prosecution of sexual predators in our community, thereby decreasing sexual assault victimization.”

### Alternative Reporting Options

To meet these goals, sexual assault victims have the choice of reporting in a variety of ways:

An **Information Only Report** includes any report of sexual assault where, at the reporting party’s request, no investigative process beyond a victim interview and/or a complete or partial Inquiry into Serial Sexual Assault (ISSA) is completed.

A **Partial Investigation** includes any report of sexual assault where some investigative processes beyond the victim interview and a complete or partial Inquiry into Serial Sexual Assault (ISSA), have been initiated by law enforcement. This may include, but is not limited to, interviewing of witnesses and collection of evidence such as a sexual assault forensic examination (SAFE) kit.

A **Complete Investigation** includes any report of sexual assault where all investigative procedures necessary to determine if probable cause exists for a criminal sexual assault offense have been initiated and completed.

Once they have accessed a reporting method, victims can change their minds, and decide to convert an *Information Only Report* to a *Partial* or a *Complete Investigation*. They can also initially request a Complete Investigation but change it to a Partial Investigation if it is not already concluded. Victims can choose to remain anonymous and/or they can choose to not identify the suspect. These options are provided even for victims who do not intend to participate in the criminal justice process, as a means of encouraging them to come forward to the police department with information about their sexual assault.

An example is provided by Deputy Chief Corey Falls, of the Ashland Police Department:

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

Regardless of which reporting method a victim selects, an officer with the Ashland Police Department will document in writing the information that is provided at that time. Even if

the incident is outside the current statute of limitations, the information is documented. Current policy is to retain such documentation indefinitely within the agency's Records System.

Perhaps most important, program materials clarify that the information – and the victim – will not be pre-judged:

*All information received on a reported sexual assault shall be documented regardless of the apparent credibility of the reporter or apparent veracity of the information being provided. Failure to document all available information inhibits the ability of investigators to identify serial sexual perpetration.*

### Expanding Nationwide

With grant funding, the *You Have Options Program* has been expanded nationwide, so law enforcement agencies across the country can make the commitment to offer similar programs in their own communities. Agencies can decide to formally join the program and access all of the resources that are offered to participants, including a specialized database for recording reports and an externally managed website to provide information for victims and the community.

Full participation requires a formal agreement with the *You Have Options Program* and a documented commitment to meet a number of requirements for implementation, training, and support. Agencies can also draw piecemeal from the program materials, and implement only specific components, but if this strategy is pursued, agencies cannot then say they are offering the *You Have Options Program*. Among other requirements, participating law enforcement agencies must commit to training select personnel, to ensure the program is implemented with fidelity and all of the appropriate resources and infrastructure are allocated to support it.

#### Resources: You Have Options Program

Detailed information is available on the national [website](#) for the *You Have Options Program*. An [informational brochure](#) is also available to disseminate to victims, support people, and other community partners.

In this [video interview](#), Detective Carrie Hull and Sheriff Corey Falls describe the top three challenges to implementing the *You Have Options* program.

### Definitions: Informational Reports vs. Crime Reports

Before we go any further, it is important to clearly differentiate between informational reports and crime reports, because these concepts become inextricably linked to the issues of alternative reporting methods for sexual assault.

- While the terminology varies, we use the phrase **informational report** to refer to a written report of a sexual assault (or other incident) that **does not meet the elements of a criminal offense**. Some agencies describe this type of report as an incident report, informational report, officer's report, non-investigative report or another term. This type of report is used by law enforcement agencies to document various types of information such as intelligence about possible criminal activity.
- On the other hand, a **crime report** is used to document an incident that **does meet the elements of a criminal offense**. It is also described by some agencies as an offense report, case report, or scored case. In fact, in some agencies the same report is used for all crimes reported to the agency; but it is only scored (or coded) as a crime report when the elements have been established.
- While these are the two primary types, there is also a third possibility worth mentioning. In some agencies, Communications personnel (911 call takers) assign an incident number to every radio call – and these dispatches are then treated as criminal offenses that need to be cleared in some way. Some have argued that this type of procedure can cause an agency's rates for unfounded cases to increase because the 'offense' is often recorded in error by Communications. This procedure, and the confusion it can create, does in fact need to be addressed in agencies because Communications personnel should only be dispatching officers to evaluate incidents and/or crimes. They should not be making the determination themselves. Only responding officers should determine how radio calls should be initially recorded for offense documentation and report writing purposes.

Unfortunately, all of these different terms make it extremely difficult to talk about the different practices that law enforcement agencies use for reporting and clearing sexual assault cases across the country. However, when the different terms are further explored, we have found that many of the practices are actually quite similar and common across agencies in a wide range of communities.

### **Need for Leadership and Support**

The question of whether to use an informational vs. crime report is addressed on the 'front end' of a case, when the decision is made regarding how to record the information that is received. However, it is worth noting that the way in which a report is recorded or 'opened' will often have implications for how it will be 'closed.'

- For example, if a sexual assault is recorded in an official crime report, it will need to be cleared or otherwise closed, based upon agency policies and practices – as well as nationally established guidelines for the FBI's Uniform Crime Reporting (UCR) Program. This includes suspending or inactivating an investigation.





- If a sexual assault is recorded in an informational report, however, it may not need to be cleared or closed at all. This would depend on the specific policies and practices of the individual law enforcement agency.

This is relevant for the discussion of alternative reporting methods, because law enforcement agencies pursuing such options may find themselves increasing their use of informational reports and/or routinely suspending or inactivating reports without conducting a thorough investigation.

Both inside and outside the agency, it must be clear that the recommended practice is to suspend or inactivate any report of a sexual assault crime that meets the legal elements – if the victim has provided her/his name but does not wish to pursue an investigation. These reports should not be unfounded, nor should they be retained as informational reports. If the elements are met and the victim's identity is recorded, these reports should be recorded and scored as a crime report, and then simply suspended or inactivated. As previously noted, this means that investigations can be easily re-activated if the victim later decides that she/he is able to participate in the process of a law enforcement investigation and possible prosecution. However, this could potentially create concerns for the individual investigator, as well as the investigative unit, or the agency as a whole, if the reason for implementing this procedure is not understood.

Historically, law enforcement agencies have been evaluated on the basis of their clearance rates, and there might have been a perception that inactivated cases 'counted against' them in terms of departmental statistics – because it might be perceived as if the agency didn't 'solve' the case. This is one reason why sexual assault reports are all too often unfounded inappropriately. They are frequently difficult to investigate and prosecute, and unfounding removes them not only from the investigator's caseload but also from crime statistics for the agency and unit.

#### **Resource: Expert Interview**

In this [video interview](#), Detective Carrie Hull and Sheriff Corey Falls offer strategies to show a Chief or Sheriff that alternative reporting options are important to their agency.

Investigators will therefore need support and leadership – both from inside the agency, as well as from the larger community – to convey the message that this is often the appropriate response for these reports. This will require cross-training among professionals, so law enforcement leaders are on the same page as other members of the Sexual Assault Response and Resource Team (SARRT) when it comes to handling these reports. It will also require public education to clearly communicate the message that the agency uses a victim-centered approach for sexual assault. Advocates will play a key role in helping the public understand this critical issue.

### Resource: Training Materials on Police Clearance Methods

For detailed information on the methods law enforcement agencies use to clear (or close) sexual assault cases, please see the OnLine Training Institute (OLTI) module entitled, [Clearance Methods for Sexual Assault Cases](#). Information is also presented in a 7-part series of training bulletins on [Clearance Methods](#) that includes both a quiz and recommendations for best practice.

### Public Perceptions and Agency Practices

In program materials for the *You Have Options Program*, the three alternative reporting options are described as: *Information Only Report*, *Partial Investigation*, and *Complete Investigation*. This is the way the options are presented to the public, but it is important to distinguish how they are conceptualized for victims and their support people versus the law enforcement agency itself.

**For the public**, the three reporting options are framed in this way to emphasize that victims can provide information to the police department and determine whether any or all investigative steps will be taken. The options can be stated in the simplest terms as: None, some, or all.

However, the reality is that victims in most communities have the same options; they simply are not offered explicitly nor framed in such victim-centered terminology. When victims report their sexual assault to law enforcement in virtually any community, they determine whether and how much to participate in the process of an investigation. If they withdraw their participation, few law enforcement agencies will continue their investigation beyond that point – at least for adolescent and adult victims of sexual assault. (The situation is very different for child victims, and there are other exceptions as well, such as intimate partner violence). This is an issue we discuss at length in a later section, but for the present purpose it is sufficient to note that victims in almost all communities do, for all practical purposes, have the power to shut down a sexual assault investigation by withdrawing their participation. The difference in Ashland, Oregon is that this decision is respected as part of a very difficult process victims must go through to determine whether and how to participate in the criminal justice process. Victims' decisions are explicitly valued, and they are given both flexibility and support to help eliminate as many barriers to reporting as possible.

**From the perspective of the police department**, the reporting options can be conceptualized somewhat differently. This is because the primary difference is not whether or how much to investigate the report, but how to document and handle it administratively. For the first option, an *Information Only Report*, the language makes it sound as if the agency will record the incident with an informational report rather than a crime report. In fact, it could be recorded either as an informational report or a crime report depending on whether the elements of a sexual assault offense have been established and the victim has agreed to have her/his identity formally recorded. Then

the rest of the description outlines the investigative steps that will, or will not, be taken. However, the same can actually be said for both *Partial Investigations* and *Complete Investigations*: victims may be given the power to decide whether or how much the law enforcement agency will investigate their report, but they do not determine whether the information they provide will meet the elements of a criminal offense. Nor do they determine the ultimate outcome of the case if it is investigated.

Therefore, the purpose of the public-facing description is to provide victims with critically important options for providing information to law enforcement and deciding how they will respond in terms of investigative steps. It must be clear to those within the agency, however, that this is a separate question from how the information will be recorded and documented. This should be determined based on whether or not the elements of a criminal offense have been met and the victim has agreed to have her/his identity formally recorded. The concern is that agencies could misunderstand the purpose of an *Information Only Report* or *Partial Investigation* and not record the information in a crime report when this is warranted. If the elements of a sexual assault offense are met and the victim's identity is known, the report should be recorded in a crime report and included in departmental statistics – just as it would be when a victim reports a sexual assault and then later withdraws participation from the investigation. It would constitute a significant disservice to the community if these cases were inappropriately recorded as informational reports and excluded from departmental statistics – because these are the statistics that are used to inform the public about the full range of crimes being perpetrated locally.

## Alternative Reporting Methods: Concepts and Components

*As with most innovative techniques that address specialized crimes, law enforcement organizations should take time up front to clarify their goals for implementing the system and the resources they are willing to direct toward sustaining it. Planning and providing training for both the process of reporting and the dynamics of sexual violence also is critical for successful implementation. In the end, agencies should remember that the lack of confidential reporting can create a picture-perfect community but not always a safe one (Garcia & Henderson, 2010, p.5).*

After explaining the rationale for alternative reporting methods and describing two promising examples from different communities, we will now break down some of the terms and concepts that are required to implement such a program. This includes the concepts of anonymous reporting, non-investigative reporting, and third-party reporting, among others.

### Concepts and Terms Evolving Rapidly

It is important to note, however, that these concepts and terminology have evolved at an astonishing pace. For example, many law enforcement agencies have historically offered victims the option of providing information about their sexual assault without

initiating an investigation. Sometimes, this option was given a name, such as *blind reporting* or *informational reporting*. More commonly, it was simply a practice utilized without any formal name or protocol. Yet with the 2005 re-authorization of the Violence Against Women Act (VAWA) all of this changed.

As described in more detail in a later section, several provisions in VAWA 2005 sparked radical changes in the criminal justice and community response to sexual assault, particularly with respect to medical forensic examinations and law enforcement participation. This fueled an unprecedented interest in the concept of alternative reporting options, with communities experimenting and innovating in all kinds of promising ways. While exciting, this rapid pace of progress has meant that terms are often used inconsistently, which creates some measure of confusion and misunderstanding. Many of us in the field have adopted certain terms for use, only to realize their limitations and modify or even abandon them later. For us, one of those terms is *anonymous reporting*.

In our early writing on the topic, we advocated for agencies to implement a protocol for anonymous reporting (which we will define and describe in a moment). However, as innovation and reform has continued, it has become clear to us that the emphasis on anonymity has masked the more important questions of **what will happen to a report once it is made**. We have therefore shifted toward a more general language of 'alternative reporting options,' which may include anonymity for victims, non-investigative responses from law enforcement, and/or other components designed to increase victims' access and participation.

This evolution must be kept in mind when reading this particular module, and especially when accessing resources, we cite for interested readers. Some of these resources may use terminology and concepts in different ways than we currently do. Yet readers must remain focused on the larger issues involved. Regardless of the name, what is the purpose of a protocol? What are the features, and how does it function? Is it designed to increase victim access and participation? With this caveat in mind, we now move on to help explain some of these terms and concepts.

### **Anonymous Reporting to Law Enforcement**

*What if we offered these victims the opportunity to talk with a law enforcement officer anonymously? In some cases, this wouldn't necessarily mean that the victim's identity is truly unknown to the responding officer. For example, in small communities, the officer may very well know who the victim is as soon as they see each other. However, an anonymous report would allow victims the opportunity to talk with an officer without their identifying information being formally recorded as part of an official crime report. The victim may also make the decision to not identify the person who sexually assaulted them; at least, not at this initial point in time. In this scenario, victims would have the opportunity to establish rapport with the officer, getting to know the officer personally and*

*finding out more about what an investigation really looks like. Victims could ask the officer questions and make a decision about reporting that is based more on realistic information and less on fear of the unknown (Lonsway & Archambault, 2010, p.52).*

The term anonymous reporting is often used to describe a method for providing information about sexual assault to law enforcement without recording the victim's name or other identifying information. Victims can therefore talk with an officer, and get their questions answered, without formally identifying themselves or having their name recorded in the report. They do not have to immediately commit to participating in the process of a full investigation and potential prosecution. Information about the sexual assault can then be recorded by law enforcement as an informational report and stored in case the victim later decides to come forward and participate.

- As an example of anonymous reporting, the *You Have Options Program* offers victims a chance to meet with an Ashland police officer personally and provide information about their sexual assault without offering (or formally recording) their name.
- Alternatively, victims can provide information about their sexual assault using an online form posted on the Ashland Police Department website.

### **Protecting Confidentiality**

The *You Have Options Program* includes several features to protect a victim's confidentiality. As Garcia and Henderson (2010) note, establishing and upholding a policy of confidentiality "is the basis of trust" (p.3). For example, when victims choose a reporting method that does not involve personal contact with law enforcement, investigators are specifically advised to respect this decision and not initiate in-person contact. Investigators are instructed to take only those steps that will maintain the victim's requested level of confidentiality.

Particular concern is warranted in situations that would trigger a mandated report. One of the required elements for the *You Have Options Program* is thus stated as follows:

*A victim's right to keep their assault confidential shall be respected. If legally permissible, no person (outside of a law enforcement agency) shall be notified that the victim has reported without the victim's consent. This includes the interviewing of identified witnesses and perpetrators.*

Yet, there are some circumstances where information might be shared with others. Victims need to understand, for example, what information must be shared by health care providers in order to meet their legal obligation for reporting to law enforcement – and by certain university personnel in order to meet their Title IX obligations under the federal Clery Act. Garcia and Henderson (2010) also note the importance of clarifying

whether there might be other circumstances where some or all of the information provided by a sexual assault victim might be shared with others:

*Determine the circumstances or processes in which information might be shared across types of investigations within the agency. For example, consider a situation in which a rape victim discloses significant information about a drug dealer. When does the victim of sexual violence hold all authority over the information shared? When might information related to the drug supply, storage, or sales be shared, anonymously or not, with another investigator?*

*Set forth the circumstances or processes in which information might be shared with other helping professionals outside the agency, such as the rape crisis center, sexual assault nurse examiner, or sexual assault response team. The victim should be informed of and preferably have the opportunity to clarify how much information must or could be shared with which other people (p.3).*

Such issues will need to be addressed in agency protocols, so they are followed consistently, and victims can be provided accurate information regarding any limits on their confidentiality.

### **Alternative Terminology**

A variety of terms have been used to describe anonymous reporting procedures, such as *confidential reporting*, *restricted reporting*, *Jane Doe reporting*, and others. However, these terms are not always used to describe a reporting procedure that is truly *anonymous*. Sometimes they are used to refer to a process that would more accurately be described as *non-investigative reporting*. (We turn to the question of non-investigative reporting next).

Regardless of the term used, it is clear that many victims want such an anonymous reporting option. In one study conducted in Colorado, over half the responding professionals surveyed had at least one sexual assault victim they worked with who wanted to remain anonymous when reporting to law enforcement (Moldovon & Livermore, 2013).

#### **Resource: Article on Anonymous Reporting**

An [article](#) in *Sexual Assault Report* offers background information on alternative reporting options for victims of sexual assault, particularly anonymous reporting directly by victims. The goal is to provide concrete guidance for those seeking to implement a protocol for anonymous reporting, clarify some common misconceptions, and help to avoid frequent pitfalls.

## Not Truly ‘Anonymous’

As noted above, just because an anonymous reporting procedure is available, this does not necessarily mean that the victim is truly anonymous, in the sense that the officer does not know who the victim is. If a medical forensic exam has been conducted, for example, the victim’s identity will certainly be known to the health care provider. Officers themselves may even know who the victim is, particularly in communities such as rural or isolated towns and villages, in addition to campuses, tribes, or military installations. The victim’s name may even be used for other aspects of the criminal justice response system, including documenting and impounding evidence, paying for the medical forensic exam or applying for Crime Victim Compensation.

Even for officers who do not personally know the victim, they would typically be able to find out quite easily. The term ‘anonymous’ is thus used – not necessarily to indicate that the officer does not know who the victim is – but to reflect the understanding that the victim’s identity will not be formally recorded in the report. The report may include some other anonymous identifier, such as a pseudonym (e.g., Jane Doe) or a tracking number of some kind. Alternatively, a specific phrase could also be used in place of an anonymous identifier (e.g., “name withheld”). Or, the records containing the victim’s name could be sealed inside the evidentiary kit, if one was collected during a medical forensic exam.

However, regardless of the tracking mechanism used, there is typically nothing stopping law enforcement from opening the evidentiary kit or taking other steps to identify the victim. The question is therefore not whether investigators can identify the victim of a sexual assault who wishes to remain anonymous – but will they? This is an issue that needs to be addressed among the multidisciplinary partners involved in responding to sexual assault – and documented in writing in a community-wide protocol that is agreed to and signed by appropriate law enforcement leadership such as any Police Chiefs and the County Sheriff.

### **Resource: Anonymous Reporting Protocol Templates**

EVAWI has developed a set of [template materials](#) to help craft a multidisciplinary protocol for victims to file anonymous reports of sexual assault. These materials are available on the EVAWI website as Word documents, so they can be used as the starting point for communities to adapt and tailor using the specific laws, resources, and other unique factors in each jurisdiction. The documents are available in two formats: One is for states with medical mandated reporting and another is for states without such a requirement. No special permission is needed to adapt and use these tools.

## Non-Investigative Reporting to Law Enforcement

While a great deal of discussion in the field has focused on anonymous reporting, the question of anonymity may not be as critical as what happens next. If a victim is unable or unwilling to participate in the process of a law enforcement investigation, will it be investigated anyway? Or will the victim be allowed to decide when and if an investigation will proceed?

Implementing a philosophy of non-investigative reporting requires communities to establish an understanding that sexual assault reports will not generally be investigated or prosecuted against the victim's wishes. Of course, police and prosecutors have the clear legal authority to investigate and prosecute any felony crime that comes to their attention, regardless of the victim's wishes. However, these alternative reporting options will be undermined if they are investigated or prosecuted against the victim's will except in very limited circumstances that are clearly stated from the initial contact with the victim. This issue will be discussed in detail later.

It may seem counterintuitive for law enforcement agencies to allow victims to decide whether or not their sexual assault report will be investigated, but many agencies have formal policies or unwritten practices that respect a victim's wish to not proceed with the investigation. The goal is to encourage more victims to come forward and to reduce unnecessary trauma.

*The information presented to law enforcement by the victim of sexual violence is potentially unavailable by any other means or through any other person...narcotics and vice operations commonly practice receiving, but not acting upon, such information to make the best strategic use of the data (Garcia & Henderson, 2010, p.4).*

This type of philosophy is seen with the *You Have Options Program*. Non-investigative reporting is a fundamental premise and a required program element. Sexual assault victims are thus given as much control over their report and the criminal investigation as the law allows:

*A victim or other reporting party may provide as much, or as little, information as they choose with no time limitations or restrictions on when the information is given to law enforcement.*

*Reasonable efforts will be made to allow the victim or other reporting party control over the location, time and date where their initial report is made to law enforcement.*

*A victim, or other reporting party, may end an interview with law enforcement at any time without having to provide a reason.*

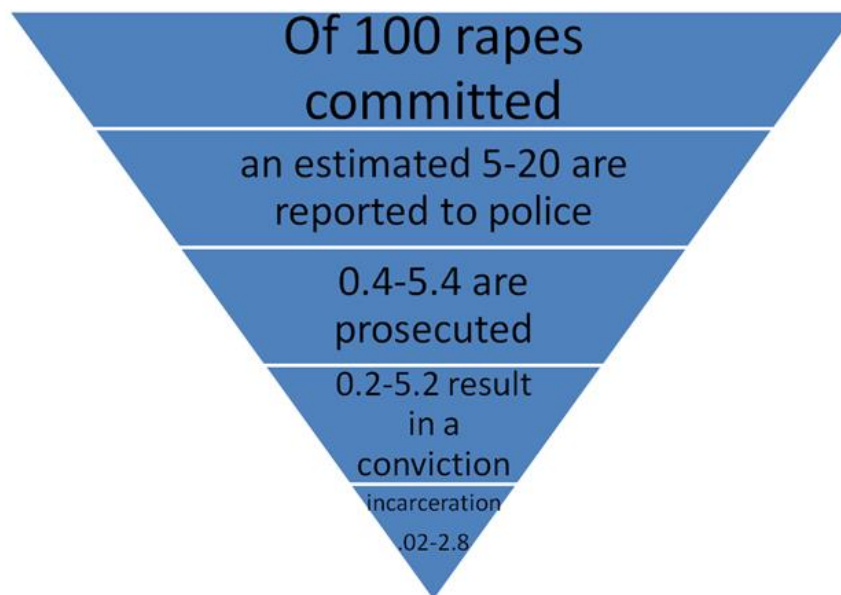
Exceptions to this general philosophy are allowed in limited circumstances, such as:



*[When] legally mandated (e.g., in certain instances of domestic violence; when the victim is under 18; when a victim is in continuing physical danger) or in other rare circumstances such as a significant threat to public safety.*

In fact, this means that a sexual assault victim's wants, and needs may at times be in direct conflict with the criminal justice process – and agencies offering the *You Have Options Program* are required to place the victim's preference first when legally possible to do so. In other words, if a victim wants to provide information to law enforcement about a sexual assault but not have an investigation initiated, this is exactly what will happen. Any report that does not lead to an arrest or referral for prosecution will then be classified as inactivated or suspended (unless it is determined to be false or baseless). If and when the victim contacts the investigator or additional information develops at a later date, the investigation would then continue.

While some of these concepts may seem foreign to us, it is important to keep in mind the blue triangle from the beginning of the module, illustrating the funnel of attrition for sexual assault cases. It is clear that our current practices are not resulting in a meaningful percentage of sexual assaults being reported, let alone successfully investigated and prosecuted. A real paradigm shift is needed to have a significant impact on this pattern and offer victims a real chance at justice.



Source: Lonsway, K.A. & Archambault, J. (2012). The 'justice gap' for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18 (2), 145-168, p.157.

### Not Pressuring Victims

A particularly critical aspect of the *You Have Options Program* is that victims or other reporting parties will not be pressured to participate in a law enforcement investigation

or criminal prosecution. This philosophy begins by allowing victims to provide as much or as little information as they can, whenever they are able.

*Putting pressure on the victim for immediate and full disclosure can threaten the sense of trust placed in the officer and sense of safety with the process (Garcia & Henderson, 2010, p.3).*

This philosophy is based on the recognition that a partial or delayed disclosure is likely to “reflect more on the victim’s sense of support than on the validity of the statement” (Garcia & Henderson, 2010, p.3). The notion is therefore reflected in several required elements for the *You Have Options Program*, pertaining to victim control over the investigative process.

*Investigators will collaborate with victims during the investigative process and respect a victim’s right to request certain investigative steps not be conducted. Criminal investigations will be conducted at a pace set by the victim, not the law enforcement officer.*

*Investigating officers shall offer options and not advice or directives. For example, it is never appropriate for any officer to tell a victim that they should cooperate with an investigation in order to prevent the sexual offender from assaulting others. The responsibility to not harm is the offender’s, not the victim’s.*

*A victim may disengage from a criminal investigation at any time prior to an arrest being made or the case being referred to an office of prosecution. There is no requirement that an explanation be given by the victim to law enforcement.*

*If legally permissible and probable cause exists for a crime, no arrest or referral to an office of prosecution will occur without the consent of the victim. All You Have Options law enforcement agencies will respect the choice of every victim who reports a sexual assault and understand that justice is not the same for every person who is victimized.*

The rationale is simple. Pressuring victims is harmful to victims, as well as investigations. This argument is also made in the materials for another program offering non-investigative reporting in Cambria County, Pennsylvania. In their community-wide protocol, the statement is made that:

*Any real or perceived pressure put on these victims to report immediately may in fact discourage future or continued involvement in the judicial system.*

Instead, emphasis is placed on connecting victims with resources available to assist them, including health care, victim advocacy, and other services.

## Not the Time to Ask About Prosecution

*Imagine for a moment the trauma of being sexually assaulted. Immediately afterward, there is no time to make sense of what has happened, let alone figure out what to do about it. Many victims feel afraid, ashamed, and confused. They are probably not sure whom to tell. But regardless of whom they tell, they are likely to be confronted with the question of whether or not they will report the incident to police and press charges. This question is asked not only by community professionals (including victims' advocates, forensic examiners, and law enforcement professionals), but also by friends and family members. In fact, in some situations this is the first question people ask when victims say they have been sexually assaulted (Lonsway & Archambault, 2010, p.51).*

Victims are often pressured by friends, family members, and responding professionals in a variety of different ways – pushing them to call the police to make a report and participate in an investigation is only one. Another way in which pressure is exerted is by asking victims if they want to ‘press charges.’ Not only is this question technically incorrect – prosecutors, not victims, are the ones who make charging decisions – but this question places an inappropriate burden on victims.

This is particularly true during the early stages of an investigation; the question should never be asked by law enforcement during the initial response. In fact, it often shouldn't even be asked during a follow-up interview with a sexual assault victim. Rather, the time for law enforcement to ask a sexual assault victim about their ability to participate in a criminal prosecution is at the end of a thorough, evidence-based investigation. Only at that point do investigators know whether they have a case to present to the prosecutor. The investigator and prosecutor should also meet with the victim to discuss the strengths and weaknesses of the case.

An exception would be those offenses where an immediate arrest is necessary based on the nature of the assault, fear that the suspect is a danger to the victim or community, and/or when there is reason to believe the suspect will flee or immediately destroy evidence. In these cases, once an arrest is made the prosecuting attorney may have as little as 24-72 hours to determine whether the suspect will be formally charged. The victim's statement is likely to be critical in presenting this case, so the question of participating in a criminal prosecution should be discussed at this point.

In other words, before discussing the issue of criminal prosecution with a sexual assault victim, law enforcement professionals must do their job first. An important part of this job is to explain the purpose of the law enforcement interview, describe the role of other members in the Sexual Assault Response and Resource Team (SARRT), and address the victim's initial concerns regarding the investigation and criminal prosecution. Then, the next step is to conduct a thorough investigation to identify any evidence that can be used to corroborate the victim's allegations. Once the investigation is complete, most law enforcement agencies will then make a decision regarding whether or not to refer

the case to the prosecuting attorney's office. (The exception would be those agencies that refer every single case to the prosecutor's office for review, including cases without a named suspect).

### **Do Not Submit Evidence to Crime Laboratory**

For victims who choose to participate in a medical forensic examination without reporting to law enforcement – or pursue another alternative reporting method such as anonymous or non-investigative reporting – one question that is often asked is whether any evidence collected during the exam should be submitted to a crime laboratory for analysis. In short, the answer is no; this evidence should not be submitted to the crime laboratory for analysis.

This is clearly the position of the US Department of Justice, Office of Violence Against Women (OVW):

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

Three reasons are given for this position:

- Testing a kit before the victim has made a report to law enforcement undermines the victim's prerogative to decide if and when to engage with the criminal justice system.
- Testing a kit without the victim's express consent either to submit the kit or to report the assault to law enforcement is not an advisable way to cultivate community trust.
- Funding for testing SAKs is not unlimited, and grant funds should be directed to activities that promote accountability for offenders and justice and healing for victims (OVW, 2017, p.5, 7 & 8).

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

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

*perpetrator profile from that kit – is not going to go into the National DNA Index System (Onorato, 2016).<sup>1</sup>*

As Chief Onorato explained, two key criteria must be met for CODIS eligibility. First, is it reasonable to believe that a crime occurred? Second, is there reason to believe that the item being tested has something to do with that crime and that it is linked to the perpetrator of that crime? In forensic compliance cases, these criteria are not met.

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

Rather, all evidence collected in an anonymous or non-investigative report should be stored in accordance with established standards for the length of time established by policy. This should also be emphasized in the informational materials given to victims, so they know what will happen. All too often victims believe that, if a medical forensic examination was conducted, then there is evidence to prosecute their case. This leads to the assumption that the case will definitely be prosecuted if they convert to a standard report at a later point in time. Evidence storage procedures can be briefly explained, along with the caution that prosecution will become less likely as time goes on and also that it is virtually impossible without victim participation.

### **Resource: Evidence in Non-Investigative Reports**

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

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

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

<sup>1</sup> The symposium was entitled, [Looking Ahead: The National Sexual Assault Policy Symposium](#). It was hosted by the National Institute of Justice on September 8-9, 2016. This presentation was made during Panel 7, entitled "In the Lab – Testing Sexual Assault Evidence." An [archived recording](#) is available.

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

## Third Party Reporting Procedures for Victims

A third concept often discussed in relation to alternative reporting methods is third party reporting. In general, the term refers to any information provided to law enforcement about a potential criminal offense **from someone other than the victim**. Information about a potential sexual assault may be reported to law enforcement by a friend, family member, teacher, coach, clergy member, or any other third party. For example, third party reports are commonly made by parents, when they discover or suspect their adolescent has been the victim of statutory rape. Third party reports are also frequently made by health care providers and others with legal responsibilities for mandated reporting. They are often recorded as informational reports, because the elements of a criminal offense will need to be established by law enforcement on the basis of an interview with the victim and other evidence.

Some victims might feel so threatened that they will only share information through other parties, such as the rape crisis center (Garcia & Henderson, 2010, p.3).

However, some law enforcement agencies provide a procedure for **victims to file an anonymous report through a third party** such as a forensic examiner program, community-based advocacy organization (e.g., rape crisis center or dual service agency), or other entity. When this type of protocol is implemented, it requires establishing detailed policies and procedures in a Memorandum of Understanding between the law enforcement agency and the entity authorized to accept reports. To illustrate, the *You Have Options Program* offers victims the choice of providing information to the Ashland Police Department through a victim advocacy program. This required program feature is described as follows:

*Victims who choose to report through a third-party, such as a sexual assault advocate, maintain their chosen level of confidentiality while still providing important information on serial sexual perpetration to law enforcement.*

## Clarifying Terminology and Concepts

Because there is a great deal of variation in how these terms are used, we want to re-state that we use the term third party reporting to refer to any report of a criminal offense made by someone other than the victim. This includes third party reports that are made at the request of the victim, following a procedure implemented collaboratively between a law enforcement agency and other entity (such as a forensic examiner program or victim advocacy organization). In many cases, such a third-party report would also be *anonymous*. For example, some communities have implemented

procedures where a victim can provide information to law enforcement anonymously through a health care provider, victim advocate, or other professional.

However, other third-party reports are not anonymous. In California, for example, health care providers are legally obligated to provide specific information to law enforcement whenever they have reason to believe a patient has been sexually assaulted. Among the required information is the victim's name. In other words, just because a report of suspected sexual assault is made by a third party does not necessarily mean it is anonymous. In fact, it is usually not anonymous at all.

### **Establishing Jurisdiction for Third Party Reports**

When a third party (such as a forensic examiner or victim advocate) makes a report to law enforcement on behalf of a sexual assault victim this will typically require asking the victim where the sexual assault occurred and contacting the law enforcement agency with jurisdiction over that location. (The exception would be if a particular agency agreed to accept all third-party reports as part of a community-wide protocol). In such a situation, the third-party professional can only be expected to do their best in determining the presumed jurisdiction for any report, based on the information received. Many victims have a hard time specifying exactly where their sexual assault took place, and third parties are not likely to know the exact boundaries of any law enforcement jurisdiction. In addition, victims often seek assistance in the community where they live and not necessarily the community where they were assaulted.

Therefore, protocols for third party reporting need to address the fact that the identification of a law enforcement jurisdiction will only constitute a best guess. If the victim later converts to a standard reporting procedure, the law enforcement agency contacted will need to determine the proper jurisdiction and may need to transfer the case to another jurisdiction when appropriate.

### **VAWA Forensic Compliance**

*What if we designed a community response system that was based on a realistic understanding of how victims actually react to being sexually assaulted? What would it look like? For example, what if we allowed victims time to rest, think, clean up, eat, drink, sleep, smoke, sober up, and do all the things they need to feel human again? What if we offered the opportunity for victims to gather the information and support that they need to make good, solid, well-educated decisions? In the meantime, what if we collected and properly stored any time-sensitive evidence, in order to preserve their option of reporting for later? And what if we connected victims with forensic health care, victim advocacy, and other services that could help them to recover from trauma? (Lonsway & Archambault, 2010, p.52).*

As previously noted, the national trend emphasizing alternative reporting methods for sexual assault is partly the result of provisions in the Violence Against Women Act (VAWA) that were first enacted in 2005 and remain in effect with subsequent reauthorizations. This is an area known as *forensic compliance*, and it is worth considering in this context because these legislative provisions have dramatically altered the field of reporting methods for sexual assault.

### **VAWA 2005 Provisions**

In 2005, VAWA was reauthorized with several landmark changes particularly affecting the response of law enforcement agencies and health care facilities to victims of sexual assault. This act, often referred to as VAWA 2005, specifies that states and territories may not “require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred on account of such an exam, or both”(42 U.S.C.A § 3796gg-4(d)(1)(2005)).

In other words, there are two key provisions in VAWA that are commonly referred to as forensic compliance:

- Victims of sexual assault must be provided with access to a medical forensic examination free of charge.
- This exam must be provided without requiring victims to cooperate with law enforcement or participate in the criminal justice system.

### **Philosophy of Forensic Compliance**

These forensic compliance provisions were designed to meet several objectives. One is to increase sexual assault victims’ access to medical care and forensic evidence collection in the aftermath of an assault – at the point when medical care is most healing, injuries can be observed and documented, and biological and physical evidence are more likely to be collected. Prompt medical care benefits victims by providing treatment and options that promote better physical and mental health in the future. In addition, prompt forensic evidence collection increases the chance that probative evidence will be collected and documented; this evidence may be essential to an investigation and criminal prosecution, if the victim chooses at some point in the future to convert to a standard report and participate in the criminal justice process.

Another purpose of VAWA forensic compliance is to increase the reporting of sexual assault and ultimately increase victim participation in the criminal justice process.

Increased reporting and participation can improve victims’ access to justice and thereby enhance community safety. To fulfill this spirit of VAWA forensic compliance, victims should simply be asked at the time of a medical forensic exam whether they are willing to talk with a law enforcement officer about what an investigation might look like and





what criminal justice outcomes might realistically be expected. The protocol that is followed would then be based on the answer given, as victims are provided information about the various reporting options that are offered in the community.

### Implementation of Forensic Compliance

While VAWA is federal legislation, the provisions actually serve as legal requirements for US states, territories, and tribes to receive a specific form of grant funding through the Office on Violence Against Women, US Department of Justice. Specifically, what is at stake is the STOP Grant funding that totaled over \$126 million in 2013 alone. This funding is used by jurisdictions to support core services, training, and other programs.<sup>2</sup>

All states, territories and tribes were required to certify (as of January 5, 2009) that they are in compliance with these requirements in order to remain eligible for this funding. Moreover, compliance is not a one-time event; they must remain in compliance to retain their eligibility for OVW STOP Grant funds. While communities originally faced significant challenges in designing protocols to achieve forensic compliance, considerable progress has been made in implementing innovative policies and procedures to meet the spirit, as well as the letter, of the law.

#### Resource: Forensic Compliance Implementation

For more information on this topic, please see the [forensic compliance](#) section of our website, which includes links to a number of articles, resources, and other tools designed to assist communities with implementation. Another valuable resource is the OLT module entitled: [The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance](#). In addition to providing background information and a detailed discussion of the underlying philosophy, the module also includes a number of resources and tools communities can adapt for their own use when implementing forensic compliance.

### No Requirement for Anonymous Reporting

One area of frequent confusion is the mistaken belief that VAWA requires communities to offer anonymous evidence collection and storage. This is not the case. As described in the [Frequently Asked Questions \(FAQs\) about STOP Formula Grants](#) published by the Office on Violence Against Women (OVW), US Department of Justice:

*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>2</sup> For information on the allocation of 2013 STOP Grant money to US states, territories, and tribes, please see the website for the [Office on Violence Against Women, US Department of Justice](#).



In other words, anonymity is not required in order to meet the ‘letter of the law’ for VAWA forensic compliance. However, it can be used to achieve the ‘spirit of the law.’

## Implementation of Alternative Reporting Methods

For communities seeking to implement alternative reporting methods for victims of sexual assault, the place to start is establishing a multidisciplinary response protocol. A clear written protocol is needed to clarify the roles and responsibilities of all the professionals involved. This will include law enforcement officers and investigators as well as forensic examiners, other health care providers (e.g., Emergency Department personnel), and any additional professionals with mandated reporting responsibilities (e.g., university personnel with Title IX requirements).

Any such protocols should also include both community-based and system-based victim advocates, as well as prosecutors who might eventually receive these cases, and other professionals involved in the entire community response system (e.g., campus, military, and tribal agencies). Even within each law enforcement agency, a truly comprehensive protocol will require clarifying responsibilities of personnel working in various departments, including:

- Communications/Dispatch (911 call takers).
- Property Room.
- Records.
- Crime Laboratory.
- Patrol/Investigations.
- Administration/Management.

This is no small task, as illustrated by the professionals in Cambria County, Pennsylvania who spent three years developing and implementing a comprehensive, multidisciplinary protocol for anonymous reporting in their community. Decisions must be made regarding numerous complex and challenging issues. For example:

- If victims choose to have a medical forensic examination, how will this process be initiated? Are alternative reporting options available for those who do not have an exam?
- Who will contact the advocacy organization, to ensure victims have access to the information, support, and other valuable services that an advocate can offer?

There are also questions regarding who is eligible for various alternative reporting options. In Cambria County, for example, the protocol clearly states that anonymous reporting is only available for victims who are 18 years of age or older. These and other



issues must be resolved, so victims are provided clear and consistent information on what options are available to them.

Even more important is ensuring that victims are not offered false promises about the reporting options available to them. It is difficult to imagine how damaging it would be to victims if they were presented with an option, such as anonymous or non-investigative reporting, that was later pulled out from underneath them – and a full investigation launched against their wishes.

### **Need for Consistent Protocol**

It is therefore critical that the services and options offered to victims are consistent. In the Colorado study, for example, results suggested that victims were more likely to have access to the services of an advocate if they participated in the standard reporting process (Moldovon & Livermore, 2013). This is most likely because many communities only activate advocates at the time of a medical forensic examination – and the majority of exams are still taking place as a result of victim contact with law enforcement. This is concerning, because victims who are reluctant to engage the criminal justice system may have a particular need for the information, support, and other forms of assistance that an advocate can provide. Such inconsistencies in the information and services provided are far less likely when a protocol is clear and comprehensive for all of the involved professionals.

Yet consistency is not the only reason for developing a clear multidisciplinary protocol for alternative reporting methods. A clear protocol is also needed to guide cross-training efforts between the professional disciplines. The protocol must therefore be reviewed regularly to determine which aspects are working well and which need improvement.

### **Statement of Purpose**

A good place to start writing such a protocol is the statement of purpose. Two examples have already been provided, from the Cambria County protocol for anonymous reporting and Ashland Oregon's *You Have Options Program*. Both programs also offer a number of guiding principles for anonymous and non-investigative reporting options for sexual assault victims.

However, the Cambria County protocol then goes on to delineate the specific roles and responsibilities of professionals who respond to sexual assault victims, including law enforcement, health care providers, and victim advocates, as well as prosecuting attorneys.

### **Response Protocol for Medical Forensic Exam**

Most of the Cambria County protocol outlines procedures to be followed in the majority of cases where victims receive a medical forensic examination and decide they are able to personally talk with law enforcement. However, specific procedures are also detailed

for those victims who are unsure at the time of the exam whether or not they want to participate in the criminal justice process. These procedures can be summarized as follows:

- After the exam, the Sexual Assault Forensic Examiner (SAFE) calls the police department to pick up the evidence and store it, using an anonymous tracking number provided by the SAFE. For simplicity and convenience, one particular law enforcement agency has agreed to store all of the evidence associated with these anonymous reports.
- The officer who responds to the request then prepares an informational report and includes the SAFE number from the front of the evidentiary kit, the name of the attending SAFE, and the date and time of retrieval of the evidence. The incident number generated by the police department is provided to the SAFE for documentation on the SAFE log.
- The police department does not investigate the matter unless and until the victim decides to convert to a standard reporting process and participate in the process of a full investigation. An exception may be made at the discretion of the prosecutor on a case-by-case basis – either in high profile cases and/or serial cases, or in the event that public safety is perceived to be at stake.
- The evidence associated with the anonymous report then remains in the evidence room for a period of two years (unless the victim converts to a standard report before that time). At the end of two years, the police department addresses the final disposition of the evidence according to departmental procedure.
- Three weeks prior to the end of the two-year period, the SAFE Program contacts the victim (if consent for this follow-up contact was given at the time of the exam), to remind the victim of the timeline for evidence storage and impending date of destruction.

The Cambria County protocol thus spells out – with considerable attention to detail – the procedures that are to be followed as well as the roles and responsibilities of involved professionals. This is extremely helpful, as it can help to avoid the misunderstandings and missteps that can occur when policies are stated in vague or overly generalized terms.

### **Follow-Up Responsibilities**

For victims who initially choose an alternative reporting option, they may be unlikely to later convert to a standard reporting procedure unless they receive some form of follow-up contact. The informational form that is given to victims can therefore be used to describe the options for follow-up contact, and document whether victims want to be contacted for various purposes – as well as the best methods for doing so (e.g., phone number, email). When considering the best means of contacting victims, it is important



to consider not only questions of access and convenience, but also safety and privacy. For example:

Specify the means (phone, e-mail, in person), the content (first name or professional title, code phrase, full disclosure, and the circumstances (if another victim comes forth, if more evidence is discovered) (Garcia & Henderson, 2010, p.3).

While some victims may not want any follow-up contact, others may choose to be notified if the same suspect is named in another report. For example, if the agency receiving a third-party report identifies a serial offender based on connections or identified similarities with another crime report, victims can be contacted to see if they are willing to participate in an investigation and prosecution. They can be given the option of either coming forward in connection with their own report or agreeing to testify on the behalf of another victim.

### **Resource: Documenting Preferences for Follow-Up Contact**

Once again, we want to highlight the template materials for an [anonymous reporting protocol](#), because they include sample documents that can be used to provide victims with information about their options for the medical forensic examination and law enforcement investigation – as well as a form to document their preferences. The form can also be used to document information such as the medical record number or patient number, contact information for the exam facility and law enforcement agency, and the law enforcement case/incident number (if there is one). All template materials are posted in Word format, so they can be easily modified and adapted in any community; no special permission is needed.

### **Not Just for Victims Who Have an Exam**

There is nothing in the general philosophy of alternative reporting methods that would limit them to victims who have had a medical forensic examination. However, this is the context in which they are most frequently discussed. This is partly due to the overlap with forensic compliance, as previously discussed. It is also because protocols for alternative reporting methods are needed to address the more complex issues that arise when an examination has been conducted and evidence collected and documented. 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). However, we recommend that any community offering alternative reporting options should make them available for all competent adult victims of sexual assault, regardless of whether or not they have had a medical forensic exam.

## Other Measures to Encourage Victim Participation

Beyond the procedural elements of enacting any alternative reporting options, there are a number of other factors that can increase a victim's comfort and thus encourage participation in the process. For example, the *You Have Options Program* requires participating agencies to make the following commitments in order to increase victim comfort, trust, and participation:

*Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces in providing information to law enforcement during the reporting process.*

*Law enforcement officers will conduct victim interviews in a trauma-informed manner.*

*Investigating officers will keep victims of sexual assault informed regarding the status of the investigation.*

For those victims who have not yet decided to participate in an investigation or prosecution, program materials go on to state that they should not be required to sign any release waiver. Nor should they be described in a report as “uncooperative.” Rather, reports should reflect the fact that victims are unable to participate in the investigation or prosecution “at that time.”

Agencies participating in the *You Have Options Program* are also required to provide a room that is specifically designed for a victim's comfort during the interview and any investigative meetings. This is because most interviews conducted at law enforcement agencies actually take place in interrogation rooms designed specifically to reduce the comfort level of suspects:

*Standard interview rooms may reinforce a victim's belief they are the one being investigated or that the interview is more of an interrogation.*

In the program materials, these are referred to as ‘soft’ interview rooms. They should be designed to be warm and welcoming for victims as well as their support people, with comfortable furniture, art, and other amenities. If necessary, this could be the same room that is used for interviews with children, because the goal is to increase victims' comfort level during the investigative process. Any effort to increase their comfort is likely to improve their well-being and enhance both reporting and ongoing participation in the criminal justice process.

### Resource: Training Modules on Victim Interviewing

For more details on how to conduct a successful interview with a victim of sexual assault, please see the OLT module entitled, [Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault](#). A variety of [webinars](#) are available on the topic, such as:

- A two-part series on the [Neurobiology of Sexual Assault](#).
- [Effective Victim Interviewing](#).
- [Forensic Experiential Trauma Interview: A Trauma Informed Experience 2-Part Webinar Series](#).

There are also a number of Training Bulletins that address these issues such as:

- [When to Conduct an Exam or Interview](#).
- [Recording Victim Interviews](#).
- [Sworn Statements](#).
- [Documenting Prior Victimization](#).

### Resources and Recordkeeping

Implementing a program for alternative reporting options will require not only agency leadership and support, but also a commitment of resources and an investment in structural changes. A critical step in the process is to identify resources available to create such a program and maintain it over time. For example, law enforcement agencies will have to begin by creating a standardized form for each of the various alternative reporting methods. One example of a place to start is the Supplemental Reporting Form for Sexual Assault created by the International Association of Chiefs of Police (IACP).

### Resource: IACP Supplemental Reporting Form and Guidelines

When victims are given the option to report anonymously and/or through a third party, it will be necessary to develop a form for them to use. One recommendation is to adapt the [Supplemental Reporting Form](#) developed by the [International Association of Chiefs of Police \(IACP\)](#). This form is also posted on the [IACP website](#), along with corresponding guidelines for successfully investigating sexual assault cases. These tools are based upon national best practices regarding sexual assault investigations and were developed in collaboration with local, state, and federal law enforcement, prosecutors, advocates, medical, and forensic professionals. The goal is to support officers and departments in preparing sexual assault cases for successful prosecution through detailed case documentation and thorough investigations. (Note: These guidelines are not intended for use when the victim is a minor).

Garcia and Henderson (2010) then offer a number of recommendations for the process of adapting such a form:

*Create a standardized intake form that, along with the details of the sexual offense, clarifies the victim's preferences for sharing or receiving information, conditions for future contact, and expected next steps (p.3).*

In addition to information about the victim, suspect, and incident, the form can also be used to track custody of any evidence collected.

This form should be designed to facilitate comparison of information with other reports, as well as easy retrieval if the victim converts to a standard reporting process. The information should thus be defined and categorized consistently so specific characteristics can be compared and matched across reports received through various processes (Garcia & Henderson, 2010). They should be recorded using a special code specifically created for sexual assault informational reports.

At that point, the agency will need to “designate who will receive, document, store, or have access to the information” included in these reports (Garcia & Henderson, 2010, p.3). The authors recommend that a single person be assigned this responsibility for the sake of consistency:

*Assigning responsibility to one person, such as the department's crime analyst, investigation commander, or sex crime specialist is a preferred way to consistently maintain and analyze the reports (p.5).*

Alternative reports will also need to be stored in a secure location, preferably separate from other records such as official crime reports. If such a location does not already exist, it may need to be created as part of implementing the program (Garcia & Henderson, 2010).



There are also issues related to how long informational reports versus crime reports are stored by the agency. In many agencies, informational reports are only stored for a limited period of time (e.g., one year). Yet for informational reports involving sexual assault, this is often not long enough and can create future problems when the victim decides to convert to a standard reporting process or the suspect is investigated at a later time. As agencies implement policies for alternative reporting methods that make more effective use of informational reporting, it may be necessary to ensure that any report of sexual assault is kept for a longer period of time. This could be for a certain number of years, the statute of limitations, or even indefinitely.

To accomplish this, agencies may need to store informational reports in an Investigative Unit rather than the Records Division because the Custodian of Records will typically adhere quite strictly to retention policies based on laws and regulations – and these requirements apply for all types of crime and not just sexual assault offenses.

As all of these structures and processes are established, it will be particularly important to ensure that training and victim-centered practices are integrated into the agency's operations, to reward quality performance of officers and investigators working with victims of sexual assault.

### **Tracking Information on Suspects**

When agencies are creating their systems for recording and analyzing data, a question will likely arise regarding how to track information on suspects. This is a primary goal for agencies using alternative reporting methods – to potentially identify suspects named or described by more than one victim. In addition to the name, agencies should therefore record additional information (when it is offered by the victim), such as a suspect description, offense location, description of the offense and/or method of operation. For example, it will be important to track not just whether an offense is a felony or misdemeanor sexual assault (or other non-criminal offense), but also whether the acts involved penile-vaginal rape, oral copulation, digital penetration, penetration with a foreign object, or other crimes such as sexual battery. Such information can serve as valuable intelligence on sexual assault in the community, to help detect known serial perpetrators or even identify previously unidentified suspects based on geography or a pattern of behavior.

This process of recording and analyzing suspect data is a relatively straightforward matter for informational reports where only intelligence or suspicion about a crime is documented. However, a question might arise whether suspects should be named in an official crime report – when the victim has provided information that meets the elements of a sexual assault offense but does not want an investigation pursued. We have previously stated our concern that law enforcement agencies might record such information in an informational report rather than a crime report. Because informational reports are not included in departmental crime statistics, this could create a misleading impression of the actual prevalence and characteristics of sexual assault being perpetrated in the community.



This situation is arguably no different from the very common scenario where a sexual assault is reported but the victim then withdraws participation in the investigative process. If the information initially provided by the victim meets the elements of a sexual assault offense, the appropriate procedure in such a situation is to record the information in a crime report and then suspend or inactivate the investigation. On this basis, it makes sense that the same procedure is followed for victims who choose a non-investigative reporting procedure.

On the other hand, some degree of caution may be warranted when naming a suspect in an official crime report if the law enforcement agency is not going to investigate the report at all. There might be some situations where the information provided by the victim is best viewed as intelligence and either recorded as an informational report – or as a crime report with the suspect name provided in the narrative portion of the report rather than the suspect identification box. At this point, there is not enough experience with alternative reporting methods to offer a definitive recommendation. This is a question to be explored with future research and practice, as we gain experience across the country with law enforcement agencies and alternative reporting options.

#### **Resource: Data Collection Forms from Ashland, Oregon**

As part of the *You Have Options Program*, the Ashland Police Department has developed two data collection [tools](#) that can be used or adapted by other law enforcement agencies. One is for information on the initial report, including the date the sexual assault was initially reported, the type of investigation initially selected by the victim, the method and recipient of the original report, the timeframe for reporting, and a classification of the crime that was reported (i.e., felony sexual assaults, misdemeanor sexual assaults, and other non-sexual criminal offenses). The second form is used for recording information on the victim, suspect, and case characteristics.

#### **When the Victim Has Engaged in Illegal Activity**

Protocols for alternative reporting methods will need to address some particularly challenging issues, such as the victim's involvement in criminal behavior – either at the time of the sexual assault or in a previous incident resulting in an outstanding warrant. Depending on the situation, alternative responses may be possible in order to prioritize the sexual assault investigation to the extent possible.

Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on investigating the crime and treating the victim with compassion. Arresting victims will most likely damage any trust that has been established with law enforcement, eliminate any chance that the victim will cooperate with the investigation, interfere with the victim's emotional recovery, and perhaps even deter future victims from reporting. Only when absolutely necessary should law enforcement personnel consider arresting the victim of a sexual assault. When crafting a policy for law enforcement agencies, it is therefore

important to make a distinction in the policy for responding to felonies versus misdemeanors that may have been committed by the victim.

If the victim has committed a felony or has an outstanding felony warrant, this will of course need to be processed. However, even in this type of situation it is important that the sexual assault crime not be disregarded, just because of the victim's criminal activity or history. The best response may therefore be to talk directly with a judge or prosecutor to discuss whether the victim could surrender to the court without booking the victim on the felony charge(s) at the time of the reported sexual assault. Of course, this may not be possible if the felony charge or warrant involves a violent crime, if the victim poses a threat to the community or has a history of failing to appear in court, or a bench warrant has been issued by a judge for failing to appear in court.

It is much more common, however, for sexual assault victims to be involved in misdemeanor crimes, such as underage drinking, prostitution, substance abuse, illegal immigration status or driving under the influence. In this situation, it is important for the law enforcement agency to prioritize the response to the felony sexual assault crime committed against the victim and carefully consider how to best respond to any misdemeanors crimes committed by the victim. Again, the best response may be to book and release the victim on the misdemeanor charge(s) or write a notice to appear in court, rather than making a physical arrest.

In sum, law enforcement agencies must carefully consider their responses to illegal activity by sexual assault victims, taking into account the important difference between felonies and misdemeanors as well as the impact on the health and safety of an entire community. Any policy response must also take into account the fact that an immediate arrest of the victim may make successful prosecution of the felony sexual assault extremely unlikely. Of course, immigrant victims also typically have a fear of being arrested and deported because of their immigration status. It is critical to discuss these difficult issues with victims before moving forward with the investigation. In fact, this is often true for witnesses as well. Law enforcement agencies and prosecutors' offices will need to coordinate their response to these issues, to reduce the likelihood of any confusion or problems arising between the two agencies.

### **Release Waivers and Victim Preferences**

We previously noted that many professionals raise the question of prosecution too soon with sexual assault victims, by asking in their very first contact whether the victim 'wants to prosecute' the suspect. Investigators may even pressure victims into signing a release waiver if they either say or imply that they do not want to 'press charges,' or if they are unsure about what to do. Unfortunately, this practice is common because there is a perception that the waiver will limit the law enforcement agency's liability for not investigating the report any further.

Some of these waivers have rather extreme wording that goes well beyond suspending an investigation to actually preventing victims from making any further inquiries or cooperating with any future investigation and/or prosecution. Here is one such example:

*I affirm that I will not pursue this matter further, nor will I initiate any criminal prosecution against any persons involved in or responsible for this offense. I will make no further inquiries as to any subsequent investigation conducted by the [law enforcement agency], nor will I voluntarily appear as a witness in any potential criminal prosecution resulting from this complaint.*

This type of practice is patently unjust. Law enforcement does not have the legal authority to tell anyone that, because they signed a particular document, they can never make additional inquiries or testify in any potential prosecution. Whether intended or not, this type of waiver does exactly the opposite of what is considered best practice – it clearly discourages victims from participating in the investigation by forcing them to make a decision that is ‘all or nothing’ and ‘now or never.’ In fact, the tone of the waiver – and the conversation that almost certainly precedes its presentation – can feel downright threatening to victims. The underlying message is: *Tell me everything, right this minute, or never call us again.*

To see how damaging this can be, it is helpful to contrast it with the typical practice in cases of suspected child abuse. When a mandated report of suspected child abuse comes into a law enforcement agency, it is not at all uncommon for the child to deny the allegation when contacted by an investigator. Very few investigators are surprised by such a denial, and it is difficult to imagine them responding by threatening the child with a statement that it is now or never: *Disclose the abuse now, or you will never have another opportunity.* Instead, most investigators would respond by expressing concern for the child and making sure he/she knows how to contact the investigator whenever he/she feels able to talk. This is because the goal is to encourage the disclosure, whenever the child is ready. The same should be true for all victims.

We recognize that some law enforcement agencies use forms that the victim can sign, to document the fact that the investigation is being terminated at the victim’s request. We do not believe there is any need for such a form, given that they do not accomplish their perceived purpose of protecting a law enforcement agency from liability – and because they have such a detrimental effect on victim participation. Therefore, if an agency uses a waiver of some kind (or an affidavit of suspension), it should only be used when victims proactively ask to have the investigation of their case terminated – and the law enforcement agency has reason to believe that they might be faced with a claim that they failed to pursue the case for questionable reasons. This might include situations such as:

- Cases where there is a perceived conflict of interest. For example, when a university student reports a sexual assault to campus police, and there is

concern that the university might later be seen as trying to 'cover it up' by not pursuing an investigation and prosecution.

- Cases where the suspect is a high-profile person, such as a celebrity, politician, well-known athlete, or even a police officer.

Even in situations such as these, agencies should recognize that the form does not carry any legal weight – **and the same purpose is likely to be better served by simply documenting what was done to help support the victim in order to remain engaged.** In other words, officers and investigators should document the steps they took to address the victim's barriers to reporting, by explaining the process of an investigation, helping to meet any immediate needs, ensuring they have the support of an advocate (if they want one). Law enforcement can even sometimes talk with loved ones to help address their questions, concerns, and direct them to available services.

This is another example of an issue that can be addressed by a multidisciplinary SARRT, to ensure that such forms are either not used or are used in limited circumstances as described above. It also highlights the need for supervisory review in sexual assault cases. Supervisors need to make sure decisions are not being made by officers and investigators based on frustration with victims who do not want to participate in the investigation, do not return calls, or those who may even respond with an attitude of hostility. These victims should not be presented with a release waiver as an excuse for not conducting a thorough investigation. After efforts have been made to address their concerns and offer them support, victims should be reassured that they can re-engage the system at any time, and the case would then be investigated to the best of their ability.

If a form is used by a law enforcement agency, it should not be used because responding officers simply decide not to investigate a sexual assault report, either because they do not believe the victim or because they do not think the case is worth pursuing. In fact, this type of form has no place whatsoever in the preliminary investigation. It should not be presented at the time of the initial contact or during a preliminary interview with a victim.



### **Resource: Victim Preference Statement**

If a release waiver is going to be used for the purpose of documenting the victim's wishes, a better alternative is the [Victim Preference Statement](#) developed by the Naval Criminal Investigative Service (NCIS). This form offers a tool that can be adapted by other agencies, particularly because it meets several purposes beyond simply documenting victim preferences. By asking victims to read and sign the statement, a number of purposes are actually met:

- Explaining the various reporting options for victims.
- Explaining the limitations of alternative reporting methods.
- Memorializing the victim's decision regarding reporting and participation.
- Documenting the involvement of an advocate or other advisor in the process.

After the victim has read and signed such a Victim Preference Statement, a copy should be provided both to the victim and to the advocate, health care provider, or other advisor.

### **Converting to a Standard Reporting Procedure**

Regardless of which alternative reporting procedure victims initially choose, they should be advised that they can decide at any time to convert to a standard report and participate in a full law enforcement investigation. A variety of options can be offered to convert the report, by contacting the law enforcement agency, SAFE program, victim advocacy organization, or another entity. However, some community protocols might designate one or more of the options as preferable to others. For example, many SAFE programs operate on a callout basis without any administrative time, which means that the forensic examiner (or other staff person with access to the exam report) will not generally be available to respond when the victim calls. Community protocols might therefore advise victims that the preferred method for converting to a standard report is to contact the law enforcement agency and provide the tracking number. This number can be used to locate and retrieve the relevant information, along with possible evidence from the medical forensic examination, if one was conducted.

Victims should also be provided with a range of information about potential conversion. For example, they should be informed that the longer they wait, the more difficult it may be to conduct a thorough investigation and pursue prosecution in their case. They should also be notified of the statutes of limitations for sexual assault crimes in the state where it was committed. If evidence is transferred from the SAFE program or other health care facility to law enforcement when victims convert, a form that victims sign will need to document their authorization for this release. Other aspects of the response protocol should also be described.

To provide one example of such a protocol, the Cambria County procedures for converting an anonymous report to a standard report can be summarized as follows:

- If at any point in that two-year time period, the victim chooses to convert to a standard reporting procedure, a variety of options are available. Victims are advised (at the time of the exam) that they can initiate this process by contacting either law enforcement or the SAFE program, as well as other specified agencies (e.g., Victim Services).
- If the victim contacts law enforcement and indicates that evidence was collected anonymously, the agency will contact or instruct the victim to contact Victim Services or the SAFE Program at the medical facility where the exam was completed.
- If the victim chooses to contact Victim Services, an advocate will provide the victim with support and assist the victim in contacting the SAFE program. The SAFE program will provide the victim who is converting from an anonymous report to a standard report with necessary information regarding evidence storage or will contact the police department directly and relay the information, including the SAFE number from the front of the evidentiary kit, the name of the attending SAFE, the name of the responding officer who picked up the evidence, and the date and time of evidence kit retrieval.
- The police department will then link that information to the anonymous kit stored in the evidence room and the informational police report using both the incident number and the SAFE number on the front of the evidence kit (provided to them by the SAFE program).
- The police department will determine the jurisdiction where the assault took place and arrange for transfer of evidence to the proper jurisdiction.
- The law enforcement agency with jurisdiction will then be able to proceed with the investigation, following the same general strategies as in a standard reporting procedure.

When crafting a protocol for converting from alternative reporting to standard reporting, the question is this: Is there any realistic possibility that cases will be successfully investigated and prosecuted if victims convert from an alternative reporting procedure to a standard report with full participation? If not, what can communities do to make this a reality? This question can be used to guide the development and evolution of a comprehensive protocol.



### Resource: Webinar on Prosecuting Converted Reports

In many communities, guidance is needed to successfully investigate and prosecute 'converted' cases. Otherwise, this option could be a false promise for victims. An archived webinar is available on the EVAWI website, entitled [Prosecuting Converted Cases](#). It addresses a range of issues such as the following:

- What do we call these cases?
- How do we perceive them?
- How do we investigate converted cases?
- How do we prosecute them?

### Prosecution is Not Our Only Goal!

It is critical to keep in mind, however, that prosecution is not our only goal for offering victims alternative reporting methods. Otherwise, we are likely to misinterpret some of our efforts as failures when they are anything but.

In Colorado, for example, a 2013 evaluation documented that no 'medical report' had yet been prosecuted. (*Medical report* is the term Colorado professionals use for victims who obtain a medical forensic examination but do not have contact with law enforcement at the time of the exam). In Cambria County, Pennsylvania only 1 of 9 anonymous reports received in a 3-year period of time resulted in conversion to a standard reporting procedure.

If prosecution is our only goal, then such data would most likely be seen as failure. However, alternative reporting options can encourage victims to access the criminal justice system and other community resources such as health care. Even beyond the long-term benefits of connecting victims with such resources, it remains unknown how many victims decided to seek help because they knew they didn't have to make an immediate decision about reporting to law enforcement and possible prosecution – and then decided they were able to participate based on the competent and compassionate response they received. In other words, we do not know how many victims 'convert' during the process of a medical forensic exam, while talking with a victim advocate, or otherwise taking steps to pursue an alternative reporting procedure. These conversions would not show up in statistics such as those collected in Colorado or Pennsylvania.

### Evidence Storage and Retention

Another issue that will need to be addressed in any community protocol for alternative reporting methods is evidence storage and retention. These questions typically arise when the victim has had a medical forensic examination, but evidence could also be taken into custody by law enforcement in association with any form of alternative reporting mechanism (without an exam being conducted). For example, a victim who is



making an anonymous or non-investigative report may bring in an article of clothing or bedding, want photographs taken of injuries, or submit digital evidence (such as cell phone data, digital photographs, or social media posts). Community protocols should clarify whether evidence can be stored and retained in such a situation, just as it when victims have a medical forensic exam without personally reporting to law enforcement.

Community protocols will need to address issues such as the following:

- What evidence can be collected and stored?
- How long will evidence be stored?
- Will these policies vary for standard reports versus alternative forms of reports?

For questions such as these, the answers may vary by community and even by agency. However, the question of who should store such evidence should be more straightforward. We recommend that any such evidence be stored by law enforcement, following standard procedures. Even if a community offers third party reporting as an option for victims, the organization receiving third party reports will not generally have the capacity to store any type of evidence (unless it is a health care facility that can retain some forms of evidence for a limited period of time, before handing it over to law enforcement). Especially for victim advocacy agencies, it is clear that they should never assume responsibility for storing and retaining evidence. For one thing, they are not equipped to maintain the rigorous standards for evidence storage as well as proper chain of custody. More important, however, storing evidence would change their role from being an advocate for the victim to a participant in the investigation. This would compromise the nature of the advocacy role and jeopardize the confidentiality of all communications between the victim and advocate, including written records.

To address this issue, community protocols should include procedures for law enforcement agencies to accept, store, and retain evidence, perhaps by labeling and tracking the evidence with a pseudonym or other anonymous tracking number. Much of the guidance on VAWA forensic compliance will be directly relevant for guiding policies and practices in this area.

### Resource: Evidence Storage Policies and Procedures

A number of tools are available in our Forensic Compliance Resources to assist with questions of evidence storage policies and procedures. For example, under the [Articles](#) tab is information about a publication in the *Journal of Forensic Nursing* discussing issues of evidence storage. Sample policies, protocols, and forms are also available under a variety of other tabs.

Under the [Training Initiatives](#) is a slide presentation entitled *Forensic Compliance Update: Where Do We Stand in 2012?* This presentation addresses a number of aspects related to evidence.

An additional resource is the 2014 report published by the Urban Institute, entitled *Sexual Assault Medical Forensic Exams and VAWA 2005: Payment Practices, Successes, and Directions for the Future* (Zweig et al., 2014). This research study explored several important questions of evidence storage and retention. It was funded by the National Institute of Justice (NIJ) and conducted by the Urban Institute in partnership with George Mason University, and the National Sexual Violence Resource Center (NSVRC). The report is available along with four research briefs in Forensic Compliance Resources, under the tab for [Exam Payment](#).

### How Long Will Evidence Be Retained?

As noted, any community protocol for alternative reporting methods will need to address the question of how long evidence will be stored. While the specific length of time will vary across agencies, it would generally defeat the purpose if evidence is not held long enough to give victims time to make a decision to convert to full participation in the criminal justice process. We therefore recommend that agencies store evidence for as long as possible, up to the statute of limitations or even indefinitely. This is particularly true in jurisdictions that have extended or eliminated the statute of limitations for sexual assault, either as a matter of law or by using the practice of issuing a 'John Doe warrant' with a DNA profile rather than a name to identify the suspect.

Regardless of how long evidence is stored, however, this must be clearly explained both in the community protocol for alternative reporting methods as well as informational materials for victims. Otherwise, there could be concerns related to consistency, selectivity, and a lack of fairness with respect to how long evidence is stored and when it is destroyed.

### **Resource: Evidence Storage in Anonymous and/or Non-Investigative Reports**

On July 10, 2014, the New Jersey Attorney General's Office published an outstanding [Directive](#) revising the standards for evidence retention in cases where the victim has not yet decided to report to law enforcement following the standard procedures. This evidence will now be stored for a period of at least 5 years. Prior standards required law enforcement agencies or prosecutors' offices to retain such evidence for a minimum of 90 days. The Directive outlines the notification procedures that must be followed before destroying evidence in these cases and specifies the information that should be collected from victims at the time of the exam, as well as their preferences for follow-up contact. It is available in the Forensic Compliance Resources on our website, under the tab for [Evidence](#).

### **Consent for Evidence Procedures**

Other issues to be addressed in a community protocol pertain to the consent victims must provide for the collection, storage, and analysis of the evidence in their case. For victims who participate in a medical forensic exam, existing protocols should ensure that they are first provided with a wide range of information and then asked to document their consent to various procedures. For those who go on to participate in the standard reporting process, they will also sign a form releasing their evidence to law enforcement. For victims who elect an alternative reporting method, they will typically follow the standard procedure for consenting to the collection and storage of evidence, but not its analysis. Consent to analyze the evidence will generally only be provided if they convert from the alternative reporting option to the standard reporting process.

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. This possibility will need to be addressed with victims. It should also be addressed in community protocols and written information that is sent home with victims, to explain when this might happen and to document any good faith agreements that prosecution will not generally be pursued against the wishes of victims except in certain circumstances.

### **Can Evidence Be Returned to Victims?**

Community protocols will also need to clarify what rights (if any) victims have for returning clothing or other evidence associated with various forms of reports (e.g., clothing, bedding). This information can then be incorporated into the informational materials created for victims. In communities where evidence is stored anonymously 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 at some point during the alternative reporting procedure, 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 evidence in connection with such a report 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 collected during a medical forensic examination). Among other concerns, this might create an opportunity for suspects to intimidate victims into requesting to have evidence returned, to obstruct the investigation and potential prosecution. We therefore recommend that informational materials clarify that any biological evidence collected does not belong to the victim and that no process exists for victims to request access to this evidence or have it returned to them.

### **Evidence Destruction**

Finally, the determination must be made whether a community protocol will require victim notification when the evidence associated with their 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 protocols 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).

### **Information for Victims**

*Consider creating an information sheet that describes the reporting system for others so that they will understand the intention, the process, the involved staff, and any limitations victims should consider. Decide how best to share this information within the agency, directly with victims, or throughout the community (Garcia & Henderson, 2010, p.3).*

When sexual assault victims express that they are unsure, unwilling, or unable to participate in the standard reporting process, they will need to be provided with information about their options for alternative reporting methods. This is a key issue to be addressed in a community protocol, to ensure that victims are provided with clear and consistent information, no matter which professional serves as their initial point of contact. To illustrate, victims could initially contact a victim advocate, health care provider, or law enforcement agency. The contact could be made through the hospital Emergency Department, SAFE program, campus health care facility, or a personal physician. It could come in through communications/dispatch or a rape crisis hotline.

A variety of questions thus need to be addressed:

- Do all of the professionals involved in responding to victims have the same information and understanding of the protocol? Have they had cross-training with a consistent message? Do they have the same written materials to provide for victims?
- Who will explain the various reporting options to victims? What specific information will be provided, both verbally and in writing?
- Will victims be informed of alternative reporting options upfront? Or will they only receive this information if they express reluctance toward standard reporting procedures?

It is important that the information is available in written form, because most victims will not be able to process everything at the time it is given. If they receive written information, they can read it later when they have more time and capability to focus on what is being conveyed. Moreover, the materials will need to be translated for victims who do not speak English and offered in a variety of accessible formats (e.g., for victims [who are blind or have low vision](#)).

#### **Resource: OLTi Module on Victims with Disabilities**

The [OnLine Training Institute \(OLTi\)](#) includes a module entitled: [Investigation of Sexual Assault Against Victims With Disabilities](#). Among other topics, it offers concrete guidance for providing information to victims in a variety of accessible formats (e.g., Large Print, Braille, audio CD, electronic formats, using screen readers).

#### **Points to Include in Written Materials**

Informational materials will need to include a form that describes the various options, to help victims weigh the advantages and disadvantages of each, before documenting their preferences. This information should therefore cover topics such as the following:

- Reassuring victims that it is common to be uncertain about what to do and addressing any concerns they might have about reporting to law enforcement and possible prosecution.
- Advantages of reporting to law enforcement following the standard procedure.
- Basic procedures for standard reporting and alternative reporting options.
- Types of evidence stored with a standard versus alternative reporting options.
- Where the evidence will be stored for each type of report.

- Whether evidence will be stored anonymously or if it includes the victim's name – and what steps are taken to protect the confidentiality of this 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 various types of reports will be retained by law enforcement agencies and forensic exam facilities.
- Who to contact, to convert from an alternative reporting option to a standard reporting procedure.
- 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 victims are eligible for Crime Victim Compensation, if they choose an alternative reporting option.

All victims will also need information on crime victim rights, regardless of which reporting option they decide to pursue. Finally, if a police officer is involved in responding to the report, victims will need to be provided with the officer's name, phone number, and ID or badge number, as well as any tracking number used by the agency in connection with the report.



### Resource: Information for Victims

As previously noted, Cambria County, Pennsylvania offers a comprehensive [sexual assault protocol](#) for anonymous reporting (for victims age 18 and over). Included in the appendix is a consent form for victims, authorizing the collection, documentation, and release of evidence (to be stored by the municipal police department). The form offers a brief explanation of key issues for victims, including the fact that they will not be billed for the exam, that their medical records will remain private, and that their evidence will be stored for 2 years. Victims can choose whether or not they would like to be contacted 3 weeks before the evidence will be destroyed. If so, the form documents their preferences and various means of contacting them.

Another example is available from Duluth, Minnesota. Community professionals in Duluth have implemented a fully functioning protocol for anonymous, third party reporting, and a variety of materials from that program are available among the Forensic Compliance Resources under the tab for [Sample Documents](#). This includes informational materials explaining the program and other issues for victims.

Also available is a slide presentation with findings from a survey conducted by EVAWI with several hundred multidisciplinary practitioners, describing various aspects of their community response system. The presentation is entitled, [Forensic Compliance Update: Where Do We Stand in 2012?](#) It includes a description of how information is provided to victims regarding their options; it can be found under the tab for [Training Initiatives](#).

### Information About Potential Disadvantages

For victims who are considering an alternative reporting procedure, there are a few potential disadvantages that need to be clearly conveyed in any informational materials. For example, some reports made through a non-standard procedure will result in only the most limited investigation by law enforcement and will not lead to prosecution. In addition, victims who choose an alternative reporting option may not benefit from the rights afforded to crime victims who do report and participate in the criminal justice process. They also may not be eligible for Crime Victim Compensation (CVC), although there are some exceptions to this. Because this is such a critical topic with important implications for victims, we will explore it in some detail.

### Crime Victim Compensation

Crime Victim Compensation (CVC)<sup>3</sup> programs were created to compensate victims for financial losses resulting from crimes. This can include a victim's expenses for medical care, counseling fees, lost earnings, and in some states, relocation. CVC programs are available in all 50 states, the District of Columbia and two US territories. However, the

<sup>3</sup> We would like to thank Dan Eddy, Director of the National Association of Crime Victim Compensation, for his helpful contributions and review of this section.

eligibility requirements for CVC can pose challenges for meeting the goals of alternative reporting options for sexual assault.

## Reporting Requirements

For example, federal CVC guidelines require that programs “must promote victim cooperation with the reasonable requests of law enforcement authorities” (Newmark et al, 2003, p.xiii). To meet this objective, many states require victims to report the crime to law enforcement within 72-120 hours to be eligible for reimbursement through the CVC program. A few states have a shorter timeframe (24-48 hours), whereas others have longer timelines or no time limit at all.<sup>4</sup>

According to the National Association of Crime Victim Compensation Boards (NACVCB), at least seven states have declared an exception to this reporting requirement for sexual assault victims who have had a medical forensic examination but not yet decided whether to personally report to law enforcement. Victims in these states can thus follow the normal application procedure for CVC funds, because their participation in the exam is seen as meeting the reporting requirement. As of October 2014, these states are: Connecticut, Illinois, Massachusetts, New Hampshire, Nevada, New York, and the District of Columbia. However, this is subject to change, so it is always important to verify current laws and regulations in your jurisdiction.

In other states, victims who have an exam without reporting to law enforcement can apply for CVC funds, but they must submit a request for an exception to the reporting requirement. These requests are evaluated on a case-by-case basis, following procedures that vary considerably across states. Regardless of the specific procedure, all states offer victims a process for appealing the final decision. However, in the absence of written policy guidance or published data specifically addressing this issue, it is impossible to document how often these requests are granted by programs, either initially or following some kind of appeal process.

## Contributory Misconduct

All state requirements also say that victims are ineligible for CVC funds if they *contributed* to their injury or victimization through *wrongful conduct or provocation* (Newmark et al., 2003). NACVCB Director Dan Eddy has sought to clarify that, “Generally speaking, this requires that the behavior of the victim causes the offense” (personal communication, October 2, 2014).

As with the reporting requirement, the NACVCB says that a few states have written specific language into guidelines and policies to clarify that the behavior of sexual assault victims shall not be evaluated in terms of contributory conduct. In Pennsylvania, for example, the following statement appears in the *Program Manual for Sexual Assault/Victims Compensation Assistance*:

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<sup>4</sup> For more information, please see the website for the National Association of Crime Victim Compensation Boards at [www.nacvcb.org](http://www.nacvcb.org).



*In cases of rape and sexual assault, the conduct of the victim may not be considered with respect to assessing contribution to the crime or in denying the claim (Pennsylvania Coalition Against Rape, no date, p.21).*

This language is clear and direct and can be used as a model for other CVC programs.

According to the NACVCB, this statement is true even in states without such a written exception:

*This is the standard approach currently for other compensation programs as well. For example, programs do not deny claims from victims who are drinking underage or using recreational drugs at the time of the crime, since those behaviors did not cause the offender to assault them (NACVCB Executive Director Dan Eddy, personal communication, October 2, 2014).*

However, how often this is true is impossible to determine in the absence of written policy guidance or published data.

### **Alternative Reporting Methods and CVC**

States will therefore need to continue exploring whether and how sexual assault victims can access CVC funds if they choose a non-standard reporting procedure. This may require evaluating the statutory and administrative rules governing eligibility and making certain exceptions. This could be accomplished either by providing an explicit exemption or good faith exception to the eligibility requirements for victims who access alternative reporting methods. An example of this is seen in the seven states that recognize participation in a medical forensic exam as meeting the requirement for reporting and participating in the criminal justice process. Alternatively, the eligibility requirements could be modified in a way that would not exclude these victims. However, it is critical to remember that CVC regulations apply to all types of crime victims, not only those who are sexually assaulted.

It is also important to note that these eligibility requirements do not affect payment for medical forensic exams in 32 states where CVC covers these costs without any reporting required. In these states, a separate payment procedure is used, outside the regular compensation process.

Finally, there is a legitimate concern that applying for CVC could compromise anonymity for victims who have opted to report their sexual assault anonymously. It is therefore critical for professionals involved in sexual assault response to identify what statutes, eligibility requirements and administrative procedures are associated with their state's CVC program. Moreover, it is imperative that victims are provided with information that is accurate and realistic. Eligibility requirements for the CVC program – and any exceptions for sexual assault victims – must be clearly explained, to ensure that they are followed clearly and consistently.

Given that the purpose of enacting alternative reporting options is to increase victim reporting and access, eliminating financial barriers with CVC can go a long way toward achieving success. Yet the only way to know whether we are making progress is to formally document policies and gather data on actual practices. That way, local communities can identify barriers that remain for sexual assault victims seeking to access CVC and raise these concerns with state administrators.

## Public Outreach

*After steps have been taken to identify and remove barriers to reporting sexual assault, educate the public about the potential benefits of reporting, how to go about reporting, what happens once a report is filed, and jurisdictional legal advocacy services available (if any) for sexual assault victims. Build upon already existing public awareness efforts of local advocacy programs (National Protocol for Sexual Assault Medical Forensic Examinations, 2013, p.48).*

Before we leave the topic of informational materials for victims, it is also important to consider the broader goal of providing information for victims and their support people through public education. Given that the whole point of alternative reporting methods is to increase access for victims of sexual assault – both to the medical forensic exam as well as the criminal justice system as a whole – creating the response system is only half the battle. The other half is ensuring that the public is aware of their options, to increase the likelihood that they will engage the system when they or someone they love has been sexually assaulted.

As documented in a study conducted by the Urban Institute, some sexual assault victims do not want to have a medical forensic examination because they think it means they will have to report to law enforcement (Zweig, Newmark, Raja & Denver, 2014). By reaching out to the public with information about the range of options available, including alternative reporting options, communities will be able to increase access to the criminal justice system as well as other services.

### Resource: Public Education

Many communities have already developed innovative ways to reach the public with information about sexual assault response options. Some have approached this issue through public service announcements, others through media campaigns, and still others through agency websites. All of these approaches can be effective in informing the public, and thus increasing access for victims of sexual assault. Examples of various public education initiatives are provided in the Forensic Compliance Resources on our website, under the tab for [Public Education](#).

## Ensuring Victim Support

*In each case, strive to create an environment in which victims are encouraged to report and are supported throughout the criminal justice process and beyond. Even in those cases that do not develop beyond an initial report to the police, victims should feel that they are respected (National Protocol for Sexual Assault Medical Forensic Examinations, 2013, p.48).*

Up to this point, we have focused primarily on those aspects of implementation that pertain to law enforcement agencies offering alternative reporting options. The philosophy is to increase victim reporting and access within the criminal justice system, because we will only be able to hold more sexual assault perpetrators accountable if victims feel safe coming forward to provide information and participate in the process. Yet this is only half of the equation. Success will also require ensuring that victims have the support they need to reach out to law enforcement and engage the criminal justice process – regardless of whether they follow the standard reporting procedure or any of the alternative reporting methods that might be offered in a community.

### Benefits for Victims

The need for such support is well documented in the research literature. Research clearly demonstrates that sexual assault victims can potentially benefit a great deal if they access formal support services, such as health care (Felitti & Anda, 2010), a forensic medical exam (Campbell, Patterson, & Lichy, 2005), victim advocacy (Campbell, 2006; Wasco, Campbell, Barnes, & Ahrens, 1999), and other services such as counseling, therapy, and support groups (Foa, Hearst-Ikeda & Perry, 1995; Foa, Keane, & Friedman, 2000; Russell & Davis, 2007; Wasco et al., 2004). By accessing the services of just one professional, this can also increase the likelihood that victims will engage others. To illustrate, reporting to police is more likely for victims who have already contacted another formal source of support.

- In one study of sexual assault victims who had already contacted a rape crisis center, as many as 44% also reported to law enforcement (Ménard, 2005).
- In a similar study of victims who were seen at a sexual assault treatment center, over 70% reported to police; in fact, over half had been referred to the sexual assault treatment center by a law enforcement officer (Ruch, Davidson-Coronado, Coyne, & Perrone, 2000).

Research also finds that victims who work with an advocate experience less distress, are less likely to experience certain negative outcomes (such as self-blame or feeling bad about themselves, guilty, or depressed), and are less reluctant to seek further help (Campbell, 2006; Wasco et al., 1999).

## Support from Loved Ones

Victims can also benefit from the support of loved ones, such as family members, friends, and intimate partners (Campbell et al., 2001; Filipas & Ullman, 2001; Ullman, 1996). When victims disclose to such informal support providers, they often receive emotional support, information, and help with tangible needs (for review, see Ménard, 2005). This assistance can help support their process of healing.

- To illustrate, in one study of female sexual assault victims, those who received positive reactions from their romantic partners had fewer PTSD symptoms than other women (Filipas & Ullman, 2001).
- In another study, “emotional support from a friend was related to significantly better recovery” (Ullman, 1996, p.152).

Clearly, positive reactions from informal support providers can be one of the most powerful forces to facilitate healing among sexual assault victims. Yet positive social support is not only critical for assisting in victim recovery, it is also a key requirement for victims to engage the criminal justice system – and to stay engaged – in order to hold offenders accountable.

In their research, Dr. Rebecca Campbell and her colleagues (Campbell, Bybee, Ford & Patterson, 2009) found that two elements must come together for a sexual assault case to have a chance for prosecution. First, there has to be a thorough, evidence-based investigation. Second, the victim has to be willing and able to participate in the criminal justice process. The researchers described what this process looks like:

*Our interviews with both survivors and police revealed that victims can give more detailed statements to law enforcement, remember more information, and can otherwise engage more fully with the investigation when they are not so traumatized and have adequate support (Campbell, Bybee, et al., 2009, p.121).*

This is especially true for adolescent victims, for whom the support of professionals as well as friends and family members will often determine whether they will access, and remain engaged, with the criminal justice system (Campbell et al., 2011).

## Increasing Criminal Justice Participation

Social support networks also “serve as a bridge between survivors and the criminal justice system” (Patterson & Campbell, 2010, p.202). There is evidence that the same can be said for community services as well (Feldman-Summers & Norris, 1984; Ruch et al., 2000). Again, the researchers have described how this process unfolds, based on the findings of their study of rape survivors who reported to police:

*Rape survivors contacted on average two to three informal (e.g., friend, family) or formal supports (e.g., hotline) before making a report. Their support people believed them, offered emotional support, validated their experience as rape, and encouraged them to report. In some cases, the support systems offered the survivors hope that they could seek justice through prosecution (Patterson & Campbell, 2010, p.197).*

Taking all of this into account, it is clear that the implementation of any alternative reporting method should also include efforts to ensure that victims receive the support they need – both to access the system initially and then to remain engaged over time. This may be the only way to decrease the percentage of sexual assault cases where victims ‘decline prosecution’ and withdraw from participating in the investigation of their case. As previously noted, this happens in as many as one-third to one-half of all sexual assault cases, with higher rates when the victim and offender know each other (Frazier et al., 1994; Spohn et al., 2008; Tellis & Spohn, 2008). There are many reasons for this, but the key to increasing victim participation clearly lies in improving the support they receive throughout the criminal justice process.

The *You Have Options Program* offers one example of what this might look like as a part of any program implementation. To illustrate, the program requires officers in all participating agencies to offer assistance to everyone reporting a sexual assault in locating sexual assault advocacy services. They are also required to allow victims accompaniment during all phases of the reporting process and criminal investigation, either by a sexual assault advocate or other appropriate support person. These are very positive steps that can be taken by any agency.

## The Need for Data Collection

As stated at the outset of this module, a primary purpose of alternative reporting methods is to allow victims and witnesses to provide information to law enforcement about sexual assaults being perpetrated in the community that they would not otherwise know about. Therefore, we recommend incorporating systems for tracking information regardless of the type of report made, once a protocol for alternative reporting options has been implemented.

## Understanding Community Responses

It is clear that we need to know a great deal more about how frequently alternative reporting options are being accessed – and what happens to these reports from that point forward. For example, information is needed to answer questions such as the following:

- What are victims’ perceptions of the barriers to reporting?
- How do they perceive the various alternative reporting methods? Do they understand how they actually work?

- Are certain victims more likely to choose certain reporting options? For example, are victims more likely to pursue a non-standard reporting procedure if they know the perpetrator? If drugs and alcohol were involved in the sexual assault?
- How do victims evaluate the professional responses they receive in the community? Are the response protocols working like they should?
- Do victims feel satisfied with the process and outcomes of their report? Are they feeling supported throughout the reporting process? Do they receive follow-up?
- Are victims accessing advocacy and other services in the community? Does this vary based on which alternative reporting option they pursue? Do the patterns of service utilization vary for different groups of victims (e.g., male victims, victims with disabilities, undocumented immigrants)?
- To what extent are reports being investigated? Are the victim's wishes respected regarding which investigative steps are taken? Are there any problems associated with evidence collection, documentation, transfer, storage, and retrieval?
- What are the case outcomes for various alternative reporting options? How are they resolved by law enforcement? Are they referred to the prosecutor's office?
- How often do victims convert from an alternative reporting option to a standard report? How long does it take them to reach that decision? What factors influence the decision? Are certain victims more likely to convert their report?
- Then for those victims that do convert to full participation, how thorough are the subsequent investigations? How often are charges filed? What are the reasons the prosecutor declined to file charges? Of those charges filed, how many are successfully prosecuted?

With data collected to help answer questions such as these, practices can be identified that help increase victim reporting and criminal justice participation – especially for victims who were initially unsure, unwilling, or unable to do so. Trends can also be tracked across time.



### Resource: Victim Satisfaction Surveys

We offer two examples of victim satisfaction surveys to be adapted for use in your community. They can be found in the Best Practice Resources section of our website. The first example is from the [San Diego County Sexual Assault Response Team](#), and it is designed for victims to evaluate the performance of various professionals (SART nurse, police officer/detective, and rape crisis advocate). The second is from the [Coalition Against Sexual Assault in North Dakota](#); it is designed to evaluate patient satisfaction with health care providers. The third example is from the Women's Justice Center in Santa Rosa, California. It is designed for evaluating the law enforcement response to victims of sexual assault and is available in both [English](#) and [Spanish](#).

In addition, procedural components can be evaluated to determine whether the protocols for various alternative reporting methods are being followed and how that might be influenced by various characteristics of the victim, suspect, or case. For example, are victims receiving follow-up contact? Are they being notified before their evidence is destroyed? Are they contacted when the suspect is named in another report (if they consented to this)? Most important, are these steps in the response protocol more likely to be followed with certain victims than others? Finally, quotes can be collected from victims, support people, and responding professionals, to enliven the documentation of any patterns, trends, and factors affecting their decision making.

### Resource: Statewide Reports on Forensic Compliance Implementation

Two statewide evaluations have been conducted to evaluate the implementation of forensic compliance. However, they can be used more generally as models for assessing how well other forms of alternative reporting mechanisms are working as well.

One outstanding [report](#) summarizes the results of a statewide assessment of forensic compliance in the state of Colorado. The report was produced collaboratively by the [Colorado Coalition Against Sexual Assault \(CCASA\)](#) and the [Colorado Division of Criminal Justice, Office for Victims Programs \(DCJ OVP\)](#). Released in September 2013, the findings are based on an analysis of 151 'medical reporting cases' (i.e., cases where a medical forensic exam was conducted without law enforcement involvement) and survey responses from 239 multidisciplinary professionals. With careful research and clear presentation, the report offers an example for other states seeking to determine how forensic compliance is being implemented statewide and identify areas for improvement.

Another extremely helpful [report](#) summarizes the results of a statewide assessment of forensic compliance in the state of Texas. Authors Dr. Noël Bridget Busch-Armendariz and Laurie Cook Heffron in the [School of Social Work at the University of Texas \(Austin\)](#) conducted hundreds of in-depth interviews and web-based surveys with: Sexual Assault Nurse Examiners (SANEs), medical personnel, rape crisis center

advocates, law enforcement officers, prosecutors, and state agency personnel. Results suggest that the 'non-report program' has been successful, yet challenges remain. Quotes from interviews with professionals are included to enliven findings.

## Why Not Prosecute Without the Victim?

We previously noted that law enforcement will typically conduct only a very limited investigation when victims access alternative reporting methods such as anonymous or non-investigative reporting. Investigation and prosecution are not typically pursued in these cases, because most communities use a victim-centered approach and honor the wishes of victims when they do not want to participate in an investigation or potential prosecution. However, it is worth exploring this issue further, because there is nothing actually stopping law enforcement from conducting an investigation or prosecutors from pursuing charges with such a report. This approach is called *evidence-based prosecution* (and sometimes *hostile prosecution*). It means that the prosecution moves forward with a case based on the physical evidence and testimony of witnesses – without the cooperation of the victim.

We dedicate an entire section to this topic because it is such a critical component of the non-investigative philosophy of alternative reporting methods. The success, and indeed the viability, of the alternative reporting options described in this module are based on the assumption that victims can choose an option that feels comfortable for them and have that choice respected – without fearing that they will lose control of the process, if police and prosecutors decide to pursue the investigation and prosecution of the case against their wishes. We will unpack some of the issues raised by the question of evidence-based prosecution, by first outlining the arguments for using the strategy with sexual assault cases and then offering a 'reality check' for why the arguments may not apply to this particular context.

## Evidence-Based Prosecution

From a historical perspective, we have typically only seen an evidence-based prosecution strategy pursued in domestic violence cases where the victim has recanted, withdrawn cooperation or become hostile to criminal justice participation. Many people believe that evidence-based prosecution has been extremely successful in domestic violence cases, because victims are often very relieved to know they are not the ones responsible for deciding whether or not criminal charges will be filed in their case. The goal is to hold more offenders accountable and decrease the risk of additional harm to victims – because offenders know it is not the victim making the decision about whether the case will be investigated or prosecuted.



## The Community Safety Argument

Based on the success of evidence-based prosecution with domestic violence cases, we sometimes hear discussions about extending this practice to sexual assault. In support of this position, some professionals argue that the safety and welfare of a community outweighs the rights of an individual; the community therefore has an interest in pursuing sexual assault cases regardless of whether or not the victim is able to participate in the criminal justice process.

Because most sexual assaults are felonies (unlike the majority of domestic violence crimes that are handled as misdemeanors) – and because felonies are crimes against the state (and not an individual) – it is clear that prosecutors are not legally required to have the victim's consent or cooperation in order to file criminal charges in a sexual assault case. Therefore, there is no question that evidence-based prosecution is available to prosecutors in sexual assault cases. The question is therefore not whether they can utilize the strategy in this context, but should they?

## The Cultural Change Argument

Beyond community safety, another argument for using evidence-based prosecution in sexual assault cases is the possibility that it might create the kind of positive changes seen in the criminal justice system's handling of domestic violence.

Currently, most prosecutors would not consider pursuing a sexual assault case without the cooperation or testimony of the victim. But there was also a time when no one would have thought to prosecute a domestic violence case without the victim's cooperation. Partly as a result of shifting attitudes in society and an increased understanding of the cycle of violence, we have seen significant decreases over the past decade in the number of domestic violence incidents – and especially in the number of domestic violence-related homicides. Many would argue that the use of evidence-based prosecution has played an important role in contributing to this positive change. As a result, some professionals are asking what would happen if we forced sexual assault cases forward with the same degree of dedication that is currently seen with domestic violence (at least in some communities). Would we begin to see a similar change in the social attitudes about sexual assault? Would these changing attitudes then be reflected in a decreased incidence of sexual assault and/or increased rates of conviction for sexual assault offenders?

These are important questions, and we must carefully consider such paradigm shifts as we work to improve criminal justice and community responses to sexual assault. However, we also need to push these questions further and explore the implications of using evidence-based prosecution with sexual assault, based on the realistic limitations of how and when such a strategy might be used, and clarify the important differences between the criminal justice processing of sexual assault versus domestic violence.



From our perspective, we cannot imagine sexual assault cases realistically being prosecuted without the victim personally testifying. And even if it is possible, it is hard to imagine that the trial would result in a conviction. We therefore believe that the calls for evidence-based prosecution for sexual assault are based more on myths and assumptions, than realities.

### **Time for a Reality Check**

In fact, we think it's time for a reality check in the discussion of this issue. On the most basic level, it is difficult to imagine forcing sexual assault prosecutions forward in cases where the victim does not want to go to trial when there are thousands of sexual assault victims in communities across the country who are desperately trying to pursue justice in their case – but, for a variety of reasons (usually 'insufficient evidence'), criminal charges are not filed. Police officers and prosecutors typically have a full caseload with victims who *want* to participate in the process. It is therefore hard to justify expending resources to pursue cases without the victim's cooperation, especially because they are unlikely to result in successful investigation and prosecution. In other words, when investigations and prosecutions are so often not pursued in cases where victims want their day in court, why would we spend our resources pursuing cases where the victim does not?

If we are considering a strategy of evidence-based prosecution for the purpose of holding more offenders accountable, a better strategy to meet this goal might therefore be to more successfully investigate and prosecute cases where *victims have stated a desire to pursue prosecution*.

In fact, evidence-based prosecution is likely to be seen only in certain cases. This may include cases that receive media attention for whatever reason, whether it is because the victim is very young, very old, or sustained extensive physical injuries – or because the suspect is either a serial perpetrator or an individual who is well-known or highly respected within the community.

Another problem is the defense tactic so commonly used in sexual assault cases which is to attack the credibility of the victim. After all, sexual assault cases are the only cases in which we need special rules (i.e., rape shield laws) to protect victims by keeping their sexual history and other personal information out of court. A moral argument could therefore be made that we need to do a better job with our investigations and prosecutions – and do more to educate the jury pool (i.e., community members) – before we put sexual assault victims at risk for further victimization from the offender as well as the criminal justice system, by pursuing evidence-based prosecution.

### **The Argument of Sparing Victims**

Yet another argument sometimes made by professionals, especially by victim advocates, is that evidence-based prosecution could be used as a way of pursuing successful prosecution in sexual assault cases without putting victims through the ordeal of going to trial. They correctly point out that there are many sexual assault cases where victims are

so traumatized or fearful that they are simply unable to participate in the process of an investigation or prosecution – let alone appear in court. If the case could be prosecuted solely on the basis of the evidence, they argue, such cases could be pursued, and offenders could be held accountable without requiring the victim to testify. This sounds promising, and of course we all struggle with the balance of trying to hold sexual assault offenders accountable while protecting victims from further trauma. However, evidence-based prosecution is unlikely to meet this goal because it is unrealistic to expect that it would work in the way that these individuals are envisioning.

To understand what we're saying, it requires walking through the logic of a sexual assault prosecution and understanding how it will typically unfold in the real world. First of all, we already know that the majority of sexual assault cases involve a victim and perpetrator who know each other, so the defense is not typically based on identification (*You've got the wrong guy*) but rather based on consent (*We had sex, but she/he wanted it*). This highlights one very important difference between the prosecutions of sexual assault versus domestic violence. While domestic violence is also a crime committed by a known offender, the defense in a domestic violence trial will not be based on consent. It may be based on the question of identifying the primary aggressor, and whether the incident was simply 'mutual combat,' but both the law and common sense tell us that a domestic violence victim cannot consent to being punched, kicked, or beaten.

We also know that the consent defense is often extremely successful in sexual assault cases, because judges and jurors frequently share societal beliefs that victims 'ask for' sexual assault by engaging in behavior that is seen as risky or morally questionable. As a result, the consent defense often succeeds, and sexual assault trials end with an acquittal or a hung jury.

Based on the power of such societal beliefs, physical evidence and witness testimony are often insufficient to overcome the deep-seated attitudes of doubt and blame. Even when there are eyewitnesses to the sexual assault and/or a videotape of the crime, the defense is still very often able to convince the judge or jury that the acts were consensual.

Realistically, the only evidence likely to be persuasive enough to overcome a consent defense is the testimony of the victim. The victim is the only person who can recreate the entire reality of the sexual assault, testify that the sexual contact was forced, and demonstrate the devastating impact that the crime has had on her/his life. Do we really expect a judge or jury to be able to make the proper decision in a sexual assault case – and to get a sense of the trauma and pain suffered by a victim of sexual assault – without hearing from that victim? Without victim testimony, it is therefore unlikely that sexual assault prosecutions would result in conviction.

But perhaps the most significant reality check is the fact that *prosecutors (and victims) are not the ones who ultimately decide that a trial will proceed without the victim's testimony*. The US Constitution grants defendants the right to confront all witnesses, and it is hard to imagine any defense attorney in a sexual assault case who would not



subpoena the victim to testify. Therefore, even if prosecutors wanted to pursue ‘evidence-based prosecution’ and not call the victim to testify, it is virtually guaranteed that the defense will produce a subpoena ordering the victim to do so. At that point, the victim is presented with two options, and it is hard to imagine which of the two would be more traumatizing.

On the one hand, the victim in such a situation could testify as a result of a subpoena, but the jury would know that the victim did not want to be involved in the trial and was appearing as a hostile witness. The defense would then use this fact to argue that it can’t possibly be a ‘real rape,’ since the victim isn’t even interested in seeing the defendant prosecuted. It is unlikely the prosecution would be able to overcome this challenge and secure a conviction in the case.

On the other hand, if the victim fails to appear in court in response to the defense subpoena, he or she could potentially be arrested for contempt of court. There have been some high-profile cases where this is exactly what happened: a sexual assault victim was arrested and jailed for not appearing in court. This would certainly be traumatic for victims, especially if they had been led to believe that they would not have to testify. Once again, defense attorneys could very easily argue that there is no better evidence to prove that the victim consented than the fact that she/he did not want to testify and/or failed to appear in court.

In other words, it is difficult to imagine a scenario where victims could avoid testifying and regardless of whether or not they testified, the fact that the case was pursued without their participation makes it extremely unlikely to result in a conviction. Is this really what communities want? It is doubtful that this is what is envisioned by professionals who might argue for the use of evidence-based prosecution in sexual assault cases. It is most likely a matter of not following the logic all the way through, for something that sounds promising but would likely fail to meet its objective and in fact could cause considerable trauma for sexual assault victims. It is therefore critical to explore all of the potential outcomes of any policy or strategy such as pursuing evidence-based prosecution in sexual assault cases.

### **Do Not Offer False Promises**

This raises the question of when evidence-based prosecution might in fact be pursued in a case involving sexual assault. The answer is this: *In the context of intimate partner violence*. This issue is perhaps best illustrated in a case described by Linda Rossman and Heather French (2011) in *Sexual Assault Report*. The case took place in Grand Rapids, Michigan.

In that case, a neighbor called 911 in response to an incident of domestic violence between a husband and wife. He had also committed a sexual assault within the context of this abuse. As a result of the call, police responded to the house, contacted the victim, and generated a police report to document the domestic violence offense. At the time, however, there was no mention of the sexual assault. Meanwhile, the victim went to the

rape crisis center and had a medical forensic examination. At the time, the victim was unsure about whether she wanted to report the sexual assault to police, so she was offered the option of anonymous reporting. The procedure had recently been introduced within the community.

Later, the victim 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 and in this case, the investigating agency obtained a subpoena for the medical records.

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 more likely to be pursued without the victim's cooperation, because many jurisdictions have adopted policies of pursuing evidence-based prosecution for intimate partner violence. Since a medical forensic exam can potentially yield evidence that is relevant for domestic violence charges as well as sexual assault, investigators and prosecutors will often decide to use it 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.

This case highlights the fact that victims of intimate partner violence will often not have a realistic option of choosing alternative reporting methods. An appropriate response therefore requires that we acknowledge this reality and prepare for it in advance, by engaging in the type of multidisciplinary policy discussions Rossman and French describe in their article. As in Grand Rapids, Michigan, 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 and any limitations. 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. This might include cases of intimate partner violence as well as other situations involving mandated reports, such as victims who are severely disabled or dependent adults.

Victims also need to be informed of this possibility. Professionals must 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 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>5</sup>*

## Other Reporting Issues

We now turn our attention to a variety of other issues that arise in the context of sexual assault reporting, including mandated reports, courtesy reports, restricted reporting in the US military, and the use of pseudonyms on public records.

### Mandated Medical Reporting

The issue of medical mandated reporting can be a complicated one, especially as it intersects with the implementation of VAWA forensic compliance. In general, the phrase refers to any legal requirement that health care professionals or others (such as adult protective services) may have to report to law enforcement – either when a patient discloses that they have been the victim of a certain crime – or when they otherwise have a reasonable basis for suspecting that a patient has been the victim of a certain crime (e.g., they observe indicators that a sexual act has been committed against a child or a dependent adult).

These laws vary dramatically in terms of what triggers the mandated reporting requirement, what information must be reported, who must be notified of the report, and what specific procedures must be followed to comply with mandated reporting. For example, in some states, the mandated report needs to be made to the office of the prosecuting attorney rather than – or in addition to – the law enforcement agency with jurisdiction over the assault. It is therefore critical for professionals involved in responding to victims of sexual assault to understand any such laws.

### Mandated Reporting Laws

First, all states require medical professionals to report sexual assault **when the victim is a child** (as defined by state law). In addition, most states require medical professionals to report sexual assault when the **victim is a dependent adult**. The definition of what constitutes a dependent adult is also defined in state law, but it generally includes such factors as advanced age, severe disability, or other factors. Most state laws also require mandated reporting of any sexual assault committed by a **caregiver or other authority figure**, although the exact provisions of these reporting requirements vary by state. The majority of states do not require health care professionals to report sexual assault of **a competent adult**. However, they may still require a report if the victim presents with **certain types of injuries**, including those that are non-accidental, result from violent

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<sup>5</sup> This language comes from the [template materials](#) designed by EVAWI to help communities craft a multidisciplinary protocol for victims to file anonymous reports of sexual assault. As previously described, these materials are available on our website, but they represent only the ‘starting point’ for communities, as they will need to be tailored to the specific agencies, laws, resources, and other unique factors in each jurisdiction.

crime, or involve the use of a weapon that is either described as “deadly” or specified in some other way (e.g., firearm, knife). In states with such a requirement, health care professionals are required to notify police that a patient has presented with the specified injury, but they may not be obliged to say that the patient was also sexually assaulted. Yet it remains unclear in some states whether such laws require medical professionals to report a sexual assault against a competent adult victim that did not result in any physical injury **other than the sexual assault itself**.

Finally, a few states have medical mandated reporting for **intimate partner violence**. In these states, health care providers are required to notify law enforcement when a patient discloses that a sexual assault occurred within the context of intimate partner violence (or when the health care provider has reason to believe this is the case).

### Resource: Medical Mandated Reporting

To find out 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 professional 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](#).

### Explain Reporting Procedures to Victims

Whenever a mandated report must be filed, it is clearly a best practice for victims to be informed of this fact. The health care provider should also explain what specific information will be included in the report. The information that is required will be outlined in state law.



Often a standard report form has been developed by the state to be used for the purpose of making a medical mandated report. In some states, reports may also be made on the phone, but this is typically in addition to submitting the information in writing, within a certain period of time. When the state-recognized form includes only basic information about the incident, health care providers often retain a more detailed report documenting their exam findings as part of the medical and/or SARRT records at their own health care facility. Again, whatever the procedure is, it should be carefully explained to victims, so they understand exactly what will happen.

### **Victims Not Required to Talk with Law Enforcement**

When a health care professional is mandated by law to report a suspected sexual assault or injury to law enforcement, it must be clear that victims do not have the option of deciding whether this report will be made. Victims do decide, however, whether they want to provide any information to law enforcement in connection with the report. In other words, just because a mandated report is filed, this does not mean the victim is required to personally talk with an officer. This would be inconsistent with VAWA forensic compliance provisions.

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. 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 – even when a mandated report has been filed with law enforcement.

In some communities, there is a policy or practice of having an officer personally meet with victims whenever 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 do not believe this represents 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.

### **Possible Conflicts with Other Laws**

It is also important to determine whether any medical mandated reporting requirements create potential conflicts with the implementation of VAWA forensic compliance. For example, a report on forensic compliance in Colorado concluded that three particular statutes overlap and can create confusion when making law enforcement determinations regarding the following:

- Whether law enforcement has a statutory obligation to investigate a sexual assault involving an intimate partner;
- Whether law enforcement has an obligation to honor the victim’s desire to not participate in a sexual assault case within the context of domestic violence; and



- Whether evidence obtained in a medical forensic exam following a sexual assault could be subpoenaed as evidence in a domestic violence case (Moldovan & Livermore, 2013, p.13).

Such potential conflicts may need to be addressed on the level of statewide legislation.

### Do Not Report Without a Legal Requirement

For states *without* medical mandated reporting for competent adult victims of sexual assault, the decision regarding whether or not to file a report with law enforcement should generally be left to the victim. In this situation, the health care provider and/or victim advocate can provide information for victims about their reporting options. Health care providers and advocates can also help victims to weigh their options, so they can make informed decisions regarding criminal justice participation.

However, some health care facilities have a written policy, or an unwritten practice, that they will report to law enforcement even when they do not have a legal mandate to do so. We believe this practice violates the spirit of VAWA forensic compliance provisions, which are designed to increase access to medical forensic examinations for victims who are unsure, unwilling, or unable to report to law enforcement.

Moreover, this practice of reporting a patient's disclosure of sexual assault to law enforcement constitutes a violation of HIPAA unless one of two conditions are met:

- The report is required or expressly authorized by state law.
- The patient has consented to the report being made.

### Three Possible Scenarios

To summarize, there are three possible scenarios when it comes to mandated reporting.

- **The law requires health care providers to report any suspected sexual assault to law enforcement.** If this is the case, the report will be made regardless of whether or not the patient consents to it. However, the patient should be advised of this mandate in advance.
- **The patient asks to talk to law enforcement.** Health care providers can contact law enforcement if the victim requests it, regardless of whether or not there is medical mandated reporting.
- **There is no law requiring or expressly authorizing a report to law enforcement, and the patient has not consented to it.** In this scenario, a health care provider would be in violation of HIPAA if they reported the suspected sexual assault to law enforcement.

### Resource: Medical Mandated Reporting and HIPAA

For more information on medical mandated reporting and HIPAA, please see our two-part training bulletins\_series entitled: [Notification of Advocates and HIPAA and More on Advocates, Routine Notification, and HIPAA](#) on the topic.

### Reporting Without Identifying Information

In most of the discussion of medical mandated reporting, it is assumed that the report to law enforcement will include the victim's name and/or other identifying information. However, there is an important distinction between states that require mandated reports to include the victim's name and other identifying information – and those that do not.

In some states, **health care providers must provide the victim's name to law enforcement**, so mandated 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 the victim's name or identifying information**. 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.

Any such protocol must be carefully designed with collaboration between law enforcement personnel, health care providers, victim advocates, and other community professionals. The protocol must also be supported with written documentation of a good faith agreement that law enforcement agencies will not investigate these reports, except in certain circumstances.

### Resource: Medical Mandated Reporting

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

## Outreach to Mandated Reporters

Because the details of medical mandated reporting laws vary dramatically, professionals from law enforcement, health care, victim advocacy, and other disciplines must work together to keep up with changes in the law or policy as well as clarifying their own understanding. Also needed is a community-wide, multidisciplinary protocol for complying with any requirements. As described in the *National Protocol for Sexual Assault Medical Forensic Examinations* this could include other supporting initiatives, such as a toll-free hotline number and public outreach.

A **toll-free hotline number** dedicated to abuse reports may also help simplify reporting and ensure a written report of each case and referrals to appropriate agencies. Such a hotline could be operated at a State, tribal, regional, or local level (*National Protocol*, 2013, p.54).

Community professionals will then need to engage in outreach efforts to inform mandated reporters of their responsibilities and the specific procedures for reporting. This may include **public information initiatives**, so mandatory reporters know the “applicable statutes regarding reporting sexual assault cases that involve older vulnerable adults, persons with severe disabilities, and minors” (*National Protocol*, 2013, p.54).

## Courtesy Reports for Other Jurisdictions

Another topic related to the reporting options for sexual assault is courtesy reports. Unfortunately, many people are assaulted while they are away from home – whether it is a sexual assault, intimate partner violence, or any other crime. What can become complicated for law enforcement is the fact that many of these victims wait to report the crime until they return home. This makes sense, because they have the support of family and friends at home, as well as other service providers they may feel more comfortable contacting. However, this often means that the law enforcement agency receiving the report may not be the one with jurisdiction over the crime. Guidance is therefore needed in this area – both for law enforcement professionals to know how to respond – but also to inform other community professionals about the options that are available for law enforcement responses in this type of situation.

## Responding to Victims

When victims report their assault after returning home, the law enforcement agency in their hometown may be able to assist the agency with jurisdiction – by taking a *courtesy report*. They may even be able to conduct the victim interview. This can go a long way toward alleviating the burden on victims, by avoiding any unnecessary requirement to return to the visited community, in order to report the assault or participate in an interview. It also represents an extension of the ‘professional courtesy’ that is so valued within police culture, as one way an agency can provide much-needed assistance for another. With law enforcement agencies providing this type of support for each other,

victims and communities both benefit from improved criminal justice responses and interagency cooperation.

When a courtesy report is taken, law enforcement professionals in both communities can work together to obtain information and evidence from the victim. Local advocates can also help the victim connect with the advocacy organization in the community where the assault took place. This aids communication with the victim and law enforcement agency, as well as other service providers in that community. If the victim does have to return to the community where the assault occurred, then a connection with supportive services will already be established.

### **Courtesy Reports**

So, what are courtesy reports? In essence, they are simply reports of crime that are taken by one law enforcement agency on behalf of another. They were recommended, for example, to use with the victims of Hurricane Katrina who were sexually assaulted in one community but reported the crime after evacuating to another. However, this is not just an issue for disaster response. Courtesy reports are frequently taken by law enforcement agencies that have a high volume of cases involving transient populations such as tourists, students, or military personnel.

Law enforcement agencies should be prepared to take a courtesy report of any crime, including sexual assault or intimate partner violence, regardless of the jurisdiction where it occurred. This does not mean that the officer taking the report has to be familiar with the state penal code or procedures in the jurisdiction where the assault took place. In fact, during the preliminary interview used to record the courtesy report, the reporting officer does not need to obtain a case number, identify the specific location of the assault, or determine the exact criminal offense that was committed. The process is similar to reports of child abuse, which often involve families who have moved. Yet there are other examples where such courtesy reports are often taken:

- To illustrate, young people from one state are all too often sexually assaulted while attending school in another state. Following the assault, the student will sometimes move back home. In these situations, it is very common for the agency in the jurisdiction where the assault occurred to ask the agency where the student moved to conduct a preliminary interview. They may even ask the other agency to conduct any subsequent follow-up interviews, depending on the course of events and how the investigation unfolds.
- Courtesy reports are also common in cases involving military personnel (as well as their dependents) who are deployed following an assault. In these situations, a military investigator will often conduct the preliminary interview or any necessary follow-up interviews because the victim or suspect is unavailable to a civilian law enforcement agency (e.g., on a ship or in a foreign country).



- Courtesy reports can be helpful in areas with a great deal of tourism, as well. In San Diego, for example, law enforcement personnel frequently deal with sexual assaults committed against American citizens while they are in Mexico. In such cases, the San Diego Police Department will often take a preliminary report and work with a liaison officer to Mexico. In some rare cases, the San Diego Police Department will even analyze crime lab evidence, possibly obtained from the victim's medical forensic exam or clothing, because they have the resources to do so and Mexican authorities often do not.

There are many different situations where courtesy reports are routinely taken by one law enforcement agency on behalf of another. It is therefore a service that any law enforcement agency should be prepared to provide to someone who has been assaulted somewhere else.

Yet courtesy reports can even be used for different agencies within the same county or state. This exemplifies a victim-centered approach, for those situations where someone finds the courage to contact law enforcement to report a sexual assault – only to find out that it is the 'wrong' agency. Far too often, victims in such a situation are told to drive across town, or across the county, or even to another county or state, in order to make their report in the jurisdiction where the sexual assault occurred. Is it any surprise that so many of these victims decide not to make the drive, and not to pursue reporting their sexual assault at that time? Some may decide to try again, by reporting the crime days, weeks, months, or even years later. Some never will.

Again, this is similar to many cases of child abuse, where a mandated report is received by a city police department that begins the investigation only to determine that the case actually belongs to the county Sheriff's Department or another law enforcement agency. Depending on the amount of work already completed, the police department might continue the investigation and coordinate these efforts with the Sheriff's Department. Agencies should make such decisions on a case-by-case basis, always keeping in mind what is in the best interest of victims, as well as each community as a whole. This is particularly critical given how transient so many of our populations are. In this scenario, it is very likely that the offender who is being reported for committing a crime in the county or on campus is likely to cross over into the city. Conducting a thorough investigation, and potentially prosecuting this offender, is therefore in the best interest of the entire community. It is just another way for a law enforcement agency to 'protect and serve.'

### **The Need for Effective Documentation**

Of course, just because a courtesy report is taken, this does not necessarily mean that the report will be investigated or resolved any time soon. Like so many other reports, it may never be successfully investigated and prosecuted. However, even if the report languishes for a period of time, it is important to remember that investigations can be resurrected and prosecuted long after a crime occurs – as long as it is within the statute of limitations. This is especially true now that a number of states have abolished the statute of limitations for sexual assault cases, or at least extended it significantly. Even if

the statute of limitations has expired, investigators can seek to determine whether the suspect fled the state. If this can be established, prosecutors can often argue that the statute of limitations was suspended much like a warrant and pursue prosecution on this basis.

Yet the potential for future prosecution is not the only reason for law enforcement to take a courtesy report. There are many other reasons for documenting the incident as well.

- First and foremost, this type of appropriate response by law enforcement can provide victims with validation – which is so important in these cases because victims are often not believed or seen as being responsible for their sexual assault.
- In addition, this procedure can provide the community and law enforcement with important information about the real prevalence, characteristics, and impact of sexual assault being perpetrated locally.
- Documentation may also provide victims with the ability to seek reimbursement from Crime Victim Compensation for financial losses, counseling, or other services.

These are all good reasons for law enforcement agencies to take courtesy reports for any victim who reports an assault perpetrated against them, regardless of the jurisdiction where it occurred.

### **Common Concerns: Admissibility of Evidence and Costs**

When implementing a policy for courtesy reports, there are a variety of issues that can cause confusion and concern. For example, police and prosecutors are sometimes concerned about the admissibility of evidence associated with a courtesy report. However, this should not be a problem as long as the chain of custody is maintained, and appropriate policies and procedures are followed with a courtesy report just as in any other case.

Another concern often raised is the potential cost for a law enforcement agency that has taken a courtesy report, particularly if the officer has to travel to testify in the resulting trial. If such a situation did arise, the travel expenses would be paid for by the office of the prosecuting attorney's office. However, the law enforcement agency taking the courtesy report would still have to cover the costs of having that officer out of service while traveling and testifying at trial. Yet this really is no different than when an officer makes an arrest on a felony warrant from another state. The bottom line is that none of these factors should be considered during a preliminary response. Far more important is the fact that taking such a courtesy report is the right thing to do, and it is something that law enforcement agencies should therefore be prepared to do to assist victims and fellow law enforcement officers, regardless of the jurisdiction of the assault.

## Technical Recommendations for Courtesy Reports

For law enforcement agencies taking courtesy reports, we offer the following recommendations:

- When taking a courtesy report, officers do not need to evaluate what the law might be in the jurisdiction where the sexual assault was committed or try to determine the exact penal code for the crime being reported. Rather, the officer can simply write “courtesy report” in the crime code section of the incident report. Issues of the other jurisdiction’s penal code are best left for law enforcement officials in that state, if the case is further investigated or prosecuted.
- Any law enforcement agency taking such a courtesy report is advised to record the interview with the victim, either with an audio recording or a video recording – with the victim’s permission and knowledge. The recording should then be provided to the agency with jurisdiction to assist their investigation.
- As with any other sexual assault report, the law enforcement agency taking a courtesy report should contact a victim advocate as soon as possible, to provide the victim with information, emotional support, and other services. The victim advocate can also help to explain law enforcement procedures to the victim and address any questions or concerns the victim might have. The advocate can also help facilitate advocacy services in the community where the assault took place.
- When completing a courtesy report, it should be coded with an incident number, so it can be archived and indexed within the agency’s filing system.
- For some courtesy reports, the location of the assault will be unknown. This might cause problems for agencies that have a computer system requiring a crime location to assign a tracking number. One possible solution is to use the address for the law enforcement agency receiving the courtesy report. This solution is frequently used in child abuse cases where young victims have no idea exactly when or where their abuse took place.
- The law enforcement agency taking the courtesy report should not include it in the statistics for Uniform Crime Reporting (UCR) purposes, because the crime did not occur in their jurisdiction.
- Courtesy reports should be recorded and stored using whatever terminology the law enforcement agency has for a written report documenting an incident with details that need to be worked out during a follow-up investigation. In some agencies this will be described as an *informational report*. In others, it may be referred to as a *non-investigative report*, *information only report*, *officer’s report*, *hold pending report* – or some other term.



- Due to the nature of a courtesy report, many will be made after a significant period of time has elapsed since the sexual assault. As a result, forensic evidence from the victim's body may not be available. Many communities now use a cutoff of 5 days (or 120 hours) for obtaining a medical forensic examination. However, emerging research suggests that evidence may be available on the victim's body far longer than previously believed, so careful evaluation is needed before ruling out the possibility of conducting an exam. Moreover, depending on the length of time since the assault, the victim may still have physical injuries that can be documented. Victims can therefore be encouraged to have photographs taken even if a complete medical forensic exam will not be conducted.
- Although much of the biological evidence that might be available in other cases will not be in these situations, it is important to remember that other types of evidence may still be available – such as clothing or photographs that might have been taken during the sexual assault. In fact, this type of evidence is often available long after biological evidence disappears from the victim's body, so victims can be asked during their interview to help identify such evidence. That way, it can potentially be collected and maintained by the law enforcement agency taking the courtesy report.

Other strategies can also be used to gather evidence in this type of case. For example, law enforcement investigators should consider obtaining electronic/digital evidence such as text messages, emails, and information from social media sites – as well as conducting a pretext phone call with the suspect (also frequently referred to as a *one-party consent call* or *controlled call*). All of these strategies can be useful when investigating a sexual assault, even when the report is delayed or made in another jurisdiction using a courtesy report.

### **The Right Thing to Do**

Many law enforcement professionals and others are seeking a way to assist victims who have been assaulted in another community, and courtesy reports offer one way they can lend a helping hand. As previously noted, these reports also offer a way for law enforcement professionals in one agency to extend the spirit of professional courtesy to another agency.

The bottom line is therefore that this is simply the right thing to do. It is positive for victims, positive for law enforcement, and therefore it is good for all our communities.

### **Using a Pseudonym**

Another issue that often arises in the context of alternative reporting methods is the victim's use of a pseudonym. Some states have enacted laws to provide victims the option of using a pseudonym (i.e., false name) on all legal and medical documents associated with a reported sexual assault. This concept is often confused with an anonymous report, but it is not the same thing. When victims use a pseudonym on their



legal and medical records, they are often not truly anonymous. The pseudonym is simply used to protect their confidentiality in public forums such as records that can be obtained by reporters or in a criminal trial. The victim's identity will typically be known both to law enforcement as well as any health care providers who conducted a medical forensic examination.

In this scenario, reports generally include the victim's name and other identifying information so they can be properly archived and searched. However, for victims who request it, their name and other identifying information are removed before the report is released. Then if there is a trial, victims can either testify in court using a pseudonym (e.g., Jane/John Doe) or using only their first name. This decision would be made by the victim and the prosecuting attorney in the case.

### Texas Example of Victim Pseudonyms

Texas offers one example of a victim pseudonym law. As described in the [Sexual Assault Advocate Training Manual](#) developed by the Texas Association Against Sexual Assault (TAASA, 2004), there are a number of advantages and disadvantages to this practice.

- On the one hand, the primary advantage of using a pseudonym is that the victim may be protected to some extent from unwanted publicity. One of the commonly cited fears among sexual assault victims is that their name will appear in the press, and the use of a pseudonym can be sufficiently reassuring to victims that they will be able to report the crime and participate in the police investigation.
- However, even the use of a pseudonym cannot realistically be expected to protect the privacy of victims if the case goes to court. If the sexual assault investigation results in criminal prosecution, there will likely be enough information presented in court that the victim will be identifiable even when a pseudonym is used.
- The primary disadvantage of the practice is that “a survivor who chooses to use a pseudonym may be less credible in the eyes of the legal system than a survivor who reports or files a complaint in his/her own name” (p.111).

As the TAASA manual goes on to describe, having victims use a pseudonym on a police report of a sexual assault requires a number of policies and protocols – not only within the law enforcement organization but with other agencies and individuals as well. For example:

- If a survivor chooses to use a pseudonym, all people and agencies involved in her/his case must receive a copy of the pseudonym form – the hospital emergency room and registration, the police or sheriff's office, Crime Victim Compensation, her/his therapist, sexual assault programs, etc.

- Law enforcement agencies are encouraged to use the pseudonym form routinely and at first contact. If it is not offered and the victim requests it later, all public records and court proceedings will need to be changed retroactively.
- All press releases or statements about a sexual assault case should include a disclaimer that a pseudonym is being used.

Other recommendations for the implementation of this policy include the following:

- We suggest that the word ‘pseudonym’ be used in place of the name on any public documents.
- Please advise survivors that the name they choose will follow them through the criminal justice system. Care should be taken in the choice.
- Also, the pseudo-address and phone number used should be that of the police department or sexual assault program or it should be left blank on the affected documents.

To provide a sense of how victim pseudonyms work in the Austin Police Department, a Victim Services Counselor provides all victims of sexual assault with information on obtaining a pseudonym – both in writing and verbally. Although the agency is not required to provide this information verbally in addition to written materials, the practice within the Sex Crimes Unit is to do so, to ensure that it is truly understood by the victim. Then the victim is advised to choose a name, and the detective investigating the case goes through all of the documents and changes the victim’s actual name to the pseudonym.

Enacting this practice requires additional work for detectives, but Sergeant Liz Donegan states that it represents best practice for law enforcement agencies because, “It gives victims a choice about whether they want people to know they are a survivor.” According to Sgt. Donegan, the practice is used with increasing frequency now that the process is being explained verbally and not just described in a brochure provided to victims by a Victim Services Counselor.<sup>6</sup>

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<sup>6</sup> Personal Communication, Sergeant Liz Donegan, Austin Police Department, Sex Offender Apprehension and Registration (SOAR) Unit.



### Resource: Sample Form for Victim Pseudonym

A sample form for establishing a victim pseudonym is provided in the [Sexual Assault Advocate Training Manual](#) published by the Texas Association Against Sexual Assault and the Office of the Attorney General. On that form, there is a space provided for the victim to give permission for the release of identifying information for specific purposes. Victims are then offered the option of releasing their name to any or all of the following agencies:

- Local sexual assault program.
- Law enforcement / Crime victim liaison.
- Crime Victim Compensation.
- The victim's medical insurance carrier.
- District Attorney's office.
- Victim-witness assistance.
- Court ordered restitution office.

Once the form is completed by the victim, one copy is retained by law enforcement, another is provided to the victim, and a third is included in the case file to be forwarded to the prosecuting attorney, as well as probation or parole (TAASA, 20014).

### A Word of Caution

Before we conclude this section on victim pseudonyms, a word of caution is in order. Any community that is implementing policies and procedures to honor a victim's concern regarding confidentiality must brainstorm all the challenges that might arise. For example, reporters often obtain copies of search warrants, so redacting a victim's name from a crime report may not be enough to protect her/his identity. One possible solution to this problem is to ask the judge to seal the warrant, when the victim's name and other identifying information (such as the victim's address if it is the location of the crime) are revealed in the warrant.

The need for such protection was poignantly illustrated in an example out of the San Diego Police Department's Sex Crimes Unit. The case involved a drug facilitated sexual assault, and the victim came from a law enforcement family; her mother, father, and sisters all worked in policing, and she did not want her family to know about the assault. The investigator and prosecutor worked hard to protect her confidentiality, but the subpoena was mailed to the victim's home where she lived with her father. Subpoenas always list the suspect's name as well as the charges and date to appear, so this served the purpose of notifying the victim's family that she had been sexually assaulted. The victim, and those who had been trying to do their best to protect her confidentiality, were



all devastated. This example is important to keep in mind when striving to protect the identity of sexual assault victims; it is not an easy thing to accomplish.

## Restricted Reporting in the US Military

Up to this point, we have been discussing the philosophy and implementation of alternative reporting methods within the context of the civilian justice system. Yet even before the forensic compliance provisions in VAWA 2005 set off an “earthquake in sexual assault response,” which led to the subsequent focus on alternative reporting procedures, the US Department of Defense was already leading the way with their implementation of a policy for *restricted reporting*.<sup>7</sup>

### Before Restricted Reporting

The reporting methods available to victims of sexual assault changed dramatically as a result of the policy on *restricted reporting* enacted in 2005 by the US Department of Defense. Before this change in policy, advocates and health care providers working within the military did not have any confidentiality in their communications with victims. If they were aware of any sexual assault committed by or against a service member, they had a legal obligation to report it to 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 (US Army CID, 2005).

In fact, the lack of confidentiality did not just end with the sexual assault – anyone working within the military may have had a duty to report any conduct of another service member that violated the Uniform Code of Military Justice or military regulations.

Unfortunately, any disclosure of a sexual assault might have also revealed the fact that the victim had been drinking underage or fraternizing with someone prohibited by military regulations. Given how often such violations occur in the context of sexual assault, this policy had a chilling effect on victims, making it extremely unlikely that they would come forward to tell anyone within the military what happened or to seek medical treatment or other services.

### Policy for Restricted Reporting

This all changed when the US military implemented a policy of restricted reporting for all service branches. The policy is described in a publication by the US Air Force (2005):

*Restricted reporting is intended to give a victim additional time and increased control over the release and management of the victim’s personal information and to empower the victim to seek relevant information and support to make an informed decision about participating*

<sup>7</sup> We would like to thank Teresa Scalzo, Deputy Director for the Navy JAG Trial Counsel Assistance Program at the Navy Judge Advocate General’s Corps for her valuable contributions and review of this section.

*in the investigative process. A victim who receives appropriate care and treatment and is provided an opportunity to make an informed decision about filing an unrestricted report with law enforcement or command authorities is more likely to develop increased trust that their needs are a primary concern (p.7).*

In other words, the policy of restricted reporting is designed to increase the chance that a victim of sexual assault will seek help from a variety of sources. However, it is also explicitly designed to encourage victim reporting, if the care and compassion they receive in response to their restricted report helps them feel comfortable converting to the standard unrestricted procedure.

### **Advantages and Disadvantages of Restricted Reporting**

As long as a report of sexual assault remains restricted, the victim can access all of the following services **without triggering an investigation**:

- Medical testing and treatment.
- Medical forensic examinations.
- Advocacy services.
- Counseling assistance.
- The services of a Special Victim Counsel.
- Support from a chaplain.

Of course, the lack of an investigation means that the following disadvantages will be seen:

- No investigation or prosecution is conducted.
- The offender goes unpunished.
- The victim is unable to obtain a military protective order (MPO).
- The victim may have continued contact with the offender.

### **Who Can Receive a Restricted Report?**

The option of making a restricted report is available to active duty service members, dependents eligible for health care, and others (although this varies to some extent by the branch of service). Any of these individuals can make a restricted report by disclosing their sexual assault to a Victim Advocate (VA), Sexual Assault Resource Coordinator (SARC), or health care provider.



## Providing Information about the Restricted Report to the Victim's Commander

If someone other than a SARC receives a restricted report of sexual assault (e.g., a Victim Advocate or health care provider), that person must notify the SARC. The SARC then has responsibility for providing a limited amount of non-identifying information to the commander of the victim's unit within 24 hours (US Army CID, 2005). The purpose of this notification is to "provide commanders with a more complete picture of the sexual violence within their commands" and to "enhance a commander's ability to provide a safe environment" (US Air Force, 2005, p.7). The SARC may also become aware of a sexual assault report through information provided by law enforcement authorities or even from other professionals outside the military. This would also require providing information to the victim's commander.

In general, the information to be provided by the SARC to the victim's commander will include the following:

- Age.
- Gender.
- Grade.
- Component.
- Status.
- Location.
- Type of assault (US Army, CID, 2005).

The SARC does not provide the victim's name as part of this notification, and if any of the other information might serve to identify the victim personally it would not be provided either. For example, if there is only one woman at a certain rank or in a small command, the commander would not be provided information about the gender or rank of the victim.

Only certain people can receive a restricted report (or disclosure) of sexual assault and fully protect the victim's confidentiality by not providing information to the commander. These are individuals with full legal privilege, meaning they have completely protected communications with victims: Chaplains, Special Victim Counsel, defense counsel, and legal assistance attorneys.

## Converting to an Unrestricted Report

Only the victim can decide whether their best option within the military system is restricted or unrestricted reporting. It is therefore important to note that victims can decide at any time to change a restricted report to an unrestricted report, which will then trigger the investigative process. However, once initiated, an investigation cannot be terminated at the wishes of the victim. In other words, a restricted report can change to

an unrestricted report, but an unrestricted report can never go back to being restricted (US Army CID, 2005).

The data suggest that approximately 15% of service members who initially file a restricted report later convert to an unrestricted (standard) report each year, thereby triggering an investigative process (US Department of Defense, 2012). However, it is important to note that some of these reports were not converted voluntarily by the victim.

As previously noted, there are specific job classifications within the US military who can receive a restricted report (or just an informal disclosure of sexual assault) and protect the victim's confidentiality. If the victim tells anyone else, that person is not required to keep the information confidential and may report it through their chain of command, thus triggering a full investigation. In fact, some members of the US military are explicitly required to report any such disclosure following established procedures within the chain of command.

In other words, if a victim tells his/her best friend (who is also serving in the military) that he/she was sexually assaulted, the friend may be mandated to report it to a superior – or may voluntarily report it to a superior – and an investigation will be initiated even if it is against the wishes of the victim. Also, if a victim tells his/her supervisor, that person is also mandated to report the information and an investigation will be launched. In both cases, the report cannot be protected as restricted. Even if the victim has filed a restricted report with someone who can protect it as such, a commander or military investigator may learn about the incident from another source and thus be required to launch an investigation through the process of unrestricted reporting. This is called an independent investigation. Thus, the bottom line is that victims in the military have no absolute guarantee of confidentiality and no promise that a restricted report will stay that way.

However, even when a report is converted from restricted to unrestricted, all communications with SARCs and victim advocates will remain confidential because these communications are also protected by an evidentiary privilege. Information communicated to a health care provider should also remain confidential because it was communicated through a restricted report, but these communications are not protected by a privilege and the issue has not yet been litigated.

### Resource: Military Responses to Sexual Assault

Centralized information on the military response to sexual assault can be found at the US Department of Defense website for [Sexual Assault Prevention and Response \(SAPR\)](#). The [SAPR Program Procedures](#) provide a detailed overview of the policies and procedures of the SAPR program, the Sexual Assault Forensic Examination (SAFE) Kit, and guidance on how to handle sexual assault cases. Information regarding [privileged communication](#) between a victim and a victim advocate can be found on the SAPR website. The Victim Reporting Preference Statement is also available in the [SAPR Toolkit](#), to provide information for victims about their options and document their reporting selection.

## Responding to False Reports

While this module focuses primarily on the methods used by law enforcement to receive, document, track, and otherwise respond to various reports of sexual assault, one topic that merits consideration is how agencies respond when the report of sexual assault they receive is false.

For example, materials for the *You Have Options Program* specifically state that agencies should not arrest a person for filing a false report of sexual assault based simply on the victim's recantation – additional evidence is needed to support the false report charge. In fact, even if there is evidence to corroborate that a report is false, the materials from Ashland make it clear that careful consideration should be given to a number of factors before making an arrest.

### Prosecutions for Filing a False Report

These issues are articulated in a study conducted by the English Crown Prosecution Service in 2013, to examine cases involving “allegedly false allegations of rape or domestic violence, or both” (p.2). In that study, a total of 121 rape cases were examined where prosecution was considered for filing a false report.<sup>8</sup> Yet analysis revealed that many of those cases did not appear to be false reports – or even if they were false, they were not made with deliberate intent.

- For example, just over half (51%) of the cases involved young people, many of whom “showed a clear failure to think about (or even awareness of) the seriousness of making an allegation of rape” (p.26).

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<sup>8</sup> These 121 cases constituted all of the rape cases considered for prosecution by the Crown Prosecution Service during a 17-month period. Of these, 35 were ultimately charged with the felony crime of “perverting the course of justice,” whereas 10 were charged with the misdemeanor offense of “wasting police time.” The report begins by contrasting these numbers with the 5,651 prosecutions for rape in the same time frame.



- Almost one in five (19%) of these individuals had “mental health difficulties.” In some of these cases, it was clear that the person “did not understand the legal definition of consent” (p.31).
- Almost half (46%) of the cases were initially reported by a third party (more than half of which also involved a victim who was under 18 years old). In many of these cases, the person “later reported that the whole thing had spiraled out of control and he or she had felt unable to stop the investigation” (p.14).
- Alcohol and drug use were particularly common in these cases, including those where the person “might have been raped, but could not recall because s/he had drunk alcohol or taken drugs” (p.32).

In fact, many of the cases included in the Crown Prosecution Service study involved no clear allegation of rape at all. This was particularly true when the person was young, where drugs or alcohol were involved, and/or when the report was made by a third party.

- For example, in some cases, the person “had undoubtedly been the victim of some kind of offence, even if not the one which he or she had reported” (p.4).
- In other cases, analysis revealed that there was no evidence to support the charge of a false allegation: “On close examination...there was nothing to show that what she was saying was untrue” (p.31).

In such cases, it doesn't make any sense to prosecute a person for filing a false report. As described by the researchers, some of these victims called police to report that they might have been raped, but they could not recall any details because of their drug or alcohol use.

When someone is not sure whether she/he was raped, the burden is on law enforcement to investigate and determine whether there is evidence to corroborate a sexual assault. The determination can only be made on the basis of the investigative findings – not the victim's initial statement. At that point, the report should typically be documented as an informational report and only scored as a crime report if and when the evidence establishes that the elements of a sexual assault offense have been met.

## Policy Guidance

It is difficult to understand why someone would be prosecuted for filing a false report if there is no evidence to corroborate the charge. This is clearly against policy guidance in this area. For example, the International Association of Chiefs of Police (IACP) states the following:

*The determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted. **This determination can be made only after a thorough investigation.***

This should not be confused with an investigation that fails to prove a sexual assault occurred. In that case the investigation would be labeled unsubstantiated. **The determination that a report is false must be supported by evidence that the assault did not happen** (IACP, 2005, pp.12-13, emphasis original).

The FBI offers similar guidance for the Uniform Crime Reporting (UCR) Program, clarifying that a reported crime can only be unfounded as false or baseless “if the investigation shows that no offense occurred nor was attempted” [SRS User Manual](#) (2013, p.111). It is therefore not surprising that the same point was made by the Crown Prosecution Service in the UK:

*In dealing with these cases, the prosecution must be able to prove to the criminal standard that the initial complaint was in fact false* (2013, p.27).

This standard was not met in many of the cases included in the Crown Prosecution Service study.

### Prior Reports

One factor that appeared to be especially important in the minds of Crown Prosecutors was whether or not the person had made a previous report of sexual assault. It is clear that a prior report was often seen as a “strike” against the person, raising questions about the legitimacy of the new report. Some of these cases even involved people who had previously been *prosecuted* for filing a false report. Yet the study highlighted that a lack of prosecution in a prior case was often confused with the report actually being false. In other words, prosecutors in these cases saw that the person had reported another sexual assault in the past -- which was not prosecuted.

However, rather than viewing the prior report as one of the vast majorities that are not successfully prosecuted, many apparently made the logical leap to decide that it had actually been false.

*There was a lack of appreciation that the earlier allegation had no probative value unless it could be shown not merely that there had been no prosecution but that it was also provably false* (Crown Prosecution Service, 2013, p.32).

This raised concern that there was a “self-fulfilling prophecy” operating for people who report being sexually assaulted more than once. The concern is particularly distressing, because the single best predictor of who will be sexually assaulted in the future is whether or not the person was sexually assaulted in the past, particularly during childhood (for review, see Breitenbecher, 2001). The cycle was poignantly described in the Crown Prosecution Service study:

*Each time she complained, investigators or prosecutors would see that this was perhaps the third or fourth time she had reported that she had been raped and would regard that as evidence of unreliability thereby ensuring that the present allegation would not be prosecuted either (2013, p.33).*

Based on this analysis, Keir Starmer, Director of the Crown Prosecution Service concluded:

*From the cases we have analyzed, the indication is that it is therefore extremely rare that a [person] deliberately makes a false allegation of rape or domestic violence purely out of malice. It is within this context that the issue should be viewed, so that myths and stereotypes around these cases are not able to take hold.<sup>9</sup>*

There is every reason to believe the same conclusions would be justified in the US context.

### **First Stage: Evidence Phase**

With these findings in hand, the Crown Prosecution Service went on to offer guidance regarding when to consider prosecuting someone for filing a false report of rape or domestic violence. The same guidance can be used by law enforcement, because investigators often play a significant role in determining when prosecution will be considered against someone filing a false report.

The guidance suggests that the decision should be made as part of a two-stage process. First is the *evidence phase*, where investigators and prosecutors decide whether there is any evidence to support the charge – or if it is simply based on suspicion, doubt, or stereotypic assumptions.

*It is, for example, well known that many rape cases will result in no visible physical injuries to the victim. The lack of injuries should not, therefore, be taken into account as a factor which tends to support the falsity of the allegation unless there is a clear evidential basis such as the [person] saying that s/he was repeatedly punched and kicked (Crown Prosecution Service, 2013, p.30).*

Further complicating matters, the report highlighted some cases where evidence appeared to be fabricated – but the report still may not have been false.

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<sup>9</sup> Under the Spotlight: Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations. Crown Prosecution Service, England, UK, dated March 13, 2013. [http://www.cps.gov.uk/news/latest\\_news/under\\_the\\_spotlight/](http://www.cps.gov.uk/news/latest_news/under_the_spotlight/) (accessed September 24, 2014).



*It became clear in some cases there was at least a possibility that the [person] may have been trying to bolster a true allegation out of fear that s/he wouldn't be believed (Crown Prosecution Service, 2013, p.31).*

Therefore, prosecution for filing a report is only justified when there is evidence to corroborate the charge. If there is no such evidence, no charge should be brought for filing a false report. This conclusion is offered in rather clear terms within the Crown Prosecution Service report:

***If there is any question as to whether the original allegation might in fact have been true...then no charge...should be brought (emphasis added).***<sup>10</sup>

### **Second Stage: Public Interest Phase**

Only when there is evidence to support the charge should investigators and prosecutors move on to the second stage of decision making: The *public interest phase*. The question at this stage is whether prosecution is *the right thing to do*, not just whether *it can be done*. Any such decision must be made on a case-by-case basis, taking into account factors such as the following:

- Was the investigative process prolonged over a period of time?
- Was the suspect arrested, charged, or even prosecuted?
- Was any evidence fabricated to support the false report?
- Was the person filing the false report the victim of another related crime (especially intimate partner violence perpetrated by the person named in the false report)?
- Is the person making the false report young, or does she/he have mental health issues?
- Was the false report motivated by malicious intent?

It is particularly important to consider whether there is a background of intimate partner violence that may have led to a retraction or recantation of the report (Crown Prosecution Service, 2013).

### **Making a Decision**

We believe these factors operate in fundamentally similar ways here in the US. The

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<sup>10</sup> Guidance Perverting the Course of Justice – Charging in Cases Involving Rape and/or Domestic Violence Allegations. Crown Prosecution Service, England, UK, undated.  
[http://www.cps.gov.uk/legal/p\\_to\\_r/perverting\\_the\\_course\\_of\\_justice\\_-\\_rape\\_and\\_dv\\_allegations/](http://www.cps.gov.uk/legal/p_to_r/perverting_the_course_of_justice_-_rape_and_dv_allegations/)  
(accessed September 24, 2014).

general guidance would also be the same, because the same factors should be weighed by investigators and prosecutors when making a decision about prosecuting someone for filing a false report. We thus offer this discussion to guide police and prosecutors regardless of their home countries.

When prosecution appears to be warranted – both on the basis of the evidence as well as the public interest – it is important to keep in mind that it may be perceived by the public (including victims, both past and future), as yet another example of a sexual assault report that was not believed by law enforcement, with the victim and not the perpetrator being the one who is punished. This will almost inevitably have a negative effect on the likelihood of sexual assault victims reporting to law enforcement. For this reason, we recommend making such decisions as part of a **multidisciplinary process**.

This can help ensure that the various advantages and disadvantages of the specific courses of action are carefully considered in each particular case.

For example, some of the possible **advantages** of prosecution for filing a false report include:

- Vindicating an innocent person who may have been arrested, booked, subjected to a forensic examination, and possibly even charged with sexual assault.
- Informing communities about the outcome of high profile cases and the fear that might have been generated, especially since many actual false reports involve strangers.
- Seeking restitution from the person filing the false report, for agency expenditures (including time spent responding to the report and conducting an investigation, as well as costs for DNA analysis, etc.).

Potential **disadvantages** include the fact that criminal justice professionals are so frequently wrong in the determination that a report is false. Based on this study by the Crown Prosecution Service as well as a considerable body of prior literature, we know that many cases are determined to be a false report when there is no evidence to support such a classification (for review, see Lisak, Gardinier, Nicksa, & Cote, 2010). In fact, the opposite is often true.

Upon examination, many of the “false” reports in these studies could have actually yielded evidence to corroborate the sexual assault. However, once the victim’s statement was seen as a false report, investigative steps that could have been taken to prove the sexual assault were not taken (e.g., conducting witness interviews, processing evidence, taking suspect statements, gathering electronic evidence, conducting a pretext phone call, obtaining a forensic examination of the suspect, etc.). The risk of prosecuting someone for filing a false report can therefore be devastating. If the judgment is wrong, the victim is first traumatized by the sexual assault and then by the criminal prosecution

for allegedly lying about it. This also means that the perpetrator is given a “free pass” for the crime and is likely to go on and commit additional sexual assaults.

The other primary disadvantage has already been mentioned, which is the deterrent effect for other victims of sexual assault who might decide not to report the crime to the authorities. Whenever someone is prosecuted for filing a false report of sexual assault, this is likely to be covered by the media. If investigators and prosecutors are wrong, it is almost impossible to imagine the additional devastation this will cause for the victim. Moreover, this media coverage will fuel public skepticism regarding all sexual assault reports. This skepticism is already seen in our jury pools; it is extremely difficult to overcome all of the myths and misconceptions about sexual assault that are held by the average citizen. These same myths and misconceptions also impact family members and friends, however, and this can be critical when they need to serve as support people for a victim who chooses to disclose that she/he was sexually assaulted. For all of these reasons, the decision to prosecute someone for filing a false report of sexual assault should be made carefully, with multidisciplinary input, weighing these and other critical factors.

#### **Resource: Training Module on False Reports**

For detailed information on false reports and unfounded allegations, including appropriate responses for law enforcement agencies and other community professionals, please see the OnLine Training Institute (OLTI) module entitled, [False Reports: Moving Beyond the Issue to Successfully Investigate Sexual Assault.](#)

#### **A Better Approach**

Rather than prosecuting someone for filling a false report, a better approach in many cases is to ensure that investigators are **recognized and rewarded for high quality work** rather than case outcomes such as arrests and prosecution. When an investigation establishes that a report of sexual assault is false, the investigator often ends up feeling betrayed. However, if a suspect was identified and perhaps arrested for an allegation that was later determined to be false, the results of a competent investigation can be used to exonerate a suspect rather than leave doubt in the minds of others. This must be viewed as an investigative success, not a failure, and the officer who conducted the investigation should be recognized for his/her investigative efforts.

These and other issues should be addressed in **training for multidisciplinary professionals** in the area of false reports. Such training should be provided not only with law enforcement but also the other professionals involved in responding to sexual assault. Training can cover the realistic dynamics of sexual assault, as well as common myths and misconceptions, current information on false reporting, and appropriate procedures for unfounding.



Leaders within the law enforcement agency and other community partners can also establish a **multidisciplinary review panel**, to discuss unfounded sexual assault cases within a specific time period. Such a review panel might consist of victim advocates, forensic examiners, prosecutors, and others (including representatives from the crime laboratory, sex offender treatment program, and probation/parole). The purpose is to determine whether the conclusions in these unfounded cases were supported by the investigative findings. The multidisciplinary panel can also seek to identify community resources that might be helpful when evaluating these investigations. In some cases, the person may have critical needs that can be met with community intervention and resources (e.g., victims who are homeless, runaways, engaged in the sex industry, and/or have some form of mental illness). Often such factors can result in repeated victimization.

Finally, communities can help friends and family members, as well as responding professionals, prepare to respond appropriately to disclosures of sexual assault victimization by launching a **Start by Believing public awareness campaign**. Start by Believing is focused on the public response to sexual assault, because research demonstrates that the first person a victim confides in after an assault is not typically a police officer or other professional, but a friend or family member (Filipas & Ullman, 2001; Starzynski et al., 2005; for review, see Ménard, 2005). Their reaction is therefore the first step in a victim's long path toward justice and healing.

If friends, family members, and professionals do not respond appropriately, their negative reactions will only worsen the victim's trauma and decrease the likelihood that the victim will access community services and report the assault to police. In fact, the relationship is a direct one: the more negative reactions a victim receives from friends and family members, the worse that victim's physical and emotional health (Campbell et al., 2001). On the other hand, a positive reaction will not only improve their health and well-being, but also increase the chance that victims will reach out for help from other sources (Campbell et al., 2001; Feldman-Summers & Norris, 1984; Filipas & Ullman, 2001; Ullman, 2006; for review, see Ménard, 2005). The two positive behaviors that stand out for victims are having someone to talk to and being believed.

All of these initiatives can help communities respond in a comprehensive way to the challenge of false reporting – as well as addressing the myths and misconceptions surrounding the topic.

#### **Resource: Start by Believing Public Awareness Campaign**

For more information about the Start by Believing public awareness campaign, including the underlying rationale, empirical support, and local examples, visit the campaign [website](#).

The campaign is also linked with [Seek Then Speak](#), the resource for survivors and their support people discussed previously in this module.



## Recommendations for Best Practice

At this point, we have explored a wide array of alternative reporting methods, and we would like to conclude the module with a general discussion of best practice recommendations that apply – regardless of which option a sexual assault victim selects. Before we do so, however, we believe it is important to step back even further and provide a broader sense of the many ways in which information about sexual assault can be provided to law enforcement. This goes beyond the question of which reporting procedure will be used, to the questions of who contacts law enforcement, which means they use to make that contact, and what information is provided. It also requires additional explanation of informational reports versus crime reports, as well as the common mistakes made by law enforcement when determining which type of report to use.

### Providing Information to Law Enforcement

As a first step, it is important to recognize the wide variety of ways a law enforcement agency receives information about a sexual assault incident.

- The most obvious route is for a victim to call the law enforcement agency's Communications Center (e.g., by dialing 911). Victims may also simply walk into a police department to report the crime. This may happen immediately following the sexual assault, or days, weeks, months, or years afterward.
- Alternatively, the crime may be reported to law enforcement by a friend, family member, or other third party. As noted in the section on third party reporting, parents often report to police that their teenager has been the victim of statutory rape. Second and even third-party reports are also common, as in the example of a college student's friend (or friend of a friend) reporting a sexual assault to police.
- If the victim contacts a health care professional or other service provider, this person may be legally mandated to report to law enforcement. We discussed medical mandated reporting in a previous section but reports of suspected sexual assault also frequently come in to police from child protective services, child welfare services, adult protective services, teachers, and other professionals with mandated reporting status. On the other hand, victim advocates will only contact law enforcement if the victim specifically asks them to do so.

Clearly, there are a number of ways in which a law enforcement agency can receive information regarding a sexual assault. Depending on how the information is presented, law enforcement then has to decide whether or how the information will be officially recorded in a written crime report. As previously noted, this decision is made differently in various law enforcement agencies across the country.

- In many law enforcement agencies, responding officers are not required to write a report for every single sexual assault report. Rather, they are given discretion



to write a report or not, based on a preliminary investigation and their own judgment of the sexual assault case and victim.

- In other agencies, sexual assault calls are immediately coded and/or assigned an incident number by communications (dispatch) personnel. This practice has become increasingly common with the advent of computer aided dispatch. However, policies and practices vary greatly across the country as to how the investigation and report will be documented once the call has been dispatched.
- In still other agencies, responding officers are required to write a report for every single sexual assault call. In these agencies, officers are not allowed to clear from any sexual assault call without documenting it with a written report and obtaining an incident number. All preliminary reports, regardless of any initial conclusions, will then be reviewed by a supervisor or an investigative unit to determine whether the report was classified correctly and if additional follow-up is needed.

This leads us to our first recommendation for best practice.

### **Record all Reports in Writing and Assign a Tracking Number**

We strongly recommend that every report of a suspected sexual assault is recorded in writing and assigned some kind of number for tracking purposes. This applies regardless of which reporting method a sexual assault victim chooses to pursue. No matter how informal the method of reporting is – even if information on the sexual assault is written down anonymously on a napkin and given to a police officer on his or her lunch break – it should still be recorded in a written report and assigned a number of some kind.

Officers should then be trained to determine how the victim wants to follow up contact (whether by cell phone, email, etc.). Of course, there will be times when the victim or third party clearly states that the victim does not want any further contact and does not want an investigation conducted. In these situations, the information being provided is simply intelligence.

Next, depending on the circumstances and the wishes of the victim, the investigation might (or might not) proceed, to determine whether the elements of a sexual assault crime are present.

- If the investigation does proceed, and it is determined that the elements of a sexual assault crime are present, it should be considered a report of a crime and investigated appropriately. This will require follow-up contact with the victim.
- Even if the elements are not initially present, the information should still be recorded in writing and the victim should receive similar follow-up contact whenever possible. In some cases, this investigation will reveal that the elements of the crime are in fact met and the incident should then be recorded in an official crime report.



We recognize that some sexual assault reports are difficult, if not impossible, to investigate given the limited information provided. Yet even the most limited information can be documented with a written report and assigned a number, so it can be tracked by the agency.

By creating written documentation and tracking all of these reports with an incident number of some kind, the agency can provide a comprehensive picture of the ways in which all sexual assaults are reported to the agency, how they are recorded, which crime code(s) are involved, and how they are resolved. Officers and investigators can then be held responsible for the investigation and documentation of every single sexual assault call they receive. Written reports are also needed for victims “to pursue protection orders, civil legal remedies, immigration self-petitioning, insurance benefits, and crime victim compensation claims” (*Toolkit to End Violence Against Women*, Chapter 4, p.3).

### Decide on Informational vs. Crime Report

As noted in a previous section, informational reports are often used by law enforcement to record information about an incident that does not yet appear to meet the elements of a criminal offense. When used effectively, informational reports can be an extremely valuable part of the protocol for implementing alternative reporting methods. However, our second recommendation is that **officers and investigators should not be rushed into making a determination to record information in a crime report versus an informational report.**

To understand this recommendation, it may be helpful to step back and describe the types of situations where informational reports are most commonly used by law enforcement.

- One use for informational reports is when citizens contact the police because they believe that a crime might have been committed. For example, an adult might report a situation where they felt pressured into having sexual contact with another person, but the coercion did not meet the criteria for a forcible sexual assault. Alternatively, citizens may want to provide information about an incident they know does not constitute a crime – but they believe it may be important for law enforcement to have the information. In the law enforcement community, this is often referred to as ‘intelligence,’ or information that may be valuable at some point even if it does not currently meet the elements of a crime.
- Informational reports are also used by law enforcement to record information on a suspicious individual or incident the officer wants to document – again, despite the fact that the information or incident does not currently meet the elements of a crime. They are similarly used when a crime is reported but it took place in another jurisdiction. The informational report would then be forwarded to the appropriate law enforcement agency.

- Another use for informational reports is when mandated reports are made by third or even fourth parties, and the victim denies the allegations or chooses not to participate in an interview or otherwise provide the information that would be needed to complete a crime report.

As long as agencies track every single report, and submit them for secondary review, informational reporting can be an important and extremely effective component of the law enforcement response to sexual assault being perpetrated within the community.

### **Problems Determining Informational vs. Crime Report**

Unfortunately, there are two primary ways in which problems arise when making this determination. Both can be seen as stemming from the all-too-common lack of training for responding officers about the dynamics of sexual assault, which limits their ability to properly determine whether or not an incident meets the elements of a sexual assault offense, at least during the preliminary investigation.

On the one hand, responding officers might improperly generate an official crime report for incidents that do not meet the elements of a sexual assault offense. Many agencies use computer aided case tracking, so every incident is assigned a number – and this will include third party reports (such as those submitted by health care professionals or others with mandated reporting requirements). Such reports often fail to meet the elements of a sexual assault offense, because they have not been established either by the victim or the evidence. Therefore, the appropriate practice would be to record the information with an informational report and not a crime report.

On the other hand, responding officers also have problems when they do not realize that the incident they are investigating actually does meet the elements of a sexual assault offense – and they improperly record it with an informational report, rather than a crime report. This can be seen, for example, in some cases where the sexual assault was perpetrated without the use of force, threat, or fear. Most states now have laws prohibiting sexual acts with a person who is extremely intoxicated, incapacitated, severely disabled, unconscious, or otherwise physically helpless. Yet responding officers all too often focus only on the question of force or fear. If they cannot establish the element of force based on the victim's initial interview, they often determine that the incident does not meet the elements of the offense and either record it as an informational report or, worse, generate a crime report and then unfound it.

Yet in many states, if the offense meets one of those criteria (extremely intoxicated, incapacitated, severely disabled, unconscious, or otherwise physically helpless), the element of force or fear is not needed to establish a sexual assault offense. Rather, the sexual assault offense is established on the basis of the victim's state (e.g., intoxication, incapacitation, disability, helplessness, or unconsciousness). Training is therefore needed for officers to identify the elements of various sexual assault offenses, so they can better identify incidents that meet the criteria – even when the offense appears to lack a particular element (e.g., force, threat, or fear).



### **Resource: OLTI Modules on Dynamics, Law and Investigative Strategy**

The OLTI modules entitled: [Dynamics of Sexual Assault: What Does Sexual Assault Really Look Like?](#), and [Law and Investigative Strategy: What Kind of Sexual Assault is This?](#) can help law enforcement professionals and others understand characteristics of sexual assault victims, perpetrators, and assault incidents – and apply this understanding to strategize a successful investigation based on the elements of various sexual assault offenses.

Training is also needed on the common dynamics of sexual assault victimization and response, because the other reason why reports are often recorded improperly is because officers either do not recognize that the victim is trying to report sexual assault victimization, or they do not believe the report is valid. This can happen when victims initially report that they were drunk, drugged, or passed out and are uncertain about exactly what happened. What is important for officers to remember in such a situation is that victims are frequently unable to provide enough information to determine exactly what happened, especially in the case of alcohol- and drug-facilitated sexual assault. Investigators therefore need to utilize other investigative steps such as interviewing witnesses, suspects, evaluating the crime scene and potential evidence, utilizing pretext phone calls, etc.

### **Make the Determination Based on Evidence**

These problems highlight the importance of not rushing to judgment about whether a crime actually occurred and whether it should be recorded as an informational report or a crime report.

Even the best-trained officer or investigator cannot always determine whether an incident meets the elements of a sexual at the time a report is first made. A preliminary investigation is often insufficient to make that determination, either because the victim is unclear as to what happened (as is often the case in suspected drug and alcohol facilitated sexual assaults or sexual assaults involving victims with developmental disabilities) or because the victim is simply unable to communicate with police at that time (either because of incapacitation or as a result of trauma).

This is why we recommend that the decision to document a call with a crime report or an informational report can often be left for later in the investigative process if there is any doubt. The same is true for decisions regarding which specific crime code(s), if any, were involved. This type of procedure allows the most flexibility, so determinations are made based upon investigative facts rather than initial judgments of the victim or crime that might be made by the responding officer.

The reality is, many sexual assault reports that are initially filed as informational reports may later become official crime reports after a thorough, evidence-based investigation is conducted.



- In some cases, victims who are originally unable to participate beyond an informational report later decide they are able to participate in a full law enforcement investigation.
- In others, additional information becomes available that requires that an informational report be re-evaluated and classified as a crime report requiring a full police investigation with an eye toward criminal prosecution.

It is therefore essential to implement a system that is flexible enough to accommodate such changes. This is particularly important now that many states are abolishing or extending the statute of limitations because DNA technology provides the opportunity to identify suspects years – even decades – after a crime occurred. It is in the best interest of victims and communities to have such cases recorded in an informational report just in case further investigation or additional information later reveals that the elements of some criminal offense(s) have been met. In such a situation, the status of the informational report can be changed to a crime report and an investigation initiated.

### Follow Up with Victims Who Provide Consent for This

Once a report of a sexual assault is recorded in writing and assigned a number for agency tracking, law enforcement professionals must then follow up with the victim to verify the information and offer appropriate services. The importance of this type of victim follow-up simply cannot be overstated. In fact, **all victims deserve follow-up contact from the police department when a sexual assault crime is reported**, except for victims who choose to report anonymously or otherwise specifically request that they not be contacted by law enforcement.

- In some cases, the only investigative action required may be to call the victim and offer the services of the agency. At the very least, such contact communicates support for the victim and conveys the message that the incident has been taken seriously by the agency.
- This follow-up contact may be especially critical in cases where investigators initially believe that the victim is uncooperative. With time to process the assault, many victims find themselves in a better position to consider their options for responding at a later time – including participating with a police investigation.

During this follow-up contact, officers and investigators have the opportunity to verify the accuracy of the information recorded in the written report and to provide additional resources and referrals for the victim. It is therefore important that the person providing this follow-up has specialized training in sexual assault investigation and the dynamics of sexual assault. In fact, such follow-up contact sometimes results in renewed investigative effort when victims decide that they are now able to provide more information or participate in the police investigation. Given the serial nature of most sexual assault offenders, reports are often linked to crimes that have already been committed or crimes that may be committed in the future.



## Conduct Secondary Review on All Reports

Finally, we recommend that the results of all sexual assault investigations be submitted for some kind of secondary review, whether it is provided by a supervisor, co-worker, or other colleague with specialized training in sexual assault investigation. This is recommended even for incidents where the elements of a sexual assault offense do not appear to be met or the victim appears to be unable or unwilling to participate in the investigation. This is the only way for the agency to ensure that all sexual assault reports are recorded, investigated, and coded properly. Yet it requires law enforcement agencies to establish protocols for accomplishing this objective – and incorporating an assessment of successful performance in regular job evaluations.

- In large agencies, an investigative sergeant will most likely review all written reports and then (regardless of the findings of the responding officer's preliminary investigation), the report will be assigned to a detective in the Sex Crimes Unit or to another investigator with specialized training in sexual assault investigation for additional follow-up.
- When completed, the case file is then submitted for secondary review by a supervisor in the Sex Crimes Unit or general Investigative Division if a specialized unit does not exist.

In small and/or rural agencies, the procedure may look different but the need for secondary review remains. For example, we recognize that many small agencies do not have detectives or other specialized investigators. Thus, responding officers handle the entire investigation of any sexual assault call they receive. This highlights the need to provide all officers with training in sexual assault investigation beyond the basic academy. Yet it still remains critical for sexual assault cases to be submitted for some kind of secondary review, whether conducted by a supervisor, co-worker, or other colleague with specialized training in this area.

- Law enforcement professionals in small and/or rural agencies may need to develop a recognized team of experts within their area – whether from the surrounding county or larger geographic region. With email, teleconferencing, remote video, and other technology, there is simply no reason why officers in even the most rural areas cannot consult with others who have the expertise needed to determine the best course of action during a sexual assault investigation.
- In fact, this may be particularly important in rural or remote areas given the relative infrequency of sexual assault reports received by local law enforcement agencies. When officers do not respond to such cases very often, it can be difficult to feel confident in the mastery of these complex and difficult investigations.



Beyond conducting secondary reviews in individual cases, we also recommend implementing a procedure for evaluating cases on a more systemic level. This can be accomplished by establishing a multidisciplinary review committee, to ensure that established guidelines have been followed when it comes to reporting methods, investigative practices, and clearance decisions. This can be particularly important in cases that have been unfounded by a law enforcement agency, as well as those that are unlikely to be successfully prosecuted. Such a review committee should include other members in the coordinated community response to sexual assault, such as victim advocates, forensic examiners, prosecutors, and others. The purpose is to discuss outcomes and review other sexual assault cases to determine the most appropriate response for victims whose cases are not likely to result in successful prosecution.

### **Resource: Guidance for Conducting Case Review**

The SART Toolkit offered by the Office for Victims of Crime (OVC) provides an excellent overview of how to [conduct case review](#), including a review of the [purpose](#) and the role of each SART member. The toolkit also discusses the importance of [confidentiality](#), and provides a sample agreement form for team members, entitled: [Confidentiality Rules and Agreements](#).

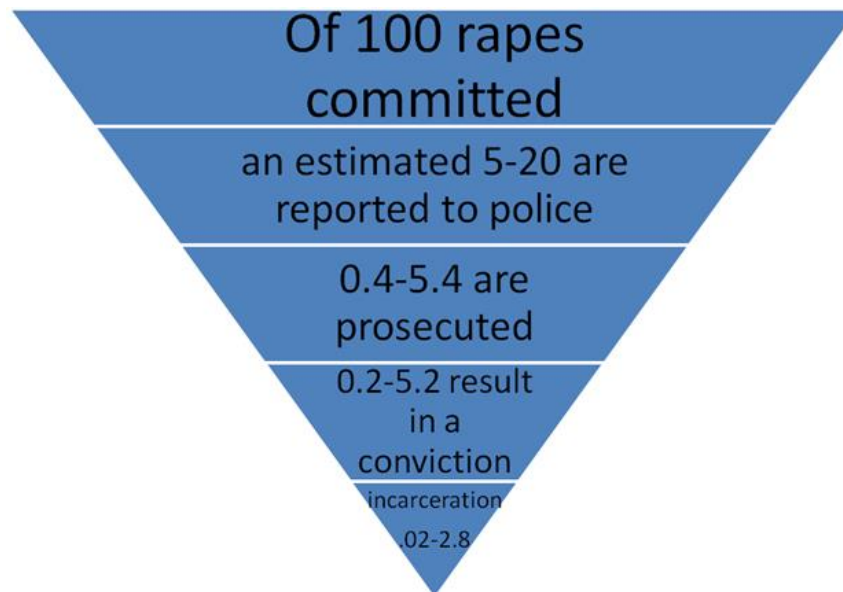
Another helpful resource is the [Case Review Protocol](#), created by the SARRT in Baltimore, Maryland. The protocol also includes an [audit checklist](#).

## **Conclusion**

*Developments in the field and changing social expectations have made law enforcement agencies reconsider and refine their processes for working with victims of sexual violence. Careful thought, clear direction, and institutional commitment are required to set up graduated reporting systems that respect the circumstances and challenges of victims, provide consistent response by investigators over time, and gather intelligence and evidence that will ultimately achieve law enforcement's primary goal: to protect and serve (Garcia & Henderson, 2010, p.1).*

So, we return to the point where we began, which is to ask ourselves how to encourage sexual assault victims to reach out for help and access our community response systems. We know the vast majority of victims will not contact law enforcement to report their sexual assault, just as most will not seek out health care, victim advocacy, mental health care, or other social services. Many will not even tell their loved ones but suffer their pain and shame in silence. We must do better. We must find ways to improve our criminal justice and community response systems, so they are easier to navigate and offer victims the support they need to reach out to law enforcement and stay engaged. That is the only way to meaningfully alter the funnel of attrition:





Source: Lonsway, K.A. & Archambault, J. (2012). The 'justice gap' for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18 (2), 145-168, p.157.

One strategy is to increase the ways in which victims can provide information to law enforcement. This module was designed to provide detailed information on the philosophy and implementation of alternative reporting methods. However, we hope we have made the point that this is not something that can be accomplished by law enforcement agencies alone. Victims will only have full access to such options if they have support – from responding professionals as well as loved ones – at every stage of the process. Alternative reporting methods must therefore be seen as one component in a much larger reform movement. We believe this module provides the information and resources needed to work together and achieve this goal.

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