

## 5. Reporting to Law Enforcement

Recommendations at a glance for jurisdictions and responders to facilitate victim-sensitive reporting practices:

- Where permitted by law, patients, not health care workers, should make the decision to report a sexual assault to law enforcement. Patients should be provided with information about the possible benefits and consequences of reporting so that they can make an informed decision.
- It is not recommended to require reporting as a condition of performing or paying for the exam. Even if patients are undecided about reporting, they should be encouraged to provide a medical forensic history, undergo the forensic exam, and have evidence collected and stored.
- Jurisdictions should consider an anonymous or blind reporting system for cases in which victims do not want to report immediately or are undecided about reporting.
- Communities should consider a variety of approaches to promote a victim-centered reporting process.

Many sexual assault victims who come to health care facilities or other exam sites for the medical forensic exam choose to report the assault to law enforcement. Reporting provides the criminal justice system with the opportunity to offer immediate protection to the victim, collect evidence from all crime scenes, investigate the case, prosecute it if there is sufficient evidence, and hold the offender accountable for crimes committed. Given the danger that sex offenders pose to the community, reporting can serve as a first step in efforts to stop them from reoffending. Equally important, reporting gives the justice system the chance to encourage victims to seek assistance to address their needs, identify patterns of sexual violence in the jurisdiction, and educate the public about such patterns. It is recommended that service providers encourage victims to report due in part to the recognition that delayed reporting is extremely detrimental to the prosecution and holding offenders accountable. Victims need to know that even if they are not ready to report at the time of the exam, the best way to preserve their option to report later is to have the exam performed.

Some victims, however, are unable to make a decision about whether they want to report or be involved in the criminal justice system in the immediate aftermath of an assault. Pressuring these victims to report may discourage their future involvement. Yet, they can benefit from support and advocacy, treatment, and information that focus on their well-being. Recognizing that evidence on their bodies is lost as time passes and that they may report at a later date, victims can also be encouraged to have the medical forensic exam conducted. Victims who are recipients of compassionate and appropriate care at the time of the exam are more likely to cooperate with law enforcement and prosecution in the future.

**Where permitted by law, patients, not health care workers, should make the decision to report a sexual assault to law enforcement.** Health care workers in some jurisdictions are bound by law to report some or all forms of sexual assault, regardless of patients' wishes.<sup>83</sup> In the remaining jurisdictions, no report should be made without the consent of patients. (Exceptions typically include cases involving vulnerable adults and minors victimized by caretakers or other authority figures). All involved health care providers should be aware of the reporting requirements in the jurisdiction in which they work.

In jurisdictions in which mandatory reporting by health care personnel is required, patients should be informed of the legal obligations of health care personnel, what triggers a mandatory report, that a report is being made, and the contents of the report. Patients should understand that even if health care personnel make a mandatory report, they are not obligated to talk with law enforcement officials or make a formal complaint themselves.<sup>84</sup>

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<sup>83</sup> Some jurisdictions call for mandated reporting for some or all violent crimes, requiring health care workers to notify law enforcement in cases involving a gunshot or knife wound, strangulation/choking, or other serious bodily injury. They vary, however, in whether they require acts of sexual violence without serious physical injuries to be reported.

<sup>84</sup> Some victims may fear perceived consequences of reporting (e.g., retaliation by offenders; rejection by family members and friends; being discriminated against if they are males.) Victims may have these and other fears because they are from populations with differing sexual orientations or from racially or otherwise oppressed groups; inmates; or are being deported or refused citizenship (in the case of recent immigrants and refugees). Some recent immigrants or refugees may fear law enforcement because of past experiences of oppression by authorities in their countries of origin. In addition, many victims are not willing to deal with the humiliation, loss of privacy, and negativity they perceive would accompany reporting, an investigation, and prosecution. If an intimate partner or a family member

Jurisdictions are encouraged to pay for forensic exams regardless of the level of cooperation of victims with law enforcement and the criminal justice process. Jurisdictions should conduct the exam and pay for exam costs without requiring patients' involvement in the criminal justice system. Documentation and evidence collected could be invaluable to the investigation and prosecution if patients should report at a later date, which often occurs. Patients should also have the right to receive medical care for assault-related injuries and concerns, regardless of their decision to report and/or have evidence collected.

Patients should be informed of the policies of the jurisdiction regarding whether the exam can be performed and paid for by a government entity if they elect not to report or are undecided about reporting. Also, they should be aware of jurisdictional and exam site policies on payment for medical care, if a report is made, no report is made, or no decision has yet been made on reporting.

**Inform patients about reporting consequences.** Prior to making a decision about reporting, patients need information about issues related to reporting. For example, they should be informed of the following:

- The contents and process of reporting;
- Procedures dealing with reporting in the jurisdictional protocol for immediate response to sexual assault;
- Whether health care personnel are bound by law to report the assault;
- The fact that the report will most likely trigger an investigation and possible prosecution;
- The medical and forensic purposes of the exam and how evidence gathered could be used during investigation and prosecution;
- Types of evidence (beyond that found on patients) that may be gathered during an investigation;<sup>85</sup>
- The fact that delays in reporting, especially extended ones, can result in loss of evidence and may negatively affect the ability of the criminal justice system to investigate and prosecute a case;<sup>86</sup>
- Practices regarding prosecution of sexual assault victims for unrelated criminal charges;
- Potential outcomes of criminal justice system interventions, such as possible sentences should assailants be convicted and the possibility of restitution for victims;
- The right to accept or decline exam procedures and the possible consequences of declining;
- The right to copies of any communication or report issued to law enforcement and procedures for accessing such data;
- Policies related to payment for the exam, evidence collection, and medical care, whether or not a report is made; and
- Policies on collecting/holding evidence in cases where patients are undecided about reporting, and, if evidence can be collected with no report, the amount of time they have to make a reporting decision.

**Consider alternatives to standard reporting procedures**.<sup>87</sup> Communities may want to consider alternatives to reporting, such as anonymous or blind reporting, in cases in which victims do not want to immediately report or are undecided about reporting (but are willing to report anonymously).<sup>88</sup> Government

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committed the assault, victims may also be concerned about the consequences of prosecution on their families (e.g., loss of income, employment, profession, attorney fees, and childcare costs) and being blamed for "tearing the families apart." Incest victims may be deterred from reporting because offender registries might indirectly identify them.

<sup>85</sup> For example, other evidence may be found at the locations of the seductions/lures, locations of actual assaults, locations victims went to immediately after the assaults, and the suspects' bodies.

<sup>86</sup> Prompt reporting can facilitate a thorough investigation. Collecting evidence from patients is but one piece of investigative information gathering. Other investigative activities may include, but are not limited to, identifying and collecting evidence from all crime scenes; identifying, apprehending, and interviewing suspects; interviewing witnesses (both eyewitnesses and persons to whom victims initially disclose); obtaining search warrants as needed (e.g., to search for drugs that might have been used to facilitate an assault or for evidence used during an assault such as clothing, ropes, or condoms). Investigative activities depend on the specifics of each case. <sup>87</sup>The first two paragraphs in this section are drawn from S. Garcia and M. Henderson, *Blind Reporting of Sexual Violence*, FBI Law Enforcement Bulletin, June 1999, pp. 12–16.

<sup>88</sup> For example, the Chapel Hill, North Carolina, Police Department's blind reporting system for sexual assault enables victims to disclose as much or as little information as they want. A detective records the information but does not initiate an investigation unless victims decide to file a formal complaint. The blind reporting system has been credited with contributing to a steady increase in sexual assault reporting. The number of male victims who reported during that time also rose. (K. Littel, M. Malefy, and A. Walker, *Assessing the Justice System Response to Violence Against Women: A Tool for Law Enforcement, Prosecution, and the Courts to Use in Developing Effective Response*, 1998, pp. 18–9.)

entities that mandate reporting for sexual assaults, in particular, may want to explore the option of third-party anonymous reporting for mandated reports.<sup>89</sup> Although the practice of anonymous reporting is not widespread, it appears promising in that it allows victims and/or third-party reporters to share critical information about the assault with law enforcement without sacrificing confidentiality and filing a complaint. It also enables investigators to gain information about sex crimes that would otherwise go unreported.

To develop an anonymous/blind reporting system, law enforcement agencies can:

- Establish and uphold a policy of victim confidentiality;
- Allow victims to disclose as little or as much information as they wish;
- Accept the information whenever victims might offer it—a delay in disclosure is not an indicator of the validity of the statement;
- Develop procedures and forms to facilitate anonymous information from third parties (e.g., examiners);
- Clarify options with victims for future contact—where, how, and under what circumstances they may be contacted by the law enforcement agency; and
- Maintain these reports in separate files from official complaints to avoid inappropriate use.

Victims making anonymous or blind reports and going through the medical forensic exam should be informed about jurisdictional policies regarding storage of evidence and exam payment. (In some communities, it is a challenge to find adequate space to hold evidence in cases where a report has not been made. For more information on this topic, see *B.6. Evidence Integrity*.) If victims have evidence collected, they also should have the option of being notified if DNA evidence from their case is linked to an offender already in the national DNA database or identifies other victims of the same offender.<sup>90</sup> Informed consent from victims for notification should be sought during the initial report, as well as appropriate times and methods to recontact them.<sup>91</sup>

**Promote a victim-centered reporting process.** Some approaches for communities to consider:

- Encourage victims to consent to the medical forensic history, an examination, and documentation regardless of whether an evidence collection kit is used.
- Explore the myriad reasons why victims are reluctant to report and how the actions or attitudes of agencies may help perpetuate these fears. Help agencies consider how to reduce reluctance and fears.
- Evaluate local trends regarding reporting and victims' involvement in the criminal justice system. Based on feedback, develop and implement a plan to improve multidisciplinary response to sexual assault.
- Increase victim-sensitivity education for first responders (e.g., educate law enforcement investigators on interviewing versus interrogating skills, educate health care personnel to be compassionate and not blame patients for the assault, and educate prosecutors to be victim-centered in their approaches).
- Encourage criminal justice statistical reports that accurately reflect the frequency and severity of sexual assaults reported in a jurisdiction.
- Initiate community education, outreach, and services targeting groups that may be reluctant to seek assistance after an assault.
- Offer viable options for reimbursement of exam costs for which victims are responsible.<sup>92</sup>

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<sup>89</sup> For example, all health care providers in Massachusetts who attend to, treat, or examine a sexual assault patient are required to submit a third-party anonymous report (with no identifying information) to law enforcement in the community where the assault occurred as well as to the State police. This report is required even if patients report the assault. (Commonwealth of Massachusetts *SANE Protocol*, 2002, pp. 8–9.)

<sup>90</sup> The Combined DNA Index System (CODIS) is an electronic database of DNA profiles obtained from evidence samples from unsolved crimes and from known individuals convicted of particular crimes. Contributions to this database are made through State crime laboratories. The FBI maintains the data.

<sup>91</sup> All those involved in immediate response, including victims, need to understand the nature of DNA evidence and how CODIS can be used to match offenders with DNA in the database. They also need to know the status of CODIS in their jurisdiction (CODIS is not yet up and running in some States, and States have varying laws regarding which crimes qualify for inclusion in the database). <sup>92</sup> It would be ideal if victims did not have to cover any costs for the exam and related medical care. However, jurisdictions and exam facilities vary in the costs that victims are required to cover. Often, but not always, victims are responsible for the costs of treatment for injuries and possible pregnancy, STIs, and HIV infection. Some exam facilities are flexible—they may allow victims to pay as they are financially able or may be willing to waive some or all charges. In some jurisdictions, if victims decide not to report but want the exam performed, they are held responsible for the cost of the exam.

- Encourage the development of a coordinating council and/or SART to facilitate a more coordinated, victim-centered, comprehensive community response to sexual violence.
- Support the formation of specialized examiner programs, investigative and prosecution units, and sexual assault victim advocacy programs to handle these cases. Specialization can potentially increase the knowledge base and commitment of involved responders, increase adherence to jurisdictional protocols for immediate response to sexual assault, encourage a victim-centered response, and positively advertise services offered.
- Develop jurisdictionwide public information initiatives on mandatory reporting—mandatory reporters need to know applicable statutes regarding reporting sexual assault cases that involve older vulnerable adults, persons with disabilities, and minors. A toll-free hotline number exclusively 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. To encourage both reporting and followthrough, protective agencies that investigate these cases should work collaboratively with local law enforcement agencies to ensure that each case is dealt with in the best possible manner and that further harm does not occur.<sup>93</sup>
- In institutional settings such as prisons, jails, immigrant detention centers, nursing homes and assisted living programs, inpatient treatment centers, and group homes, ensure that victims can report assaults to outside agencies and are offered protection from retaliation for reporting.
- 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.<sup>94</sup>
- After steps have been taken to identify and remove barriers to reporting sexual assaults, 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.

<sup>93</sup> Bullet drawn from A. Vachss, *Redefining Rape Response: When the Victim is Elderly or Has a Disability*, 2001, pp. 6–8, and 10.

<sup>94</sup> Bullet adapted from the New Jersey Office of the Attorney General's *Standards for Providing Services to Survivors of Sexual Assault*, 1998, pp. 6 and 18.

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