

## 5. Reporting to Law Enforcement

Recommendations at a glance for jurisdictions and individual responding to the sexual assault victims to facilitate victim-sensitive reporting practices:

- Except in situations covered by mandatory reporting laws, patients, not health care workers, make the decision to report a sexual assault to law enforcement
- Inform patients about reporting consequences.
- As a result of VAWA 2005, many jurisdictions have implemented alternatives to standard reporting procedures.
- 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. Service providers should discuss all reporting options with victims and the pros and cons of each, including the fact that delayed reporting may be detrimental to the prosecution of an offender. 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. Information should be provided in a language victims understand.

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 focuses on their well-being. Recognizing that traumatic injuries heal and 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.

**Except in situations covered by mandatory reporting laws, patients, not health care workers, 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>92</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<sup>93</sup>

<sup>92</sup> Some jurisdictions mandate 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. Health care personnel should be aware that these reporting laws may come into conflict with military policy allowing for restricted reporting for victims in the military.

<sup>93</sup> Some victims may fear possible 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 gender identities, or they are from racially or otherwise oppressed groups; they are inmates; or they fear 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 committed the assault, victims may also be concerned about the consequences of

States are required, as a condition of eligibility for STOP Violence Against Women Formula Grant funds, to allow victims to receive examinations and to have the examinations paid for regardless of the level of participation of victims in the criminal justice process. Documentation and evidence collected could be invaluable to the investigation and prosecution if patients should report at a later date, which often occurs. Patients 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, although the state is not required to pay for medical care.

Jurisdictions need to consider the challenges of storing evidence in cases where victims go through the medical forensic exam but opt not to participate with the criminal justice process. 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*.

In addition, under VAWA 2005 as a condition of STOP Formula Grant funding, states must also certify that law enforcement officers, prosecutors, and other government officials do not ask or require victims of sex offenses to submit to polygraph exams or other truth telling devices as a condition for proceeding with the investigation or prosecution of the offense.

**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 process of reporting the sexual assault to law enforcement and the information that will typically be requested from the victim.
- Procedures dealing with reporting in the jurisdictional protocol for immediate response to sexual assault.
- Whether health care personnel are mandated by law to report the assault.
- The fact that the report will trigger an investigation. Depending upon the results of the investigation, the case may be referred to the prosecutor, and the prosecutor may file charges.
- The purposes of the exam and how documented injuries as well as 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>94</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>95</sup>
- Practices regarding prosecution of sexual assault victims for unrelated criminal charges.
- 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.
- 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.

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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>94</sup> For example, other evidence may be found on the suspect’s bodies and clothing, at the locations of actual assaults, and locations victims went to immediately after the assaults.

<sup>95</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.

**In response to VAWA 2005, many jurisdictions have implemented alternatives to standard reporting procedures.**<sup>96</sup> Many communities have implemented alternatives to traditional reporting procedures, such as anonymous or blind reporting. These procedures are used when victims do not want to immediately report or are undecided about reporting with their own name and contact information (but are willing to report anonymously).<sup>97</sup> Government entities that mandate reporting for sexual assaults, in particular, have implemented an option of third-party anonymous reporting for mandated reports, which allow a third-party, such as the medical personnel, to make the report without including identifying information about the victim.<sup>98</sup> Although the practice of anonymous reporting is not widespread it allows victims and/or third-party reporters to share critical information about the assault with law enforcement without sacrificing privacy. 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 or by another agency.
- Maintain these reports in separate files from official complaints to avoid inappropriate use.

Informed consent from victims for notification should be sought during the initial report, as well as appropriate times, reasons, and methods to recontact them.<sup>99</sup> For example, a victim may want to be contacted if another victim who was likely assaulted by the same suspect comes forward.

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

- 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 address reluctance and fears (e.g., immigrant victims who fear deportation and immigration enforcement may benefit from immediate access to legal services or information about their rights as potential U-Visa holders). Information regarding U-Visas should be universally provided to all victims. The resource, if not appropriate for the victim being seen, may be passed along to others through word of mouth.<sup>100</sup>
- 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.
- Improve and increase professional training for first responders (e.g., training for law enforcement investigators on effective interviewing techniques for sexual assault victims, training for health care personnel on the clear use of language in documentation, training for prosecutors on strategies for

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<sup>96</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>97</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.)

<sup>98</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 themselves. (Commonwealth of Massachusetts *SANE Protocol*, 2002, pp. 8–9.)

<sup>99</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 (states have varying laws regarding which crimes qualify for inclusion in the database).

<sup>100</sup> Legal Momentum has extensive resources available regarding U-Visas. See <http://www.legalmomentum.org/our-work/immigrant-women-program/u-visa.html>. Additionally, immigrant women are entitled to emergency medical and post-assault healthcare. For a state-by-state breakdown of the benefits afforded, see [http://www.legalmomentum.org/assets/pdfs/4\\_nilc\\_table\\_10.pdf](http://www.legalmomentum.org/assets/pdfs/4_nilc_table_10.pdf).

overcoming a consent defense, and training for first responders on effective use of interpreters when responding to sexual assault cases).

- Encourage reporting of criminal justice statistics that accurately reflect the full range of sexual assaults that are reported in a jurisdiction.
- Initiate community education, outreach, and services targeting groups that may be reluctant to seek assistance after an assault.
- Expand community collaboration to include immigrant victim advocates who can work with the local coordinating council and SART/SARRT to inform immigrant victims of their rights as soon as possible post-assault.
- Offer viable options for reimbursement of exam costs for which victims are responsible, such as costs that are purely medical in nature.<sup>101</sup>
- Ensure that victims who opt not to participate in the criminal justice process have access to the same comprehensive medical forensic examination as those who do.
- Encourage the development of a coordinating council and/or SART/SARRT 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 those responding to sexual assault victims, increase adherence to jurisdictional protocols for immediate response to sexual assault, encourage a victim-centered response, and positively advertise services offered.
- Develop jurisdiction-wide 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 follow-through, 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>102</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 supported and respected throughout the criminal justice process and beyond.<sup>103</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.

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<sup>101</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. In some jurisdictions, 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.

<sup>102</sup> Bullet drawn from A. Vachss, *Redefining Rape Response: When the Victim is Elderly or Has a Disability*, 2004, pp. 6 and 18.  
<http://www.nj.gov/lps/dcj/agguide/standards/standardssartsane.pdf>

<sup>103</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.