
Ensuring Forensic Medical Exams for All Sexual Assault Victims: A Toolkit for States and Territories

The Violence Against Women Act (VAWA) Forensic Compliance Project

U.S. Department of Justice

Office on Violence Against Women

Maryland Coalition Against Sexual Assault, Inc.

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Introduction

Violence Against Women Act

Every state and territory receiving STOP (Services, Training, Officers, Prosecutors) Violence Against Women Grant Program (STOP Program)¹ formula grant funds from the U.S. Department of Justice, Office on Violence Against Women (OVW), must certify by January 5, 2009, that it is in compliance with the revised forensic medical examination requirements of the Violence Against Women Act of 2005² (VAWA 2005) in order to remain eligible for funding. This document, known as a “Toolkit,” is designed to help states and territories address compliance with this requirement codified in federal statute 42 U.S.C.A. § 3796gg-4, which states, Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to 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, reimbursement for charges incurred on account of such an exam, or both. This means that states must ensure that victims of sexual assault can get a forensic medical exam free of charge or with full reimbursement regardless of whether they report the crime to police or otherwise cooperate with the criminal justice system.

Instituting the medical forensic examination certification requirement certainly poses implementation challenges, many of which states and territories will continue to face well after the January 5, 2009, compliance deadline. Therefore, the purpose of the “Toolkit” is to provide states and territories with information, resources, considerations, and examples of how to implement compliant policies and procedures with an emphasis on a victim-centered and multi-disciplinary approach. The Toolkit is a product of the Violence Against Women Act (VAWA) Forensic Compliance Project, and was produced cooperatively through the U.S. Department of Justice Office on Violence Against Women

¹U.S. Department of Justice, Office on Violence Against Women. OVW FY 2008 STOP Violence Against Women Formula Grant Program (CFDA 16.588).

²42 U.S.C.A. § 3796gg et seq.

and the Maryland Coalition Against Sexual Assault, with the collaboration of three pilot sites: North Dakota, Virginia and Wyoming and the input and guidance of a national working group comprised of members representing states, law enforcement, prosecution, health care and victim advocacy.

The Violence Against Women Act (VAWA) was first signed into law as part of the Violent Crime Control and Law Enforcement Act of 1994, recognizing the need to address violent crimes that disproportionately impact women.³ It was reauthorized in 2000 and in 2005. Acknowledging the prevalence of violence against women and the persistently low reporting rates of such crimes, VAWA and subsequent legislation affirm the need for a comprehensive response to address domestic violence, dating violence, sexual assault and stalking, with dual objectives of enhancing the criminal justice system's ability to hold offenders accountable and enhancing victim services. The legislation passed with strong bipartisan support and broad agreement among lawmakers that a coordinated, multi-disciplinary effort is essential to meet victims' needs and bring offenders to justice. VAWA strongly encourages states and territories to convene law enforcement, prosecutors, courts, victim advocates and other stakeholders to establish an implementation plan for responding to violence against women within their respective jurisdictions.

When Congress reauthorized VAWA in 2000 and again in 2005, it established groundbreaking new initiatives to enhance the justice system's response to domestic violence, dating violence, sexual assault and stalking and expand victim services. With respect to sexual violence, VAWA 2005 initiatives included requirements related to sexual assault forensic medical examinations,⁴

The STOP Program is a formula grant program authorized by VAWA of 1994.⁵ Each year, eligible states and territories receive a base amount of \$600,000, plus an additional amount based on population,⁶ to enhance the criminal justice system's response to violence against women and provide services to victims of domestic violence, dating violence, sexual assault and stalking.

STOP grant recipients (i.e., states and territories) are required to allocate 25% of their award for law enforcement, 25% for prosecution, 5% for courts, and 30% for victim services. The remaining 15% is discretionary, allowing states and territories to direct funds as needed within the scope of the STOP Program.⁷ The STOP Program places a special emphasis on programs for un-served and/or underserved populations such as immigrants, minorities and individuals with disabilities.

³42 U.S.C. § 3711 et seq.

⁴Also known as Sexual Assault Forensic Examinations (SAFEs) or medical forensic examinations. prohibitions on polygraphing of victims, and other protections.

⁵U.S. Department of Justice, Office on Violence Against Women. Program Brief: STOP Violence Against Women Formula Grant Program.

⁶U.S. Department of Justice, Office on Violence Against Women. OVW FY 2008 STOP Violence Against Women Formula Grant Program (CFDA 16.588): 7.

⁷U.S. Department of Justice, Office on Violence Against Women. Program Brief: STOP Violence Against Women Formula Grant Program.

The Office on Violence Against Women

The Office on Violence Against Women (OVW), a component of the U.S. Department of Justice, administers the grant programs authorized by VAWA and subsequent legislation.⁸ OVW provides “national leadership in developing the nation's capacity to reduce violence against women through VAWA,”⁹ overseeing administration of the federal grant programs and providing financial and technical assistance to states, territories and local communities throughout the nation to implement programs in an effort to reduce domestic violence, dating violence, sexual assault and stalking.¹⁰

OVW is committed to assisting states and territories in negotiating what may be a significant overhaul of current procedures by providing them the necessary technical assistance as they work to implement their medical forensic examination obligations. To this end, OVW entered into a cooperative agreement with the Maryland Coalition Against Sexual Assault (MCASA) to create the national technical assistance project known as the VAWA Forensic Compliance Project.

VAWA Forensic Compliance Project

Victim-Centered Multi-Disciplinary Approach

The VAWA Forensic Compliance Project has an overriding commitment to victim-centered, multidisciplinary approaches to resolving forensic compliance issues. Strategies included in this document, the Toolkit, demonstrate solutions that promote and prioritize the needs and well-being of the victim while ensuring the four core disciplines: law enforcement, prosecution, health care and victim advocacy are partners in the development, implementation and delivery of services to meet the compliance mandates.

National Working Group

To ensure MCASA's work reflects a diversity of views, regional and national perspectives, and a multi-disciplinary approach, OVW and MCASA formed a National Working Group (NWG). These experts have significantly contributed to the framework and development of the Toolkit. More importantly, the NWG was responsible for the scope of the content, helping to identify promising practices for multi-disciplinary, victim-centered response and barriers to implementation. The NWG also provided significant guidance on particular issues and, in conjunction with the VAWA Forensic Compliance Project, responds to technical assistance requests as needed. A complete roster of NWG members is attached as *Exhibit A*.

⁸The Office on Violence Against Women (OVW) administers one formula grant program and eleven discretionary grant programs. U.S. Department of Justice, Office on Violence Against Women. OVW Grant Programs. Retrieved August 10, 2008, from <http://www.ovw.usdoj.gov/ovwgrantprograms.htm>

⁹U.S. Department of Justice, Office on Violence Against Women.

¹⁰Ibid.

Technical Assistance

Throughout the course of the Forensic Compliance Project,¹¹ technical assistance is available to states and territories upon request. Answers are provided to such questions as the practical application of the statutory mandates, types of compliant systems, information regarding what other states or territories have implemented, and emerging promising practices.

Between December 2007 and January 2008, all states and territories were surveyed to ascertain the “state of the nation” and identify promising practices. Surveys were directed to all STOP Administrators and the directors of state sexual assault or dual coalitions.¹² Responses were received from 59% of the jurisdictions surveyed,¹³ providing a wealth of information concerning their current status, barriers they face in implementing compliant procedures, and strategies they have adopted. The survey tool is attached as *Exhibit B*. Information from the survey as well as lessons learned from the day-to-day provision of technical assistance have been synthesized and interpreted in aggregate form. You will find the results highlighted throughout this document.

Pilot Site Projects

For most states and territories, the forensic compliance requirement is a monumental change in public policy, as it directly impacts the way states and territories make available forensic exams to victims of rape and sexual assault.¹⁴ Although the policy change will most likely be enacted on a state level, it must also be implemented in local jurisdictions to result in meaningful change for sexual assault victims and ensure compliance with the federal statute. Recognizing the challenges set forth by the federal statute, OVW and MCASA sought to provide customized, intensive technical assistance to a limited number of jurisdictions. Applications were solicited from states and territories seeking individualized assistance, with three states: North Dakota, Virginia and Wyoming selected as pilot sites to receive dedicated assistance from project staff and to benefit from the expertise of the National Working Group. Each of the three pilot sites is separate and distinct, with unique challenges associated with the implementation of policies and procedures designed to ensure that all victims of sexual assault are able to obtain a forensic medical examination without being required to report the sexual assault to law enforcement.

¹¹The Forensic Compliance Project is currently funded through April 2009.

¹²A dual coalition is a coalition that addresses both sexual assault and domestic violence.

¹³Total number of states and territories is 56 (50 states, 5 territories, and the District of Columbia).

¹⁴The Federal Bureau of Investigation (FBI), for purposes of data collection for the Uniform Crime Report (UCR), defines forcible rape as “the carnal knowledge of a female forcibly and against her will.” Although assaults and attempted rapes by force or threat of force are included, this definition is limited in many respects. For example, statutory rape (without force) is not included, as well as many other sexual offenses. The National Center for Victims of Crimes (NCVC), however, defines sexual assault as, “Sexual assault takes many forms, including attacks such as rape or attempted rape, as well as any unwanted sexual contact or threats. Usually a sexual assault occurs when someone touches any part of another person's body in a sexual way, even through clothes, without that person's consent. Some types of sexual acts which fall under the category of sexual assault include forced sexual intercourse (rape), sodomy (oral or anal sex acts), child molestation, incest, fondling and attempted rape.” The NCVC also notes, “In most jurisdictions, the term sexual assault has replaced the term rape in the state statutes. This was done to be more genderneutral and to cover more specific types of sexual victimization and various levels of coercion.” For purposes of this document, sexual assault is used to represent the comprehensive nature of sexual violence.

The variety of challenges presented, and the diverse approaches to problem solving employed to overcome them within the pilot sites' respective jurisdictions, are not necessarily unique. The challenges faced by the pilots are consistent with survey results of all states and territories. The processes that the North Dakota, Virginia and Wyoming pilot sites have undertaken are shared in aggregate throughout the Toolkit. The lessons learned are among the most significant influences on the content of the Toolkit. They are included to guide others' implementation of policy changes within their own jurisdictions.

The Toolkit

This document, “the Toolkit,” is designed to meet the needs of a variety of audiences: STOP Administrators, sexual assault coalition directors, statewide planning entities, and other stakeholders. In addition to serving as a planning tool for states and territories, the Toolkit is intended to serve as a resource for law enforcement, health care providers, victim advocates and other stakeholders for issues specific to their respective areas of expertise.

This Toolkit serves a dual purpose. The Toolkit is designed to serve as a checklist for those states and territories not currently able to confidently certify that every sexual assault victim within their state or jurisdiction is able to receive a forensic medical examination if the victim chooses not to report the assault to law enforcement. The Toolkit will assist these states in assessing what aspects of the system's response in their own jurisdictions may still require work, and provides a framework to assist jurisdictions with their planning processes and policy development. Equally important, for those states and territories able to certify they are compliant with VAWA 2005 and satisfied that all victims of sexual assault throughout their jurisdiction are able to receive a forensic medical examination whether or not they immediately report the sexual assault to law enforcement, this Toolkit will serve as a mechanism to enhance current policies and procedures to meet the standards of promising practice in addition to implementing compliant policies.

The Toolkit will also provide guidance to those jurisdictions that wish to transform their current “letter of the law” approaches to strategies that are more victim-centered. Readers will learn from the promising practices adopted by other jurisdictions. Through the use of the Toolkit, states and territories will also learn from the challenges other jurisdictions have faced, the problem-solving processes undertaken, and the solutions uncovered.

VAWA 2005 clearly mandates that states and territories certify that sexual assault victims are able to access sexual assault forensic medical examinations throughout their state. Although the federal statute provides the incentive for policy change, it is silent regarding the logistics of implementation, deferring to states and territories. This Toolkit is designed to assist states and territories with the process, articulating the issues to be considered, potential barriers, and, perhaps most importantly, presenting possible solutions that other states may learn from and adopt.

The approaches used by states and territories as they work to implement compliant policies and practices will vary greatly throughout the nation. For some, the planning process, discussed within Steps Towards Establishing a Compliant System Working Toward a Compliant System (page 14), may involve strategic planning to tackle numerous issues related to both access and the reimburse-

ment process. Another course of action could be to develop an ad hoc committee to troubleshoot emerging issues associated with implementation of the new statute. Others may use a top-down approach to communicate policy changes and to ensure compliance within their jurisdiction. This Toolkit provides examples of how several states successfully changed their policies.

Methods for effecting change will also vary greatly throughout the nation. Some states have enacted enabling legislation; others have developed statewide policies. Some have produced directives for dissemination throughout their jurisdiction(s), while others have determined there is a need for local autonomy and have deferred to their local jurisdictions to develop policies. Recognizing that one size does not fit all, this Toolkit provides several examples of methods used throughout the nation.

Policies, practices and resources related to initial responses to sexual assault victims who present to health care facilities¹⁵ vary greatly throughout the nation. Some jurisdictions benefit from a comprehensive coordinated Sexual Assault Response Team (SART) whose policies and procedures allow specially trained professionals to provide a consistent, comprehensive response to victims of sexual assault within the health care setting and greater community. Other jurisdictions, however, struggle with inconsistent responses. For example, health care facilities may or may not have professionals who are specially trained to provide sexual assault forensic medical examinations. Advocacy services, if available, provide support to the victim and, if the victim requests, accompaniment during the examination. In some jurisdictions advocates may not be available to victims around the clock; or a victim may present at a hospital where forensic medical examinations are not routinely performed and be asked to travel to an alternative facility, thus leaving the transportation logistics to the victim.

It is not uncommon for states to struggle with one or more of these issues. Even in states with excellent programs, services may be geographically limited, resulting in service gaps. The implementation of mobile SANEs to travel to victims, being considered by some low-population jurisdictions, may also present obstacles. In addressing the challenges that victims may face when presenting, states and territories will have taken the first steps towards developing a response where all victims are able to access forensic medical examinations.

Jurisdictions will need to identify responses that are reasonable for their communities given the physical and financial constraints they face. Regardless of local jurisdictions' limitations, a consistent, uniform response providing an established standard of care for victims of sexual assault is strongly encouraged. Whether a jurisdiction has a coordinated, multi-disciplinary, victim-centered response, or has a limited number of trained examiners and few advocates, there are several basic premises states and territories should consider as they work toward compliance, keeping in mind that a positive professional first response is critical to ensuring that all victims have access to forensic medical examinations. This Toolkit reviews the principles critical to implementing successful strategies.

¹⁵“Health care facilities” is a comprehensive term used to include the numerous options where victims of sexual assault may present for medical treatment, including forensic medical examination: hospitals, clinics, community-based health care programs, stand-alone rape crisis centers and/or examination facilities, and other alternate health care facilities.

States and territories must also consider evidentiary issues. The integrity of evidence collected and the chain of custody must be maintained. This Toolkit discusses points for states and territories to consider in developing policies that maintain the integrity of the evidence and chain of custody when responding to victims who participate in a forensic medical examination but defer reporting the assault to law enforcement to a later date. The victim's decision to delay a report may certainly have an impact on the prosecutor's decision to prosecute the case and/or potential litigation. Further details regarding the potential benefits and risks of delaying a report are explained in Background—Criminal Justice Philosophy (page 11).

The Toolkit also presents several different “types” of systems states have adopted. The chapters of Types of Compliant Systems (page 38) discuss overriding themes of each compliance type, as well as practical considerations. Examples from jurisdictions throughout the nation are illustrated and specific policies are attached as exhibits.

This Toolkit will guide states and territories as they work beyond certification and continue to implement and enhance policies and procedures toward a multi-disciplinary, victim-centered response in all communities. Included in the Toolkit are ideas to help states and territories educate stakeholders throughout their jurisdictions on established compliance protocols and to encourage continual monitoring of performance.

Forensic Medical Examination Compliance Issues

“Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to 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, reimbursement for charges incurred on account of such an exam, or both.” 42 U.S.C.A. § 3796gg-4(d)(1)

VAWA 2005 included a requirement specific to the availability of and payment, or reimbursement, for sexual assault forensic medical examinations for all victims of sexual assault.¹⁶ Prior to VAWA 2005, the state, Indian tribal government, unit of local government 16 42 U.S.C.A. § 3796gg-4(a)(1).or other governmental entity was required to pay for the sexual assault forensic medical examinations or ensure victims were provided reimbursement for the exams; but, because the statute was silent on the matter, they had the discretion to make such payment or reimbursement contingent upon a victim's decision to report to law enforcement.¹⁷ VAWA 2005 includes a requirement that to be eligible for STOP funding, states must ensure access to sexual assault forensic medical examinations for victims who choose not to report the sexual assault to law enforcement. An additional eligibility requirement for STOP funding is that states must assure that victims are provided a forensic medical examination free of charge or with full reimbursement, without being required to report to law enforcement and/or participate in the criminal justice system as a condition of the payment or reimbursement.

All states, territories, and the District of Columbia are currently eligible to apply for and receive STOP formula grant funds. To continue to be eligible for STOP funds, they must certify by January

¹⁶42 U.S.C.A. § 3796gg-4(a)(1).

¹⁷Ibid.

5, 2009—three years from the date of enactment of VAWA 2005—that they meet the statutory eligibility requirements of VAWA 2005.

Practical Application of the Statutory Requirements

The changes within VAWA 2005 are designed to promote a more victim-centered approach to reporting among victims of sexual assault. They also aim to enhance prosecution of sexual assault cases and create a more victim-friendly environment that will ensure that all victims of sexual assault have access to a forensic medical examination. However, these changes present a number of challenges for states and territories as they work to develop and implement VAWA-compliant policies and procedures.

For example, hospitals and medical providers, law enforcement agencies, prosecutors, rape crisis centers and other victim service providers must develop policies and procedures to address the handling of evidence collected from victims who defer reporting to law enforcement. Concerns to be addressed include where the “non-reported” forensic evidence will be stored during the period when the victim is deciding whether to report the sexual assault to law enforcement, for how long the evidence will be held and, in localities utilizing an “anonymous” reporting system, the individual or agency responsible for retaining the information necessary to link the victim's identity to the evidence gathered. Logistical challenges also exist around the payment for forensic medical exams in jurisdictions where payment has traditionally been tied to law enforcement involvement, since an examination may no longer be conditioned upon the victim's choice to participate by reporting the sexual assault.

The challenges states and territories face may be significant. Complying with the STOP statute requirements related to forensic medical examinations may translate to the removal of gatekeepers who have historically authorized the forensic medical exam to be conducted by a health care provider. Often, this gatekeeper has been a law enforcement agency. Many law enforcement agencies, in addition to providing authorization for the examination to be conducted, also purchase and house the sexual assault evidence collection kit¹⁸ until an exam is needed. Further, many states have required a police report for purposes of reimbursement for the examination, documenting that the victim not only underwent the examination but also reported the assault to law enforcement. States and territories will benefit by involving all stakeholders in the development of policies and procedures.

Background

Incidence

Data from the Uniform Crime Report tell us more than 92,000 forcible rapes were reported to law enforcement in 2006.¹⁸ Unfortunately, this statistic does not accurately portray the incidence of rape and sexual assault in our nation. It reflects only those crimes captured as forcible rapes and

¹⁸U.S. Department of Justice, Federal Bureau of Investigation (FBI). Released September 2007. Forcible rape. Uniform Crime Report: Crime in the United States, 2006: Overview.

does not include many other forms of sexual assault. Perhaps more significantly, the number is contingent upon the forcible rape crimes being reported to police. Sexual assaults, including rape, remain the most under-reported crimes in our nation,¹⁹ with only 36% of rapes being reported to police.²⁰

Randomized, confidential surveys of individuals throughout the country have attempted to determine a more accurate representation of the incidence of rape and sexual assault. Recently published findings from the National Crime Victimization Survey (NCVS)²¹ confirm the underreported nature of these crimes, reporting over 270,000 rape or sexual assault crimes occurring within the same year. Another study found that 18% of all women surveyed and 3% of all men surveyed had been raped in their lifetime.²² Given these findings, it is projected that one out of six women, and one out of every thirtythree men, will be sexually assaulted in their lifetime.²³

The crimes of rape and sexual assault do not discriminate, as females and males of all ages, races, ethnicities, abilities, sexual orientations, and socio-economic backgrounds may be victimized by sexual violence. There are, however, several subpopulations experiencing higher rates of rape and sexual assault.

Women are more likely to be the victims of sexual assault than men.²⁴ When men experience sexual violence, they are much more likely to be victimized at an earlier age, with 70% of all male victims reporting they were “raped before their 18th birthday.”²⁵ The same research found the rate at which women were raped as children or adolescents continues to climb annually.²⁶ Fifty-four percent (54%) of the female rape victims identified within the survey were under 18 years old when they experienced their first rape.

American Indian/Alaska Native women are much more likely to be sexually assaulted than African American, White or Hispanic women.²⁷ Research findings clarified that these data were based upon

¹⁹U.S. Department of Justice, Centers for Disease Control (CDC) Injury Center. Sexual violence: Fact sheet. Data is cited from the National Violence Against Women Survey and National Crime Victimization Survey.

²⁰C.M. Rennison. 2002, August. Rape and sexual assault: Reporting to police and medical attention, 1992–2000. Bureau of Justice Statistics, Selected Findings. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs. NCJ 194530.

²¹The National Crime Victimization Survey (NCVS) is a survey of over 77,000 random households and includes over 134,000 individuals age 12 and over. The survey is conducted annually in an effort to accurately determine the incidence rate of a variety of crimes including not only rape, but sexual assault offenses as well.

²²P. Tjaden and N. Thoennes. 1998, November. Prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey. Research in Brief. Washington, DC: U.S. Department of Justice, National Institute of Justice, Centers for Disease Control and Prevention. NCJ 172837. The National Violence Against Women Survey (NVAWS) defined rape as an event that occurred without the victim’s consent that involved the use or threat of force in vaginal, anal, or oral intercourse. NVAWS includes both attempted and completed rape.

²³P. Tjaden and N. Thoennes. 2006, January. Extent, nature, and consequences of rape victimization: Findings from the National Violence Against Women Survey. NIJ Special Report: 7–12. Washington, DC: U.S. Department of Justice, Office of Justice Programs. NCJ 210346. Data is from the NVAW survey conducted from November 1995 to May 1996.

²⁴C.M. Rennison. 2002, August.

²⁵P. Tjaden and N. Thoennes. 2006, January.

²⁶P. Tjaden and N. Thoennes. 2006, January.

²⁷P. Tjaden and N. Thoennes. 1998, November. C.M. Rennison. 2007. Reporting to police by Hispanic victims of violence. *Violence and Victims* 22 (6): 754–772.

individuals reporting victimization in the survey, therefore challenging that the findings may in fact represent reporting trends, rather than trends in incidence.²⁸ The rates of sexual victimization among White, African American and “other races” of women were found to be equal.²⁹ Women of mixed race, however, reported “... significantly higher rates of rape victimization”³⁰ than any other race.

Another population particularly vulnerable to sexual violence is women on college campuses, among whom the rate of sexual victimization far exceeds that of the general population. A research study completed by the National Institute of Justice found that approximately 3% of all female college students were victims of a completed or attempted rape during an academic year.³¹ Projecting reporting rates from the academic year survey period over the average five-year college career, it is estimated that one in every five female students will experience rape during her college years.³²

The majority of victims are assaulted by someone they know. Over 80% of all sexual assault victims indicate they were attacked by an intimate, other relative, friend or acquaintance.³³ Seventeen percent (17%) of all women and 23% of all men are sexually assaulted by strangers.³⁴ The majority of sexual assaults do not occur in a public environment, but within a home, hotel or vehicle.³⁵

Underreporting

Extensive research has been conducted to determine the prevalence of sexual violence—reported and unreported—with studies consistently concluding that rape and sexual assault remain among the most underreported crimes in our nation.³⁶ Depending on the particular study, the range of reporting rates for rapes and sexual assaults reported to police vary between 16 and 41%,³⁷ meaning more than half of all rapes and sexual assaults go unreported.

A comprehensive study conducted by Dean Kilpatrick and others found formal reporting rates to tend toward the lower end of the spectrum.³⁸ A randomized study conducted of approximately

²⁸C.M. Rennison. 2002, August. P. Tjaden and N. Thoennes. 2006, January.

²⁹P. Tjaden and N. Thoennes. 2006, January.

³⁰Ibid.

³¹B.S. Fisher, F.T. Cullen, and M.G. Turner. 2000, December. The sexual victimization of college women. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. NCJ 182369. C.P. Krebs, C.H. Lindquist, T.D. Warner, B.S. Fisher, and S.L. Martin. 2007, December. The campus sexual assault (CSA) study. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice Grant #2004-WGBX-0010. Abstract in NCJRS Abstracts. NCJ 221153.

³²B.S. Fisher, F.T. Cullen, and M.G. Turner. 2000, December.

³³P. Tjaden and N. Thoennes. 2006, January.

³⁴Ibid.

³⁵Ibid.

³⁶U.S. Department of Justice, Centers for Disease Control (CDC) Injury Center. Sexual violence: Fact sheet. Data is cited from the National Violence Against Women Survey and National Crime Victimization Survey. M. Rand and S. Catalano. 2007, December. Criminal victimization, 2006. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs. NCJ 219413.

³⁷M. Rand and S. Catalano. 2007, December. P. Tjaden and N. Thoennes. 2006, January. D.G. Kilpatrick, C. Edmunds, and A. Seymour. 1992. Rape in America: A report to the nation. Arlington, VA: National Center for Victims of Crime; Charleston, SC: Medical University of South Carolina, Crime Victims Research and Treatment Center.

³⁸D.G. Kilpatrick, C. Edmunds, and A. Seymour. 1992.

5,000 individuals nationwide revealed that only 16% of all victims of rape chose to report the crime to police.³⁹ Although reporting to police has increased over the past thirty years,⁴⁰ the increase was attributed to third-party reporting, such as another member of the family, neighbor, bystander, or friend, as opposed to reporting by the victims themselves.⁴¹

Certain populations are less likely than the general population to report a sexual assault. For example, the reporting rate for college students is significantly lower than for the general population, with only 5 to 10% of all sexual assault victims attending college reporting the rape to police.⁴²

There are many factors that may contribute to a victim's decision not to report an assault to law enforcement. National Crime Victimization Survey (NCVS) responses indicate that in the majority of sexual assaults the victim knows the offender as an intimate, other relative, friend or acquaintance.⁴³ In these cases, the victim may have ongoing interaction with the offender, complicating the decision-making process behind reporting. The victim may reside with or near the offender, be reliant upon the offender for financial support, or share children in common.

Other factors that may affect a victim's decision not to report include: considering the rape or sexual assault to be a “personal matter,” “reporting to a different official,” and concern for “police bias.”⁴⁴ Additionally, “being blamed by others,” “family finding out,” and a victim's “name(s) being made public by the news media” also have been found to contribute to a victim's reluctance to report the crime to police.⁴⁵ Perhaps most notably, one-half of all female victims and one-fifth of all male victims indicated they were afraid of being killed when the rape was committed.⁴⁶

Criminal Justice Philosophy

Changes enacted by VAWA 2005 mean a sexual assault victim now has the right to have a forensic medical examination without being forced to decide, immediately after an assault, whether or not to report the assault to law enforcement. The option to have evidence collected and preserved in a timely manner now exists, allowing the victim to defer the decision of whether to officially report the crime to police.⁴⁷

³⁹Ibid.

⁴⁰E.P. Baumer. 2004, April. Temporal variation in the likelihood of police notification by victims of rapes, 1973-2000. Washington, DC: U.S. Department of Justice, National Institute of Justice. NCJ 207497. L.R. Taylor. 2006, July. Has rape reporting increased over time? *NIJ Journal* 254:32-34. Washington, DC: U.S. Department of Justice, Office of Justice Programs.

⁴¹E.P. Baumer. 2004, April.

⁴²College students defined as women who were attending a 2 or 4-year college or university during fall 1996.

⁴³P. Tjaden and N. Thoennes. 2006, January.

⁴⁴C.M. Rennison. 2002, August.

⁴⁵D.G. Kilpatrick, C. Edmunds, and A. Seymour. 1992.

⁴⁶P. Tjaden and N. Thoennes. 2006, January.

⁴⁷Many states have statutes mandating health care professionals report to law enforcement certain situations where patients present for treatment of sexual assault. Generally speaking, these situations include vulnerable populations such as children and elderly and/or disabled individuals and are designed for the protection of those individuals. States and territories should defer to their state laws concerning mandatory reporting situations. Such state laws may also include reporting of violent crimes or reporting of injuries caused by lethal weapons. T.P. Scalzo. Rape and sexual assault reporting laws. American Prosecutors Research Institute National Center for Prosecution of Violence Against Women: The Voice 1 (3).

The timely collection of evidence may impact the likelihood of conviction. Forensic medical exams, prompt reporting, and scientific evidence are directly related to an increased rate of arrest of sexual offenders, as well as an increased number of prosecutions, and have a positive influence on the outcome of sexual assault prosecutions.⁴⁸ However, it is important to recognize that when an assault is not reported to law enforcement as soon as possible, the prospect of conducting a thorough investigation may be diminished.

The opportunities for law enforcement to conduct interviews of witnesses, thoroughly investigate the crime scene, or collect additional evidence from alternative crime scenes may be eliminated completely. The impact of a deferred report to law enforcement and the potential negative bearing of a delayed investigation upon prosecution should be shared with the victim prior to the collection of evidence in an honest and neutral manner, so that a victim is informed not only of her or his options, but also of the benefits and risks of deciding not to report to law enforcement at the time of the forensic examination.⁴⁹

Nevertheless, successful evidence collection during forensic medical examinations has a direct correlation to successful prosecution of cases.⁵⁰ The circumstances under which evidence is collected play an essential role in the future of the case long before it enters the courtroom. For example, physical evidence connecting the suspect to the crime is a critical variable prosecutors consider when determining if and/or how they will proceed with a case.⁵¹

The quality of forensic medical examinations (also known as SAFE exams [Sexual Assault Forensic Examinations]) in relation to enhanced sexual assault prosecutions has been demonstrated, as well.⁵² Forensic medical exams can document evidence of the sexual assault and in some instances find evidence of sexual contact, including penetration (if applicable), identify injury consistent with forcible sexual contact, and/or document injury consistent with the victim's description of assault. Although forensic evidence can be collected for up to 96 hours or longer, collecting evidence within 24 hours of an assault has been associated with more positive outcomes within the criminal justice system.⁵³ The benefit of a trained, experienced Sexual Assault Nurse Examiner (SANE) supports a prosecutor's case, as studies "suggest that SANE programs increase prosecution."⁵⁴

⁴⁸R. Campbell. 2004, November. The effectiveness of Sexual Assault Nurse Examiner (SANE) programs. VAWnet Applied Research Forum: National Online Resource Center on Violence Against Women. C.S. Crandall and D. Helitzer. 2003, December. Impact evaluation of a Sexual Assault Nurse Examiner (SANE) Program: Exhibit 14—Case outcome, by highest applicable charge per case, pre and post SANE, Bernalillo County, NM, 1994–1999. U.S. Department of Justice Grant #98-WT-VX-0027. New Mexico: University of Mexico School of Medicine. NCJ 203276.

⁴⁹More information regarding informed consent can be found in Ensuring Access to Examinations'Initial Response (page 23).

⁵⁰R. Campbell. 2004, November. C.S. Crandall and D. Helitzer. 2003, December. C. Spohn and D. Holleran. 2001, September. Prosecuting sexual assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. Justice Quarterly 18 (3). Abstract in NCJRS Abstracts. NCJ 199720.

⁵¹C. Spohn and D. Holleran. 2001, September.

⁵²R. Campbell. 2004, November. J. Wiley et al. 2003, June. Legal outcomes of sexual assault. American Journal of Obstetric Gynecology 188 (6): 1638–1641.

⁵³J. Wiley et al. 2003, June.

⁵⁴R. Campbell. 2004, November.

A recent study conducted jointly by the National District Attorneys Association (NDAA) and Boston College has reported tangible outcomes regarding the efficacy of forensic medical exams conducted by a Sexual Assault Nurse Examiner.⁵⁵ The study found that forensic medical exams conducted by SANEs “significantly increase the likelihood that charges would be filed in sexual assault cases.”⁵⁶

Studies in New York State produced similar results. The Manhattan District Attorney's Office, in conjunction with St. Luke's/Roosevelt Hospital Center (Crime Victims Treatment Center) and the New York City Alliance Against Sexual Assault (NYCASA), conducted their own study of the role of forensic medical examination evidence in the disposition of sexual assault cases. Their results were published in a report entitled “The Impact of Medical Evidence on Criminal Justice Outcomes.”⁵⁷ The study found that prosecutors utilized evidence from the forensic medical examinations in 39.3% of all cases. Prosecutors reported that documentation of injuries, the determination of the presence of semen, and DNA testing were the primary benefits of the forensic medical examination as they tried their cases.⁵⁸ Prosecutors also suggested that the evidence was equally important to jurors to “corroborate the victim's story.”⁵⁹

Recently released research sponsored by the National Institute of Justice confirmed that media heavily influence potential jurors. Heavily-watched crime-related shows such as Crime Scene Investigation (CSI) and Law and Order were found to have a significant bearing on individuals' expectations regarding the role evidence plays in trials. Only 14% of those surveyed indicated they would find the defendant in a rape trial guilty without “scientific evidence” accompanying the victim's testimony.⁶⁰ Twenty-six percent indicated that if there were no scientific evidence, they would find a defendant charged with rape not guilty.⁶¹ Because some jurors report they require scientific evidence before being willing to convict a defendant of rape, and forensic medical examinations may produce that evidence, access to forensic medical exams plays a central role in successful investigation and prosecution.

Health Care Philosophy

Sexual assault victims' increased access to forensic medical exams provides an opportunity to address immediate medical concerns, as well as an occasion to address the potential long-term health and psychological effects of sexual assault. Currently, the vast majority of rape and sexual assault victims do not seek medical care following the assault. Victims who report to law enforcement, however,

⁵⁵M.E Nugent-Borakove, P. Fanflik, D. Troutman, N. Johnson, A. Burgess, and A.L. O'Connor. 2006, May. Testing the efficacy of SANE/SART Programs: Do they make a difference in sexual assault arrest & prosecution outcomes? Final report: U.S. Department of Justice Grant #2003-WG-BX-1003. NCJ 214252.

⁵⁶Ibid.

⁵⁷New York City Alliance Against Sexual Assault, Manhattan District Attorney's Office, and St. Luke's Roosevelt Hospital Center Crime Victims Treatment Center. 2002. The impact of medical evidence on criminal justice outcomes: The District Attorney/sexual assault examiner study: Final report.

⁵⁸Ibid

⁵⁹Ibid

⁶⁰D. Shelton. 2008, March. The “CSI effect”: Does it really exist? *NIJ Journal* 259:1–7. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. NCJ 221500.

⁶¹Ibid.

are more likely to receive medical care.⁶² Research found that 59% of all victims choosing to report the victimization to law enforcement received medical treatment. In contrast, only 17% of all rape victims who did not report the victimization to police received medical care. It is important that victims have access to medical care to address immediate medical concerns, including the possibility of sexually transmitted diseases or even pregnancy, as 4.7% of all rapes result in pregnancy.⁶³ Medical care may also serve as an opportunity to educate sexual assault victims on the link between sexual assault and potential future health problems.

The National Violence Against Women Survey (NVAWS) found that 32% of women and 16% of men who were sexually assaulted sustained physical injuries in addition to the sexual assault.⁶⁴ Victims reported a variety of injuries including scratches, lacerations, bruises, welts, broken bones, dislocated joints, chipped or broken teeth, sprained muscles and internal injuries.⁶⁵ In this same study, slightly over 3% of all victims reported having contracted a sexually transmitted disease as a result of the rape.⁶⁶

Of victims receiving injuries in addition to the sexual assault itself, only 36% seek medical treatment, leaving over 60% of injured victims without medical care.⁶⁷ Research indicates a sexual assault victim benefits in numerous ways from a consistent response, streamlined services, and increased quality of care provided by a trained forensic examiner who fully understands the issues associated with victimization.⁶⁸

The changes in VAWA 2005 reflect the hope that victims will be more likely to seek medical care if they are afforded the opportunity to obtain a forensic medical examination as a part of the care they receive, regardless of whether they choose to report the incident to police. Increased access to medical care, with the forensic medical examination component to that care, has the potential to improve survivors' physical and mental health, increase rates of prosecution and conviction in criminal sexual assault cases, and result in healthier, safer communities.

Steps Towards Establishing A Compliant System

Working Toward a Compliant System

A Checklist for States and Territories

Working Toward a Compliant System: A Checklist for States and Territories

- Understand VAWA 2005 Compliance Requirements

⁶²C.M. Rennison. 2002, August.

⁶³M.M. Holmes, H.S. Resnick, D.G. Kilpatrick and C.L. Best. 1996. Rape-related pregnancy: estimates and descriptive characteristics from a national sample of women. *American Journal of Obstetric Gynecology* 175:320–324.

⁶⁴Data is based upon survey responses targeting sexual assaults occurring within the past 12 months prior to the interview.

⁶⁵P. Tjaden and N. Thoennes. 2006 January.

⁶⁶Ibid.

⁶⁷P. Tjaden and N. Thoennes. 2006, January. T.K. Logan. 2006, Summer. Program and sexual assault survivor characteristics for one SANE program. *Journal of Forensic Nursing*.

⁶⁸R. Campbell. 2004, November.

- Convene a Statewide Planning Forum
- Educate Stakeholders on the Issues
- Assess Current Status of Your State
- Project Increases in the Volume of Forensic Medical Exams
- Ensure a Victim-Centered Multi-Disciplinary Approach
- Ensure Successful Implementation of the Process

The Federal Statute

The federal statute encouraging the enhanced protections for sexual assault victims, as it relates to forensic medical examinations, essentially defines a two-prong test for states and territories. The first prong is to ensure all sexual assault victims are afforded the opportunity to have a forensic medical examination without requiring them to report the assault to law enforcement. While the statute provides the framework for the mandate, it does not dictate how it should be implemented. States and territories have great autonomy to determine how to ensure their jurisdiction complies with the federal law. There are a variety of ways to effectuate the necessary changes. Legislation, statewide policy, and guidelines for local jurisdictions are all viable options. Each option is discussed in further detail in the chapters ahead.

The second prong for compliance is to ensure that all forensic medical examinations are provided with no cost to the victim or with full reimbursement. Jurisdictions can accomplish this in a variety of ways:

- They can fund the forensic examination reimbursement program up front;
- They can have the forensic examination reimbursement program bill them directly for each examination conducted; or
- They may have the victim pay for the forensic medical examination, and the State or local jurisdiction then reimburse the victim for any and all out-of-pocket costs, provided the following conditions are met:
 - The government entity may not impose any deductible requirement or limit on the amount of a reimbursement;
 - Victims must be allowed to apply for reimbursement for at least one year from the date of the exam;
 - Reimbursement must be provided not later than 90 days after written notification of the victim's expense; and

- All victims, including victims with limited or no English proficiency, must be provided information regarding how to obtain reimbursement at the time of the exam.⁶⁹

Further:

- If a jurisdiction uses STOP funds to pay for the costs of the examinations, the jurisdiction may not require victims to submit the bill to their private insurance.⁷⁰
- If a jurisdiction uses state or alternative funding to pay for the cost of the exam, and chooses to bill a victim's private insurance, the victim may not be held liable for a deductible, co-pay, or other out-of-pocket expenses.

If a state's or territory's existing regulation and/or statute dictates that a police report or other documentation of the victim's cooperation with the criminal justice system be provided in order for the costs of the forensic medical examination to be reimbursed, that requirement must be remedied in order to comply with VAWA 2005.

The Planning Process

The first step in assessing and/or ensuring compliance is to identify and convene the stakeholders. The STOP Administrator is a key player, because the agency designated to administer the STOP funds is required to certify that its jurisdiction is VAWA-compliant. Prospective partners include the sexual assault or dual (sexual assault and domestic violence) coalition; representatives from a statewide sexual assault task force and/or Sexual Assault Response Team (SART) or other statewide planning entity, if one exists; the state health department; the area hospital association; medical providers; forensic nurses; law enforcement; and prosecution representatives.

Input from the statewide stakeholders group is necessary in designating a lead agency and/or convenor. In considering an appropriate leader to facilitate this initiative, the state might draw upon prior experience with previous statewide initiatives such as the VAWA Implementation Planning Committee, statewide legislative initiatives, or perhaps ad hoc committees convened for a common purpose. Once a state or territory has identified the facilitating entity, the state must then identify appropriate stakeholders to include. Some states establish a formal agreement among the stakeholders to ensure successful implementation of the process. A checklist of agencies to consider for inclusion within this process is found in Exhibit C.

Michigan Domestic Violence Prevention and Treatment Board

The Michigan Domestic Violence Prevention and Treatment Board offered an interesting opportunity for launching statewide planning discussions in the form of a “Think Tank.” A variety of policy-level advocates and stakeholders met on March 19, 2008, to discuss the sexual assault forensic medical examination requirements within VAWA 2005. Discussions began with a review of the federal

⁶⁹42 U.S.C.A. § 3796gg-4(b).

⁷⁰U.S. Department of Justice, Office on Violence Against Women. Program Brief: STOP Violence Against Women Formula Grant Program: Program Eligibility.

statutory requirements and a comparison of the state's statute, current policies and procedures, and practices throughout the state. The forum continued with a presentation of the different “types” of compliance that may be viable options for their state.

Participants quickly followed with a brain-storming session, tackling each option individually and identifying pros and cons for each. The forum resulted in several creative ideas for problem-solving, as well as an action plan for the future to continue the strategic discussions.

Educate Stakeholders on the Issues

Start with the basics to ensure that all stakeholders have a complete understanding of the issues. This includes an overview of the compliance statute, the basics of a victimcentered approach, as well as ideas on how to develop policy into practice, to include the “types” of compliant systems (described in further detail within the chapters of Types of Compliant Systems [page 38]).⁷¹ To assist stakeholders with this, a PowerPoint presentation, entitled Compliance Overview, has been developed and is attached as Exhibit D.⁷²

Assess the Current Status of Your State/Territory

Typically, once stakeholders understand the forensic compliance mandates it quickly becomes apparent which rules, policies and practices need to be revised. The Compliance Overview PowerPoint (Exhibit D) may help set the stage for discussions, as it outlines barriers that states and territories commonly face. In the event that stakeholders are not aware of how the exams are currently conducted and how they are paid, an overview of that information should be presented. Stakeholders should be made aware of current statutes, administrative regulations, and other dynamics pertaining to the provision of the examinations and payment of those exams, as this will assist in identifying areas that need to be addressed.

Pilot Site North Dakota

The North Dakota Department of Health, Division of Injury Prevention and Control, in partnership with the Office of the Attorney General and the North Dakota Council on Abused Womens Services/Coalition Against Sexual Assault in North Dakota, were selected to represent North Dakota as one of three pilot sites throughout the nation benefiting from intensive technical assistance through the VAWA Forensic Compliance Project. One of the first tasks as part of the pilot site project was to assess the current health care response to victims of sexual assault throughout the state. Additionally, the survey was to serve as a tool to assess the reimbursement process health care facilities were accessing to seek reimbursement for the costs associated with performing forensic medical examinations.

⁷¹A more detailed discussion regarding the length of storage and the disposition of storage occurs in Ensuring Access to Examinations—Storage, Transportation and Destruction of Evidence (page 31).

⁷²The Compliance Overview PowerPoint is available to view online through the VAWA Forensic Compliance link at www.mcasa.org [<http://www.mcasa.org>]

The statewide survey, conducted in May and June of 2008, produced a 67% response rate from health care facilities throughout the state. The results of the survey were enlightening, and served as a needs assessment with regard to professional resources dedicated to the provision of forensic medical examinations and the need for additional training of examiners. Additionally, the survey results revealed the need to provide additional education to hospital administrators and billing personnel within health care facilities throughout the state regarding the reimbursement process.

Survey results are available as Exhibit E.

Project Increases in the Volume of Forensic Medical Exams

Jurisdictions can better prepare for the new examination and payment protocols if they know what to expect. This includes an estimate of the number of exams likely to be conducted for their state or jurisdiction.

Inevitably, one of the first questions that arise regarding implementation of the new policy relates to what can be anticipated in terms of an increased volume in the number of forensic medical examinations. This information is valuable to fully understanding the potential impact initiating such a policy will have upon the health care and criminal justice systems, as well as for projecting the costs associated with the anticipated increase in volume, and planning accordingly.

Unfortunately, since very little research exists, the question of how to project the increase in the number of forensic medical exams is difficult to answer. There is one venue, however, where research has provided some insight into the effect of initiating these types of policies: the military.

In June 2005, the U.S. military implemented a “Restricted Reporting”⁷³ policy, where military victims of sexual assault have the option to report an incident of sexual assault to a health care provider, victim advocate, chaplain, or Sexual Assault Response Coordinator, but the incident is not investigated. Utilizing a Restricted Reporting process, victims are afforded services such as a forensic medical examination, advocacy, and counseling, while reserving the right to “officially” report the assault at a later date. In contrast, the Unrestricted Reporting process, when initiated, will automatically generate an investigation. Obviously, all parties are identified when the Unrestricted policy is implemented. During the first six months of implementation, 18% of all sexual assault reports were Restricted.⁷⁴ During the next twelve months, overall reports of sexual assault increased by 24%, with 26% of those victims exercising the Restricted Reporting option.⁷⁵

In 2006, 11% of all victims who originally reported through the Restricted policy eventually elected to change the report to Unrestricted. In 2007, 14% of all Restricted reports ultimately were changed to Unrestricted. Although the trend is to be noted, it is also important to discern that the military is a unique subpopulation and may not be reflective of the general population. The rate of underreporting in the general population should be taken into account, and be used as a catalyst for discus-

⁷³U.S. Department of Defense, Sexual Assault Prevention and Response Office. Restricted reporting.

⁷⁴U.S. Department of Defense, Sexual Assault Prevention and Response Office. FY07 report on sexual assault in the military. 2008, March. Washington, DC: U.S. Department of Defense.

⁷⁵Ibid.

sions. See Exhibit F for a one-page handout containing statistics regarding the underreporting of sexual assault.

Ensure a Victim-Centered Multi-Disciplinary Response

As previously noted, any policies and procedures related to the provision of direct services for sexual assault should be victim-centered and multi-disciplinary. The importance of a multi-disciplinary approach to sexual assault is well-documented. When a community formalizes a comprehensive collaborative approach by establishing a Sexual Assault Response Team (SART), its increased collaborations can improve prevention efforts, enhance the response provided to victims, and provide better management of offenders.⁷⁶ Generally speaking, likely participants on a SART include law enforcement officers, prosecutors, advocates and volunteers from the rape crisis center, and Sexual Assault Nurse Examiners (SANEs). Studies have found that more services are being offered to victims in communities where SARTs exist.⁷⁷

Victims report services are more effective when “agencies work together to meet their needs.”⁷⁸ Victim satisfaction surveys indicate that when agencies work together to address domestic or sexual violence, victims report increased levels of satisfaction with the criminal justice system and case outcomes.⁷⁹

A combined SANE/SART response, as offered in some communities, also yields a significant impact upon outcomes within the criminal justice system and has been found to have “the greatest impact on charging decisions in adult female sexual assault cases and is a contributing factor in the likelihood suspects will be identified and arrested.”⁸⁰ A combined SANE/SART response to a victim of sexual assault was found to increase the likelihood of charges being filed by 3.3%.⁸¹ Finally, a combined SANE/SART response was also found to increase the chances of producing a conviction for the sexual assault by 3.5%.⁸²

Wyoming Sexual Assault Response Team (WySART)

The mission of the Wyoming Sexual Assault Response Team (WySART) is to promote a healthy, respectful and appropriate response for victims of sexual assault within Wyoming communities

⁷⁶Some jurisdictions refer to these multi-disciplinary teams as Sexual Assault Response Teams or Sexual Assault Resource Teams, both of which use the acronym “SART.” Others use the acronym “SARRT,” Sexual Assault Resource and Response Team. Throughout this document, the term SART is used. Responsibilities of SARTs vary, however. Some are response teams that provide a coordinated response to victims of sexual assault when they present at a hospital. Other SARTs serve as a multi-disciplinary coordinated community response (CCR) team, addressing issues pertaining to the response to victims of sexual assault in their community. Members may or may not be first responders and/or direct service providers. See K. Littell. 2001, April. Sexual Assault Nurse Examiner (SANE) programs: Improving the community response to sexual assault victims. U.S Department of Justice, Office of Justice Programs, Office for Victims of Crime, OVC Bulletin. NCJ 186366.

⁷⁷M.E. Nugent-Borakove, P. Fanflik, D. Troutman, N. Johnson, A. Burgess, and A.L. O’Connor. 2006, May.

⁷⁸J.M. Zweig, M.R. Burt, and A. Van Ness. 2003, February. Effects on victims of victims service programs funded by the STOP Formula Grants Program. Washington, DC: U.S. Department of Justice, National Institute of Justice. NCJ 202903.

⁷⁹Ibid.

⁸⁰M.E. Nugent-Borakove, P. Fanflik, D. Troutman, N. Johnson, A. Burgess, and A.L. O’Connor. 2006, May.

⁸¹Ibid

⁸²Ibid.

through support, policy, education and training. WySART members, appointed by the Wyoming Attorney General, are charged to serve as a model multi-disciplinary team to local communities who are committed to improving their response to sexual assault victims.

WySART is comprised of two members from each of the following disciplines: advocacy, law enforcement, the Wyoming State Crime Lab, prosecution, medical administration, and practicing SANEs or SANE trained nurses. Demonstrations of this successful collaboration include statutory changes to allow sexual assault nurse examiners (SANEs) to conduct forensic medical examinations. Prior to the statutory changes, only physicians were authorized to provide these exams.

WySART created a unique training opportunity with the Crime Lab. When Wyoming revised its Biological Evidence Collection Kit (“Bio Kit”), a statewide training was conducted, requiring community members to attend the training prior to receiving the new kits. This created an opportunity to develop and provide training over and above training on the Bio Kit, encouraging a victimcentered collaborative response to sexual assault.

WySART successfully trained all 23 counties, as well as the Wind River Indian Reservation, within a period of one year.

Ensure Successful Implementation of the Process

Training

Once a plan for compliance measures has been identified and developed and is being pursued, it is also important to ensure that the plan is communicated to stakeholders throughout the jurisdiction. A broad dissemination of informational materials describing the requirements under VAWA is essential. It is equally necessary to communicate the strategy for responding to the mandates. This may be accomplished through the distribution of a statewide policy, accompanied by a training/general education component designed to articulate the proposed process for serving sexual assault victims who do not wish to report to law enforcement and/or the criminal justice system. States and jurisdictions are encouraged to consider establishing multi-disciplinary training teams representative of the individuals targeted for training.

There are many audiences to consider for training, some of which are listed below:

- *Health care providers*-Local, regional or state/territorial chapters of the International Association of Forensic Nurses (IAFN); SANEs; emergency room personnel; triage personnel; clinics; emergency medical services (paramedics, fire departments); campus health facilities; Indian Health Services (IHS); and other alternative health care providers
- *Health care facility billing personnel*
- *State Department of Health*
- *Law enforcement personnel*-Chiefs of Police associations; Sheriffs associations; state police; campus police; local law enforcement departments; basic academy classes

- *Prosecutors-Prosecutors' offices, organizations*
- *Statewide sexual assault coalition*
- *Rape crisis centers Staff, volunteers*
- *Crime Victims' Compensation State administrative agency*
- *Legal partners Attorney General's Office; Legal Aid*
- *STOP Administrator*

States are encouraged to target the training to multi-disciplinary audiences that are representative of the multiple stakeholders responding to victims of sexual assault.

Minnesota Coalition Against Sexual Assault (MNCASA)

In July 2008, the Minnesota Coalition Against Sexual Assault (MNCASA) conducted a Webinar entitled “VAWA Forensic Compliance Issues for Advocates: Requirements and Best Practices: Translating the forensic compliance mandates within the Violence Against Women Act (2005) into practice within Minnesota.” The Webinar provided an opportunity for advocates throughout the state to be provided information on the forensic examination requirements. MNCASA staff, along with a forensic nurse examiner, provided a comparison of their state statute and practices, highlighting issues that remained to be resolved. The Webinar provided an opportunity for advocates to discuss barriers and to identify next steps. MNCASA followed the presentation with a survey asking participants to evaluate the educational opportunity, providing feedback to both MNCASA staff and Webinar presenters.

Monitoring

Jurisdictions may wish to consider implementing a process for monitoring the effectiveness of the system, both to ensure the successful implementation of new policies and procedures and to maintain the integrity of the system established. A monitoring system would be dependent upon an established case tracking system (described in further detail within Ensuring Access to Examinations—Storage, Transportation and Destruction of Evidence [page 31]). The case tracking system is designed to track the evidence from the sexual assault examination evidence collection kit from the time the examination is initiated to the disposition of the evidence, as well as, in those states or jurisdictions utilizing “anonymous” kits, the coded identity of the victim whose evidence is collected. It is imperative for states and territories to establish a reliable and valid case tracking system in conjunction with the implementation of new protocols.

The case tracking system will be valuable in collecting information regarding the number of exams for any given period of time and will also provide information regarding what, if any, increases are seen not only in the number of exams, but also in the resources necessary to ensure victims are not held responsible for the costs associated with the examinations. States and territories are also

strongly encouraged to consider linking the case tracking system to a longer-term monitoring mechanism to measure several variables:

- *Which cases, where the victim originally did not wish to report the assault to law enforcement, ultimately changed their course as the victim decided to pursue options through the criminal justice system?*
- *Of these cases, how were the investigations cleared or closed?*
- *Of these cases, what were the prosecutorial outcomes? (e.g., How many charges were filed? How many defendants convicted?)*
- *In cases where the victim elected not to pursue options through the criminal justice system, what was the process, if any, for contacting the victim prior to the disposition of the evidence to advise them the evidence would be destroyed?*⁸³

As jurisdictions work toward implementing compliant systems, the longitudinal monitoring of such cases should be actively explored.

Ensuring Access To Examinations

Overview

Federal Statute

Violence Against Women and Department of Justice Reauthorization Act of 2005

Purpose of Program and Grants

(a) General Program Purpose

The purpose of this subchapter is to assist States, State and local courts (including juvenile courts), Indian tribal governments, tribal courts, and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women.

42 U.S.C.A. § 3796gg-0(a)

Rape Exam Payments

(d) Rule of Construction

(1) In General

⁸³A more detailed discussion regarding the length of storage and the disposition of evidence occurs in Ensuring Access to Examinations—Storage, Transportation and Destruction of Evidence (page 31).

Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to 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, reimbursement for charges incurred on account of such an exam, or both.

42 U.S.C.A. § 3796gg-4

Background

Consistent with the intent of the federal statute,⁸⁴ prompt evidence collection offers the opportunity to provide medical and supportive care to every victim of sexual assault as soon as possible following the assault.⁸⁵ With evidence collected, the victim may either report the assault immediately or at a later time. For victims, the dilemma of having to make the decision to report immediately is removed, yet the possibility for the criminals to be apprehended and prosecuted in the future is retained.

VAWA 2005 requires that states and territories desiring to remain eligible to receive STOP Program funding must—by January 5, 2009—provide sexual assault victims access to a forensic medical examination without requiring the victim to report the assault to law enforcement. A further eligibility requirement for STOP Program funding is that the state, Indian tribal government, unit of local government, or another governmental entity incur the full out-of-pocket cost of forensic exams. In many jurisdictions, significant changes in policies and practice may be necessary to achieve compliance with the forensic medical examination access and payment requirements of VAWA 2005.

This section of the Toolkit provides states and territories information on how to implement a multidisciplinary, victim-centered approach to establishing compliant protocols. It is our hope that states and territories will strengthen victim services by striving to meet both the letter and the spirit of the law. To that end, this Toolkit will help you build upon the foundation that you have established, providing information on promising practices and victim-centered policies and procedures and highlighting successful strategies employed by the pilot sites and other states throughout the nation. States and territories are encouraged to continually monitor and assess their policies for gaps in service delivery, as newly implemented policies often require enhancements.

Initial Response

Communicating Options to the Sexual Assault Victim Who Is Presenting the Reporting Options to the Victim of Sexual Assault?

Considerations:

- *Who will be the professional designated to discuss the reporting options with the sexual assault victim?*

⁸⁴42 U.S.C. 3711 et seq.

⁸⁵For more information regarding the criminal justice and health care philosophies, see Background—Criminal Justice Philosophy (page 11) and Health Care Philosophy (page 12).

- *a victim advocate?*
- *a Sexual Assault Nurse Examiner?*
- *an Emergency Department physician?*
- *triage personnel?*
- *other health care provider?*
- *law enforcement?*
- *Will the process for discussing the reporting options be consistent within your jurisdiction, or will it alter depending upon variables such as whether or not staff is available, financial resources, and/or the time of day?*
- *Are there state mandatory reporting laws for health care providers within your state, precluding changes in the policy?*
- *How will professionals be educated on the reporting options and trained to respond to the sexual assault victim?*

States and territories are encouraged to consider the various points of entry to which a sexual assault victim may present to report the assault or to seek medical care. Consideration should be given to all possible points of entry into the system to ensure a uniform, consistent response to all sexual assault victims throughout the jurisdiction. Victims of sexual assault may present to a variety of audiences—friends, family members, clergy, rape crisis centers, other supportive services programs, the criminal justice system, and/or the health care system. For purposes of this document, however, greater emphasis is placed upon those victims presenting to health care providers, rape crisis centers or the criminal justice system.

One of the first considerations is to determine who will be communicating to the victim the victim's options in reporting or not reporting the assault to law enforcement. A victim-centered response would uniformly and consistently provide all reporting options to the sexual assault victim as soon as reasonably possible after the victim presents to the criminal justice system, rape crisis center or health care system so the victim is able to make informed decisions. Because how the victim is provided the reporting options is important, who provides the information plays a critical role in the process.

Various scenarios are presented below for states and territories to consider. The Forensic Compliance Project surveyed state STOP Administrators and coalition directors to ascertain current practices employed throughout the nation.⁸⁶ These practices are integrated into the scenarios provided below.

⁸⁶Between December 2007 and January 2008, all states and territories were surveyed to ascertain the “state of the nation” and identify promising practices. Surveys were directed to all STOP Administrators and the directors of state sexual assault or dual (sexual assault and domestic violence) coalitions. Responses were received from 59% of the jurisdictions surveyed, providing a wealth of information concerning their current status, barriers they face in implementing compliant procedures,

Exhibit G—First Responders to Victims and Exhibit H—Who Communicates Options to Victims provide summary information on survey results.

Victim Advocates

In some states and territories, victim advocates are responsible for providing reporting options to victims. Victim advocates,⁸⁷ from private non-profit agencies dedicated to serving victims of sexual assault, offer an array of services to the victim including, at the victim's discretion, accompaniment and support during the forensic medical examination. In this scenario, the sexual assault victim advocate is responsible for presenting all of the reporting options available and discussing the pros and cons of each option with the sexual assault victim; and the victim advocate supports and advocates for the victim as the victim makes an informed decision. Designating the victim advocate to present reporting options to the victim would be a victim-centered approach, ensuring the best interest of the victim is prioritized and maintained.

Relying upon victim advocates to respond to sexual assault victims in all cases is possible in jurisdictions that have advocacy organizations with adequate staffing and financial resources to respond to every sexual assault victim. However, having advocates provide the reporting options to victims may not be viable for all jurisdictions. Not all jurisdictions have the benefit of continuity of victim advocacy services. Only 31% of the nation indicate that an advocate is one of the first individuals responding to a victim of sexual assault and designated to provide reporting options to the victim.⁸⁸

It is not uncommon for a jurisdiction to have limited advocacy services, including limited shifts as well as periods during which an advocate is unavailable. An alternative system may need to be considered in order to provide reporting options to victims during times when advocacy services are not available.

Health Care Professionals

Another professional that may be considered to communicate the reporting options to the sexual assault victim is the health care provider conducting the sexual assault forensic medical examination. A growing trend across the United States is the use of Sexual Assault Nurse Examiners (SANEs) to conduct the exam. SANEs are registered nurses who receive specialized education and fulfill clinical requirements to perform these exams. Some nurses have been certified as SANEs-Adult and Adolescent (SANE-A) through the International Association of Forensic Nurses (IAFN). Others are specially educated and fulfill clinical requirements as forensic nurse examiners (FNEs), enabling them to collect forensic evidence for a variety of crimes. The terms “sexual assault forensic examiner” (SAFE) and “sexual assault examiner” (SAE) are often used more broadly to denote a health care provider (e.g., a physician, physician assistant, nurse, or nurse practitioner) who has been

and strategies they have adopted. Total number of states and territories is 56 (50 states, 5 territories, and the District of Columbia). The VAWA Forensic Compliance Project National Survey tool is attached as Exhibit B.

⁸⁷There are also system-based Victim Witness/Victim Assistants, who support victims of sexual assault in interacting with the criminal justice system. Within this Toolkit, the term victim advocate refers to community-based sexual assault victim advocates who most commonly represent non-profit, non-governmental domestic violence, sexual assault and/or stalking programs such as rape crisis centers, shelters, advocacy groups, or coalitions.

⁸⁸VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

specially educated and completed clinical requirements to perform this exam. VAWA Forensic Compliance Project National Survey⁸⁹ results indicated that in 69% of cases, a SANE is one of the first responders to victims of sexual assault.

Barriers to recruiting, training, and retaining specially trained forensic examiners mean that their use will not be a viable option for some states.⁹⁰ Many jurisdictions do not have SANEs or other trained forensic examiners on staff. In North Dakota, for example, approximately 72% of all health care facilities indicated that they do not have SANEs on staff providing the forensic medical examinations.⁹¹

Consequently, sexual assault patients frequently are examined by Emergency Department physicians or Registered Nurses. The VAWA Forensic Compliance Project National Survey found that in 50% of all cases, the first responder is an Emergency Department physician.⁹² While this may often be true in rural areas, it is certainly not limited to geographical areas with limited resources. In areas with a high volume of sexual assault cases, the demand for specially-trained forensic examiners can outweigh the supply, forcing hospitals to either transfer patients to alternative locations or provide the forensic medical examinations with untrained examiners. In Wyoming, a statewide survey of health care facilities indicated that 67% of physicians had not completed formal training regarding the collection of evidence from sexual assault victims.⁹³

The lack of trained forensic examiners is one of the formidable challenges states and territories may face as they work to develop protocols. The accessibility of dedicated personnel should be carefully evaluated prior to making a recommendation for SANEs or SAFEs to take on the role of relaying the options to the sexual assault victim. It is important to note that STOP formula grant funds can be used to train forensic examiners.

Other Hospital Personnel

Depending upon the facility's procedures, the first individual within the medical system who may be interacting with the victim is the person responsible for registering and/or conducting an assessment of the patient at the point of admission. The VAWA Forensic Compliance Project National Survey results reflect that in 39% of all cases that present, "other hospital personnel" are providing information regarding the reporting options to the victim.⁹⁴

Development of protocols, training in policies and procedures, and education of those professionals performing the forensic medical exams need to be made priorities. Health care personnel who may interact with victims of sexual violence should be wellversed on the federal statute and on the interpretation of the federal statute within their state's and/or local jurisdiction's policies, protocols

⁸⁹VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

⁹⁰The SANE Sustainability Technical Assistance Project provides assistance to jurisdictions and hospitals in increasing the capacity to sustain SANEs. More information is available from <http://www.nsvrc.org/projects/sane>

⁹¹Based upon a statewide survey of North Dakota health care providers conducted May–June 2008, 67% response rate.

⁹²VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

⁹³Statewide survey of Wyoming health care providers conducted by the VAWA Forensic Compliance Project July–August 2008. 75% response rate.

⁹⁴VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

and procedures. Also important, information as to how a victim of sexual assault may access forensic medical examination services, and how a victim who received a forensic medical examination but did not immediately report the assault may reconnect with the system to file a report or to retrieve personal items stored as evidence, should be broadly disseminated to rape crisis centers, advocacy organizations, hospitals and other medical facilities, law enforcement agencies, and other settings where victims may seek assistance. Those agencies should assure that their staff are aware of the information and have ready access to it. More information regarding training and education for a variety of disciplines can be found in *Steps Towards Establishing a Compliant System—Working Toward a Compliant System* (page 14).

Law Enforcement

The federal statute specifically addresses law enforcement in relation to access to forensic medical examinations. Section 3796gg-4(d)(1) of the statute provides that “Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to 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, reimbursement for charges incurred on account of such an exam, or both.”

Some jurisdictions continue to have health care personnel contact law enforcement as part of their routine protocol when a sexual assault victim responds to the health care facility.⁹⁵ In a nationwide survey, 39% of all survey respondents indicated that law enforcement is contacted when a victim presents for medical care.⁹⁶ States and jurisdictions may wish to re-evaluate this practice, provided there are no mandatory reporting laws requiring the report to law enforcement.⁹⁷ A law enforcement officer in uniform, asking to speak with the sexual assault victim immediately following the trauma, may be viewed as an authority figure, and the victim could perceive no choice but to cooperate with the officer.

Historically, a law enforcement officer may have responded to the medical facility's Emergency Department and met with the sexual assault victim. The law enforcement officer, by conducting an interview with the victim concerning details of the assault and observing the victim, would make a determination as to whether or not the elements of a crime existed. After obtaining preliminary information from the victim and determining that there existed reasonable suspicion a crime had occurred, law enforcement would then authorize the forensic medical exam and proceed with investigating the crime and securing alternative crime scenes as appropriate. If, however, the officer

⁹⁵A majority of states have statutes mandating health care professionals report to law enforcement certain situations where patients present for treatment of sexual assault. All states have mandatory reporting requirements for situations involving vulnerable populations. States and territories should defer to their state laws concerning mandatory reporting situations.

⁹⁶VAWA Forensic Compliance Project National Survey, December 2007—January 2008 (Exhibit B).

⁹⁷States may wish to refer to the Health Insurance Portability and Accountability Act of 1995 (HIPAA) and its implementing regulations (found at 45 CFR Parts 160 and 164), providing national standards for the protection of certain individually identifiable health information created or held by health care providers and others. Interpretation of the laws depends on individual situations and the laws of the particular state. See Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, Regulation Text (Unofficial Version), available from <http://www.hhs.gov/ocr/privacy/hipaa/news/2002/combinedregtext02.pdf>

determined there was not reasonable suspicion of a crime, the officer may not have authorized a forensic medical examination.

Denying a victim of sexual assault the opportunity for a forensic medical examination based on her or his decision not to report the sexual assault to law enforcement would preclude a state or territory from certifying to compliant practices after January 5, 2009. If the practice of a law enforcement officer responding to all victims of sexual assault continues as a matter of policy or practice, jurisdictions must ensure the law enforcement officer does not deny the sexual assault victim the opportunity for the forensic medical examination if the victim chooses not to report. Law enforcement agencies in these jurisdictions should be required to establish clear, concise standard operating procedures with respect to responding to these types of events to ensure that a victim-centered approach is maintained. If the victim indicates to law enforcement officers or health care professionals that she or he is not interested in reporting or cooperating with a law enforcement investigation, the victim is to be given the option of having the forensic medical examination conducted and the evidence collected and stored for a designated period of time.

What Information Will Be Provided to the Sexual Assault Victim?

Considerations:

- *Has the sexual assault victim been:*
 - *Informed of the options: to immediately report the sexual assault to law enforcement, or to not report the sexual assault at the time of the forensic medical examination, while retaining the prerogative to report at a later time?*
 - *Given specific details regarding the storage of the evidence, including the length of time the evidence will be stored and information on the destruction of the evidence?*
 - *Provided the name and contact information for the individual the victim is to contact in the event she/he desires to proceed with reporting the assault to law enforcement, as well as any identifying information for the evidence in the event the evidence is being stored “anonymously”?*
 - *Given information regarding the local nonprofit rape crisis center within the community and the services available to the victim (counseling, hotline, etc.)?*
 - *Informed of the potential ramifications of not immediately reporting the assault to law enforcement, including that additional evidence may be lost from crime scenes, and chances for a successful investigation and prosecution in the future may be reduced?*
- *Have core agencies and interested parties within your community been educated regarding the policies for victims to report at a later date, in the event the victim misplaces the information?*

When reporting options are presented, there are two choices for the sexual assault victim to consider: immediately reporting the assault to law enforcement, or declining to report the assault to law en-

forcement at the time of the forensic medical examination while retaining the prerogative to report at a later time. In the event a sexual assault victim desires to not immediately report the sexual assault to law enforcement, but elects to continue with a forensic medical examination,⁹⁸ the victim should be informed of the potential pros and cons of not reporting the assault to law enforcement immediately; provided information regarding identification, storage and retrieval of the evidence collected during the forensic medical exam; furnished contact information to be used in the event the victim desires to report to law enforcement at a later date; and given contact information for rape crisis center or other support services.

States and territories should communicate in detail with the sexual assault victim not only the reporting options, but also the pros and cons associated with reporting to law enforcement and not reporting to law enforcement, including a delayed report.

Victims' Options:

Reporting

Pros

- The victim receives the forensic medical exam and may access treatment and counseling for physical and mental effects of the sexual assault regardless of the decision to report.
- Crime scenes may be investigated before evidence is lost.
- Witnesses may be located and interviewed while memories are fresh.
- Evidence collected in the forensic medical examination may be immediately processed.
- An immediate investigation may be conducted and evidence may lead to identification, apprehension and prosecution of the assailant.
- Some victims find a sense of closure and/or empowerment by choosing to engage the criminal justice system.

Cons

- The victim may fear further danger to self, family or others from the assailant in response to the victim's interaction with law enforcement.
- The victim may be reluctant to identify the assailant or aid in arrest for a variety of reasons including financial dependence upon the assailant; assailant is father of victim's children; victim is concerned about institutionalized racism.
- The victim may be reluctant to be identified as a victim among family or the larger community.

⁹⁸It is important to note that sexual assault victims can decline to have a forensic medical examination conducted.

- An investigation could reveal illegal activity of the victim, such as drug use, underage drinking, prostitution or immigration status.
- Some victims find the criminal justice system to be intrusive and may have difficulty facing the perpetrator in court.

Delayed Reporting

Pros

- The victim receives the forensic medical exam and may access treatment and counseling for physical and mental effects of the sexual assault regardless of the decision to delay reporting.
- In cases where the victim knows or is financially dependent upon the assailant, the victim has time to address safety and financial concerns.
- Evidence collected in the forensic medical examination may be processed.
- An investigation may be conducted and evidence may lead to identification, apprehension and prosecution of the assailant.

Cons

- A thorough and successful investigation of the assault could be more difficult. Evidence and witnesses disappear, and memories fade.
- Delayed reporting may affect the perceptions and response of prosecutors and jurors and may influence the prosecutors' ability to obtain a conviction.

An example of a disclaimer drafted by a state regarding the potential impact of a delayed report and its bearing upon future prosecution is found within an informed consent form used in the state of Utah. Utah incorporates a disclaimer that there may, in fact, be ramifications for not reporting the assault immediately. A copy of Utah's *Informed Consent Form* is found as *Exhibit I*.

The State of Virginia furnishes another excellent example of information provided on how a delayed report may affect the outcome of a case. Virginia's Frequently Asked Questions, written for a variety of audiences, is attached as *Exhibit J*.⁹⁹

In addition to being informed of the ramifications associated with reporting, not reporting, or delayed reporting to law enforcement, a victim should be provided specific information regarding the logistical details related to the evidence being stored. The following specifics, each described in more detail later in this chapter, should be communicated to the victim of sexual assault:

⁹⁹Virginia Department of Criminal Justice Services. 2008, August. Frequently asked questions (FAQ)—Physical evidence recovery kit (PERK) authorization and payment: Improving access to sexual assault forensic examinations (Exhibit J).

- Information regarding how long the evidence will be stored pending a decision from the victim to report the assault;
- Contact information to be used in the event the victim wishes to “initiate” a report to law enforcement (telephone number, contact name [if appropriate], hours of availability); and
- The case number or identifier the victim should use when initiating a report, linking the victim to the evidence collected within the sexual assault evidence collection kit.

How Will Options Be Communicated?

Considerations:

- *Provide both written and oral information to sexual assault victims regarding the reporting options.*
- *Provide information in multiple formats to meet the needs of individuals who speak languages other than English, have low literacy levels, or have cognitive or physical disabilities, as required by VAWA.¹⁰⁰*
- *Consider including information on reporting options on the informed consent form for the forensic medical examination, which encourages professionals to provide comprehensive information to sexual assault victims regarding the options prior to the examination being conducted.*

In addition to considering what reporting option information professionals will provide to the victim, jurisdictions should determine how the options will be communicated. Verbally informing sexual assault victims is certainly an important method, however jurisdictions are strongly encouraged to provide information in writing regarding the reporting options, instructions for the victim in the event the victim desires to report the assault in the future, as well as the risks associated with reporting and not reporting to law enforcement, discussed above under *Victims' Options in What Information Will Be Provided to the Sexual Assault Victim* (page 27).

Some jurisdictions accomplish this communication while obtaining informed consent for the forensic medical examination and evidence collection. The National Protocol for Sexual Assault Medical Forensic Examinations states, “Patients should understand the full nature of their consent to each procedure, whether it be medical or forensic (e.g., what the procedure entails, possible side effects, and potential impact). The only way to put patients in the position of being able to make informed decisions about whether to allow a procedure is by presenting them with all relevant information. Patients can decline any part or all of the examination. However, the informed consent process includes making patients aware of the impact of declining a procedure, as it may negatively affect the quality of care and the usefulness of evidence collection.” The National Protocol also states, “Health care providers and other responders must refrain from any judgment or coercive practice in seeking patients' consent. It is contrary to ethical and professional practices to influence their

¹⁰⁰42 U.S.C.A. § 3796gg-4.

decisions.”¹⁰¹ The informed consent form could also provide contact information should the victim have questions after discharge. All information for victims of sexual assault should be available in multiple formats to meet the needs of individuals who speak languages other than English, have low literacy levels, or have cognitive or physical disabilities.

Another option for communicating information related to reporting options is in a separate letter or form provided to the victim at the time of the exam. The City of Albuquerque, New Mexico, has produced a draft for an informed consent form regarding items collected from the forensic medical examination of non-reporting victims that includes pertinent information regarding the steps to be taken should the victim decide to report the assault at a later time (Exhibit K).

Because the victim may not retain the contact information provided at the point of examination, it is imperative that the procedures for victims to report the assault at a later date be communicated throughout the jurisdiction. All agencies should be familiar with how a delayed report is initiated, including whom to contact and how to reach them.

Storage, Transportation and Destruction of Evidence

States and territories are also faced with issues associated with the identification, transportation, storage and disposition of evidence collected in sexual assault forensic medical examinations in cases where the victim of sexual assault does not initially wish to report to law enforcement. Law enforcement agencies may be challenged with the transportation, storage and retrieval of evidence where they may or may not know the identity of the victim. The following sections related to storage location, transportation, and length of storage address issues states and territories generally will face as they work to implement policies and procedures regarding the medical forensic evidence collected in cases where the sexual assault victim chooses not to report immediately or at all.

Storage Location

Considerations:

Where will the evidence be stored in cases where the victim chooses not to immediately report the sexual assault?

- *Local law enforcement agency?*
- *Hospital?*
- *State law enforcement?*
- *Crime lab?*

¹⁰¹Informed consent is discussed in detail in Section A.3. (pages 39–41) of the National Protocol for Sexual Assault Medical Forensic Examinations (Exhibit L). See U.S. Department of Justice, Office on Violence Against Women, President’s DNA Initiative. 2004, September. A national protocol for sexual assault medical forensic examinations, adults/adolescents. NCJ 206554.

- *FBI?*
- *Other secured location?*

Determining the location for the storage of evidence collected from victims of sexual assault who initially choose not to report the assault to law enforcement may be challenging. Law enforcement officers are accustomed to having custody of evidence and maintaining the chain of custody¹⁰² for cases they have investigated. Cases where the victim has initially chosen not to report the assault to law enforcement are unique, in that evidence is collected and presented when a law enforcement officer has not investigated or documented the sexual assault by writing a crime report. Further, the evidence may present as “anonymous,” with only numeric identifiers.

Based upon responses to the VAWA Forensic Compliance Project National Survey, states and territories often use local law enforcement agencies to store forensic medical examination evidence.¹⁰³ Approximately 60% of all respondents indicated that evidence is stored locally in one or more jurisdictions. Forty percent (40%) of all respondents indicated that jurisdictions store evidence in a state crime lab. Oftentimes practices are contingent upon local policy and vary throughout the majority of states. National survey findings pertaining to the storage locations used throughout the nation may be found as Exhibit M.¹⁰⁴

Determination of the appropriate storage location may be based upon existing policies, procedures and facilities. Generally speaking, local law enforcement agencies have been storing evidence within their own agency facilities. In addition, states sometimes have statutes with defined parameters for evidence storage that may limit storage options for “anonymous” evidence. Virginia, for example, has a statute clearly defining not only the mission of the state’s crime lab facility, but also the parameters of what is eligible for storage within the facility.¹⁰⁵ Virginia’s statute clearly defines the scope of what can be accepted in the facility. It is interpreted to be exclusively evidence for which there is an active investigation, which precludes the facility accepting evidence from cases where the victim initially chooses not to report or proceed. Statewide, many of Virginia’s law enforcement agencies have been sending all sexual assault evidence collection kits directly to the crime lab for processing, and had never been challenged with identifying a repository for evidence collected that was not associated with a report and an active investigation. Local law enforcement departments within Virginia were not equipped with evidence storage repositories, which illustrates the importance of determining up front if there are any existing statutes or policies directing the storage location.

The chain of custody must be maintained for all evidence from the point of collection through disposition. If the evidence cannot be accounted for at all times beginning with the collection, there

¹⁰²Chain of Custody: A legal term which means the movement and location of evidence from the time it is obtained to the time it is presented in court. Chain of custody requires testimony of continuous possession by each individual having possession, together with testimony by each that the object remained in substantially the same condition during its presence in his possession. (Black’s Law Dictionary, 222. 7th ed., 1999.)

¹⁰³VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

¹⁰⁴VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

¹⁰⁵Virginia Code §= 19.2-270.4:1—Standards and Guidelines for the Method of Custody, Transfer and Return of Evidence. Available from <http://www.dfs.virginia.gov/services/forensicBiology/standardsGuidelines19.2-270.4.pdf>.

exists the possibility that the evidence was compromised. It is difficult for evidence to be admitted if the chain of custody is not intact.

Hospitals

Hospitals may serve as storage repositories and may be successful in meeting both short-term and long-term requirements of protecting the integrity of evidence. However, storing evidence, especially long term, is not a role hospitals are accustomed to fulfilling. Maintaining evidence on a short-term basis while awaiting law enforcement to transport it to their agency may be a responsibility hospitals are more willing to accept than that of a permanent repository. Thirty-one percent (31%) of all respondents to the nationwide survey indicated that hospitals are utilized to store evidence within their state.¹⁰⁶ Survey responses, however, indicated there were multiple storage options within their respective jurisdictions, suggesting that many states defer to local law enforcement agencies to identify the appropriate evidence storage repository in cases where the victim does not elect to report the assault to law enforcement.

The length of time evidence is being stored within hospitals varies throughout the nation. There are jurisdictions that store the evidence for up to two weeks until law enforcement arranges to pick up the evidence and transport it to their agency for longterm storage. Other jurisdictions store evidence up to 30 days.

In Types of Compliant Systems—Healthcare-based System (page 38), the discussion highlights that a common characteristic of that system is that hospitals store the evidence. Law enforcement is contacted only in the event that the sexual assault victim chooses to report. New York is an excellent example of a state that requires that all hospitals maintain evidence for at least 30 days (and many will hold the kits longer, if not indefinitely).¹⁰⁷ This allows a victim the opportunity to decide whether or not to turn the evidence over to law enforcement. In addition, the New York State Department of Health has created certified SAFE Center of Excellence Hospitals.¹⁰⁸ These hospitals are charged with maintaining certification standards, recruiting and training specially trained forensic examiners, and providing coverage around the clock.¹⁰⁹

¹⁰⁶VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

¹⁰⁷New York State Department of Health. Protocol for the acute care of the adult patient reporting sexual assault, Appendix H—10 NYCRR 405.9 (c) and 405.19; Establishment of hospital protocols and maintenance of sexual evidence. Available from http://www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/

¹⁰⁸Forty hospitals are certified by the New York State Department of Health as SAFE Centers of Excellence. These hospitals have special responsibilities to meet the needs of victims of sexual assault, including certified Sexual Assault Forensic Examiners on-site or on-call available to the victim within 60 minutes of arriving at the hospital, except under exigent circumstances. See New York State Department of Health glossary—Sexual Assault Forensic Examiner (SAFE) Center of Excellence, available from <http://hospitals.nyhealth.gov/learn.php?t=SAFE>, and the New York State Department of Health Protocol for the acute care of the adult patient reporting sexual assault, Attachment D— Responsibilities of hospitals with a DOH-certified SAFE program compared to hospitals without a SAFE program related to the treatment of victims of sexual assault, available from http://www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/

¹⁰⁹New York State Department of Health. Sexual Assault Forensic Examiner Program (SAFE) Hospital Application. Available from http://www.health.state.ny.us/nysdoh/safe/hospital_application.htm

Transportation of Evidence

Considerations:

- *Will transportation of the sexual assault evidence collection kit be required from the health care facility to an evidence storage facility?*
- *Who will be responsible for transporting the evidence to the storage facility? Will alternative forms of transport be required?*
- *How will the individuals responsible for transporting the evidence be contacted when a sexual assault evidence collection kit is ready for pick up?*
- *What are the expectations in terms of time limitations for picking up the evidence?*
- *Will the transportation system identified within the jurisdiction stand up to challenges regarding the chain of custody?*

Results of a national survey conducted of STOP Administrators¹¹⁰ clearly demonstrated that nationwide the primary transporter of evidence from health care facilities to evidence storage facilities is local law enforcement. Over 55% of all respondents indicated local law enforcement officers assisted with transporting evidence from the health care facility to the evidence storage facility.¹¹¹

The issue of transportation is directly linked to the “type” of system implemented within a jurisdiction.¹¹² If, for example, a Healthcare-based System is utilized, the evidence may be retained and stored at a local hospital. If an Anonymous System is used, law enforcement officers are generally not initially involved unless the victim chooses to report the assault. However, in cases where the sexual assault victim chooses not to report the assault initially, it may require law enforcement officers’ involvement in terms of transportation of the evidence to the local law enforcement agency for storage. If this is the case, this may present as a barrier for law enforcement, as they may be redirected from patrolling or responding to calls to retrieve the evidence and transport it back to the evidence storage facility. It may also be a resource issue for many departments and may be viewed as a barrier in some jurisdictions. Law enforcement in rural environments may experience even greater challenges, given limited resources and greater distances between destinations.

To address resource issues related to transporting evidence in cases where the victim does not wish to initially report the assault to law enforcement, several jurisdictions have implemented creative solutions. For example, hospitals may serve as short-term repositories for evidence storage, maintaining the evidence and chain of custody while allowing local law enforcement to schedule to transport the evidence at a convenient time, anywhere from a shift (eight hours) to two weeks later.

¹¹⁰VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

¹¹¹See VAWA Forensic Compliance Project Survey Results: State STOP Administrators—Transportation Methods Utilized by States/Territories to Transfer “Anonymous” Kits to Storage Facility, attached as Exhibit N.

¹¹²There are various systems states and territories may implement to be compliant with VAWA 2005. These fall into four basic categories, or “types”—Healthcare-based, Anonymous /Blind /Jane Doe, Anonymous Mandatory Reporting, and Evidence-based Prosecution—described further in Types of Compliant Systems (page 38).

Some jurisdictions utilize alternative services to transport evidence from the health care facility to the evidence storage facility. The nationwide survey¹¹³ revealed that courier services such as FedEx and UPS are used to retrieve the evidence and deliver it to the evidence storage facility in approximately 2% of the nation.¹¹⁴ Most commonly, the use of courier services is found in rural areas where transportation is a primary barrier.¹¹⁵ The use of courier services that are familiar with using chain of custody transportation and storage for toxicological testing may be a viable option for health care facilities. Courier services may be able to adapt these methods for the transportation of evidence kits.

Regardless of the systems identified for evidence transportation and storage, the integrity of the evidence must be maintained. Prosecutors should be included in the multidisciplinary planning process through which evidence transportation and storage system policies are crafted and approved. It is the prosecutor who must withstand challenges to evidence in the courtroom.

Length of Storage

Considerations:

- *Will evidence in cases where the victim has not reported to law enforcement be stored for the statute of limitations?*
- *If evidence will not be stored for the statute of limitations, what length of storage has been identified? How was that policy determined?*
- *Are there any state statutes governing the destruction of evidence?*

Another issue to consider is the length of time evidence will be stored. Jurisdictions often struggle in establishing guidelines for the maximum length of time sexual assault forensic medical examination evidence will be stored. Practical matters, such as the space required within the storage facility to store evidence long-term, emerge as issues to be addressed to accommodate cases where the victim chooses not to initially report the assault.

In a national survey of STOP Administrators in early 2008,¹¹⁶ 27% reported their jurisdictions store evidence for the statute of limitations. For those jurisdictions without a statute of limitations, this poses a dilemma. Does this mean that jurisdictions are storing evidence “forever”? States generally are cautious, if not reluctant, to go beyond what may be articulated within their statute to define an alternative period of storage in cases where the victim chose not to report. For jurisdictions identifying an alternative period of time for storage, the key to success is ensuring that consistent policies are maintained. A summary of the nationwide survey findings regarding length of storage can be found as Exhibit O.

¹¹³VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

¹¹⁴See VAWA Forensic Compliance Project National Survey Results: State STOP Administrators— Transportation Methods Utilized by States/Territories to Transfer “Anonymous” Kits to Storage Facility, attached as Exhibit N.

¹¹⁵Courier services are used in West Virginia and portions of Indiana.

¹¹⁶VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

Prosecutors and law enforcement may be reluctant to destroy evidence before the statute of limitations expires. An important consideration for jurisdictions is whether there are any existing state statutes pertaining to the destruction, or disposal, of evidence. States may look to state statute pertaining to the length of time evidence is to be stored for felonies pending prosecution as well as after prosecution and conviction. Alternatively, policies specific to the storage of evidence collected from non-reporting victims may be developed, such as in New Mexico, whose draft policy proposes holding evidence for 365 days,¹¹⁷ and New York, which stores evidence for a minimum of 30 days.¹¹⁸ The same authority may govern the conditions under which evidence is to be destroyed.

Processing Evidence

Jurisdictions may deliberate processing the evidence collected in cases where the victim does not wish to report the offense to law enforcement at the time the forensic medical examination is conducted. States that consider processing all evidence in nonreporting cases generally do so in the interest of preserving the evidence in the event the victim decides to report at a later time. Oftentimes this recommendation is brought up by a prosecutor or an experienced investigator who may be concerned about serial rapists or general public safety issues for the greater community. States and jurisdictions may also be attracted by the prospect of processing the evidence immediately to avoid logistical concerns regarding the facilities and space needed to protect the integrity of the evidence long term, such as maintaining optimal temperature conditions.

Jurisdictions should, however, take into account the potential ramifications of processing evidence in non-report cases. First, jurisdictions are strongly encouraged to consider the potential repercussions for victims, including their emotional and physical well-being. Second, jurisdictions also need to consider larger aspects, such as it has not established that a crime has occurred and consensual partners have not been excluded.

A strong victim-centered policy is strongly encouraged when considering the processing of all evidence in non-reported cases, as it may directly impact a victim's decision whether to receive an examination. For instance, what if the processing of the evidence within the sexual assault evidence collection kit produces a "hit," a lead to the perpetrator? Would the victim be contacted? If so, how will this contact take place? If the victim were to remain reluctant to report the assault to law enforcement, what would be the response from law enforcement and/or prosecution?

If evidence will be processed, victims should be advised of this as part of the informed consent process and this information should be included in the informed consent form provided to the victim for review and signature prior to the collection of evidence. All information for victims of sexual assault should be available in multiple formats to meet the needs of individuals who speak languages other than English, have low literacy levels, or have cognitive or physical disabilities.

¹¹⁷The draft informed consent form proposed for use in Albuquerque, New Mexico, for evidence collected from non-reporting victims (Exhibit K) informs the victim that evidence will be disposed of after 365 days.

¹¹⁸New York State Health Law Section 2805-i, Treatment of sexual offense patients and maintenance of evidence in sexual offense. Available from http://www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/docs/protocol_appendix_a.pdf, Appendix A.

When a Victim Later Chooses to Report the Assault

States and territories must consider what procedures will be followed when a victim later chooses to report the assault. There are numerous logistical details that need to be considered as procedures are developed.

Considerations:

- *When the victim elects to report the assault, whom should the victim contact? Law enforcement, the hospital, advocates?*
- *How will the victim make the connection? What phone number will be used? Will the individual be available around the clock, or only during designated hours?*
- *What information will the victim need to have available when reporting the assault? How will the sexual assault evidence collection kit be linked to the victim, if, for example, the kit is being stored “anonymously”? Is there a numeric identifier?¹¹⁹ (See below for more information regarding Case Tracking Mechanisms.)*

Some of these considerations lead to more questions than answers, as each jurisdiction must develop policies that work for its particular state or locality. What may work in one jurisdiction may not work in another. For example, if in one jurisdiction there is a coordinated and comprehensive Sexual Assault Response Team (SART), the procedures may be developed with current SART protocols in mind. Another jurisdiction may not have a coordinated response program, and may elect to develop alternative procedures. Regardless, states and jurisdictions should strive for consistency within their policies regarding the response to victims who later choose to report the assault to law enforcement and make plans to assure that all of those involved in sexual assault cases know where to refer a survivor who contacts them with a request to report. All stakeholders should be familiar with the protocols and understand how to access the delayed reporting system.

Case Tracking Mechanisms

Considerations:

- *Victim confidentiality must be protected.*
- *The Health Insurance Portability and Accountability Act of 1995 (HIPAA) and its implementing regulations (found at 45 CFR Parts 160 and 164) established national standards for the protection of certain individually identifiable health information created or held by health care providers and others. Interpretation of the laws depends on individual situations and the laws of the particular state.¹²⁰*

¹¹⁹If truly an “anonymous system,” sexual assault evidence collection kits will be identified by a numeric identifier, often a serial number or processing number from the kit.

¹²⁰Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 , Regulation Text (Unofficial Version).

STOP Administrators and Coalition Directors surveyed in early 2008¹²¹ revealed a variety of case tracking methods currently being employed by jurisdictions that choose to implement Anonymous Systems.¹²² Of those responding to the survey, the large majority of jurisdictions reported that they use the serial number, or other identifying number, from the sexual assault evidence collection kit. Other jurisdictions choose to utilize the patient’s medical identification number, or to create a dedicated non-identifying numeric system. Another case tracking system implemented has been a numeric system utilizing the forensic nurse examiner’s identification number along with the date and time of the exam, thereby creating a unique identifier. This system has the added benefit of providing a method to connect a victim and kit at a later date should the victim not have retained the required information. Exhibit P¹²³ includes survey findings regarding case tracking methods.

Regardless of the system employed within a jurisdiction, a key to success is consistency with the tracking mechanism. All stakeholders who will be utilizing the system should be familiar with the protocols, understand the case tracking system, and understand how an identification number is generated.

Types Of Compliant Systems

There are several themes, or “types,” of compliant systems that are emerging throughout the nation. Illustrations of the four types are described below, with practical examples provided of each.¹²⁴ It is important to recognize that jurisdictions do not have to neatly correspond to the types illustrated below. The examples of compliant systems provided are meant to serve only as guidance, with the understanding that the success of securing a compliant system within states and territories may require flexibility within the multi-disciplinary planning process.

Healthcare-based System

Guiding Principle:

Emphasis is on a health-care response to victims of sexual assault and prompt evidence collection.

Characteristics:

- Victims are offered a forensic medical exam regardless of their decision to cooperate or participate with the criminal justice system.
- From a law enforcement perspective, no assault has taken place unless and until the victim elects to report at a later date.
- Evidence is generally stored within the health-care facility.

¹²¹VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

¹²²See VAWA Forensic Compliance Project National Survey Results: State STOP Administrators— Mechanism Used to Track “Anonymous” Kits, attached as Exhibit P.

¹²³Ibid.

¹²⁴The types of systems depicted are generalized for descriptive purposes. There are a variety of versions of each type of system.

- Generally seen in communities where Sexual Assault Response Teams (SARTs) have been established.

Overview

The Healthcare-based System emphasizes a health-care approach in responding to the victim and in many cases a health-care model for evidence storage. Ideally, a sexual assault victim presenting in a Healthcare-based System environment would experience a seamless response of health care, forensic evidence collection, and advocacy services. This model is seen most often in jurisdictions where a comprehensive and collaborative response is provided to victims of sexual assault, such as those hosting a sexual assault response team (SART).

Procedures vary as to the chain of events when a victim presents to a health-care facility. The victim may be directed to a sexual assault nurse examiner (SANE), who contacts an advocate from a rape crisis center; or the health-care facility may contact an advocate first to review options with the victim. Alternatively, some health-care facilities simultaneously dispatch advocates and SANEs.

When available, the advocate offers upon arrival to accompany the victim during the examination and to provide other supportive services. The victim may elect to have the advocate present during the examination, or may decline. This decision may be influenced by the jurisdiction's confidentiality laws and policies, which the advocate will have explained.

The sexual assault forensic examiner¹²⁵ begins by initiating a dialogue with the victim of sexual assault that includes providing an overview of the sexual assault forensic medical examination and its potential usefulness in any potential investigation and prosecution.¹²⁶ The sexual assault forensic examiner may ask the sexual assault victim whether or not she or he would like to report the incident to law enforcement. If the victim declines reporting to law enforcement, the sexual assault forensic examiner may explain that another option exists: the evidence may be collected and stored for a specific period of time and, in the event the victim chooses to report the sexual assault to law enforcement in the future, the evidence will be available to initiate the criminal justice response.

An example of a Healthcare-based System response and statewide standard of care for sexual assault forensic examinations is New York State. New York, through public health law, articulates standards for hospitals designated as Department of Health (DOH)- certified SAFE Centers of Excellence. New York has, through legislation, promulgated professional standards for hospital-based SAFE (Sexual Assault Forensic Examination) programs, as well as training and certification for individual forensic examiners.¹²⁷

¹²⁵See Health Care Professionals in Ensuring Access to Examinations—Initial Response (page 25) for a discussion of health care providers who perform sexual assault forensic examinations, including those certified as Sexual Assault Nurse Examiners (SANEs), Sexual Assault Examiners (SAEs), Sexual Assault Forensic Examiners (SAFEs), and Forensic Nurse Examiners (FNEs).

¹²⁶See Background—Criminal Justice Philosophy (page 11) for information regarding the link between forensic evidence collection and increased prosecution.

¹²⁷See the State of New York's Sexual Assault Forensic Examiner (SAFE) Program, available from <http://www.health.state.ny.us/nysdoh/safe/>

New York hosts multiple DOH-certified SAFE Center of Excellence facilities, all of which store evidence for not less than 30 days to allow the victim the opportunity to consider whether to proceed with reporting to law enforcement and/or participating with the criminal justice system.¹²⁸ New York's Healthcare-based System provides a seamless response to victims of sexual assault regardless of the victims' desire to report the assault to law enforcement. Because evidence collected by sexual assault forensic examiners is maintained by all hospitals for not less than 30 days following collection, law enforcement does not obtain information about the sexual assault unless the victim later chooses to report to law enforcement.

Practical Considerations

Perhaps the greatest challenge of a Healthcare-based System is establishing evidence repositories within hospitals that protect the integrity of the evidence and can withstand any potential challenges to the chain of custody. Typically, health-care facilities do not store evidence long term. Strategic planning is required to identify the storage facility and the conditions under which the evidence is to be stored. Development of a Healthcarebased System, and meeting the unique challenges of dedicated evidentiary storage repositories within health-care facilities, is an example of successful problem-solving within a multi-disciplinary setting.

Anonymous /Blind /Jane Doe System

Guiding Principle:

Emphasizes protecting victim anonymity and confidentiality.

Characteristics:

- Victims are offered a forensic medical exam regardless of their decision to report to law enforcement and/or participate with the criminal justice system.
- From a law enforcement perspective, they are not investigating until the victim chooses to make a full report.
- Law enforcement may choose to document the forensic medical examination and the collection of evidence through a police report or an informational report without identifying the victim. This often assists the law enforcement agency in maintaining a record of the evidence stored within their facility.
- Generally, law enforcement transports evidence to a police department for storage.

¹²⁸See the State of New York's Sexual Assault Examiner Locator Interactive Map, available from [<http://www.criminaljustice.state.ny.us/ofpa/sanemap.htm>] [<http://www.criminaljustice.state.ny.us/ofpa/sanemap.htm>]

Overview

A system that engages law enforcement in evidence transportation and evidence storage, yet maintains the anonymity of victims, is often called an Anonymous, Blind, or Jane Doe System.¹²⁹ The guiding principle driving this type of policy is shielding the sexual assault victim's identity from law enforcement until the victim chooses to report, while ensuring that the integrity of the evidence is fully protected in the interim. A blind reporting system provides information about the patterns of behavior of repeat offenders, which can be used to identify assailants or build cases for court, and may help prevent crime by educating the public about high-risk scenarios or locations.¹³⁰

Practically speaking, a victim of sexual assault presenting at a hospital with an Anonymous System may initially experience a response similar to that at a hospital implementing a Healthcare-based model. If available, a Sexual Assault Nurse Examiner (SANE) and an advocate may be called. The victim will be informed of the purpose of the forensic medical examination. The victim generally is informed at this time of her or his options for reporting. If the victim elects not to report the sexual assault to law enforcement, the victim will be advised that the evidence can be collected and stored for a pre-determined period of time.¹³¹ In cases where the victim chooses to have evidence collected but not to report the sexual assault immediately to law enforcement, hospital personnel generally notify law enforcement that evidence has been collected and the sexual assault evidence collection kit is ready to be transported to the evidence storage facility.

The majority of law enforcement departments working within an Anonymous System, upon arriving at the hospital to retrieve evidence, initiate a record of the evidence in the form of an informational report or a police report specifically created to document anonymous reports. Law enforcement needs some form of report for a variety of reasons, primarily to document the incident, but also to initiate a tracking system for the evidence to be stored within their facility and retrieved when needed.

Practices vary greatly throughout the nation regarding how an anonymous report is documented. There may be a rape or sexual assault report with the victim's name and identifying information omitted and a notation that the victim did not want to engage the criminal justice system at the time the evidence was collected. Other tools utilized include police reports generated for categories such as "miscellaneous," "suspicious incident," and general "assault." Another option for consideration is an informational report. Police may find this to be a viable alternative, allowing for a report to be filed that can serve as a record-keeping method for the storage of the evidence. Some jurisdictions maintain informational reports for a limited time (generally one year). For those jurisdictions electing to store evidence for a longer period of time, an informational report may not be a viable

¹²⁹In many jurisdictions, "Jane Doe" reporting means that law enforcement knows who the victim is, but the Jane Doe Statutes allow the victim to use a pseudonym so that the public doesn't know who the victim is. The terminology "Jane Doe" or "John Doe" is also commonly used when the identity of a victim is not known. For purposes of meeting the forensic compliance mandates, many jurisdictions have elected to develop policies or procedures where the victim's identity is withheld from law enforcement until the victim elects to report the incident.

¹³⁰S. Garcia and M. Henderson. 1999, June. Blind reporting of sexual violence. *FBI Law Enforcement Bulletin* 68, no. 6:12–16.

¹³¹The length of storage varies greatly throughout the nation. For more information, see *Ensuring Access to Examinations—Storage, Transportation and Destruction of Evidence* (page 31).

option. Virginia’s Henrico County Police Department (Exhibit Q), Virginia’s James County Police Department (Exhibit R), and the Maryland State Police/Cecil County (Exhibit S) provide examples of law enforcement policies developed to protect the identity of the victim.

Practical Considerations

The Anonymous System provides autonomy to states and/or local jurisdictions to establish systems within law enforcement to respond to sexual assault cases where the victim chooses not to include law enforcement initially. Law enforcement is accustomed to taking custody and storing evidence in cases where the department responded to the incident and interviewed and investigated as appropriate. In an Anonymous System, law enforcement departments are often faced with the prospect of creating a dedicated system to record the retrieval and transport of evidence to the department without an active investigation, and to adequately track custody of that evidence.

Communities will face the challenges of creating avenues for evidence transportation in Anonymous Systems. In instances where law enforcement is not involved in an official response to the crime of sexual assault, the call for services may pull officers from patrolling and responding duties to pick up evidence from the hospital and transport it to the evidence repository. This can be a topic of discussion within planning meetings, as resource allocation may be an issue for departments, regardless of size—urban, suburban or rural. More discussion regarding the challenges associated with evidence transportation can be found in *Ensuring Access to Examinations—Storage, Transportation and Destruction of Evidence* (page 31).

Anonymous Mandatory Reporting System

Guiding Principle:

Responds to statutorily defined mandates of health care providers, while maintaining an anonymous system of reporting.

Characteristics:

- Victims are offered a forensic medical exam regardless of their decision to report the assault to law enforcement and/or participate with the criminal justice system.
- From a law enforcement perspective, an assault has taken place, which is generally documented through an alternative manner (such as a supplemental report filed by a health care provider).
- Provides an opportunity for states and territories to have a more accurate picture of prevalence within their jurisdiction.
- Generally, law enforcement transports evidence to a state or local law enforcement department for storage.

Overview

All states have statutorily defined mandatory reporting guidelines for health-care providers.¹³² Mandated reporting requirements do not preclude a victim from accessing a forensic medical examination and still allow for victim choices.

Several states broadly define their mandates. Massachusetts, for example, requires health-care providers to report all sexual assaults presenting to health-care facilities.¹³³ Their statute requires physicians to report not only to the local police department, but also to the Massachusetts Criminal History Systems Board.

Massachusetts' statute also includes a provision for an anonymous report of the sexual assault, requesting details regarding the location of the sexual assault but not mandating identifying information regarding the victim. With an anonymous reporting tool implemented statewide,¹³⁴ Massachusetts gains enhanced data regarding sexual assault throughout the state. Demographic and geographic information is collected and submitted to the state's statistical analysis center. A report regarding the prevalence of sexual assault within the state is produced annually.

Practical Considerations

Implementing an Anonymous Mandatory Reporting System is contingent upon a clear authority for the reporting mandate through the statute. A broad-based reporting mandate encompassing all sexual assaults is not the norm.¹³⁵ Even rarer is a statute protecting the identity of the victim through anonymous reporting. When considering statutory change to support Anonymous Mandatory Reporting, states and territories are encouraged to prioritize victim-centered approaches to ensure that victims' identities are protected when reports are made as mandated.¹³⁶

An Anonymous Mandatory Reporting System requires significant resources to support its implementation. Massachusetts elected to have Sexual Assault Nurse Examiners (SANEs) not only perform sexual assault forensic medical examinations, but also collect basic geographic and demographic information regarding each assault using a supplemental report¹³⁷ which is more than a traditional

¹³²T.P. Scalzo. Rape and sexual assault reporting laws. *The Voice* 1 (3). *The Voice* is a publication of the American Prosecutors Research Institute National Center for Prosecution of Violence Against Women.

¹³³General Laws of Massachusetts, Part I, Title XVI, Chapter 112, Section 12A½. Reporting treatment of rape or sexual assault, penalty.

¹³⁴Massachusetts' Provider Sex Crime Report form is available from www.mass.gov [<http://www.mass.gov>] <http://www.mass.gov/eopss/law-enforce-and-cj/law-enforce/sexual-dom-viol/provider-sexual-crime-report.html>

¹³⁵T.P. Scalzo. Rape and sexual assault reporting laws. *The Voice* 1 (3).

¹³⁶States may wish to refer to the Health Insurance Portability and Accountability Act of 1995 (HIPAA) and its implementing regulations (found at 45 CFR Parts 160 and 164), providing national standards for the protection of certain individually identifiable health information created or held by health care providers and others. Interpretation of the laws depends on individual situations and the laws of the particular state. See Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, Regulation Text (Unofficial Version), available from <http://www.hhs.gov/ocr/privacy/hipaa/news/2002/combinedregtext02.pdf> www.hhs.gov [<http://www.hhs.gov>]

¹³⁷Massachusetts' SANE Pager/Beeper Log monitors requests for all SANE program services and includes the code or name of the facility to which the SANE responded. A copy of the SANE Pager/Beeper Log is available from <http://www.jrsa.org/dvsa-drc/massachusetts/index.shtml>

sexual assault evidence collection kit typically requires. Massachusetts' system is based on SANEs being available, which may not be the case in other states or territories.

Evidence-Based Prosecution System

Guiding Principle:

Proper evidence collection may allow prosecutors to proceed in prosecuting the case with physical evidence only.

Characteristics:

- Similar to “Pro-Prosecution” model for Domestic Violence.
- Victims are offered a forensic medical exam regardless of their decision to report the assault to law enforcement and/or participate with the criminal justice system. Victims are offered a forensic medical exam regardless of their decision to report the assault to law enforcement and/or participate with the criminal justice system.
- Requires processing of evidence in cases where the victim does not wish to report the assault to law enforcement and/or participate in the criminal justice system.

Overview

Adoption of an Evidence-based Prosecution System is generally driven by jurisdictions that believe the safety of a community outweighs the rights of an individual. They believe that the community has a right to know when there has been a sexual assault because the perpetrator could continue to be a threat to others in the community.

This type of system requires the systematic processing of all evidence collected, even in cases where the victim does not wish to report the assault to law enforcement or participate in the criminal justice system. In these cases it has not been established that a crime has occurred and consensual sexual partners have not been ruled out. Prosecutors may only be interested in pursuing cases where there is a CODIS¹³⁸ “hit” upon processing the evidence. In this case, jurisdictions are strongly encouraged to develop a victimcentered policy on how the victim will be contacted when a “hit” is made.

¹³⁸CODIS is a computer software program that operates local, State, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. Every State in the Nation has a statutory provision for the establishment of a DNA database that allows for the collection of DNA profiles from offenders convicted of particular crimes. CODIS software enables State, local, and national law enforcement crime laboratories to compare DNA profiles electronically, thereby linking serial crimes to each other and identifying suspects by matching DNA profiles from crime scenes with profiles from convicted offenders. For further information about CODIS, see President’s DNA Initiative, Advancing Justice through DNA Technology, www.dna.gov [<http://www.dna.gov>] <http://www.dna.gov/solving-crimes/cold-cases/howdatabasesaid/codis/>

Practical Considerations

From a practical standpoint, the processing of all evidence, including that from cases where the victim does not wish to initially report, may be controversial. Crime labs throughout the nation have a backlog, and requiring them to process evidence in cases where the victim does not wish to proceed initially, and that perhaps may never be prosecuted, may overload the system. The cost of processing the evidence may also have relevance for jurisdictions considering an Evidence-based Prosecution System.

A strong victim-centered policy is encouraged when considering the processing of all evidence, particularly when the evidence may be used to proceed with an investigation and prosecution. Victims should be notified in the informed consent form provided to them for review and signature prior to the collection of evidence. All information for victims of sexual assault should be available in multiple formats to meet the needs of individuals who speak languages other than English, have low literacy levels, or have cognitive or physical disabilities. It could clearly impact a victim's decision to receive an examination if there is concern evidence will be processed regardless of the victim's desire to participate with the criminal justice system.

Assuming a jurisdiction has overcome the backlog and kit processing issues, it must then consider what policies and procedures will be adopted to address the occurrence of a "hit," a lead to the perpetrator, for a case in which the victim did not wish to report. Who would contact the victim? How would law enforcement know how to contact the victim? Would the contact be a trigger for the victim, reminding the victim of the assault? Would supportive services be provided to the victim during this process? What if the victim does not wish to proceed with the investigation and prosecution, despite the "hit"? How would prosecution address a consent-based defense without victim testimony? Would the victim be compelled to testify?

Establishing Protocols

Overview

As discussed in Steps Towards Establishing a Compliant System—Working Toward a Compliant System (page 14), each state and territory is charged with assessing the status of its jurisdictions' current policies and procedures regarding forensic medical exams for victims presenting within the health-care setting or presenting to other points within the system. Bringing these policies and procedures into compliance with VAWA 2005 can be achieved through a variety of methods, including statutory changes, statewide policy development, or statewide guidelines for adaptation by local jurisdictions. Regardless of the method, a uniform and consistent response supporting a victim-centered standard of care is strongly encouraged.

As part of the planning process, stakeholders must consider the mechanism for establishing policies and procedures throughout their state or territory. For some, crafting new legislation will be the desired approach, as that may historically have been the vehicle for effectuating policy change within the state. This is a strategy often used to drive law enforcement policy, providing recommendations for local jurisdictions to adopt. Another option for jurisdictions is to craft statewide

guidelines, providing significant direction while affording local jurisdictions the autonomy to customize logistical details.

Victim-centered Multi-disciplinary Perspective

States and territories are strongly encouraged to conduct statewide planning in a multi-disciplinary, victim-centered manner. A multi-disciplinary approach ensures planning is conducted with—at a minimum—all core disciplines (law enforcement, prosecutors, health care and advocacy) represented. Committing to a victim-centered approach to policy development signifies that the guiding principle for the planning entity is to ensure the needs of the sexual assault victim are prioritized.

As planning bodies convene, issues are discussed and policy developed, it is imperative to always consider how the practical application of policies will impact victims as they move through the system. Policies developed to address the needs of sexual assault victims who choose not to report the assault to law enforcement immediately benefit from a comprehensive perspective that addresses both the system's immediate response to the victim as well as the system's later response, if and when the victim chooses to report to law enforcement. One way to ensure the victim's perspective is represented is to include survivors in the planning process.

Process

One of the first steps in the planning process is to determine what, if any, policies and protocols will be developed and/or directed on the state level, and what issues will be deferred to local communities and/or Sexual Assault Response Teams (SARTs) for development. If change will be implemented through the creation or modification of state statute, or statewide policy developed, the objective is to create the policy with the goal of uniform and consistent adaptation throughout.

A jurisdiction choosing to develop model policies or guidelines to be adapted by various localities will need to determine the mechanism by which information will be communicated and disseminated throughout the state. Additionally, states and territories may want to identify a central contact person to provide technical assistance to the various localities as they work to apply the guidelines provided by the state within their local jurisdictions.

States and territories are strongly encouraged to develop a system to monitor local jurisdictions throughout the state on the implementation of policies to ensure victims are provided access to forensic medical examinations without requiring victims to report the assault to law enforcement and/or participate in the criminal justice system. The responsibility of certifying that victims throughout the state are able to access forensic medical examinations falls upon the administrative agency within each state and territory designated to administer the STOP Violence Against Women Act funding.¹³⁹

¹³⁹The S.T.O.P. Program Annual Report 2006 refers to the state official designated to administer STOP Program funds as the "STOP Administrator(s)." U.S. Department of Justice, Office on Violence Against Women. S.T.O.P. Program Annual Report 2006.

Outputs

Statutory Changes

Several states have chosen to bring about change to ensure that victims of sexual assault are provided access to forensic medical examinations through statutory initiatives. This may be accomplished through modification of an existing statute, often directly linked to the reimbursement and/or payment process for the examinations. Florida, for example, viewed the VAWA 2005 certification issues as an opportunity to craft omnibus legislation regarding the provision and payment of sexual assault forensic examinations.¹⁴⁰

States and territories should, however, be cautioned that statutory changes require comprehensive strategies for communicating them throughout the state. For instance, statutory changes may require policy direction to articulate practical application for stakeholders throughout the state. States often begin work toward statewide policy development once statutory changes have been implemented. Florida is an example of such an initiative.¹⁴¹ The Florida Council Against Sexual Violence convened a statewide workgroup comprised of prosecutors, law enforcement professionals, victim advocates, forensic examination and medical providers, and crime lab professionals to address implementation issues, identify best practices, and support communities implementing the statutory requirements. As a result, this State enacted comprehensive legislation regarding VAWA certification and corresponding protocols. Florida's statute is attached as Exhibit T, and the Guidelines for Forensic Examinations for Sexual Assault Victims Not Reporting to Law Enforcement developed by the Florida Council Against Sexual Violence's workgroup are attached as Exhibit U.

Statewide Protocols

States and territories may choose to develop statewide protocols directing standard operating procedures for agencies responding to sexual assault victims. This is often found in jurisdictions where there are collaborative entities addressing the issue of sexual assault statewide. New Hampshire is an example of a statewide approach to responding to sexual assault victims through the development of a statewide protocol.¹⁴² There are several benefits to statewide policy development, including the establishment of a consistent standard of care for victims of sexual assault. Additionally, a consistent, uniform response protocol may be more amenable to oversight and monitoring by the STOP Administrative Agency.

Statewide Guidelines /Local Implementation

States may choose to develop protocols for local jurisdictions to adopt and adapt to suit their specific local needs. Policies and procedures to ensure victims access to forensic medical examinations

¹⁴⁰Florida House of Representatives, 2007 legislature, HB 989, attached as Exhibit T.

¹⁴¹In Florida, Guidelines for Forensic Examinations for Sexual Assault Victims Not Reporting to Law Enforcement were developed by a statewide group comprised of prosecutors, law enforcement professionals, victim advocates, forensic examination and medical providers, and crime lab professionals convened by the Florida Council Against Sexual Violence (see Exhibit U).

¹⁴²State of New Hampshire, Office of the Attorney General. 2008. Sexual assault: an acute care protocol for medical/forensic evaluation. Fifth edition, 2008.

may be incorporated into statewide SART protocols, for example, or perhaps a statewide recommended policy that jurisdictions may easily adapt to local practices. Oregon is an example of a state establishing the expectation that local jurisdictions develop anonymous systems for victims who choose not to report the sexual assault immediately.¹⁴³ Additionally, Oregon created recommended law enforcement and medical facility policies for local jurisdictions to consider. The model policies remain available on the website of Oregon's Attorney General's Sexual Assault Task Force,¹⁴⁴ and are provided in their entirety as Exhibit V. Jurisdictions may wish to consider implementing a process for monitoring the effectiveness of the system, both to ensure the successful implementation of new policies and procedures and to maintain the integrity of the system established *Steps Towards Establishing a Compliant System—Working Toward a Compliant System* (page 14).

Other states, such as Wyoming, have developed a model law enforcement policy providing direction to law enforcement entities throughout the state while maintaining control and providing direction of certain elements within the policy.¹⁴⁵ Wyoming has established several significant elements within its model policy:

- Stored evidence will be picked up by law enforcement and transported to its respective local agency for storage.
- Evidence will be stored for a period of eighteen months.
- Local law enforcement entities have the authority to dispose of the evidence upon expiration of the eighteen-month storage period.

Wyoming's concise policy, attached as Exhibit X, was vetted through the Wyoming Chiefs and Sheriffs Association for endorsement. Using a multi-tiered approval process, the Chiefs and Sheriffs Association, the Wyoming Division of Victim Services, and the Wyoming Coalition Against Domestic Violence and Sexual Assault are developing a consistent communication and marketing strategy for dissemination of the policy, while providing an opportunity for the state to provide technical assistance to local law enforcement departments as they work to develop interagency policies and procedures among health care facilities, law enforcement, prosecutors, and advocates. This type of policy development is commonly referred to as a hybrid model, as policies may vary within jurisdictions throughout the state.

In order to develop victim-centered policies and procedures, the process should follow a multidisciplinary approach and should include, at minimum, representatives from health care, advocacy, law enforcement and prosecution, and when appropriate, the voices of survivors. In addition, it is important that states and jurisdictions incorporate into the planning process methods for the monitoring of victim access to forensic medical exams throughout the state in order to document compliance and identify opportunities for improvement.

¹⁴³State of Oregon, SANE—OSP, Anonymous Sexual Assault Reporting Program, Jackson County, September 2007 (Draft), attached as Exhibit W.

¹⁴⁴Oregon Attorney General's Sexual Assault Task Force. 2007, July. Recommended medical facility policy for implementation of HB 2154 and Recommended law enforcement policy for implementation of HB 2154.

¹⁴⁵Wyoming Association of Sheriffs and Chiefs of Police. 2008. Policy on forensic medical exams for sexual assault victims not reporting to law enforcement (Exhibit X).

Payment For Forensic Medical Examinations

Ensuring Victims Are Not Responsible for Payments

Regulation

U.S. Code Annotated Title 42—The Public Health and Welfare

Chapter 46—Justice System Improvement

Subchapter XII-H—Grants to Combat Violent Crimes Against Women

42 U.S.C.A. § 3796gg-4

Rape exam payments

(b) Medical costs

A State, Indian tribal government, or unit of local government shall be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity

1. provides such exams free of charge to the victim;
2. arranges for victims to receive such exams free of charge to the victims; or
3. reimburses victims for the charge of such exams if
 - A. the reimbursement covers the full cost of such exams, without any deductible requirement or limit on the amount of a reimbursement;
 - B. the reimbursing governmental entity permits victims to apply for reimbursement for not less than one year from the date of the exam;
 - C. the reimbursing governmental entity provides reimbursement not later than 90 days after written notification of the victim's expense; and
 - D. The State, Indian tribal government, unit of local government, or reimbursing governmental entity provides information at the time of the exam to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement.

Considerations:

- *Examine current payment or reimbursement funding streams and procedures. Remove restrictions requiring victims' cooperation with law enforcement.*
- *If using victims' private insurance as payers, ensure co-pays and deductibles are covered.*

- *Explore pros and cons of a flat rate reimbursement fee for health-care providers.*
- *Consider broadening reimbursement policies to include fees for services such as transportation fees, follow-up visits, etc.*
- *Consider streamlining the reimbursement process for health-care providers.*
- *Explore creative funding strategies.*
- *Explore strategies for communicating revised policies and procedures to stakeholders throughout the state.*

Payment and Reimbursement Procedures

VAWA 2005 includes a requirement specific to the payment, or reimbursement, for sexual assault forensic medical examinations for all victims of sexual assault.¹⁴⁶ The full cost for performing a forensic medical examination is to be covered. The forensic medical examination has been defined as an “...examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law.”¹⁴⁷ The forensic medical examination “...should include, at a minimum”:

1. examination of physical trauma;
2. determination of penetration or force;
3. patient interview; and
4. collection and evaluation of evidence.¹⁴⁸

The statute speaks only to the forensic medical examination itself and does not address the fees for services rendered in treating injuries resulting from the sexual assault. Some states, however, voluntarily cover the cost of all medical services provided as a result of the sexual assault.

Prior to VAWA 2005, states were required to pay for sexual assault forensic medical examinations or ensure victims were provided reimbursement for the exams. States had the discretion to make such payment or reimbursement contingent upon a victim’s cooperation with law enforcement.¹⁴⁹ In instances where direct reimbursement was provided to the health-care facility providing the examination, it was common for states to require confirmation of the victim’s interaction with the criminal justice system, included among the administrative forms submitted with the reimbursement request. In Maryland, for instance, a “...police central complaint number or a similar police case identifier”¹⁵⁰ was required for the reimbursement to be processed. This requirement, articulated

¹⁴⁶42 U.S.C.A. § 3796gg-4(a)(1).

¹⁴⁷U.S. Department of Justice, Office on Violence Against Women. Frequently asked questions on STOP formula grants: 22. Updated November 21, 2007.

¹⁴⁸Ibid.

¹⁴⁹42 U.S.C.A. § 3796gg-4(a)(1).

¹⁵⁰Code of Maryland Regulations 10.12.02.05.

within the regulations governing the administrative agency charged with processing the reimbursements, 152 was incorporated as a part of the reimbursement form.¹⁵¹

With the enactment of VAWA 2005, access to sexual assault forensic medical examinations has been extended to victims regardless of whether they report to law enforcement and/or participate in the criminal justice system, including payment for the exam. States now must provide a forensic medical examination free of charge or with full reimbursement to all victims regardless of whether the victim reports the sexual assault to law enforcement. In light of this change, a thorough review of the reimbursement process, including any governing statute, current procedures, and forms, should be conducted to ensure there are no obstacles blocking the provision of a forensic medical examination, including payment or reimbursement to victims.

Funding Streams for Forensic Medical Examinations

States and territories utilize a variety of funding sources to pay for, or reimburse victims for, the cost of the sexual assault forensic medical examination (Exhibit Y).¹⁵² Results from a nationwide survey administered in early 2008¹⁵³ indicated more than half of states and territories use Victims of Crime Act (VOCA) Criminal Injuries Compensation funding.¹⁵⁴ Sixteen percent (16%) of the nation uses state funds as a primary payment source, with an additional sixteen percent (16%) using local funds. Seven percent (7%) of the nation defers to local law enforcement to cover the costs of the sexual assault forensic medical examinations. Each of these funding streams presents opportunities and challenges to states and local jurisdictions.

Victims of Crime Act: Criminal Injuries Compensation

Victims of Crime Act Crime Victims Fund

The Crime Victims Fund (the Fund), established by the Victims of Crime Act of 1984 (VOCA), is a major funding source for victim services throughout the Nation. Millions of dollars have been deposited into the Fund annually from criminal fines, forfeited bail bonds, penalties, and special assessments collected by U.S. Attorneys' Offices, federal U.S. courts, and the Federal Bureau of Prisons.

Funding from the VOCA program funds several programs, including child abuse programs, the Federal Criminal Justice System, and the Antiterrorism Emergency Reserve. The remaining fund deposits are divided between the Victims of Crime Assistance Program and the Victims of Crime Compensation Fund, also known as the Criminal Injuries Fund. To date, Fund dollars have always come from offenders convicted of federal crimes, not from taxpayers.

All 50 states, the District of Columbia, and several U.S. territories receive VOCA assistance and compensation grants. A state is eligible for a VOCA compensation grant if it meets the criteria set

¹⁵¹State of Maryland, Department of Health and Mental Hygiene. Form DHMH 2923—Medical Examination and Report of Alleged Sexual Assault. Revised January 2002.

¹⁵²See VAWA Forensic Compliance Project Survey Results: SAFE Payment Procedures, attached as Exhibit Y.

¹⁵³VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B)

¹⁵⁴The Crime Victims Fund (the Fund), established by the Victims of Crime Act of 1984 (VOCA), is a major funding source for victim services throughout the Nation.

forth in VOCA and OVC program rules. The amount of VOCA compensation grant funding a state receives is based on a percentage of the payments to crime victims from state funding sources in the previous year.¹⁵⁵

Criminal Injuries Compensation Boards paid over 22 million dollars in 2007 to cover costs associated with sexual assault forensic medical examinations.¹⁵⁶ The National Association of Crime Victims Compensation Boards (NACVCB) confirms that 26 states indicate Criminal Injuries Compensation is their primary funding source for the costs associated with forensic medical exams.¹⁵⁷ The number of states looking to Criminal Injuries Compensation as their primary source to fund the costs associated with performing the examination has steadily climbed over the past two years, from 15 in 2006¹⁵⁸ to 26 in 2008, a 43% increase. The NACVCB recognizes this trend, and attributes the increase to the fact that with VAWA 2005, states and territories must fund the cost of additional forensic medical examinations for those individuals who choose not to report the crime initially.

Guidelines for the Criminal Injuries Compensation Program stipulate that victims are to cooperate with law enforcement as a requirement for eligibility.¹⁵⁹ The program eligibility requirements, however, provide several caveats in addressing the cooperation requirement. One exception to the cooperation requirement presented within the guidelines is for states to consider accepting "...proof of the completion of a medical evidentiary examination"¹⁶⁰ as evidence of cooperation. Many states have approved the acceptance of the completed sexual assault forensic medical examination as meeting the requirement to cooperate with law enforcement. Several jurisdictions, including Iowa¹⁶¹ and the District of Columbia,¹⁶² have stipulated within their statutes that the action of the victim undergoing the examination is to be acknowledged as cooperation with law enforcement.

¹⁵⁵U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime. 2005, October. OVC fact sheet—Victims of crime act crime victims fund.

¹⁵⁶Victims of violent crime and their families received benefits totaling \$453 million from state-administered crime victims compensation boards in federal fiscal year 2007, including \$22.9 million for forensic sexual assault exams. Retrieved November 24, 2008, from the National Association of Crime Victims Compensation Boards web site home page, <http://www.nacvcb.org>

¹⁵⁷The National Association of Crime Victim Compensation Boards. 2008. Crime Victim Compensation Quarterly 3.

¹⁵⁸U.S. Department of Justice, Office on Violence Against Women. Frequently asked questions on STOP formula grants: 25. Updated November 21, 2007.

¹⁵⁹U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime (OJP[OVC]-1319). 2001, May 16. Victims of crime act victim compensation grant program. Federal Register 66(95):27158.

¹⁶⁰U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime (OJP[OVC]-1319). 2001, May 16. Victims of crime act victim compensation grant program. Federal Register 66(95):27158.

¹⁶¹Iowa's Administrative Rules state, "A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination." See Iowa Administrative Rules, Attorney General (61), Chapter 9 Victim Assistance Program, 61-9.30(915) Cooperation with law enforcement, 9.30(4) Sexual abuse victim.

¹⁶²The Official Code of the District of Columbia states that "(c)...a victim who has been sexually abused or subjected to unlawful sexual conduct, domestic violence, or cruelty to children and who does not report the crime to the local police department, may: ... (2) In the case of sexual assault victims, satisfy the reporting requirement by seeking a sexual assault examination from a medical treatment facility...." District of Columbia Official Code, 2001 Edition, Division I Government of District, Title 4 Public Care Systems, Chapter 5 Compensation of Victims of Violent Crime, Subchapter I General, § 4-506 Eligibility for compensation.

State and Local Jurisdictions

According to national survey results,¹⁶³ approximately 40% of the nation provides funding for the forensic medical examinations through state or local funds.¹⁶³ States that utilize general funds have established their fund through statute, as in Iowa,¹⁶⁴ or through administrative rules or regulations, as in Maryland.¹⁶⁵ These statutes and administrative rules or regulations delineate the specific services to be covered by the reimbursement. The administrative agency designated to oversee the reimbursement process may also be articulated within the governing authority, as well as parameters surrounding the reimbursement process itself.

There are several states where the cost of the forensic medical exams is the responsibility of the local jurisdiction where the offense occurred. In these cases, the forensic medical examination is conducted for purposes of evidence collection related to the prosecution of a case and is viewed as a local expenditure. In states where reimbursements for forensic medical examinations are processed by local jurisdictions, reimbursement has often been tied to the authorization of the examination by local law enforcement officers and/or prosecutors who have determined there is reasonable suspicion that a crime has occurred. When this is the case, technical assistance from the VAWA Forensic Compliance Technical Assistance Project¹⁶⁶ may be helpful to local jurisdictions working toward developing policies and procedures to ensure all victims of sexual assault, whether or not they report to law enforcement and/or participate in the criminal justice system, have access to forensic medical examinations and do not incur out-of-pocket expense.

STOP Funds

With VAWA 2005, states and territories are now eligible to use STOP funds to pay for the cost of the sexual assault forensic medical examination, provided the jurisdictions meet two criteria:

1. The examinations are performed by specially-trained examiners for victims of sexual assault, such as Sexual Assault Nurse Examiners (SANEs) or Sexual Assault Medical Forensic Examiners (SAFEs); and
2. The jurisdiction does not require victims of sexual assault to seek reimbursement from their insurance carriers.¹⁶⁷

However, although VAWA 2005 requires forensic medical examinations to be conducted by trained examiners if states use STOP formula grants as a funding source, it does not specify the type of training to be used. Some specially-trained examiners for victims of sexual assault are known as

¹⁶³See VAWA Survey Results—SAFE Payment Procedures, attached as Exhibit Y.

¹⁶⁴Iowa Code 915.94. Victim compensation fund.

¹⁶⁵Code of Maryland Regulations 10.12.02.05.

¹⁶⁶The VAWA Forensic Compliance Technical Assistance Project is a cooperative agreement between the U.S. Department of Justice, Office on Violence Against Women, and the Maryland Coalition Against Sexual Assault, Inc., currently funded through April 2009 through grant number 2007-TA-AX-K003. Technical Assistance is provided online at www.MCASA.org [http://www.MCASA.org] or by contacting the Technical Assistance Project Director at 410-974-450

¹⁶⁷United States Department of Justice, Office on Violence Against Women. Frequently asked questions on STOP formula grants: 7. Updated November 21, 2007.

Sexual Assault Forensic Examiners (SAFEs). According to the National Training Standards for Sexual Assault Medical Forensic Examiners,¹⁶⁸ some communities refer to SAFEs by different terms/acronyms based on the discipline of the practitioners and/or specialized education and clinical experience. Sexual Assault Nurse Examiners (SANEs) are registered nurses and advanced practice nurses (can include nurse practitioners and nurse midwives) who receive specialized education and fulfill clinical requirements to perform these exams. Some nurses have been certified to perform adolescent and adult exams (referred to as SANE-Adult and Adolescent or SANE-A) through the International Association of Forensic Nurses (IAFN). Others are specially educated and fulfill clinical requirements as forensic nurse examiners (FNEs), enabling them to collect forensic evidence for a variety of crimes. SAFEs and sexual assault examiners (SAEs) are often used broadly to denote health care providers (e.g., physicians, physician assistants, nurses, nurse practitioners, or midwives) who are specially educated and clinically prepared to perform this examination. A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents, further describes a forensic medical examiner as one who is:

...committed to providing compassionate and quality health care, collecting evidence in a thorough and appropriate manner, and testifying in court if needed. Their commitment should be grounded both in an understanding that sexual assault is a serious crime that can have profound, negative effects on those victimized and in recognition of the role of advanced education and clinical experience in building competency to perform the exam.¹⁶⁹

While educational programs offered to train professionals on the collection of forensic evidence vary throughout the nation, there are national training standards for sexual assault forensic medical examiners that are based on the *National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents*. The goal is that every person who reports or discloses a recent sexual assault will have access to a specially educated and clinically prepared SAFE who can validate and address their health concerns, minimize their trauma, promote their healing, and maximize the detection, collection, preservation, and documentation of physical evidence related to the assault for potential use by the legal system. Uniformity in SAFE training can aid in evaluating the effectiveness of examiner response. In addition, the use of these standards is meant to support a coordinated community response to sexual assault and promote responses that recognize and address the unique needs and circumstances of each patient.

States and territories are encouraged to implement the SAFE and SANE protocols discussed above. While many have done so, others have developed their own systems. The State of New York encourages its sexual assault forensic examiners to be certified as SANE-A (Sexual Assault Nurse Examiner, Adult/Adolescent) and to complete 15 hours of continuing education every three years

¹⁶⁸U.S. Department of Justice, Office on Violence Against Women, President's DNA Initiative. 2006, June. National training standards for sexual assault medical forensic examiners. NCJ 213827.

¹⁶⁹U.S. Department of Justice, Office on Violence Against Women, President's DNA Initiative. 2004, September. A national protocol for sexual assault medical forensic examinations, adults/adolescents: 53. NCJ 206554.

to be recertified.¹⁷⁰ Pima County Arizona requires SANE training, but has no state certification process for sexual assault forensic examiners.¹⁷¹ California, on the other hand, has its own training curricula.¹⁷² Wyoming's innovative approach to statewide training is discussed in the section on the Wyoming Sexual Assault Response Team (WySART) in *Steps Towards Establishing a Compliant System-Working Toward a Compliant System*(page 14).

Creative Funding Strategies

Private Partnerships

In North Dakota, the Department of Health's Division of Injury Prevention and Control, teaming with the Office of the Attorney General and the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota, convened a Stakeholders Group to discuss the need for additional funds to support the reimbursement of fees for the provision of sexual assault forensic medical examinations. The Stakeholders Group included representatives from the core agencies named above as well as Blue Cross/Blue Shield (BC/BS), the North Dakota Medical Association, the North Dakota Hospital Association, local hospital billing staff, a SANE representative, victim advocates, and the director of the VOCA program.

The group discussed the intent of the proposed senate bill,¹⁷³ the current status of forensic medical exams in North Dakota, the definition for "forensic medical examination," potential coverage for adults and children, the Crime Victims Compensation Fund, which procedures would be covered by the state funds, and sustainability at the end of the 2007–2009 biennium.

The Stakeholders Group resolved the issues and, with the leadership of BC/BS, also created a new funding stream proposing the use of funds from the Insurance Regulatory Trust Fund in the state treasury to pay for the costs associated with performing sexual assault forensic medical examinations. The Insurance Regulatory Trust Fund is a fund to which all insurance companies within North Dakota are contributors.¹⁷⁴ With the private partners at the planning table, this unique approach to funding forensic medical exams became a reality.

Other Considerations

Regardless of the source of funding, when reimbursement is provided directly to the victim, VAWA 2005 requires states and territories to allow victims to seek reimbursement for one year following

¹⁷⁰New York State Department of Health, Appendix C-Sexual Assault Forensic Examiner (SAFE) Program Standards, Sexual Assault Forensic Examiner Standards and Sexual Assault Forensic Examiner Training Program Standards, Requirements and Applications.

¹⁷¹The Southern Arizona Center Against Sexual Assault web page and Sexual Assault Nurse Examiner Training, February 25–29, 2008, brochure. Retrieved December 1, 2008, from www.sacasa.org [<http://www.sacasa.org>]

¹⁷²California Clinical Forensic Medical Training Center calendar and Sexual Assault Forensic Examiner Training brochure. Retrieved December 1, 2008, from <http://ccfmc.org.s110224.gridserver.com/>

¹⁷³2007 North Dakota Century Code Chapter 12.1-34-07: 12.1 Criminal Code, 34 Fair Treatment of Victims and Witnesses, 07 Acute forensic medical examinations costs—Reimbursement by attorney general—Use of evidence. Available from www.legis.nd.gov [<http://www.legis.nd.gov>] <http://www.legis.nd.gov/information/statutes/cent-code.html>

¹⁷⁴The North Dakota Insurance Department is a state regulatory agency headed by the Insurance Commissioner. All fees and fines paid by companies or agents are deposited into the Insurance Regulatory Trust Fund, from which the money to operate the Department is appropriated by the Legislature. See <http://www.nd.gov/> <http://www.nd.gov/ndins/>

the date the examination was performed. Reimbursement must be made within ninety (90) days of receipt of the victim's claim.

As stated in *Ensuring Access to Exams—Initial Response* (page 23), all materials provided to victims of sexual assault should be provided in a variety of formats to meet the needs of individuals who speak languages other than English, have low literacy levels, or have cognitive or physical disabilities, as required by VAWA. Ideally, victims should be informed of reimbursement procedures both verbally and in writing. Written materials regarding the reimbursement procedures should be available to victims in a variety of languages, taking into consideration the demographics of the community.

Acknowledgments

This Toolkit was produced by the VAWA Forensic Compliance Project through a cooperative agreement between the U.S. Department of Justice Office on Violence Against Women and the Maryland Coalition Against Sexual Assault (MCASA). The Toolkit is the product of a multi-disciplinary effort involving a National Working Group comprised of STOP Administrators and various other professionals with a collective wealth of knowledge and experience in administering grant programs and working with victims of sexual assault through advocacy, health care, law enforcement, and the courts.¹⁷⁵ Special appreciation goes to Debra Bright, primary researcher and writer for the Toolkit. The states of North Dakota, Virginia and Wyoming served as pilot sites, and in sharing their journey toward compliance helped to map the process for others. State STOP Administrators, coalition directors, and directors of dual coalitions participated in the VAWA Forensic Compliance Project National Survey,¹⁷⁶ furnishing information on victim services and systems throughout the country. These and many other professionals, associations, and organizations throughout the United States have provided ideas, information, expertise and insight that have been incorporated into this Toolkit. With these tools at hand, states and territories may build and sustain VAWA 2005 compliant systems that strengthen victim services and offer a victim-centered standard of care based on the most promising practices of service delivery.

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42 U.S.C.A. § 3796gg et seq. U.S. Code Annotated, Title 42—The Public Health and Welfare, Chapter 46—Justice System Improvement, Subchapter XII-H—Grants to Combat Violent Crimes Against Women. Available online <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+4368+0++%28%29%20%20AND%2>

42 U.S.C.A. § 3796gg-4(a)(1). U.S. Code Annotated, Title 42—The Public Health and Welfare, Chapter 46—Justice System Improvement, Subchapter XII-H—Grants to Combat Violent Crimes

¹⁷⁵ A complete roster of NWG members is attached as Exhibit A.

¹⁷⁶ VAWA Forensic Compliance Project National Survey, December 2007–January 2008 (Exhibit B).

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