

## Non-Reporting Options for Victims

SART Listserv  
November, 2006

*States are listed as a point of reference rather than as a statewide perspective*

**Issue:** Non Reporting Options for Victims

**Background:** A community-based SART is formulating guidelines for victims that present to Emergency Departments but who have not decided whether to report. From a victim-centered perspective, it is understandable that victims may be reluctant to report. From a prosecutorial perspective, delayed reporting greatly lessens the chance of a conviction. From a law enforcement perspective, without a report, the crime scene cannot be preserved and potential witnesses cannot be identified. From a funding standpoint, the Victims Compensation program requires reports to LE before a claim for sex assault services can be made. SANEs are paid from that fund, so if there is no report, other funding streams will have to be tapped. What do other teams do?

### **National Implication under VAWA 2005:**

- VAWA 2005 changed the certification with regard to forensic exams. This applies to all states, territories and the District of Columbia in their applications for STOP Violence Against Women Formula Grants.
- Under the new requirement, victims must be able to receive a forensic exam and reimbursement for the cost of the exam without being required to participate in the criminal justice system or cooperate with law enforcement.
- Grantees have until January 5, 2009 to meet the new requirement.

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### **California**

- California law requires health professionals to notify law enforcement (LE) when sexual assault patients seek services.
- In Santa Cruz, many mandatory reports are dropped because victims later decide they do not wish to cooperate.
- In some jurisdictions (e.g., San Francisco; Santa Monica) if victims are clear that they do not want to involve LE, the police will not show up at the health facility.
- While the legislation is clear that LE has to be contacted by health practitioners, it is not clear that LE has to show up and talk with the person who was raped.
- LE prefers to talk with victims themselves, to determine whether or not they are willing to report. This process can include subtle pressures on victims to report; especially when questions, such as ‘don’t you want to protect other women?’ are asked.
- Students have literally been quite traumatized when they seek medical care at Health Centers and are told police are on their way.

### **Florida (Pinellas Park)**

- The forensic exam program is community-based; not hospital-based.
- If victims present to a hospital, they are routinely referred to the medical forensic exam program off site (unless there is life threatening injuries).
- It is the survivors' decisions/choices to report the rape or not.
- Law Enforcement is the only agency that can activate a SART because they authorize exams.
- Victims who do not to report can be seen at an After Care Clinic for treatment; including pregnancy and STI testing.

### **Maryland (Bethesda)**

- Studies have shown that patients reporting sexual assaults are much more likely to receive medical care if they have the option for confidential reporting.
- The Department of Defense currently offers both Restricted (Confidential) and Unrestricted reporting for all of their active duty personnel; providing they have not disclosed their assault to anyone other than the Victim Advocate, the Sexual Assault Response Coordinator, Medical Professional/Sexual Assault Examiner, or a Chaplain.
- Evidence from confidential (restricted) reporting is kept up to one year in the DoD program, during which time the patient may decide to officially report the incident or make the report "unrestricted".
- Non-identifying information is provided to the commander of the installation so that he/she knows a sexual assault occurred, and is able to keep track of occurrences in order to provide options such as increased security in necessary areas, etc.
- Communities without restricted (confidential) reporting may want to consider notifying the police only of "non-identifying" information - such as where the crime occurred - so that police may at least know that sexual assaults are occurring.
- Despite the desire for patients to report the crime ...the greater need is to have patients receive medical care, pregnancy prophylaxis, and information on follow-up care.
- Confidential reporting in the military allows referrals to Behavioral Health and to Social Work; so patients may obtain necessary services.
- Patients are frequently afraid of having to talk to law enforcement. Coming into contact with an examiner and advocate makes them feel more comfortable. The process allays their fears which may help them decide to report the crime.
- From the law enforcement point of view...it is much better to have the crime reported later than never.

### **Maryland (Towson)**

- In Maryland, the ER is required to call LE for specific types of crimes (e.g., gunshot wounds)
- Outside of those very specific situations, the health care professional should not call LE without the victim's consent.

### **Michigan (Battle Creek)**

- Unless you have mandatory reporting laws in your state, it is a HIPPA violation to notify anyone of the fact that the patient was seeking care in the ER.
- A medical forensic exam should be offered each patient that requests care following an acute sexual assault. The medical forensic exam is to assess the medical needs of the patient and may aid a criminal investigation, if the patient chooses.

## Minnesota (St. Paul)

- Provides exams without LE report.
- Enables victims to get medical attention and decide later if they want to report.
- Protecting victims' choices as part of their rights is critical to establishing a credible system to victims.
- Unless there is a statute that requires law enforcement to be notified when adult sexual assault victims seek medical care, teams would be violating victims' right to privacy.
- Consistent with Minnesota privacy statutes, the community-based teams all have protocols in place that protect a victim's right to **not** have the systems involved unless they choose.
- MN Teams have started a numbering process for non-reporting victims who receive exams. A numbering system should not include Social security numbers because they identify victims. A combination of date and sequential number - 200611 (Nov. 2006) or 20061106 (Nov 6, 2006)) plus an assigned number – such as '1' for first victim today, etc might be used. Some numerical codes could also include the hospital code for the evidentiary exam.
- Either the hospital or the advocacy program holds the main file so that names and numbers can be cross-referenced in cases where there could be questions. This allows the county to pay and allows victims' names to be kept confidential until they decide to make a formal report.

## New Jersey

- In NJ, all victims are given a reporting option and exams are performed if victims want them.
- Law enforcement is not called if the victim has not decided whether they want to report.
- Kits are held anonymously for 90 days (by reference number assigned by SANE).
- Link to State Standards:  
<http://www.state.nj.us/lps/dcj/agguide/standards/standardssartsane.pdf>  
[http://www.state.nj.us/lps/dcj/agguide/standards/standardssartsane\\_append.pdf](http://www.state.nj.us/lps/dcj/agguide/standards/standardssartsane_append.pdf)

## New York (Suffolk County)

- Patients decide whether or not law enforcement is contacted.
- If the assault occurred within 96 hours, evidence is collected, whether or not Law Enforcement is involved.
- State law requires that evidence be held for 30 days in case patients later decide to report. Victims can contact LE and they collect the kit.
- It is common for patients to report after they have disclosed to a friend, parent, etc.

## Ohio (Cleveland)

- In Ohio, hospitals must (by law) report any felony (including SA) to law enforcement. Patients are informed that LE must be called.
- LE is obligated to investigate but the patient is not obligated to talk with the police.
- If victims are adamant that they do not want to report, their name will not be disclosed to law enforcement.
- Reports without victim identifiers include date, time and general location of the crimes.
- If victims choose to have evidence collected, their name will be on the evidence.

- Victims not wanting to report generally do not understand the role of law enforcement. They may be afraid that they will get in trouble (underage drinking, illicit drug use), etc.
- State of Ohio pays for evidentiary exams and antibiotics. Patients may be billed for medical treatment outside the scope of the immediate SANE visit. (X-rays, lab draws, etc).
- Hospitals cannot hold evidence kits. Law enforcement collects and maintains kits in order to generate a paper trail and show maintenance of custody.
- It is preferable that victims use their real names on medical records, however if patients use a pseudonym, it is good to take photos for the medical record. That way the RN caring for the patient can testify, "That is the patient I treated under that name".

### **Oregon (Portland)**

- Oregon is working on legislation for the next session to make it possible for a survivor to receive a full forensic exam without having law enforcement (LE) involvement. The details of this bill are currently being worked out.
- The idea is to support victims who may be unsure about reporting while collecting important evidence, crucial for prosecution, if they report later.
- Currently, LE must authorize the collection of forensic evidence (full SAFE kit) but a partial exam (no forensic evidence collected) can be done without police involvement.
- The goal of the Oregon Attorney General's Office is to have kits stored anonymously for a set period of time.
- Oregon also has a fund that is specific for sexual assault survivors which covers the costs of both the full forensic exam and the partial exam, as well as the normal Crime Victim Compensation fund for counseling and other services.

### **Texas (Comal County)**

- According to Texas law, adult survivors are not required to report to law enforcement.
- In one community-based program, advocates are called to the hospital as soon as victims arrive in order to explain their rights to them.
- If victims decide to report, then Law Enforcement (LE) is called.
- If, after reporting to LE, an exam is authorized, the SANE is contacted by the advocate. (SANEs are not hospital employees, and so are not already at the hospital)
- In another hospital-based program, the hospital staff informs victims of their rights and contacts an advocate. In the hospital based program, LE, the hospital, or an advocate can "activate" the SANE to respond once LE authorizes an exam.
- TX Dept of Health requires that all hospitals notify victims that they have a right to have an advocate present.
- There have been challenges with the system, such as:
  - Local hospitals that consider their facilities to be mandatory reporters of adult sexual assaults (as crimes of violence).
  - Hospitals that have called LE without advising the victim that they did not have to report.
  - If LE arrives without an advocate present, victims were not advised of their rights.
- Through training materials on victim rights (developed by the Attorney General's Office and the Texas Association Against Sexual Assault) the system is working much better. Both advocates and LE have educated hospitals about victims' rights and options.

- SART meetings have been invaluable tool to improve the response

## Resources

### *Explaining Counterintuitive Victim Behavior in Domestic Violence and Sexual Assault Cases*

*The Voice*: Volume 1 Number 4

[http://www.ndaa-apri.org/publications/newsletters/the\\_voice\\_contents.html](http://www.ndaa-apri.org/publications/newsletters/the_voice_contents.html)

### *Rape and Sexual Assault Reporting Laws*

By Teresa Scalzo

[http://www.ndaa-apri.org/publications/newsletters/the\\_voice\\_vol\\_1\\_no\\_3\\_2006.pdf](http://www.ndaa-apri.org/publications/newsletters/the_voice_vol_1_no_3_2006.pdf)

### *National overview of reporting requirements by State:*

[http://www.ndaa-apri.org/apri/programs/vawa/state\\_rape\\_reportings\\_requirements.html](http://www.ndaa-apri.org/apri/programs/vawa/state_rape_reportings_requirements.html)

### *The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police*

Author(s): Richard Felson, Paul-Philippe Paré

March 2005

<http://www.ncjrs.gov/pdffiles1/nij/grants/209039.pdf>

### *Explaining Counterintuitive Victim Behavior in Domestic Violence and Sexual Assault Cases*

Author: Jennifer Gentile Long

American Prosecutors Research Institute

Volume 1, Number 4 (2006)

[http://www.ndaa-apri.org/publications/newsletters/the\\_voice\\_vol\\_1\\_no\\_4\\_2006.pdf](http://www.ndaa-apri.org/publications/newsletters/the_voice_vol_1_no_4_2006.pdf)

### *Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey*

Author(s): Patricia Tjaden, Nancy Thoennes; NIJ, NCJ 210346.

(See Victims' Involvement in the Justice System, page 33)

<http://www.ncjrs.gov/pdffiles1/nij/210346.pdf>