

Non-Reporting Options for Victims
SART Listserv
December 2006 (continued from November 2006)

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

Topic: Non Reporting Options for Victims and Implications for Criminal Justice

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.

Definition of Anonymous Reporting: Anonymous reports (also known as “blind reports; Jane Doe reports”) allow victims and/or third persons to share critical information about sexual assaults without sacrificing victim confidentiality and without requiring victims to file complaints. It also enables investigators to gain information about sex crimes that would otherwise go unreported (National Protocol for Sexual Assault Medical Forensic Examinations, US Department of Justice Office on Violence Against Women, September, 2004 P. 47). Some law enforcement departments and state laws mandate the use a pseudonym such as Jane Doe; other states collect evidence and make an anonymous report via tracking numbers.

The issue of anonymous reporting is complex because it intersects with the medical, legal, advocacy and sustainability concerns within SARTs. Overlapping victims’ issues and criminal justice questions that evolved during the listserv discussions include:

Questions Raised about the Benefits and Challenges of Providing Exams without LE Reports

- Do SARTs collect evidence in cases where victims have no intention of reporting?
- If evidence must be collected within 72 hours of the assault do forensic examiners become investigators in order to gather as much information about the incident as possible in case victims decide to report at a later date?
- What are the benefits of anonymous reports (to victims and the criminal justice system)?
- What are SART concerns about anonymous reporting?

Questions Raised about Funding Anonymous Exams

Note: States will need to certify that victims are not required to seek reimbursement for exams from insurance carriers under the new VAWA 2005 certifications under the STOP formula grants. (A summary of VAWA 2005 Summary is available at <http://nnedv.org/VAWA/VAWA2005Summary.PDF>)

- What corporate, nonprofit and government-based funding streams are available to pay for anonymous reports?
- Specifically, how do SARTs now pay for anonymous reports?

Kit Tracking Questions for Anonymous Reports

- What identifiers are used to link the patient to the kit in the event the patient should decide to report to law enforcement?
- When a kit is turned over to a police department (and the victim does not give you permission to do so), what happens to the kit?

Chain of Custody Questions

The chain of custody is a concept in law which applies to the handling of evidence that ensures its integrity. Chain of custody must be maintained for the evidence to be admissible in court.

- Who maintains the chain of custody for forensic exam kits when victims do not report?
- Where are anonymous kits stored?
- How long are kits held, pending victims' decisions to report?

CODIS Questions

The FBI Laboratory's Combined DNA Index System (CODIS) blends forensic science and computer technology into an effective tool for solving violent crimes. CODIS enables federal, state, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders. <http://www.fbi.gov/hq/lab/codis/index1.htm>

- Do jurisdictions analyze forensic medical exam kits involving anonymous reports? (To see if there is a match to other cases or to a database of offenders)? Is that legal?
- If there is a hit on CODIS? What provision is made on the consent form for anonymous Kits?
- Do anonymous reporting exam kits get tested for DNA? Are anonymous reporting victims ultimately identified through DNA that is in the kit?
- What if an offender's DNA is associated with other rapes? Is there a way to confidentially go back to the victim and explain that he/she has been raped by a serial rapist in order to see if the victim may want to cooperate with law enforcement?

VAWA Certifications for Exams:

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. Victims will also not be required to use their insurance benefits to pay for forensic medical exams.

For additional information see VAWA 2005 Summary of Provisions at:

<http://www.nnedv.org/default.asp?Page=44>

Benefits and Challenges of Providing Exams without Reports

Oregon (National Consultant/Former Prosecutor)

- I'm a long-time advocate for giving victims the freedom to defer the decision whether they want to prosecute.
- All other things being equal, the difficulty a victim has in being believed is inversely correlated to the strength of the forensic proof.
- In addition to the difficulty of making such a huge decision (about reporting) in the immediate aftermath of a traumatic event, here are just a few of the many situations where preserving the evidence might be critically important if the victim is initially unsure about reporting:
 - The victim does not want to prosecute but later decides to sue the landlord for faulty security provisions and needs to prove the rape. (Victims have years to decide if they want to civilly sue even if they do not want to prosecute.)
 - The victim does not want to prosecute but wants to file a disability claim and needs to prove post traumatic stress (and therefore may need to prove the underlying trauma.)
 - The victim's circumstances change so that the initial reasons for not wanting to report no longer exist. (For example, a loved one dies who at the time of the assault was in such frail health that the victim wanted to protect the loved one from the heartache of learning what happened.)
 - Initially the victim did not expect to be believed but the crime now fits within a pattern of serial rapes or attempted homicides and law enforcement can now be expected to listen.

Pennsylvania

- Victims may be reluctant to seek medical attention if they know that the police will be called.
- As a prosecutor, I am interested in presenting the strongest case possible, and in our experience, a delayed report greatly lessens the chance of a conviction.
- At least when the victim has had a forensic exam, we can argue that she did 'report'.
- On the other hand, when law enforcement does not get a report, they cannot preserve the crime scene or identify potential witnesses.
- One problem raised by our SART members is that Crime Victims Compensation program requires a report to LE before a claim for sex assault services can be made. SANEs are paid from this fund, so if there is no report, other funds need to be found.

California (Campus)

- A further complication for survivors in California is the fact that ALL health practitioners are required by law to contact law enforcement when they attend to a patient whom they suspect is or has been the victim of rape. Even when the survivor has no wish ever to report to LE.
- Survivors seeking medical care suddenly find out that they are required to talk with a police officer even when they do not want to do so.
- There have been survivors who refused medical attention and hurriedly left the health facility when they were told that the police are on their way. So the issue, at least in California, goes beyond ambivalence over whether or not to have a forensic exam. For additional information on mandatory reporting see:

Rape and Sexual Assault Reporting Laws

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

- While a survivor is not required to have a forensic exam under CA mandatory reporting law, local police reports document a high percentage of mandatory reports that include a subsequent forensic exam followed by case closed due to survivor "lack of cooperation."
- The solution seems simple enough:
 - Adult survivors who want to have a police report made should be offered a forensic exam plus best practices in law enforcement.
 - Adult survivors who want only medical care and clearly want no police involvement should not have to talk with LE. They can be offered a short "What if I change my mind" pamphlet. This still allows those states with mandatory reporting laws to gather data, but excludes a mandatory police site visit or contact. If necessary, a waiver refusing police response can be obtained.
 - Adult survivors who are ambivalent should be offered a forensic exam; a pamphlet on the pros of early reporting and clear instructions on the next steps if they decide to report later.

Florida

- When we provide hospital advocacy and accompaniment it is impossible for us to know definitively that the case will "never involve the legal component".
- Often times a "recent victim" may be unsure about how they want to handle the situation because she/he is still trying to gain some understanding and acceptance of having recently been the victim of a crime.
- Moreover, victims may need education in understanding that what happened to them was criminal. Additionally, they need to understand "the other face of the coin"-- that late reporting and no forensic exam render less evidence to support the case.

Michigan

- Anonymous reporting gives patients an option to change their minds at a later date.
- Patients who have been raped will experience a great deal of emotional turmoil and are expected to make HUGE decisions that may impact the rest of their lives.
- Nurses are in a privileged position to provide the patient with as many options as possible while allowing them the autonomy to make decision for themselves.
- It is unfortunate when forensic nursing professionals are so focused on the forensic part of the medical forensic exam, that we forget the true power that we have as nurses to impact the healing process for these patients.
- I respectfully disagree with the notion that just because a patient does not want to prosecute it is somehow unethical to perform a pelvic exam. The patients that I see seem to get a great deal of comfort in knowing that their body is okay, or will heal soon.

Maryland

- The anonymous option just buys a little time for victims who are not sure what they want to do and become immobilized trying to make a reporting decision.
- There are many situations in which victims are frightened about speaking with police, to name a few that we have encountered in a large metro area:
 - The victim was assaulted by a police officer, either on or off duty (3 cases this year);
 - The victim is related to a police officer (a daughter);
 - The victim is a sex worker, drug addict, illegal immigrant, etc.;
 - The victim is a prominent member of the community;
 - The victim was previously assaulted and had a very negative experience with police, the legal system, and the media.

- In our rural areas, there have been victims who were ambivalent about reporting because the community is so small and they didn't want anyone to know.
- I have had prosecutors tell me that if a victim is ambivalent, they would rather have some evidence than none. I understand that some prosecutors have concerns about explaining delays in reporting, but the reality is that this is quite common. There is an excellent article on explaining "counterintuitive" victim behavior to juries and on the use of expert testimony in this area - available at the APRI website.
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
- Victims who report immediately are often defined as "good" or deserving victims. In reality, we know that "bad witnesses make good victims" –in other words, they are often women who are preyed upon are targeted because they are vulnerable (see above article).

New Jersey

- Some victims cannot make the decision in the immediate aftermath of an assault. This takes some of the pressure off of the victim.

New York

- I practice on Long Island in a suburban setting and we have a large percentage of patients who do not report to LE initially, for a multitude of reasons.
- Often, when they get home; disclose to parent/friend; give it some thought; speak with a counselor; get some sleep; etc, they decide to report.
- If evidence is not collected when we make the initial contact, it may be futile to try 3 days later when they make the decision.
- We always encourage evidence collection regardless of the initial reporting decision.

Texas

- Offender statements made to victims often reveal patterns and can help to identify that the perpetrator in one case may also be the perpetrator in another.
- Many years ago, Austin Police Department worked with the advocacy agency to develop anonymous reporting forms and procedures. For victims of stranger assaults who did not want to make an official report, the form allowed the advocacy agency to provide law enforcement with a more accurate sense of the nature and frequency of sexual assaults and helped to establish offender patterns.
- Anecdotal Information for stranger sexual assaults and anonymous reporting:
 - We had 7 women who had reported one perpetrator and we had 10 who had filed anonymous reports that fit the same perpetrator's MO. The advocacy agency contacted the anonymous reporting victims and offered them the opportunity view a line-up without having to speak to the officers, prosecutor, or the defense counsel. We asked if they would be willing to look and see if they, too, could identify the one perpetrator identified by the 7 victims who reported. Ultimately, they had tremendous relief in knowing that the offender had been caught and was being prosecuted. (He was caught in part because he operated on the same days of the week and assaulted in a specific geographic that involved just three neighborhoods.
 - Thinking about the line-up also reminds me of visiting the women's police stations in Brazil. The agencies were run by women for women. With much fewer resources than in the United States, line-ups were performed behind a giant piece of plywood with side panels to obscure the

view of victims. The plywood had the tiniest of holes for victims to look through. They had a plywood set of stairs so victims of various heights could see through the same little hole.

- Anecdotal Information for offenders known to victims:
 - For example, one victim wouldn't initially report because her father was the Chief of a major Texas City police department and she feared him being disappointed in her judgment, given the way the offender had managed to isolate her. By taking information from her about what happened and sharing it with law enforcement, we were able to go back to her and let her know of two other university students, on the same campus, who experienced very similar assaults. We helped her process the fact that the offender was a smooth predator and that her father would be able to see how she was manipulated. She filed a formal complaint. If we say information is power, then the more information victims and law enforcement have, the better the response.
- In order to achieve the benefits of anonymous reporting, SARTs need to collaborate and consider what is worth trying even if it has never been done before.

Anonymous Reports and Forensic Medical Exams

Issue: Providing care, counseling, and prophylaxis to victims is logical and appropriate, however, putting a recent victim through evidence collection and a pelvic examination for evidence which will never be utilized is ethically and morally questionable. And, to charge a State or Federal fund for a forensic examination which, will never involve the legal component is also highly questionable.

Listserv responses:

- Evidence collection exams are not offered to a victim who has not intention of reporting.
- Forensic exams have both medical and evidentiary components. Victims can opt to get, or not get, the forensic part. We would perform a medical exam--no forensic evidence would be collected.
- If victims are not sure about reporting, that is their right and they don't need to be offered an exam "anyway."

Anonymous Reports and SART Responses

Indiana

- We are drafting legislation for hospitals to create non-identifying tracking systems for kits so that only the hospital and victims compensation have victim identities. [the legislation will be submitted to the SART listserv when completed]
- Law enforcement in the jurisdiction of the investigation will be responsible for picking up potential evidence from the hospital and they will hold it until either a report is made or the statute of limitations runs.
- No part of an anonymous kit goes in to CODIS -if the victim decides to report to police then police will contact the hospital with a release for the victim's kit number to process the evidence.
- Our forensic laboratory states that they are only allowed to enter evidence into CODIS in cases where there is a police report.

Louisiana

- The choice of words can make a BIG difference in the forensic medical exam report, especially in court.
- If a patient, after being given appropriate explanations, does not want a certain procedure done, I suggest, instead of documenting "patient refused" you document "patient declined".

- I learned this the hard way the first time I testified in court - fortunately not at my patient's expense. The defense attorney tried to discredit my patient because I had documented "patient refused" having her pubic hair pulled out as part of the exam. An iffy part of evidence collection in many programs.

Maryland

- If a victim says there will **never ever** be any potential that s/he will report the assault – a kit is not really called for.
- Reporting decisions should only come after victims are given sufficient information to make an informed choice. Advocates can be an invaluable support to victims in this process.
- Not having to force the “report or no-report” decision in the time of crisis is critical!

New Jersey

- In NJ, the examiner (SANE) writes the SANE case number on the outside of the box instead of the victim's name.
- The kit is stored in a variety of ways, depending on the county, to maintain chain of custody.
- In some counties, the SANE Coordinator holds the kit in a secure area in her office; in others law enforcement picks up the kit and logs it into evidence using the SANE case number.
- No one but the SANE Coordinator gets a copy of the forensic report until the victim signs a release. The SANE Coordinator holds the law enforcement copy of the report.
- When a victim does come forward to make a police report, the victim signs a release consent form that law enforcement gives to the SANE Coordinator for the case file. Essentially, the SANE Coordinator cross-references the victim's name from a SANE case number log. Law enforcement can then pick up the paperwork (and kit depending on the county).
- Evidence is not analyzed until the victim reports to law enforcement.
- In NJ, all exams by SANEs are paid by VOCA funds. We are working with our victim compensation board to see if there is a way they can pay for anonymous exams.
- It may be worth talking with your state's VOCA and VAWA administrators, as well as the state victim compensation board. SANEs do provide a victim service. It's not all about evidence collection.

New York

- We do not require a police report for a victim to get a forensic exam.
- We also do not turn kits over to police departments - unless, the victim gives us permission to do so.
- By law, New York holds them for 30 days (but a lot of hospitals will hold them indefinitely if they have room.) Immediately after a sexual assault, victims may think they don't want to press charges. Holding the kit for 30 days gives the victim an opportunity to weigh all options before making a decision.

Tennessee

- We do not require a police report for a victim to get a forensic exam.
- We also do not turn kits over to police departments - unless, the victim gives us permission to do so.
- We are in the process in changing our policy on how long to hold these forensic medical exam kits.

Texas

- Right now in our program, no exam is done without prior LE reporting----as we don't have the money to pay SANEs to do exams that are not compensated.

- The idea of being able to offer NO COMMITMENT exams is a great idea. The funding issue is the drawback.

Public Policy Perspective regarding Anonymous Exams and CODIS

- There has been debate in the "DNA circles" for some time about collecting and testing evidence in anonymous reporting cases; and entering the results into a the national database.
- Maybe if there is a DNA match, and police could identify a suspect in a stranger case, a victim might feel more reason to report?
- OR, it could be that when the DNA profile is entered into CODIS, police identify a serial offender and if at least one victim comes forward, then sometimes others will choose to come forward. I recall that the Chapel Hill folks were using anonymous reporting and had a serial case. They were able to identify a serial offender because all the women said in their anonymous reports that the offender was driving a certain type of red car. When the police identified the offender, one woman came forward, and then a few others felt empowered to do so.

Wisconsin-specific concerns about CODIS

- Our coalition has been talking about processing anonymous reporting evidence through CODIS. Our main concerns are:
 - The impact on the victim's privacy and emotional well being.
 - Very well-intentioned individuals might put an extreme amount of legal or other kinds of pressure on the advocacy agency and/or the hospital to gain access to the identity of the victim.
- While our state is very fortunate in that we have advocate privilege, nothing is absolute. HIPAA would most likely not provide protections either. When we think about serial rapists I think we often think of stranger assaults. In those cases victims are more likely to report or change their minds about reporting. But what we tend to see are the serial rapists that are known to their victims, especially in rural areas.
- The public outcry that could result in a community that finds out a serial rapist is on the loose and the victim does not want to report could have an extremely intense traumatic impact on the victim.
- Studies have shown that when considering reporting, victims identify privacy issues as one of their primary concerns.
- One hospital in our state that was doing anonymous reporting (without processing anything) found that on average 40% of victims changed their minds. This is fabulous and we are fully supportive of this approach. However that means that 60% did NOT want to report, and I think it is important that we honor and protect these victims' options.