



End Violence Against Women International
(EVAWI)

Opening Doors: Alternative Reporting Options for Sexual Assault Victims

Kimberly A. Lonsway, PhD
Sergeant Joanne Archambault (Ret.)
Heather Huhtanen

January 2021
Updated June 2021

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OnLine Training Institute

This module is part of EVAWI's OnLine Training Institute (OLTI), which includes review exercises, practical applications, and an end-of-course test. Participants can also download a personalized certificate of completion to use for continuing education or other purposes. For more information, please see the [EVAWI website](#).

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Recommended Citation

Lonsway, K.A., Archambault, J., & Huhtanen, H. (2021). *Opening Doors: Alternative Reporting Options for Sexual Assault Victims*. End Violence Against Women International.

Organizational Features

Throughout this module, we use several tools to help explain key concepts, identify supplemental resources, and explore applications to practice. They are indicated with the following icons:

- | | |
|--|--|
|  Innovative and promising practices |  Questions for participants |
|  Resources and tools |  Information to note |
|  Instructional video clips |  Policy recommendations |

Authors

Dr. Kimberly A. Lonsway earned her PhD in the Department of Psychology at the University of Illinois, Urbana-Champaign. Her research career has focused on sexual violence and the criminal justice and community response systems, and she has written one book and over 100 training modules, bulletins, research articles, book chapters, and government reports on related topics. She has also trained thousands of professionals around the world, testified as an expert witness in criminal and civil court cases, and volunteered for over 15 years as a victim advocate. In 2012, she was awarded the first-ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, California. In 2003, Dr. Lonsway was invited to serve as a Founding Director for End Violence Against Women International (EVAWI), a fledgling nonprofit dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. In 2004, she assumed the role as Director of Research, and she has since helped grow EVAWI into the premiere criminal justice training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders.



Sgt. Joanne Archambault (Retired, San Diego Police Department) is the Founder and Chief Executive Officer for End Violence Against Women International (EVAWI). Prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for over 22 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which investigated approximately 1,000 felony sexual assaults each year. Under her leadership, the San Diego Police Department's Sex Crimes Unit was recognized for pioneering research, groundbreaking victim-centered practices, and multidisciplinary collaboration that changed law enforcement responses to sexual assault across the nation. She also established and operated a highly successful for-profit training and consulting business for 22 years, providing expert guidance to hundreds of police departments and allied agencies, and training tens of thousands of practitioners.



In 2003, Sgt. Archambault founded EVAWI, a nonprofit organization dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. Starting from scratch, she has grown EVAWI into the premier training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders. In 2011, she achieved a dream first envisioned while working in the San Diego Police Department's Child Abuse Unit in 1985 – the launch of Start by Believing, a public awareness campaign designed to transform the way society responds to victims of sexual violence. With campaigns in all 50 US states, several US territories and protectorates, and numerous countries, this vision is now becoming a reality, changing the world for victims, one response at a time.

Heather Huhtanen is currently based in Geneva, Switzerland where she works to promote gender equality in the context of international development, security and justice reform and peace and transition processes. She moved to The Hague, The Netherlands in 2008 to attend graduate school and has been working internationally since completing her MA in December 2009. Prior to moving abroad, Heather worked for the Oregon Attorney General's Sexual Assault Task Force where she had the opportunity to collaborate with Sgt. Joanne Archambault and to become familiar with the work of EVAWI.



Acknowledgements

We are extremely grateful to the following individuals (listed in alphabetical order), for their valuable contributions to the development of this training module:

- Anne Boatright, MSN, RN, SANE-A, Forensic Nursing Coordinator, Nebraska Attorney General's Office, Lincoln, NE
- Erica Brosig, LCSW, CTTS, DAAETS, Clinical Director, Victim Services Incorporated; Cambria County SART Coordinator, Johnstown, PA
- Amanda Cardone, Sexual Assault Response Coordinator, D-SAACP Certified Advocate Level III, US Air Force, Fort Meade, MD
- Jennifer Carter Dochler, MSW, Public Policy Director, Missouri Coalition Against Domestic and Sexual Violence, Jefferson City, MO
- Cynthia Clark, Court and Legal Advocacy Coordinator, Our VOICE Rape Crisis and Prevention Center, Asheville, NC
- Haleh Cochran, Systems Change Advocate, Texas Association Against Sexual Assault, Austin, TX
- Michael Crumrine, Sergeant, Austin Police Department, Austin, TX
- Mike Davis, Sergeant (Ret.), Vancouver Police Department, Vancouver, WA
- Elizabeth Donegan, Director, EVAWI; Senior Sergeant (Ret.), Austin Police Department, Austin, TX
- Maureen Evans (Ret.), Special Agent, Naval Criminal Investigative Service; Clery Compliance Coordinator, Old Dominion University Police Department, Norfolk, VA
- Diana Faugno, MSN, RN, CPN, SANE-A, SANE-P, FAFS, DF-IAFN, DF-AFN, President and Co-Founder, Academy of Forensic Nursing; Treasurer and Founding Director, EVAWI, Dallas, GA
- Lisa A. Frisch, Raven Hill LLC, Consultant for SAFE Storage LLC, Albany, NY
- Sheree Goldman, DNP, WHNP, SANE-A, SANE-P, Sexual Assault Response Team Coordinator, Monterey County Health Department, Monterey, CA
- Jenna Harper, Sexual Assault Response Program Manager, Colorado Coalition Against Sexual Assault, Denver, CO



- Sandra Huntzinger, Victim Service Coordinator, Crime Victims Section, Ohio Attorney General's Office, Columbus, OH
- Lisa Ingarfield, PhD, Researcher / Consultant, Defi Consulting, Denver, CO
- Meghan Jenks, SANE Program Assistant, New Hampshire Coalition Against Domestic and Sexual Violence, Concord, NH
- Kathy Kimball, New Hampshire Sexual Assault Resource Team (SART) Coordinator, New Hampshire Attorney General's Office, Concord, NH
- Lisa Lamphere, Victim's Compensation Coordinator, New Hampshire Attorney General's Office, Concord, NH
- Megan Lechner, Clinical Manager, SANE/SAFE Project Director, Memorial Central Emergency Department, Forensic Nurse Examiner Team, Colorado Springs, CO
- Michelle Miller, Sexual Violence Program Coordinator, Nebraska Coalition to End Sexual and Domestic Violence, Lincoln, NE
- Wendy L. Patrick, JD, San Diego District Attorney, San Diego, CA
- Dan Patterson, JD, Greene County Prosecuting Attorney, Springfield, MO
- Sergeant Mary Prestel, Major Crimes Division – Sex Crimes, Denver Police Department, Denver, CO
- Nicole Stahlmann, MN, RN, SANE-A, AFN-BC, Forensic Nursing Specialist, International Association of Forensic Nurses, Elkridge, MD
- David R. Thomas (Ret.), Corporal, Montgomery County Police Department; Program Manager II, International Association of Chiefs of Police, Alexandria, VA
- George C. Welch, Assistant Attorney General, Nebraska Attorney General's Office, Lincoln, NE



Objectives

At the end of this training module, the learner will be better able to:

- Describe the “funnel of attrition” for sexual assault cases within the criminal justice system and identify the single most significant point of attrition.
- Identify key barriers to reporting that victims of sexual assault may experience.
- Explain two key aims of alternative reporting options, and how those aims can help increase victim engagement and address the funnel of attrition.
- Describe the relevance of alternative reporting options to VAWA forensic compliance, both in terms of the *letter of the law* and the *spirit of the law*.
- Define and differentiate between anonymous reporting, non-investigative reporting, and third-party reporting.
- Identify the key conceptual, legal/policy, and practical issues that need to be addressed in a multidisciplinary protocol for alternative reporting options.
- Identify recommendations for best practice relevant for a multidisciplinary protocol for alternative reporting options.
- Apply the two main conceptual aims of alternative reporting options as a means of analyzing components in a specific policy or protocol.
- Develop a multidisciplinary protocol that meets VAWA forensic compliance and increases access to reporting and services for sexual assault victims.

Introduction

Sexual violence cases require special handling. Victims may be hypersensitive to real or perceived threats to their safety or their confidentiality. At the same time, investigation and prosecution invite threats to confidentiality and the physical and emotional safety for the victim, and victims who disclose their experience open themselves up for additional violations. As a result, many victims choose to focus on their own healing rather than on trying to achieve justice in systems that historically have not been supportive of victims of sexual violence. To overcome the threat that reporting represents to victims, officers have to work harder to make the reporting process feel safe (Garcia & Henderson, 1999, p. 16).

This module explores various approaches to increase the reporting options available for sexual assault victims. They are grounded in a victim-centered and trauma-informed philosophy,¹ encapsulated in the concepts of *one step at a time* and *opening doors*.

- **One Step at a Time:** How can allied professionals support a *gradual* process of disclosure and reporting (rather than “all or nothing,” and “now or never”)?
- **Opening Doors:** How can allied professionals increase the number of options available for victims to report their sexual assault and access services?

The module begins by explaining key concepts to incorporate in a comprehensive, multidisciplinary protocol for alternative reporting options. The discussion then turns to specific policy and practice considerations. Ultimately, victims who have more ways to access information and support, to receive physical and psychological care, and to preserve the viability of a criminal justice intervention, will have more opportunities to successfully participate in the criminal justice process if and when they choose to do so.



Options Available for Adolescents and Adults

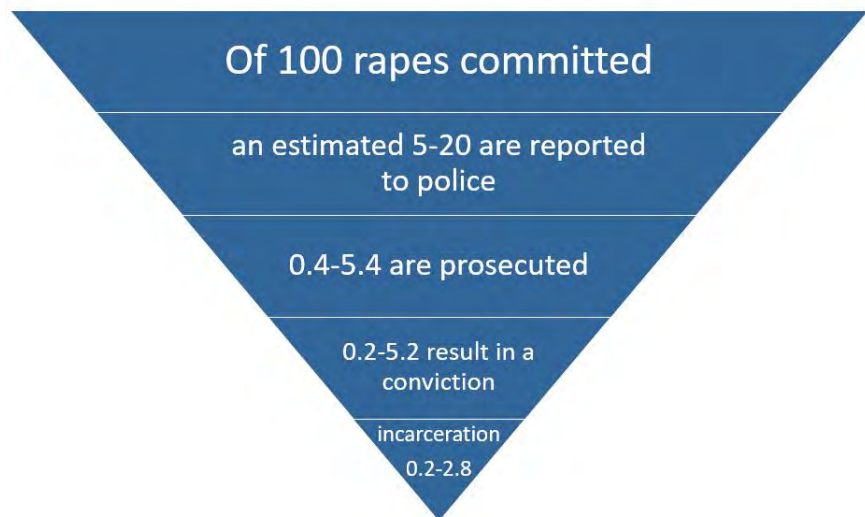
Alternative reporting options for sexual assault are generally only available for victims who are adults and older adolescents. Any discussion of reporting issues for children or younger adolescents is beyond the scope of this module.

¹ “Victim-centered is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. A trauma-informed approach considers the impact of trauma and victim safety considerations ... These approaches are more likely to increase victim participation and thereby support more complete investigations, increasing the overall likelihood of successful prosecutions.” National Institute of Justice (2017). [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#). Washington, DC: National Institute of Justice, US Department of Justice (quote appears on p. 8-9).



Funnel of Attrition

The process of investigating and prosecuting sexual assault has been characterized as a funnel of attrition. At each step, there is a chance that a sexual assault case will drop out of the system. Yet the most significant point of attrition is the first one – nonreporting. Research estimates that **80-95% of sexual assault victims do not report the crime.**² Adolescents may be even less likely to report than adults; it is estimated that 8-13% of sexual assaults against adolescents are reported to law enforcement.³ Other groups may also be less likely to report, based on barriers due to gender, age, race, sexual orientation, language/culture, physical or intellectual disabilities and/or a history of negative experiences with the criminal justice system.



Barriers to Reporting

Why don't most victims report their sexual assault? Many are afraid the perpetrator will retaliate against them or their loved ones. Others fear being doubted or blamed for their sexual assault, both by responding professionals as well as their family members and friends. Most victims have concerns about others finding out about their assault. They may also be unsure about reporting, due to past negative experiences with law enforcement. Some are afraid of the costs involved, mistakenly believing they have to pay for their own lawyer. Perhaps the most fundamental barrier, however, is the **fear of not being believed.** This prevents victims from reporting to law enforcement, as well as accessing medical care and other community services like victim advocacy.⁴

Too often and too accurately, victims delay or avoid reporting the crime because the perpetrator has convinced them that no one else will believe or care (Garcia & Henderson, 2010, p. 4).

² For review of this research, see Lonsway, K.A. & Archambault, J. (2012). The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform. *Violence Against Women*, 18 (2), 145-168 (triangle graphic appears on p. 157).

³ Casey, E.A. & Nurius, P.S. (2006). Trends in the Prevalence and Characteristics of Sexual Assault: A Cohort Analysis. *Violence and Victims*, 21 (5), 629-644; Kilpatrick, D.G., Saunders, B.E., & Smith, D.W. (2003). *Youth Victimization: Prevalence and Implications (Findings from the National Survey of Adolescents)*. Washington, DC: National Institute of Justice, US Department of Justice (NCJ 194972).

⁴ For review, see Lonsway, K.A. & Archambault, J. (2019). *Improving Responses to Sexual Assault Disclosures: Both Informal and Formal Support Providers*. EVAWI training bulletin.

Consequences for Victims, Perpetrators, and Communities

Without a report of sexual assault, law enforcement has no opportunity to investigate the crime, and prosecute offenders where the facts and evidence warrant. Victims are left with unresolved trauma, and law enforcement remains unaware of the full range of sexual violence being perpetrated in their communities.⁵ Perhaps most alarming, **many perpetrators will go on to commit additional sexual assaults,**⁶ with the devastating harms of repeat perpetration cascading from survivors and their loved ones, to communities as a whole.

The perpetrator is free to offend again, and nothing changes for the next victim. So, the cycle repeats (Lonsway & Archambault, 2010, p.51).

One Step at a Time

With so many barriers to reporting, it is not surprising that sexual assault victims often **need time to make a decision, and take the steps needed to act on that decision.**⁷ This is why we promote a *one step at a time* approach which enables victims to take the time they need to decide whether and how to engage the criminal justice system. This is consistent with a neuroscientific understanding of trauma, and the need many victims have to reestablish their sense of control in the aftermath of a sexual assault.⁸

It's also important to remember that **criminal justice participation is not just about reporting.** In fact, reporting is just the first step in a long, complex process that starts with an investigation being conducted by law enforcement, potentially followed by a charging decision by a prosecutor, that may result in a trial (or plea deal), a conviction, and incarceration of the offender. The process can take months, even years.

Yet as evidenced by the attrition data, sexual assault investigations are rarely robust enough to make it all the way through that process. Even victims who initially report to law enforcement frequently withdraw participation, further exacerbating case attrition.⁹

⁵ Garcia, S. & Henderson, M. (1999). Blind Reporting of Sexual Violence. *FBI Law Enforcement Bulletin*, 68 (6), 12-16.

⁶ Lisak, D. & Miller, P.M. (2002). Repeat Rape and Multiple Offending Among Undetected Rapists. *Violence and Victims*, 17 (1), 73-84; McWhorter, S.K., Stander, V.A., Merrill, L.L., Thomsen, C.J., & Milner, J.S. (2009). Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel. *Violence and Victims*, 24 (2), 204-218.

⁷ Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.E. (1992). *Rape in America: A Report to the Nation*. Arlington, VA: National Crime Victims Center.

⁸ Draucker, C.B., Martsof, D.S., Ratchneewan, R., Cook, C.B., Stidham, A.W., & Mweemba, P. (2009). The Essence of Healing from Sexual Violence: A Qualitative Metasynthesis. *Research in Nursing & Health*, 32 (4), 366-378.

⁹ Frazier, P., Candell, S., Arikian, N., & Tofteland, A. (1994). Rape Survivors and the Legal System. In M. Costanzo & S. Oskamp (Eds.), *Violence and the Law (Chapter 6, p.135-158)*. Newbury Park, CA: Sage; Spohn, C., Rodriguez, N., & Koss, M. (2008, November). *The 'Victim Declined to Prosecute': Accounting for Lack of Cooperation in Sexual Assault Cases*. Paper presented at the annual meeting of the American Society of Criminology, St. Louis, MO; Tellis, K.M. & Spohn, C. (2008). The Sexual Stratification Hypothesis Revisited: Testing Assumptions About Simple Versus Aggravated Rape. *Journal of Criminal Justice*, 36, 252-261.



With alternative reporting options based on a *one step at a time* philosophy, victims can confirm that their sexual assault is a matter of interest to law enforcement, establish a trusting relationship with professionals, and build confidence in the system. All this may help them to remain engaged with the criminal justice process over time.

Elements of Success

Two elements must come together for a sexual assault to be successfully prosecuted:

- First, there must be a **thorough, evidence-based investigation**.
- Second, the **victim must be able to participate** in the criminal justice process.¹⁰

Supporting a *one step at a time* process of disclosure and reporting is the first key to ensuring victims remain willing and able to participate in the criminal justice system.

Opening Doors

The second key is an *opening doors* approach, recognizing that **victims need support** while they make a reporting decision, and that informal support providers (such as friends and family members) represent an important

Our interviews with both survivors and police revealed that victims can give more detailed statements to law enforcement, remember more information, and can otherwise engage more fully with the investigation when they are not so traumatized and have adequate support (Campbell et al., 2009, p. 121).

“doorway” to access formal support providers (including law enforcement, health care providers, and victim advocates). To illustrate, one study found that sexual assault victims were more likely to report the crime to law enforcement if they consulted with others and were encouraged to report the assault.¹¹ Another study found that *survivors contacted an average of 2-3 support providers*, either informal or formal, before ultimately reporting their sexual assault to law enforcement.¹²

Again, this may be especially true for adolescent victims, who typically need social support to report their sexual assault to law enforcement and then remain engaged throughout the criminal justice process.¹³ The need for support is also likely to be particularly important for vulnerable, marginalized, and underserved populations.

¹⁰ Campbell, R., Bybee, D., Ford, J.K., & Patterson, D. (2009). *Systems Change Analysis of SANE Programs: Identifying the Mediating Mechanisms of Criminal Justice System Impact*. Washington, DC: National Institute of Justice, US Department of Justice.

¹¹ Paul, L.A., Zinzow, H.M., McCaugly, J.L., Kilpatrick, D.G., & Resnick, H.S. (2014). Does Encouragement by Others Increase Rape Reporting? Findings From a National Sample of Women. *Psychology of Women Quarterly*, 38 (2), 222-232.

¹² Patterson, D. & Campbell, R. (2010). Why Rape Survivors Participate in the Criminal Justice System. *Journal of Community Psychology*, 38, 191-205.

¹³ Campbell, R., Greeson, M., Fehler-Cabral, G., & Kennedy, A. (2015). Pathways to Help: Adolescent Sexual Assault Victims' Disclosure and Help-Seeking Experiences. *Violence Against Women*, 21 (7), 824-847.



Benefits for Victims

The research is clear that **sexual assault victims can benefit in a variety of ways from accessing formal services** – and that is why opening doors is so critical. For example, victims who receive a positive response from law enforcement (defined as being nonjudgmental, believing, and/or validating) experience positive effects on their emotional well-being.¹⁴ Those who work with an advocate also experience less distress and self-blame, and are less likely to feel guilty, depressed, or bad about themselves.¹⁵

Victims can also benefit both physically and psychologically from health care providers, particularly if they are specially trained sexual assault nurse examiners (SANEs).¹⁶ One of the most helpful responses is a simple acknowledgment or validation of the victim's experience: "I'm so sorry this happened to you," or "I'm glad you told me about this." The goal is to open as many doors as possible for victims to access these services.

Open Doors Lead to More Open Doors

Yet another benefit of the opening doors approach is the fact that **open doors lead to more open doors**. For instance, victims who report their sexual assault to law enforcement are more likely to receive medical attention and advocacy services.¹⁷ Those who work with a victim advocate are also less reluctant to seek further help.¹⁸ Victims can therefore benefit from services they receive, but the increased access of an *opening doors* approach can lead to even more open doors for services and support.



¹⁴ Greeson, M.R., Campbell, R., & Fehler-Cabral, G. (2016). "Nobody Deserves This": Adolescent Sexual Assault Victims' Perceptions of Disbelief and Victim Blame From Police. *Journal of Community Psychology, 44* (1), 90-110.

¹⁵ Campbell, R. (2006). Rape Survivors' Experiences With the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference? *Violence Against Women, 12*, 30-45; Patterson, D. & Tringali, B. (2015). Understanding How Advocates Can Affect Sexual Assault Victim Engagement in the Criminal Justice Process. *Journal of Interpersonal Violence, 30* (12), 1987-1997; Wasco, S.M., Campbell, R., Barnes, H., & Ahrens, C.E. (1999). *Rape Crisis Centers: Shaping Survivors' Experiences With Community Systems Following Sexual Assault*. Paper presented at the biennial conference of the Society for Community Research and Action, New Haven, CT.

¹⁶ Ahrens, C.E., Stansell, J., & Jennings, A. (2010). To Tell or Not to Tell: The Impact of Disclosure on Sexual Assault Survivors' Recovery. *Violence and Victims, 25* (5), 631-648; Campbell, R., Patterson, D., & Lichty, L.F. (2005). The Effectiveness of Sexual Assault Nurse Examiner (SANE) Programs: A Review of Psychological, Medical, Legal, And Community Outcomes. *Trauma, Violence, & Abuse, 6* (4), 313-329.

¹⁷ Wolitzky-Taylor, K.B., Resnick, H.S., McCauley, J.L., Amstadter, A.B., Kilpatrick, D.G., & Ruggiero, K.J. (2011). Is Reporting of Rape on the Rise? A Comparison of Women With Reported Versus Unreported Rape Experiences in the National Women's Study Replication. *Journal of Interpersonal Violence, 26* (4), 807-832.

¹⁸ Campbell, *Rape Survivors' Experiences*; Patterson and Tringali, *Understanding How Advocates Can Affect Sexual Assault Victim Engagement*; Wasco et al, *Rape Crisis Centers*.

VAWA Forensic Compliance: Redefining Reporting

One concrete means of supporting both a *one step at a time* and an *opening doors* approach is referred to as “VAWA forensic compliance.” This phrase is used to describe certain provisions of the Violence Against Women Act (VAWA) that have redefined reporting and led to new approaches that do not require law enforcement (or other criminal justice actors) to authorize medical forensic exams for sexual assault victims.

Forensic Compliance Provisions

The [2005 reauthorization](#) of VAWA included several landmark provisions affecting law enforcement and health care responses to sexual assault. Specifically, they mandated that US states, territories, and tribes may not “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, reimbursed for charges incurred on account of such an exam, or both.”¹⁹ Translated, this means that:

- 1) Victims must be provided access to a medical forensic exam **free of charge**;²⁰
- 2) And this exam must be provided **without requiring victims to cooperate with law enforcement or participate in the criminal justice system.**

Significant reforms were enacted by US states and territories in response to this legislation, to implement these two provisions and pave the way to redefining reporting.

Compliance is Ongoing

US states and territories were required to certify compliance with all VAWA requirements by January 5, 2009. They were again required to certify compliance with the [2013 reauthorization](#) of VAWA by March 7, 2016. This 2013 reauthorization also included some new provisions, including clarification that sexual assault victims cannot be required to pay the cost of a medical forensic exam *upfront* and then be reimbursed later. The 2013 reauthorization also included a new requirement for public outreach, to notify survivors and their support people that medical forensic exams are available at no cost to victims. We will return to discuss this second provision in a later section.

¹⁹ Violence Against Women Act 42 U.S.C. 3796gg-4(d)(1)(2005).

²⁰ VAWA defines what constitutes a medical forensic exam for this purpose. It includes, at a minimum: (a) Examination of physical trauma; (b) Determination of penetration or force; (c) Patient interview; and (d) Collection and evaluation of evidence [28 C.F.R. § 90.2(b) (1)]. However, VAWA does not require states, territories, or tribal governments to cover the costs of medical testing or treatment associated with a medical forensic exam (including treatment of injuries, pregnancy, sexually transmitted infections, etc.). How this is handled therefore depends on state laws and regulations, as well as local policies, protocols, and practices. For example, these costs may be billed to the victim’s private insurance, or the victim may be eligible to apply for Crime Victim Compensation for reimbursement. Because medical testing and treatment is a critical component of a medical forensic examination, it is recommended that some basic medical services be included in the exam for free. Office on Violence Against Women (2013). [A National Protocol for Sexual Assault Medical Forensic Examinations: Adults / Adolescents \(2nd Edition\)](#). Washington, DC: Office on Violence Against Women, US Department of Justice.



But **forensic compliance is not a one-time event**; states, territories, and tribes must remain in compliance with all VAWA provisions to retain their eligibility for STOP grant funds.²¹ As a result of the VAWA forensic compliance provisions and subsequent refinements, victims now have more open doors – more opportunities to access the criminal justice system, mental and physical health care, and advocacy support.

- Forensic compliance supports a *one step at a time* process for reporting, so victims can access medical care and evidence collection without law enforcement contact.
- It also supports an *opening doors* approach, so victims have access to a health care provider who has specialized training in medical forensic care, and a familiarity with the services and resources available to help address sexual assault issues.

I was told that it [the exam] would be paid for by the state, that it wasn't going to be no cost at all to me, and that was such a big relief. That was such a big burden.

*- Victim in Urban Institute study
(Zweig et al., 2014, p. 28)*



For more information, please see EVAWI's OnLine Training Institute (OLTI) module, [The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance](#).

Philosophy of Forensic Compliance

When the forensic compliance provisions were first enacted in VAWA 2005, there was some confusion about the intended goal. What were they designed to accomplish?

The general explanation is that they were designed *to improve responses to sexual violence in the US*. More specifically, they were based in two philosophical approaches.

- **Criminal justice philosophy:** To increase access for victims to report sexual assault and participate in the criminal justice process, with improved outcomes.
- **Health care philosophy:** To increase victim access to health care and other services and improve both physical and psychological well-being for victims.

Because forensic compliance paved the way for reporting options based on an *opening doors, one step at a time* approach – it is worth exploring these two philosophical bases.

²¹ Grant funds through the STOP (Services, Training, Officers, Prosecutors) program are awarded by the Office on Violence Against Women (OVW), US Department of Justice; they totaled \$154 million for 56 US states and territories in 2019 alone. This funding is used to support core services including salaries for investigators, prosecutors, and judges handling cases of violence against women, salaries for victim advocates working in government or community-based agencies, specialized training, support for crisis lines, restraining order clinics, and similar services. For information, please see the [OVW awards page](#).



Increase Reporting and Criminal Justice Participation

As noted in the introduction, as many as 80-95% of sexual assaults are not reported to law enforcement. One key goal of VAWA forensic compliance is therefore to increase reporting and criminal justice participation, perhaps counterintuitively by *not requiring this as a condition for victims to obtain a medical forensic examination.*

The letter of the law thus requires communities to provide victims access to a medical forensic exam without requiring them to pay for the exam or participate in the criminal justice process. But the *spirit of the law* goes even further, by encouraging communities to put into practice greater care and flexibility in relation to when and how victims can obtain an exam and initiate the criminal justice process. It stands to reason that reducing or eliminating barriers (like paying for the exam or talking with an officer) will make it easier for victims to take *one step at a time.*²²

I was kind of iffy on whether I wanted to press charges [report] but I knew I needed the exam. The nurse who gave me the exam... talked with me and the case worker talked with me. And I felt more and more certain that the right thing to do was to press charges [report].

*- Victim in Urban Institute study
(Zweig et al., 2014, p. 68-69)*

Improve Case Outcomes with Exam Evidence

Another goal is to improve sexual assault case outcomes. Several studies have found that sexual assault cases that involve a medical forensic exam conducted by a trained examiner are more likely to result in charges being filed, a conviction, and a longer average sentence.²³ This is due to many different aspects of the exam process.

- **Documenting injuries and pain:** Such documentation can be critical in a sexual assault case, but injuries may be difficult to see by someone other than a health care professional (e.g., genital injury and micro-tears), and pain may not be documented in any other way. It is therefore important to have a health care provider document any injuries and pain as soon as possible, whenever this option is available.
- **Documenting the assault history:** With patient consent, health care providers will also document the victim's account of the sexual assault (often referred to as the

²² Please note that the victim's reference to "pressing charges" in the quote actually refers to the decision to report a sexual assault to law enforcement and participate in the process of an investigation. Only prosecutors, not victims, have the authority to make charging decisions.

²³ Campbell, R., Bybee, D., Townsend, S.M., Shawn, J., Karim, N., & Markowitz, J. (2014). The Impact of Sexual Assault Nurse Examiner (SANE) Programs on Criminal Justice Case Outcomes: A Multisite Replication Study. *Violence Against Women, 20* (5), 607-625; Campbell, R., Patterson, D., & Bybee, D. (2012). Prosecution of Adult Sexual Assault Cases: A Longitudinal Analysis of the Impact of a Sexual Assault Nurse Examiner Program. *Violence Against Women, 18* (2), 223-244; Crandall, C. & Helitzer, D. (2003). *Impact Evaluation of a Sexual Assault Nurse Examiner (SANE) Program*. Washington, DC: National Institute of Justice, US Department of Justice.

“assault history”) within the medical forensic record. This assault history is very important because it guides the medical forensic examination, and it can potentially corroborate any statements made by the victim, suspect(s), and/or any witnesses.

- **Collecting physical evidence:** After obtaining patient consent and based on the assault history, the health care provider will collect and document a wide range of evidence, by swabbing various parts of the body, collecting blood and urine samples, taking photographs, documenting findings, and collecting any available trace evidence (hair, fibers, soil, wood, etc.). Physical evidence, especially biological and trace evidence, is often at risk of deterioration or loss, so it is critical to collect it as soon as possible.



Photo Credit: Debra Holbrook

The evidence collected and documented during a medical forensic exam may help the investigation and prosecution of sexual assault cases, and possibly connect the report to other cases. Even when victims are unable to testify about their own assault, they may be willing to testify on behalf of another victim who was assaulted by the same person. All these factors can help to improve case outcomes and reduce the funnel of attrition, while also communicating to victims that they are valued and respected by responding professionals.²⁴

They're really good ...about not pressuring you on this. They say it's your choice whether you decide to press charges [report] or not, and you have a time frame... They emphasize in case you change your mind in a day or two or in a month or so within the time frame. It's something you can do now to go through with the exam just in case. Even if you don't press charges [report], but if you change your mind, it's there.

- Victim in Urban Institute study (Zweig et al., 2014, p. 62)



In this [video interview](#), forensic nursing expert Debra Holbrook describes the philosophy and purpose behind “blind reporting,” the term used in her community to describe VAWA forensic compliance. Among other topics, she eloquently expresses how this option fills a critical need for many victims.

²⁴ Again, the victim’s reference to “pressing charges” in the quote refers to a decision about reporting and participation in an investigation. Prosecutors, not victims, have the authority to make charging decisions.

Increase Access to Health Care

Forensic compliance was also designed to improve access to health care. Prompt medical care in the aftermath of a sexual assault may reduce the risk of chronic health problems such as depression, eating disorders, and alcohol or substance abuse, as well as pelvic pain which is experienced by many victims.²⁵

The reality is that sexual assault victims are often motivated to have a medical forensic exam *based on their need for health care*, rather than evidence collection.²⁶ Forensic compliance builds on this common motivation, by ensuring that victims can access health care – including a full medical forensic examination – without requiring law enforcement contact or criminal justice participation.

If you can go in and get this stuff done and get your physical well-being taken care of and get the evidence collected, then you can think about what you want to do with the rest, instead of waiting so long that you end up being pregnant, that you end up having an STD that can't be treated, [or] that you end up having things that could've been taken care of if you had gone [to the hospital].

- Professional in Texas study (Busch-Armendariz & Heffron, 2011, p. 26)



Do Not Require Victims to Talk with Law Enforcement

When victims have a medical forensic exam without reporting to law enforcement or participating in the investigation, some communities have a practice of allowing officers to make personal contact with the victim, so they can introduce themselves, offer their services, and confirm the victim's non-participation.

It is easy to understand why officers might want this type of contact, because it gives them a chance to establish rapport with victims, and ensure the information about reporting options has been presented fairly. They can also have an opportunity to demonstrate their competence and compassion for victims. It can be frustrating for officers to feel “shut out” of the process, especially if their law enforcement agency pays for the costs of a forensic medical examination.

Yet VAWA is clear that sexual assault victims must have access to a medical forensic exam without requiring them to “cooperate with law enforcement” or “participate in the criminal justice system.” If victims are willing to talk with an officer, this can provide the chance to provide information and make contact. But, if victims are *not willing* to talk with an officer, they should never be forced to.

²⁵ American College of Obstetricians and Gynecologists (2019). Sexual Assault. ACOG Committee Opinion No. 777. *Obstetrics & Gynecology*, 133, 296-302.

²⁶ DuMont, J., White, D., & McGregor, M.J. (2009). Investigating the Medical Forensic Examination From the Perspectives of Sexually Assaulted Women. *Social Science & Medicine*, 68, 774-780.



Connect with Services

A final goal of VAWA forensic compliance is to connect victims with advocacy services and other supportive resources. Sexual assault victims will frequently be offered the services of an advocate when they have a medical forensic examination, but this is less likely for victims who seek other forms of health care. *The importance of advocacy services cannot be overstated.* Advocates can provide sexual assault victims with crisis intervention and emotional support, as well as information on reporting options and other available services. Research has consistently shown that victims who receive this type of supportive response have lower rates of post-traumatic stress, and are less reluctant to seek further help.²⁷ Once again, *opening doors leads to more open doors.*

Public Notification

Earlier, we mentioned that the 2013 reauthorization of the Violence Against Women Act (VAWA) included a new provision clarifying that victims cannot be required to pay the costs of a medical forensic examination upfront, and then be reimbursed later. Yet there was a second new provision of VAWA 2013 that also represents a critical advance for victims. Specifically, VAWA 2013 requires states, territories, and tribal governments receiving STOP grant funds to engage in public outreach, to notify sexual assault victims and their support people that medical forensic exams are available at no cost to victims and regardless of criminal justice participation.

Given that the whole point of forensic compliance is to increase access and open doors for victims – both to the criminal justice system and other services – creating a response protocol is only half the battle. The other half

is ensuring that the public is aware of their options, to increase the likelihood that they will reach out when they or someone they love has been sexually assaulted.

After steps have been taken to identify and remove barriers to reporting sexual assault, educate the public about the potential benefits of reporting, how to go about reporting, what happens once a report is filed, and jurisdictional legal advocacy services available (if any) for sexual assault victims. Build upon already existing public awareness efforts of local advocacy programs (National Protocol for Sexual Assault Medical Forensic Examinations, 2013, p. 48).



EVAWI's website offers detailed information for survivors and support people in [Explore Your Options](#). Additional strategies include public service announcements, media campaigns, and agency websites. For examples, please see the state and local initiatives highlighted on [EVAWI's website](#).

²⁷ Campbell, *Rape Survivors' Experiences*; Wasco et al, *Rape Crisis Centers*.



Anonymity Not Required

In sum, VAWA forensic compliance redefined reporting options by requiring a new approach to accessing medical forensic exams for sexual assault victims. States, territories, and tribes can no longer require that medical forensic examinations be authorized by law enforcement (police or prosecutors) before they take place – at least not if they want to remain eligible for STOP grant funding. Victims also cannot be required to pay for their medical forensic exam, including any out-of-pocket expenses. However, **VAWA does not specifically require states, territories, or tribes to offer an option for anonymous reporting.** Many jurisdictions have voluntarily chosen to develop an anonymous reporting protocol, but it is not specifically required by VAWA.

States are not required to institute anonymous reporting. Some states are instituting it voluntarily. Under VAWA 2005, states are only required to ensure that a victim receives access to a forensic examination free of charge regardless of whether the victim chooses to report a sexual assault (for any reason) to law enforcement or cooperate with the criminal justice system.

- Frequently Asked Questions about STOP Formula Grants, published by the Office on Violence Against Women, US Department of Justice

The question therefore remains: What are the best approaches to designing and implementing innovative reporting options that *open doors, one step at a time*?



Alternative Reporting Options

What if we designed a community response system that was based on a realistic understanding of how victims actually react to being sexually assaulted? What would it look like? For example, what if we allowed victims time to rest, think, clean up, eat, drink, sleep, smoke, sober up, and do all the things they need to feel human again? What if we offered the opportunity for victims to gather the information and support that they need to make good, solid, well-educated decisions? In the meantime, what if we collected and properly stored any time-sensitive evidence, in order to preserve their option of reporting for later? And what if we connected victims with forensic health care, victim advocacy, and other services that could help them to recover from trauma? (Lonsway & Archambault, 2010, p. 52).

“Alternative reporting options” is an umbrella term for many different approaches to achieving the goals of VAWA forensic compliance and meeting the demand for trauma-informed and victim-centered responses. Some of these approaches have long been used in communities, to reduce barriers for victims and increase access to the criminal justice system and other community services. For example, many law enforcement agencies have allowed victims to provide information about their sexual assault without identifying themselves (or the suspect). Some of these agencies refer to this practice as “blind reporting” or “Jane Doe” reporting. However, it may have no formal name, and it might never have been documented in any official protocol, policy, or procedure.

Seasoned investigators also frequently receive sexual assault reports that they do not investigate, based on the stated wishes of the victim. Or, they may have taken some investigative steps, but not others (for example, contacting the suspect or witnesses). This may be the most literal interpretation of the *one step at a time* philosophy.

One Investigative Step at a Time

People often talk about investigations as if they are an all-or-nothing proposition. In reality, a thorough law enforcement investigation involves many possible steps, and investigators can decide to take some steps and not others based on the findings of an investigation and/or a victim’s wishes. As noted above, a victim might agree to talk with law enforcement without revealing their identity, or they may only provide general information about the sexual assault while choosing not to give the names of anyone involved. Or, they might provide detailed information about the incident, but ask that no one be contacted about it. The possibilities are endless, and – depending on the information provided, and the victim’s level of participation – investigators may be able to take some investigative steps and see where they might lead based on the outcome.

For example, if the victim names a suspect, the investigator could check their criminal history to check to see if they have any prior criminal history or outstanding warrants. The investigator could also review other information or evidence that might be available. If the victim had a medical forensic examination, the investigator could review the

assault history and any findings (such as injuries) to evaluate how this might impact the investigation. Based on the results of such steps, victims may become increasingly willing to participate in an investigation and have their identity officially recorded. In other words, instead of immediately focusing on whether the victim's statement supports prosecution, the investigation proceeds *one step at a time*, and depending on the information gathered, the victim can decide whether they want to continue.

This does not mean, however, that victims determine the outcome of the case.

When investigations proceed *one step at a time*, victims have the power to choose whether they want a law enforcement agency to investigate their report, and what investigative steps they are willing to engage in at any given time. However, they do not determine whether the information will meet the legal elements of a criminal offense, or whether the evidence will be sufficient to prove these elements. Nor do they determine the ultimate outcome of the case if it is investigated, including whether the prosecutor feels there is sufficient evidence to file charges and successfully prosecute the suspect.

It all comes down to the relationship between investigators and victims. When the relationship is based on trust and respect, the two individuals can have a personalized discussion about what possible steps might be taken, and make a decision about what may (or may not) happen next. Then, based on the results of that step, decisions can be made about what will happen next, and so on. *Opening doors. One step at a time.*

Putting pressure on the victim for immediate and full disclosure can threaten the sense of trust placed in the officer and sense of safety with the process (Garcia & Henderson, 2010, p. 3).

You Have Options Program

This type of approach was formally memorialized in the You Have Options Program (YHOP) first developed in Ashland, Oregon in 2010. The program recommends offering sexual assault victims the choice of reporting several different ways:

- 1) With an **information only report**, victims only consent to: (1) an interview and/or (2) complete or partial inquiry into the possibility of serial offending, but no other investigative steps and no referral for prosecution.
- 2) Victims can also consent to a **complete investigation**, meaning the law enforcement agency will take all investigative steps needed to determine whether probable cause exists for a criminal sexual assault offense.
- 3) Between these two extremes, however, victims can also choose a **partial Investigation**, where the law enforcement agency will take some investigative steps beyond the victim interview and a complete or partial inquiry into serial offending. This may include interviewing any potential witnesses and/or collection of evidence during a medical forensic exam.

These three options can be stated in the simplest terms as: *None, some, or all.*

Once victims have chosen a reporting method, they can change their minds and convert to another option. They can also remain anonymous if they choose, and they can identify the suspect (or not). All these options are offered to encourage victims to come forward to the law enforcement agency with information about their sexual assault.



20 Elements of the You Have Option Program (YHOP)

The requirements for YHOP agencies are encoded in [20 Elements](#), which are listed below. These elements articulate how a non-investigative, or a *one investigative step at a time* philosophy can be translated into actual practices.

1. *A victim of sexual assault is offered three options for reporting: Information Only, Partial Investigation, and Complete Investigation.*
2. *A victim or other reporting party may remain anonymous and still have the information they provide documented by a You Have Options Program Law Enforcement Agency.*
3. *A victim or other reporting party may have questions answered regarding their options for reporting and/or a criminal investigation prior to providing any identifying or incident information to law enforcement.*
4. *A clear explanation of the reporting process and/or investigative procedures will be provided by a law enforcement officer if requested by the victim.*
5. *When making a report, there is no requirement to meet in person with a law enforcement officer. For example, a victim or other reporting party may report using an online form or a victim may choose to have a sexual assault advocate report on their behalf.*
6. *Reasonable efforts will be made to allow the victim or other reporting party control over the location, time, and date where their initial report is made to law enforcement.*
7. *A victim or other reporting party may provide as much, or as little, information as they choose with no time limitations or restrictions on when the information is given to law enforcement. For example, information obtained on an incident outside the current statute of limitations will be documented and used as the law allows to assist in other investigations.*
8. *Law enforcement officers will offer assistance in locating sexual assault advocacy services to every person reporting.*
9. *A victim may be accompanied by a sexual assault advocate or other appropriate support person during all phases of the reporting process and criminal investigation.*



10. *A victim, or other reporting party, may end an interview with law enforcement at any time without having to provide a reason.*
11. *After making a report, a victim or other reporting party will not be pressured to participate in a criminal investigation.*
12. *Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces in providing information to law enforcement during the reporting process.*
13. *Law enforcement officers will conduct victim interviews in a trauma-informed manner.*
14. *Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces when participating in a sexual assault investigation.*
15. *A victim's right to keep their assault confidential will be respected. If legally permissible, no person (outside of a law enforcement agency) will be notified the victim has reported without the victim's consent. This includes the interviewing of identified witnesses and perpetrators.*
16. *Investigators will utilize strategies to identify and document serial sexual perpetration, such as the Inquiry into Serial Sexual Assault (ISSA).*
17. *Investigators will collaborate with victims during the investigative process and respect a victim's right to request certain investigative steps not be conducted. Criminal investigations will be conducted at a pace set by the victim, not the law enforcement officer. Victims will be informed that no case can proceed to arrest or referral to an office of prosecution until the investigative process is complete.*
18. *A victim may disengage from a criminal investigation at any time prior to an arrest being made or the case being referred to an office of prosecution. There is no requirement that an explanation be given by the victim to law enforcement.*
19. *If legally permissible and probable cause exists for a crime, no arrest or referral to an office of prosecution will occur without the consent of the victim. All You Have Options Law Enforcement Agencies respect the choice of every victim who reports a sexual assault, and understand that justice is not the same for every person who is victimized.*
20. *Criminal investigations that do not result in arrest or referral to an office of prosecution will be classified as "inactive" unless found baseless or false, allowing for the investigation to be re-opened in the future at a victim's request and/or if additional information is discovered.*



Anonymous Reporting

What if we offered victims the opportunity to talk with a law enforcement officer anonymously? In some cases, this wouldn't necessarily mean that the victim's identity is truly unknown to the responding officer. For example, in small communities, the officer may very well know who the victim is as soon as they see each other. However, an anonymous report would allow victims the opportunity to talk with an officer without their identifying information being formally recorded as part of an official crime report. The victim may also make the decision to not identify the person who sexually assaulted them; at least, not at this initial point in time. In this scenario, victims would have the opportunity to establish rapport with the officer, getting to know the officer personally and finding out more about what an investigation really looks like. Victims could ask the officer questions and make a decision about reporting that is based more on realistic information and less on fear of the unknown (Lonsway & Archambault, 2010, p. 52).

“Anonymous reporting” was one of the earliest terms that was commonly understood as an alternative reporting option for sexual assault victims. In many communities, it was formally instituted as a means of enacting VAWA forensic compliance, so victims could have a medical forensic exam without identifying themselves to law enforcement or engaging in the criminal justice process at the time of the exam. In other communities, it may have already been offered by law enforcement, with victims providing information about their assault without having their identity recorded. Anonymous reporting may have also been offered by other entities, like universities or advocacy programs, even if they went by another name (such as “blind reporting,” “Jane Doe reporting,” etc.).

While every jurisdiction may not agree on exact terminology, there is still a need to describe various approaches in a way that can be commonly understood. When we use the term anonymous reporting, we are referring to the essential element that victims can **provide information about their sexual assault to law enforcement without their name or other identifying information being recorded.**



Option to Talk with Law Enforcement Anonymously

One of EVAWI's recommendations for best practice is that any protocol for anonymous reporting should provide victims with an option to personally talk with law enforcement, without their identity being recorded. This provides victims an opportunity to address their questions and concerns, before deciding whether to report, and whether to identify themselves.

A veteran investigator explains how he accomplishes this goal, by encouraging victims to disclose information **without initially providing any names.**



I introduce myself and tell them the following:

I appreciate you meeting with me. I want to listen to everything that's happened, but I want to let you know something before we get started. I am a police officer and I am obligated to investigate certain crimes even if you don't want me to. So, if you tell me the person's name and you're not sure if you want to move forward with a police investigation, I may have to investigate him/her/they even if you don't want me to. So, I am here to listen and to help, but to start, let's leave names out of your situation. I'll provide you all the information I can, and explain what a police investigation would look like, and then you can decide – when you're ready – if that is something you are interested in doing.

I am not a banker – you're not signing a 30-year mortgage with me – we are just here having a conversation. You do not need to make your mind up today; we can move at your pace. I want to put you in the best position moving forward and help in any way that I can. Do you have any questions?

Almost always, victims are ready after we talk. That's all they need is some context: Questions about court, questions about how hard it is to make an arrest. They just want some information. This is likely a 2-year commitment to a government process if the case goes to trial. Of course, they would have questions. Wouldn't you?

- Matthew Stegner, Senior Investigator, Campus Sexual Assault Victims Unit, New York State Police

Limits of Anonymity

It is clear anonymity is something many victims want while they consider their reporting options.²⁸ However, it must also be clear – to victims as well as responding professionals – what the realistic limits are on the victim's anonymity. For example, *health care providers will always know the identity of a patient who has received a medical forensic exam.* This means that victims will also not typically be anonymous to the billing and records departments for the hospital (or other exam facility), as well as any advocacy agency offering support to the victim, or the Crime Victim Compensation (CVC) program or other administrative program handling exam payment.

²⁸ In one study, over half of the surveyed professionals said they had worked with at least one sexual assault victim who wanted to remain anonymous when reporting to law enforcement. Moldovan, K. & Livermore, T. (2013). [Forensic Compliance in Colorado: An Examination of System Response to Sexual Assault](#). Denver, CO: Forensic Compliance Evaluation Project, Colorado Coalition Against Sexual Assault and State of Colorado, Division of Criminal Justice.



It must also be clear – again, to professionals as well as victims – that law enforcement can typically identify a victim for any legitimate purpose. In fact, officers may already know the victim, especially in rural or remote communities, or on college campuses, military installations, or tribal lands. But even if they don't know the victim personally, records with identifying information may be sealed inside the kit, which they can open. Or they can obtain a search warrant, or request a subpoena to gain access to these exam records. Without any law expressly prohibiting such actions, law enforcement has the legal right to seek identification of the victim as part of their investigative discretion.

As a result, “anonymous reporting” doesn't necessarily mean the victim's identity is unknown (or unknowable). It simply means the victim's identity is not recorded in the report at that time, and law enforcement will not take steps to identify or document who the victim is. The practice of anonymous reporting thus **relies on good faith agreements between law enforcement and community partners**, to ensure that anonymous reports will *remain* anonymous (except in certain unusual circumstances). Documenting these agreements in writing, and consistently following them in practice, requires ongoing collaborative work to ensure the promise that is made to victims with anonymous reporting is being honored.

Non-Investigative Reporting

Imagine for a moment the trauma of being sexually assaulted. Immediately afterward, there is no time to make sense of what has happened, let alone figure out what to do about it. Many victims feel afraid, ashamed, and confused. They are probably not sure whom to tell. But regardless of whom they tell, they are likely to be confronted with the question of whether or not they will report the incident to police and “press charges.” This question is asked not only by community professionals (including victims' advocates, forensic examiners, and law enforcement professionals), but also by friends and family members. In fact, in some situations this is the first question people ask when victims say they have been sexually assaulted (Lonsway & Archambault, 2010, p. 51).

While there has been considerable focus on anonymous reporting for sexual assault, the question of anonymity may not be as critical as *what happens next*. If a victim is unable or unwilling to participate in the criminal justice process, will the report be investigated (and possibly prosecuted) anyway? Or will the victim be allowed to decide?

“Non-investigative reporting” enables victims to report their sexual assault to law enforcement **without triggering an investigation and possible prosecution**.

Key Elements

At the most basic level, non-investigative reporting involves two key elements:

- Victims provide law enforcement with as much or as little information about their sexual assault as they choose, and **this information is documented by law enforcement**; they may also have evidence collected to the extent they choose.
- But victims still decide **whether and when an investigation will be initiated**.

In other words, the philosophy of non-investigative reporting requires victim consent for any law enforcement contact or other investigative steps. This ensures *open doors* for victims while supporting a *one step at a time* process of disclosure and reporting.



The **US military** was an early pioneer in the field of non-investigative reporting, with a policy of “restricted reporting” first adopted in 2005. With a restricted report, sexual assault victims can access a variety of services without triggering an investigative process. A detailed description of restricted reporting and associated practices in the US military appears in [Appendix A](#).

Benefits for Law Enforcement

We have already described the benefits of non-investigative reporting for victims, in terms of VAWA forensic compliance and an *opening doors, one step at a time* process. When it comes to law enforcement, the benefits may not be as obvious. In fact, it may even seem counterintuitive for law enforcement agencies to allow victims to decide whether their sexual assault report will be investigated, but many agencies already have informal policies or practices that respect a victim’s wish to not proceed with the investigation.

The information presented to law enforcement by the victim of sexual violence is potentially unavailable by any other means or through any other person... narcotics and vice operations commonly practice receiving, but not acting upon, such information to make the best strategic use of the data (Garcia & Henderson, 2010, p. 4).

The goal is to **encourage more victims to come forward and minimize re-traumatization**. Law enforcement then has the opportunity to document critical information, including the victim’s response, demeanor, and the impact of the sexual assault on their life. A medical forensic exam may be conducted to collect and document evidence, or it may not. Regardless, by connecting victims with resources and services, without pressuring them into an *all or nothing, now or never* decision, victims may ultimately be more willing and able to participate in a successful criminal justice process.

It is also worth remembering that non-investigative reporting is consistent with, and complementary to VAWA forensic compliance – which requires US states, territories, and tribes to provide victims with free access to a medical forensic exam without participating in the criminal justice system if they wish to receive STOP funding.



Not Pressuring Victims

Another critical aspect of the non-investigative reporting philosophy is *not pressuring victims* to participate in the investigation or possible prosecution of their sexual assault. This begins by offering – and truly supporting – the option for victims to provide as much or as little information as they can, whenever they are able. For victims who have a medical forensic exam, they can be assured that critical evidence has been collected and documented in case they later decide to participate in the investigative process.

We feel that if we provide the environment that's safe and healing for them, and we give them understanding and support, there is a chance that before they leave, we do not have to mark that kit as a non-report. Rather, it can be sent through to the authorities where it needs to be, and gone ahead and processed, and the report finalized and worked. That's our whole goal: not to coerce, but to support, inform, and let them make an informed decision on what's happening to them.

- Professional in Texas study (Busch-Armendariz & Heffron, 2011, p. 27)

This approach continues by not asking victims whether they want to “press charges.” For one thing, most victims have a very limited understanding about what prosecution involves, let alone the steps that are needed to get to that point. Second, this question is technically incorrect – prosecutors, not victims, make charging decisions. Finally, and most important, this question places an inappropriate and unfair burden on victims. This is particularly true during the early stages of an investigation: **Victims should never be asked during the phase of an initial response whether they will “press charges.”**

The time for law enforcement to ask victims about their ability to participate in a criminal prosecution is *at the end of a thorough, evidence-based investigation*. Only at that point do investigators know whether they have sufficient evidence collected and documented to present the case to the prosecutor, and evaluate what the risks might be for a victim.



Exceptions to Non-Investigative Reporting

Police and prosecutors have the legal authority to investigate and prosecute any felony crime that comes to their attention. So, while communities are encouraged to enact a non-investigative reporting philosophy, there are certain circumstances where an investigation and possible prosecution may be pursued against the victim's wishes. This includes cases that receive media attention, whether it is because the victim is very young, very old, or sustained extensive physical injuries. Exceptions may also include cases where the suspect is: (a) an intimate partner, (b) a serial offender, or (c) someone who is high profile within the community, such as a law enforcement officer or an elected or appointed official.

Sample Protocol: New Hampshire Non-Investigative Report

Throughout this module, we will feature alternative reporting protocols that demonstrate how to enact the spirit of VAWA forensic compliance: *opening doors* for more victims of sexual assault, and supporting a *one step at a time* process of disclosure and reporting.

The first example is from **New Hampshire**, which has established procedures that are described as *anonymous reporting* but are also *non-investigative* according to our definition.²⁹ Key features of this protocol include the following:

- Anonymous reporting is available to patients 18 years or older who have a medical forensic exam, and do not have gunshot wounds or other serious bodily injury.
- Following the exam, a unique serial number is assigned to the evidence, in place of the victim's name or other identifying information. Victims are given the number and asked to call the law enforcement agency if they decide to initiate an investigation.
- The evidence is stored by law enforcement agency with jurisdiction over the assault. There is no specified timeframe for evidence retention, but the protocol strongly recommends the statute of limitations or 20 years, whichever is shorter.
- No investigation or testing is conducted with the evidence, unless the victim contacts the law enforcement agency to initiate participation in the investigative process.

Some victims who present themselves to the emergency department for medical / forensic treatment may be undecided over whether to report the crime to law enforcement. The anonymous reporting procedure ensures that such victims have the opportunity to have evidence collected and preserved that would otherwise be destroyed through normal activity (New Hampshire SART Protocol, 2018, p. 34).

The New Hampshire protocol offers an excellent example of how *opening doors* and *one step at a time* can be put into practice – to the benefit of victims, professionals, and communities as a whole. For jurisdictions seeking to draft their own protocol for alternative reporting options, this sample protocol offers an excellent place to start.



[Appendix B](#) is a Summary of Alternative Reporting Protocols, providing more detail on the examples featured in this module, as well as other local and statewide protocols that incorporate alternative reporting options for victims.

²⁹ These procedures are outlined in two documents: the statewide protocol for medical forensic examinations and the protocol for Sexual Assault Resource Teams (SARTs). Both documents are updated on a regular basis, which is a testament both to the robust and flexible nature of their protocols, as well as extensive and ongoing multidisciplinary collaboration. New Hampshire Office of the Attorney General (2018). [Sexual Assault: An Acute Care Protocol for Medical / Forensic Evaluation \(9th Edition\)](#). Concord, NH: Office of the Attorney General, New Hampshire Department of Justice; New Hampshire Office of the Attorney General (2018). [A Model Protocol for Response to Adult Sexual Assault Cases \(2018 Edition\)](#). Concord, NH: Office of the Attorney General, New Hampshire Department of Justice.



Online Reporting to Law Enforcement

Another expression of *one investigative step at a time* is an online reporting portal. Before COVID-19, some law enforcement agencies offered online reporting through their website. The demand for this option then dramatically increased during the pandemic, as law enforcement agencies and community partners sought to provide services for victims without requiring in-person contact. We hope this practice continues after the pandemic, because it offers many advantages for victims and law enforcement.

Online Reporting to Police Department

The [Commerce City Police Department](#) in Colorado offers online reporting of sexual assault through the You Have Options Program. Victims do not have to provide identifying information, and no fields are required on the online form. Victims can choose whether or not they want law enforcement to contact them, and they can request law enforcement to reach out to them if the information they provide might assist in another investigation. Victims are also provided with the option of having an advocate follow up, rather than a law enforcement officer.

Advantages of Online Reporting

One key advantage of online reporting is that it can **increase trust and comfort** for victims, if the reporting portal is carefully designed. This may be especially critical for adolescents, since technology is often their primary means of gathering information and engaging with others.³⁰ However, it can also provide crucial access for victims who are isolated either as a result of geography or fear of violence (e.g., by an intimate partner). In the context of the COVID-19 pandemic, online reporting has offered a safe alternative to in-person contact with an officer, but even after the pandemic ends many people may still choose online reporting to reduce the anxiety associated with such contact.

To establish trust and comfort, the portal must provide **clear and accurate information about what will happen to an online report**, including how the information will be shared and used. Ideally, the portal could guide survivors and their support people through an interactive dialogue, so it only provides the information and resources they are most interested in. For example, users could be asked if they want to know more about medical forensic exams; if they say *yes*, that information could be presented. If they say *no*, that section could be skipped, and users could be asked if they want information about the next topic (reporting options, victim services, campus or military options etc.). This interactive component would improve upon first-generation portals, where the same information is presented to all users in a standard, static format.

³⁰ Kachur, R., Mesnick, J., Liddon, N., Kapsimalis, C., Habel, M., Ferdon-David, C., Brown, K., Gloppen, K., Tevendale, H., Gelaude, D.J., Romero, L., Seitz, H., Heldman, A.B., & Schindelar, J. (2013). *Adolescents, Technology and Reducing Risk for HIV, STDs and Pregnancy*. Atlanta, GA: Centers for Disease Control and Prevention.



Online portals can also **enhance the accessibility of reporting a range of users**. For instance, the text could be transmitted using screen readers or large font size for individuals who have limited vision, or it could be translated into different languages for those who do not speak English.³¹ This would increase the likelihood that victims could access the portal from home or any other location of their choice, any time they are able. It also means that health care providers or other responding professionals could offer the online reporting portal while victims are waiting for services or when interpretive services are lacking. The portal could provide victims with information to help answer their questions, and even begin the process of completing a thorough preliminary interview, to assist a law enforcement investigation if they choose.

To achieve these ends, an online reporting portal would need to be secure and compliant with the Health Insurance Portability and Accountability Act (HIPAA), as well as confidentiality requirements outlined in the Violence Against Women Act (VAWA).³²



Connecting Victims with Services

Beyond reporting, online portals could be improved in the future by giving victims the option to connect directly with services, if they choose. For example, the program could ask victims if they want to request advocacy services or a medical forensic examination, or begin reporting to law enforcement. If they say yes, the program could then connect them directly with the appropriate organization.

Victims could even choose *where* they wanted to access services. For instance, college students might choose to access services while they are at school, or after returning to their hometown. A military service member might decide to access services on the military base, or in the community. This type of program could significantly improve access to services for all types of sexual assault victims, including those who are currently underserved by existing services.

No Replacement for Personal Interviews

For law enforcement agencies considering online reporting, there are a few key issues worth highlighting. One is ensuring that victims understand what the process can and cannot accomplish. For example, with carefully developed prompts, an online reporting process can help victims accurately recall and relay memories of their assault. This can guide them to create a detailed record of the event, along with other information that may assist the law enforcement investigation. But for victims who are reporting online with the intent of participating in an investigation, it must be clear **that this online report will not replace the need for follow-up interviews by an investigator**.

³¹ Online portals could potentially translate text, to present to victims in their own language. They could also translate the victim's responses back into English, but they would need to retain the original version in the victim's own language both to ensure accuracy of translation and also increase the likelihood that it could be admissible in court if the case goes to trial.

³² For more information, see the [Frequently Asked Questions \(FAQs\) on the VAWA Confidentiality Provision](#) (34 U.S.C. § 12291 (b)(2)), published in October 2017 by the Office on Violence Against Women, US Department of Justice.



The information can certainly provide a foundation for investigators to build on during follow-up interviews. But additional interviews will definitely be needed as the investigation unfolds, and more information becomes available (e.g., witness statements, laboratory reports, suspect interviews). This should be clear to victims upfront, so they are not surprised or frustrated by a request for additional interviews.³³

At the same time, investigators should make it clear that they've taken the time to read the online report and explain any steps taken in preparation for the interview based on the information provided, so victims don't feel like they've wasted their time repeating information already provided. This also offers an opportunity for investigators to demonstrate that they are taking the victim's report seriously and professionally.

High Quality Prompts for High Quality Information

This leads to the real value of online reporting, which rests on the quality of the prompts. Just like in-person interviews, victims will be able to provide more detailed information about their sexual assault **if they are asked well-crafted questions during an interview dialogue**. It is not enough to simply say: "Please describe the incident."³⁴

Often times, victims are unsure what information is relevant for an investigation, so they need concrete guidance on the type of information they should provide. Vague or unclear prompts could lead victims to provide information that is irrelevant and unhelpful at best – or even harmful at worst, if it unnecessarily undermined their credibility. Experienced sexual assault investigators and trauma experts should be involved in writing these questions, so they follow victim-centered, trauma-informed principles for helping victims recall key information and communicate it in the clearest possible way.

Third-Party Reporting

Another term worth defining is "third-party reporting," which describes **information provided to law enforcement from someone other than the victim**. This could be a friend, family member, teacher, coach, clergy member, or any other third party. For example, third-party reports are commonly made by parents when they discover or suspect that their adolescent has been the victim of rape (including statutory rape). Third-party reports are also made by health care providers and others with mandated reporting responsibilities (these will be discussed in detail later in the module). While

³³ An online report will also not replace the need for victims to personally testify in court, if their case goes to trial. In that scenario, the online report would be treated the same as a traditional police report – one important source of information, but not a replacement for personal testimony on the part of the victim.

³⁴ This may be a particular concern for online reporting systems that are designed to capture information on a wide range of incidents or issues. For example, some private companies offer online reporting programs for college campuses to collect information about student discipline, academic integrity, and Title IX concerns. For a system to capture information on such wide-ranging issues (from plagiarism or the location of a suspicious package, to underage drinking, or felony sexual assault) the prompts will necessarily be very broad and vague (e.g., "Please provide a detailed description of the incident or concern"). There is clearly a value for campuses offering a single reporting system for all these different types of information-gathering, but this is offset by the poor quality of the prompts in terms of helping students to recall the most accurate information about their sexual assault and relay it effectively.



third-party reports often include identifying information for the victim and suspect (if it is available), they could be anonymous in some circumstances.

★ Anonymous Reporting through Crime Stoppers

The [Nebraska Medical Sexual Assault Protocol](#) offers anonymous third-party reporting through the Nebraska Crime Stoppers. When someone submits a “tip” with information about a sexual assault, the program “creates a time-stamped record of information that is shared with law enforcement.” This information is monitored by the Nebraska State Patrol and may be given to local law enforcement agencies when the jurisdiction of the incident can be determined.

The protocol explains that this option allows victims to “anonymously share information with law enforcement and engage in two-way communication with the assigned officer.” This may help law enforcement “make connections between cases with similar fact patterns,” while victims continue “keeping their identity private until they are ready to come forward.” Victims may “choose to ‘convert’ this report and identify themselves to law enforcement at any time” (p. 19).

Third-Party Reporting Protocols

We have already described protocols that allow victims to report their sexual assault through the process of a medical forensic examination. This is clearly in line with VAWA forensic compliance and the twofold aims of *opening doors* and *one step at a time*. However, the term is used in that context to convey that victims are “reporting” their sexual assault to a health care professional, not directly to law enforcement. Although law enforcement is typically responsible for long-term storage of the evidence and documentation from the exam, at this point there will be no official crime report.

Third-party anonymous reporting could also be offered by other community partners.

For example, an online reporting portal could be hosted by a community-based victim advocacy organization, a Family Justice Center, or another service agency. We will describe one example of such a program in a moment. However, it is worth noting that such options may or may not be aligned with the goals of *opening doors* and *one step at a time*. To be meaningful, such programs require detailed policies and procedures, as well as a signed Memorandum of Understanding (MOU) between the law enforcement agency and any entity authorized to accept third-party reports.

Some victims might feel so threatened that they will only share information through other parties, such as the rape crisis center (Garcia & Henderson, 2010, p. 3).



National “Reporting” Programs

Some private companies and nonprofit organizations have developed online platforms for victims to “report” their sexual assault, but reporting is defined simply as documenting information and storing it in a date/time stamped record.

This type of program can potentially *open doors* for victims by helping them to **gather information, explore their options, and learn about services** that might be available. However, the real value of this service depends on the quality of information provided through the online portal. When it comes to criminal justice processes such as reporting to law enforcement and participating in an investigation, survivors will only benefit if the information is accurate and realistic. Criminal justice practitioners must be involved in developing that content.

These programs can also support a *one step at a time* process by helping victims **record information about their sexual assault**. This act alone may serve a therapeutic purpose for many survivors. It can also give survivors a sense that they are “doing something,” which helps to re-establish control after an assault.³⁵

Victims might even be able to **provide this record to law enforcement**, if they decide to report and participate in an investigation. This is not fundamentally different than writing the information on paper (or using a computer or other digital device), and providing that document to law enforcement, although there may be an added value due to the computerized date/time stamp on the record.

Finally, some programs offer a **notification feature** if someone else names the same person who sexually assaulted them. This may prompt additional action on the victim’s part, including consideration of whether to contact law enforcement. Victims may feel more confident reporting if they know someone else has been assaulted by the same person. However, just because the victim is notified of another assault committed by the same person, this does not necessarily mean the other victim will report it, or assist in the investigation or prosecution of either assault. Even if the other person *does report it*, the two assaults will not necessarily be handled by the same law enforcement agency if they were committed in different jurisdictions. Ideally the two law enforcement agencies will consult and coordinate their investigations, but there is no guarantee this will happen based on the reporting program. Once again, victims will only benefit if they are given accurate information, especially about criminal justice procedures.

³⁵ One advocate who helps victims with online reporting described a common experience of “unloading” memories of the sexual assault, so they exist somewhere outside the victim’s own head (and possibly a personal journal). They know there is a paper trail, and someone else holds the information in addition to themselves; this can have a powerful emotional impact, especially if the entity receiving the report and holding the information about their assault is law enforcement (personal communication, Cynthia Clark, Court and Legal Advocacy Coordinator, Our VOICE Rape Crisis and Prevention Center, 10/30/20).



Sample Protocol: North Carolina Third-Party Reporting

Our third sample protocol comes from **Asheville, North Carolina**, where the advocacy program Our VOICE worked collaboratively with the Asheville Police Department and Buncombe County Sheriff's Office to establish a third-party reporting option (described as "blind reporting") for sexual assault victims, with the option of remaining anonymous. It is offered through an online portal based on the [Our VOICE agency website](#).

In the instructions provided on the website, victims are advised that they can provide as much or as little information about their sexual assault as they choose. They are also free to provide contact information (or not), but no investigation will be initiated unless the survivor chooses that option. In other words, the report may or may not be anonymous (based on victim choice), but it is promised to be non-investigative.

A final question asks if the survivor would like Our VOICE to coordinate communication with law enforcement. If they say yes, agency staff assumes this responsibility. The website also advises victims that they can be contacted by Our VOICE if law enforcement receives another report with the same suspect, so the victim can decide whether they want to speak with law enforcement at that point; however, this is not required. The goal is to provide as many options for victims to report their assault – not pressuring them to speak with law enforcement or engage the criminal justice process.



Establishing Jurisdiction for Third-Party Reports

When a third-party agency makes a report to law enforcement on behalf of a sexual assault victim, this will typically require asking the victim where the sexual assault occurred, and contacting the law enforcement agency with jurisdiction over that location. (The exception would be if a particular agency agreed to accept all third-party reports as part of a community-wide protocol.)

Yet **third-party professionals can only do their best to determine jurisdiction** for any report, based on the information they receive from the victim, which may be absent, limited, or incorrect. Many victims have a hard time specifying exactly where their sexual assault took place, and third parties are not likely to know the exact boundaries of any law enforcement jurisdiction. In addition, victims often seek assistance in the community where they live, not necessarily in the community where they were sexually assaulted. This will need to be considered when drafting policies, protocols, and MOUs. If victims decide they are able to participate in an investigation, the law enforcement agency that received the third-party report will typically take steps to determine the proper jurisdiction, and refer the case to another agency if it is not theirs.

Courtesy Reports for Other Jurisdictions

When someone is sexually assaulted while they are away from home (for example, on vacation, at college, or on a work trip), they often wait until they return home to report the crime. This makes sense, because they may have the support of loved ones at home, and they may have some familiarity with local service providers. But this means the law enforcement agency receiving the report will not have jurisdiction over the crime.

Far too often, victims in this situation are told to drive across town, or the state – even fly across the country – to report their sexual assault in the jurisdiction where it occurred. Is it any surprise that so many of them decide not to make that drive or take that flight, and not pursue reporting their sexual assault? Some may decide to try again, by reporting the crime days, weeks, months, or even years later. Some never will.

In these scenarios, the law enforcement agency in the victim's hometown may be able to assist the agency with jurisdiction, by conducting a preliminary victim interview and documenting the information obtained in a **courtesy report**. This exemplifies a victim-centered approach, in those scenarios where someone finds the courage to contact law enforcement to report a sexual assault – only to find out that it is the “wrong” agency. In other words, it is another expression of an *opening doors, one step at a time* approach.

Common Scenarios

There are many examples where courtesy reports may be taken by law enforcement:

- Courtesy reports may be used for **students who are sexually assaulted on campus in another city or state, but wait to report the assault until they are home**. It is very common for the agency in the jurisdiction where the assault occurred to ask the agency in the student's hometown to conduct a preliminary interview. They may even ask the other agency to conduct any subsequent follow-up interviews, depending on the course of events and how the investigation unfolds.
- Courtesy reports are also common in cases involving **military personnel (as well as their dependents) who are deployed following an assault**. In these situations, a military investigator will often conduct the preliminary interview or any necessary follow-up interviews, because the victim and/or suspect are unavailable to the civilian law enforcement agency (on a ship or in a foreign country, for example).
- **Courtesy reports are also used in areas with a great deal of tourism**. In San Diego, for example, law enforcement frequently responds to reports of sexual assaults committed against American citizens while they are in Mexico. In these cases, the San Diego Police Department will often take a preliminary report and work with a liaison officer to Mexico. In some cases, in the spirit of collaboration and providing services to American citizens, the San Diego Police Department will even analyze evidence obtained from the victim's medical forensic exam or clothing, because they have the resources to do so and Mexican authorities often do not.



Courtesy reports between different law enforcement agencies in the same county or state also represent an extension of the “professional courtesy” that is so valued within police culture, as one way an agency can provide much-needed assistance for another.



Medical Forensic Exams for Another Jurisdiction

As with courtesy reports for law enforcement, there is frequently a need for hospitals and other health care facilities to conduct a medical forensic examination for victims who were assaulted in another city, county, or state. After conducting such an exam, health care providers will likely need to work with the law enforcement agency that has (presumed) jurisdiction over the assault, to determine the process for transferring the evidence and records.

The payment question will also need to be resolved. The Sexual Violence Justice Institute (SVJI) at the Minnesota Coalition (MNCASA) created a helpful [fact sheet](#) offering guidance on payment policies for exams conducted with an out-of-state sexual assault. The tool offers a model for other states to follow and adapt.

Recommended Practices

Law enforcement agencies should have policies and procedures that encourage courtesy reports for any type of crime, not just sexual assault. This does not mean the officer taking the report must be familiar with penal codes or procedures in the jurisdiction where the assault took place. During the preliminary interview, the courtesy report is usually assigned an incident number (based on agency policy and practice), but not scored as an official crime report or counted in statistics for offenses committed in the agency’s jurisdiction. (This is similar to the procedure used for other crimes that are reported as occurring in another jurisdiction, such as mandated reports of suspected child abuse.) If the exact location is unknown, the officer can write “courtesy report” in the address section and forward the incident report to the agency with jurisdiction.

Courtesy reports help to *open doors* for victims, by reducing barriers to reporting and increasing access to the criminal justice system. In other words, courtesy reports are clearly good for victims. However, they are also extremely valuable as an investigative tool for law enforcement, and therefore good for our communities. With law enforcement agencies providing this type of support for each other, victims and communities both benefit from improved criminal justice responses and interagency cooperation.



For more information and guidance on courtesy reports, EVAWI offers a training bulletin on [Responding to Victims from Another Jurisdiction](#).



Informational Report vs. Crime Report

Before we go any further, it is important to differentiate *informational reports* and *crime reports* because they become inextricably linked with alternative reporting options.

- While the terminology varies, we use the phrase **informational report** to refer to a written report of a sexual assault (or other incident) that *does not meet the elements of a criminal offense* – at least not with the information available at the time. Agencies across the country use a variety of official and unofficial names when referring to these types of reports. But regardless of what they call it, this type of report is used by law enforcement agencies to document various types of information such as intelligence about possible criminal activity.
- A **crime report** is used for incidents that *meet the elements of a criminal offense*, although they may be called an “offense report,” “case report,” “scored case,” etc.

Implications for Alternative Reporting Options

These concepts are critical to understand in the context of alternative reporting options, because agencies may increase their use of informational reports to record information submitted by victims through these alternative pathways.

Regardless of which path a victim takes, **a crime report should be completed when the elements of a sexual assault offense are met, and the victim’s identity is recorded.**³⁶ This report should be included in departmental statistics, just as it would if the victim reported a sexual assault but later withdrew participation in the investigation. It would not serve the community if these cases were improperly recorded as informational reports and excluded from agency statistics – because these statistics are used to inform the public about the full range of crimes perpetrated in the community.

On the other hand, an **informational report should be used when the elements of a sexual assault offense have not been met with the information obtained so far**, and the victim does not want, at least initially, to officially identify themselves for the purpose of a report and investigation. An informational report may later be converted to a crime report, if the victim decides to be identified or additional information is revealed. Law enforcement systems should be flexible enough to accommodate such changes.

What is most important is that investigators consider how an investigation unfolds *one step at a time*, and recognize that the initial contact with a victim does not need to provide all the information needed to launch an investigation, let alone present a case to the prosecutor. If we really want to protect community safety and hold perpetrators

³⁶ Although the victim must be identified for a crime report to be filed by law enforcement, many states have laws that can shield the victim’s identity from the public. These laws allow law enforcement to remove the victim’s name from public files and records concerning the offense, including internal reports submitted to supervisors, press releases, and records of judicial proceedings. In some states, a pseudonym (fictitious name) can also be used instead of the victim’s name in all public files and records concerning the offense. More detailed information on the use of pseudonyms is provided in [Appendix C](#).



accountable, then we shouldn't be forcing victims into an *all or nothing* scenario when they are first contacted. This approach shuts down many victims, even those who were initially willing to talk with law enforcement, leading them to withdraw their participation. Informational reports can be used to capture whatever information victims are willing to provide at the time, and then converting it to a crime report if the situation later changes.

Crime Reports: Clearing or Suspending

The implications then extend to how these reports are closed or cleared. When the information received through an alternative reporting path is recorded as a crime report, it will be cleared/closed based on agency policies and practices, as well as nationally established guidelines for the Uniform Crime Reporting (UCR) program.³⁷ However, if the victim is not participating in the investigation, it will not typically move forward, and the suspect will not be arrested, or if a suspect was arrested, the suspect will be released from custody. In that scenario, the **crime report should be suspended or inactivated, not cleared (e.g., unfounded)**. This indicates that a crime was reported, but the investigation will not move forward unless the victim decides to participate.



Suspending Reports Not Failure to Investigate

The practice of suspending or inactivating crime reports based on a victim-centered, non-investigative reporting philosophy could raise concerns by the public and command staff, if it is seen as a reflection that the law enforcement agency is unable to clear or close a high percentage of their sexual assault cases. It must be clear that **this practice is the result of respecting victims' wishes, not a failure to investigate sexual assault cases**.

Informational Reports: Retention Policies

When the information received by the agency is recorded as an informational report, the procedures are different. Typically, an informational report will only be reviewed for the information or intelligence provided; **no follow-up investigation is conducted, and it does not need to be cleared or closed following UCR guidelines**. The specific policies and practices of law enforcement agencies vary quite a bit. However, they may need to be re-examined if the agency intends to implement alternative reporting options.

Some agencies destroy informational reports (and any associated evidence) after a limited period of time, such as one year. Yet destroying these records and evidence could create future problems if victims later decide they are able to participate in the investigation and possible prosecution of their report, or the suspect is investigated for another crime at a later time. **The retention period for informational reports may need to be extended for a certain number of years, or the statute of limitations.**

³⁷ The Uniform Crime Reporting (UCR) program is a voluntary data collection program for criminal offenses reported to law enforcement, operated by the Federal Bureau of Investigations (FBI). For more information, please see EVAWI's OLT module on [Clearance Methods for Sexual Assault Cases](#).





Need for Written Policies and Procedures

Investigative journalists have uncovered problems in some communities with law enforcement agencies routinely downgrading sexual assault reports to lesser offenses or even non-criminal records such as informational reports.

For example, the *Philadelphia Inquirer* revealed that the **Philadelphia Police Department** was routinely downgrading sexual assault reports or categorizing them as "2701," a police code used to designate a non-criminal call for service.³⁸ As many as one-third of all sexual assaults reported to the Police Department in the 1980's ended up in this non-criminal category. Once classified, the report was not investigated further, and it disappeared from the agency's criminal offense statistics and active caseload. The process was so ingrained in departmental culture, it earned its own euphemism; "going down with crime."³⁹

The same problem was uncovered by the New Orleans by *Times-Picayune*. Officers at the **New Orleans Police Department** were also downgrading sexual assault reports to lesser offenses or non-criminal codes referred to as a "Signal 21." Again, these reports were not investigated and were dropped from agency statistics. In 2008, as many as 60% of all rape reports were classified as Signal 21 cases. Changes were not seen until the US Department of Justice conducted their own investigation, resulting in a consent decree and mandated reforms.⁴⁰

In the **St. Louis Police Department**, officers were using informal "memos" to document information about many sexual assaults reported to them, rather than official crime reports.⁴¹ The **Atlanta Police Department** was reported to use a "secret sex crimes file" as a dumping ground for sexual assault reports that investigators viewed as difficult or dubious.⁴² Although different names are used by agencies across the country, the practices mean that reports will not show up in agency statistics or receive any follow-up investigation. They simply disappear.

These examples illustrate the critical need for written policies and procedures. Inappropriate practices are less likely when protocols are clearly spelled out in written documents, which are used to guide training, supervision, accountability,

³⁸ Fazlollah, M., Matza, M., McCoy, C., & Benson, C. (1999, October 17). Women Victimized Twice in Police Game of Numbers: An Investigation Shows the Rape Squad Polished its Numbers by Disregarding Thousands of Cases. *The Philadelphia Inquirer*; Fazlollah, M., Matza, M., McCoy, C., & Benson, C. (1999, October 18). How Police Use a New Code When Sex Cases are "Unclear." *The Philadelphia Inquirer*; Fazlollah, M., Matza, M., McCoy, C., & Benson, C. (1999, October 19). Review of City Sex Cases Sought. *The Philadelphia Inquirer*.

³⁹ Fazlollah, M., Matza, M., & McCoy, C. (1998, November 1). How to Cut City's Crime Rate: Don't Report It. *The Philadelphia Inquirer*.

⁴⁰ Maggi, L. (2009, July 11). [NOPD downgrading of rape reports raises questions](#). *The Times-Picayune*; US Department of Justice (2001, March 16). *Investigation of the New Orleans Police Department*. Washington, DC: US Department of Justice, Civil Rights Division.

⁴¹ Kohler, J. (2005, January 17). What Rape? Series Special Report: Crime Statistics. *St. Louis Post-Dispatch*; Kohler, J. (2005, July 23). Police Revise Rape Figures Upward by 58 Percent. *St. Louis Post-Dispatch*; Kohler, J. (2005, August 29). Waivers Wipe Out Reports of Rape. *St. Louis Post-Dispatch*.

⁴² Good, J.B. (2001, October 24). Secret Sex Crimes File: Atlanta Police Failed to Report Rape Cases. *The Atlanta Journal and Constitution*.



and recognition for high quality work. For more information, see the OLTJ modules on (1) [Clearance Methods for Sexual Assault Cases](#) and (2) [False Reports: Moving Beyond the Issue to Successfully Investigate Sexual Assault](#).

Summary of Basic Reporting Options

To summarize, we have already noted that EVAWI's recommended practice is to follow a philosophy of non-investigative reporting or *one investigative step at a time*. While this may include a form of anonymous reporting, the primary goal is to avoid triggering a full investigation; anonymity is only one approach toward achieving that goal. An alternative reporting protocol could therefore include any or all the following mechanisms:

- **Reporting directly to law enforcement** with or without recording identifying information. This could be accomplished by contacting law enforcement in-person, reporting online, or through another means. Regardless, the purpose is to enable victims to provide information about their sexual assault to law enforcement – to get it on record – without initiating a full investigation and possible prosecution. The victim may even agree to taking *one investigative step at a time*. This means evidence may or may not be collected in connection with the report. This is directly parallel to the logic of VAWA forensic compliance, which is to capture information and possibly evidence, while still allowing victims time to make decisions about their participation. Yet the quality of information captured will depend on the procedures (whether online or in-person) to guide victims through recall and relay of memories.
- **Reporting through a medical forensic exam** when the victim presents to a health care facility in the aftermath of a sexual assault, and a medical forensic examination is conducted (in accordance with VAWA forensic compliance), including an assault history, evidence collection, and documentation. The evidence kit may be identified using an anonymous tracking system, or with the victim's name. Either way, the purpose is to enable victims to have evidence collected, documented, and stored, without having it reviewed or tested, unless they specifically consent to this.
- **Reporting through another entity** with or without recording identifying information for the victim (or others, including the suspect). The third party may then forward the report to law enforcement for intelligence purposes only. Or they may simply store the information while the victim decides about reporting and participation. Again, the goal is to enable victims to provide information without making direct contact with law enforcement, and without initiating a full investigation until they are ready.

For such efforts to be effective, it is important to keep in mind the twofold goal of: (1) *opening doors* for victims, to increase their access to services, support, and reporting; and (2) facilitating a *one step at a time* process. This will require considering how reporting options are connected with service providers and existing response protocols.





Reporting Options for Students and Employees

In this module, we focus on alternative options for sexual assault victims to report *to law enforcement*. For college students, faculty, and staff, additional options exist for reporting to the campus administration, Title IX Office, and/or student disciplinary system. Employees can also report a sexual assault committed by a supervisor or co-worker, using procedures established within the workplace. Both campuses and workplaces usually have their own policies and procedures for accepting reports, conducting investigations, protecting complainants, reaching determinations, and imposing discipline, as needed. These processes are separate from any criminal investigation and prosecution, but there are complex intersections between these educational/organizational mechanisms and criminal justice procedures that extend well beyond the scope of this module.

EVAWI offers two training bulletins with more information: (1) [Sexual Harassment and Sexual Assault: Understanding the Distinctions and Intersections](#), and (2) [Sexual Violence on Campus: Reporting and Collaborative Response](#).

Putting Theory into Practice: Developing a Multidisciplinary Protocol

In the immediate aftermath of a trauma, a victim simply may not have the emotional or physical capacity to make a commitment to a full investigation and a court trial. The victim may equate talking to an investigator with losing control again, a repeat of what happened during the sexual assault. Having evidence collected, risking a breach of confidentiality, being disbelieved or criticized by others, or enduring a cross-examination by a hostile defense attorney all may blend together as one potential threat to the victim. Yet, if the process feels safe to victims, they will be more likely to cooperate with a formal investigation (Garcia & Henderson, 1999, p.13).

For communities seeking to offer alternative reporting options for sexual assault victims, the best place to start is establishing a multidisciplinary protocol clearly outlining the policies and procedures involved. The ideal approach may be to offer **a combined option for anonymous and non-investigative reporting**. However, as we have noted, the critical element is *non-investigative*, regardless of whether it is also *anonymous*.

This approach honors the spirit of VAWA forensic compliance, by providing victims with the option of accessing a medical forensic exam without eliciting a law enforcement investigation. It also recognizes the funnel of attrition for sexual assault cases depicted in the [blue triangle](#) at the beginning of the module. It is clear that current practices are not resulting in a significant percentage of sexual assaults being reported, let alone successfully investigated and prosecuted (when the evidence warrants). A paradigm shift is needed to significantly alter this pattern and offer victims a chance at justice.



No False Promises

Perhaps most important, any alternative reporting protocol must avoid false promises. It is difficult to imagine how damaging it would be to victims if they were presented with an option – such as anonymous or non-investigative reporting – that was later breached, either by compromising their anonymity or launching a full investigation against their wishes (except in certain unusual circumstances outlined in the protocol). This would undermine trust in the options for both victims and professionals moving forward.

It is therefore critical that the protocol is consistently applied in everyday practices. *Both the written protocol and the daily practices of professionals* must be reviewed in an ongoing way to determine which aspects are working and which need improvement.

Practice Considerations

We now turn our attention to various considerations for policy and practice when designing a protocol for alternative reporting options that is consistent with the spirit of VAWA forensic compliance, and the philosophy of *opening doors*, and *one step at a time*. These considerations intertwine with laws and requirements encoded in state and federal statutes, and the unique context of agency policies, practices, and resources.

Notification of Advocates

Given the many benefits of victim advocacy services, one practice that should be incorporated in any protocol for alternative reporting options is **notification of a victim advocate as soon as possible**.⁴³ That way, advocates can meet with the victim privately to explain the options available and the services they can provide, including information, support, accompaniment, and other forms of assistance.

Victim advocates serve an essential role in providing a victim-centered and trauma-informed response that not only promotes victim well-being but also can enable victims to remain engaged in the investigative process, which improves case outcomes (National Best Practices for Sexual Assault Kits: Multidisciplinary Approach, 2017, p. 9).

In many communities, victims are only offered the services of an advocate if they follow a standard reporting process and/or participate in a medical forensic exam.⁴⁴ Yet victims who are considering an alternative reporting option may be in particular need of these services. It is therefore worth considering how to integrate notification at all the

⁴³ [National Best Practices for Sexual Assault Kits; National Protocol for Sexual Assault Medical Forensic Examinations.](#)

⁴⁴ One study in Colorado found that sexual assault victims were more likely to access the services of an advocate if they participated in the standard reporting process versus alternative reporting options available in the state. Moldovan and Livermore, [Forensic Compliance in Colorado](#).



various entry points, so advocacy is offered to victims who enter any of the “open doors.”





Community-Based and System-Based Advocates

The US Department of Justice explains the difference between community-based and system-based advocates in [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach \(2017\)](#):

Victim advocates can be system-based, meaning they are employed by law enforcement or by prosecutors' offices, or community-based, meaning they are employees or trained volunteers with a nongovernmental community organization that provides services to victims. Not all jurisdictions have both system-based and community-based advocates, but including advocacy is important as early in the process as possible.

Community-based advocates can support alternative reporting by providing victims information about their options, supporting their decision-making process, and assisting them in enacting decisions. They may also accompany victims to the medical forensic exam and any law enforcement interviews (including interviews with prosecutors), or other contacts with community professionals. Their services can often continue long after any involvement with the criminal justice process has ended.



In contrast, victims typically meet with **system-based advocates** after they have reported their sexual assault to law enforcement, or when their case is referred to the prosecutor's office. Their services typically end at the conclusion of the criminal justice process. Decisions must therefore be made regarding whether, when, and how to offer the services of system-based advocates for victims who choose an alternative reporting option. These decisions will also be affected by the fact that system-based advocates do not usually have legally protected confidentiality in communications with victims.⁴⁵

More information is available in EVAWI's [two OLTl modules](#) on the topic of effective victim advocacy in the context of the criminal justice system.

⁴⁵ Most system-based advocates do not have legal privilege protecting the confidentiality of their private communications with victims. One notable exception is the state of Arizona, which offers privileged communications between "crime victim advocate and victim" ([A.R.S. 13-4330](#)). A crime victim advocate is defined as "a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims" ([A.R.S. 13-4401](#)). This definition clearly includes system-based advocates. For more information, see [Confidentiality: FAQ](#) published by the Arizona Coalition Against Domestic Violence.



Informing Victims

Research documents that sexual assault victims who are provided helpful information are more likely to participate in the criminal justice process and to be satisfied with the outcomes of their case and the professionals who assisted them.⁴⁶

Therefore, regardless of which entry point victims choose, a clear written protocol (and ongoing training) is needed to ensure that **all professionals have the same information about alternative reporting options and a realistic understanding of how they actually work.**

Consider creating an information sheet that describes the reporting system for others so that they will understand the intention, the process, the involved staff, and any limitations victims should consider. Decide how best to share this information within the agency, directly with victims, or throughout the community (Garcia & Henderson, 2010, p. 3).

Provided Upfront

A related question is whether all sexual assault victims will be informed about traditional and alternative reporting options upfront? Or will they only be told about alternative reporting options if they express reluctance toward standard reporting procedures?

Upon initial contact, sexual assault victims vary widely with respect to their initial orientation toward criminal justice participation. Some victims already know they want to report to law enforcement and participate in the process of an investigation and possible prosecution. Some victims know they don't want this. But most victims range between these two extremes, and they likely have many questions and concerns about criminal justice involvement. A philosophy of *opening doors*, and *one step at a time* would suggest that **victims should be provided as much information as possible to help them make decisions, and then supported in acting on them.**

Written Materials

Responding professionals will need to be prepared to explain alternative reporting options verbally, but **the information should also be provided in writing.** This is important because most victims will not be able to process everything they are told in the aftermath of a sexual assault. If they are provided written materials, they can read them later when they have more time and capability to focus. This also ensures that the information given to victims is consistent, regardless of their entry point in the system.

Informational materials will also need to be translated for victims who do not speak English and offered in accessible formats for victims who are blind or have low vision. When handing victims these materials, it is important to ask whether they could potentially compromise the victim's safety or privacy, based on who might see them.

⁴⁶ Kilpatrick, D.G., Beatty, D., & Smith Howley, S. (1998). *The Rights of Crime Victims - Does Legal Protection Make a Difference?* National Institute of Justice Research in Brief. Washington, DC: National Institute of Justice, US Department of Justice (NCJ 173839).



Accessibility of Written Materials

The Americans with Disabilities Act (ADA) requires government agencies to make reasonable accommodations to avoid excluding people with disabilities from their programs, services, and activities. This can include making sure that written resources are available in alternative formats, such as Large Print, Braille, CD, or screen readers. Guidance is offered in a 2014 publication by the US Department of Justice entitled, [ADA Requirements: Effective Communication](#).

Also, see the OLT module on [Successfully Investigating Sexual Assault Against Victims with Disabilities](#) for more information about these complex issues.

Points to Address

Informational materials should address a wide range of topics, such as the following:

- Reassurance about common responses to trauma, including uncertainty about reporting and reaching out for help, and information to address typical concerns victims may have about reporting to law enforcement and possible prosecution.
- Basic procedures for standard and alternative options for reporting, and a brief discussion of their advantages and disadvantages.
- A clear statement about who is eligible for alternative reporting options. For example, in some jurisdictions, they are only available for victims who are 18 years or older. The question of who is eligible for alternative reporting options may intersect with questions of when a mandated report must be filed.
- Whether victims who choose an alternative option will benefit from the rights that are typically afforded to crime victims who report following the standard process.
- Crime Victim Compensation (CVC) eligibility requirements: whether they are met with some or all alternative reporting options, and how to apply for CVC funds.
- Whether, how, and when victims will receive any follow-up contact.
- How the costs of a medical forensic examination will be covered (if an exam is being considered), including both medical and forensic components.
- Types of evidence that can be collected, where it will be stored, and for how long.
- How to have personal clothing or other evidence returned, if this is possible.
- Whether evidence will be stored anonymously, or, if it includes the victim's name, what steps will be taken to protect the confidentiality of this information.



- Whether, how, and when victims will be notified as the deadline for evidence destruction approaches.
- How long records will be retained by law enforcement and hospitals or other facilities conducting medical forensic examinations.
- Whether an investigation or possible prosecution is likely to be pursued against the victim's wishes, and under what circumstances (for example, if the assault involves severe physical injuries, or the case involves an intimate partner, a serial offender, or a suspect who is high profile within the community).
- Who to contact for additional information or to initiate a full investigation.
- How to provide positive or negative feedback, including any concern victims might have regarding their interactions with any of the responding professionals.
- Finally, if the victim has any personal contact with law enforcement, they should be given the officer's name, phone number, ID or badge number, and the incident number used by the agency in connection with the report, if one was initiated.

After reviewing the information, victims will then be able to document their consent to whatever option they choose, whether it is a standard or alternative reporting procedure.

Crime Victim Compensation⁴⁷

Crime Victim Compensation (CVC) programs were created to reimburse victims for financial losses and expenses resulting from crime. This can include a victim's expenses for medical care, counseling fees, lost earnings, funeral/burial expenses, and/or relocation. By seeking to repair the financial harms of crime, CVC programs are clearly aligned with the goal of *opening doors* for victims to restore their well-being and livelihood. These programs are available in all 50 states, the District of Columbia and two US territories. However, eligibility requirements vary by state, meaning victims who choose an alternative reporting option in some states may not be eligible for CVC funds.



For CVC eligibility requirements for every US state, territory, and the District of Columbia, see the [Payment Resources](#) on the SAFETa.org website hosted by the International Association of Forensic Nurses (IAFN) in (under Payment TA). It also includes a brochure and application for every CVC program.

More information is also available from the Office for Victims of Crime (OVC), US Department of Justice, in the section of their website dedicated to [Victim Compensation and Assistance Formula Grants](#)

⁴⁷ We would like to thank Dan Eddy, Director of the National Association of Crime Victim Compensation, for his helpful contributions of this section.



Reporting Requirements

Federal guidelines require CVC programs to “promote victim cooperation with the reasonable requests of law enforcement authorities.”⁴⁸ To meet this objective, **many states require victims to report the crime to law enforcement within 72-120 hours** to be eligible for reimbursement through the CVC program. A few states have a shorter timeframe (24-48 hours), whereas others have longer timelines or no time limit at all.⁴⁹

Yet some jurisdictions have created an exception to this reporting requirement for sexual assault victims who have a medical forensic exam but are undecided about reporting or criminal justice participation (one alternative reporting option). Victims in these jurisdictions follow the normal application procedure for CVC funds, because their participation in the exam is viewed as meeting the CVC reporting requirement. One such example is found in the District of Columbia.⁵⁰ Another is New Hampshire, where sexual assault victims are eligible for CVC funds as long as they seek medical care within 10 days of the assault and agree to the collection of forensic evidence.⁵¹

In other states, victims who have an exam but do not report to law enforcement can still apply for CVC funds, but they must request an exception to the reporting requirement. These requests are evaluated on a case-by-case basis, following procedures that vary considerably across states; a process is then provided for appealing the final decision. However, in the absence of any written policy guidance or published data on the topic, *it is impossible to know how often these requests for an exception to the reporting requirement are granted by CVC programs*, either initially or as a result of an appeal.



Alternatives for CVC Reporting Requirement

In California, policies for the state’s Victim Compensation Board (CalVCB) were revised in 2020 so they now emphasize that compensation claims for sexual assault cases should not be denied “solely because the victim did not report the crime.” Instead, CalVCB statute allows that “staff may use other factors to determine a crime was committed when a crime report is unavailable.” These other factors could include: medical records documenting injuries consistent with allegations of sexual assault; documentation that the victim received a sexual assault examination; mental health records; a letter or written statement from a counselor or other mental health provider; a Title IX or other campus report demonstrating a preponderance of evidence; or a restraining order against a sexual assault suspect. When verifying eligibility of military sexual assaults, CalVCB may also use either “restricted” or “unrestricted” reports.⁵²

⁴⁸ Newmark, L., Bonderman, J., Smith, B., & Liner, B. (2003). *The National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future*. Washington, DC: Justice Policy Center, Urban Institute (quote appears on p. xiii).

⁴⁹ For more information, please see the [National Association of Crime Victim Compensation Boards](#).

⁵⁰ For more information, see CVC eligibility requirements posted by the [District of Columbia Courts](#).

⁵¹ N.H. Code Admin. Rule JUS 605.13 (e).

⁵² Thanks to Marta Sykes, Manager of Training & Policy Implementation for the California Victim Compensation Board (CalVCB), for providing this information.



Contributory Misconduct and Eligibility

Some programs also state that victims are only eligible if they have **not contributed to their injury or victimization through wrongful conduct or provocation**.⁵³ Generally speaking, this means the crime was not caused by their own behavior.⁵⁴

As with the reporting requirement, some CVC programs have specific language in their policies or guidance to provide an exception by clarifying that the behavior of sexual assault victims will not be evaluated in terms of contributory conduct. One example is the statement written by the Pennsylvania Coalition Against Rape, in their *Program Manual for Sexual Assault/Victims Compensation Assistance*. This clear and direct language can be used as a model for other CVC programs, because it has implications for victims who

choose the standard reporting procedure as well as any alternative reporting procedure

In cases of rape and sexual assault, the conduct of the victim may not be considered with respect to assessing contribution to the crime or in denying the claim (Pennsylvania Coalition Against Rape, no date, p. 21).

Compensation and Alternative Reporting Options

When developing a protocol for alternative reporting options, it will be necessary to clarify whether sexual assault victims can still apply for CVC funds to reimburse any crime-related expenses. This may require evaluating statutory and administrative rules governing eligibility, and making certain exceptions for victims who access these alternative reporting paths. The exceptions should then be explained both in the protocol and informational materials for victims, to ensure they are administered consistently.

It is also important to remember that CVC regulations apply to *all types of crime*, not just sexual assault. This can create challenges when seeking to craft policies or procedures for sexual assault that are different from other crimes. For example, if the jurisdiction is establishing a protocol for anonymous reporting, it will be important to identify what statutes, eligibility requirements, and/or administrative procedures associated with the CVC program could potentially jeopardize that anonymity. These issues will also need to be explained to victims in clear and plain language, to ensure they are able to realistically weigh the advantages and disadvantages of alternative reporting options.



CVC Eligibility Requirements Do Not Affect Exam Payment

In some states, the cost of a medical forensic exam is paid by the CVC program, when the victim does not report to law enforcement or participate in the criminal justice process. However, *this is not affected by any CVC eligibility requirements*. Eligibility requirements are only used to determine whether victims can apply for CVC funds to compensate their crime-related expenses, not to cover exam costs.

⁵³ Newmark et al., *The National Evaluation*.

⁵⁴ Personal communication, Dan Eddy, Director, National Association of Crime Victim Compensation, 10/2/14.



Medical Mandated Reporting

Medical mandated reporting can be complicated, especially when it intersects with VAWA forensic compliance and alternative reporting options. The term is used to refer to any legal requirement that health care providers must report to law enforcement when a patient discloses – or the provider has a reasonable basis for suspecting – that the patient has been the victim of a certain crime. For example, the provider may observe indicators that a sexual act was committed against a child or dependent adult.

These laws vary dramatically in terms of what activates the reporting requirement.

- All states require medical professionals to report sexual assault when the victim is a **child** (as defined by state law).
- In addition, most states require medical professionals to report sexual assault when the victim is a **dependent adult**. The definition of what constitutes a dependent adult is also defined in state law, but it generally includes such factors as advanced age, severe cognitive disability, or other factors.
- Most state laws also require mandated reporting of any sexual assault committed by a **caregiver or other authority figure**, although the exact provisions of these reporting requirements vary by state.
- Most states *do not* require health care providers to report sexual assault of a **competent adult**. However, *a few states do*. In these jurisdictions, a report is required every time someone presents to a health care facility as a result of being sexually assaulted.
- Some states also require a report when patients present with **certain types of injuries**, such as gunshot or knife wounds, or other injuries that are non-accidental, result from violent crime, or involve the use of a deadly weapon. In these states, health care providers are required to notify law enforcement that a patient has presented with the specified injury, however, they may not have to say that the patient was also sexually assaulted.
- Finally, a few states have medical mandated reporting for **intimate partner violence**. In these states, health care providers are required to notify law enforcement when a patient discloses that a sexual assault occurred within the context of intimate partner violence (or when the health care provider has reason to suspect this is the case).



For medical mandated reporting requirements in each US state, please see the legal compilation created by the National District Attorneys Association: [Mandatory Reporting of Domestic Violence and Sexual Assault Statutes \(2010\)](#). Also see the section on [State Laws and the Nurse Practice Act](#) in the web-based *SANE Program Development and Operation Guide* by the Office for Victims of Crime, and EVAWI's [webinar](#) on medical mandated reporting.



Mandated Reporting and VAWA

As discussed throughout this module, VAWA forensic compliance requires that victims have access to a medical forensic exam without being required to “cooperate with law enforcement” or “participate in the criminal justice system.” When a mandated report is filed, this means victims cannot be required to personally talk with a law enforcement officer or participate in the investigation. In other words, victims *do not* have the option of deciding whether a mandated report will be made. They *do decide* whether they want to talk to law enforcement or provide any information in connection with the report.⁵⁵

Victims should also be advised which agency (or agencies) will receive the mandated report, what information will be included, and whether it must identify the victim (or suspect, if known) by name. These requirements are typically outlined in state law.



California law requires health care providers to use a statewide [report form](#) for any suspicious injuries, following instructions that are included with the form. These materials can be adapted for mandated reports in other jurisdictions.

No Report Without Legal Requirement

If there is no mandated report required, the decision of whether or not to contact law enforcement should be left to the victim. If a victim does not want law enforcement contacted, **health care providers should not take it upon themselves to report the sexual assault to law enforcement if they are not legally required to.** This clearly violates the spirit of VAWA forensic compliance and alternative reporting options, which are designed to increase access to medical forensic examinations for victims who are unsure about reporting to law enforcement or participating in an investigation.

This practice also violates the Health Insurance Portability and Accountability Act (HIPAA). HIPAA clearly states that health care providers can only report a patient’s disclosure of sexual assault to law enforcement when one of two conditions are met:

- The report is required or expressly authorized by state law.
- The patient has consented to the report being made.

If there is no legal mandate or patient consent, health care providers should not provide any information about the suspected sexual assault of a patient to law enforcement.

⁵⁵ Medical mandated reporting requirements can create potential conflicts with the implementation of VAWA forensic compliance or alternative reporting options. For example, a statewide assessment in Colorado concluded that there was some confusion regarding: (1) Law enforcement’s statutory obligation to investigate a sexual assault involving an intimate partner; (2) The obligation to honor the victim’s desire to not participate in a sexual assault case within the context of domestic violence; and (3) The question of whether evidence obtained in a sexual assault medical forensic exam could be subpoenaed as evidence in a domestic violence case. Any such conflicts will need to be identified and explored, and may need to be resolved through statewide legislation. Moldovan and Livermore, [Forensic Compliance in Colorado](#).





For detailed information about HIPAA, please see the website for the [US Department of Health and Human Services](#). Also see EVAWI's two-part training bulletins series: (1) [Notification of Advocates and HIPAA](#) and (2) [More on Advocates, Routine Notification, and HIPAA](#)

Three Scenarios for Consideration

To summarize, there are three possible scenarios when it comes to mandated reporting.

- 1) **The victim consents to law enforcement being contacted:** Health care providers can notify law enforcement whenever the victim consents to this, regardless of whether there is any medical mandated reporting requirement.
- 2) **The law requires health care providers to file a report of suspected sexual assault under circumstances that apply to this patient:** In this scenario, the report will be made regardless of whether the victim/patient consents. However, the victim will need to be advised of this mandate, and notified that they still decide whether they will talk with an officer or participate in the investigation.
- 3) **There is no mandated reporting requirement, and the victim has not consented to law enforcement being contacted.** In this scenario, health care providers would violate HIPAA if they notified law enforcement, regardless of what the facility's policy or procedure might say. This must be clearly articulated in any multidisciplinary protocol for alternative reporting options.

Not Recording Victim Identity

State laws also vary regarding what procedures must be followed for medical mandated reports. For example, many states require health care providers to identify the victim in the report to law enforcement; as noted above, *this must be made very clear to victims*.

However, in other states, health care providers may be able to meet their mandated reporting obligation **without identifying the victim**. In this scenario, the health care provider may use the phrase "declined by patient" for the patient's name (or suspect's name, if known), as well as address and phone number. A non-identifying address could also be used for the assault location. For example, if the assault was committed in the victim's own home, the address for the police department could be used. Or the 100-block could be used to avoid listing a specific address that would identify the victim.

If it is not legally required, EVAWI recommends that such practices be followed to avoid identifying the victim and compromising their confidentiality and privacy. Following a similar logic, we also recommend that **law enforcement not launch an investigation** into a mandated report when this violates the stated wish of a competent adult victim, except in certain specified circumstances. Any alternative reporting protocol will need to be developed with input from professionals in all the involved disciplines, to ensure they



are consistent with medical mandated reporting requirements, as well as the *opening doors*, and *one step at a time* approach they are designed to bring to life.

Education for Mandated Reporters

Because the details of medical mandated reporting vary dramatically across jurisdictions, professionals from all the involved disciplines must work together to educate themselves and keep up with changes in law, policy, and practice. This includes health care providers who do not conduct medical forensic examinations, but nonetheless provide critically needed care for sexual assault victims. It must also be clear how these legal requirements for medical mandated reporting intersect with the design and implementation of alternative reporting options.

Mandatory reporters need to know applicable statutes regarding reporting sexual assault cases that involve older vulnerable adults, persons with disabilities, and minors (National Protocol for Sexual Assault Medical Forensic Examinations, 2013, p. 54).

Sample Protocol: Ohio Exams with Mandated Reporting

Ohio has a medical mandated reporting requirement for all felonies committed against competent adults, including sexual assault. This has important implications for the anonymous reporting procedures outlined in their statewide protocol for medical forensic examinations.⁵⁶ First, it means that a report will be filed by health care providers every time a medical forensic exam is conducted with a sexual assault victim, including when the victim chooses the option of anonymous reporting. However, the protocol also states that an adult patient's name **does not need to be included in the mandated report**; it may simply include the date and general location of the assault.

Other elements of the Ohio protocol include the following:

- A unique ID number is created and used in place of the patient's name on all specimens/paperwork (patient's birth date plus last 4 digits of the medical record). Victims are provided the ID number on their discharge instructions. Yet the consent form also cautions that anonymity may be compromised and an investigation pursued: "I understand that my medical records may be subpoenaed by the court for investigative purposes. I may be contacted by the hospital if this happens."⁵⁷
- The protocol states that no investigation will be pursued unless the victim converts from anonymous reporting to full participation, but the consent form again cautions

⁵⁶ Ohio Department of Health (2011). [Ohio Protocol for Sexual Assault Forensic and Medical Examination \(2nd Edition\)](#). Columbus, OH: Office of Healthy Ohio, Bureau of Health Promotion and Risk Reduction, and Sexual Assault and Domestic Violence Prevention Program.

⁵⁷ Based on past cases, this typically only occurs if there is a CODIS hit to an individual with serious felony charges or identified as a serial offender. However, it is not a frequent occurrence (personal communication, Sandy Huntzinger, Victim Service Coordinator, Ohio Attorney General's Office, 10/23/20).



that evidence “may be tested at a crime lab” even with an anonymous report. In other words, anonymous reports are generally defined as non-investigative, but local agreements are needed to ensure they are not pursued against a victim’s wishes.

- Victims are advised in their discharge paperwork that they should call the law enforcement agency storing their evidence if they decide to convert their anonymous report to participate in the criminal justice process. “At this time, an investigation of the crime, including the examination of the evidence, may commence” (p. 9).

In the Ohio protocol and consent form, it appears that an attempt has been made to balance the victim’s stated desire for anonymous (and non-investigative) reporting with the reality that some circumstances may preclude this option. Other jurisdictions are advised to make a similar effort, with procedures spelled out as clearly as possible.

Protecting Victim Privacy

Establishing and upholding a policy of confidentiality is “the basis of trust” between victims and responding professionals, including law enforcement.⁵⁸ Therefore, when victims choose a reporting option that does not involve identifying themselves to law enforcement or personally talking with an officer, steps should not generally be taken that will violate this “basis of trust” and violate the victim’s confidentiality. For example, investigators should not seek to identify the victim, share information, or initiate contact.

Sharing Information

There are some circumstances, however, where information might be shared without the victim’s consent. This includes information that must be shared by health care providers to meet their mandated reporting requirements – or by university personnel to meet their legal obligations under the Clery Act. It is also

Consider a situation in which a rape victim discloses significant information about a drug dealer. When does the victim of sexual violence hold all authority over the information shared? When might information related to the drug supply, storage, or sales be shared, anonymously or not, with another investigator? (Garcia & Henderson, 2010, p. 3).

important to clarify what information might be shared between responding professionals, including law enforcement, health care, and victim advocacy. These issues will need to be addressed in a multidisciplinary protocol as well as informational materials for victims, to ensure they are followed consistently.

⁵⁸ Garcia, S. & Henderson, M. (2010). Options for Reporting Sexual Violence. *FBI Law Enforcement Bulletin*, 79 (5), 1-5 (quote appears on p. 2).



Body Worn Cameras

Another privacy issue is the use of body-worn cameras (BWCs) by law enforcement. With alternative reporting options, law enforcement may enter a health care facility where victims have had, or in the process of having, a medical forensic examination. This may be for the purpose of responding to a mandatory report and/or taking possession of evidence from an exam. Yet it could potentially expose victims, staff, and other patients to BWC recording, so protections should be addressed in the protocol.



Photo Credit: Axon



Valuable guidance is offered in a 2014 publication by the Police Executive Research Forum (PERF) entitled, [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#). Also helpful is [Police Body Worn Cameras: A Policy Scorecard](#). This resource was published in 2015 by Upturn and the Leadership Conference on Civil and Human Rights.

Using a Pseudonym

One strategy for protecting victim privacy is a *pseudonym* (fictitious name). Some states have enacted laws to provide victims the option of using a pseudonym on public records for reported offenses, including police reports, press releases, and records of judicial proceedings. This concept is often confused with an anonymous report, but it is not the same. When victims use a pseudonym, **they are not truly anonymous**. Responding professionals (like police and prosecutors) will still know who the victim is. The pseudonym is simply used to protect the victim's confidentiality in public forums like a criminal trial, and any criminal justice records that could be obtained by the public.



Texas offers one example of a victim pseudonym law and protocol. For detailed information about the policies and practices used to enact this law, as well as a sample form for victims to establish a pseudonym, please see [Appendix C](#).

Follow-Up Contact

When victims initially choose a reporting option that does not involve a full investigation, they may be unlikely to convert to full participation without some form of follow-up contact. This follow-up contact can be used to check on the victim's well-being, answer any questions they may have, offer support and other forms of assistance, and provide referrals for other services. It also offers an opportunity to provide more information about reporting options, and explain the process for initiating a full investigation.

Who, When, and How

Who will have the responsibility to follow up with victims? It depends. **For victims who have personal contact with law enforcement**, there is no universal path or formal consent procedure for follow-up contact. Follow-up contact with victims will thus vary, but it will be guided by victim-centered and trauma-informed principles. Investigators will discuss the various options with each victim, and come to a decision collaboratively.

If the victim chooses an option **without law enforcement contact**, the protocol could still offer an option of follow-up contact by an investigator. For example, an investigator could call the victim within a few days of the initial contact, to offer services of the law enforcement agency. At the very least, this communicates support for the victim and conveys the message that the incident is being taken seriously. Some victims may find themselves in a better position to participate in an investigation at that point, after they have recovered from the immediate trauma and established some support.

For victims who have a medical forensic exam, many will receive some form of follow-up contact from the **sexual assault nurse examiner (SANE) / sexual assault forensic examiner (SAFE) program**.⁵⁹ Yet some SANE/SAFE programs operate on a callout basis with no administrative time that could be used for follow-up contact with victims.

Finally, **advocates** frequently follow up with victims. For example, an advocate might try to reach the victim within 72-96 hours of their medical forensic exam. The same type of procedure could apply to victims who do not have an exam, when they contact law enforcement or another entity in connection with an alternative reporting option.

Consent for Notification

Beyond standard follow-up, some victims may choose to be contacted in specific circumstances. For example, we have already noted that victims may want to know if someone else names the same suspect in a subsequent report, or if an investigating agency identifies a possible serial offender based on similarities or other connections.

⁵⁹ The forensic examiner may need to follow up with victims based on their medical needs. This may include checking the victim's physical well-being and follow-through on medical recommendations (medications, testing). Or the victim may be asked to return to the exam facility, to evaluate medical treatment or examine and photograph any injuries for signs of healing and forensic evidentiary purposes.

Any such follow-up contact by law enforcement would not require formal consent procedures. But for other professionals such as health care providers and advocates, follow-up

Specify the means (phone, e-mail, in person), the content (first name or professional title, code phrase, full disclosure, and the circumstances (if another victim comes forth, if more evidence is discovered) (Garcia & Henderson, 2010, p. 3).

contact does require specific consent by the victim. Informational materials should describe these options for follow-up contact, including the circumstances under which they want to be contacted, and the best methods for doing so (phone number, email, etc.). When evaluating these options, it is important to consider not only access and convenience, but also the victim's safety and privacy.

Converting to Full Participation

When people talk about “converting,” they are typically describing a scenario where victims initially choose an alternative reporting option with limited or no investigation by law enforcement, but later decide to participate in a full investigation and possible prosecution. Yet we also highlighted how law enforcement can conduct *one investigative step at a time*. This means conversion is not an all-or-nothing proposition. It may also unfold one step at a time, as victims become increasingly willing to engage with the criminal justice process, possibly culminating in a successful prosecution.

How Many Victims Convert?

How many victims convert from an alternative report to full participation? There is limited data to answer this question. In the US military, approximately 23% of “restricted” (non-investigative) reports filed in FY2019 later converted to an “unrestricted” (investigative) report.⁶⁰ But these “conversions” were not necessarily based on the victim's decision or choice. Restricted reports can be investigated by military law enforcement without the victim's cooperation, if the information provided by a third party supports the elements of a sexual assault offense or law enforcement has viable leads to pursue.

In civilian agencies, the data varies. For example, one statewide assessment examined 228 “non-report” (non-investigative) evidence kits stored by the Texas Department of Public Safety between June 2010 and May 2011. As of that date, only 11 (4.8%) had converted to standard reports, allowing local law enforcement agencies to pursue an investigation.⁶¹ A second study was conducted in 2012 with 496 professionals registering for an EVAWI webinar on the topic of forensic compliance. Of these, most indicated that fewer than 10% of the victims in their community who initially had a medical forensic exam, but were unsure about criminal justice participation, ultimately

⁶⁰ US Department of Defense (2019). [Department of Defense Annual Report on Sexual Assault in the Military](#). Washington, DC: US Department of Defense.

⁶¹ Busch-Armendariz, N.B. & Heffron, L.C. (2011). [Non-Report Sexual Assault Evidence Program: Forging New Victim-Centered Practices in Texas](#). Austin, TX: Institute on Domestic Violence and Sexual Assault, Center for Social Work Research, School of Social Work, The University of Texas at Austin.



converted to full participation in the criminal justice process.⁶² It is clear we need more data on the conversion rates for various alternative reporting protocols.

How Long Does it Take?

There is even less information available about how long it takes for victims to convert. The Texas report noted that the average amount of time it took for “non-reporting” victims to convert to full participation was 9.6 weeks. Yet this ranged from one week to eight months.⁶³ Again, updated information is needed, because the question of timing is important to consider when creating alternative reporting protocols, to make sure victims have enough time to arrive at their own decisions, and take steps to act on them.

Is it Really “Converting?”

It is also worth exploring how the process of “conversion” unfolds in actual cases. For example, some victims convert “mid-stream,” when they are initially unsure whether they will be able to participate in an investigation but then decide *they will do it*, either during a medical forensic exam, or a conversation with law enforcement or victim advocates. This is a very common scenario, and it results from the process of human interaction, when victims are able to make a connection with individual professionals, and have an opportunity to ask questions, gather information, and make decisions. Yet this will not show up in any agency statistics, meaning the data may *underestimate* the total number of victims who convert from an alternative pathway to full participation.

On the other hand, the statistics may *overestimate* the true number of conversions by including victims who initially chose an alternative reporting path, but an investigation and possibly even prosecution was pursued against their wishes. This issue was raised above, in the context of the US military, but it is just as relevant for civilian law enforcement agencies. If we describe these cases as “converted,” we are doing a serious disservice to victims, and presenting a misleading image to the public, by implying that the conversions were the result of victim decisions or choices. When reports are investigated and possibly prosecuted against the victim’s wishes, **they should not be called “converted” or included in statistics on converted cases.**

Case Conversion Protocols

Returning to the twin goals of alternative reporting options (*opening doors*, and *one step at a time*), it is clear that this vision can only be achieved when it is easy for victims to choose an alternative path, and just as easy to change their mind and participate in an investigation. Protocols will need to consider questions such as the following:

- Who do victims contact to convert their report? If they are required to contact law enforcement, how will they know which law enforcement agency to contact?

⁶² Archambault, J., Lonsway, K.A., & Day, K. (2012). [Forensic Compliance in 2012](#). EVAWI webinar.

⁶³ Busch-Armendariz and Heffron, [Non-Report Sexual Assault Evidence Program](#).



- What information will victims need to initiate the process? For example, if they have a medical forensic exam, will they need a case number or an exam date? Maybe even the name of the health care provider who conducted the exam?
- How will any evidence associated with the report be identified by law enforcement? Typically, this will be through a medical forensic exam, but it could apply to any evidence provided by the victim with an alternative reporting option.
- When and how will victims be connected with advocacy services? Protocols should ensure that this happens as soon as possible, regardless of which path victims take, so they are supported throughout the process of reporting and any subsequent investigation and possible prosecution of their report.

When crafting a protocol, the ultimate question is this: *Is there any realistic possibility that cases will be successfully investigated and prosecuted if victims convert from an alternative reporting procedure to full participation?* If not, *what can be done to make this a reality?* Answers will guide the development of a truly comprehensive protocol.

Point of Contact

For victims who choose some type of law enforcement contact as part of an alternative reporting procedure, they will need to be able to get back in touch with that same law enforcement agency to initiate or expand their participation in an investigation. If the victim originally talked with an investigator, the point of contact will most likely be the same investigator, or at least the investigative unit to which that investigator is assigned. If a patrol officer responded to the initial report, and the agency is too small to have an investigative unit, the victim might call the non-emergency business number to contact the original officer, or have another officer respond, to expand the victim's participation. Protocols will need to specify what contact information to give to victims for this process.

If the victim did not have any law enforcement contact, they may still need to call the agency with jurisdiction over the sexual assault to initiate their participation in an investigation, or they might be advised to call an advocacy agency or another third-party entity. For instance, victims who have a medical forensic exam will often be asked to contact the hospital or other exam facility (SAFE or SANE program), but we have already noted that some SANE/SAFE programs operate on a callout basis without any administrative time. In these communities, the protocol might advise victims that the preferred method for case conversion is to contact law enforcement or the advocacy agency and provide the tracking number for their exam report and/or evidence kit.



Point of Contact: Position, Not Individual

Regardless of which entity is the point of contact for case conversion this should be a position rather than an individual. That way, the information will remain accurate even when there is turnover among individual staff members.



Information for Victims

Whatever the conversion protocol is, best practice is to provide this information upfront and in writing, during the initial contact. Still, victims may lose or misplace written materials, so it is important to keep the process as simple – and logical – as possible.

For victims who have a medical forensic examination, the following information should be included in the written materials they are given to take home:

- Date of the exam, and the name of both the examiner and the exam facility
- Tracking number assigned to the report from the exam and the evidence kit
- Location where the evidence will be stored, and for how long
- Information about when specific evidence will be destroyed, and whether the victim can expect to receive a reminder prior to that date

It is also important to be realistic with victims, so they understand that an evidence kit doesn't necessarily include everything that is needed to investigate and possibly prosecute a sexual assault offense. Other evidence will be needed, and some of it may become increasingly difficult for an investigation to capture with the passage of time.

Then for any victim considering an alternative reporting option, they should be given the following information, **regardless of whether they have a medical forensic exam**:

- Point of contact to initiate or expand criminal justice participation
- Brief description of what conversion and criminal justice participation will involve
- Information about advocacy services, to obtain support during the process

Informational materials can also address some common questions about case conversion. For example, these materials can note that any crime victim has the right to report to law enforcement, regardless of how much time has passed since the commission of that crime. However, the question of whether a converted report can be successfully investigated and prosecuted will be based on a number of factors, including the statute of limitations and the existence of corroborative evidence.

Evidence Collection, Storage, and Testing

Many questions about evidence will arise when communities seek to create a protocol for alternative reporting options. For example:

- What types of evidence can be collected and stored?
- Who will store it, and for how long?
- Will it be tested by a forensic laboratory?

- Can victims have any evidence returned?
- Will they be notified when their evidence will be destroyed?
- Will any of these procedures be different for alternative reporting options?

Prosecutors need to be involved in addressing these questions during protocol development, to ensure that evidence will be admissible for any cases that go to trial.



For more information and resources on evidence collection, transfer, storage, and testing, please see the [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#) published by the National Institute of Justice.

The Sexual Assault Kit Initiative (SAKI) also offers an [Evidence Tracking Toolkit](#) with documents, webinars, and other resources on three key topics: (1) conducting a sexual assault kit inventory, (2) selecting and implementing an evidence tracking system, and (3) sample evidence tracking systems.. Additional tools are available on EVAWI's website, including model policy materials on [Evidence Retention, Disposition, and/or Removal](#), which incorporate both background information and sample policy language.

Evidence Collection

Questions about evidence collection frequently pertain to the medical forensic examination, but evidence could be taken into custody by law enforcement in connection with any form of alternative reporting, with or without an exam. For example, victims may provide an article of clothing or bedding, take photographs of injuries, or submit digital evidence like cell phone data, digital photographs, or social media posts.

“Do It Yourself” Kits

One specific practice that raises difficult questions is the use of “do it yourself” sexual assault evidence kits. These kits were developed by private companies, based on the premise that some victims may want forensic evidence collected from their body but do not feel comfortable going to the hospital or other facility for a medical forensic exam. Yet the kits could pose a false promise for sexual assault victims if their use is not connected with response protocols for law enforcement and other service providers.

Keep in mind that medical forensic exams serve two purposes for victims: (1) medical care and (2) forensic evidence collection and documentation. Without the involvement of a trained health care provider, these do-it-yourself kits can only meet the second purpose in terms of sample collection and documentation. **Any associated health care needs remain unaddressed.** Victims will not receive the physical and psychological support that health care providers can offer, along with the assessment and treatment of injuries, and prophylaxis against sexually transmitted infections and pregnancy.



Another concern is the cost of the kit, which may be borne by victims even though medical forensic examinations are available for free (per the VAWA forensic compliance provisions). These are both legitimate concerns, but they arguably fall within the realm of victim choice, if victims are well-informed about the advantages and disadvantages.

It is less clear how to address concerns that evidence collected using a do-it-yourself kit may be unusable within the criminal justice process. Numerous organizations and officials (on the state, local, and federal level) have issued statements decrying these kits as harmful to sexual assault survivors, and discouraging their sale or use by the public. Several state attorneys general went even further, issuing “cease and desist” orders, and at least one state passed a law prohibiting the sale of do-it-yourself kits.⁶⁴

The argument made is that do-it-yourself evidence collection will not meet established standards for evidence collection and chain of custody. This raises the question of whether the evidence would be admissible in court, if the victim collected evidence without any involvement of responding professionals, and simply showed up at a hospital, exam facility, or law enforcement agency with a completed kit in hand. Presumably, the reason victims would choose to collect evidence is to preserve the possibility that it could be used to assist in an investigation and possible prosecution. If that possibility is not realistic, then the practice offers a false promise to victims.

On the other hand, there is a long history of sexual assault victims bringing their own evidence to law enforcement or forensic examiners – providing everything from clothing and bedding, to condoms, tissues, and towels. In fact, victims frequently demonstrate amazing foresight by preserving evidence for collection (e.g., spitting into a tissue or glove following oral copulation, inserting or pulling out a tampon to preserve biological evidence such as semen following vaginal penetration). This type of evidence often plays a key role in the investigation and prosecution of sexual assault cases.⁶⁵

In other words, victims have long been involved in “do-it-yourself” evidence collection, but there is a new level of concern with creating and selling evidence collection kits to obtain possible evidence without any involvement of health care providers (to support and assist with the process), law enforcement (to protect the integrity of the evidence), and victim advocates (to offer victims information, support, and service referrals).

Supported At-Home Evidence Collection

In the midst of COVID-19 and resulting stay-at-home orders, one California jurisdiction crafted an innovative solution to continue providing medical forensic examinations, by offering at-home evidence collection for sexual assault victims **with the support of professionals in health care, law enforcement, and victim advocacy.**

⁶⁴ For a compilation of these statements, see the [International Association of Forensic Nurses \(IAFN\)](#).

⁶⁵ This is based on the experiences of Sgt. Joanne Archambault, who retired from the San Diego Police Department after almost 23 years of service, the last 10 of which were spent supervising the Sex Crimes Unit, which had 13 detectives and was responsible for investigating approximately 1,000 felony sexual assaults each year. However, it also reflects the experiences of other practitioners across the country.



The county's Sexual Assault Response Team (SART) worked collaboratively to develop the at-home protocol, to increase the likelihood that evidence would be collected, documented, and transferred according to accepted criminal justice standards. The [Temporary COVID-19 Shelter in Place SART Protocol](#) was adopted on April 10, 2020; it has since been revised and updated as the team learns from experience. They even developed an instructional video to prepare responding professionals within law enforcement, forensic nursing, and victim advocacy to implement the protocol.

When a law enforcement officer is notified that a person has been sexually assaulted (either directly by the victim, or by a health care provider such as the hospital Emergency Department), the new protocol directs them to contact a Sexual Assault Forensic Examiner (SAFE) to request a medical forensic exam.⁶⁶ If the victim is in a safe and private location, the SAFE first calls the victim and uses a medical screening tool to determine emergent care needs and the appropriateness of an exam given the time lapse since the sexual assault, and the types of acts committed.⁶⁷

If the patient screening does not reveal any emergent medical concerns, a victim may request a teleSART exam. TeleSART is a virtual exam that is conducted interactively with the SAFE and advocate present. The victim is asked to remain in view of the SAFE while collecting evidence, but swabs are collected in such a way as to preserve the patient's privacy (e.g., under clothing). The advocate can provide a supportive presence throughout the process, just as they do when the exam takes place in person.

When a teleSART exam is requested, the SAFE contacts law enforcement to request delivery of a forensic evidence collection kit to the victim's location. A consent form and urine cup are also provided. The SAFE then sets up a HIPAA-compliant telemedicine connection for the victim, the responding officer, and a sexual assault advocate. The SAFE leads a multidisciplinary team interview with the victim (following statewide guidance on the forensic report form), and documenting information with the officer and advocate virtually present so they can interact with the victim throughout the process.⁶⁸

After the interview, the officer leaves the platform and the SAFE guides and observes the victim throughout the process of collecting and sealing evidence. The SAFE then notifies law enforcement that the kit is ready for pick-up. The victim is invited to meet the SAFE at a convenient time to test for sexually transmitted infections and/or to receive emergency contraception and prophylaxis against sexually transmitted infections.⁶⁹

⁶⁶ In California, health care providers are required to report all suspected sexual assaults to law enforcement, and medical forensic examinations are requested by law enforcement on behalf of victims.

⁶⁷ At-home evidence collection will not be offered if the victim reports being pregnant, or strangled, or if they experienced a loss of consciousness, a head injury, severe pain, bleeding, or other significant history or symptoms. In these scenarios, the SAFE will refer the patient to the hospital Emergency Department.

⁶⁸ The officer may record the interview using an agency-issued device, but the platform is encrypted and recording features disabled. If an injury is visible, the officer assigned to pick up the evidence kit could be asked to take a photograph, if the victim consents.

⁶⁹ Not all victims require prophylaxis against pregnancy and/or sexually transmitted infections (STIs); this is determined on an individual basis. If the victim requires or requests baseline testing for STIs, the SAFE will meet them at the hospital to collect blood and/or urine, and offer prophylactic medication accordingly.



This supported response protocol is extremely innovative in adapting to the restrictions of a public health emergency, providing services that meet the needs of victims and protecting the safety of a community, all while preserving criminal justice viability. It is unclear whether this practice will remain after the US emerges from the pandemic, but **this type of supported response protocol could offer a longer-term solution** for many victims who are unable to present to a hospital or other exam facility, either because of geographical isolation or other factors. For example, some victims may continue to choose an at-home option to protect their confidentiality and/or safety.



What is Lost with At-Home Evidence Collection

While supported at-home evidence collection may remain an option beyond the COVID-19 pandemic, it is important to remember what is lost when victims do not receive a full medical forensic examination by a specially trained SAFE or SANE.

For example, when they use a virtual platform, health care providers are limited in their ability to comprehensively assess the patient's safety, health, and well-being. They cannot conduct a full head-to-toe physical exam or photograph any injuries, which limits the documentation of exam findings. In some programs across the country, blood is routinely collected both for toxicology and to test for syphilis, hepatitis, HIV, and other medical conditions. To maintain the same high standards, victims must be seen in-person by a health care professional.

Where Should Evidence be Stored?

While the answers to some of these evidence questions may vary by community, the issue of storage location should be relatively straightforward. **Best practice is to have evidence stored long-term by law enforcement, following standard procedures established for all evidence associated with reports of criminal offenses.**⁷⁰ Only law enforcement is equipped to maintain the rigorous standards required for storage conditions and proper chain of custody. This means health care providers should transfer the evidence they collect and document during a medical forensic examination to law enforcement as soon as possible, ideally within three business days. If the evidence cannot be physically retrieved by law enforcement within that time period, a shipping method can be used as long as criminal justice standards are achieved.⁷¹

This also means law enforcement will store any other evidence provided by victims in connection with an alternative reporting option. The evidence might be labelled and tracked using a pseudonym or other anonymous tracking number (rather than the victim's name). Or, if the evidence is tracked using the victim's name, the protocol should document the good faith agreement of the law enforcement agency not to initiate an investigation without victim consent. Much of the guidance on VAWA forensic compliance will be directly relevant for guiding policies and practices in this area.

⁷⁰ [National Best Practices for Sexual Assault Kits.](#)

⁷¹ [National Best Practices for Sexual Assault Kits.](#)



★ Private Storage Facilities for Evidence

In New York State, a private storage company, [SAFE Storage, LLC](#), was specifically developed to respond to increasing demand for long-term maintenance of physical evidence associated with sexual assault exams. It was established following the adoption of a new statewide requirement to store sexual assault evidence kits (and other associated evidence) for a period of 20 years. Private storage facilities can be an effective solution to meet this increasing demand, as long as storage conditions meet the same (or better) requirements in place for hospitals and law enforcement agencies to protect the integrity of the evidence, and proper precautions are taken to document chain of custody.

For jurisdictions interested in more information, the [SAFE Storage website](#), outlines the need and purpose of private storage facilities, as well as operational details for: staffing and security, tracking, chain of custody, HIPAA compliance, and ongoing assessment and evaluation. They focus on the importance of multidisciplinary collaboration in any such program, including in-depth-training of all the professionals involved. There is also a confidential website for survivors to access information about their kits with links to community resources.

How Long Will Evidence Be Retained?

For any alternative reporting options, the purpose would be defeated if evidence associated with the report was not held long enough to give victims time to convert to full participation in the criminal justice process. Thus, **best practice is to hold evidence for at least the statute of limitations for the specific crime(s).**⁷² Or indefinitely, in jurisdictions that have eliminated the statute of limitations for sexual assault or that issue “John Doe warrants” based on a DNA profile rather than a name.⁷³

Regardless of how long evidence is stored, this must be clearly explained both in the alternative reporting protocol and informational materials for victims. Otherwise, there could be concerns related to consistency, selectivity, and a lack of fairness.



Medical Records Retention and Criminal Justice Needs

While health care facilities are discouraged from storing evidence, they do store the records from a medical forensic examination, including written and photographic documentation. Health care facilities are encouraged to create retention policies for these records “in accordance with statutes of limitations and

⁷² [National Best Practices for Sexual Assault Kits](#).

⁷³ Felony arrest warrants “toll” (or pause) the statute of limitations for a crime based on the theory that the suspect has fled or is hiding from justice. John Doe warrants are used when the traditional identity of a suspect is unknown, but their DNA profile has been discovered during the course of a law enforcement investigation. Because this evidence is unique to a person (or identical twins), it is used to identify the individual for the arrest warrant. Once the DNA profile is matched to a specific person, the statute of limitations is no longer tolled and begins to run again; prosecution of that suspect must take place within the statutory time limit. For more information, see: [National Best Practices for Sexual Assault Kits](#).



other criminal justice needs rather than with traditional parameters for medical record keeping, storage, retention, and destruction.”⁷⁴

Evidence Tracking

Many jurisdictions are enacting reforms to improve their tracking of sexual assault evidence. **A computerized tracking system is the best way to accomplish this goal**, by coordinating information in a comprehensive way about the status, progress, and outcomes of all sexual assault reports and their associated evidence.⁷⁵ Keep in mind that tracking is needed for all the evidence associated with a sexual assault report. This could include an evidence kit, as well as blood and/or urine samples, and other items that may be stored separately (clothing, bedding, tissues, towels, condoms, etc.).



Resources to Improve Evidence Tracking Systems

Some law enforcement agencies might not have the resources to create or sustain a such a system on their own. However, they can partner with forensic laboratories in this effort to develop such a tracking system on the local, regional, or statewide level. The Bureau of Justice Administration’s [Sexual Assault Kit Initiative \(SAKI\)](#) grant program allows funds to be allocated for the creation and maintenance of an evidence kit tracking system, whether purchased commercially or “home-grown.” The SAKI Training and Technical Assistance website provides [guidelines](#) for developing and evaluating electronic tracking systems, including minimum data elements and key considerations. The Bureau of Justice Administration also operates the [Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting \(SAFE-ITR\) Program](#), providing funding to assist agencies in inventorying, tracking, and reporting of sexual assault kits.



Promising Practices for Evidence Tracking

Most SAKI grantees have implemented evidence tracking, including the Montana Department of Justice. The Montana SAKI system tracks the kit from initial collection at a health care facility, inventory and storage by the law enforcement agency, laboratory analysis, and storage or destruction after completion of analysis. Anyone involved with any stage of this process can update the status and location, while survivors can access [real-time kit status](#) and opt-in to receive notifications when a change in status has occurred.

Evidence tracking systems can also be enhanced with the use of bar codes and automated identification technology (AIT), such as RFID (radio frequency identification) which provide precise locations, environmental measurements, and real-time updates on specific items of evidence. For more information, see the [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#).

⁷⁴ [National Best Practices for Sexual Assault Kits](#) (quote appears on p. 30).

⁷⁵ [National Best Practices for Sexual Assault Kits](#).



Tracking Evidence for Alternative Reports

For agencies adopting a computerized system for evidence tracking, we recommend including any evidence associated with anonymous or non-investigative reports (with documentation indicating that the evidence should not be tested). This is necessary to ensure that these kits are not caught up in any testing initiative undertaken by the agency. Even in communities following a “forklift approach” (testing all sexual assault evidence kits in their possession), **anonymous or non-investigative kits should be tracked, but excluded from this testing program.** This point is clearly emphasized in *Test Every Kit*, a report published by the Manhattan District Attorney’s Office, a leader in the national movement to encourage jurisdictions to submit all their untested evidence kits to a laboratory for analysis.⁷⁶

The only kits excluded from testing were those where the victim did not consent to testing or where evidence existed that no crime was committed) (Office of Manhattan District Attorney Cyrus R. Vance, 2019, p. 11).

Victim Notification of Testing Status

Some jurisdictions are adding a component of victim notification in their evidence tracking system, so **adult victims can receive information about the location and status of their evidence kit** – for example, whether it is in the crime laboratory or the police property room, whether it has been tested, and whether a report with test results has been sent to the investigating law enforcement agency. In some states, this is required by law, and survivors have a legal right to be notified about the status of their evidence kit, unless the disclosure will interfere with the investigation of the assault.⁷⁷

This is a laudable goal, and a great first step. To truly achieve their purpose, community protocols will need to specify who has responsibility for victim notification and ensure that they are well-trained to accurately explain the process and interpret any test results.



Example of Testing Notification

In 2017, Texas joined several other states in passing legislation to create a statewide tracking system for sexual assault evidence kits. The Texas system includes a notification feature; it is designed to provide victims secure and confidential information on the status of their sexual assault evidence kit. For more information, please see the [Texas Department of Public Safety website](#).

⁷⁶ Office of Manhattan District Attorney Cyrus R. Vance, Jr. (2019). [Test Every Kit: Results From the Manhattan District Attorney’s Office’s Sexual Assault Kit Backlog Elimination Grant Program](#).

⁷⁷ For more information on the status of these victim notification laws, please see [End The Backlog](#).



Limits of Notification

Simply notifying victims about the testing status of their evidence kit can constitute a false promise if it is the only measure taken to increase transparency. The status of an evidence kit, and even a DNA hit, **has little to do with the status of an investigation as a whole**. A thorough investigation will involve many other steps before a conclusion can be drawn about the outcome of a case (e.g., running criminal histories, interviewing victims, witnesses, and suspects, executing search warrants). For victims to truly understand the status of their case, they should be informed in a timely manner about the impact of these investigative steps on the direction the investigation is taking and the outcome of the case (e.g., the case will be referred to the prosecutor's office, the case has been issued, an arrest is made, or there is insufficient evidence to proceed).⁷⁸

Simple notification also fails to take into account the probative value of any evidence tested. Without an investigator evaluating the facts of the case and all the available evidence, it is impossible to know how the analysis of any particular item might advance the investigation. In other words, actual transparency will only be achieved when criminal justice actors give victims information that is realistic and meaningful about what is – or is not – happening with their case. This goes beyond simple notification about the location and status of an evidence kit; it relies on investigators and prosecutors sitting down to *talk honestly with victims about the entirety of their case*.

Evidence Testing

One question that is often asked is whether evidence should be submitted for testing, if the victim has chosen an alternative reporting option. This question typically pertains to the evidence collected during a medical forensic examination, but it could apply to any other type of evidence provided in connection with an alternative report.

In most cases, the answer is no, **because the victim has not consented to this**.

This is not just EVAWI's opinion. The US Department of Justice, Office of Violence Against Women (OVW) clearly states that the evidence from a medical forensic exam should not be submitted to the laboratory for testing if it is associated with a non-investigative report of sexual assault. Three reasons are given for this position:

⁷⁸ A common frustration among sexual assault victims is that they have no idea about what is happening with their case, especially when they are participating in the investigation and a decision is made to not move forward with their case, but no one tells them. Some victims have described this as a "black hole." Sometimes this happens because investigators or prosecutors delay making a final decision on a case they wish they could move forward on, but the investigation doesn't meet the standards needed for successful prosecution. In other cases, investigators and prosecutors may believe that waiting to give bad news will make it less traumatic for victims, but this is not likely to be true. Or, they just don't want to deliver the bad news. Yet victims deserve to know the status of their case as soon as possible, whether the outcome is what they had hoped for or not. Only then can survivors begin to heal and move on.

- 1) This practice “undermines the victim’s right to choose not to engage with the criminal justice system.”
- 2) It is therefore “not an advisable way to cultivate community trust.”
- 3) And, because funds are limited, they “should be directed to activities that promote accountability for offenders and justice and healing for victims.”⁷⁹

Submitting non-investigative SAKs [sexual assault kits] to a forensic laboratory for testing, absent consent for the victim, should not be a standard operating procedure for a law enforcement agency (Office on Violence Against Women, US Department of Justice, 2017, p. 4).



OVW’s position paper is titled, [Sexual Assault Kit Testing Initiatives and Non-Investigative Kits](#). More information is also available in EVAWI’s OLT module, [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#), and training bulletin: [Should We ‘Test Anonymous Kits?’](#)

CODIS Eligibility

We already noted that the testing question is typically about evidence collected during a medical forensic exam, not the many other types of evidence that could be collected and documented during a sexual assault investigation. The testing question also tends to focus exclusively on the *biological samples* collected during an exam, not other items such as clothing and photographs. This is because the purpose of testing is commonly understood as identifying foreign DNA profiles and uploading them into CODIS, which on the national level is referred to as the National DNA Index System (NDIS). Yet this raises the question of **whether these foreign DNA profiles would even be eligible for inclusion in NDIS if the victim chose an alternative reporting option?**



What is CODIS?

CODIS refers to the Combined DNA Index System; it is the database of DNA profiles used for forensic purposes which is operated by Federal Bureau of Investigations (FBI). Many people refer to all forensic DNA databases as “CODIS.” However, the CODIS system actually has three levels: National, State, and Local DNA Index Systems, commonly referred to as NDIS, SDIS, and LDIS.

⁷⁹ Office on Violence Against Women (2017). [Sexual Assault Kit Testing Initiatives and Non-Investigative Kits](#). Office on Violence Against Women, US Department of Justice (quotes appear on p. 5, 7, & 8).



Two Key Criteria

This question of NDIS eligibility was addressed by the FBI's Chief of the Nuclear DNA Unit, Anthony J. Onorato, at a conference hosted by the National Institute of Justice.⁸⁰ Chief Onorato began by highlighting the two criteria that must be met for NDIS eligibility:

- First, is it reasonable to believe that a crime occurred?
- Second, is there reason to believe that the item being tested has something to do with that crime and that it is linked to the perpetrator of that crime?

In the case of a non-investigative report, **these two criteria have not been met.**⁸¹

First, the elements of a criminal offense have not been established by law enforcement. With many non-investigative reporting procedures, the victim has explicitly chosen *not to talk with law enforcement or participate in the investigative process*. Yet determining whether an incident meets the elements of a criminal offense is the primary role of law enforcement. It is outside the role of a health care professional to supplant this law enforcement role and make a legal determination that a criminal offense has occurred.

Second, law enforcement cannot document a reasonable belief that the DNA belongs to the perpetrator(s) with a non-investigative report, if steps have not yet been taken to identify and exclude any consensual partner as the source of any foreign DNA.

Elimination Standards

This process begins by asking victims if they have had consensual sex within a certain number of days before the exam. The timeframe for recent consensual sex should generally be the same as the cutoff for conducting a medical forensic exam following the sexual assault. For example, many communities use 120 hours (5 days) as a guideline, which was the recommendation for best practice in the [National Protocol for Sexual Assault Medical Forensic Examinations \(2013\)](#). In light of emerging research, however, some states are now moving toward a guideline of 168 hours (7 days). Again, whatever cutoff is used for conducting an exam after a sexual assault for victims – **that same timeline should also be used for determining whether a reference standard is needed from a consensual sexual partner.**

If a consensual partner is noted in the SAK [sexual assault kit] documentation, the laboratory must document the request that an elimination sample be submitted for comparison purposes prior to entering the DNA profile generated (National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach, 2017, p. 63).

⁸⁰ The symposium was entitled, *Looking Ahead: The National Sexual Assault Policy Symposium*. It was hosted by the National Institute of Justice (NIJ) on September 8-9, 2016. This presentation was made during Panel 7, which was entitled "In the Lab – Testing Sexual Assault Evidence."

⁸¹ This discussion focuses on NDIS, the national DNA database maintained by the FBI. State and local laboratories have more latitude regarding the use of forensic DNA during the investigative stage.



If an exam report documents that the victim *did not have* consensual sex within the specified time period, there is typically no need for law enforcement to pursue any elimination standards from a consensual partner.⁸² However, if the exam report notes that the victim *did have consensual sex in that time period*, law enforcement will need to show that they've made an effort to contact the consensual partner to request a DNA reference standard. This will be submitted to the laboratory for testing and comparison with any DNA profile identified from evidence collected during the victim's exam, as well as any other evidence that might be tested (e.g., condoms, towels, bedding, clothing).

NDIS Criteria Not Met

In sum, without law enforcement determining that a crime has been reported, and reference standards requested from any consensual partner, the two criteria for NDIS eligibility have not been met. This is captured in the graphic below, adapted from the [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#).⁸³

EXHIBIT 12: CODIS/NDIS ELIGIBILITY CONSIDERATIONS



* Determination of whether a crime has been committed will include consideration of applicable victim consent, blind/mandatory reporting, and mandatory analysis laws.

Equally important, this practice raises questions related to civil liberties and privacy rights, both for suspects as well as any consensual partners. Uploading a DNA profile into NDIS, without a criminal complaint or consent of the individuals in question could constitute a violation of privacy rights and may even be subject to legal action.

⁸² Keep in mind that a reference standard may still be needed if DNA is found on clothing or other physical evidence associated with the crime. For example, semen might be identified on a sweater worn by a victim prior to the sexual assault. In that case, a reference standard may still be needed to eliminate a consensual sexual partner or someone the victim had close contact with while wearing that sweater.

⁸³ The graphic appears on p. 64.

Don't Test Without Consent

For all these reasons, EVAWI recommends that **evidence associated with a non-investigative report simply be stored (in accordance with established policies and standards), but not submitted for testing.** Evidence should only be submitted to the laboratory for testing when the victim has consented to this, either in: (1) the standard reporting process, (2) an alternative option that includes consent for testing, or (3) conversion from a non-investigative report to a standard report. This point should then be clearly stated in informational materials for victims, so they know what will happen to any evidence associated with their report, depending on the reporting options available.

“Test All Kits” Laws

The question of evidence testing takes place in the context of considerable media attention on the problem of untested evidence in sexual assault cases.⁸⁴ Hundreds of thousands of sexual assault kits and associated evidence have been stored by law enforcement agencies across the country without ever being submitted for analysis. In response, many states passed laws to prevent this problem from re-occurring. These laws are described as “**test all kits**,” because they seek to ensure evidence is submitted for testing in all sexual assault cases with a medical forensic exam. Many of the laws also include new requirements for victim notification and kit inventories. This raises several issues to address in any protocol for alternative reporting options.

- **Mandatory kit testing:** In those states with a statutory requirement to submit all sexual assault evidence to the laboratory for testing, a specific exception may need to be made for anonymous or non-investigative reports. This exception may need to be instituted at the statewide legislative, executive policy, or agency level. However, it should apply both to current cases (in accordance with the non-investigative reporting protocol), as well as past cases where evidence was collected from a victim during a medical forensic examination without a report to law enforcement (consistent with VAWA forensic compliance provisions). If there is no exception for the mandatory testing of evidence in connection with non-investigative reports, *it is imperative that victims be informed of this fact.*
- **Victim notification:** As noted earlier, some states have also passed laws requiring victim notification (upon request) about the testing status of evidence from their medical forensic exam, and any test results. Alternative reporting protocols will need to comply with any such statutory requirements, which may include notifying the victim about the pending destruction of their evidence. However, a key concern will be ensuring that the victim's privacy or anonymity is not violated through the process of notification. This may mean that the forensic examiner or advocacy programs will serve as the gateway for victim notification.

⁸⁴ For one prominent example, see: Reilly, S. & Jones, C. (2015, September 11). [More Than 40 Police Agencies To Get \\$79M To Test Rape Kits.](#) *USA Today.*



- **Inventory of evidence kits:** Many of these laws also require law enforcement agencies to conduct an inventory of the sexual assault evidence kits they have in their custody in storage. The need to accurately track evidence is clear. While doing so, it is important to distinguish between kits associated with a standard report versus alternative reporting options. Otherwise, the inventory will produce a misleading picture of a backlog, and may risk creating or fueling a demand for all kits to be tested, including those associated with non-investigative reports.



For more information on the status of untested evidence kits, and policy issues relating to mandatory testing, inventories, and victim notification, see [End The Backlog](#) and the [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#). For media campaigns designed to educate the public about any kit testing initiatives, visit the [Sexual Assault Kit Initiative \(SAKI\)](#). Their guide for [SAKI Media Relations](#) might be particularly helpful.

Testing with Non-Investigative Report

As noted above, consent to evidence testing will generally be provided during the standard reporting process, or upon conversion from an alternative reporting option to full participation. Yet, some jurisdictions have begun offering victims the option of having evidence from their medical forensic exam submitted for testing, **even if their report is anonymous and/or non-investigative**. This practice raises important questions to be addressed in a protocol, but there are scenarios where it could advance the goal of *opening doors* and *one step at a time* if it is enacted with a great deal of careful thought.

For example, victims may be interested in evidence testing if they were assaulted by a stranger, because they might be able to learn whether any foreign DNA was identified before making a decision to participate in an investigation. They may even learn whether the foreign DNA matches with a known offender, or an unidentified suspect in another case of sexual assault (or other crime). The prospect of an investigation and possible prosecution may feel less daunting if the victim knows there are others who were victimized by the same person. This may also provide some peace of mind for victims of stranger sexual assault, because many of these victims describe living in fear – often for decades – because they are unsure of who the suspect might be, and whether it is someone they might encounter during their daily routines. A DNA match could provide victims this valuable information, without initiating an investigation or prosecution.

Another example is when someone is unsure whether a sexual act was committed against them while they were incapacitated or unconscious. This is a common scenario, and it is understandable that a person might want to find out if there was any biological evidence establishing that a sexual act occurred, before making a decision about reporting and participation in an investigation. This scenario also highlights the need to collect an elimination reference standard from any consensual sexual partner, to ensure that any foreign DNA is actually from an unknown suspect, not a consensual partner.

In these and other situations, victims may benefit from the option of having evidence tested from their exam without committing to full participation in an investigation and



possible prosecution. Again, the key question is *whether they have consented to this testing*, and whether they are well-informed about what this means – what testing and any possible results can and cannot accomplish, and what might happen as a result.

For example, many people have unwarranted expectations about what DNA can accomplish, believing that testing an evidence kit can “prove” someone was sexually assaulted. Yet most suspects are known to the victim, so DNA is not needed to identify them. Most suspects also raise a consent defense, acknowledging that a sexual act took place, but arguing that the victim consented to it. Therefore, the fact that their biological material is recovered from the victim’s body or clothing shouldn’t come as a surprise. Bottom line? Victims should be well informed about the possible impact of evidence testing on any investigation and prosecution of their case, *before they consent to it*.

Sample Protocol: Nebraska Testing with Non-Investigative Reports

The [Nebraska Medical Sexual Assault Protocol](#)⁸⁵ offers an example of how victims can have their evidence tested with non-investigative reporting. The protocol includes an option (called “partial” reporting) where victims can have evidence collected during a medical forensic exam, and consent to have it submitted to the laboratory for DNA testing. The examiner gives law enforcement the victim’s name and contact information, along with the exam report. If the incident described meets the elements of a sexual assault offense, the evidence can be submitted to the laboratory for analysis and any foreign DNA profiles can be uploaded to NDIS. If the report notes consensual sexual activity within the last 120 hours, law enforcement will attempt to obtain an elimination DNA standard from the consensual partner. That way, the forensic laboratory can upload the foreign DNA profile believed to be contributed by the suspect into NDIS.

Additional features of the Nebraska protocol include the following:

- Partial reporting is available for sexual assault victims who are 18 years of age or older who have a medical forensic examination, present without serious bodily injury, and when a deadly weapon was not used during the commission of the offense,
- No law enforcement contact is required at the time of the exam, but the victim may speak with law enforcement if they choose.
- Investigators reach out to the victim when they have “information to share about the physical evidence in the case, such as hits in CODIS for similar assaults” (p. 16). Any such contact with victims “should be scheduled for an in-person meeting, in a private space, and in collaboration with victim services” (p. 16).
- Victims can “choose to later convert their case to a full law enforcement report by reinitiating contact with the appropriate law enforcement agency” (p. 6). Otherwise, investigators are discouraged from “making contact with the suspect or any

⁸⁵ Nebraska Attorney General’s Office (2019). [Nebraska Medical Sexual Assault Protocol](#). Lincoln, NE: Nebraska Attorney General’s Office.

witnesses without the victim’s consent, as such contact may jeopardize the safety of the victim” (p. 16).

If the victim converts to participation in a full investigation, law enforcement will then “take an initial statement from the victim as soon as contact can be made” (p. 17).

Remaining Questions

A protocol offering an option of evidence testing with a non-investigative report may help to advance the goals of *opening doors*, and *one step at a time* if it is carefully crafted and address some of the fundamental questions we have already raised. But it is still worth considering whether this **has the potential to offer victims a false promise**. Can professionals guarantee the report *remain* anonymous or non-investigative after the evidence is submitted for testing and the laboratory results are returned? What happens if it yields a CODIS hit? It is easy to imagine a scenario where investigators and prosecutors are eager to pursue the hit, and victims are pressured to participate in the investigation or even subpoenaed to testify against their will. Worse, victims could be arrested and jailed for failing to appear in response to a subpoena.



To see how devastating it is for victims to be subpoenaed to testify against their will, see this [ABC News video](#) of a judge sentencing a domestic violence victim for contempt of court, while she literally begs for mercy.⁸⁶

There is also the question of **which items of evidence will be submitted for testing**, and whether this will vary based on case facts. For example, will testing be conducted with some or all the items in the evidentiary kit? What about additional items such as clothing, bedding, towels, or tissues that may have been collected? Without a law enforcement investigation, it may be difficult to determine which items might have the most probative value. Or these items may not be identified or collected.

To illustrate, maybe the suspect used a condom that was later discarded in the victim’s wastebasket. Or the victim changed clothes for the exam, so the clothing worn during or immediately after the assault remains at home. In these scenarios, testing an evidence kit can offer a false promise for victims, because the only items being submitted for analysis are from the exam, not from any other sources of potential evidence that might be identified and collected during the evolution of a thorough investigation. We hope this discussion highlights some of the many complex and challenging issues to address.

The answers are not always clear or straightforward. While developing this module, one representative from a state Attorney General’s Office had to contact *every forensic laboratory in the state*, to determine what was actually happening with evidence testing associated with an alternative reporting procedures. This is the type of boots-on-the-ground effort that can be expected by practitioners when designing and implementing alternative reporting protocols, and ensuring they are being followed consistently.

⁸⁶ [Tough Words from Judge as She Sends Abuse Victim to Jail](#) (October 7, 2015), *ABC News*.





Toxicology Analysis: One Possible Investigative Step

The question of evidence testing tends to focus exclusively on the biological samples collected during a victim's medical forensic exam. The purpose is seen as identifying foreign DNA profiles, to upload into CODIS and search for a potential match with an identified person and/or other cases.

Yet for victims who have a medical forensic exam, blood and urine samples may also be collected which **could be submitted to a laboratory for the purpose of toxicology analysis**. This should never be done without victim consent. However, when victims have chosen to be personally engaged with law enforcement, the investigator could raise this as a possibility when it makes sense given case facts. This is what the approach might look like:

Based on what you've told me about what happened, I'm concerned that you might have been drugged. I would like to submit your blood (or urine sample, depending on the length of time between the suspected ingestion and the sexual assault) to a laboratory that specializes in this type of analysis to see if they can identify the presence of any drugs in your system.

Would you be willing to do that? Then, based on the results, we can come back together to figure out what our next steps might be.

If toxicology analysis is going to be conducted, **investigators will need to gather any information the victim can provide about what substance(s) they might have consumed**, either voluntarily or involuntarily. Some of this information may be found in the exam report, but other information and evidence can only be uncovered with a law enforcement investigation, including search warrants for drugs and paraphernalia, prior criminal histories, crime scene evidence, digital evidence, and statements made by the victim, suspect(s), and any witnesses.

If no information is available about the substance(s) that may be involved, toxicology analysis can still be conducted, but it is more difficult – and often, more expensive. This is because there are countless substances that could potentially be identified in a person's blood or urine, and different test panels are often needed to identify these drugs at the low detection limits needed.⁸⁷

Finally, it is important to note that any **toxicology analysis for a law enforcement investigation can only be conducted by a forensic laboratory, not a medical facility**. Health care providers often request toxicology tests for medical purposes, when diagnosing and treating a patient. Investigators may seek to obtain a release for the medical records associated

⁸⁷ For more information, see the [Fact Sheet on Drug-Facilitated Sexual Assault](#) and the [Recommended Minimum Performance Limits for Common Drug-Facilitated Crimes](#) published by the Drug-Facilitated Crimes Committee of the Society of Forensic Toxicologists (SOFT).



with such testing (if this is appropriate and relevant given the case facts), so the findings can be incorporated into the investigation. However, medical laboratories are typically unable to test samples at the very low levels of detection required for a sexual assault investigation (especially because reporting is often delayed). Medical facilities also do not follow chain of custody required in a criminal investigation. Law enforcement agencies need to ensure toxicology analysis is conducted by forensic laboratories that run these types of low detection tests and meet these chain of custody standards.

Can Evidence Be Returned to Victims?

If personal items such as clothing or bedding are collected in connection with an alternative reporting option, protocols may need to clarify what rights (if any) victims have for that evidence to be returned to them. This question should also be addressed in the informational materials created for victims, because it is a frequent source of concern, especially when the items that have been collected are especially personal or valuable.⁸⁸

If the victim had personal contact with law enforcement, it may be possible to make the necessary arrangements to have certain items returned to the victim, if requested. But if the evidence is being stored anonymously, it may be difficult for victims to have anything returned to them, because **some form of identification is typically required before any evidence or property can be returned to its lawful owner.**

Keep in mind that this discussion only pertains to personal items of evidence such as clothing, bedding, or jewelry. Serious concerns would arise if victims were offered the option of requesting biological or trace samples collected during a medical forensic exam. This could create an opportunity for suspects to intimidate victims into requesting to have such evidence returned, to obstruct the investigation and potential prosecution. These samples also represent hazardous materials and should be handled with care. Informational materials should therefore clarify that **sexual assault evidence kits do not belong to victims, and cannot be obtained by them.** Typically, the only way to request access to this evidence would be through a subpoena filed by an attorney during the course of civil litigation (for example, if the victim or suspect filed a lawsuit).

Evidence Destruction

Finally, victims should be notified – in writing, at the time of their report – how long any evidence associated with their assault will be stored, and when it will be destroyed.⁸⁹ Some communities go a step further, and notify victims 30-90 days before their

⁸⁸ One way to reduce victims' concern about having evidence returned is being sensitive about whether specific items should be collected in the first place. For example, "a patient may own only the clothing that is being collected" (*National Protocol for Sexual Assault Medical Forensic Examinations*, p. 100). Other items are unlikely to have significant evidentiary value (e.g., winter coat, shoes). Investigators and forensic examiners can work with victims to balance the objectives of maximizing evidence collection and minimizing grief and loss experienced by the victim. For more information, see the OLT module on [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#).

⁸⁹ [National Best Practices for Sexual Assault Kits](#).

evidence is scheduled to be destroyed, so they are given another chance to consider whether they want to participate in a full investigation. Either way, it is important that victims understand the timelines for evidence storage and the approximate date of destruction, to offer them a final opportunity to participate in the criminal justice system.

Investigative Considerations

Beyond evidence, there are additional investigative considerations that may be helpful to address in an alternative reporting protocol. These considerations apply to both traditional and alternative reporting procedures, and a community protocol can be a good place to emphasize core values and principles with examples of specific practices.

Employ Best Practices

For instance, a great deal of attention has focused on the need for **trauma-informed approaches** to sexual assault response and investigation – particularly with victim interviews. Any victim who accesses an alternative reporting option may be in particular need of a trauma-informed approach, since they have shown that they are unsure or reluctant about engaging in the criminal justice process. Communities offering alternative reporting options can therefore work to ensure that officers responding to these reports are well-educated about how to conduct trauma-informed interviews.



What is a “Trauma-Informed” Approach?

A trauma-informed response by law enforcement begins with a genuine expression of empathy for victims, acknowledging the trauma or pain they have experienced. Investigators can then ask victims about any questions or concerns they may have and seek to address these issues. By creating an environment of safety and trust, investigators can seek to acknowledge, respect, and meet victims where they are – not where the investigator might want them to be.



EVAWI offers many resources on trauma-informed responses, including [several training bulletins](#), and a two-part webinar series on the *Neurobiology of Sexual Assault* presented by Dr. Jim Hopper. In [Part 1](#), Dr. Hopper focuses on the topic of *Experience and Behavior*, while [Part 2](#) emphasizes *Experience and Memory*.

The Florida Council Against Sexual Violence (FCASV) also created an [introductory training video](#) for patrol officers on trauma-informed responses, with an overview of trauma impacts and key aspects of a trauma-informed response.

Other measures that can help alleviate trauma and encourage participation include offering to conduct interviews in a location of the victim’s choosing (e.g., in their own home) or in a “soft” interview room, which is designed to be warm and welcoming, with comfortable furniture, art, and other amenities. We have already highlighted the



importance of encouraging victims to have an advocate or appropriate support person present during investigative interviews and other law enforcement contact.

Finally, sexual assault victims will often need **safety planning**. Alternative reporting options can incorporate this feature, with support from law enforcement and other responding professionals. Areas of need can include transportation, living arrangements, protection orders, or enhanced security precautions. Such efforts can help to increase victim comfort, safety, and their ability to participate in an investigation.

Victim Preference Statements

Too often, professionals (and even loved ones) inappropriately ask victims if they want to “press charges” against the person who assaulted them. If the victim says *no*, or simply expresses reluctance at the prospect, some officers and investigators have historically responded by pressuring victims into signing a form (often referred to as a release waiver), documenting their request to suspend or terminate the investigation. A few release waivers go even further by **preventing victims from making any further inquiries or cooperating with any future investigation or prosecution of their report**. Some law enforcement agencies have the erroneous perception that this type of signed statement will protect them from liability for failing to pursue an investigation.

Yet these waivers are the opposite of an *opening doors, one step at a time* approach. They place unnecessary pressure on victims to make a “now or never,” and “all or nothing” decision about participation, and they sidestep the law enforcement agency’s responsibility to properly inform the victim, determine their wishes, and then pursue an investigation (with the victim’s consent) to gather the facts and evidence. Only then – after a thorough investigation has been completed by law enforcement – should a decision be made whether to refer the case for prosecution, and possibly file charges.

This is the type of practice that alternative reporting options can help to reduce or eliminate, by offering victims additional pathways to law enforcement. If victims are not ready or able to participate in an investigation, **law enforcement can courteously inform them about their options and document their preferences**. The conversation should clearly leave the door open, so victims are encouraged to fully participate when they are able. This also means victims should never be recorded in documentation as “uncooperative” or “declining prosecution.” Rather, reports should simply reflect the fact that victims are unable to participate in the investigation or prosecution “at this time.”



A sample tool designed to meet this objective is the [Victim Preference Statement](#) developed by the Naval Criminal Investigative Service (NCIS). The form begins by confirming that victims have had an opportunity to consult with a victim advocate or counselor, and that they have been informed of their rights as a crime victim. The form then documents: “At this time, I have decided not to provide additional information or participate in the investigation and prosecution of the suspect.” By signing the NCIS preference statement, victims explicitly acknowledge that “I may change my mind and provide information for this investigation at a later time.”



Not Arresting Victims

Another investigative consideration is whether victims will be arrested as a result of reporting their sexual assault, for any illegal behavior they may have engaged in.

In many sexual assault cases – regardless of traditional versus alternative reporting pathways – victims may present to a hospital or exam facility, or have contact with law enforcement, while they are under the influence of drugs or alcohol. Or they may have engaged in unlawful behavior such as underage drinking, recreational drug use, driving under the influence, sex work, or immigration violations. They may even have an outstanding warrant. As a result, victims may be afraid of reporting their assault or may withhold this information, for fear of being arrested or deported. These fears may be especially pronounced for victims from traditionally marginalized communities, and communities with a history of negative encounters with law enforcement.

Yet it is essential for reporting options to be viewed with confidence by the community. Law enforcement can therefore reassure victims that they will not be arrested for any such behavior, and law enforcement agencies should have a policy of not arresting in such instances, unless it is absolutely necessary given the seriousness of the offense.

If the victim has committed a felony or has an outstanding felony warrant, this will typically need to be processed. However, even in this situation it is important that the sexual assault crime not be disregarded. The best response may be to talk directly with a judge or prosecutor to discuss whether the victim could surrender to the court without booking the victim on the felony charge(s) at the time of the reported sexual assault. However, this may not be possible if the felony charge or warrant involves a violent crime, or if the victim poses a threat to the community, has a history of failing to appear in court, or has a bench warrant issued by a judge for failing to appear in court.

It is much more common for victims to be involved in misdemeanor offenses, not felonies. In many of these situations, misdemeanor offenses like underage drinking or recreational drug use can simply be overlooked. Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on responding to the sexual assault, treating the victim with compassion, not focusing on minor illegal activity. This can be addressed in alternative reporting protocols with the goal of being truly comprehensive.



For more information, see the OLT module, [*Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault.*](#)



Evidence-Based Prosecution

Law enforcement will typically conduct a very limited investigation, if any investigation at all, when victims choose alternative reporting options. This is based in a trauma-informed and victim-centered approach, honoring the wishes of victims who choose not to fully participate in the investigation or possible prosecution of their sexual assault.

However, it is worth exploring this issue further, because there is nothing stopping law enforcement from conducting an investigation, or prosecutors from filing charges, when there is sufficient evidence to establish probable cause or to support the charges.

“**Evidence-based prosecution**” is the phrase that is commonly used to describe a prosecution that moves forward based on the physical evidence and testimony of witnesses – without the victim’s cooperation. Then if victims are subpoenaed to appear in court against their will, they will often be characterized as a “hostile” witness.

The bottom line is this: The success, and indeed the viability, of alternative reporting options depend on the premise that victims can choose an option that feels comfortable for them and have that choice respected, without fearing they will lose control of the process and have their report investigated and prosecuted against their wishes.



For more information, see [Appendix D](#). We begin by outlining the arguments for using evidence-based prosecution for sexual assault, and then offer a “reality check” for why the arguments may not apply to these cases.

Documentation and Review

Investigative considerations are important, but so are documentation and review. Regardless of which pathway it takes, **every report of sexual assault received by law enforcement will need to be recorded in writing and assigned some type of incident number**. This will facilitate tracking and retrieval if the victim later decides to participate in the investigative process. Even if the incident is outside the current statute of limitations, this information should be documented and retained in agency records. This is partly because the statute of limitations might later be revised and made retroactive. But it also means the records will include *all reports* received by the agency.



The International Association of Chiefs of Police (IACP) offers a sexual assault [Supplemental Reporting Form](#) that law enforcement agencies could adapt for recording information received through various pathways. It also includes helpful guidance for successfully investigating sexual assault cases.



Records Storage

Law enforcement agencies will need to “designate who will receive, document, store, or have access to the information” included in alternative reports.⁹⁰ As with traditional crime reports, any alternative reports must be stored in a secure location within the law enforcement agency. However, this will most likely be a different location than crime reports, which are stored in the Records Division. This is because the Custodian of Records has standard retention policies for crime reports that are established in laws and regulations for all types of crime, not just sexual assault offenses. If an agency will be following different practices for alternative reports, they may need to consider storing them somewhere other than the Records Division, like in an Investigative Unit.



Many Purposes of Reports

Written reports are needed for many purposes beyond an investigation. Victims may need them to pursue protection orders, civil legal remedies, immigration self-petitioning, insurance benefits, and crime victim compensation. These purposes might be met with reports made through alternative pathways, but retention policies and procedures will need to be spelled out in the protocol.

Intelligence and Analysis

When law enforcement agencies receive information through traditional and alternative reporting pathways, they have a more comprehensive picture of the sexual assaults being perpetrated in their community. This can inform community education programs, as well as supporting intelligence and analysis. For example, the information could be used to identify previously unidentified suspects or connect a series of sexual assaults.

To make these connections, **data fields must be clearly defined and consistently used.** Someone must also be specifically assigned to analyze data recorded in the reports. Typically, this will be done by law enforcement, for both traditional and alternative reports. However, for reports made through third parties (e.g., exam facilities or advocacy agencies), some of this responsibility may fall to those entities.

This raises questions about any protocol that has third-party entities tracking information on suspects and incidents. Because this function is investigative, it can blur the roles and boundaries of other professionals. For health care providers, this question may be raised during cross-examination at any future sexual assault trial in which they testify. Defense attorneys could use it to try to undermine their credibility and objectivity. For victim advocates, this could potentially compromise the confidentiality of their communications with victims. Logistical and ethical issues will need to be carefully addressed regarding how the records will be stored, reviewed, and kept confidential.

⁹⁰ Garcia and Henderson, *Options for Reporting Sexual Violence*.



Supervisory Review

Written reports are needed for supervisors to hold individual officers and investigators – as well as investigative units and entire agencies – responsible for every report of sexual assault they receive, regardless of the pathway taken. Reports can be reviewed for the investigative steps taken, the quality of documentation, and case dispositions, both to identify any concerns and training needs, as well as rewarding quality work.

Beyond reviewing individual cases or investigators, reports should also be evaluated on a more systemic level. This can be accomplished by **establishing a multidisciplinary review committee**, to ensure that established guidelines have been followed. In addition to law enforcement, this committee should include community partners, such as victim advocates, forensic examiners, prosecutors, criminalists, and others. A key objective is to determine what the appropriate response is for sexual assault victims whose cases are not likely to result in successful prosecution.



The Sexual Violence Justice Institute (SVJI) at the Minnesota Coalition Against Sexual Assault (MNCASA) has published a comprehensive toolkit, called: [A SART Coordinator's Guidebook for Case File Review](#). This step-by-step guide is designed to help identify areas where a SART is successful in its response to victims, and other areas where improvement is needed.



Establishing Peer Review in Smaller Agencies

In smaller agencies, this type of review could be provided by a co-worker or colleague with specialized training in sexual assault investigation. Smaller agencies could even develop a team of experts in sexual assault investigation, from the surrounding county or larger geographic region. With video conferencing and other technology, officers in even the most rural areas cannot consult with others who have the expertise needed to determine the best course of action. In fact, this may be particularly important in rural or remote areas given the relative infrequency of sexual assault reports received by law enforcement agencies. When officers do not respond to such cases very often, it can be difficult to feel confident in the mastery of handling these complex and difficult scenarios.



Evaluating Protocol and Practice


Law enforcement organizations should take time up front to clarify their goals for implementing the system and the resources they are willing to direct toward sustaining it ... The lack of confidential reporting can create a picture-perfect community but not always a safe one (Garcia & Henderson, 2010, p. 5).

Is It Working?

As agencies, communities, and even states move forward with alternative reporting options, it will be critical to learn more about whether, when, why, and how they are being accessed by victims – and what happens to them. Questions include the following:

- What are the barriers to standard reporting procedures? Do alternative reporting options help to overcome any of these barriers?
- How do victims perceive their reporting options? Do they understand how they work? Do they trust the process?
- Are the alternative reporting options working as promised? Do victims feel satisfied with the process? What about the outcomes?
- Do victims feel supported throughout the process? Are they accessing advocacy and other community services?
- How often do victims convert to full participation in the criminal justice process? How long does it take? What factors influence their decision?
- Are there any problems associated with evidence collection, documentation, transfer, storage, and retrieval – especially in converted cases?
- What are the outcomes of converted cases? Are they investigated to the extent possible? Are they referred to the prosecutor's office? Are charges filed?
- Are reports investigated and prosecuted against the victim's wishes?
- Finally, do any of these factors vary based on victim characteristics, such as male victims, people of color, victims with disabilities, undocumented immigrants, victims of stranger sexual assault, or alcohol/drug-facilitated sexual assault?

With data to help answer such questions, practices can be identified that help increase victim reporting and criminal justice participation – especially for victims who were initially unsure, unwilling, or unable to do so. Are we increasing pathways for victims to access services and support? Are we *opening doors*? Is it *one step at a time*?

 Two statewide evaluations have been conducted on VAWA forensic compliance, in [Colorado](#) and [Texas](#). They offer models for other jurisdictions to follow when evaluating how well alternative reporting options are working.

In addition, the Ohio protocol includes an Appendix briefly describing [Quality Assurance Measures](#) to better understand the process and outcomes of medical forensic examinations and the coordinated community response.

Finally, EVAWI offers evaluation tools on our [website](#), including three examples of victim satisfaction surveys that can be adapted for local use.

Prosecution Not the Only Goal

As we collect data to evaluate the “success” of alternative reporting options, it is important to remember that prosecution is not the only goal. In Colorado, for example, a study conducted in 2013 found that no medical (non-investigative) report had been prosecuted after the victim converted to full participation. If prosecution were the only goal, this would be seen as a failure. But these options also have the goal of increasing access for victims, not only to the criminal justice system but to other community resources such as health care and victim advocacy which can have important long-term benefits. Victims who access alternative reporting options are much more likely to connect with these additional services, regardless of any outcome relating to the investigation or prosecution.

Victims may define justice in their sexual assault cases, not only through conviction but also through their voices being heard and respected (National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach, 2017, p. 45).

We have also noted that it will be impossible to know how many victims seek help precisely because *they don't have to make an immediate decision about participating in an investigation and possible prosecution*. For example, they may decide to have a medical forensic exam, because they know it wouldn't prompt a law enforcement report or investigation. Or, they may decide to talk with an officer, because they know they can still choose to provide their name (or not) and decide whether law enforcement will launch an investigation (or not).

These victims may then decide they are able to participate based on the competent and compassionate responses they receive – during the process of an exam, or while talking with an officer or advocate, or taking other steps to pursue alternative reporting options. This is important to keep in mind, because **these scenarios are certainly successes**.

 While it is not the only goal of alternative reporting options, EVAWI offers guidance on [Prosecuting Converted Cases](#) in an archived webinar.

Changing the Culture

Evaluation should therefore extend beyond whether procedures are simply working. We also need to know whether alternative reporting options are changing the culture of law enforcement response and collaboration among community partners. For example:

- Have relationships improved, as community partners work together to design and implement alternative reporting options? Has this resulted in a more positive direction for law enforcement, and increased collaborative spirit?
- Has the process yielded more comprehensive policies and procedures for responding to sexual assault? Has this increased consistency for victims?
- Have alternative reporting options helped to identify suspects or link cases, based on increased information being provided to law enforcement?
- Do investigators feel more satisfied with their work, and less likely to burn out because they recognize victims may take many different pathways, and prosecution is not the only measure of success?
- Do commanding officers understand the objective, and appreciate that providing helpful services is more important to the public than clearance rates? If so, does this reduce stress on the agency, recognizing that law enforcement is not the only one responsible for outcomes, but community partners also share responsibility?



In addition to quantitative data, narratives can be elicited from victims, support people, and responding professionals, to reveal the transformative positive impact over time.



Conclusion

Developments in the field and changing social expectations have made law enforcement agencies reconsider and refine their processes for working with victims of sexual violence. Careful thought, clear direction, and institutional commitment are required to set up graduated reporting systems that respect the circumstances and challenges of victims, provide consistent response by investigators over time, and gather intelligence and evidence that will ultimately achieve law enforcement's primary goal: to protect and serve (Garcia & Henderson, 2010, p. 1).

We know most sexual assault victims will not report their sexual assault to law enforcement, just as most will not seek out health care, victim advocacy, or other services. Many will not even tell loved ones about the assault, suffering their pain and shame in silence. **We must do better.** We must find ways to improve our response systems, so they are easier to navigate and meet the goal of increasing victims' access to services and support while also preserving options to successfully engage the criminal justice system. This involves clarity of purpose, commitment, and collaboration between allied professionals – as well as awareness of the potential for false promises.

In this module, we have provided detailed guidance on how to achieve this goal by implementing alternative reporting options for sexual assault that are rooted in a twofold approach of *opening doors* and *one step at a time*. We therefore conclude with three questions for professionals who respond to sexual assault victims in their community:

- 1) How can you support a *process of disclosure and reporting* for sexual assault victims, rather than an *all or nothing, now or never* approach?
- 2) How can you contribute to increasing the number of meaningful options that are available to victims to access services and support, as well as reporting?
- 3) How can you help change the [funnel of attrition](#), so sexual assault victims can feel safe enough to report, and then participate in a thorough investigation and possible prosecution, to hold offenders accountable?

We hope this module helps start to answer these questions. Now the rest is up to you.



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Appendix A: Restricted Reporting in the US Military⁹¹

The options available to sexual assault victims within the US military changed dramatically as a result of the policy on “**restricted reporting**” enacted in 2005 by the US Department of Defense (DOD).⁹² Before this change in policy, advocates and health care providers working within the military did not have any confidentiality in their communications with victims. If they were aware of any sexual assault committed by or against a service member, they had a legal obligation to report it to the chain-of-command. Any such disclosure would then have resulted in the notification of law enforcement authorities and the initiation of a full investigation.

In fact, the lack of confidentiality did not just end with the sexual assault – anyone working within the military may have had a duty to report any conduct of another service member that violated the Uniform Code of Military Justice or military regulations.

Unfortunately, the disclosure of sexual assault might also reveal that the victim was drinking underage or fraternizing with someone prohibited by military regulations. Given how often such violations occur in the context of sexual assault, this policy had a chilling effect, making it extremely unlikely that victims would come forward to tell anyone within the military what happened to them, or to seek medical treatment or other services.

Restricted Reporting

This all changed when the US military implemented a policy of restricted reporting. This policy was designed to increase the chance that a victim of sexual assault will seek help from a variety of sources. However, it was also explicitly designed to *encourage* victim reporting and participation, if the care and compassion they receive in response to their restricted report helps the feel comfortable converting to the standard unrestricted procedure.

Restricted reporting is intended to give a victim additional time and increased control over the release and management of the victim’s personal information and to empower the victim to seek relevant information and support to make an informed decision about participating in the investigative process. A victim who receives appropriate care and treatment and is provided an opportunity to make an informed decision about filing an unrestricted report with law enforcement or command authorities is more likely to develop increased trust that their needs are a primary concern (32 CFR § 105.8, 2005).

⁹¹ We would like to take this opportunity to honor the work of Teresa Scalzo, who served as Deputy Director for the Navy Judge Advocate General (JAG) Trial Counsel Assistance Program at the Navy Judge Advocate General’s Corps. Ms. Scalzo contributed to an earlier version of this training material – and the larger field of work on alternative reporting options – before tragically passing away in 2016.

⁹² 32 CFR § 105.8 – Reporting Options and Sexual Assault Reporting Procedures (2005).



Accessing Services

As long as a report of sexual assault remains restricted, the victim can access all of the following services **without triggering an investigative process**:

- Medical testing and treatment
- Medical forensic examinations
- Advocacy services through the Sexual Assault Prevention and Response (SAPR) or Sexual Harassment/Assault Response and Prevention (SHARP) programs
- Counseling assistance
- Services of a Special Victims' Counsel / Victims' Legal Counsel
- Support from a chaplain

Service members can also access the **DOD Safe Helpline**, which offers crisis intervention, support, and resources for members of the DOD community who have experienced sexual assault. An additional resource called the Safe HelpRoom is an anonymous, moderated online chat service that allows individuals who experienced sexual assault in the military to safely and securely connect for support. These resources are available to all service members, regardless of whether they choose to report.

The DOD Safe Helpline ... is confidential, anonymous, secure, and available 24 hours a day, 7 days a week. Its availability ensures that all victims have a place to safely disclose sexual assault allegations, express concerns, and obtain information. As such, this resource provides victims a key source of support, particularly for those who might not otherwise reach out for help through face-to-face military channels (Department of Defense, 2019, p. 19).

Yet the lack of investigation means the following will also be seen:

- No investigation or prosecution is conducted
- The offender goes unpunished
- The victim is unable to obtain a military or civilian protective order (MPO/CPO)
- The victim cannot request an expedited transfer to another job or base
- The victim may have continued contact with the offender

Despite these limitations, restricted reporting is seen as an extremely valuable option by service members. In one survey of female service members who reported being sexual assaulted, nearly half said they would not have reported at all if restricted reporting was not available. Only 11% would have sought confidential civilian resources.⁹³

⁹³ Office of People Analytics (2018). [Annex 1: 2018 Workplace and Gender Relations Survey of Active Duty Members Overview Report](#). Washington, DC: US Department of Defense.



Who Can Receive a Restricted Report?

The option of making a restricted report is available to active-duty service members, adult dependents eligible for health care, and others (although this varies to some extent by the branch of service). Only SAPR personnel can officially take a restricted report, by documenting it on the form specifically developed for this purpose and tracking it in the Defense Sexual Assault Incident Database (DSAID). However, the restricted reporting process can be initiated by disclosing sexual assault to a Victim Advocate (VA), Sexual Assault Response Coordinator (SARC), or health care provider.

Only certain personnel can receive a restricted report (or disclosure) of sexual assault and fully protect victims' confidentiality by not providing information to commanders. These are positions with legal privilege offering protected communications with victims: Chaplains, Special Victim Counsel, defense counsel, and legal assistance attorneys.

Information to Victim's Commander

If someone other than a SARC receives a restricted report of sexual assault (for example, a Victim Advocate or health care provider), that person must notify the SARC. The SARC then has responsibility for providing a limited amount of non-identifying information to their installation commander or equivalent within 24 hours.⁹⁴ This information may include a general location of the assault (on or off base), type and date of assault, and whether the victim received services. The purpose of this notification is to "provide commanders with a more complete picture of the sexual violence within their commands" and to "enhance a commander's ability to provide a safe environment." The SARC may also become aware of a sexual assault report through information provided by law enforcement authorities or even from other professionals outside the military.

The SARC does not provide the victim's name as part of this notification, and if any of the information might serve to identify the victim, the SARC may choose to withhold it. For example, if there is only one woman at a certain rank or in a small command, the commander would not be provided information about the gender or rank of the victim.

Converting to Unrestricted Report

Only the victim can decide whether their best option within the military system is restricted or unrestricted reporting. It is therefore important to note that victims can decide at any time to change a restricted report to an unrestricted report, which will then activate the investigative process. However, once initiated, an investigation cannot be terminated at the wishes of the victim. In other words, **a restricted report can change to unrestricted, but an unrestricted report can never go back to being restricted.**

⁹⁴ Department of Defense Instruction 6495.02, [Sexual Assault Prevention and Response \(SAPR\) Program Procedures](#), March 28, 2013.



Research indicates that approximately 23% of restricted reports filed in FY2019 later converted to unrestricted reports.⁹⁵ But these “conversions” were not necessarily based on the victim’s choice. Restricted reports can be investigated by military law enforcement without the victim’s cooperation, if the information provided by a third party supports the elements of a sexual assault offense or law enforcement has viable leads to pursue.

When a report is converted from restricted to unrestricted, all communications with SARCs and victim advocates will remain confidential (unless the victim explicitly consents to sharing of information), because these communications are protected by an evidentiary privilege. Information communicated to a health care provider should also remain confidential, because it was communicated through a restricted report. However, these communications are *not* protected by a legal privilege.

Disclosure by Third Parties

As noted above, there are certain personnel who can receive a restricted report (or an informal disclosure of sexual assault) and protect the victim’s confidentiality. If the victim tells anyone else, that person **is not required to keep the information confidential and may report it through their chain of command**, thus prompting an investigation. In fact, some members of the US military are *explicitly required to report any such disclosure* following established procedures within the chain of command. However, victims are not required to participate in an investigation initiated by a third party.

In other words, if a victim tells his/her best friend (who is also serving in the military) that he/she was sexually assaulted, the friend may be mandated to report it to a superior – or may voluntarily report it to a superior – and an investigation will be initiated even if it is against the wishes of the victim. Also, if a victim tells his/her supervisor, that person is also mandated to report the information and an investigation will be launched. In both cases, the report cannot be protected as restricted. Even if the victim has filed a restricted report with someone who can protect it as such, a commander or military investigator may learn about the incident from another source and thus be required to launch an investigation through the process of unrestricted reporting. This is called an independent investigation. Thus, the bottom line is that victims in the military have no absolute guarantee of confidentiality and no promise that a restricted report will stay that way.

CATCH Program

In August 2019, the US Department of Defense launched CATCH, a new program allowing service members making restricted reports to confidentially provide information about the incident and parties involved. It was designed to provide a new opportunity for service members to participate in the military justice system while remaining confidential. If investigators uncover a potential match to other reported incidents, service members are notified and provided an opportunity to convert their report from restricted to unrestricted. Between August 2019 and April 2020, there were 239 victim

⁹⁵ US Department of Defense (2019). [Department of Defense Annual Report on Sexual Assault in the Military](#). Washington, DC: US Department of Defense.



reports in the CATCH program and 5 matches had been made.⁹⁶ It will be interesting to see how this program unfolds in the future, and whether it leads to increased reporting by sexual assault victims and the identification of serial offenders by law enforcement.



For more information on reporting options and the CATCH program, please see the website for DOD's [Sexual Assault Prevention and Response](#).

⁹⁶ US Department of Defense, [Annual Report on Sexual Assault](#).



Appendix B: Alternative Reporting Protocols

This document summarizes alternative reporting options for sexual assault victims in several jurisdictions. It is designed to complement the OnLine Training Institute (OLTI) module, [Opening Doors: Alternative Reporting Options for Sexual Assault Victims](#).

Four of these protocols are featured in the OLTI module, including three states that offer alternative options for victims who have a medical forensic exam, and one community where online reporting is available through a third-party victim advocacy organization:

[New Hampshire](#) [Ohio](#) [Nebraska](#) [Asheville, North Carolina](#)

Four additional protocols (three statewide and one local) are included as supplementary information. They also offer options only for victims who have a medical forensic exam:

[Cambria County, Pennsylvania](#) [Colorado](#) [Missouri](#) [South Carolina](#)

New Hampshire⁹⁷

Procedures for anonymous reporting are outlined in two documents, the statewide protocol for medical forensic examinations and the state protocol for Sexual Assault Resource Teams (SARTs). We will refer to them as the New Hampshire Exam Protocol⁹⁸ and SART Protocol.⁹⁹

Medical Mandated Reporting

New Hampshire does not have medical mandated reporting for sexual assault of a competent adult, unless the victim has a gunshot wound or other serious bodily injury, defined as “any harm to the body which causes or could cause severe, permanent or protracted loss of or impairment to the health or the function of any part of the body.”

This means the vast majority of sexual assault medical forensic exams will not require a report to law enforcement.

⁹⁷ Special thanks to three dedicated professionals who reviewed and contributed to the development of this material: (1) Meghan Jenks, SANE Program Assistant, New Hampshire Coalition Against Domestic and Sexual Violence; (2) Kathy Kimball, New Hampshire Sexual Assault Resource Team (SART) Coordinator, New Hampshire Attorney General’s Office; and (3) Lisa Lamphere, Victim’s Compensation Coordinator, New Hampshire Attorney General’s Office.

⁹⁸ New Hampshire Office of the Attorney General (2018). [Sexual Assault: An Acute Care Protocol for Medical / Forensic Evaluation \(9th Edition\)](#). Concord, NH: Office of the Attorney General, New Hampshire Department of Justice.

⁹⁹ New Hampshire Office of the Attorney General (2018). [A Model Protocol for Response to Adult Sexual Assault Cases \(2018 Edition\)](#), Concord, NH: Office of the Attorney General, New Hampshire Department of Justice.



Anonymous Reporting Procedures

- Anonymous reporting is available to patients 18 years or older who have a medical forensic exam, and do not have gunshot wounds or other serious bodily injury.
- Exams conducted with an anonymous report can be paid for by the Victims' Compensation Program in the New Hampshire Attorney General's Office, regardless of whether the patient has insurance and/or Medicaid, if the victim opts not to use their insurance.
- A unique serial number is assigned to the evidence (all specimens and paperwork), in place of the victim's name or other identifying information. Victims are given the number and asked to call the law enforcement agency if they decide to initiate an investigation.¹⁰⁰
- Following the exam, the evidence kit is handed over to the law enforcement agency with jurisdiction over the assault, then transported to the forensic laboratory (consistent with the practice for any sexual assault medical forensic exam conducted in the state).¹⁰¹
- If the crime occurred outside New Hampshire, or the law enforcement agency with jurisdiction over the assault location cannot pick up the kit, it is turned over to New Hampshire State Police and transported to the forensic laboratory.
- No investigation or testing is conducted with the evidence, unless the victim contacts the law enforcement agency to initiate participation in the investigative process.
- After 60 days, if the victim has not contacted law enforcement to initiate an investigation, the evidence is returned to the law enforcement agency with jurisdiction over the assault.
- No timeframe for evidence retention is specified in the protocol, but it is "strongly recommended" to use the statute of limitations, or 20 years, whichever is shorter.

Notes on New Hampshire Protocol

The New Hampshire Exam Protocol notes that the anonymous evidence collection procedures may be used in scenarios where patients cannot give informed consent, such as when they are incoherent or unconscious as a result of drug or alcohol consumption. When the patient regains consciousness or capacity, they can make the decision about reporting.

¹⁰⁰ When New Hampshire updated their evidence collection kit in October 2020, space was added on the cover to track whether a victim comes forward to law enforcement to convert their report from anonymous to known victim.

¹⁰¹ During the October 2020 updates to the evidence collection kit, space was also added on the cover to identify the law enforcement agency with jurisdiction over the assault.



Victims are eligible to apply for the Victims' Compensation Program as long as they seek medical care within 10 days of the assault and agree to evidence collection.¹⁰²

Both protocol documents encourage victims to convert to full participation in the criminal justice process whenever they are able: "Any crime victim has the right to report the crime at any time following the commission of that crime."¹⁰³ However, the question of whether it can be successfully prosecuted "is a matter that will be determined within the criminal justice system, based on a multitude of factors (e.g., statute of limitations, existence of supporting evidence)."¹⁰⁴

Ohio¹⁰⁵

Like New Hampshire, Ohio outlines their procedures for anonymous reporting in the statewide protocol for medical forensic examinations.¹⁰⁶

Medical Mandated Reporting

Unlike New Hampshire, however, Ohio has a medical mandated reporting requirement for *all felonies committed against competent adults*, including sexual assault. This means a report will be filed by health care providers every time a medical forensic examination is conducted with a sexual assault victim, including a victim who chooses anonymous reporting. The report must be made to the law enforcement agency with (presumed) jurisdiction over the assault location. However, the protocol also states that *an adult patient's name does not need to be included* in the mandated report; it may simply include the date and general location of the assault.

Anonymous Reporting Procedures

- Anonymous reporting is available for sexual assault victims 18 or older who have a medical forensic examination.
- All medical forensic examinations in Ohio are paid for by the Attorney General's SAFE Program (not just exams associated with anonymous reporting).

¹⁰² The two documents state the requirement as 5 days, but this was extended to 10 days in 2019. [N.H. Code Admin. Rule JUS 605.13 \(e\)](#). According to the Coordinator of the Victim's Compensation Program, if a victim was to present to a hospital or other exam facility 11 or more days following the sexual assault, the cost of the medical forensic examination would still be covered by the Victims' Compensation Program. However, the victim would only be eligible for other services through the program by reporting to law enforcement (personal communication, Lisa Lamphere, Victim's Compensation Coordinator, New Hampshire Attorney General's Office, 10/18/20).

¹⁰³ This statement appears on page 18 of the Exam Protocol, and page 35 of the SART Protocol.

¹⁰⁴ This quote is from the SART Protocol (p. 35), but similar language is found in the Exam Protocol (p. 18).

¹⁰⁵ Thanks to Sandy Huntzinger, Victim Service Coordinator in the Crime Victim Section of the Ohio Attorney General's Office, for her valuable review and contributions to this section.

¹⁰⁶ Ohio Department of Health (2011). [Ohio Protocol for Sexual Assault Forensic and Medical Examination \(2nd Edition\)](#). Columbus, OH: Office of Healthy Ohio, Bureau of Health Promotion and Risk Reduction, and Sexual Assault and Domestic Violence Prevention Program, Ohio Department of Health.



- With anonymous reporting, a unique ID number is used in place of the patient's name on all specimens and paperwork (the patient's birth date, plus the last 4 digits of the medical record number). Patients are provided this ID number on their discharge instructions.
- If a personal identifier is mistakenly left in the paperwork, it is converted to a named kit and law enforcement is provided this information in their laboratory report. By signing the consent form, patients acknowledge that their anonymity could be compromised and an investigation pursued: "I understand that my medical records may be subpoenaed by the court for investigative purposes. I may be contacted by the hospital if this happens."¹⁰⁷
- Evidence from the exam is stored by the law enforcement agency with jurisdiction over the assault location. Jurisdictions are advised to include a contingency plan in their local protocol for anonymous kits whose proper jurisdiction is unknown or outside the county.
- No specific timeline is required for evidence retention, but the protocol requires a minimum of 60 days. The protocol recommends establishing an agreement regarding evidence retention between hospital facilities, law enforcement agencies, and prosecutors.¹⁰⁸
- The protocol says that no investigation will be pursued unless the victim converts to a standard report with participation in the criminal justice process, but the consent form again acknowledges that evidence may be tested at a crime laboratory even with an anonymous report. In other words, anonymous reports are generally defined as non-investigative, but local agreements are needed to ensure they are not pursued against a victim's wishes.¹⁰⁹
- Victims are advised in their discharge paperwork that they should contact the law enforcement agency storing their evidence if they decide to convert to a standard report and participate in the criminal justice process. "At this time, an investigation of the crime, including the examination of the evidence, may commence" (p. 9).

¹⁰⁷ Reportedly, this is not a frequent occurrence. It typically only occurs if there is a CODIS hit to an individual with serious felony charges or who has been identified as a serial offender (personal communication, Sandy Huntzinger, Victim Service Coordinator, Ohio Attorney General's Office, 10/23/20).

¹⁰⁸ Although the protocol does not specify a timeline for evidence retention with anonymous reports, many agencies follow the general requirement of 25 years for biological evidence in reported cases [[2933.82\(B\)\(1\)\(b\) – Retention of biological evidence](#) and [Guidelines for Preservation and Retention of Biological Evidence](#), Ohio Attorney General's Office, November 2010] (personal communication, Sandy Huntzinger, 10/21/2020).

¹⁰⁹ State law requires law enforcement agencies to submit sexual assault evidence kits to the forensic laboratory within 30 days of receipt [[109:7-107\(D\)\(4\) – Procedure for testing and tracking of sexual assault evidence kits](#)]. However, this is clarified in another statute specifying that investigating agencies are actually required to submit evidence kits for analysis *within 30 days of determining an offender may have committed a specific sex crime* [[2933.82\(B\)\(2\)\(b\) – Retention of biological evidence](#)]. This clarification is used by some agencies to explain why evidence kits are not submitted to the laboratory if they are associated with an anonymous report, unless the victim converts to a standard report with participation in the criminal justice process. At that point, law enforcement will conduct an interview with the victim, and make a determination about reported offenses.



Nebraska¹¹⁰

In the statewide protocol for medical forensic examinations,¹¹¹ Nebraska offers several reporting options for sexual assault victims: (1) partial report with evidence collection, (2) anonymous report with evidence collection, and (3) Nebraska Crime Stoppers Program.

Medical Mandated Reporting

Nebraska has medical mandated reporting for sexual assault victims who are under the age of 18, have serious bodily injury, or any bodily injury from a deadly weapon. Mandated reports must include the victim's name, a brief description of the injury, and (if it can be ascertained) the victim's residential address and the location of the offense.

Alternative Reporting Procedures

For adult victims without injuries requiring a mandated report, they are asked to either:

- (1) Consent in writing to have their (1) sexual assault (or attempted sexual assault) reported to law enforcement; or
- (2) Sign a written acknowledgement that the sexual assault will not be reported to law enforcement, but any evidence collected during a medical forensic examination will be submitted to law enforcement in accordance with an anonymous reporting protocol.¹¹²

Partial Report with Evidence Collection

- Partial reporting is available for sexual assault victims who are 18 or older who have a medical forensic examination and present without serious bodily injury, and when a deadly weapon was not used during the commission of the offense.
- No law enforcement contact is required at the time of the exam, but the victim may speak with law enforcement if they choose.
- With the victim's consent, the forensic examiner provides law enforcement the victim's name and contact information, and access to the complete exam report.
- The law enforcement agency with jurisdiction over the assault is notified that an exam was conducted, and responds to take custody of the evidence.

¹¹⁰ Special thanks to three dedicated professionals who reviewed and contributed to the development of this material: (1) George Welch, Assistant Attorney General, Nebraska Attorney General's Office; (2) Anne Boatright, Forensic Nursing Coordinator, Nebraska Attorney General's Office; and (3) Michelle Miller, Sexual Violence Program Coordinator, Nebraska Coalition to End Sexual and Domestic Violence.

¹¹¹ Nebraska Attorney General's Office (2019). [Nebraska Medical Sexual Assault Protocol](#). Lincoln, NE: Nebraska Attorney General's Office.

¹¹² [Neb. Rev. Stat. §28-902](#).



- Law enforcement reviews the assault history documented in the exam report. If the incident described meets the legal elements of a sexual assault offense, evidence from the exam is submitted to the forensic laboratory for analysis, and any foreign DNA profiles identified from the evidence are uploaded to the National DNA Index System (NDIS).
- If the report notes any consensual sexual activity by the victim within the last 120 hours, law enforcement will attempt to obtain an elimination standard from the consensual partner, so the forensic laboratory can exclude the consensual partner's DNA profile from NDIS.
- Investigators reach out to the victim when they have "information to share about the physical evidence in the case, such as hits in CODIS for similar assaults" (p. 16). The protocol notes that any such contact with victims "should be scheduled for an in-person meeting, in a private space, and in collaboration with victim services" (p. 16).
- Victims can "choose to later convert their case to a full law enforcement report by reinitiating contact with the appropriate law enforcement agency" (p. 6). Otherwise, investigators are discouraged from "making contact with the suspect or any witnesses without the victim's consent, as such contact may jeopardize the safety of the victim" (p. 16).
- If the victim converts to a standard report with full participation, law enforcement will "take an initial statement from the victim as soon as contact can be made" (p. 17).

Anonymous Report with Evidence Collection

- Anonymous reporting is available for sexual assault victims who are 18 or older who have a medical forensic examination and present without serious bodily injury, and when a deadly weapon was not used during the commission of the offense,
- An evidence kit number is used instead of the patient's name for tracking purposes. Law enforcement is not given identifying information on the kit or accompanying paperwork. The crime laboratory's copy of the report (without the victim's name) is sealed inside the kit.
- The forensic examiner notifies the law enforcement agency with jurisdiction over the assault location about the anonymous report and turns the evidence over for storage.
- The evidence is stored by law enforcement for 20 years, without any testing or other investigative steps taken. The kit number is entered into the agency's record management system in a searchable field.
- The victim is given the evidence kit number upon discharge, and advised to contact the law enforcement agency storing the evidence to convert to a partial report or full participation.



- The exam facility will also document the law enforcement agency and kit number in their confidential records, so the victim can contact them to obtain the information, if needed.
- The victim may convert to a partial report or full participation at any time.
- The evidence may then be transferred to the agency with jurisdiction, if needed.

Crime Stoppers Program

The protocol also offers anonymous reporting through the Crime Stoppers program.

- When someone submits a “tip” with information about a sexual assault, the program “creates a time-stamped record of information that is shared with law enforcement” (p. 19).
- This information is monitored by the Nebraska State Patrol and may be given to a local law enforcement agency when jurisdiction of the incident can be determined.
- The program allows victims to “anonymously share information with law enforcement and engage in two-way communication with the assigned officer” (p. 19). This may help law enforcement “make connections between cases with similar fact patterns,” while victims continue “keeping their identity private until they are ready to come forward” (p. 19).
- Victims may “choose to ‘convert’ this report and identify themselves to law enforcement at any time” (p. 19).

Asheville, North Carolina¹¹³

An example of third-party reporting comes from Asheville, North Carolina, where the advocacy program Our VOICE worked collaboratively with the Asheville Police Department and Buncombe County Sheriff’s Office to establish an online reporting option (described as “blind reporting”) for sexual assault victims, with the option of remaining anonymous.

Blind reporting is offered through an online portal on the [Our VOICE agency website](#). Sexual assault victims are invited to use the online portal on their own, or they can be accompanied by an advocate for support during the process of recording information.

Blind Reporting Procedures

In the instructions provided on the agency’s website, victims are advised that they can provide as much or as little information about their sexual assault as they choose. They are also free to provide contact information (or not), but no investigation will be initiated

¹¹³ Thanks to Cynthia Clark, Court and Legal Advocacy Coordinator, Our VOICE Rape Crisis and Prevention Center, for her valuable review and contributions to this section.



unless the survivor chooses that option. In other words, the report may or may not be anonymous (based on victim choice), but it is promised to be non-investigative. The online form then asks for the following information (but again, they can provide as much or as little of the information as they choose):

- Date, time, location of the assault
- Narrative description of the assault
- Victim name, gender, race, date of birth, address, and phone number
- Suspect name, gender, race, date of birth, address, and phone number
- Relationship between victim and suspect
- Description of physical injuries, if any
- Whether a weapon was used, and if so, what and how
- Whether drugs and/or alcohol were used/present
- Whether/which medical treatment was accessed
- Whether there is social media use by the suspect
- Vehicle identification, if relevant

A final question asks if the survivor would like Our VOICE to coordinate communication with law enforcement. If they say yes, staff assumes this responsibility. After the form is completed, staff submits it to the law enforcement agency with jurisdiction over the sexual assault.

Victims can choose to be contacted by Our VOICE if the law enforcement agency receives another report with the same suspect, to decide if they want to speak with law enforcement; however, this is not required. The goal is to provide as many options as possible for victims to report their assault, without pressuring them to speak with police and engage the criminal justice system.

Cambria County, Pennsylvania¹¹⁴

For an example of a local rather than statewide protocol, anonymous reporting procedures are incorporated in the sexual assault response protocol in Cambria County, Pennsylvania.¹¹⁵

Medical Mandated Reporting

Pennsylvania does not have medical mandated reporting for sexual assaults committed against a competent adult. In fact, health care providers are *prohibited* from reporting

¹¹⁴ Thanks to Erica Brosig, Clinical Director for Victim Services Incorporated and Cambria County SART Coordinator, for her valuable contributions to the development of this material.

¹¹⁵ Cambria County Community of Responders (2011). [Cambria County Sexual Assault Protocol \(2nd Edition\)](#). Cambria County, PA.



the sexual assault of an adult patient to law enforcement, unless certain injuries are present (shooting, stabbing). This means the vast majority of sexual assault medical forensic examinations will not trigger any requirement for reporting to law enforcement.

Anonymous Reporting Procedures

- Anonymous reporting is available for sexual assault victims age 18 or older who have a medical forensic examination.
- When a medical forensic examination is conducted, the advocate in coordination with the SANE informs the victim about the procedures involved with anonymous reporting, the timeline for storing evidence associated with an anonymous report, the method of future contact (with victim consent), and how anonymous reporting may affect future prosecution. The consent form also reviews the benefits and challenges of anonymous reporting.
- Following the exam, a designated law enforcement agency completes an informational report, including the name of the SANE, the SANE number for the evidence kit, and the date of retrieval of the evidence. An incident number is also generated by the law enforcement agency, and provided to the SANE for documentation in the SANE log.
- The evidence is identified with a “SANE number” on the front of the kit, and it is stored by law enforcement “for the duration of the maximum applicable statute of limitations” (p. 20).
- No investigation or evidence testing will be conducted unless the victim decides to convert from anonymous reporting to participation in the criminal justice process. However, “an exception may be made at the discretion of the District Attorney on a case-by-case basis in high profile cases and/or serial cases or in the event public safety is at issue” (p. 20).
- Victims may contact the designated law enforcement agency storing their evidence, the victim advocacy organization, or the SANE program, to initiate the investigative process. If the initial contact is with victim advocacy, the advocate will provide the victim with support and assistance contacting the SANE program. If the initial contact is with law enforcement or another agency, the responder “must immediately contact or instruct the victim to contact the SANE program at the medical facility where the exam was completed” (p. 20).
- The SANE assists the designated law enforcement agency in identifying the anonymous evidence kit, which transfers it along with the informational report to the law enforcement agency with jurisdiction over the assault, which can then proceed with an investigation.
- If the victim has not contacted any agency to convert the anonymous report, the SANE calls the victim (with consent) approximately 30 days before the storage



period comes to an end. A second attempt at contact can also be made by the SANE, if consent is given.

- The destruction of evidence then follows policy for the law enforcement agency.

Colorado¹¹⁶

In Colorado, the statewide protocol for medical forensic examinations¹¹⁷ outlines two alternative reporting options for sexual assault victims: (1) anonymous reports, and (2) medical reports. Both options are available to any sexual assault victim who has a have a medical forensic examination, but chooses not to participate in the law enforcement investigation at the time.¹¹⁸

With both options, victims can talk with law enforcement to obtain more information, if they choose. The statute defining the two options clearly states that: “Nothing in this section prohibits a victim from anonymously speaking to law enforcement about the victim’s rights or options prior to determining whether to consent to a report described in this subsection.”¹¹⁹

Medical Mandated Reporting

Colorado does not have medical mandated reporting for sexual assaults committed against a competent adult unless the victim has “serious bodily injury” or certain types of injuries defined by law (from a firearm, knife, or other sharp/pointed instrument). Even if a mandated report is required, three reporting options are available for any victim who has a medical forensic exam, is 18-69 years old, and does not have an intellectual or developmental disability: (1) standard report to law enforcement with full participation, (2) medical report, or (3) anonymous report. With all options, “the patient is not obligated to participate in the criminal justice system (p. 10).

Medical Report

In Colorado, the term “medical report” is used when the victim chooses to have evidence from a medical forensic exam provided to law enforcement *with their name*

¹¹⁶ Special thanks to four dedicated professionals who reviewed and contributed to the development of this material: (1)) Dr. Lisa Ingarfield, Researcher / Consultant, Defi Consulting; (2) Jenna Harper, Sexual Assault Response Program Manager, Colorado Coalition Against Sexual Assault; (3) Sergeant Mary Prestel, Major Crimes Division – Sex Crimes, Denver Police Department; and (4) Megan Lechner, Clinical Manager, SANE/SAFE Project Director, Memorial Central Emergency Department, Forensic Nurse Examiner Team, Colorado Springs.

¹¹⁷ Colorado SANE/SAFE Program (2016). [Colorado Sexual Assault Evidence Collection Protocol \(3rd Edition\)](#). Denver, CO: Colorado Sexual Assault and Nurse Examiner Advisory Board, Colorado SANE/SAFE Program.

¹¹⁸ For both medical and anonymous reports, the Sexual Assault Victim Emergency (SAVE) program pays for the evidence collection portion of the exam and related medical care up to \$3,000 (the specific amount varies based on available funds). This is in contrast to the standard reporting process, where the law enforcement agency with jurisdiction over the crime pays for the evidence collection portion of the exam, and Crime Victim Compensation covers other related medical expenses.

¹¹⁹ C.R.S. §12-36-135 (1)(a)(II)(A)



and contact information. They can then decide whether this evidence will be submitted to the laboratory for testing.

If the victim chooses testing, law enforcement may attempt to contact any recent consensual sexual partner identified during the exam, to obtain an elimination standard. The evidence kit (and elimination standard, if collected) will then be submitted to an accredited crime laboratory within 21 days of receipt by the law enforcement agency (unless the victim withdraws consent for testing, the report is proven false, or the kit needs to be transferred to another jurisdiction). When test results are returned to law enforcement, investigators may contact the victim to explain the findings and discuss possible next steps. However, they are not required to.

If the victim chooses *not* to have evidence tested, it will be stored by the law enforcement agency with jurisdiction over the assault for at least two years. (If jurisdiction is unknown, it is stored by the law enforcement agency in the same jurisdiction as the hospital or exam facility.)

Whether the victim chooses to have the evidence tested or not, no additional investigative steps will be taken unless the victim converts from a medical report to full participation in the investigation. Victims can call the law enforcement agency if they decide to pursue this option.

Anonymous Report

The term “anonymous report” is used when the victim chooses to have evidence from an exam provided to law enforcement *without their name or contact information*. This evidence will not be submitted to the laboratory for testing: “Anonymous reports cannot be tested due to the inability of law enforcement to follow-up, if necessary, regarding testing outcomes” (p. 11).¹²⁰

The evidence is assigned a unique identifying number by law enforcement (usually a case report number), which is given to the victim, placed in their medical record, and written on the outside of the kit. Law enforcement will then store the evidence for at least two years.

No testing or investigation is conducted unless the victim converts to a medical report or full participation. Victims can convert an anonymous report by contacting the law enforcement agency storing the evidence and providing the unique identifying number for their kit.

¹²⁰ Colorado has a statutory requirement for law enforcement to submit evidence from all sexual assault medical forensic exams to the laboratory for testing within 21 days. However, the legislature later passed an exception, *specifically prohibiting law enforcement from submitting evidence for testing* in connection with an anonymous report of sexual assault. C.R.S. §18-3-407.5 (3)(d)



Missouri¹²¹

Procedures for (1) anonymous reporting and (2) unreported evidence collection are described in the statewide protocol for sexual assault medical forensic examinations.¹²² For both options, a unique identifier is assigned to the evidence kit from the exam.¹²³ Missouri does not have medical mandated reporting for competent adults unless there are gunshot wounds involved.

Anonymous Reporting Procedures

- The victim agrees to participate in the criminal justice process (anonymously).¹²⁴ Law enforcement is not provided any victim identifiers or contact information.
- Law enforcement is notified of the exam no later than the next business day, and must pick up the evidence kit from the exam facility within 14 days.
- After picking up the evidence kit, law enforcement has another 14 days to transfer it to the crime laboratory (up to 28 days total from the date of the exam).
- The evidence is stored by law enforcement for at least 30 years if the report is not adjudicated. (If DNA is recovered from the evidence, it is to be stored indefinitely.)
- Victims are advised to contact the law enforcement agency identified on their consent form if they decide to convert to a standard report with full participation.

Unreported Evidence Collection

- The victim does not agree to participate in an investigation or potential prosecution.
- Law enforcement is not notified, and there is no investigation or testing of the evidence unless the victim converts to a report being made to law enforcement.
- The evidence kit is stored by the Missouri State Highway Patrol for 5 years.¹²⁵

¹²¹ Special thanks to two dedicated professionals who reviewed and contributed to the development of this material: (1) Dan Patterson, Greene County Prosecuting Attorney, and (2) Jennifer Carter Dochler, Public Policy Director, Missouri Coalition Against Domestic and Sexual Violence (MCADSV).

¹²² Missouri Department of Public Safety (2020). [Missouri Sexual Assault Forensic Examination Evidence Guidelines](#). Jefferson City, MO: Missouri Department of Public Safety.

¹²³ As of October 21, 2020, the system for creating and tracking unique identifiers is not yet operational; it is currently being developed by the Missouri Attorney General's Office.

¹²⁴ Although this is stated in the protocol, it is not clear what anonymous participation in the criminal justice process would look like, since most steps in an investigation and prosecution require victim identification (personal communication, Dan Patterson, Greene County Prosecuting Attorney, 10/21/20).

¹²⁵ Although this is outlined in the protocol, some hospitals are electing to keep the evidence kits and not send them to the Missouri State Highway Patrol because they are equipped to retain them for a longer period of time (personal communication, Dan Patterson, Greene County Prosecuting Attorney, 10/21/20).



- Victims are advised to contact the law enforcement agency identified on their consent form if they decide to convert to a standard report with full participation.

South Carolina¹²⁶

Anonymous reporting procedures are outlined in the statewide protocol for sexual assault investigation and prosecution.¹²⁷ South Carolina does not have medical mandated reporting for competent adults unless the injury is the result of a firearm.

Anonymous Reporting Procedures

- Only available for sexual assault victims 18 or older who have a medical forensic examination (paid for by the Department of Crime Victim Compensation).
- Victims have no contact with law enforcement at the time of the exam.
- The evidence kit is labelled with an anonymous identifier; there is no personally identifiable information for the victim on the outside of the kit.
- A case number is generated, using the same procedures for anonymous reporting, citizen contacts, suspicious incidents, etc. This is recorded in the victim's account at the hospital.
- The evidence kit number and the law enforcement case number are linked.
- Evidence is stored for 1 year, by the law enforcement agency with jurisdiction over the assault location.
- The evidence kit is not opened, and no investigation is pursued unless the victim converts to a standard report with full participation in the criminal justice process.
- The victim is notified at 11 months by a community-based victim advocate that the kit will be destroyed (the victim provides contact information at the time of the exam).

Note: "Blind reporting" is mentioned in the protocol, but no additional information is provided.

¹²⁶ Thanks to Sabrina Gast, RN, MSN, South Carolina Victim Assistance Network, Statewide Forensic Nurse Examiner Director for reviewing and providing valuable contributions to this section.

¹²⁷ South Carolina Office of the Attorney General (2015). [Sexual Assault Protocol for the Investigation, Prosecution, and Judgment of Sexual Assault \(2nd Edition\)](#). Columbia, SC: STOP Violence Against Women Program, South Carolina Office of the Attorney General.



Appendix C: Sample Protocol for Pseudonyms in Texas

Originally passed by the Texas legislature in 1988, the state statute offers sexual assault victims the right to establish a pseudonym for use in public records:

A victim may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim who elects to use a pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.¹²⁸

The Texas Association Against Sexual Assault (TAASA) explains some advantages and disadvantages of this practice in their [Sexual Assault Advocate Training Manual \(2016\)](#):

- On the one hand, the primary advantage of using a pseudonym is that the victim may be protected to some extent from unwanted publicity. One of the commonly cited fears among sexual assault victims is that their name will appear in the press, and the use of a pseudonym can be sufficiently reassuring to victims that they will be able to report the crime and participate in the police investigation.
- However, even the use of a pseudonym cannot realistically be expected to protect the privacy of a victim if the case goes to court. If the sexual assault investigation results in criminal prosecution, there will likely be enough information presented in court that the victim will be identifiable even when a pseudonym is used.

As the TAASA manual goes on to describe, having victims use a pseudonym on a police report of a sexual assault requires a number of policies and protocols – not only within the law enforcement organization but with other agencies and individuals as well. Law enforcement agencies are therefore encouraged to use the pseudonym form routinely and at first contact. If it is not offered and the victim requests it later, the pertinent records and court proceedings will need to be changed retroactively. One approach is to offer an explanation and link to the pseudonym form on public websites (for law enforcement agencies, advocacy centers, etc.), so victims can be informed about the option and complete the form on their own, to present to law enforcement when they make contact.

Other recommendations for implementation are described in the TAASA manual:

- “Survivors should be advised that the name they choose will follow them through the criminal justice system. Care should be taken in the choice” (p. 92).¹²⁹

¹²⁸ [TX Code Crim Pro art 58.202 \(2019\)](#).

¹²⁹ For example, some agencies encourage victims to pick a pseudonym with the same first and last initial as their real name, so the initials are easier to remember. However, this can also make it easier for others to piece together who the victim is, especially if they are a public figure (personal communication, Haleh Cochran, Systems Change Advocate, Texas Association Against Sexual Assault, November 1, 2020).



- If an address and phone number are required for any computerized records, information for the police department or sexual assault program (not the victim) should be used. If they are not required, these records can simply be left blank.
- To further protect victim privacy, all press releases or statements about a sexual assault case should include a disclaimer that a pseudonym is being used.

To provide a sense of how victim pseudonyms work in the Austin Police Department, a Victim Services Counselor provides all victims of sexual assault with information on obtaining a pseudonym – both in writing and verbally. If they choose this option, victims are then advised to choose a name, and the detective investigating the case goes through all the documents and changes the victim’s legal name to the pseudonym.

Enacting this practice requires additional work for detectives, but Sergeant Liz Donegan (Retired) of the Austin Police Department describes it as a best practice for law enforcement that is now being used with increasing frequency because it is explained verbally and not just described in a brochure provided by a Victim Services Counselor.¹³⁰

[Using a pseudonym] gives victims a choice about whether they want people to know they are a survivor.

- Sergeant Liz Donegan (Ret.)

Establishing a Pseudonym

A [statewide form](#) is also provided, with instructions for victims and responding professionals on how to establish a pseudonym for pertinent records. It was developed by the Texas Office of the Attorney General, and it requires very simple information about the victim and case, such as the law enforcement agency and case number, and the victim’s name, address, and contact information. Victims can then document their consent to release identifying information for a number of specific purposes. This includes the option of releasing their name to any or all the following entities:

- Local sexual assault program
- Law enforcement / Crime victim liaison
- Crime Victim Compensation
- The victim’s medical insurance carrier
- District Attorney’s office
- Victim-witness assistance
- Court ordered restitution office

¹³⁰ Personal communication, Sergeant Liz Donegan (Retired), Austin Police Department, Sex Offender Apprehension and Registration (SOAR) Unit.



Once the form is completed by the victim, one copy is retained by law enforcement, another is provided to the victim, and a third is included in the case file to be forwarded to the prosecutor and court administration, as well as probation or parole if the defendant is convicted and assigned to supervision.

A Word of Caution

Before we conclude this discussion, a word of caution is in order. Any community that is implementing this practice to honor a victim's need for confidentiality must brainstorm all the challenges that might arise. For example, reporters often obtain copies of arrest and search warrants (including affidavits or probable cause statements), so redacting a victim's name from a crime report may not be enough to protect their identity. One solution is to ask the judge to seal the warrant, when the victim's name and other identifying information (like address or relationship with the suspect) might be revealed in the affidavit and supporting documents for the warrant.



Case Example

The need for such protection was poignantly illustrated in an example out of the San Diego Police Department's Sex Crimes Unit. The case involved a drug facilitated sexual assault, and the victim came from a law enforcement family; her mother, father, and sisters all worked in policing, and she did not want her family to know about the assault. The investigator and prosecutor worked hard to protect the victim's confidentiality, but the subpoena was mailed to her home where she lived with her father. Subpoenas always list the suspect's name as well as the charges and date to appear, so this put the victim's family on notice that she had been sexually assaulted. The victim, and those who had been trying to do their best to protect her confidentiality, were all devastated. This example is important to keep in mind when striving to protect the identity of sexual assault victims; it is a very worthy goal, but not always easy to accomplish in practice.



Appendix D: Why Not Prosecute Without the Victim?

Historically, we have typically seen evidence-based prosecution in domestic violence cases where the victim has recanted, withdrawn cooperation, or become increasingly unwelcoming of criminal justice participation. Many people believe it has been extremely successful in domestic violence cases, because victims are often relieved to know they are not the ones responsible for deciding whether or not criminal charges will be filed in their case. The goal is to hold more offenders accountable and decrease the risk of additional harm to victims – because offenders know it is not the victim making the decision about whether the case will be investigated or prosecuted. Based on this success with domestic violence, some have suggested extending it to sexual assault.

Community Safety Argument

This idea to use evidence-based prosecution with sexual assault is based on the premise that community safety outweighs the rights of an individual; the community therefore has an interest in pursuing sexual assault cases (as with domestic violence) regardless of whether the victim is able to participate in the criminal justice process.

Investigators and prosecutors clearly have the legal authority to pursue this strategy. They are not required by law to have the victim's consent or cooperation, to investigate or file charges in a sexual assault case. This is true because most sexual assaults are felonies (unlike the majority of domestic violence crimes that are handled as misdemeanors), and because felonies are crimes against the state (and not an individual). Therefore, there is no question that evidence-based prosecution is available to prosecutors in sexual assault cases. The question is not whether they *can* utilize the strategy in this context, but *should they?*

Cultural Change Argument

Beyond community safety, another argument is that evidence-based prosecution for sexual assault might create positive changes in the criminal justice system's handling of these cases, as many would argue that it has for domestic violence cases.

Currently, most investigators and prosecutors would not consider pursuing a sexual assault case without the cooperation or testimony of the victim. But there was also a time when no one would have thought to prosecute a domestic violence case without the victim's cooperation. With shifting societal attitudes and an increased understanding of the cycle of violence, we have seen significant decreases in the number of domestic violence incidents over the past few decades – and especially in the number of domestic violence-related homicides. Many would argue that the use of evidence-based prosecution has played an important role in contributing to this positive change. As a result, some professionals are asking what would happen if we forced sexual assault cases forward with the same degree of dedication that is currently seen with domestic violence. Would we begin to see a similar change in the social attitudes about sexual



assault? Would these changing attitudes then be reflected in a decreased incidence of sexual assault and/or increased rates of conviction for sexual assault offenders?

These are important questions, and we must carefully consider such paradigm shifts as we work to improve criminal justice and community responses to sexual assault. However, we also need to push these questions further and explore the implications of using evidence-based prosecution with sexual assault, based on the realistic limitations of how and when such a strategy might be used, and clarify the important differences between the criminal justice processing of sexual assault versus domestic violence.

Time for a Reality Check

In fact, it may be time for a reality check in the discussion of this issue. On the most basic level, it is difficult to imagine forcing sexual assault prosecutions forward in cases where the victim does not want to go to trial, when there are thousands of sexual assault victims across the country who are desperately trying to pursue justice in their case – but, for a variety of reasons (usually “insufficient evidence”), criminal charges are not filed. Police officers and prosecutors typically have a full caseload with victims who *want* to participate in the process. It is therefore hard to justify expending resources to pursue cases without the victim’s cooperation, especially because they are unlikely to result in successful investigation and prosecution. In other words, when investigations and prosecutions are so often not pursued in cases where victims *want* their day in court, why would we spend our resources pursuing cases where the victim does not?

It is also worth noting that evidence-based prosecution is likely to be pursued in communities only in certain types of cases. This may include cases that receive media attention for whatever reason, whether it is because the victim is very young, very old, or sustained extensive physical injuries – or because the suspect is either a serial perpetrator or an individual who is well-known or highly respected within the community.

A better way to achieve community safety and cultural change is to successfully investigate and prosecute those cases where this reflects the victim’s wishes.

This is especially true because the defense strategy in sexual assault cases is so often to attack the credibility of the victim. After all, sexual assault cases are the only ones where the legal system has created special rules (i.e., rape shield laws) to protect victims by keeping their sexual history and other personal information out of court. A moral argument could therefore be made that we need to do a better job with our investigations and prosecutions – and do more to educate the jury pool (i.e., community members) – before we put sexual assault victims at risk for further victimization from the offender, as well as the criminal justice system itself, by pursuing evidence-based prosecution.

Argument of Sparing Victims

This brings up another argument that is sometimes made by professionals, especially by victim advocates, which is that evidence-based prosecution could be used as a way of pursuing successful prosecution in sexual assault cases without putting victims through



the ordeal of going to trial. They correctly point out that there are many sexual assault cases where victims are so traumatized or fearful that they are simply unable to participate in the process of an investigation or prosecution – let alone appear in court. If the case could be prosecuted solely on the basis of the evidence, they argue, such cases could be pursued, and offenders could be held accountable without requiring the victim to testify. This sounds promising, and of course we all struggle with the balance of trying to hold sexual assault offenders accountable while protecting victims from additional trauma. However, evidence-based prosecution is unlikely to meet this goal because it is unrealistic to expect it to work in the way these individuals are envisioning.

To understand what we're saying, it requires walking through the logic of a sexual assault prosecution, and understanding how it will typically unfold in the real world. First of all, we already know that the majority of sexual assault cases involve a victim and perpetrator who know each other, so the defense is not typically based on identification (*You've got the wrong person!*) but consent (*Yeah, we had sex, but she/he wanted it*). This highlights a key difference between sexual assault versus domestic violence prosecution. Domestic violence is also a crime committed by a known offender, but the defense is not based on consent. It may be based on the question of identifying the primary aggressor, and whether the incident was simply "mutual combat," but the law says that a domestic violence victim cannot *consent* to being punched, kicked, or beaten.

We also know the consent defense is extremely successful in sexual assault cases because judges and juries share the same societal beliefs about sexual assault (e.g., that victims lie about sexual assault, or that they "asked for it" by engaging in behavior that is seen as risky or morally questionable). Physical evidence and witness testimony are often insufficient to overcome these deeply held beliefs. Even when there are eyewitnesses to the sexual assault or a video recording of the crime, the defense is still frequently able to convince the judge or jury that the acts were consensual. As a result, sexual assault trials often end with an acquittal or a hung jury, rather than a conviction.

Realistically, **the only evidence persuasive enough to overcome a consent defense is personal testimony of the victim.** The victim is the only person who can re-create the entire reality of the sexual assault, by testifying that the sexual contact was forced or nonconsensual, and demonstrating the devastating impact that the crime has had on their life. Do we really expect a judge or jury to be able to make the proper decision in a sexual assault case – and to get a sense of the trauma and pain suffered by a sexual assault victim – without hearing from that victim? Without victim testimony, it is unlikely that most sexual assault prosecutions would be able to yield a conviction.

But perhaps the most significant reality check is the fact that *prosecutors are not the ones who ultimately decide that a trial will proceed without the victim's testimony.* The US Constitution grants defendants the right to confront all witnesses, and it is hard to imagine any defense attorney in a sexual assault case who would not subpoena the victim to testify. Therefore, even if prosecutors wanted to pursue "evidence-based prosecution" and not call the victim to testify, it is virtually guaranteed the defense will produce a subpoena ordering the victim to do so. At that point, the victim is presented with two options, and it is hard to imagine which of the two would be more traumatizing.



- On the one hand, the victim in such a situation could testify as a result of a subpoena, but the jury would know that the victim did not want to be involved in the trial and was appearing as a hostile witness. The defense would then use this fact to argue that it can't possibly be a "real rape," since the victim isn't even interested in seeing the defendant prosecuted. It is unlikely the prosecution would be able to overcome this challenge and secure a conviction in the case.
- But if the victim fails to appear in court in response to the defense subpoena, they could potentially be arrested for failure to appear or contempt of court. There have been some cases across the country where this is exactly what happened: where sexual assault victims are arrested and jailed for not appearing in court (or in one case, to "ensure her safety and appearance at trial."¹³¹ This would certainly be traumatic for victims, especially if they had been led to believe that they would not have to testify about their sexual assault. Yet again, defense attorneys could easily argue that there is no better evidence to prove that the victim consented than the fact that she/he did not want to testify and/or failed to appear in court.

In other words, **it is difficult to imagine a scenario where victims could avoid testifying.** Furthermore, regardless of whether or not they testified, the fact that the case was pursued without their participation makes it extremely unlikely to result in a conviction. Is this really what communities want? It is doubtful that this is what is envisioned by professionals who might argue for the use of evidence-based prosecution in sexual assault cases. It is most likely a matter of not following the logic all the way through, for something that sounds promising but would likely fail to meet its objective and in fact could cause considerable trauma for sexual assault victims. It is therefore critical to explore all of the potential outcomes of any policy or strategy such as pursuing evidence-based prosecution in sexual assault cases.

Sexual Assault in Intimate Partner Violence

This raises the question of what happens when evidence-based prosecution is pursued for a sexual assault report **in the context of intimate partner violence.** This issue is perhaps best illustrated in a case described by Linda Rossman and Heather French (2011) in *Sexual Assault Report*.¹³² The case took place in Grand Rapids, Michigan. In that case, a neighbor called 911 in response to an incident of domestic violence between a husband and wife. The husband had also committed a sexual assault in the context of this abuse. As a result of the call, police responded to the house, contacted the victim, and generated a police report to document the domestic violence offense. At the time, however, there was no mention of the sexual assault. Meanwhile, the victim went to the local rape crisis center, which operated a medical forensic exam facility, and had an examination. At the time, the victim was unsure about whether she wanted to

¹³¹ Onishi, N. (2012, April 15). [Victims' Advocates Protest as Prosecutors Detain 17-Year Old Rape Victim in California](#). *New York Times*; Victor, D. (2016, July 22). [Texas woman was jailed for fear she would not testify, lawsuit says](#). *New York Times*.

¹³² Rossman, L. & French, H. (2011). Evidence seized from nurse examiner program against victim wishes. *Sexual Assault Report*, 14 (5).



report the sexual assault to police, so she was offered the option of anonymous reporting. The procedure had recently been introduced within the community.

Later, the victim decided she *did not* want to participate in the investigation or prosecution of her sexual assault (and presumably the domestic violence as well). Like many victims, she did not want to see her partner incarcerated. However, because of the police response to the domestic violence incident, the decision was already out of her hands. The investigating agency obtained a subpoena for the medical records.

Whether a neighbor calls 911, or a health care provider files a mandated report, domestic violence cases will often come to the attention of law enforcement through some means other than the victim's own decision to report. These cases are more likely to be pursued without the victim's cooperation, because many jurisdictions have adopted policies of pursuing evidence-based prosecution for intimate partner violence.

However, a medical forensic examination can potentially yield evidence that is relevant for domestic violence charges as well as sexual assault. Therefore, investigators and prosecutors will often decide to use this evidence to pursue charges of domestic violence, even if they decide not to file or pursue any charges related to the sexual assault. This will often happen regardless of the victim's wishes. This means the victim may not be able to withdraw from the criminal justice process in a case of sexual assault, if it was committed within the context of intimate partner violence.

In other words, **victims of intimate partner violence will often not have any realistic option for alternative reporting methods.** An appropriate response therefore requires that we acknowledge this reality and prepare for it in advance, by engaging in the type of multidisciplinary policy discussions Rossman and French describe in their article. As in Grand Rapids, communities should develop a written protocol to ensure that all the professionals involved in the community response system share an understanding of any alternative reporting options and their limitations. Ideally, this written protocol will include documentation of a good faith agreement on the part of criminal justice professionals that sexual assault will not generally be investigated or prosecuted without the victim's consent and active participation, except in certain circumstances. (As noted in the module, this may include cases that involve severe injuries or serial perpetration, as well as those that receive media attention or involve a high-profile individual).

Victims also need to be informed of this possibility. Written materials should include simple language that victims can read and sign, indicating their understanding that sexual assault may be investigated and prosecuted regardless of their wishes.