Opening Doors:
Alternative Reporting Options for Law Enforcement and VAWA Forensic Compliance

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Learning Objectives

- Identify key provisions of the Violence Against Women Act (VAWA), often referred to as forensic compliance.
- Examine best practices and tools from across the country to enact VAWA forensic compliance and implement alternative reporting methods.
- Evaluate additional strategies for increasing victim access, and reducing gender bias within criminal justice community responses ("opening doors").

Of 100 rapes committed

- an estimated 5-20 are reported to police
- 0.4-5.4 are prosecuted
- 0.2-2.5 result in a conviction
- 0.2-2.8 incarceration


Barriers to Reporting

- Why don’t victims report?
  - Fear of reprisal
  - Fear of being blamed
  - Not enough proof
  - Fear of the justice system
  - Don’t want anyone to know
  - Too embarrassed / ashamed
  - In other words...
    - Fear of how others will respond

Sources: Wolitzky-Taylor et al. (2011b), Zinzow and Thompson (2011)
Reporting Decision Takes Time

- MAD data, 1,825 cases from 2004-2006
  - 63% reported the same day
  - 19% between 1-6 days
  - 7.5% between 1-4 weeks
  - 7.5% between 1-12 months
  - 3% took years to report

Source: Making a Difference (MAD) research methodology and findings at www.evawintl.org/mad.aspx.

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Victims Seek Support First

Survivors contacted an average of 2-3 informal or formal supports before reporting to police


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Benefits of Help-Seeking

Accessing the services of one professional increases the likelihood of engaging others
Need to Open Doors for Victims!

Opening doors

VAWA Forensic Compliance

VAWA Forensic Compliance: 2005 Reauthorization

“Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.”

2005 VAWA Reauthorization 42 USC S. 3796gg-4 (b)(3)(d)(1)
**Forensic Compliance: 2 Prongs**

- **Payment**: SA victims must have access to a medical forensic examination FREE
- **Participation**: SA victims must have access to exam without being required to “participate in the criminal justice system or cooperate with law enforcement.”

**New Provision in VAWA 2013**

- Forensic compliance provisions remain in effect with current reauthorization
- Plus 2 new provisions:
  - Victims cannot be required to pay any out-of-pocket costs (cannot pay and be reimbursed)
  - Public outreach to notify victims that exams are free and without reporting to police

**Why Forensic Compliance?**
Why Forensic Compliance?

Criminal Justice Philosophy
- To increase reporting and participation
- To reduce attrition and improve case outcomes
- Connect victim with resources (health care, advocacy, Crime Victim Compensation, etc.)
- Encourage reporting as early as possible, but whenever a victim is able

“"I was kind of iffy on whether I wanted to press charges 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.”

- Victim in Urban Institute study (2014)

Health Care Philosophy
- To improve physical and psychological outcomes
- Health care is a critical access point for victims
- Can check physical health (e.g., STI's, pregnancy), and connect victim with resources
- As soon as possible, but anytime victim is able
"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 (2011)

**Definition of Forensic Exam**

- For purpose of VAWA, a forensic examination is defined as including, at a minimum:
  - Examination of physical trauma
  - Determination of penetration or force
  - Patient interview, and
  - Collection and evaluation of evidence

[28 C.F.R. § 90.2(b)(1)]
Definition of Forensic Exam

- Medical testing and treatment are NOT included in VAWA definition of a forensic exam
- Some basic services may be included at no cost to victim (STI treatment, emergency contraception)
- Otherwise, medical costs typically billed to victim's private insurance or submitted to CVC
- Many facilities absorb some basic costs at a loss (e.g., STI treatment, emergency contraception)

No Requirement for Anonymity

- VAWA forensic compliance does not require anonymous reporting
  - For exam forms, report for law enforcement, evidence kits, or other evidence such as clothing

Forensic Compliance Deadline

- As of January 2009, states, territories, and tribes must certify compliance with VAWA 2005
  - If jurisdiction cannot certify – or system breakdown (e.g., victims denied exams) could lose VAWA STOP grant funds
"I was told that it 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 (2014)

Billing and Payment

- How are victims informed of options and rights?
- What is process for billing and payment?
- Is victim’s private insurance billed?
- What elements of exam are covered?
- Any follow-up with victims after exam?
- Out-of-jurisdiction exams? Designated facilities?
- Victims should not be sent long distances for exam
Standard Payment Mechanisms

- Most states have statewide payment system, typically through CVC or other state entity
  - Process works smoother when standardized
  - When local jurisdictions pay for exams, there are inconsistent practices, complexities
  - But if cost is standardized, often too low for certain geographic areas or specialized examiners
  - Some programs will offer services at a loss


Crime Victim Compensation

- Crime Victim Compensation (CVC):
  - 2/3 of states use CVC to pay for some exams
  - More than 1/3 use only CVC to pay for exams
  - CVC administrators almost always paying agency (whether or not using CVC funds)


Crime Victim Compensation

- May need to revise eligibility criteria (e.g., reporting requirement, timeline, payer of last resort, ‘contributory misconduct,’ etc.)
  - For example, medical forensic exam might be seen as meeting the reporting requirement
  - Training needed for professionals to ensure they have accurate understanding of laws, procedures

Other Payment Sources

- State Departments of Health, Mental Health, or Human Services
- Law enforcement or prosecutors
- STOP grant funds
- Special dedicated fund for forensic exams
- County funds

Billing Private Insurance

- Can insurance be billed under VAWA 2013?
  - In theory, practice may comply with VAWA 2013 forensic compliance provisions
  - Yet administratively complicated to ensure that victims have no out-of-pocket costs, including co-pays, deductibles, etc.

Billing Private Insurance

- Can also present complications for victims, especially loss of confidentiality
  - Removes victim choice regarding disclosure
  - Problem for victims of intimate partner violence
  - Even if it meets the letter of the law, it does not achieve the spirit of the law
Billing Private Insurance

- Variation in private insurance billing
  - Some states require government funds (e.g., Crime Victim Compensation) be the payor of last resort – victim’s private insurance billed first
  - Others prohibit billing victim’s private insurance
  - Some only bill private insurance with consent

*Note: research conducted before VAWA 2013*


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Forensic Compliance Resources

- Information and materials available from EVAWI, the OVW-funded national technical assistance (TA) provider since 2009
  - Includes module in OnLine Training Institute, articles, Training Bulletins, templates, tools
  - [www.evawintl.org/Forensic-Compliance](http://www.evawintl.org/Forensic-Compliance)
Resources, Cont’d.

- SAFE Payment Map, with laws in each state or territory regarding exam payment
- EVAWI templates for informing victims, documenting consent to exam / reporting
- EVAWI Training Bulletin: Responding to Victims Reporting from Another Jurisdiction

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Forensic Compliance

Opening doors

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Alternative Reporting Options

- Similar philosophy to forensic compliance
  - Encourage reporting and service utilization
  - As soon as possible, but whenever victim is able
  - Can gather intelligence, conduct investigations, and connect victims with resources
### Anonymous Reporting

- Victim can provide information to law enforcement without name or ID
- Example: Cambria County, Pennsylvania
  - Protocol available on EVAWI website:
  - [www.evawintl.org/PAGEID4/Forensic-Compliance/Resources/Model-Policies](http://www.evawintl.org/PAGEID4/Forensic-Compliance/Resources/Model-Policies)

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### Non-Investigative Reporting

- Victim can report to law enforcement without triggering an investigation
- Example: You Have Options Program
  - [www.reportingoptions.org](http://www.reportingoptions.org)
  - Also offers anonymous reporting option

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"Just go to the ER. They can do it all confidential. You can get a card, doesn't even have your name on it. It has your case number. Once you have your case number, you can open that back up anytime you want. So, just to go and get that information collected, just to have it is going to be huge. It's going to be in your favor, and you can take your time from then. It doesn't have to be all thrown into a day."

- Victim in Urban Institute study (2014)
“They’re really good ... about not pressuring you on this. They say it’s your choice whether you decide to press charges 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, but if you change your mind, it’s there.”

- Victim in Urban Institute study (2014)

“They told me I could come and not have to contact the police, but if I wanted they would release the records. ... They kept the file, and I would call them every month and tell them to keep the file because I didn’t know what I was going to do. And so then it was eventually released to the police ... with my consent. Yeah, I called them, but there was never any pressure.”

- Victim in Urban Institute study (2014)
Is there any realistic possibility that cases will be thoroughly investigated and prosecuted, if the facts warrant?

If not, what can we do to make this a reality?

Requires Interagency Coordination

- Law enforcement agencies
- Forensic examiner programs (SANE, SAFE)
- Other medical providers, especially ED staff
- Community-based advocacy (rape crisis center)
- System-based victim advocacy (Victim Services Unit of Police Dept., Victim-Witness Assistance)
- Prosecutors who will eventually receive cases
- Campus, military installations, tribal agencies ...

Units Within Law Enforcement

- Communications / Dispatch (911 call takers)
- Property Room
- Records
- Crime Laboratory
- Patrol / Investigations
- Administration / Fiscal Management
The Bottom Line

Investigation and possible prosecution are more realistic if law enforcement and prosecution are involved in development of protocols.

Evidence Questions

- Where is evidence stored? For how long?
  - Recommend storing at least 2 years
- Are standards for evidence storage met?
- What info are victims provided at time of exam?
- Are victims notified of pending destruction?
- Is evidence stored anonymously? Linked to exam?
- Is it submitted for testing without victim consent?
  - Strongly recommended not to submit for testing

Policies and Protocols for Evidence
Resources: Evidence Retention

- EVAWI model policy on evidence storage, with template forms and other tools
  - Includes two sample evidence retention grids, including Arizona which passed legislation mandating that all sexual assault evidence be retained for a minimum of 55 years
  - New Jersey Attorney General Directive to store evidence for 5 years, to allow victims time to make decision about CJ participation

Victims Who Convert

- How do victims “convert” to a standard report?
  - Research from 2011-2013, conversion rates of 5-15%
  - Typically within relatively short period of time (days/weeks)
  - Are victims provided written info to take home?
  - What investigative steps taken in converted cases?
Recorded webinar on Investigating and Prosecuting Converted Cases, presented by Sgt. Joanne Archambault and Roger Canaff

Pursuing Cases Without Victim Consent

CAUTION

- Cannot always guarantee victims that investigation will not be pursued
- Especially with severe injuries, serial perpetrator, intimate partner, high profile case
- Victims must have realistic information about options and consequences
- See language in EVAWI templates for anonymous reporting protocol templates
Open doors for victims …
... Don’t shove them through

“It just seemed like it was the only option, you know, like ‘Why won’t you?’ … It was asked so many different times by so many different people that I just kind of felt like, ‘Well, should I just give in and do it?’ … But I just felt like I needed to at least stand up for myself on that part, you know … They said that they would keep it for six months, the evidence itself, and there would be a report made and the report on the evidence would be kept on file for a year. So, I have up to a year to report it.”

- Victim in Urban Institute study (2014)

Measuring Success
**Prosecution Not the Only Goal!**

- Colorado report (2013): No "medical report" had been prosecuted at that point
  - Must not be framed as a failure!
  - Unknown how many victims "convert" during course of exam because of VAWA
- Long-term positive outcomes of connecting victims with health care and other services

**Opening doors**

**Need for Data Collection**

- How many exams conducted without LE report?
- How many convert during the exam?
- How many later convert to a standard report?
- How long do most victims take to convert?
- Characteristics of victim, suspect and assault (e.g., stranger, intimate partner, non-stranger)
- How many are successfully prosecuted?
Need for Data Collection

- What services do these victims access?
- What is the protocol for exam without LE contact and does it work as well as a standard report?
- What are victims’ perceptions of the barriers, professional responses, and outcomes?
- Are certain groups of victims less likely to report than others? (e.g., male victims, undocumented)

Resources: Data Collection

- Colorado Forensic Compliance Evaluation Project (FCEP) Report
- Texas research on “Non-Report” Exams

What good are free exams, or alternative reporting options if no one knows about them?
Public Notification

New Provision in VAWA 2013

- Public outreach required to notify victims that medical forensic exam is free and available without reporting to police
- Compliance deadline was March 2016

Public Notification Strategies

- Communities use websites, brochures, media articles, PSA's, and other strategies
  - Translation for non-English speaking people
  - Accessibility for individuals with disabilities
  - Reaching out to underserved communities
  - Ensure consistency with written materials
Seek Then Speak and Victim Link provide victims and their support people with the tools they need to gather information, explore options, and take action. Together they help to close gaps in service delivery and promote justice and healing.

Public Notification

Opening doors

What can you do to open doors for sexual assault victims in your community?