Forensic Compliance Update
Where do we stand in 2012?

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The opinions, findings and information presented in the webinar represent the views of the author(s), not of the Department of Justice or the Office on Violence Against Women.

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Participants

<table>
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Background

Forensic Compliance: 2 Prongs

- Access to medical forensic exams for victims of sexual assault (SA)
  - Payment
  - Participation
Payment

SA victims must have access to exam without paying (free) – or with full reimbursement (if they do pay out-of-pocket costs)

- VAWA 2005 does not specify, however, what agency or entity will cover these costs
- State must certify that these costs are covered

Participation

SA victims must have access to exam without being required to "participate in the criminal justice system or cooperate with law enforcement"

- OVW has decreed that medical mandated reporting requirements do not violate this provision – because victims do not have to talk with police
- No other guidance for what constitutes "participation" in the criminal justice system

VAWA 2005: Specific Language

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

42 USCA 3796gg-4 (b)(3)(d)(1)
Why?

- **Increase Justice:** To increase reporting and victim access to the criminal justice system – and to improve case outcomes in CJS

- **Improve Healthcare:** To improve victim access to health professionals – and to improve physical and psychological outcomes

- **Exam is critical access point for many victims**

State Requirements

- States must be able to certify, in good faith, that they are in (ongoing) compliance with the statutory eligibility requirements within VAWA

- Deadline for compliance was **January 5, 2009**

- If state could not certify – or if there is a breakdown in the system (e.g., victims denied exams) – they could lose VAWA STOP funds

First Step for Communities

- **Community self-assessment tool**
  - Available at TA section of EVAWI website
  - Series of questions to identify many of the challenges and decisions that need to be made

- Not models of compliance – Decision points
Technical Assistance Available:

Supporting FEMA's Disaster Recovery Mission through the Implementation of Municipal Emergency Management Plans

Resources Available for Community Professionals

In this section, you will find resources for professionals that we have developed or disseminated in a format for easier use. Many of the resources can be used by community leaders, community representatives, and others to improve emergency planning and preparedness. The resources are divided into the following categories:

- Related Documents
- Resources
- Self-assessment

If you have any questions or need to request help in the area of emergency management, please contact your local Emergency Management Agency. If you need further assistance, please call 1-800-321-3211. We are here to help you.

Decision Points
Decision Points

Payment mechanisms:
◦ Who will pay for exams? What is the process?
◦ What components are covered? Does it vary?
◦ Does payment require identifying info for victim?
◦ Will there be special requirements or criteria?
◦ What happens if the number of exams increases?
◦ Will jurisdictions “send victims” to other program?

Evidence issues:
◦ Who provides the kits for the exam facility?
◦ What evidence is collected? Same in reported cases?
◦ How long will evidence be stored? How secured?
◦ How will chain of custody be documented?
◦ How will evidence be tracked and linked with cases if a victim does later decide to report to LE?
◦ When will kits be destroyed? Will victims be notified?

Information for victims:
◦ Who will explain reporting options to victims?
◦ What specific information will be provided?
◦ Will it depend on access point (e.g. hotline, hospital)?
◦ Will victims be informed of option upfront? Or only if they are not unable or unwilling to talk to police?
◦ Can written materials be developed to send home?
◦ Does someone follow-up with victims to see if they are able to convert to standard report later?
And the million dollar question is...

Is there any realistic possibility that cases will be successfully investigated and prosecuted? What can we do to make this option a reality?

Research on SAFE Payment Mechanisms

Research on State Statutes

- Available soon: Statutory research on SAFE payment mechanisms and related issues
  - Initiated by Dr. Lisa Newmark and students at George Mason University
  - Completed by Jessica Katz, Esq. with Charlene Whitman, Attorney Advisor at AEquitas: The Prosecutors' Resource on Violence Against Women
  - Contributions from EVAWI, with OVW grant support
Payment Mechanisms

- Research currently being conducted to document implementation of SAFE payment
  - By Dr. Janine Zweig of the Urban Institute – Dr. Lisa Newmark at George Mason University – and Sally Laskey at Pennsylvania Coalition Against Rape
  - Preliminary findings presented at American Society of Criminology, November 2011

Payment Mechanisms

- Most commonly reported funding sources
  - Victim compensation funds (32)
  - Victim’s insurance (12)
  - Public benefits (12)
  - Other state funds (which may include STOP funds) (10)
  - Other local funds (10)

Source: Sexual Assault Forensic Exam Payment Study. Presentation given at the American Society of Criminology, November 2011. By Lisa Newmark, Megan Denver, and Janine Zweig.

Alternate Payment Mechanisms

- In some states, the method of payment is different based on whether the victim participates in the criminal justice system
  - In Texas, for example, exams are typically paid for by the law enforcement agency with jurisdiction
  - If the victim is unsure about participating in the CJS, exam is paid by Texas Department of Public Safety
Survey Responses

- Survey conducted with 496 webinar registrants
  - Did not ask disciplines of survey respondents
  - But likely similar to webinar registrants generally

1st Question: “Where do you work?”

Survey Participants by State / Territory

<table>
<thead>
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<th>State / Territory</th>
<th>Number of Participants</th>
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<tr>
<td>Alaska</td>
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<td>Puerto Rico</td>
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Payment for Exams
Survey: Payment Mechanisms

- **Standard Payment Mechanism**
  - When victim is participating in the CJS

- **Alternate Payment Mechanism**
  - When victim is not (yet) participating
  - Most respondents said they did not have a different payment process for this situation
  - Therefore most people did not respond to questions about an alternate payment process

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**Different payment mechanism?**

*Based on whether or not victim is participating in CJS*

- No responses (56)
- I don’t know (67)
- Different Process (70)
- Same Process (303)

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**Is victim’s insurance billed for costs?**

- Standard Payment Mechanism
- Victim Not (Yet) Participating

<table>
<thead>
<tr>
<th></th>
<th>Standard Payment Mechanism</th>
<th>Victim Not (Yet) Participating</th>
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<tr>
<td>No</td>
<td>24</td>
<td>265</td>
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<tr>
<td>Yes, automatically</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Yes, if victim consents</td>
<td>57</td>
<td></td>
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<tr>
<td>I don’t know</td>
<td>87</td>
<td></td>
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<tr>
<td>No responses</td>
<td>426</td>
<td></td>
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</table>
OVW has determined that billing insurance may be a compliant practice, IF:

- Victims are fully reimbursed for all out-of-pocket costs (co-pays, deductibles, etc.), regardless of the victim’s decision about participating in CJS
- The state/territory is not using STOP Grant funds to pay for exams if they choose to bill the victim's insurance (must use another funding source)

Technically may be compliant, but not necessarily a victim-centered practice
"The Office on Violence Against Women strongly encourages States to not require victims to file a claim with their insurers."


"There is no other crime where the victim is asked to pay any of the costs for evidence collection."


**Best Practice**

**Safeguards for Billing Insurance**

- If costs are billed to insurance, best to limit to medical costs beyond scope of the exam
- Safeguards needed for victim privacy and safety
- Procedure to prevent co-pay or deductible
- Assistance with paperwork and process
If insurance does not pay all costs, who covers them?

- First **standard payment mechanism**
- Then when victim not (yet) participating
Best Practice
Standardized Payment Mechanisms

- Standardized payment encouraged (through the state, territory, or tribe – as opposed to payment through a city or county)
- Careful attention to disqualifying conditions
  - Crime Victim Compensation (e.g., victim “engaged in criminal activity,” or not participating in CJS)

How much is charged for an exam?

<table>
<thead>
<tr>
<th>Standard Payment Mechanism</th>
<th>Victim Not (Yet) Participating</th>
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<tr>
<td>$100 or less</td>
<td>218</td>
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<td>$101 - $250</td>
<td>56</td>
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<td>$251 - $500</td>
<td>81</td>
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<tr>
<td>$501 - $750</td>
<td>201</td>
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<tr>
<td>$751 - $1,000</td>
<td>327</td>
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<td>$1,001 - $1,249</td>
<td>81</td>
</tr>
<tr>
<td>$1,250 - $1,499</td>
<td>111</td>
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<td>$1,750 - $1,999</td>
<td>71</td>
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<td>$2,000 - $2,499</td>
<td>0</td>
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<tr>
<td>$2,500 - $2,999</td>
<td>40</td>
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<tr>
<td>$3,000 or more</td>
<td>210</td>
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<tr>
<td>I don’t know/no response</td>
<td>4</td>
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Data Collection
**Best Practice**

Track Data on Exams / Conversions

- Establish system for tracking data
- Review in ongoing way for possible reforms

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**Resources**

- Example of Florida data collection tools
  - Data collected by county, by state SA coalition
  - Reveals vast disparities in number of exams and number that convert to standard report
  - Suggests differences in real practices of counties
  - Available at TA section of EVAWI website
- Texas Department of Public Safety is also collecting data, but not yet available

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**Exams and Evidence**
**Where are exams performed?**

When victim is not (yet) participating (mark all that apply)

- Hospital (ED)
- Hospital (designated area not ED)
- Health clinic
- Freestanding SAFE facility
- Community-based nonprofit
- I don’t know
- Other

**Is the exam modified in any way?**

When victim is not (yet) participating (mark all that apply)

- No modification
- Exam is modified
- Different facility
- I don’t know

**Best Practice**

**Conduct Full Exam in Same Facility**

- Some communities conduct abbreviated exam if victim has not yet decided to participate in CJS (e.g., California)
- Understandable if cost prohibitive, but not ideal
- Victims should not be transferred to another facility
- Not victim-centered, can incur transportation cost
- First hospital will incur costs for initial exam /triage
“Evidence is more than bags, boxes and body fluids... It may be someone's only opportunity to seek justice.”


Where is the evidence stored?
When victim is not (yet) participating (mark all that apply)

- Hospital (unsecured area)
- Hospital (secured area)
- Freestanding SAFE facility
- Law enforcement agency with jurisdiction
- Specific local law enforcement agency
- County law enforcement agency
- State law enforcement agency
- Tribal law enforcement agency
- Victim advocacy agency
- I don't know
- Other
**Best Practice**
Law Enforcement Stores Evidence

- Ideal is law enforcement storage of evidence
  - LE has facilities, structure for evidence storage
  - SAFE stores evidence in many communities, which requires careful security and safeguards
  - Collaboration with police, prosecutors, crime lab personnel to develop policies
  - Evidence must be admissible in court!

**What types of evidence are stored?**
When victim is not (yet) participating (mark all that apply)

- Evidentiary kit
- Form documenting exam findings
- Photographs
- Liquid blood sample(s)
- Liquid urine sample(s)
- Clothing, bedding, etc.
- I don't know
- Other

**Best Practice**
All Evidence Stored from Exams

- Ideal to store all evidence like standard exam
  - Some communities limit evidence in these exams
How long is evidence stored?
When victim is not (yet) participating (mark all that apply)

Best Practice
Store Evidence as Long as Possible

- Up to statute of limitations or indefinitely
  - Allows time for victims to decide to participate
  - Case may be linked with another one
  - Can issue “John Doe” warrants based on DNA
  - Texas even entering DNA into databank from cases beyond the statute of limitations
- Practical challenges, but this is the goal
**Victim Notification**

**When are victims notified of timeline for evidence storage/destruction?**

When victim is not (yet) participating (mark all that apply)

- Upfront (at time of exam): 204
- Later (as deadline approaches): 52
- I don't know: 181
- Other: 27

**Who provides this notification?**

When victim is not (yet) participating (mark all that apply)

- Forensic examiner: 182
- Community-based advocate: 105
- System-based advocate: 83
- Law enforcement: 69
- I don't know: 158
- Other: 24
**How are victims notified?**

When victim is not (yet) participating (mark all that apply)

- In-person: 169
- In writing (personally given): 69
- On the phone: 58
- By mail: 28
- Email: 3
- I don’t know: 201
- Other: 19

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**Best Practice**

**Victims are Well Informed**

- Victims should receive information upfront
  - No single right answer for who or how
  - Provided by various people, in different formats
- Difficult policy decision to notify victim as deadline for evidence destruction approaches
  - Could be years later, unwanted by victim, triggering
  - Victim-centered policy and practice
  - Multidisciplinary collaboration to develop materials

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**Victim Information and Options**
Who provides information about options (exam, reporting, follow-up)?

When victim is not (yet) participating (mark all that apply)

- Forensic examiner
- Community-based advocate
- System-based advocate
- Law enforcement
- I don’t know
- Other

Best Practice
Develop Informational Materials

- Develop informational materials for victims, to explain exams, reporting, follow-up, etc.
  - Multidisciplinary collaboration
  - Available in victim’s native language
  - Other accessibility considerations

Resources

- Sample informational material for victims and form to document victim options
  - Information on options for: medical testing and treatment, forensic evidence collection, reporting to law enforcement, and follow-up contact
  - Form to document victim preferences, designed to correspond to informational document
  - Documents medical record/patient #, contact information, and law enforcement record #
  - Available at TA section of EVAWI website
Resources

- Example of good materials from Duluth
  - Available at TA section of EVAWI website

Who provides follow-up after exam?

When victim is not (yet) participating (mark all that apply)

- None: 50
- Forensic examiner: 76
- Community-based advocate: 244
- System-based advocate: 40
- Law enforcement: 12
- I don’t know: 63
- Other: 36

When do victims receive follow-up?

When victim is not (yet) participating (mark all that apply)

- Never: 39
- Within days of the exam: 227
- Weeks after the exam: 81
- Months after the exam: 21
- Years after the exam: 7
- I don’t know: 110
**Best Practice**
**Victims Receive Follow-Up Contact**

- Victims unlikely to decide to participate in CJS without support and follow-up contact
  - No single right answer for who or how
  - Provided by various people, in different formats

**Best Practice**
**Victims Have Medical Follow-Up**

- Best practice for forensic examiner to follow-up, for medical purposes and photographs
  - Are costs covered as part of medical forensic exam?

**Documentation and Case Tracking**
If evidence kit is provided to law enforcement, is it anonymous?

When victim is not (yet) participating (mark all that apply)

- Not given to law enforcement: 75%
- Yes (no identifying info): 54%
- Identifying info sealed inside kit: 98%
- Identifying info visible on outside: 70%
- I don't know: 103%
- Other: 13%
- No responses: 83%

Best Practice

Protections for Victim Privacy

- Law enforcement provided evidence, but not report with exam findings or photographs
  - Violates spirit of law to provide report with exam findings and photos, even if viewed as compliant
  - Kit remains anonymous, or the identifying information is sealed inside
  - If the victim's name is included, should include a good faith agreement to not pursue investigation and/or prosecution against the victim's wishes
- Victims must be provided realistic information about procedures and protections / limits

Law enforcement documentation?

When victim is not (yet) participating (mark all that apply)

- No written report: 148
- Crime report: 25
- Informational report: 75
- Third party report: 18
- I don't know: 176
- Other: 23
Best Practice
Documentation Stored and Tracked

- No single right answer for LE documentation
  - May be recorded in informational report, BUT
  - Must be stored (at least) as long as evidence
  - Must be able to find report, and link with evidence
  - Requires tracking system, best if anonymous (bar code, anonymous tracking number, pseudonym)
  - Link with other reports naming same suspect?

Prosecution

Any converted cases prosecuted?

- N/A (none converted) 46
- No (none prosecuted) 34
- Yes (at least one) 33
- I don't know 298
- No responses 85
**Best Practice**

Prosecute Converted Cases

- Spirit of VAWA 2005 only met if converted cases have realistic chance of prosecution
  - Develop strategies to overcome defense challenges

**Best Practice**

Address Evidence-Based Prosecution

- Multidisciplinary collaboration to address question of evidence-based prosecution
  - Will cases be prosecuted against victim’s wishes?
  - Which ones most likely (intimate partner violence, severe injuries, serial stranger rape, high profile)?
  - Create culture of victim-centered philosophy
  - Provide victims realistic information

Resources
Major Study Forthcoming

- Research currently being conducted to document implementation of SAFE payment
  - By Janine Zweig of the Urban Institute – Lisa Newmark at George Mason University – and Sally Laskey at Pennsylvania Coalition Against Rape
- Will provide critically important information to the field on policies, procedures, practices

Resources

EVAW International is the national Technical Assistance (TA) provider for forensic compliance

Dedicated section of website for background information and resources:

www.evawintl.org/ForensicCompliance.aspx

EVAW International website

- **Community self-assessment tool**
  - Series of questions to identify many of the challenges and decisions that need to be made
- **Article summarizing VAWA 2005 provisions**
  - Forensic exam access, payment, mandated reporting
- **Template materials for anonymous reporting**
  - Information for victims, form to document options
  - Materials for multidisciplinary community protocol
EVAW International website

- Article from *Police Chief* magazine
  - Forensic compliance issues, police procedures
  - Addressed toward audience of police executives
- Article from *Journal of Forensic Nursing*
  - Forensic compliance issues, exams and evidence
  - Addressed toward audience of forensic nurses

EVAW International website

- Sample protocols, forms, templates, etc.
- Public education materials

Resources

International Association of Forensic Nurses

- Website at: www.iafn.org
- Sexual Assault Forensic Examiner Technical Assistance (SAFE TA) Project: at: www.safeta.org
- *National Protocol for Sexual Assault Medical Forensic Examinations*
Resources

National Sexual Violence Resource Center
- Website at: www.nsvrc.org
- Ensuring Sexual Assault Medical Forensic Examinations for All Sexual Assault Victims: A Toolkit for States and Territories (posted on our website)

Resources

International Association of Chiefs of Police
- Website at: www.theiacp.org
- Model Policy and Concepts and Issue Paper on Investigating Sexual Assault
- Supplemental SA Report Form and Guidelines

Questions?

EVAW International website: www.evawintl.org
SAFEta website: www.safeta.org

Contact information also available at website
Joanne@evawintl.org
Kim@evawintl.org
kimday@iafn.org

Also contact your State Sexual Assault Coalition and STOP Grant Administrator