



Sexual Assault
Reporting Options:
**Guidelines
for Response**

January 31, 2017





Table of Contents

A Product of the Colorado Forensic Compliance Team	1
Important Information Regarding this Document	3
Important Definitions	5
Reporting Options: At a Glance	7
Importance of Co-Advocacy	13
Law Enforcement Reporting Victim	15
Medical Reporting Victim	19
Anonymous Reporting Victim	25
Medical Care Only (No Evidence Collection)	29
Medical Mandated Reporting	31
Appendices	
I. Medical Forensic Exams: Basic Concepts for Reporting Options	33
II. Intimate Partner Sexual Violence (IPSV): Basic Concepts for Reporting Options	35
III. Formal Opinion of Ken Salazar, Attorney General 1999-2004, Concerning the Types of Health Information That May Be Disclosed to Law Enforcement Officials Under HIPAA	39
IV. HIPAA Rules for Disclosure to Law Enforcement	51
V. Population-Specific Information	55
VI. Colorado Sexual Assault Consent and Information Forms	63
VII. MNCASA Core Intervention Principles	67



A Product of the Colorado Forensic Compliance Team

Mission Statement

The Forensic Compliance Team is a multidisciplinary stakeholder group committed to ensuring Colorado's compliance with the medical and anonymous forensic exam provisions of the Violence against Women Act (VAWA) and accompanying Colorado statutes. The mission of the Colorado Forensic Compliance Team is to ensure that all Colorado victims have access to no-cost medical forensic examinations and advocacy services, while understanding their options regarding engagement with the criminal justice system.

The Forensic Compliance Team is co-staffed by the Colorado Coalition against Sexual Assault (CCASA) and the Colorado Division of Criminal Justice, Office of Victims Programs (DCJ, OVP).

About CCASA

The Colorado Coalition against Sexual Assault (CCASA) is a membership organization promoting safety, justice, and healing for survivors while working toward the elimination of sexual violence. Our vision is for Colorado communities to believe and support survivors, hold perpetrators accountable, and take action to end sexual violence. For more information, please visit www.ccasa.org.

About DCJ, OVP

The Office for Victims Programs in the Colorado Division of Criminal Justice is committed to the physical and emotional recovery of crime victims and to the restoration of victims' confidence in the criminal justice system. OVP provides funding to state and local victim service programs to support their crime victim programs and manages programs related to the Victim Rights Act, Victim Compensation, and Sexual Assault Response, among others. For more information, please visit <http://dcj.ovp.state.co.us/home>.

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Important Information Regarding this Document

This document outlines emerging best practices for sexual assault response as it relates to Colorado’s medical and anonymous mandated reporting laws.¹ *This document applies to adult patients seeking medical care and/or evidence collection following a sexual assault.* Due to other, specific mandatory reporting laws, minors and at-risk adults do not have the same spectrum of reporting options.²

Under current law, specified medical licensees (see Definitions, page 5) and nurses are required to report a sexual assault to law enforcement *only if evidence is collected*; if a report is required, the victim³ determines which type of report is made:

1. Law enforcement report;
2. Medical report; or
3. Anonymous report.

Nationally, since 2005, there has been a philosophical shift and accompanying statutory changes (at the state and federal level) regarding response to sexual assault victims. That shift acknowledges that providing victim-centered reporting options can begin to restore the power and control victims lose during an assault, promoting improved long-term outcomes for victims, improved investigations, and stronger prosecutions. Colorado’s current statutory structure enables victims to determine a course of action, with multidisciplinary responders acting from the victims’ decisions.

This document is intended to complement, not replace, community-based Sexual Assault Response Team (SART) protocols, agency-specific protocols, or the Colorado Sexual Assault Evidence Collection protocol, 3rd edition. However, recent statutory changes in sexual assault

1 Colo. Rev. Stat. § 12-36-135

2 Please see C.R.S. 19-3-304 and C.R.S. 18-6.5-108 for more information about reporting requirements for minors and at-risk adults.

3 For consistency and ease of understanding, this publication primarily uses the term “victim.” Some individuals/agencies utilize the terms “survivor,” “client,” or “patient,” depending on the circumstances.

response, evidence collection, and evidence testing may require updates to existing SART and agency-specific protocols.

This Guideline outlines emerging best practices for an appropriate response for each type of report, while acknowledging response variations based on different system access points; it also provides response guidelines for victims who elect not to have evidence collected. Appendix V was included as a resource to offer population-specific information for the purpose of guiding culturally responsive services for responders.



Important Definitions

Anonymous report: A victim chooses to obtain a medical forensic exam but at that time chooses not to participate in the criminal justice system. Any evidence collected and information given to law enforcement is released **without** victim identifying information. When evidence is collected as part of the medical forensic exam for an anonymous reporting victim, they consent to evidence storage only, and do not have the option of evidence testing. Evidence and information is stored for at least two years by local law enforcement and a victim has the right at any time to file a law enforcement report, thereby converting from an anonymous report to a law enforcement report.

Co-advocacy: This is when systems-based and community-based advocates work together to provide complementary advocacy services to the victim of sexual assault to ensure they have all the relevant information pertaining to their options moving forward. Co-advocacy also ensures the victim has access to knowledgeable support persons who can assist them in understanding the criminal justice system and a confidential support person based in the community.

CODIS: CODIS is the acronym for the “Combined DNA Index System” and is the term used to describe the FBI’s program for criminal justice DNA databases. The National DNA Index System or NDIS is one part of CODIS containing the DNA profiles contributed by federal, state, and local participating forensic laboratories.

Converted case: When a victim later reports their assault to law enforcement after initially declining to participate in the criminal justice system.

Evidence collection portion of the medical forensic exam: Following a sexual assault, the victim has the option to go to the hospital to have a medical forensic examination by a trained professional. During a medical forensic exam, a sexual assault evidence collection kit may or may not be used. Sexual assault evidence collection can be a component of the larger medical forensic exam if the victim/patient so chooses. Sexual assault evidence collection is a means to collect evidence from the victim that may contain DNA left by the perpetrator. The

action of collecting evidence may be referred to as a sexual assault evidence collection kit (SA kit), sexual assault forensic evidence (SAFE) kits or simply evidence collection.

Evidence testing: Testing the evidence in the sexual assault evidence collection kit to determine the presence of foreign DNA. If enough foreign DNA is present, a profile can be developed. The profile can then be run against CODIS databases to see if it matches other profiles.

Law enforcement report: A victim reports the sexual assault to law enforcement and engages in the criminal justice system.

Licensee: As defined in CRS 12-36-102.5(7); physicians, physician assistants, or anesthesiologist assistants who are licensed to practice medicine in Colorado.

Medical report: A victim chooses to obtain a medical forensic exam but at that time chooses not to participate in the criminal justice system. Any evidence collected and information given to law enforcement is released **with** victim identifying information. A medical reporting victim can choose to have evidence tested, for how long evidence is stored, and when/if they decide to convert etc.

Moving Away From “Rape Kits”

This document does not use the term “rape kit.” While “rape kit” is often heard in the media and on television crime shows, this term is not trauma-informed or supportive to an individual in crisis. It also does not fully encompass the spectrum of care given in a medical forensic exam and may discourage individuals who do not identify with the term “rape” from seeking medical care.

“Medical forensic exam” is a broad term used for specialized medical care following a disclosure or suspicion of sexual assault. There are many aspects of care that may or may not be included in the exam. Care (or medical actions) are determined by the patient’s history, choices, and risks versus the benefits from a medical standpoint.

“Evidence collection” is one action that may or may not be appropriate within a medical forensic exam. If it is appropriate, and the patient consents, a sexual assault evidence collection kit may be used to collect evidence. If a sexual assault evidence collection kit is utilized, it is given to law enforcement for storage and/or testing.

These terms more accurately encompass the spectrum of sexual violence, as well as the comprehensive care received during a medical forensic examination.

However, it is not uncommon for victims to use the term, “rape kit,” and it is important that professionals are able to provide accurate education about the medical forensic examination and evidence collection.



Reporting Options: At a Glance

This section is a brief summary of reporting options.

The following pages include:

- **Reporting Options - Common Questions**
- **Reporting Options - Fact Sheet**

Reporting Options – Common Questions

COMMON QUESTIONS	Type of Report Chosen by Victim			
	Law Enforcement (LE) Reporting	Medical Reporting	Anonymous Reporting	None
<i>Whose choice is it whether evidence is collected?</i>	Victim	Victim	Victim	Victim
<i>MFE timeframes</i>	Up to 5 days from assault	Up to 5 days from assault	Up to 5 days from assault	Up to 5 days from assault
<i>Who chooses type of report to make?</i>	Victim	Victim	Victim	Victim
<i>Who pays for MFE?</i>	Law enforcement	DCJ/SAVE Program (up to \$3000 per incident)	DCJ/SAVE Program (up to \$3000 per incident)	N/A
<i>Who pays for associated medical costs?</i>	Victim applies to Crime Victim Compensation. Private health insurance/Medicare/Medicaid is also an option	DCJ/SAVE Program (up to \$3000 per incident). Private health insurance/Medicare/Medicaid is also an option	DCJ/SAVE Program (up to \$3000 per incident). Private health insurance/Medicare/Medicaid is also an option	Victim/victim's private health insurance
<i>Victim name associated with evidence?</i>	Yes	Yes	No. Instead, a unique identifying number assigned by LE	N/A
<i>Evidence tested?</i>	Yes, sent to CBI within 21 days with victim consent	Yes, sent to CBI within 21 days with victim consent	No	N/A
<i>Can victim withdraw consent for evidence testing?</i>	Yes, as long as testing has not commenced	Yes, as long as testing has not commenced	N/A	N/A
<i>Evidence stored by law enforcement?</i>	Yes, minimum two years if victim does not consent to testing at time of MFE	Yes, minimum two years if victim does not consent to testing at time of MFE	Yes, minimum two years	N/A
<i>Drug facilitated sexual assault testing?</i>	Yes, if determined appropriate by medical professional and with victim consent	Yes, if determined appropriate by medical professional and with victim consent	Yes, if determined appropriate by medical professional and with victim consent	N/A
<i>Can victim 'convert' to LE report at a later date?</i>	N/A	Yes	Yes	Yes
<i>Call local victim advocacy center?</i>	Yes	Yes	Yes	Yes

Reporting Options – Fact Sheet

A victim of sexual assault should NEVER be charged for the evidence collection portion of a forensic exam. If a victim of a sexual assault contacts your agency, it is important that *everyone* has this information.

Under Colorado law (C.R.S. §18-3-407.5), a victim can receive a medical forensic exam (MFE) without having to cooperate with law enforcement. Victims of sexual assault therefore have three options when seeking a medical forensic exam:

1. **Law Enforcement Report** – victims choosing to report a sexual assault to law enforcement
2. **Medical Report** – at the time of the MFE, victim chooses **not** to report to law enforcement but their name is shared and the sexual assault evidence collection kit can be tested if the victim consents to testing
3. **Anonymous Report** – victims choosing not to share their name with law enforcement; their sexual assault evidence collection kit is not tested.

The victim decides whether they would like evidence collected, not the medical facility or law enforcement agency.

Law Enforcement Report – Medical Forensic Exams

If a victim wants a medical forensic exam and **wants to report the crime**:

- The law enforcement agency where the crime occurred is obligated to pay for the evidence collection portion of the medical forensic exam (C.R.S. §18-3-407.5(1)).
- It is always the victim's choice whether or not they receive an exam, not the law enforcement agency.
- The law enforcement agency must send the sexual assault evidence collection kit to the Colorado Bureau of Investigation within 21 days of receipt (Colo. Rev. Stat. §24-33.5-113).
- Victims can apply for Crime Victim Compensation funding to cover additional medical costs associated with evidence collection.

Medical Report – Medical Forensic Exams

If a victim wants a medical forensic exam but is not ready to report to law enforcement at that time:

- The evidence collection portion of the medical forensic exam for **medical reporting** victims is paid for by the Division of Criminal Justice and the Sexual Assault Victim Emergency (SAVE) Payment Program pays for associated costs and medical costs related to injuries sustained during the assault. Medical facilities bill DCJ directly (Colo. Rev. Stat. § 18-3-407.5 (b)).
- Victims can apply to the SAVE program directly to have associated medical care costs covered.
- It is recommended that the victim access a Sexual Assault Nurse Examiner (SANE) program, or a Medical Forensic Exam program (MFEP), if possible.
- Medical reporting victims can choose whether or not their evidence is tested (via a consent form). They can also withdraw consent previously given.
- The sexual assault evidence collection kit is provided to law enforcement with victim identifying information. Consent forms for testing are inside the kit. The victim is provided the case number assigned by law enforcement.
- Law enforcement has 21 days to submit the sexual assault evidence collection kit to CBI for testing if the victim has consented for testing.
- Medical reporting victims can apply to the SAVE program to have associated medical care costs covered.
- An initially medical reporting victim **can decide at a later date** that they want to have the crime investigated and prosecuted. Under Colorado law, law enforcement must store the sexual assault evidence collection kit for a minimum of two years (C.R.S. §18-3-407.5(3)(c)).

Anonymous Report – Medical Forensic Exams

If a victim would like evidence collected, but is not ready to provide identifying information to law enforcement, they have the option of anonymously reporting:

- The evidence collection portion of the medical forensic exam for **anonymous reporting** victims is paid for by the Division of Criminal Justice and the SAVE payment program pays for associated costs and medical costs related to injuries sustained during the assault. Medical facilities bill DCJ directly.
- It is recommended that the victim access a Sexual Assault Nurse Examiner (SANE) program, or a Medical Forensic Exam program (MFEP), if possible.

- Victims can apply to the SAVE program directly to have associated medical care costs covered.
- The sexual assault evidence collection kit is provided to law enforcement **without** victim identifying information and the victim is provided with the case number assigned by law enforcement should they choose to report their assault to law enforcement at a later date.
- An anonymous reporting victim **cannot** choose whether the evidence collected is tested.
- Under Colorado law, law enforcement must store the sexual assault evidence collection kit for a minimum of two years (C.R.S. §18-3-407.5(3)(c)).

Drug Facilitated Sexual Assault Testing (DFSA)

Drug testing is not a standard component of the medical forensic exam regardless of whether or how a victim chooses to report. If the SANE or medical provider determines that a test is warranted, then law enforcement will pay for the test as part of evidence collection if the victim chooses the law enforcement reporting option. If the victim chooses to medically report, then the SAVE program will pay for the drug test (as long as it is connected to evidence collection). In both cases, results are only released to the relevant law enforcement agency. If the victim chooses to anonymously report, urine can be collected as part of evidence collection but it will not be tested. The evidence will be stored for a minimum of two years by law enforcement (C.R.S. §18-3-407.5(3)(c)).

Financial Assistance for Sexual Assault Victims

The Sexual Assault Victim Emergency Payment Program (SAVE) administered through the Colorado Division of Criminal Justice will pay for evidence collection and any associated costs related to the medical forensic exam and injuries sustained during the assault up to \$3000 per victim for **medical** and **anonymous** reporting victims.

Colorado has a **Victim Compensation Program** that provides assistance with medical bills for victims working with law enforcement. Victim Compensation Programs are administered through the District Attorney's office.

Planned Parenthood Health Centers may be appropriate referrals for victims seeking follow-up medical services at reduced cost.

Victim Advocates can help victims address concerns and provide information regarding costs, resources and available victim assistance services.

Victim's Health Insurance/Medicaid or Medicare will sometimes cover expenses associated with the medical forensic exam. However, not all victims want the medical treatment associated with a sexual assault billed to their health insurance for a variety of reasons, including privacy.

Time Frames for Obtaining Medical Forensic Exams and DFSA Testing

Medical Forensic Exams

Victims can choose to do the exam within 120 hours (5 days) of the assault, although up to 72 hours (3 days) is preferable. Even outside of this time frame, medical attention may still be warranted. There is a misperception that showering after an assault washes all evidence away.

Evidence can still be present after a shower.

DFSA Testing

Medical providers should be able to collect a specimen for drug-facilitated sexual assault testing within 48 to 72 hours with victim consent. Please consult with your nearest SANE or MFEP program to determine best practices in your jurisdiction. Even if evidence is not collected, the victim may still require a medical assessment.

Mandatory Reporting for Medical Providers

Under Colorado law (C.R.S. §12-36-135 (1)), any injury that occurs due to a suspected criminal act must be reported to the law enforcement agency in the treating facility's jurisdiction. However, with sexual assault, medical providers should make a report based on the victim's choice (law enforcement report, medical report, or anonymous report). Colorado law (C.R.S. §18-3-407.5) allows for victims to have evidence collected at no cost without reporting to law enforcement.

Resources

The Colorado Division of Criminal Justice – additional information regarding anonymous, medical and law enforcement reporting victims, payment for medical forensic exams and the DFSA medical reporting policy. <http://dcj.ovp.state.co.us/home/sexual-assault-programs>

The Colorado Coalition Against Sexual Assault – additional information on SANE, MFE program, and community based advocacy site locations, along with information about sexual assault and other resources. <http://www.ccasa.org>



Importance of Co-Advocacy

When working with sexual assault victims, a promising practice is the utilization of co-advocacy to comprehensively meet the needs of victims.

System-Based Advocates

System-based advocates are employed at law enforcement agencies, district attorney's offices, or other public agencies.

- Non-confidential advocacy
- Support to law enforcement
- Give victims information about their rights and resources under Colorado Victims' Rights Act (Colo. Rev. Stat. § 24-4.1-301)
- Give victims information about the case and criminal justice process
- Referrals for support groups, counseling, and therapy
- Assistance in applying for Victim Compensation
- Education for the victim's loved ones regarding the effects of sexual violence
- Referrals for civil legal issues (civil protection order, school-based accommodations, etc.)
- Provide emotional support and trauma-informed response

Community-Based Advocates

Community-based advocates often work at sexual assault advocacy centers or dual domestic violence and sexual assault programs. Not every community has this type of program. To learn more about what is available in your area, please visit www.ccasa.org.

- Source for confidential advocacy
- Support group, counseling, therapy services or referrals to other agencies that provide these services
- Education for the victim's loved ones regarding the effects of sexual violence
- Victim assistance with civil legal issues (civil protection order, school-based accommodations, etc.)
- Support for needs outside the criminal justice system, as well as ongoing support after the criminal justice system resolution
- Provide emotional support and trauma-informed response



Law Enforcement Reporting Victim

A Law Enforcement reporting victim is a victim who reports to the police at the time of their medical forensic exam and chooses to participate in the criminal justice system.

Who Pays?

- Law enforcement agency with jurisdiction over a sexual assault pays for the evidence collection portion of medical forensic exam.⁴
- Law enforcement officers are prohibited by law from discouraging a victim from obtaining a medical forensic exam.⁵
- Hospitals bill law enforcement agencies directly for evidence collection costs.
- Victims may apply for reimbursement⁶ for additional costs (assistance with medical expenses, therapy expenses, and lost wages, among others) through Crime Victim Compensation.⁷ Victims may also utilize their own private health insurance or Medicaid/Medicare, if applicable and if desired for additional costs.

4 Colo. Rev. Stat. § 18-3-405

5 Colo. Rev. Stat. § 24-33.5-113

6 Victims must apply for this program in the appropriate jurisdiction and eligibility is determined by a local board. Contact your jurisdiction's Victim Compensation program, located within the district attorney's office, for more information.

7 Colo. Rev. Stat. § 24-4.1.-102

Victim Advocacy

- Community-based advocates and systems-based advocates should be called for victims seeking a medical forensic exam following a sexual assault. The victim should be told when an advocate is onsite and available. The victim then chooses whether to engage with the advocate. This offer should occur prior to the medical forensic exam.
- Victims should be informed that system-based advocates are not confidential advocates⁸ and anything the victim says to, or in front of, the system-based advocate can become a part of the case. Victims should also be told that community-based advocates can provide confidential services.
- Co-advocacy between system-based and community-based advocates is a strongly encouraged emerging best practice.

Evidence

- Law enforcement must submit all medical forensic evidence to the Colorado Bureau of Investigation or accredited crime laboratory for analysis within 21 days of receipt of such evidence, **unless**:
 1. The victim has not consented or has withdrawn consent to have forensic analysis conducted;
 2. Law enforcement has proven, via an investigation, the allegation is false; or
 3. The law enforcement entity in possession of the evidence collection kit is not the investigating agency, in which case the evidence must be forwarded to the appropriate agency for submission as soon as possible.⁹
- When a victim withdraws consent for evidence testing, law enforcement and/or victim advocates should explain the scope and purpose of evidence testing, and learn more about why the victim does not want the evidence submitted for testing. Additionally, they should explain that refusing to have evidence tested can have a negative effect on the investigation. All communication between law enforcement, victim advocates and the victim should be trauma informed and non-judgmental.

8 Colo. Rev. Stat. § 13-90-107(k)(II)

9 Colo. Rev. Stat. § 24-33.5-113

Other Considerations Specific to Law Enforcement Reporting Victims

Victims Who Disengage from the Criminal Justice System

- If a victim has not yet disengaged from the criminal justice system, law enforcement should contact law enforcement victim advocates to provide ongoing support.
- Systems-based advocates and community-based advocates should utilize a co-advocacy model to offer ongoing support.
- Advocates should share with the victim that disengagement may cause the loss of eligibility for Victim Compensation.
- Please Note: Due to the cooperation requirements of Victim Compensation and narrow scope of the Sexual Assault Victim Emergency (SAVE) Payment Program, law enforcement reporting victims who disengage from the criminal justice system may not be eligible for Victim Compensation and are not eligible for the SAVE program.

Following Up with a Law Enforcement Victim

- Advocates should seek permission from the victim for advocate-initiated follow-up contact utilizing a method chosen by the victim.
- Advocates can discuss available services and inquire about how the victim is feeling regarding the initial reporting decision during the follow up.

Q: Why might victims choose to disengage from the criminal justice system?

A: Many victims may begin the process with a law enforcement report, but then change their mind and disengage from the criminal justice system. This response is common and understandable considering the traumatic effects of sexual assault, the reactions victims may receive from their communities, and the stressful nature of being a part of the criminal justice system. It should be remembered, that it is perfectly normal for a victim to disengage from the criminal justice system and does not indicate anything about the veracity of the victim's experience.

Medical Reporting Victim

A Medical Reporting victim is a victim who would like evidence collected but is not ready to make a report to law enforcement. They can choose if their evidence is tested and their name and contact information is given to law enforcement.

Who Pays?

- The Division of Criminal Justice (DCJ), Office for Victims Programs (OVP), pays for the evidence collection portion of the medical forensic exam for medical reporting victims through the Sexual Assault Victim Emergency (SAVE) payment program.¹⁰
- Hospitals bill the Division of Criminal Justice (DCJ) directly.
- Victims may apply for financial assistance directly from the Sexual Assault Victim Emergency (SAVE) payment program for additional costs associated with obtaining the medical forensic exam and/or for associated medical care.¹¹ Victims may also utilize their own private health insurance or Medicaid/Medicare, if applicable and if desired for additional costs.

Q: Why is it called “medical reporting?” I’ve also heard the term “non-reporting.”

A: Colorado uses the term “medical reporting” because “non-reporting” implies the victim is not telling anyone about the sexual assault. The reality is that the victim IS reporting the crime to a medical provider for the purpose of medical care and possibly evidence collection. “Non-reporting” has a negative connotation and is inaccurate, while “medical reporting” is an accurate reflection of the bravery and courage required for victims to disclose a sexual assault and seek medical care.

¹⁰ Colo. Rev. Stat. § 18-3-407.5 (b):

¹¹ The SAVE Program has a per victim cap of between \$2,000 and \$3,000, which changes annually based on projected need and available funding. Any remaining expenses over the cap are the victim’s responsibility.

Victim Advocacy

- If a victim calls a sexual assault advocacy center or victim service agency hotline prior to going to the hospital, the hotline advocate responding to the hotline call should inform the victim that an advocate will also be called out to the hospital, and explain the benefits of having a community-based advocate present during the forensic evidence collection process.
- Medical providers should contact a confidential community-based advocate automatically; as soon as the victim seeks sexual assault related care and indicates uncertainty regarding the reporting decision or indicates they wish to be a medical reporting victim. The victim always retains the option to decline advocacy services; however, the victim may decline services due to lack of understanding regarding an advocate's role and/or not wanting to inconvenience another individual. For these reasons, it is preferable to offer advocacy services when the advocate is present. This is the best approach to providing victim advocacy.
- Medical providers, in the case that the community has no confidential advocacy services, should refer to SART guidelines that address alternative support options for medical reporting victims including social workers, private therapists, nearest available confidential advocacy services, allied organizations such as domestic violence or homeless shelters, national hotlines, etc.
- In the case that community-based advocates are unavailable, system-based advocates should be available to answer questions about reporting options, the criminal justice system, and provide referrals and follow up. It is always important for system-based advocates to educate victims about their inability to protect a victim's confidentiality.

“ Our hospital policy is to contact a confidential sexual assault advocate from [name agency]. The advocate, [give name], is in the waiting room. This advocate's job is to help explain options, and provide support. A lot of questions can come up, and their job is to help answer questions and provide assistance. [Name of advocate] is a confidential advocate, which means what you share will be held private. Meeting and working with the advocate is entirely up to you; it's your choice. Would you like to meet [name of advocate] and decide how you would like to proceed? ”

“ An advocate will also be called out to the hospital. The advocate’s name is _____. The advocate’s job is to help explain your options, and to provide support. A lot of questions can come up at the hospital, and the advocate is trained to answer them/ provide assistance. [Insert name] is a confidential advocate. So anything you tell the advocate will be held private. Working with the advocate is entirely up to you, and it is also your choice if you want them to provide support during the medical forensic examination. ”

Evidence

In medical reporting cases, a victim has the right to choose whether their evidence gets tested or stored untested regardless of whether they do or do not want to work with law enforcement at that time. In both cases, their name is released to law enforcement.

Victim Chooses Evidence NOT Be Tested

- Law enforcement must store the evidence, as mandated by the law, for a minimum of two years under the victim’s name and contact information.¹²
- Medical providers and advocates should inform victims that the evidence will be preserved for at least that two year period but may be destroyed following that window.
- Victims have the right to choose whether or not to have their evidence tested at any time after initially deciding not to report to law enforcement.

Victim Chooses Evidence Be Tested

(see Colorado Sexual Assault Consent and Information Form, Appendix VI)

- Victims have the right to choose whether or not to have their evidence tested.
- Law enforcement must submit all medical forensic evidence received to the Colorado Bureau of Investigation (CBI) or accredited crime laboratory for analysis within 21 days of receipt of such evidence, **unless**:
 1. The victim has not consented or has withdrawn consent to have the forensic analysis conducted;
 2. Law enforcement has proven, via an investigation, the allegation is false; or

¹² Colo. Rev. Stat. § 18-3-407.5

3. The law enforcement entity in possession of the evidence collection kit is not the investigating agency, in which case the evidence must be forwarded to the appropriate agency for submission as soon as possible.¹³
- Law enforcement must store the evidence by the victim's name and contact information before sending it for analysis.
 - Victims have the right to withdraw consent for evidence testing, provided the withdrawal occurs prior to the commencement of testing and should do so by contacting law enforcement in the jurisdiction that the crime occurred.

Victim Withdraws Consent for Evidence Testing

- The medical provider and/or advocate should explain to the victim that refusing to have evidence tested can have a negative effect on the investigation.
- Advocates should explain the scope and purpose of evidence testing, and learn more about why the victim does not want the evidence submitted for testing.
- Victims have the right to withdraw consent for evidence testing, provided the withdrawal occurs prior to the commencement of testing and should do so by contacting law enforcement.

Other Considerations Specific to Medical Reporting Victims

Billing

- Medical facility billing departments should receive education on medical reporting options so that they can establish an internal protocol which ensures the appropriate agency is billed for evidence collection and medical services. This should include the law enforcement generated case number, in addition to an identifier showing that the patient medically reported.

¹³ Colo. Rev. Stat. § 24-33.5-113

Case Conversions

When a medical reporting victim later decides to engage with the criminal justice system and convert their case from medical reporting to law enforcement reporting:

- Law enforcement officials, medical providers, and victim advocates should:
 1. Explain to medical reporting victims that they have the right to change their mind and convert the case at any time. Victims should be told it is common to need some extra time prior to making a major decision. Take a few minutes to explain that many victims need time to sleep, eat, think about options, and talk to trusted friends/family/community members before making a decision regarding law enforcement involvement.
 2. Explain how a case can be converted. It is important for the victim to know who to call if/when they are considering converting their case. The victim should be directed to contact the law enforcement jurisdiction responsible for storing their evidence. Contacting law enforcement can be intimidating for some victims, therefore advocacy services should be offered to assist the victim with making a report.
 3. A medical reporting victim should be given the option of speaking with law enforcement or a system-based advocate, to learn more about the criminal justice process and get any questions answered. This conversation also provides an opportunity for law enforcement to build rapport with the victim.

In September 2013, the Forensic Compliance Team issued the report *Forensic Compliance in Colorado: An Examination of System Response to Sexual Assault*. This report showed that, between July 2008 and March 2011, 18% of medical reporting cases converted to law enforcement reports. Of the total converted cases, 39% converted in less than 24 hours and 56% converted within 72 hours. This data indicates that if victims are given some time and space, (perhaps to eat, sleep, talk to friends/family, and think about their options) some victims will decide to engage in the criminal justice system.

Following Up with a Medical Reporting Victim

- All advocates should seek permission from the victim for advocate-initiated follow-up contact utilizing a method chosen by the victim.
- Advocates can discuss available services and inquire about how the victim is feeling regarding the initial reporting decision during the follow up.
- The advocate should assist with changing the reporting decision, if the victim wants to change their reporting decision.



Anonymous Reporting Victim

An Anonymous Reporting victim is victim who would like evidence collected but is not ready to provide any information to law enforcement including their name and contact information.

Who Pays?

- The Division of Criminal Justice (DCJ), Office for Victims Programs (OVP), pays for the evidence collection portion of the medical forensic exam for anonymous reporting victims through the Sexual Assault Victim Emergency (SAVE) payment program.¹⁴
- Hospitals bill the Division of Criminal Justice (DCJ) directly.
- Victims may apply for financial assistance directly from the Sexual Assault Victim Emergency (SAVE) payment program for additional costs associated with obtaining the medical forensic exam and/or for associated medical care.¹⁵ Victims may also utilize their own private health insurance or Medicaid/Medicare, if applicable and if desired for additional costs.

Victim Advocacy

- If a victim calls a sexual assault advocacy center or victim service agency hotline prior to going to the hospital, the hotline advocate responding to the hotline call should inform the victim that an advocate will also be called out to the hospital, and explain the

¹⁴ Colo. Rev. Stat. § 18-3-407.5 (b):

¹⁵ The SAVE Program has a per victim cap of between \$2,000 and \$3,000, which changes annually based on projected need and available funding. Any remaining expenses over the cap are the victim's responsibility.

benefits of having a community-based advocate present during the forensic evidence collection process.

- Medical providers should contact a confidential community-based advocate automatically; as soon as the victim seeks sexual assault related care and indicates uncertainty regarding the reporting decision or indicates they wish to be a medical reporting victim. The victim always retains the option to decline advocacy services; however, the victim may decline services due to lack of understanding regarding an advocate's role and/or not wanting to inconvenience another individual. For these reasons, it is preferable to offer advocacy services when the advocate is present. This is the best approach to providing victim advocacy.
- Medical providers, in the case that the community has no confidential advocacy services, should refer to SART guidelines that address alternative support options for anonymous reporting victims including social workers, private therapists, nearest available confidential advocacy services, allied organizations such as domestic violence or homeless shelters, national hotlines, etc.

There are many reasons why victims may choose to report anonymously at the time of receiving medical care with evidence collection, such as:

- Significant trauma response that impedes victims from being ready to report the crime or navigate the complexities of the criminal justice system at that time.
 - Concerns that reporting the crime could have a detrimental impact on their professional careers, especially if they are active military or in law enforcement.
 - Safety concerns related to reporting the crime and disclosing information about the perpetrator.
 - A need for more time to think and make an informed decision.
 - Negative perceptions or previous negative encounters with the criminal justice system.
 - Fear they will be criminalized as a result of coming forward about the sexual assault, such as undocumented immigrants, illegal drug use or participating in other illegal activities.
-

Evidence

- When evidence is collected and the patient opts for the Anonymous reporting option, the medical provider conducting the exam contacts the appropriate law enforcement agency. That jurisdiction provides a case number that is listed on all of the evidence, including the outside of the kit.
- Law enforcement must store evidence with the unique identifying number (case number), for a minimum of two years.
- The medical provider, victim advocate, or law enforcement officer (depending on whom the victim wants to talk to, who is available, and community protocols) **must** give the victim the case number associated with their anonymous reporting case **and** the medical provider must record it in the victim's medical record.
 - Medical providers and victim advocates should tell victims that evidence collected under an anonymous report is not eligible for testing. If they want their evidence tested at a crime laboratory and cross-referenced with DNA databases, then the victim must provide their name and contact information to law enforcement (i.e. medical report). The victim should understand a medical report does not mean the victim has to engage with the criminal justice system, but by providing contact information to law enforcement they can now choose to have their evidence tested. Victims should understand that the reason their name and contact information are needed is because results/outcomes of evidence testing may require follow-up.
 - Medical providers and/or victim advocates should explain to the victim that they should keep the unique identifying number in a safe, secure location so that if they change their mind and convert to a law enforcement report or medical report their evidence can be connected to their case.
 - Victims should be told their number is in their medical records and can be obtained that way as well should they misplace the number or forget it.

Other Considerations Specific to Anonymous Reporting Victims

Billing

- Medical facility billing departments should receive education on anonymous reporting options so that they can establish an internal protocol which ensures the appropriate agency is billed for evidence collection and medical services. This should include the law enforcement generated case number, in addition to an identifier showing that the patient anonymously reported.

Follow-up

- Advocates should seek permission from the victim for advocate-initiated follow-up contact utilizing a method chosen by the victim.
- Advocates can discuss available services and inquire about how the victim is feeling regarding the initial reporting decision during the follow up.
- The advocate should assist with changing the reporting decision, if the victim wants to change their reporting decision.

Process for Anonymous Reporting

1. The licensee (see Definitions, page 5) or nurse shall obtain victim consent (see Appendix VI for consent form), perform a medical forensic exam, and collect evidence. Law enforcement shall assign a unique identifying number to the case and corresponding evidence.
2. The licensee or nurse shall record the identifying number in the medical record, and give the identifying number to the victim.
3. The employing medical facility shall release the evidence to law enforcement for storage.
4. Any victim identifying paperwork should be sealed inside of the sexual assault evidence collection kit. Law enforcement should not be given any documentation or records containing victim identifying information.
5. For best practice guidelines on labeling and storage of anonymous evidence, please reference the Colorado Sexual Assault Evidence Collection Protocol (Third Edition), page 36.

Please note: Anonymous reporting victims should understand that they still have to provide basic information to the hospital/clinic for billing and medical examination purposes. Anonymity is with law enforcement, not the hospital. An anonymous reporting victim can still speak with a law enforcement officer anonymously to learn about the criminal justice process, victims' rights, and other options. Law enforcement interaction should be based on the victim's wishes.

Medical Care Only (No Evidence Collection)

Who Pays?

- Victims are not eligible for financial assistance from the Division of Criminal Justice (DCJ), or the Sexual Assault Victim Emergency (SAVE) payment program for costs associated with medical care. Victims are responsible for their medical bills.

Victim Advocacy

- The medical provider, upon learning the victim is seeking care for sexual assault should inform the victim of confidential community-based advocacy services. It should be explained to the victim that an advocate is skilled and trained to answer questions related to sexual assault reporting options, evidence collection, the criminal justice process, financial assistance, and the healing process. The victim should also be informed about confidentiality parameters existing for advocates as this may assist them in their decision to speak with an advocate.
- The medical provider should initiate a “warm referral” between the victim and the advocate, where the medical provider helps create the connection.

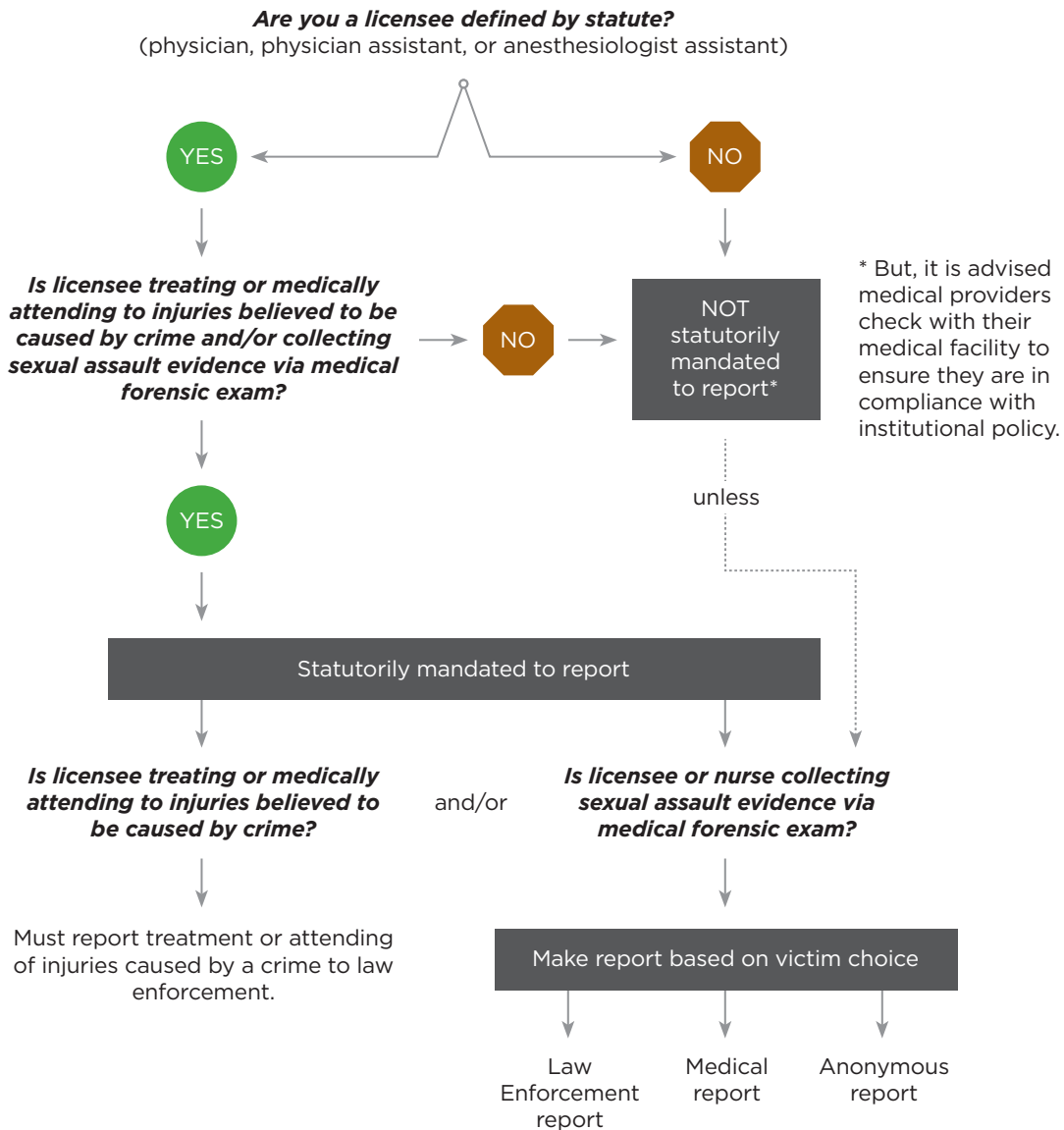
This approach helps victims feel safer in accessing support and taking action. For example, the medical provider could explain: “If you are comfortable with this idea, I would like to call ‘Michelle’ from the community sexual assault advocacy center. She is really kind and has worked with many people who have been through what you are going through.”

Evidence

- If victims wish to have evidence collected, they should be referred to the local, or closest, Sexual Assault Nurse Examiner (SANE) or medical forensic exam program. For a listing of Colorado's medical forensic exam programs, please visit <http://www.ccasa.org/gethelp/health-related-organizations/>.

Medical Mandated Reporting

Figure 1. Basic Options for Reporting Domestic Violence as Mandated Under C.R.S § 12-36-135



See Appendix III for more information including the formal opinion of Ken Salazar, Attorney General 1999-2004, concerning the types of health information that may be disclosed to law enforcement officials under the federal Health Insurance Portability and Accountability Act.



Appendix I

Medical Forensic Exams: Basic Concepts for Reporting Options

Access: Victims determine whether or not to obtain a medical forensic examination, with or without evidence collection. Law enforcement, medical providers, and prosecuting attorneys do not have the authority to approve or deny whether a victim receives a medical forensic examination.¹ Because it can be critical to long-term well-being and recovery from the sexual assault, victims should never be discouraged from accessing medical care, regardless of whether evidence is collected. The medical provider and victim collaboratively determine the utility of evidence collection.

Billing and Payment: Regardless of the reporting option, victims never receive a bill for the evidence collection portion of the medical forensic exam. However, victims may receive bills for other costs related to obtaining the medical forensic exam and any other related medical care. Payment programs exist to assist victims with paying those costs, which are discussed below.

During the Medical Forensic Exam: Due to the medical forensic exam's primary focus on patient care, and its private nature, the victim should determine who, if anyone, should be in the exam room with them; which follows national best practice. However, it is important for medical providers, law enforcement, and advocates to understand legal privilege and be able to explain it to the victim, particularly who can protect it and the discoverable nature of unprotected information.

Outreach, Awareness & Training: In order to ensure that victims know where to go for the most appropriate, comprehensive care, community-based Sexual Assault Response Teams (SART) and multi-disciplinary responders should develop outreach and marketing campaigns that include the location(s) of SANE and medical forensic exam services. Multidisciplinary responders should be well-informed of the hours medical forensic exam services are available and, generally, the length of time a medical forensic exam takes. Community-based public

¹ Colo. Rev. Stat. § 24-33.5-113 and Colo. Rev. Stat. § 18-3-407.5 (3) (a)

awareness campaigns should also include information about financial assistance programs for victims seeking sexual assault related medical care.

Many victims will not feel comfortable or think to contact a sexual assault advocacy center or law enforcement, but will disclose sexual assault to a medical provider. However, not all medical providers are trained in sexual assault response, patient care for victims of sexual assaults, and/or victim dynamics. It is not unusual for a sexual assault victim to disclose sexual assault and seek related services from a primary care physician, urgent care facility, or clinic. For that reason, SARTs should proactively offer and provide training to medical providers who do not typically have sexual assault specific training and expertise. The training should include:

- An overview of the medical forensic exam for the purpose of answering patients' questions;
- Victim dynamics and trauma response;
- Long-term and short-term health impact of sexual assault;
- Criminal justice reporting options;
- Financial assistance programs to help mitigate the costs of sexual assault care; and
- Appropriate medical, law enforcement, and community-based advocacy referrals.

Population-specific considerations (please see Appendix V for detailed information): Each victim of sexual violence should be treated as an individual. People will react to an assault in their own way. When attempting to address the individual needs of a victim, responders may need to consider how being a member of a marginalized, underserved and/or oppressed population can affect a victim's reaction to the assault and participation in the criminal justice process.

Who maintains statutorily protected privileged communication?:

- Community-based advocates
- Medical providers

Who DOES NOT maintain statutorily protected privileged communication?:

- Law enforcement
- System-based advocates (e.g. law enforcement, district attorneys)

Victims should receive an explanation of these differences. Absent the ability to protect legal privilege, all communication between a victim and another person is discoverable during any legal proceeding.



Appendix II

Intimate Partner Sexual Violence (IPSV): Basic Concepts for Reporting Options

Different medical mandated reporting requirements exist for domestic violence and sexual assault. Medical licensees (see Definitions, page 5) are required to report the treatment of injuries believed to have been caused by an act of domestic violence.

Core Concepts for Intimate Partner Sexual Violence (IPSV)

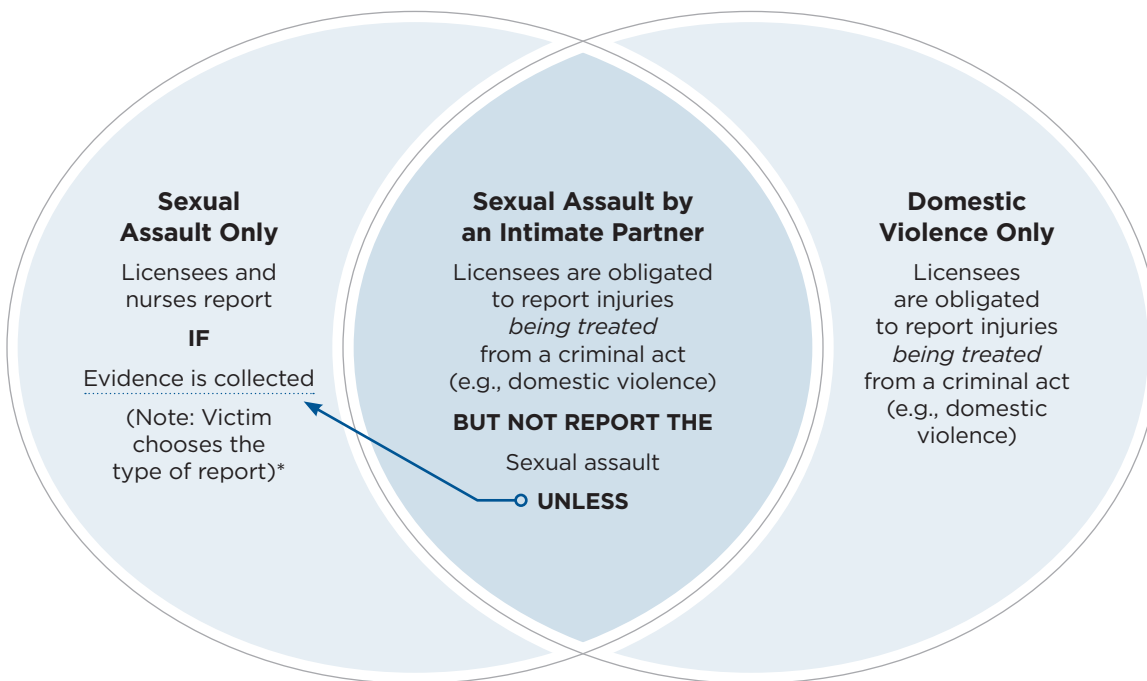
The medical mandated reporting statute contains a subsection specific to sexual assault.¹ If a sexual assault victim obtains a medical forensic exam *and* has evidence collected, medical licensees and nurses are required to make one of the three types of reports (law enforcement, medical, or anonymous). If a victim does not have evidence collected, medical providers are not required to make a report.

If the patient is being treated for other injuries that are believed to have been caused by a criminal act and the licensee is obligated to report, then the licensee should report those injuries. For sexual assault, the patient should still be offered victim choice. This unique response to sexual assault was created due to the intimate nature of this crime, sexual assault trauma, and the importance of restoring power, control, and choice for/to victims.

“Intimate relationship” means relationships between spouses, former spouses, past or present unmarried partners, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

¹ Colo. Rev. Stat. § 12-36-135

Figure 2. Sexual Assault by an Intimate Partner



* Other mandatory reporting requirements still apply (e.g., minors, at-risk elders, adults with intellectual or developmental disabilities)

For cases involving both sexual and domestic violence, when determining whether a report to law enforcement is required, there are some important considerations:

1. The obligation to report **domestic violence** only applies under the law to licensees (see Definitions, page 5). However, hospital policies may vary; therefore, it is important for medical providers to understand the law as well as institutional policies. While nurses are not considered medical licensees per statute, their hospital policy may require they report injuries believed to have been caused by a criminal act.
2. The obligation to report **sexual assault** applies to licensees *and* nurses, but is based on whether evidence is collected and the type of reporting option the victim chooses.
3. The “duty to report”² statute applies to situations in which a licensee treats injuries that are believed to be caused by a crime (including domestic violence). If injuries are not being treated, under the law, licensees are **not mandated to report** to law enforcement. Not making a report should not be interpreted to mean the medical provider does nothing upon disclosure or suspicion of domestic violence. For more information, please

2 Colo. Rev. Stat. § 12-36-135(1)(a)

visit <http://www.futureswithoutviolence.org/health/national-health-resource-center-on-domestic-violence/>.

4. Domestic violence is defined by a current or previous intimate relationship.³ While there is often an overlap of both domestic and sexual violence in victims' lives, not all sexual assaults involve an intimate relationship. For example: a victim who goes out on a date with a friend or acquaintance and then experiences sexual violence is NOT an example of an intimate relationship as defined by law.

Law enforcement reporting victims: Law enforcement reporting victims choose to report the sexual assault to law enforcement and engage with the criminal justice system. It is important in IPSV cases to ensure victims are aware of and understand relevant laws. For example, medical licensees (see Definition on page 5) are required to report to law enforcement any treated injuries believed to have been caused by domestic violence,⁴ and upon probable cause of domestic violence, law enforcement is mandated to make an arrest.⁵

Medical reporting and anonymous reporting victims: These options exist to ensure sexual assault victims can obtain critical, immediate medical care, while learning about their criminal justice options. When addressing IPSV cases, these core concepts should be considered:

- Victims sometimes do not seek critical medical care following a sexual assault due to concerns about engaging with the criminal justice system. Immediately following this crime, specialized medical care as well as allowing the victim to make choices can be critical for the healing process.
- There may be cases in which a licensee reports other injuries and/or domestic violence, but the victim chooses to make an anonymous or medical sexual assault report at the time. The victim can always choose at a later time to share the sexual assault information with law enforcement. Since law enforcement will be interviewing the victim regarding other injuries and/or the domestic violence, there is an opportunity for law enforcement to build trust and rapport with the victim so the victim feels safe and able to provide additional information.
- Sexual assault victims frequently drop out of the criminal justice process if they feel pressured to engage in the criminal justice system and talk about sexual assault before they are ready. Successful investigation/prosecution of a sexual assault case is difficult without a cooperative victim. Additionally, when victims decide to disengage from the criminal justice process, they are typically ineligible for Crime Victim Compensation or other state funds to assist with medical and other expenses. Victim self-determination in regards to their involvement with the criminal justice system generally results in greater victim engagement in the criminal justice process.

³ Colo. Rev. Stat. § 12-36-135(b)

⁴ Colo. Rev. Stat. § 12-36-135

⁵ Colo. Rev. Stat. § 18-6-803.6



Appendix III

**Formal Opinion of Ken Salazar, Attorney General
1999-2004, Concerning the Types of Health
Information That May Be Disclosed to Law
Enforcement Officials Under HIPAA**

State of Colorado Department of Law
Office of the Attorney General

September 30, 2003

Please note the date of this AG opinion, as it was authorized prior to the passage of Senate Bill 128 (anonymous reporting options for sexual assault survivors).

No. 03-06
AG Arpa No. PS PA AGBAZ

(Opinion starts on the next page)



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FORMAL)	
OPINION)	No. 03-06
)	AG Alpha No. PS PA AGBAZ
Of)	HIPAA Rules for Disclosures to
)	Law Enforcement
KEN SALAZAR)	September 30, 2003
Attorney General)	

This opinion describes the types of health information that may be disclosed to law enforcement officials under the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sections 1320d – 1320d-8 (2003) (“HIPAA”). It is issued at the request of Lieutenant Colonel Gary L. Coe, of the Colorado State Patrol.

Question Presented and Answer

Question: When may a health care provider disclose protected health information to law enforcement officials under HIPAA?

Answer: HIPAA permits health care providers to disclose protected health information to law enforcement officials under several complicated disclosure rules. Highlights of these rules include:

- Providers are required under Colorado law to report certain bullet and other wounds and injuries to law enforcement, and HIPAA expressly permits these types of mandatory disclosures to law enforcement.
- Disclosures of limited identifying information are permitted in response to an official inquiry from law enforcement to identify or locate a suspect or fugitive.
- Health care providers may voluntarily alert law enforcement of a suspicious death or a crime on their premises.
- Emergency medical personnel may advise law enforcement officials of information concerning the nature and commission of a crime and the location of the crime, victims or perpetrators.

- HIPAA permits disclosures to law enforcement to avert a serious threat to public health or safety and to report child abuse or neglect, domestic violence, and adult abuse or neglect.

HIPAA's varied and complex disclosure rules may also permit other public health and public interest disclosure in particular circumstances, depending upon the purpose of the disclosure.

Discussion

HIPAA is a comprehensive federal statute that is designed, in part, to provide national standards for the protection of certain health information.¹ These statutory privacy provisions have been interpreted in a highly complex regulation issued by the federal Department of Health and Human Services and known as the HIPAA Privacy Rule.² The HIPAA Privacy Rule plays a central role in the discussion that follows.

Colorado's law enforcement personnel sometimes require medical information that is covered by HIPAA protections in order to carry out their public safety functions. These law enforcement needs raise difficult questions of federal law concerning the types of medical information that health care providers can disclose to law enforcement officials. This opinion addresses those questions.

This opinion is accompanied by a [comprehensive attachment](#) that sets forth a chart explaining the legal rules concerning HIPAA and law enforcement. This chart is included to provide easier access for law enforcement officials to the complex rules discussed below.

Finally, this opinion is limited in important respects. It addresses HIPAA's rules in the abstract, but a conclusion as to whether a specific disclosure is permitted under the HIPAA Privacy Rule in a specific circumstance typically depends upon who is making the disclosure, the facts and circumstances of the disclosure, and the purpose of the disclosure. Also, this opinion does not address other federal laws that may impose restrictions upon the release of confidential medical information in particular circumstances. For these reasons, and assuming time is available, law enforcement officials are encouraged to seek legal guidance when specific circumstances arise.

Application of HIPAA. HIPAA's health information disclosure rules apply to "covered entities." This term is defined to include a health plan, a health care clearinghouse, and a health care provider who transmits protected health information in electronic form in connection with a covered transaction.³ (Covered entities are referred to below collectively as "health care providers.") Most emergency medical and other health care personnel are covered and are required to comply with the HIPAA Privacy Rule.

As a general rule, the HIPAA Privacy Rule forbids a health care provider from using or disclosing a patient's protected health information without written authorization from the patient,

¹ 65 Fed. Reg. 82,464 (Dec. 28, 2000).

² 45 C.F.R. Parts 160 and 164 ("HIPAA Privacy Rule"). Available at www.hhs.gov/ocr/hipaa.

³ 45 C.F.R. § 160.102(a) (2003).

except for treatment, payment, and health care operations. 45 C.F.R. § 164.506(a). The rule restricts only the disclosure of “protected health information,” which is defined as individually identifiable health information that is transmitted or received by a covered entity, excluding certain educational and employment records. 45 C.F.R. § 164.501. This opinion discusses the exceptions to the general rule that permit public interest disclosures to law enforcement officials.

The HIPAA Privacy Rule allows the disclosure of protected health information by health care providers – absent a patient’s authorization – for a variety of public interest reasons. 45 C.F.R. § 164.512. When a disclosure is permitted by the rule, a health care provider must also determine whether a law makes that disclosure mandatory. Non-mandatory public interest disclosure provisions are permissive, and the disclosing health care provider then generally has discretion to choose not to disclose even though it legally could do so.⁴

The HIPAA Privacy Rule is not concerned solely with the need for law enforcement officials’ access to protected health information.⁵ Rather, it balances the competing interests of law enforcement and individual privacy. The preamble to the HIPAA Privacy Rule explains:

The importance and legitimacy of law enforcement activities are beyond question, and they are not at issue in this regulation. We permit disclosure of protected health information to law enforcement officials without authorization in some situations precisely because of the importance of these activities to public safety. At the same time, individuals’ privacy interests also are important and legitimate. As with all other disclosures of protected health information permitted under this regulation, the rules we impose attempt to balance competing and legitimate interests.

65 Fed. Reg. 82,678 (Dec. 28, 2000).

The requirement of an official request by law enforcement. An official request from law enforcement is needed by a health care provider in order to prompt certain disclosures. 45 C.F.R. § 164.512(f)(2) and (3). These include disclosures of protected health information needed to identify or locate a suspect, fugitive, material witness or missing person and disclosures concerning the victim of a crime. *Id.* Other disclosures to law enforcement can be made by a health care provider without an official request. 45 C.F.R. § 164.512(f)(1), (4), (5) and (6). These include disclosures required by law; to report a suspicious death; to report crime on the premises; during a medical emergency about a crime, victim or suspect. *Id.*

⁴ The only disclosures required by the HIPAA Privacy Rule are disclosures at the request of the individual or by the federal Department of Health and Human Services. 45 C.F.R. § 164.502(a)(2) (2003), and neither is likely to be important to law enforcement officials.

⁵ The HIPAA Privacy Rule broadly defines a law enforcement official to include an officer or employee of the United States, a State, territory, political subdivision or Indian tribe who is empowered by law to investigate an official inquiry into a potential violation of law, or prosecute or conduct a criminal, civil or administrative proceeding of an alleged violation of law. 45 C.F.R. § 164.501 (2003).

Accounting to the individual involved for disclosures to law enforcement officials. The HIPAA Privacy Rule requires that health care providers give an accounting of certain disclosures to the individual involved upon that individual's request. 45 C.F.R. § 164.528. Disclosures to law enforcement under section 512 of the HIPAA Privacy Rule are one of the types of disclosures that require such an accounting.

It is the responsibility of the health care provider to account for disclosures to law enforcement officials. A summary accounting can be provided for multiple disclosures to the same entity under section 512 of the HIPAA Privacy Rule. 45 C.F.R. § 164.528(b)(3).

The significant accounting burden associated with disclosures by health care providers to law enforcement officials undoubtedly contributes to a reluctance to make disclosures under the HIPAA Privacy Rule.

Bullet wounds and injuries. Health care providers may disclose protected health information on their own when that disclosure is required by law. 45 C.F.R. § 164.512(a) and 45 C.F.R. § 164.512(f)(1)(i). This exception includes laws that require the reporting of certain types of wounds or other physical injuries. *Id.* The use of the information and the disclosure must comply with and be limited to the requirements of the particular law involved. *Id.*

In Colorado, licensed physicians are required by state law to notify law enforcement of certain bullet wounds and other injuries:

It shall be the duty of every licensee [physician] who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report such injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located

Section 12-36-135(1), C.R.S. (2002). This statutory duty to report injuries overcomes the physician-patient privilege which would ordinarily protect information the physician observes during an examination. See Section 12-36-135(3), C.R.S. (2002); *People v. Covington*, 19 P.3d 15 (Colo. 2001).

In Colorado, therefore, licensed health care providers must disclose information to law enforcement officials concerning gunshot and other wounds and injuries they believe involves a criminal act. Nothing in HIPAA prohibits this disclosure, and the HIPAA Privacy Rule permits disclosures required by state law. 45 C.F.R. § 164.512(f)(1)(i). Colorado law requires the reporting of these injuries to law enforcement "at once" and without further procedural requirements.

A health care provider need not limit its disclosures required by law to a minimum necessary amount of information, which is a limit that applies in other circumstances under

HIPAA.⁶ Nevertheless, the disclosure is limited to the amount of information mandated by State law. Under Colorado’s mandatory reporting law, disclosures required by law are limited to a physician’s observations of the injury.⁷

In general, disclosures required by law are subject to the verification procedures of the HIPAA Privacy Rule. This requires a health care provider to verify the identity and authority of a law enforcement official prior to making a disclosure.

Court orders and other legal process. Other disclosures required by state law and expressly allowed by HIPAA include responses to court orders and warrants; subpoenas or summons issued by a judicial officer; grand jury subpoenas; administrative and civil subpoenas; and civil or investigative demands authorized by law if the information is relevant, specific, limited and material to a legitimate law enforcement inquiry and de-identified information cannot be used under the provisions of 45 C.F.R. § 164.512(f)(1)(ii). These disclosures are subject to ordinary legal process and are limited to the requirements of the court order or subpoena.⁸

Disclosures to identify or locate a suspect, fugitive, material witness or missing person. The HIPAA Privacy Rule permits disclosure of limited information in response to a law enforcement request for information that is to be used to identify or locate a suspect, fugitive, material witness or missing person. 45 C.F.R. § 164.512(f)(2). Requests made on behalf of law enforcement are permitted and include providing the media with information in order to request the public’s assistance in identifying a suspect, or information to include on a “wanted” poster.⁹

Only limited information may be released by a health care provider to law enforcement under this rule: name; address; date and place of birth; social security number; ABO blood type and rh factor; type of injury; date and time of treatment; date and time of death; and description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos. 45 C.F.R. § 164.512(f)(2)(i). No DNA information may be disclosed. Disclosure of other information is a violation of HIPAA, unless it is allowed under some other provision of the HIPAA Privacy Rule.

This section of the HIPAA Privacy Rule does not allow a health care provider to reveal the hospital location of a victim or perpetrator of a crime, since this is not included in the list of information that may be disclosed. Nevertheless, other sections of the HIPAA Privacy Rule do allow a health care provider to disclose the location of a victim or perpetrator when law enforcement is investigating a crime. 45 C.F.R. § 164.512(f)(6).

Victims of a crime. Following an official inquiry from law enforcement, the HIPAA Privacy Rule permits disclosure of protected health information to law enforcement about the

⁶ 45 C.F.R. § 164.502(b)(2)(v) (2003).

⁷ Section 12-36-135(3), C.R.S.

⁸ The HIPAA Privacy Rule has other requirements for responding to a subpoena or court order issued by parties in the course of a judicial proceeding. 45 C.F.R. § 164.512(e).

⁹ 65 Fed. Reg. 82,532 (Dec. 28, 2000).

victim of a crime – if the victim consents to the disclosure. 45 C.F.R. § 164.512(f)(3).¹⁰ If a victim’s consent cannot be obtained due to incapacity or emergency, health care providers may disclose information only upon a specific representation by law enforcement that the information is needed to determine if a crime has occurred, is not intended to be used against the victim, and that immediate law enforcement activity depends upon the disclosure and would be materially and adversely affected by waiting for the victim’s consent. 45 C.F.R. § 164.512(f)(3)(ii). Also, the disclosure must be in the best interest of the victim, as decided in the health provider’s professional judgment. *Id.*

Colorado’s mandatory reporting law broadly requires reporting of any “injury that the licensee has reason to believe involves a criminal act” and includes injuries resulting from sexual assault.¹¹ This law only permits disclosure of injuries the physician observes during an examination, and not statements made to a physician during the examination. To obtain information from victims other than an observed injury, the victim’s consent is generally required. Consent for such disclosures may be made orally.¹²

Deaths. The HIPAA Privacy Rule permits disclosure of information to law enforcement about decedents if the health care provider suspects that death may be the result of criminal conduct. 45 C.F.R. § 164.512(f)(4). Disclosures concerning suspicious deaths need not be made in response to an official law enforcement inquiry; health care providers may voluntarily disclose information about suspicious deaths to law enforcement if they have a good faith basis for believing the death may have resulted from criminal conduct. Colorado’s mandatory reporting law also requires licensed health care providers to report injuries, including death, they believe resulted from a criminal act. Section 12-36-135(1), C.R.S. (2002).

Crime on the premises of a health care provider. The HIPAA Privacy Rule permits disclosure of information to law enforcement when a health care provider has a good faith belief the information is evidence of criminal conduct on the premises of the provider. 45 C.F.R. § 164.512(f)(5). This disclosure does not require an official request from law enforcement, and permits the covered health care provider voluntarily to disclose such information.

Reporting crime in emergencies. The HIPAA Privacy Rule permits disclosure of information to law enforcement concerning a crime in a medical emergency. 45 C.F.R. § 164.512(f)(6). The emergency must be off the premises of the health care provider and the disclosure must be to alert law enforcement to the commission and nature of a crime; location of a crime or victim; and identity, description and location of the perpetrator of the crime.

¹⁰ The Office of Civil Rights in the federal Department of Health and Human Services says that the victim’s authorization is required before protected health information can be released about a victim to law enforcement. *Standards for Privacy of Individually Identifiable Health Information*, Office of Civil Rights, U.S. Department of Health and Human Services, Page 116 (Dec. 3, 2002). Also available at <http://www.hhs.gov/ocr>, Frequently Asked Questions, Answer 349.

¹¹ Section 12-36-135(1), C.R.S. (2003).

¹² 45 C.F.R. § 164.512.

Emergency personnel may reveal the location of a victim or suspect if this information is related to the investigation of a crime.

Comments to the final HIPAA Privacy Rule regulations indicate this disclosure provision was specifically added to permit such disclosures to law enforcement:

This added provision [45 C.F.R. § 164.512(f)(6)] recognized the special role of emergency medical technicians and other providers who respond to medical emergencies. In emergencies, emergency medical personnel often arrive on the scene before or at the same time as police officers, firefighters, and other emergency personnel. In these cases, providers may be in the best position and sometimes the only ones in the position, to alert law enforcement about criminal activity. For instance, providers may be the first persons aware that an individual has been the victim of a battery or an attempted murder. They may also be in the position to report in real time, through use of radio or other mechanism, information that may immediately contribute to the apprehension of a perpetrator of a crime.

65 Fed. Reg. 82,533 (Dec. 28, 2000).

The HIPAA Privacy Rule does not prohibit disclosures to law enforcement related to the commission of a crime during an emergency and does not limit the type of information that can be disclosed if it is related to the commission of a crime. Health care providers can disclose the location of a victim or perpetrator of a crime when law enforcement is investigating a crime. An official request from law enforcement is not required if law enforcement is investigating a crime.

Child abuse. The HIPAA Privacy Rule permits disclosure of health information to appropriate governmental entities that are authorized by law to receive reports of child abuse. 45 C.F.R. § 164.512(b)(1)(ii). Colorado law requires that health care providers and other individuals report suspected child abuse to county social services or local law enforcement. Section 19-3-304, C.R.S. (2002). Thus, Colorado law requires, and the HIPAA Privacy Rule permits, covered entities to disclose reports of child abuse or neglect to appropriate governmental authorities.¹³

Abuse and neglect, including domestic violence. The HIPAA Privacy Rule contains special provisions to permit disclosures to report abuse, neglect or domestic violence other than child abuse. 45 C.F.R. § 164.512(c).

The disclosure must be to a government entity authorized by law to receive reports of abuse. If the disclosure is required by law, and limited to the relevant requirement of law the victim's consent is not required. Again, Colorado law mandates the reporting of certain wounds and injuries, including those resulting from acts of domestic violence, and disclosures mandated by state law are permitted by the HIPAA Privacy Rule under 45 C.F.R. § 164.512(c)(1)(i) and do not require the consent of the victim.¹⁴

¹³ 65 Fed. Reg. 82,527 (Dec. 28, 2000).

¹⁴ Section 12-36-135(1), C.R.S. (2002).

Information other than the observed injury concerning abuse and domestic violence is not required to be reported to law enforcement under Colorado law. It is a permissible disclosure under the HIPAA Privacy Rule if the victim consents to the disclosure. The victim's consent may be oral. If the individual does not consent to the disclosure, the disclosure is allowed if it is expressly authorized by statute and the covered entity believes in the exercise of their professional judgment that the disclosure is necessary to prevent serious harm. If an individual is unable to consent because of incapacity, a government official must assure that the information is not intended to be used against the individual, and that immediate enforcement activity depends on the disclosure and would be materially and adversely affected by waiting for the individual's consent.

A covered entity must promptly inform the individual involved of such a disclosure unless (a) it would risk serious harm to the individual or (b) the covered entity reasonably believes a personal representative is responsible for the abuse and informing the representative would not be in the best interest of the individual.

Disclosures to avert a serious threat to health or safety. The HIPAA Privacy Rule permits health care providers to disclose information to law enforcement to avert a serious threat to health or safety. 45 C.F.R. § 164.512(j). The health care provider must have a good faith belief that the disclosure: (a) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person reasonably able to prevent or lessen the threat, or (b) is necessary for law enforcement to identify or apprehend an individual because of their admission to participation in a crime or because they appear to have escaped from a correctional institution or from lawful custody. The disclosure is limited to the admission and limited identifying information (section 164.512(f)(2)(i)), and may not include statements made to initiate treatment, counseling or therapy to affect the propensity to commit a crime.

This provision of the HIPAA Privacy Rule permits disclosures consistent with the duty to warn third persons at risk established in *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425 (1976).¹⁵ Colorado courts impose a duty to warn upon physicians and therapists based upon a determination of several factors including the risk involved, the foreseeability and likelihood of injury as weighed against the social utility of the defendant's conduct, the magnitude of the burden of guarding against the harm, and the consequences of placing the burden of a duty on the defendant. *Ryder v. Mitchell*, 54 P.3d 885 (Colo. 2002).

Patient authorization. Disclosure of protected health information may be made under the HIPAA Privacy Rule if the health care provider has the express, HIPAA-compliant authorization of the individual whose protected health information is being disclosed, except for the disclosure of certain psychotherapy notes. 45 C.F.R. § 164.502(a)(1)(iv). A HIPAA authorization must be specific, limited in time and meet several requirements set forth in 45 C.F.R. § 164.508.

¹⁵ 65 Fed. Reg. 82,538 (Dec. 28, 2000).

An authorization form that complies with HIPAA, developed by and for law enforcement officials, is attached to this opinion as [Attachment B](#).¹⁶

Enforcement of the HIPAA Privacy Rule. Violators of the HIPAA Privacy Rule are subject to government enforcement.¹⁷ If disclosure is not permitted under the rule but information is released anyway, the disclosing health care provider is subject to civil penalties and potential criminal sanctions.

Civil penalties are \$100 for each violation, up to a maximum of \$25,000 per year for all violations of the HIPAA Privacy Rule. 42 U.S.C. § 1320d-5(a)(1). Criminal penalties include one to ten years of prison with penalties ranging from \$50,000 to \$250,000 for knowing violations committed under false pretenses or with the intent to use protected health information for malicious harm, personal gain, or commercial advantage. 42 U.S.C. 1320d-6.

As described in this opinion, HIPAA's disclosure rules are complex and sometimes difficult to apply. In circumstances in which a disclosure can invite civil or criminal penalties, unsure health care providers understandably may be reluctant to make the disclosure.

The agency that enforces the HIPAA Privacy Rule has described its approach to enforcement. It says:

. . . [T]o the extent practicable, OCR will seek the cooperation of covered entities in obtaining compliance with the Privacy Rule, and may provide technical assistance to help covered entities voluntarily comply with the Rule. See 45 C.F.R. § 160.304. As further provided in 45 C.F.R. § 160.312(a)(2), OCR will seek to resolve matters by informal means before issuing findings of non-compliance, under its authority to investigate and resolve complaints, and to engage in compliance review.

68 Fed. Reg. 18,897 (April 17, 2003) (preamble to interim enforcement regulations).

Finally, an individual whose privacy rights are violated by improper disclosure under the HIPAA Privacy Rule does not have an ability – under this statute – to recover damages for his or her injury. There is no private right of action under HIPAA. The legal recourse for an individual about whom a disclosure has been made is either to file a complaint with the Office of Civil Rights or to proceed under some other legal theory.

HIPAA preemption of state law. The HIPAA Privacy Rule preempts contrary state laws relating to the privacy of individually identifiable health information. 42 U.S.C. § 1320d-7. The HIPAA Privacy Rule does not preempt state laws that protect more strictly the disclosure of medical information. Also, HIPAA does not preempt state laws that provide for reports of

¹⁶ This authorization form was developed by the Office of the District Attorney for the First Judicial District.

¹⁷ The Office of Civil Rights in the federal Department of Health and Human Services enforces the HIPAA Privacy Rule.

disease, injury, child abuse, birth, or death. 45 C.F.R. § 160.203(c) (2003). The HIPAA Privacy Rule therefore does not preempt Colorado laws that require health care providers to notify law enforcement of bullet wounds and other injuries resulting from criminal conduct.

Historically, patient consent was obtained by law enforcement officials to avoid violating Colorado’s theft-of-medical-record statute. The Colorado theft-of-medical-record statute, 18-4-412, C.R.S. (2002), was recently amended to exempt disclosures by health care providers and health plans that are covered entities under HIPAA.¹⁸ Disclosures by a covered health care provider which are permitted under HIPAA are now permissible disclosures under Colorado law. Disclosures under Colorado’s theft-of-medical-record statute are limited for entities that are not covered under HIPAA, unless the disclosure is with the written authorization of the patient or an appropriate court order. Section 18-4-412, C.R.S. (2002).

Conclusion

HIPAA is a complex set of federal statutory and regulatory rules that regulate the disclosure of medical information to law enforcement officials. This opinion describes several of the most important portions of these rules.

Issued this 30th day of September, 2003.

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¹⁸ HB 03-1164, amending 18-4-412, C.R.S. (2002) effective July 1, 2003.



Appendix IV

HIPAA Rules for Disclosure to Law Enforcement

This opinion describes the types of health information that may be disclosed to law enforcement officials under the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sections 1320d - 1320d-8 (2003) (“HIP AA”). It is issued at the request of Lieutenant Colonel Gary L. Coe, of the Colorado State Patrol.

Question

When may a health care provider disclose protected health information to law enforcement officials under HIPAA?

Answer

HIPAA permits health care providers to disclose protected health information to law enforcement officials under several complicated disclosure rules. Highlights of these rules include:

- Providers are required under Colorado law to report certain bullet and other wounds and injuries to law enforcement, and HIPAA expressly permits these types of mandatory disclosures to law enforcement.
- Disclosures of limited identifying information are permitted in response to an official inquiry from law enforcement to identify or locate a suspect or fugitive.
- Health care providers may voluntarily alert law enforcement of a suspicious death or a crime on their premises.
- Emergency medical personnel may advise law enforcement officials of information concerning the nature and commission of a crime and the location of the crime, victims or perpetrators.

- HIPAA permits disclosures to law enforcement to avert a serious threat to public health or safety and to report child abuse or neglect, domestic violence, and adult abuse or neglect. HIPAA's varied and complex disclosure rules may also permit other public health and public interest disclosure in particular circumstances, depending upon the purpose of the disclosure.

HIPAA's health information disclosure rules apply to "covered entities." This term is defined to include a health plan, a health care clearinghouse, and a health care provider who transmits protected health information in electronic form in connection with a covered transaction. (Covered entities are referred to below collectively as "health care providers.") Most emergency medical and other health care personnel are covered and are required to comply with the HIPAA Privacy Rule.

Bullet Wounds and Injuries

Health care providers may disclose protected health information on their own when that disclosure is required by law. 45 C.F.R. § 164.512(a) and 45 C.F.R. § 164.512(f)(1)(i). This exception includes laws that require the reporting of certain types of wounds or other physical injuries, including injuries resulting from domestic violence, to report such injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located Section 12-36-135(1), C.R.S. (2002). This statutory duty to report injuries overcomes the physician-patient privilege which would ordinarily protect information the physician observes during an examination. See Section 12-36-135(3), C.R.S. (2002); *People v. Covington*, 19 P.3d 15 (Colo. 2001).

Victims of a Crime

Following an official inquiry from law enforcement, the HIPAA Privacy Rule permits disclosure of protected health information to law enforcement about the victim of a crime – if the victim consents to the disclosure. 45 C.F.R. § 164.512(f)(3). If a victim's consent cannot be obtained due to incapacity or emergency, medical providers may disclose information only upon a specific representation by law enforcement that the information is needed to determine if a crime has occurred, is not intended to be used against the victim, and that immediate law enforcement activity depends upon the disclosure and would be materially and adversely affected by waiting for the victim's consent. 45 C.F.R. § 164.512(f)(3)(ii). Also, the disclosure must be in the best interest of the victim, as decided in the medical provider's professional judgment. *Id.* Colorado's mandatory reporting law broadly requires reporting of any "injury that the licensee has reason to believe involves a criminal act" and includes injuries resulting from sexual assault. This law only permits disclosure of injuries the physician observes during an examination, and not statements made to a physician during the examination. To obtain information from victims other than an observed injury, the victim's consent is generally required. Consent for such disclosures may be made orally.

Abuse and Neglect, Including Domestic Violence

The HIPAA Privacy Rule contains special provisions to permit disclosures to report abuse, neglect or domestic violence other than child abuse. 45 C.F.R. § 164.512(c).

Information other than the observed injury concerning abuse and domestic violence is not required to be reported to law enforcement under Colorado law. It is a permissible disclosure under the HIPAA Privacy Rule if the victim consents to the disclosure. The victim's consent may be oral. If the individual does not consent to the disclosure, the disclosure is allowed if it is expressly authorized by statute and the covered entity believes in the exercise of their professional judgment that the disclosure is necessary to prevent serious harm.



Appendix V

Population-Specific Information

Victims with Disabilities

If the personal care assistant or caregiver is the perpetrator, the victim may fear that they will not have someone to take care of them and therefore not want to report the abuse. Responders should have a list of emergency personal care services to contact if a victim is in need of alternative care.

Persons with cognitive or mental health disabilities may be confused due to their disabilities or medications, and may have trouble describing the assault or perpetrator. This does not mean they are lying or that an assault did not happen.

Persons who are deaf and communicate non-verbally, as well as persons who have disabilities that affect their speech, may need to use interpreters, pictures, and written communication to facilitate communication. Responders should not assume that persons who are deaf use sign language, and instead should determine the most effective way to communicate with the victim based on the victim's needs. In almost all cases, lip-reading is not an effective mode of communication. The average lip-reader understands about one-third of what is being communicated. For victims who use sign language as their primary mode of communication, English is almost always a second language; therefore, written documents will also need to be interpreted or provided in simplified English. Under no circumstances should a family member, child, or friend of the victim be used as an interpreter, unless it is simply to establish initial communication needs.

Victims Who Are Men

Regardless of their sexual orientation (e.g., gay, heterosexual, bisexual), men and individuals presenting as men can be victims of sexual assault. Some male victims may be reluctant to disclose sexual assault for a variety of reasons, some of which are personal, others of which are imposed upon them by society and may include:

- Societal beliefs that men should be able to defend themselves, especially against sexual violence
- Fear that their identity and/or sexual orientation may become suspect or impacted as a result of the assault
- Confusion because they had a physical response (such as an erection or ejaculation) during the assault even though consent was not given
- Fear of their identity being “outed” if the assault was committed by a male date, partner or acquaintance
- Misconception that sexual assault crisis centers do not provide services to male victims

Responders need to be aware that some of the concerns above can influence whether a man will report. Male victims need to be taken seriously when they make a report and be treated with respect. It is not common for this population to have regular gynecological exams and therefore they may be even more uncomfortable during a forensic sexual assault evidence collection examination. This may be one of the reasons some men do not want an exam or to report, so work with them to make them feel as comfortable as possible.

Lesbian, Gay, Bisexual, Queer and Asexual (LGBQA) Victims

Persons who identify as LGBQA can be assaulted by a same-sex or same-gender assailant, or an assailant of a different sex and/or gender. They may fear they will be discriminated against if they report their experience and that law enforcement officers, health care professionals, and/or victim advocates will not be able, willing, or know how, to provide services to them. It is important for responders to be aware of the possibility that the victim may fear “outing” “one of their own” or retribution for reporting a member of their community. Sometimes persons who are LGBQA are assaulted because of their sexuality, gender identity and/or expression due to societal oppression and discrimination.

To provide the most culturally competent response possible responders are encouraged to:

- Not assume the gender of the assailant and use gender neutral language until the perpetrator’s gender is clear.
- Be aware of local LGBQA resources in your community.
- Recognize the homophobia and oppression that lesbian gay, bisexual, queer and asexual victims may have experienced (i.e., themselves or second-hand) from the medical, victims services and/or criminal justice systems in the past.
- Respect that victims may not be “out” to their families, friends or workplace, and therefore are unwilling to be “outed” in such a public venue as the criminal justice system. SART members need to be aware of these concerns and offer as much confidentiality as allowed by law.

- Familiarize staff with terminology that may be used within the LGBTQA communities and do not ask the victim to educate you.
- Ensure that you and your staff are only asking questions relevant to your specific role in responding to the victim. Do not ask questions out of curiosity.
- For more information visit Survivor's Organizing for Liberation (SOL): <http://coavp.org>

Victims Who Are Transgender and/or Intersex

Transgender is an umbrella term for people whose gender identity and/or gender expression differs from the sex or gender they were assigned at birth. Such groups include, but are not limited to: intersex, transsexual, genderqueer, gender variant, gender diverse, androgynous, male-to-female, female-to-male, cross-dressers, gender fluid, gender-non-conforming, gender non-binary, agender, gender-expansive (especially used in youth communities), etc. Transgender people may or may not decide to alter their bodies hormonally and/or surgically. People must self-identify as transgender in order for the term to be appropriately used to describe them. Being transgender does NOT imply any specific sexual orientation. Some persons in the transgender community do not identify as a man or woman, not wanting to limit themselves to gender identities/roles based on the sex they were assigned at birth. Discrimination and oppression perpetrated against the Trans and Intersex community creates additional barriers for transgender and intersex victims of sexual violence who are seeking to receive appropriate, culturally responsive services. Since the forensic sexual assault evidence collection examination can “out” the victim as transgender and/or intersex, they may be unwilling to undergo an examination.

Responders should keep in mind the following when working with victims who are transgender:

- Ask the victim how they identify and how they would like to be addressed
- Use the gender pronoun that is requested by the victim, which may or may not coincide with the assigned sex at birth of the individual
- Avoid making assumptions about a victim's sexual orientation, relationships or parental status based on a particular gender identity or expression
- Do not ask questions of the victim to satisfy your own curiosity or to educate yourself on the Trans and Intersex community.

Victims Who Are College Students

College students may have the unique experience of having their perpetrators on the same campus, even in their classes or in their residence halls. Therefore responders may need to provide additional protections and/or work with the college to change a student's classes or

living situation. Even though college students are usually over the age of 18, some students may want to involve their parents, while others' parents may want to be involved despite the student's desire for them not to be involved. It is important that responders always protect the privacy of the student. Providers should also discuss insurance as some students may still be on their parents' insurance and, if there are other medical needs besides the forensic exam, insurance could be billed and could lead to parents finding out, which some students may not want. Providers should also be aware that some colleges have victim services that providers can connect with to help with some of the above concerns specific to classes and living situations. Also be aware that there are federal regulations that require colleges to also address and offer resources to sexual assault victims under Title IX. College victims have other options for reporting to the school in addition to the criminal process. These processes can occur concurrently and a victim can choose to pursue, one, both or neither. For more information visit http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

Victims in Rural or Smaller Communities

For victims in rural or smaller sized communities there is significant concern for lack of privacy when reporting an assault. In rural communities, often everyone knows everyone else. Victims in close-knit communities can be very reluctant to come forward to report an assault because they fear they will not be believed, will not be able to keep the assault private, will have to share intimate aspects of the assault with professionals they have known all their lives, and/or will experience a backlash from the community. In small communities, victims are more likely to run into their assailants, and, therefore, may need extra safety planning and protections to help them feel secure.

In rural communities, victims may also have to travel longer distances to receive services or medical treatment. A longer distance means a longer period of time that victims have to wait before they can bathe, brush their teeth, or change their clothes. Being able to bathe and try to cleanse or "wash away" the feelings from the assault is often very important to victims. Responders can be helpful by ensuring immediate service upon reaching the medical facility. The medical facility may also have a private showering area victims can use and spare clothing they can change into so they do not need to wait to return home before bathing.

Victims Who Are Homeless

Working with victims who are experiencing homelessness can provide unique challenges; however, patient choices and medical care should not differ for this population. Be aware that victims who are experiencing homelessness may have distrust of the medical community related to previous negative experiences. In addition, addressing basic comfort needs such as food, warmth and clothing (both pre and post exam) may be warranted.

It is also important to remember that many individuals experiencing homelessness suffer not only from poverty but mental illness, past abuse, and drug addiction. Be thorough with your history and consider carefully possible polypharmacy and co-occurring issues.

Discharging to an environment that may not allow the victim to bathe, brush their teeth, or change their clothes should always be considered. Being able to bathe and try to cleanse or “wash away” the feelings from the assault is often very important to victims. Attempt to provide access to a private bathing area victims can use and spare clothing they can change into for physical and emotional comfort.

Other special considerations related to discharge planning may include:

- Safety planning
- Access to prescribed medications
- Access and transportation to follow up appointments or referrals

Knowing your local and state resources is paramount to addressing these considerations. Acknowledge the obstacles, work with the victim and attempt to be creative with solutions to these challenges. No matter the obstacles, responders need to treat victims experiencing homelessness with respect, empathy, and understanding. Victims experiencing homelessness have multiple barriers in their way influencing their willingness to engage and seek help. It is important to be empathetic to the complexity of their situation.

Active Duty Victims

Working with victims who are active duty military can provide unique challenges; however, victim choices and medical care should not differ for this population. Active duty victims may have specific concerns related to how the assault may affect their career. This may be further impacted if they were assaulted by someone in their company or chain of command. This should be considered while discussing reporting options and during safety planning.

It is important to determine where the assault occurred. If the assault occurred on military property, military law enforcement will respond. If the assault occurred outside of military property, the local law enforcement agency will respond. This also has an impact on what reporting options the victim has. If the active duty victim (or spouse or partner of the active duty victim) was assaulted on military property, they will have two reporting options: restricted or unrestricted. It is important to discuss these options with the victim right away, as the restricted reporting option can be easily be invalidated.

Access to medical forensic examinations for the military population should be equivalent to the civilian population. Some military installations offer medical forensic examinations as a part of their medical services. Other installations may have a contract or agreement set up with a nearby healthcare facility. In either case, active duty victims should receive the same level of care after an assault.

Advocacy for the active duty victim should include both a military advocate and a community-based confidential advocate. Military advocates are instrumental in knowing the military system, especially when the victim chooses to make a restricted report. Some

military advocates may be confidential and some may not. The medical provider should assist the victim in determining the difference.

Victims Who Are Non-English Speaking

Response to victims of assault will be much more effective if it can be done in the victim's primary language. This means responders will need to have a list of qualified interpreters that are available throughout the process. Responders need to consider both verbal and written communication with victims who are not fluent in English or those non-English speakers who may speak another language but may not be able to read it. Using language students, family, or friends of the victim are not effective ways of facilitating communication and may damage the investigation process. Professional interpreters, particularly those trained in sexual assault response and trauma must be used at all times.

Responders should educate themselves on the cultures that relate to the languages most commonly used in their community. The most effective response is one that is bilingual and bicultural. Responders need to be aware of any cultural beliefs, traditions, and practices that can affect victims' abilities to participate in the criminal justice response but as a rule should not ask the victim to educate them. This can include:

- A fear of law enforcement officers
- What appears to be extreme modesty by U.S. American standards (refusing to disrobe, talk about sex, etc.)
- A belief that men do not need consent to engage in any sexual activity with women
- Not being able to make eye contact
- Being acquiescent to male responders
- Not understanding their rights; etc.

By being aware of cultural barriers before a case presents itself, responders can be much more effective.

Similar to victims in rural communities, victims from other countries who speak limited English may be isolated and are usually part of a very small sub-community. They may fear retribution if they report "one of their own." In some cultures, victims may be punished, shunned, or blamed by their own families or community for being sexually assaulted or for no longer being a virgin.

Victims Who Are Immigrants: Documented and Undocumented

Working with both documented and undocumented immigrants can offer challenges to responders. There may be language and/or cultural barriers (discussed above). There may also be a lack of understanding of the U.S. American criminal justice system and the rights of victims and perpetrators that are offered in this system.

Undocumented persons may be targeted because of their undocumented status – the assailants may threaten to turn them in to Immigration and Customs Enforcement (ICE) if they report the assault. If they work with, or for, their assailants, they may be fearful of losing their jobs if they report the assault, and due to their status, have significant difficulty in getting other employment. Documented victims may fear losing their green cards or worker visas if they report a sexual assault against a figure of authority (e.g., case manager, employer, health-care provider, law enforcement officer, attorney, government official, etc.).

Documented and undocumented victims who have children who are U.S. American citizens may be threatened with their children being taken away, especially if the children’s father or another family member assaults them.

If a victim who is an immigrant does report, responders may assist that person to feel safer throughout the process by taking away the threat of deportation or loss of legal status, children, or gainful employment. As mentioned earlier, having responders trained on the local community’s cultures can help tremendously with bridging culture gaps as well as validating the victim’s concerns and providing them with accurate information about their rights. Having access to interpreter services, community resources for immigrant populations, and written materials in languages other than English can help victims feel more comfortable. Overall, responders need to remember that all victims should be provided with culturally appropriate responses, regardless of their legal status in this country.

Victims of Human Trafficking

Trafficking victims are coerced into performing sex acts or unpaid labor for the profit of others. They can be either international or U.S. American citizens. These persons are trapped and have few options. Perpetrators often maintain control over trafficking victims through creating a culture of fear, threatening and/perpetrating physical violence, and emotional manipulation. Perpetrators take away victims identifications, money, and other resources that could enable them to leave. They often have no family, no legal status, and no rights.

Victims of trafficking are eligible for benefits through several government channels. In addition, non- governmental, community, and faith-based organizations around the country continue to provide a wide range of social services for both U.S. – and foreign-born trafficking victims. U.S. American citizens who are victims of domestic trafficking are eligible for social services such as Medicaid, food stamps, and housing subsidies. Foreign-born victims may also be able to access similar services as they move through the “certification” process.

If you encounter a trafficked victim, you may wish to provide the individual with the National Human Trafficking Resource Center Hotline at 1-(888)-373-7888, or report a tip yourself.

Victims Who Engage in Sex Work

Society often denies that persons who engage in sex work can be sexually assaulted. Sex workers are individuals whose reasons for engaging in sex work are just as complex as any decision to be involved in a particular type of work – personal, economic, and social – and often face social stigma, not typically encountered in other professions, that can prevent or hinder them from moving into other forms of labor if they so choose. Sex workers who have experienced sexual violence may be reluctant to come forward for fear of prosecution and fear of not being believed. Persons who engage in sex work still have the right to say no and to limit sexual acts to those with which they are comfortable. Persons who engage in sex work have the right to not be sexually violated by their pimps or customers. Sex workers need fair access to health care and responders need to treat these victims with respect, empathy, and understanding.

Victims Who Are Incarcerated

Persons in prison and jail deserve the same protections from sexual violence as persons outside the correctional system. Sexual violence in prison can occur between inmates or be perpetrated by prison staff. Individuals of all gender identities experience sexual violence in the correctional system and transgender inmates experience higher rates of sexual violence. Reporting can have significant negative consequences on the victim. A victim may be labeled as a “snitch” and targeted for further violence if returned to the same prison. Inmates can be coerced into sexual acts by prison staff due to their positions of power over inmates, or by another inmate who has a higher status within the inmate hierarchy. An inmate may be forced to perform sexual acts in order to stay safe from other inmates, or to keep family members on the outside safe.

Victims who are incarcerated are not offered confidentiality in most settings, and so any description of sexual violence during a counseling session will be treated as a report of sexual assault. This leaves victims who do not want to report very isolated and without support. Inmates are forced to present themselves as strong in order to survive in the prison system. It also means if the assault is not reported, the victim will often try to “play tough” and appear to be more uncooperative than victims who are not incarcerated.

It is important that responders be familiar with local prison and jail policies for handling reports of sexual violence. Recognizing that a prison is similar to a small community and therefore will provide the same challenges (e.g., people being unwilling to share information, people being reluctant to report violence or get other prison staff or inmates in trouble, etc.) will help responders be prepared.



Appendix VI

Colorado Sexual Assault Consent and Information Forms

This section includes the following forms:

- **Colorado Sexual Assault Consent and Information Form**
- **Anonymous Reporting Colorado Sexual Assault Consent and Information Form**

(Forms shown on the next page)



COLORADO SEXUAL ASSAULT CONSENT and INFORMATION FORM

Collection, Analysis/Release, and Consent Withdrawal of Sexual Assault Evidence/Information

▶ **You have the right to have this form explained and all of your questions answered. Please initial and sign where appropriate. You will receive a copy of this form after it is completed.**

Law Enforcement Agency:	Case No:
Officer Name:	Phone No:

Medical Forensic Exam

▶ _____ **I consent to a medical forensic exam.** I understand I can stop the exam at any time and can decline any portion of the exam or collection of any sample.

Reporting Decision (initial only one)

▶ _____ **I am choosing to make a report to law enforcement.** I give permission for evidence collected and information gathered during my sexual assault exam to be released to law enforcement for use in investigation(s) and potential prosecution(s). I understand the investigating law enforcement agency will be given my name and contact information.

▶ _____ At this time, **I am choosing NOT TO REPORT TO LAW ENFORCEMENT OR PARTICIPATE** in any investigation. I understand I can change my mind and later report to law enforcement. I understand law enforcement may be given my name. I understand law enforcement may choose to investigate but I do not have to participate.

Evidence Analysis/Release of Results (initial only one)

▶ _____ **I consent for law enforcement to release the collected evidence to a forensic lab for analysis.** I understand law enforcement **may** submit the evidence to a lab no later than 21 days after receiving it. I understand if the evidence is analyzed, law enforcement **will** receive the results for the purposes of investigation(s) and potential prosecution(s).

▶ _____ **I consent only to the collection and storage of evidence** at a law enforcement agency. I understand this means the evidence will **NOT** be submitted to a forensic lab for analysis. I understand I can change my mind, make a report to law enforcement and possibly have the evidence analyzed at a forensic lab. I understand law enforcement is only required to hold the evidence for a minimum of 2 years.

Withdrawal of Consent for Evidence Analysis/Release of Results (only patients 18 years & older)

▶ _____ **I understand I may withdraw my consent for evidence analysis/release of results** by contacting the law enforcement agency listed on this form. I understand the withdrawal of consent becomes effective when law enforcement verifies my identity, but will not apply to any actions already taken. I understand that once analysis has begun, consent cannot be withdrawn.

Printed Patient Name _____ Patient Signature _____ Date _____

Printed Witness Name/Title _____ Witness Signature _____ Date _____

White Copy – Enclose with Kit Yellow Copy - Law Enforcement Pink Copy – Medical Records Green Copy – Patient



ANONYMOUS Reporting Patients Only

Law enforcement does not receive a copy of this form.

**COLORADO SEXUAL ASSAULT ANONYMOUS REPORT
CONSENT and INFORMATION FORM**

Anonymous Reporting is ONLY an option for patients who are 18 to 69 years old. Mandatory reporting laws prevent minors under 18 and adults 70 years and older from anonymously reporting a sexual assault.

► **You have the right to have this form explained and all of your questions answered. Please initial and sign where appropriate. You will receive a copy of this form after it is completed.**

Law Enforcement Agency:	Case No: Unique Identifying Number (if different than case number):
Officer Name:	Phone No:

Medical Forensic Exam

► _____ **I consent to a medical forensic exam.** I understand I can stop the exam at any time and can decline any portion of the exam or collection of any sample.

Reporting Decision (both must be initialed by patient)

► _____ **At this time, I am choosing to make an anonymous report.** I understand I will have evidence collected that will be stored anonymously at a law enforcement agency. I understand that law enforcement will not be given my name or other identifying information. I understand I can change my mind and later report to law enforcement by providing the unique identifying number given to me.

► _____ I understand that the evidence **will NOT be submitted** to a forensic lab for analysis. I understand I can change my mind and possibly have the evidence analyzed, but must provide my name and contact information to law enforcement. I understand law enforcement is only required to hold the evidence for a minimum of 2 years.

Printed Patient Name _____ Patient Signature _____ Date _____

Printed Witness Name/Title _____ Witness Signature _____ Date _____

White Copy – Enclose with Kit Pink Copy – Medical Records Green Copy – Patient



Appendix VII

MNCASA Core Intervention Principles



SVJI Core Intervention Principles

Sexual Assault Response Teams¹ work to improve a community's response to sexual violence by designing multidisciplinary, victim-centered interventions. Through various tools and training, these teams influence the response patterns of participating members and their agencies. The team's goal is an adaptive and self-correcting system which seeks good case outcomes through a victim-centered approach. A victim-centered approach attends to victim agency (supporting victims in a way that helps them to make their own best decisions), victim safety, offender accountability, and changing community norms which blame and silence victims.

Assumptions underlying our work:

1. **Victim/survivors are not to blame** for being sexually assaulted. They did not 'provoke' the abuse or assault. Interventions should focus on changing the offender's behavior and/or improving the system and community response, not changing the victim/survivor. When they DO report, cases should be vigorously investigated.
2. **Victim/survivors best know what decisions are right for themselves** in the context of the unique circumstances of their lives. Assistance should be geared to providing information and support to help in decision-making relative to the victim/survivor's own goals of establishing *safety, healing, and seeking justice*. Informed decision-making means the victim/survivor knows what could be gained or lost in the options available to him or her. While all responders should facilitate victim agency, victim/survivors should have repeated access to free and confidential advocacy services to help guarantee it.

¹ These teams are known by various names including, Sexual Assault Interagency Councils (SAIC), Sexual Assault Multidisciplinary Response Teams (SMART), and sometimes Coordinated Community Response teams.

3. **Recognize that sexual violence affects each individual differently.** Responders should be especially aware of the differential impact that sexual violence has on non-majority community members. Responders should consider specific ways to increase safety and accessibility that account for these differences.
4. **Each responder has a unique role to play in the response. A coordinated interdisciplinary response** that supports and recognizes these roles—including that of *victim advocates*—is good for victim/survivors AND for community and public safety. Victim/survivors are best served when responders fulfill their roles with high degrees of skill, compassion, and coordination/collaboration with other responders.
5. **Interdisciplinary teams need to learn** about the current response, **design** interventions, **and monitor and evaluate** their interventions **together**. The overall process must involve times when the team *solicits information and insight from those outside the team—including victim/survivors themselves* and the people they most often turn to in a community.

Teams can also use the following questions to guide a victim-centered response: Have we received input from the victim/survivor at this stage? How will this affect the victim/survivor's safety? How does this further justice-making? How can we proceed with the case with minimal negative impact on the victim/survivor?