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This is the second installment in our series exploring alternative reporting methods. In the previous installment, we provided an overview of alternative reporting. In this bulletin, we continue to introduce key concepts and components with a focus on non-investigative reporting.

Non-Investigative Reporting to Law Enforcement

While a great deal of discussion in the field has focused on anonymous reporting, the question of anonymity may not be as critical as *what happens next*. If a victim is unable or unwilling to participate in the process of a law enforcement investigation, will it be investigated anyway? Or will the victim be allowed to decide when and if an investigation will proceed?

Implementing a philosophy of non-investigative reporting requires communities to establish an understanding that sexual assault reports will not generally be investigated or prosecuted against the victim's wishes. Of course, police and prosecutors have the clear legal authority to investigate and prosecute any felony crime that comes to their attention, regardless of the victim's wishes. However, these alternative reporting options will be undermined if they are investigated or prosecuted against the victim's will -- except in very limited circumstances that are clearly stated from the initial contact with the victim.

Allowing Victims to Decide

It may seem counterintuitive for law enforcement agencies to allow victims to decide whether or not their sexual assault report will be investigated, but many agencies have formal policies or unwritten practices that respect a victim's wish to not proceed with the investigation. The goal is to encourage more victims to come forward and to reduce unnecessary trauma.

This means that a sexual assault victim's wants and needs may at times be in direct conflict with the criminal justice process. In other words, if a victim wants to provide information to law enforcement about a sexual assault but not have an investigation initiated, this is exactly what will happen. Any report that does not lead to an arrest or referral for prosecution will then be classified as inactivated or suspended (unless it is determined to be false or baseless). If and when the victim contacts the investigator or additional information develops at a later date, the investigation would then continue.

It is clear that our current practices are not resulting in a meaningful percentage of sexual assaults being reported, let alone successfully investigated and prosecuted. A real paradigm shift is needed to have a significant impact on this pattern and offer victims a real chance at justice.



Not Pressuring Victims

To illustrate this concept of non-investigative reporting, one particularly critical aspect of the *You Have Options Program* in Ashland, Oregon is that victims or other reporting parties are not pressured to participate in a law enforcement investigation or criminal prosecution. This philosophy begins by allowing victims to provide as much or as little information as they can, whenever they are able. The rationale is simple. Pressuring victims is harmful to victims, as well as investigations.

Not the Time to Ask About Prosecution

In most communities, victims are often pressured by friends, family members, and responding professionals in a variety of different ways – pushing them to call the police to make a report and participate in an investigation is only one. Another way in which pressure is exerted is by asking victims if they want to ‘press charges.’ Not only is this question technically incorrect – prosecutors, not victims, are the ones who make charging decisions – but this question places an inappropriate burden on victims.

This is particularly true during the early stages of an investigation; the question should *never* be asked by law enforcement during the initial response. In fact, it often shouldn’t even be asked during a *follow-up interview* with a sexual assault victim. Rather, the time for law enforcement to ask a sexual assault victim about their ability to participate in a criminal prosecution is *at the end of a thorough, evidence-based investigation*. Only at that point do investigators know whether they have a case to present to the prosecutor. The investigator and prosecutor should also meet with the victim to discuss the strengths and weaknesses of the case.

An exception would be those offenses where an immediate arrest is necessary based on the nature of the assault, fear that the suspect is a danger to the victim or community, and/or when there is reason to believe the suspect will flee or immediately destroy evidence. In these cases, once an arrest is made the prosecuting attorney may have as little as 24-72 hours to determine whether the suspect will be formally charged. The victim’s statement is likely to be critical in presenting this case, so the question of participating in a criminal prosecution should be discussed at this point.

In other words, before discussing the issue of criminal prosecution with a sexual assault victim, *law enforcement professionals must do their job first*. An important part of this job is to explain the purpose of the law enforcement interview, describe the role of other members in the Sexual Assault Response and Resource Team (SARRT), and address the victim’s initial concerns regarding the investigation and criminal prosecution.

Then, the next step is to conduct a thorough investigation to identify any evidence that can be used to corroborate the victim’s allegations. Once the investigation is complete, most law enforcement agencies will then make a decision regarding whether or not to refer the case to the prosecuting attorney’s office. (The exception would be those agencies that refer every single case to the prosecutor’s office for review, including cases without a named suspect.)

Do Not Submit Evidence to Crime Laboratory

For victims who choose to participate in a medical forensic examination without reporting to law enforcement – or pursue another alternative reporting method such as anonymous or non-investigative reporting – one question that is often asked is whether any evidence collected during the exam should be submitted to a crime laboratory for analysis. In short, the answer is *no*; this evidence should not be submitted to the crime laboratory for analysis. There are many reasons for this, but the two main ones can be summarized as follows:

1. Victims have not (yet) consented to having their evidence analyzed
2. Consensual partners have not (yet) been excluded.

In addition, many of these alternative reporting mechanisms will not result in an official crime report being recorded or scored by law enforcement. This is yet another reason for not submitting evidence to the crime laboratory for analysis; an official crime report is typically needed.

Rather, all evidence collected in an anonymous or non-investigative report should be stored in accordance with established standards for the length of time established by policy. This should also be emphasized in the informational materials given to victims, so they know what will happen. All too often victims believe that, if a medical forensic examination was conducted, then there is evidence to prosecute their case. This leads to the assumption that the case will definitely be prosecuted if they convert to a standard report at a later point in time. Evidence storage procedures can be briefly explained, along with the caution that prosecution will become less likely as time goes on and also that it is virtually impossible without victim participation.

Up Next

In the next installment of this series on alternative reporting methods, we will continue our discussion of concepts and components with a focus on third party reporting.

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