

## Violence Against Women Act (VAWA) 2005 Reauthorization Forensic Compliance Mandates

### Brief Overview

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

**42 USCA S. 3796gg-4 (d) (1)**

- Generally described as a two-prong approach to compliance:
  - 1) Ensuring victims of sexual assault are afforded forensic medical examinations *without* requiring cooperation with law enforcement and/or participation in the criminal justice system; and,
  - 2) States ensure that victims do not have any out of pocket expenses associated with the provision of the sexual assault forensic examination.
- Although the VAWA 2005 reauthorization mandates that States certify that they meet the forensic requirements, it does not articulate to States the method of compliance. Therefore States differ greatly in their approach to compliance. “Anonymous reporting”, “Blind reporting” or “Jane Doe reporting” are only examples of ways in which States can meet the forensic compliance mandate.
- A Blind or Anonymous system generally means that law enforcement is involved on some level – in many cases driven by the need to accept the evidence for storage. Therefore, this often translates to a police report generated to continue the chain of custody and establish a place holder, if you will, for the evidence to be stored (and tracked) within the local (or state) law enforcement agency. The “type” of police report (sexual assault, rape, miscellaneous, etc.) may vary greatly.
- The term “Jane Doe”, however, has a different connotation – especially with law enforcement. When using the terminology “Jane Doe” with law enforcement, it conjures up the image of the same terminology used when responding to “Jane Doe” homicides.

Officers may assume that both a police report and an investigation need to be initiated (which is not the case).

- States and territories must ensure that victims are not responsible for any portion of the sexual assault forensic examination regardless of what funds they choose to use for payment of those exams. Further guidance regarding the parameters pertaining to funding of exams can be found in OVW's Frequently Asked Questions (pages 22-25): [http://www.ovw.usdoj.gov/docs/FAQ\\_FINAL\\_nov\\_21\\_07.pdf](http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf)
- The forensic compliance mandates are applicable for teens and adults (see page 25: [http://www.ovw.usdoj.gov/docs/FAQ\\_FINAL\\_nov\\_21\\_07.pdf](http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf)). However, states and territories are to adhere to their respective state mandatory reporting laws. For example, cases that are classified as "child abuse" are still subject to mandatory reporting laws of the state or territory.
- Many states have developed statewide planning forums to identify victim-centered multi-disciplinary strategies to meeting the compliance mandates. To assess what statewide planning efforts are ongoing within your own state, contact your state STOP Administrator. Contact information for all STOP Administrators is available at: [http://www.ovw.usdoj.gov/docs/admin\\_contact\\_list.pdf](http://www.ovw.usdoj.gov/docs/admin_contact_list.pdf)
- Further information may be obtained through the U.S. Department of Justice, Office on Violence Against: <http://www.ovw.usdoj.gov/index.html>.
- The Office on Violence Against Women has designated the Maryland Coalition Against Sexual Assault (MCASA) as the national technical assistance provider on this issue. MCASA is charged with providing technical assistance to States as they work toward implementing changes within their policies and procedures to ensure that they are in compliance. Further information regarding the national technical assistance project can be found at: [www.mcasa.org](http://www.mcasa.org).
- States and territories will need to certify that they are in compliance with the mandates by January 5, 2009. The certification applies to practices throughout all states and territories and is not limited to STOP grantees.



# VICTIMS OF SEXUAL ASSAULT

HIPAA Privacy ♦ December 2005

## TMA Privacy Office Guidance

Records Management ♦ FOIA ♦ DUAs ♦ HIPAA Compliance ♦ Privacy Act/System of Records ♦ PIAs



### Purpose

The purpose of this paper is to clarify the policy and procedures on the disclosure of Protected Health Information (PHI) of sexual assault victims and to ensure that the Military Health Systems (MHS) apply appropriate safeguards, as set by the DoD Health Information Privacy Regulation (DoD 6025.18-R) and the Health Insurance Portability Act (HIPAA) of 1996, to prevent any use or disclosure of PHI that would be in violation of HIPAA.

DoD Health Information Privacy Regulation (DoD 6025.18-R, C7.6.3, C7.6.5 & C7.3) and HIPAA (45 CFR 164.512(c),(f)(3,5)) establish the requirement for the disclosure of PHI of sexual assault victims.

### Policy

A Covered Entity (CE) may disclose the PHI of a victim of sexual abuse to law enforcement officials when the victim authorizes such disclosure or when certain exceptions, as set by the DoD Health Information Privacy Regulation, Federal or State Law, are applicable.

### Guidance

A CE may disclose PHI, in response to a law enforcement official's request for such information, about an individual who is suspected to be a victim of a crime, other than disclosures for public health activities or disclosures about victims of abuse, neglect, or domestic violence, when:

1. The individual agrees to the disclosure;
2. The provider is unable to obtain the individual's agreement because of incapacity or other emergency circumstance if:
  - a. The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred and such information is intended to be used against the victim.
  - b. The law enforcement official represents that such immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
  - c. The disclosure is in the best interests of the individual as determined by the provider, in the exercise of professional judgment.

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The CE may disclose to a law enforcement official PHI that he/she believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the provider.

Disclosures under this provision require the individual to be promptly informed that a disclosure has been or shall be made. All disclosures are to be accounted for using the Protection Health Information Management Tool (PHIMT) which has been provided to the Military Health System by TRICARE Management Activity. The PHIMT will be used to track disclosures, document complaints, requests for amendments and authorizations, and restrictions to PHI.

PrivacyMail@tma.osd.mil ♦ [www.tricare.mil/tma/privacy](http://www.tricare.mil/tma/privacy)

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### Handout 3.1

## Sexual Assault Quiz

1. The forcible rape arrest rate has decreased in the past 20 years.  
True    False
2. In 2010, forcible rapes accounted for less than 1 percent of violent crimes reported to law enforcement.  
True    False
3. More than 250,000 victims age 12 and older experienced rape or sexual assault in 2010.  
True    False
4. About half of all rapes and sexual assaults were reported to law enforcement in 2010.  
True    False
5. About 60 percent of reported forcible rapes were cleared by law enforcement in 2010.  
True    False
6. Most female rape or sexual assault victims are assaulted by strangers.  
True    False
7. In 2010, over 90 percent of rape or sexual assault victims were female.  
True    False

HANDOUTS  
**Sexual Assault Advocate/Counselor Training**

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## Handout 3.2

### Sexual Assault Quiz With Answers

1. The forcible rape arrest rate has decreased in the past 20 years.

**True** False

2. In 2010, forcible rapes accounted for less than 1 percent of violent crimes reported to law enforcement.

True **False**

3. More than 250,000 victims age 12 and older experienced rape or sexual assault in 2010.

True **False**

4. About half of all rapes and sexual assaults were reported to law enforcement in 2010.

**True** False

5. About 60 percent of reported forcible rapes were cleared by law enforcement in 2010.

True **False**

6. Most female rape or sexual assault victims are assaulted by strangers.

True **False**

7. In 2010, over 90 percent of rape or sexual assault victims were female.

**True** False

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**Sexual Assault Advocate/Counselor Training**

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