



## **A Best Practice: Why Law Enforcement is Excluded from the Forensic Medical Exam<sup>i</sup>**

This position paper on best practice reflects the views of the Criminal Justice, Victim Response, and Medical Forensic Committees of the Task Force and was approved by the entire Task Force in 2006.

It is estimated that more than 70% of all sexual assault victims in the United States never report the crimes committed against them; we have every reason to believe that these numbers are at least as high in Oregon.<sup>1</sup> The Attorney General's Sexual Assault Task Force (Task Force) shares, with Oregon's responders, the goal of ensuring that victims of sexual assault receive the highest consideration while participating in criminal investigations. To that end, the Task Force and its committees compiled issues and concerns relating to improving the response to sexual assault in Oregon's communities. One recurrent issue was whether law enforcement officers should be present during medical forensic exams.

What is the appropriate role for law enforcement in a medical setting as it relates to a sexual assault medical forensic examination? In the aftermath of a reported sexual assault, law enforcement is obligated to conduct a criminal investigation, while medical personnel are obligated to focus on the victims' health while ensuring their privacy. Both responders recognize the need in the medical setting to be sensitive, considerate and appropriate to the emotional and physical vulnerability of victims – whatever their specific vulnerability is.

Therefore, the position of the Task Force is that it is inappropriate for a law enforcement officer – regardless of gender – to be present during the forensic history-taking and medical forensic examination of a victim. The medical exam routinely involves private, sensitive and potentially traumatic procedures that require: a victim to disrobe, a physical inspection from head to foot, a vaginal speculum exam, and an anal exam. The medical exam will also involve a conversation between the Sexual Assault Nurse Examiner (SANE) and the patient regarding private medical information such as STIs, emergency contraception, prior sexual contact and practices, and medical or mental health follow-up. The involvement and physical presence of law enforcement during the medical forensic exam places the officer in the position of a witness rather than investigator, which can create legal issues at trial. Additionally, in light of the U.S. Supreme Court ruling on *Crawford v. Washington* 541 U.S. 36 (2004), law enforcement presence during

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<sup>1</sup> **Over the last ten years, the National Crime Victimization Survey has reported that approximately 30% of rape survivors report the incident to the police.** Rennison, C. M. (2001). National crime victimization survey, criminal victimization 2000: Changes 1999-2000 with trends 1993-2000, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, NCJ 187007

**Only 16% of rapes are ever reported to the police.** National Victim Center and Crime Victims Research and Treatment Center, Rape in America: A Report to the Nation, 1992.

the forensic history-taking and exam could compromise the admissibility of evidence during the criminal prosecution.

Most importantly, it is a violation of a patient's privacy rights when law enforcement is observing and/or listening to the conversation between the victim/patient and the SANE or other medical professional.

The scope of law enforcement's involvement does not include participation in the medical forensic exam. The responders who are legally qualified to conduct legal medical examinations and collect forensic/medical evidence are SANEs, forensic nurses, registered nurses, physician's assistants and medical doctors. Pursuant to statute, advocates, family or friends are entitled to be personally present during a medical examination to offer emotional support and, as necessary, transportation, information, and referrals. Law enforcement officers have no legal foundation that authorizes them to be present during a medical exam. Law enforcement interviews can be conducted before or after the exam – when the patient is fully dressed.

It is therefore the position of the Task Force that it is improper for law enforcement to ask any victim for permission to be present during the forensic history-taking and medical exam. In circumstances when a victim has established a rapport with law enforcement and has specifically requested the presence of an officer during the exam, the best practice would obligate the officer to explain to the victim why it is improper for him/her to be present, and to encourage an advocate, family or friend to be utilized as a support person during the exam.

The Task Force continues to strongly encourage all responders to work collaboratively while supporting everyone's multidisciplinary role. To maintain the designated boundaries and roles, a law enforcement officer should never be present, involved or participate in a medical forensic examination.

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