



## Sexual Assault Revisions to Medical Mandated Reporting

### What is Colorado's medical mandated reporting statute?

Medical mandated reporting [(C.R.S. 12-36-135 (1)(a))] requires licensed medical professionals to report injuries **that are believed** to have been caused by a criminal act. The statute specifies which injuries medical professionals must report to law enforcement: bullet wounds, gunshot wounds, powder burns, knife wounds, ice pick wounds, wounds from any other sharp or pointed instrument, dog bites, or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence. While injuries related to sexual assault are not specifically cited in this statute, it is widely interpreted to include these suspected injuries. However, interpretation of what constitutes a reportable injury with regard to sexual assault currently varies widely in our state.

### Is this approach common nationwide?

Only nine states (including CO) have similar requirements for medical professionals, which apply to competent adult patients seeking medical attention following a sexual assault.<sup>1</sup> Nationally, best practice is to not require medical mandated reporting for adult sexual assault victims.

### Why does the statute need revision?

- The current statute does not explicitly address sexual assault.
- The current statute is based on the presence of injuries, however injury is not defined. Many sexual assaults do not include physical injury. There is no indication of whether all sexual assaults, or only those with physical injury, should be reported.
- Because medical mandated reporting is largely interpreted to apply to all sexual assaults, victims who are not ready or able to interact with law enforcement may not seek critical medical care.
- Sexual assault is an intensely personal crime. It is the most underreported crime in the United States<sup>2</sup> for reasons including but not limited to: fear of the perpetrator, concern about confidentiality, uncertainty if they will be believed or blamed, and fear of negative consequences (arrest of the victim if the sexual assault was facilitated by illegal drugs or underage drinking, deportation if undocumented, etc.).
- The current language gives medical providers the responsibility of determining whether a crime occurred prior to making a report. Making a determination of whether a sexual assault occurred is not the role or responsibility of the medical professional.
- There is varying interpretation as to whether this statute applies to nurses, who are the primary care givers to patients seeking medical care following a sexual assault.

### What will the revision do?

The revisions will create a subsection within the mandatory reporting statute which will provide specific direction as to how all licensed medical professionals (including nurses) should handle the reporting of sexual assault injuries for competent, adult patients. If the sexual assault does not involve another type of injury listed in the statute (gunshot wound, knife wound, etc.), and the victim wishes to have evidence collected, then the victim chooses one of the three types of reports the medical professional will make to law enforcement: (*see other side*)

<sup>1</sup> Rape and Sexual Assault Reporting Requirements for Competent Adult Victims: <http://www.ncdsv.org/images/RapeandSAReportingRequirement-Scalzo6.15.06.pdf>.

<sup>2</sup> United States Department of Justice. (2007) National crime victimization survey: <http://www.bjs.gov/content/pub/pdf/cv07.pdf>.

- 1) **Law Enforcement Report:** Victim chooses to work with law enforcement at the time of medical care and evidence collection. Evidence is tested (upon victim consent) and stored by local law enforcement, under the victim's name. *This option already exists under current Colorado law.*
- 2) **Medical Report:** Victim chooses not to participate with a law enforcement investigation at the time of medical care and evidence collection. However, the evidence can be tested (upon victim consent) and is stored by local law enforcement, using the victim's name. *This option already exists under current Colorado law.*
- 3) **Anonymous Report:** Victim chooses not to participate with a law enforcement investigation at the time of medical care and evidence collection. While the victim can choose to have an "anonymous" conversation with law enforcement, law enforcement receives no identifying information for the victim, unless and until the victim chooses to provide such information. The collected evidence will be stored by law enforcement using a unique identifying number, and law enforcement will not receive any victim identifying information. Anonymously reporting victims will not be able to have their evidence tested, unless and until the victim converts to a medical or law enforcement report. *This option will be created by this statutory revision.*

For cases in which sexual assault medical care is administered, but no evidence is collected and the adult victim has no injuries that require reporting, the medical professional is not required to make a report to law enforcement.

### **How will this help victims, assist medical professionals, and increase public safety?**

- Sexual assault perpetrators often target victims who are vulnerable, accessible, and/or lacking in credibility.<sup>3</sup> These victims are the most likely to fear law enforcement interaction, but still need and deserve medical attention and support services following a sexual assault. With this revision, victims who are afraid of law enforcement will be able to access critical medical attention and support services without fear impeding this care.
- Law enforcement will have the ability to gain rapport with victims who, with the protection of anonymity, will feel safe enough to come forward to learn about their reporting options and access time sensitive care. Providing victims with more options may encourage increased reporting of sexual assault. This trauma-informed approach gives the victim sufficient time to process decision-making.
- Statutory clarification will result in a more consistent application among medical professionals.

### **Is this reform needed?**

**YES.** In addition to the reasons noted, in 2011, the Colorado Coalition Against Sexual Assault and the Division of Criminal Justice, Office for Victim Programs collaboratively reviewed 151 adult medical mandated reporting cases and surveyed 239 sexual assault response professionals (law enforcement, advocates, prosecutors, and medical personnel) in order to determine how this statute was interpreted and applied in our state.<sup>4</sup> Over half of the survey respondents encountering at least one victim who wanted to report the sexual assault, but also wanted to remain anonymous. *This finding is significant because anonymity is not currently presented as an option to the majority of victims in Colorado.* This revision is also consistent with national best practices in sexual assault response and the purpose and spirit of the federal Violence Against Women Act.<sup>5</sup>

**Questions?** Contact Karen Moldovan, Colorado Coalition Against Sexual Assault: [advocacy@ccasa.org](mailto:advocacy@ccasa.org) or 720-240-1216.

<sup>3</sup> For an overview of their more comprehensive research, see N. Groth & H.J. Birnbaum, *Men Who Rape: The Psychology of the Offender* (Da Capo Press, 2001).

<sup>4</sup> Forensic Compliance in Colorado: An Examination of System Response to Sexual Assault: <http://www.ccasa.org/wp-content/uploads/2013/12/FCEP-Rpt-v04-Web.pdf>.

<sup>5</sup> 42 USC § 3796gg-4(b)(3)(D)(d)