

Rape and Sexual Assault Reporting Laws

BY TERESA SCALZO¹

Many states require medical personnel to make a report to law enforcement and/or social services following treatment of a child, elderly person or vulnerable adult who was the victim of a crime. Although most states do not per se require medical personnel to make a report when they have treated a rape victim who is a competent adult,² other state statutes may have the impact of requiring that a report be made. Laws regulating medical personnel's reporting of their treatment of a competent, adult rape victim can be broken down into the following categories:³ (1) laws that specifically require medical professionals to report treatment of a rape victim to law enforcement; (2) laws that require the reporting of injuries that may include rape; (3) laws relating to other crimes or injuries which may impact rape and sexual assault victims; and (4) laws regarding sexual assault forensic examinations which may impact rape and sexual assault reporting.⁴ This article discusses each of the four categories of rape reporting statutes.⁵

LAWS THAT MANDATE RAPE REPORTING

California is the only state that explicitly requires medical personnel to report their treatment of a competent, adult rape victim.⁶ In Kentucky, rape must be reported to the Kentucky Cabinet for Family and Children when the rape

also constitutes domestic violence.⁷ Massachusetts requires medical personnel to report to the Criminal History Systems Board and to the police that they have treated a rape victim; however, the report cannot include the victim's name, address or any other identifying information.⁸

LAWS THAT MANDATE THE REPORTING OF INJURIES WHICH MAY INCLUDE RAPE

Laws that require the reporting of injuries which may include rape fall into two categories: (1) laws that require non-accidental or intentional injuries to be reported and (2) laws that require injuries caused by criminal conduct or violence to be reported. The question that arises in these states is whether a rape must be reported when the patient has suffered no injury other than the rape itself.

- Statutes that require the reporting of non-accidental or intentional injuries
 - Alaska, Alaska Stat. 08.64.369 (If the injury is likely to cause death)
 - California, Cal Pen Code § 11160
 - Colorado, C.R.S. 12-36-135
 - Florida, Fla. Stat. § 790.24
 - Georgia, O.C.G.A. § 31-7-9
 - Michigan, MCLS § 750.411
 - Ohio, ORC Ann. 2921.22
 - Pennsylvania, 18 Pa.C.S. § 5106 (Exception for domestic violence)

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cases unless the injury constitutes serious bodily injury or was caused by a deadly weapon)

- Statutes that require the reporting of injuries caused by criminal conduct
 - Arizona, A.R.S. § 13-3806 (Material injuries)
 - California, Cal Pen Code § 11160
 - Colorado, C.R.S. 12-36-135
 - Hawaii, HRS § 453-14 (Any injury that would seriously maim, produce death, or has rendered the injured person unconscious)
 - Idaho, Idaho Code § 39-1390
 - Illinois, 20 ILCS 2630/3.2
 - Iowa, Iowa Code § 147.111
 - Massachusetts, ALM GL ch. 112, § 12A1/2 (Must report but may not identify a rape victim)
 - Nebraska, Neb. Rev. ST. 28-902
 - New Hampshire, RSA § 631:6
 - North Carolina, N.C. Gen. Stat. § 90-21.20
 - North Dakota, N.D. Cent. Code, § 43-17-41
 - Ohio, ORC Ann. 2921.22; ORC Ann. 2921.22 (Felonies and any serious physical harm resulting from an offense of violence)
 - Pennsylvania, 18 Pa.C.S. § 5106 (Exception for domestic violence cases unless the injury constitutes serious bodily injury or was caused by a deadly weapon)
 - Tennessee, Tenn. Code Ann. § 38-1-101
 - Utah, Utah Code Ann. 26-23a-1
 - West Virginia, W.Va. Code § 61-2-27
 - Wisconsin, Wis. Stat. 146.995

REPORTING REQUIREMENTS RELATING TO OTHER CRIMES OR INJURIES WHICH MAY IMPACT VICTIMS OF RAPE AND SEXUAL ASSAULT

The third category of mandatory reporting statute that may impact competent, adult rape victims includes statutes that require various types of injuries caused by crimes other than rape to be reported. If a rape victim presents with any of these injuries,

medical personnel are required to report the injury to law enforcement. These injuries include injuries caused by firearms, stab wounds or non-accidental wounds caused by a knife or sharp pointed instrument, injuries caused with a deadly weapon, and burns, among others. These include the following:

- Injuries caused by firearms
 - Alaska, Alaska Stat. § 08.64.369
 - Arizona, A.R.S. § 13-3806
 - Arkansas, A.C.A. § 12-12-602
 - California, Cal Pen Code § 11160
 - Colorado, C.R.S. 12-36-135
 - Connecticut, Conn. Gen. Stat. § 19a-490f
 - Delaware, 24 Del. C. § 1762
 - District of Columbia, D.C. Code § 7-2601
 - Florida, Fla. Stat. § 790.24
 - Hawaii, HRS § 453-14
 - Idaho, Idaho Code § 39-1390
 - Iowa, Iowa Code § 147.111
 - Illinois, 20 ILCS 2630/3.2
 - Indiana, Ind. Code Ann. § 35-47-7-1
 - Kansas, KS § 21-4213
 - Louisiana, La. R.S. § 14:403.5
 - Maine, 17 AMRS § 512
 - Maryland, Md. Code Ann. § 20-703
 - Massachusetts, ALM GL ch. 112, § 12A.
 - Michigan, MCLS § 750.411
 - Minnesota, Minn. Stat. § 626.52
 - Mississippi, MS § 45-9-31
 - Missouri, § 578.350 R.S. Mo.
 - Montana, MCA § 37-2-30
 - Nevada, NRS § 629.041
 - New Hampshire, RSA § 631:6
 - New Jersey, N.J. Stat. § 2C:58-8
 - New York, NY CLS Penal § 265.25
 - North Carolina, N.C. Gen. Stat. § 90-21.20
 - North Dakota, N.D. Cent. Code, § 43-17-41
 - New Hampshire, RSA § 631:6
 - Ohio, ORC Ann. 2921.22
 - Oregon, ORS § 146.750
 - Pennsylvania, 18 Pa.C.S. § 5106
 - Rhode Island, R.I. Gen. Laws § 11-47-48
 - South Carolina, S.C. Code Ann. § 16-3-1072
 - South Dakota, S.D. Codified Law § 21-13-10
 - Tennessee, Tenn. Code Ann.

§ 38-1-101

- Texas, Tex. Health & Safety Code § 161.041
 - Utah, Utah Code § 26-23a-2
 - Vermont, 13 V.S.A. § 4012
 - Virginia, Va. Code Ann. § 54.1-2967.
 - West Virginia, W.Va. Code § 61-2-27
 - Wisconsin, Wis. Stat. § 146.995
- Stab wounds or non-accidental wounds caused by a knife or sharp pointed instrument
 - Alaska, Alaska Stat. § 08.64.369
 - Arizona, A.R.S. § 13-3806
 - Arkansas, A.C.A. § 12-12-602
 - Colorado, C.R.S. 12-36-135
 - Delaware, 24 Del. C. § 1762
 - Hawaii, HRS § 453-14
 - Indiana, Ind. Code Ann. § 35-47-7-1
 - Iowa, Iowa Code § 147.111
 - Kansas, KS § 21-4213
 - Massachusetts, ALM GL ch. 112, § 12A.
 - Michigan, MCLS § 750.411
 - Mississippi, MS § 45-9-31
 - Montana, MCA § 37-2-302
 - Nevada, NRS § 629.041
 - New Jersey, N.J. Stat. § 2C:58-8
 - New York, NY CLS Penal § 265.25
 - North Carolina, N.C. Gen. Stat. § 90-21.20
 - North Dakota, N.D. Cent. Code, § 43-17-41
 - Ohio, ORC Ann. 2921.22
 - Oregon, ORS § 146.750
 - South Dakota, S.D. Codified Laws § 23-13-10
 - Tennessee, Tenn. Code Ann. § 38-1-101
 - Utah, Utah Code Ann. 26-23a-1
 - Virginia, Va. Code Ann. § 54.1-2967.
 - West Virginia, W.Va. Code § 61-2-27
 - Injuries caused by a deadly or dangerous weapon
 - District of Columbia, D.C. Code § 7-2601
 - Michigan, MCLS § 750.411
 - Minnesota, Minn. Stat. § 626.52
 - New Jersey, N.J. Stat. § 2C:58-8
 - Utah, Utah Code Ann. 26-23a-1

- Burn injuries
 - Alaska, Alaska Stat. § 08.64.369
 - Delaware, 24 Del. C. § 1762
 - Indiana, Ind. Code Ann. § 35-47-3
 - Louisiana, La. R.S. § 14:403.4
 - Massachusetts, ALM GL ch. 112, § 12A
 - Minnesota, Minn. Stat. 626.52
 - Nevada, NRS § 629.045
 - New Jersey, N.J. Stat. § 2C:58-8
 - New York, NY CLS Penal § 265.26
 - Ohio, ORC Ann. 2921.22
 - Wisconsin, Wis. Stat. § 146.995

- Suspicious wounds
 - Minnesota, Minn. Stat. 626.52

STATUTES ADDRESSING PAYMENT FOR FORENSIC SEXUAL ASSAULT EXAMINATIONS

The Violence Against Women Act precludes states from receiving STOP funding⁹ unless the state or unit of local government incurs the full out-of-pocket costs of forensic medical examinations for victims of sexual assault. Many states have enacted statutes that impose requirements in order for the cost of the examination to be covered.¹⁰ For example, a number of states have statutes that require that rape be reported to law enforcement before a victim may receive a forensic sexual assault examination without cost to the victim. Some have additional requirements such as time limits for the performance of the examination or cooperation with law enforcement. VAWA III¹¹ calls the practice of requiring victims to report to law enforcement into question. It states: “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.”¹² (Notably, victims cannot be denied medical treatment regardless of what the require-



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ments are with respect to forensic evidence collection.)

The following states have statutes that may require a rape to be reported before a forensic examination is paid for:

- Arkansas, A.C.A. § 12-12-403
- Arizona, A.R.S. § 13-1414
- Colorado, CRS § 18-3-407.5
- Connecticut, Conn. Gen. Stat. § 19a-112a
- Delaware, 11 Del. C. 9019
- District of Columbia, D.C. Code § 4-506
- Florida, F.S.A. S 960.28
- Georgia, O.C.G.A. § 16-6-1
- Hawaii, HRS 351-15
- Idaho, Idaho Code § 19-5303 and § 72-1019
- Indiana, Burns Ind. Code Ann. § 5-2-6.1-39 and § 16-21-8-5
- Iowa, Iowa Code § 915.41
- Kansas, KS § 65-448
- Kentucky, KRS § 216B.400

- Maine, Code Me. R. 26-550 Ch. 8, § 1
- Maryland, MD ADC 07.06.07.05
- Minnesota, Minn. Stat. § 609.35
- Mississippi, MS Code § 99-37-25
- Missouri, MS § 191.225
- Montana, Mont. Code § 46-15-411
- Nebraska, RRS Neb. 13-607
- Nevada, NRS § 217.310 and NRS § 449.244
- New Hampshire, RSA § 21-M:8-c
- New York, NY CLS Exec § 631
- North Carolina, N.C. Gen. Stat. § 143B-480.2
- North Dakota, N.D. Cent. Code, § 54-23.4-06
- Ohio, ORC Ann. § 2907.28
- Oklahoma, 21 OK St. § 142.20
- Oregon, OR Admin. R. 137-084-0010
- Pennsylvania, 18 P.S. § 11.707.
- South Carolina, S.C. Code Ann. § 16-3-1350
- South Dakota, S.D. Codified Laws § 22-22-26
- Texas, Tex. Code Crim. Proc. art. 56.08
- Utah, Utah Code § 63-25a-411
- Vermont, 32 V.S.A. § 1407
- Virginia, Va. Code Ann. § 19.2-165.1
- West Virginia, W.Va. C.S.R. § 168-1-3 and W.Va. Code § 61-8B-16
- Wisconsin, Wis. Stat. § 949.08
- Wyoming, Wyo. Stat. § 6-2-309

Rape reporting statutes may be interpreted differently by hospitals, medical providers or courts. When working with victims, prosecutors and other allied professionals should remember that the possibility always exists that the rape could be reported due to these varying interpretations. Ideally, questions about reporting requirements should be resolved before a rape victim is sitting in an emergency room; communities, therefore, should address questions with Memoranda of Understanding (MOUs) or in Sexual Assault Response Team (SART) protocols.

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The entire report, *Rape and Sexual Assault Reporting Requirements for Competent Adult Victims*, is available from the National Center for the Prosecution of Violence Against Women at APRI. It contains the full text of all state statutes, as well as a discussion of issues that may be encountered when interpreting the statutes. Please email ncpvaw@ndaa-

[apri.org](http://www.ndaa-apri.org) or call NCPVAW at 703-549-9222. In addition, the state statutes are posted on NCPVAW's website with an interactive map at http://www.ndaa-apri.org/apri/programs/vawa/state_rape_reportings_requirements.html. ■



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Are you a prosecutor or allied professional involved in the prosecution of violence against women? Join the NCPVAW Yahoo! discussion group at <http://groups.yahoo.com/group/apri-vawp>

FOOTNOTES

¹ Ms. Scalzo is the Director of APRI's National Center for the Prosecution of Violence Against Women.

² Please refer to state law for definitions or interpretations of what constitutes a *competent adult* in a given state.

³ The terms *rape* and *sexual assault* are used interchangeably in this document. For specific definitions of *rape* and *sexual assault*, please refer to state law.

⁴ The purpose of this article is to provide an overview of the issues that may arise with respect to mandatory requirements. The article is not intended as legal advice. Work with local attorneys to insure that their interpretation of relevant law is correct.

⁵ Note that some medical personnel may interpret statutes differently than this article. For example, some providers in Oklahoma interpret 10 Okl. St. § 7104 as requiring a report to be made when the victim is a competent adult. However, the statute appears in Chapter 71 of Title 10, which is Oklahoma's Child Abuse Reporting and Prevention

Act; therefore, it does not mandate that a report be made when the victim is a competent adult.

⁶ Cal Pen Code § 11160.

⁷ KRS § 209.030.

⁸ ALM GL ch. 112, § 12A1/2.

⁹ The STOP (Services - Training - Officers - Prosecutors) Violence Against Women Formula Grant Program. 28 C.F.R. § 90.14.

¹⁰ Note that these statutes should only impact victims when payment is an issue; therefore, they should not be an issue for military members. However, a hospital primarily accustomed to dealing with civilian victims may have a protocol in place that automatically results in a report being made. Therefore, this issue should be addressed when drafting Memoranda of Understanding (MOUs) and / or creating Sexual Assault Response Teams (SARTs).

¹¹ H.R. 3402.

¹² H.R. 3402, sec. 101(f). This language will be added to 42 U.S.C. 3796gg-4.

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