

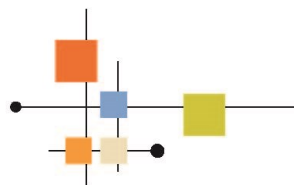


# **Preserving Survivor Choice: Forensic Compliance & LGBTQ+ Survivors of Sexual Violence**

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Forensic compliance exams after a sexual assault are medical exams which include evidence collection related to the sexual assault and meet particular medical needs of sexual assault survivors. Forensic exams can be carried out in the absence of a report to law enforcement at a survivor's request. Forensic compliance exams allow a survivor to ensure that evidence usable in a criminal prosecution is collected even though they may not be sure they wish to pursue reporting the assault at the time of that collection. This process preserves the survivor's option of reporting the assault to criminal systems later and ensures specialized medical care for sexual assault, regardless of law enforcement involvement.

LGBTQ+ survivors of sexual assault should have access to this option, but in order to actualize this, potential barriers must be addressed. This paper includes a discussion of why this access is critical and beginning steps for how to ensure it exists.

In this document we will use "forensic compliance" to refer to the process of providing specialized post sexual assault medical care *and* collecting physical evidence which may be used later (i.e. samples containing the perpetrator's DNA). Forensic compliance protocols allow all survivors to access medical care and preserve evidence without an obligation to report to law enforcement. Some states may be more familiar with the language "anonymous reporting" to refer to the process of doing a forensic exam without reporting to police. However, this term is limited and at times inaccurate. In fact, some of these systems are not completely anonymous, so "anonymous reporting" can be misleading.

People who identify as lesbian, gay, bisexual, transgender, queer, asexual, gender-queer, gender non-conforming or otherwise hold non-normative sexual and/or gender identities (herein referred to as LGBTQ+) are at significantly heightened risk of experiencing sexual violence. At the same time, community support agencies such as rape crisis centers, law enforcement agencies, and hospitals often lack the cultural competence necessary in order to make accessing these systems a viable option for LGBTQ+ survivors. Further complicating matters is the justified cultural fear and distrust which many LGBTQ+ individuals experience regarding community systems that historically have been (and, in many cases, remain) hostile towards LGBTQ+ identities and experiences.

**In order to ensure full resource equity for LGBTQ+ survivors, medical providers, social service agencies and law enforcement must implement informed, intentional, and comprehensive reforms which emphasize accessibility, accountability, coordinated multidisciplinary response, and on-going training and review.**

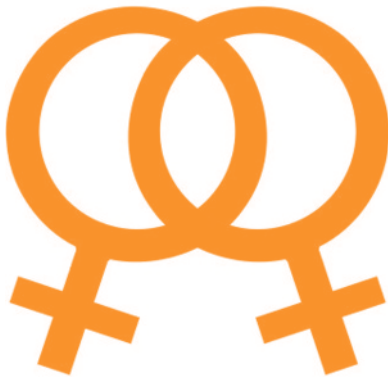
While the process of implementing such reforms will vary from agency to agency, existing mandates provided by the Violence Against Women Act (VAWA) provide a practical starting point to improve quality of care and access to services for LGBTQ+ individuals. According to the VAWA mandates, victims of sexual assault are not required to report the assault to law enforcement or participate in the investigation and

prosecution of the offender as a condition of receiving a forensic medical exam. Historically, cooperation and engagement with the criminal system had been a condition of victims receiving a no-cost forensic exam (commonly referred to as a “rape kit”). This is no longer the case. Allowing victims to opt out of engagement with the criminal system while still getting specialized medical exams and treatment makes it easier for victims of sexual assault to get the healthcare they need after a sexual assault.

Sexual assault forensic kit collection is situated at the intersection of medical, law enforcement, and advocacy systems. Modifying forensic compliance protocols to be optimally accessible to LGBTQ+ survivors moves community response systems in the direction of creating a safe and efficient first-point-of-contact for these survivors to receive initial care and support. Culturally competent protocols for forensic compliance ensure that more LGBTQ+ survivors will feel that they have access to a full range of options for seeking medical care, reporting their assault, and accessing resources. This change may result in increased reports to law enforcement. However, it should be noted that the ultimate goal is not increased reporting, but rather for each survivor to have access to a full range of options and to feel supported in choosing those they feel will most benefit them, which may include a non-carceral approach to receiving medical and other types of support after being assaulted.

## Sexual Violence and LGBTQ+ Survivors

While research specifically focusing on the experiences of LGBTQ+ survivors of sexual violence is still in its infancy, it is already abundantly clear that people who identify as LGBTQ+ are vulnerable to sexual violence at levels comparable to or greater than the general population. Recent studies indicate that:

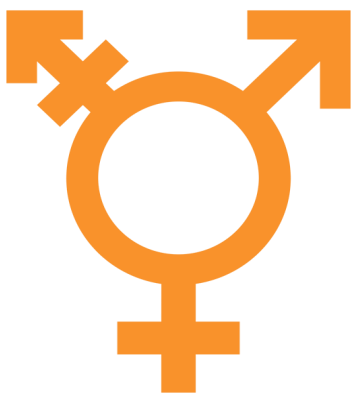


**43%** of lesbian and bisexual women report experiencing sexual violence<sup>1</sup>

**1 in 8** lesbian women and  
**1 in 2** bisexual women have been raped<sup>2</sup>

**30%** of gay and bisexual men report experiencing sexual violence<sup>1</sup>

**4 in 10** gay men and  
**1 in 2** bisexual men have experienced sexual violence other than rape<sup>3</sup>



About **50%** of transgender people report unwanted sexual activity<sup>4</sup>

Among LGBT people reporting hate violence in 2014, transgender people of color were **1.8** times more likely to report sexual violence<sup>5</sup>

*The same factors which contribute to the vulnerability and victimization of LGBTQ survivors also create the barriers these survivors face in accessing community support services.*

The factors that contribute to the particular vulnerability of people who identify as LGBTQ are too varied and complex to be adequately explored here. Some significant contributors include widespread systemic homophobia, biphobia, and transphobia, particularly at the intersections of racism, classism, and socioeconomic oppression. The same factors which contribute to the vulnerability and victimization of LGBTQ survivors also create the barriers these survivors face in accessing community support services.

Despite the prevalence of sexual violence experienced by LGBTQ individuals, systemic response to sexual violence is still heavily informed by heteronormative and gender-binarian assumptions and practices. These assumptions and practices marginalize LGBTQ survivors and create additional barriers for those individuals in accessing support. For example, despite increasing cultural awareness of trans\* identities, most standardized forms in hospitals, police departments, or social service agencies continue to list "male" and "female" as the only options for gender. Similarly, homeless shelters and many shelters for victims of abusive partners are set up to provide services along strictly gender-binarian lines. Some programs continue to define gender not by an individual's personal identity, but rather by genitalia or "legal" gender status.

As a historically marginalized population, LGBTQ individuals frequently distrust social institutions, and for good reason:

- **15%** of transgender individuals report being sexually assaulted while in police custody or jail, which more than doubles (**32%**) for African-American transgender people<sup>6</sup>
- **5 to 9%** of transgender survivors were sexually assaulted by police officers<sup>6</sup>
- **28%** of transgender individuals reported harassment in medical settings<sup>7</sup>
- In its 2014 report, the National Coalition of Anti-Violence Programs found that, of survivors of anti-LGBT violence, roughly **half** of the survivors who experienced violence reported to police<sup>5</sup>
- Of those who did report, close to **one third** reported police hostility. Negative police behavior reported by LGBTQ survivors included verbal abuse, arrest, slurs, biased language, physical and sexual violence<sup>5</sup>

The prevalence of systemic violence against LGBTQ+ individuals has resulted in collective trauma which impacts the perceptions and “common knowledge” of the general LGBTQ+ population. Individuals may anticipate certain forms of violence or bias even if they themselves have not had first-hand experience of it (yet). Therefore, it is not sufficient for individual service agencies to merely ensure the accessibility and cultural competence of their own internal systems; rather, agencies in each community must actively cultivate relationships and build trust with historically oppressed and marginalized communities. Protocols for Forensic Compliance will only serve all survivors and be affirming of and accessible to LGBTQ+ communities when intentional changes are made to the community wide systems of which they are a part.

## Forensic Compliance

*In the absence of Forensic Compliance protocols, survivors who do not wish to report to law enforcement right away may be less likely to get medical help and take the steps to preserve evidence.*

The 2005 Violence Against Women Act (VAWA) Reauthorization specified that states may not “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.”<sup>8</sup>

In order to comply with this mandate, many communities throughout the United States have adopted ‘forensic compliance protocols’, the protocols by which forensic medical care is provided and medical evidence is collected and preserved at the expense of the State, with no requirement that the survivor make an official report to law enforcement.\*\* When properly implemented, these protocols have the additional benefit of supporting survivors in seeking medical care by removing the barrier of fear of unwanted contact with law enforcement. In the absence of Forensic Compliance protocols, survivors who do not wish to report to law enforcement right away may be less likely to get medical help and take

the steps to preserve evidence. Consequently, forensic evidence, which is only viable for five days following an assault, is lost. In those cases, if a survivor wishes to move forward with law enforcement reporting later on, they must do so without the benefit of forensic evidence, which can be difficult.

Forensic compliance protocols may, in many instances, be of benefit to LGBTQ+ identified survivors insofar as they may offer an accessible point of entry for a population who are typically marginalized by the sexual assault response system.

\*\*Unfortunately, some states interpret the law as applying only to the forensic evidence collection itself, meaning expenses may be incurred for medical treatment such as prophylaxis or emergency contraception; advocates should be aware of local practices and inform survivors what to expect.



## Benefits of Forensic Compliance for LGBTQ+ Survivors

Research that specifically examines which systems of support LGBTQ+ survivors of sexual violence are most likely to access does not exist. Considering the research that does exist regarding systemic trauma, it seems likely that LGBTQ+ survivors would initially seek support following an assault at a rape crisis or advocacy center, assuming the center is perceived as being LGBTQ+ affirming. LGBTQ+ survivors may also seek assistance at a hospital, especially if there are injuries sustained during the assault or if the survivor is concerned about pregnancy or contracting sexually transmitted infections. Given the data suggesting distrust of law enforcement among the LGBTQ+ communities, it is unlikely that this population would seek the support of police. This may be particularly true for those additionally marginalized by being people of color, people who are undocumented, or people of a lower socioeconomic status.

As previously noted, forensic compliance protocols are positioned at the intersection of medical, law enforcement, and advocacy systems in that they involve forensic evidence collection in a medical facility by medical personnel, often in conjunction with additional medical services. Many hospital protocols nationwide include connecting survivors with advocacy services, whether that be a hospital social worker or a local rape crisis center advocate. Good Forensic compliance protocols inform survivors of their choice to collect evidence without involving law enforcement. They also afford the opportunity for an advocate or social worker to discuss law enforcement and criminal justice processes with the survivor

without requiring that the survivor make an immediate decision about reporting. Ideally, survivors are able to receive medical care and get connected to resources without having to make final decisions regarding law enforcement involvement -- which can be a daunting process for any survivor, especially for those who identify as LGBTQ+.

In the case of LGBTQ+ survivors specifically, forensic compliance protocols, when properly implemented, can guide the provision of initial care and support while also helping to build the survivor's trust in the system of care overall. Proper implementation, however, requires, that individual community systems do their own internal work to establish LGBTQ+ affirming and accessible practices, as well as working intentionally to streamline community processes across agencies.

It is important to note that these changes cannot be made in a vacuum. It is strongly recommended that the following suggestions be undertaken collectively by a Sexual Assault Response Team (SART) or similar coordinated community response organization in an effort to ensure mutual accountability across systems. Collaboration is imperative in order to effectively combat the distrust that LGBTQ+ communities often associate with community support agencies.

*Given the data suggesting distrust of law enforcement among the LGBTQ+ communities, it is unlikely that this population would seek the support of police.*

## Strategies for Accessibility and Implementation

In the following pages, there are suggestions for:

- **Community systems**
- **Medical systems**
- **Rape Crisis/Advocacy agencies**
- **Law enforcement agencies**

to support LGBTQ+ survivors of sexual violence

In order for forensic compliance protocols to offer optimal benefit to LGBTQ+ survivors of sexual violence, it is critical for community organizations and institutions to conduct their own internal assessments of their practices when working with LGBTQ+ individuals and make appropriate changes based upon those assessments. It is also necessary for agencies and institutions involved in responding to sexual violence to set clear expectations of one another and systems of accountability with regard to ensuring an accessible and affirming system of care for LGBTQ+ survivors.

For communities in which a SART or other coordinated community response organization exists, those entities should work in conjunction with LGBTQ+ organizations to establish community-wide protocols for serving LGBTQ+ survivors, By fostering a mutual understanding of practices and protocols across the community response system, and by building trust and relationships among community partners, agencies will be better equipped to support survivors by clearly communicating options and processes. Furthermore, the relationships built among community partners will facilitate well-informed and confident referrals.

Below are outlined some suggestions for medical, advocacy, and law enforcement organizations to optimize accessibility and support for LGBTQ+ survivors both within the respective agencies in general and with specific regard to forensic compliance protocols. It should be noted that these action items are not sufficient for comprehensive reform. Laws and protocols vary significantly from state to state and among differing communities. While these suggestions offer a generalized starting point, individual community response teams should take care to work collaboratively with one another and with LGBTQ+ organizations to create local plans of action to address the particular needs of a given community.



## All Community Systems

### General Accessibility:

- o All participating agencies should assess their policies, programs, and written materials for LGBTQ+ inclusion. Internal policies should explicitly prohibit discrimination based on sexual orientation, gender identity, and gender expression, and written materials should reflect this policy and include language about LGBTQ+ communities
- o Intake forms and other documents should include open-ended options for the individual to self-identify their gender. Where open-ended options are not possible, there should, at the very least, be several options for gender-identification in addition to male/female. See, for example, the best practices suggested by the [Williams Institute](#).<sup>9</sup>
- o Agency leadership, policy, and training should clearly communicate the expectation that agency staff will refer to individuals by their preferred gender pronouns. Agency staff should be trained in how best to ask which pronouns a person prefers.
- o An easily accessible gender-neutral bathroom option should be available.
- o All agency staff should undergo discipline-specific training regarding the particular needs of LGBTQ+ survivors, systems barriers impacting the population, and skills-building for working with the LGBTQ+ community.
- o All agencies should seek to foster professional relationships with and solicit feedback from local and/or state LGBTQ+ organizations.

# Medical Systems

## **General Accessibility:**

- o Staff should be trained regarding confidentiality concerns of LGBTQ+ individuals. Training should seek to foster general awareness that someone accompanying an LGBTQ+ patient may not be aware of their LGBTQ+ identity and other concerns pertaining to the risk of "outing" a patient as LGBTQ+.
- o Staff should have a baseline awareness of LGBTQ+-specific health care needs, particularly for transgender communities.
- o Staff should be aware of the particular risk of suicide and self-harm among LGBTQ+ individuals and be equipped to assess risk appropriately.

*(Adapted from the DOJ, National Protocol for Sexual Assault Medical Forensic Examinations, April 2013)<sup>10</sup>*

## **Concerns specific to forensic compliance protocols:**

- o Staff training should clearly address “pro-reporting” biases among staff; help them critically evaluate their position with regard to reporting and to understand why some survivors will have legitimate reasons to avoid reporting the assault they’ve experienced. Staff should be comfortable offering options regarding reporting or not reporting without conveying judgement.
- o Staff should have a general awareness of and sensitivity to issues of medical trauma as it pertains to LGBTQ+ individuals.
- o Staff should have a general awareness of and sensitivity to issues of law enforcement/legal trauma and systemic bias in law enforcement systems as it pertains to LGBTQ+ individuals.

## Medical Systems

- o Staff who conduct forensic medical exams should receive training on the particular sexual and reproductive health concerns of each subpopulation in the LGBTQ+ communities.
- o Staff who conduct forensic medical exams should have received specific training on the particular medical concerns of transgender individuals who are taking hormones and/or have undergone gender reassignment surgery. For example, "vaginas that have been exposed to testosterone or created surgically are more fragile than vaginas which have not" therefore extra care should be taken when conducting pelvic exams.<sup>10</sup>
- o Forensic medical examinations should utilize gender-neutral body maps, such as [this one provided by FORGE](#).

There should be a protocol in place for ensuring that survivors get connected with an advocacy agency which can help survivors understand potential reporting and support options and which can provide follow-up to the survivor for additional referrals.

## Rape Crisis/Advocacy Agencies

### **General Accessibility:**

- o Rape Crisis Agencies should have LGBTQ+-inclusive nondiscrimination policies; staff should inform survivors of their nondiscrimination policy.
- o Staff and volunteers should be trained in the specific needs of LGBTQ+ survivors and how to provide appropriate support.
- o Agency staff should use gender-neutral or non-binariad pronouns in outreach, marketing, and volunteer training materials.

## Rape Crisis/Advocacy Agencies

- o The physical space of the agency should be welcoming to LGBTQ+ clients (i.e. gender-neutral bathroom options as well as overt signage/posters/etc. indicating the agency is LGBTQ+ affirming.)
- o Agency staff should identify LGBTQ+ affirming resources in the community to which they can refer clients and have a list of vetted referrals at the ready when needed.
- o Clothing and toiletry items provided should be gender neutral.
- o The agency should have collaborative relationships with LGBTQ+ organizations and individuals within the community. Furthermore agency staff, volunteers, and Board members should include LGBTQ+ people.

### **Concerns specific to forensic compliance protocols:**

- o Staff/volunteers should have a general awareness of and sensitivity to issues of medical trauma as it pertains to LGBTQ+ individuals.
- o Staff/volunteers should have a general awareness of and sensitivity to issues of law enforcement bias and legal trauma as it pertains to LGBTQ+ individuals.
- o Staff and volunteers should have a specific awareness of their local criminal response system's level of bias or responsiveness regarding LGBTQ+ issues and LGBTQ+ individuals
- o Staff/volunteers should be trained in how to present medical and/or law enforcement options to LGBTQ+ survivors in light of the systemic trauma, system bias and institutional oppression they experience
- o Staff should utilize survivor-centered advocacy, and never pressure LGBTQ+ survivors to pursue criminal justice responses which they may not wish to engage in.

# Law Enforcement Agencies

## **General Accessibility:**

- o Law enforcement agencies should have clearly defined policies and protocols for engaging with LGBTQ+ communities, including nondiscrimination policies and protocols for using respectful and culturally competent language.
- o Agencies can benefit from soliciting feedback regarding public perceptions and experiences of law enforcement interactions from LGBTQ+ individuals. LGBTQ+ organizations should be involved in the process of designing and implementing this data collection.
- o Agencies should examine the differential impact that their routine policing regarding sex offenses may have on LGBTQ+ youth, gay men and transwomen; and understand that these practices impact the ability of victims of sexual violence to feel safe seeking law enforcement assistance.
- o Officers and personnel should undergo mandatory training with regard to the particular concerns of the LGBTQ+ population in the community they serve, including but not limited to rates of violence, rates of homelessness, prevalence of suicidal ideation, and accessibility of resources.
- o Agencies should establish an on-going system of community feedback and transparent systems of accountability.

## **Concerns specific to forensic compliance protocols:**

- o Law enforcement agencies should solicit feedback from medical and advocacy organizations regarding perceived barriers to reporting for LGBTQ+ survivors and use this feedback to direct protocol reforms.
- o When working with LGBTQ+ survivors, law enforcement officers should be particularly sensitive to the possibility that the survivor has had previous negative interactions with

## Law Enforcement Agencies

law enforcement and/or that they know others who have had such experiences. Survivors should be given the opportunity to voice their concerns, and officers should take care to validate the survivor and address concerns before proceeding with questioning.

It is important to note that police violence against LGBTQ+ people, especially trans\* women of color, is endemic. While law enforcement agencies may do well to adapt the above suggestions, the work of law enforcement agencies in regard to creating safety and trust with LGBTQ+ survivors of violence goes far beyond a checklist. Even when we assume the best intentions and most competent practices of individual law enforcement agencies, the task of building trust and rapport with historically marginalized and victimized populations still remains. That work can begin with law enforcement agencies publicly acknowledging the historical context of violence against LGBTQ+ and other marginalized people and committing to make necessary reforms in partnership with the broader community.

One model for this type of reform has been provided in the [2014 We Deserve Better Report](#), published by [BreakOUT!](#), a New Orleans-based organization which "seeks to end the criminalization of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth to build a safer and more just New Orleans." <sup>11</sup> Additional suggestions and information can also be found in the [Williams Institute Discrimination and Harassment by Law Enforcement Officers in the LGBT Community Report](#).



## Implications for Future Research

A significant body of research exists documenting the failure of societal systems to appropriately accommodate and meet the needs of the general population of LGBTQ+ individuals. Likewise, a growing body of research examines the prevalence of sexual violence among sexual and gender minority populations. Much more work is needed, however, to assess the accessibility and efficacy of existing systems of care for LGBTQ+ survivors, particularly regarding forensic compliance protocols. It is our hope that this document will serve not only as a model for practitioners but also as a call to researchers to further assess current systems and generate additional theories and proposals for how to ensure that LGBTQ+ survivors have access to the same level of care as any other survivor and, ultimately, to improve systems of care for survivors of all identities.

Additionally, while this document primarily focuses on systems of care which typically provide first response in the immediate aftermath of an incident of sexual violence, advocates and communities need to attend to the criminal justice process beyond the initial report to law enforcement. It is well-documented that rape is estimated to be among the most underreported crimes in the United States, with only 32% ever being reported to law enforcement. Of that 32%, only an estimated 2% of perpetrators will ever serve time in jail.<sup>12</sup> For LGBTQ+ survivors of sexual violence, these statistics are likely even lower, especially considering not only the homophobic and transphobic barriers evident within other systems, but also that state definitions of sexual violence are often heteronormative (for example, North Carolina, where the authors work and reside, defines rape specifically as an act that involves "vaginal intercourse").<sup>13</sup> Furthermore, in some instances, forensic medical evidence kits are not processed in cases of female-perpetrated assaults in which there is "no male suspect."<sup>14</sup> Further research is needed to assess and raise awareness of these barriers.

*Our goal is not 100% reporting or prosecution rates. It is to ensure that each and every survivor in our communities is believed, validated, affirmed, supported, and empowered to choose from a full range of accessible options.*

It is a painful irony that those who are most in need of help and support are often those with the least access to getting their needs met. This truth holds across various communities, identities, and societal systems. Reforms are always needed, and those providing services on the front lines may often feel overwhelmed. History has shown us time and again that lasting and meaningful reforms rarely come in sweeping waves, but rather are the collective product of several small changes implemented by several dedicated people. It is our hope that this paper will provide useful context and helpful suggestions for implementing those small changes within your community, beginning with enhancing the accessibility of forensic compliance protocols. Our goal is not 100% reporting or prosecution rates. It is to ensure that each and every survivor in our communities is believed, validated, affirmed, supported, and empowered to choose from a full range of accessible options. That is a goal we can attain.

## Notes

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## Additional Resources

### **For all community service providers:**

[National Sexual Violence Resource Center: Non-Reporting Options for Victims](#)

[The Williams Institute: Intimate Partner Violence and Sexual Abuse Among LGBT People: A Review of Existing Research](#)

### **For medical and advocacy personnel:**

[FORGE: Quick Tips for Caregivers of Transgender Clients](#)

### **For medical personnel:**

[FORGE: Trans-specific barriers to accessing healthcare](#)

[The Joint Commission: Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the Lesbian, Gay, Bisexual, and Transgender \(LGBT\) Community](#)

### **For law enforcement:**

[The Williams Institute: Discrimination and Harassment by Law Enforcement Officers in the LGBT Community](#)

\*\*Note: References to the work of organizations in this document does not necessarily suggest the endorsement of this document by organizations referenced.