Who Can Help Me?

Fall 2014

Break the Cycle
Empowering Youth to End Domestic Violence

Understanding Minor Access to SAFE Exams

Lucy's ex-boyfriend Jake came over last night to try to convince her to be his girlfriend again. When she told him no and to leave, he forced himself on her and raped her.

Lucy felt guilty because she knew her friends and Mom would be mad she was talking to Jake again and invited him over. But Lucy knew she didn't want to be pregnant, and that what Jake did was wrong. She didn't know yet if she wanted to go to the police, but she knew from looking online that she had to get a forensic exam in the next 72 hours if she wanted strong evidence against him. But her online search also revealed that sometimes the police would have to be called, because she was 16, and she might not be able to access services at all without her Mom there. Lucy felt that telling her Mom would be harder than not getting the exam, and since she didn't know what would happen if she called the hospital to ask if she could get an exam alone, she decided to get Plan B at the pharmacy and not tell anyone about the rape.

Minor survivors of intimate partner sexual assault deserve access to forensic exams, but the current maze of policies and procedures in many jurisdictions and within many healthcare systems creates barriers to service for young survivors. State and federal law, hospital and healthcare clinic policies and systems, and provider education influence whether a minor chooses, or is able to access, a sexual assault forensic exam (SAFE) after experiencing a sexual assault at the hands of an intimate partner. Forensic exams for injuries from intimate partner violence are also becoming more available to survivors of physical intimate partner violence, though these exams have many of the same barriers for minor survivors.

Background

Forensic exams, in addition to being strong tools for criminal justice, can be vital intervention points for young people who may continue to be vulnerable or victimized without access to services and safety. Primary responders to sexual assault cases are crucial to survivor comfort, recovery, and decision-making and can be even more important for survivors who are young adults. Young survivors' experiences directly following an assault can shape their short and long-term health outcomes and legal decisions moving forward. SAFE exams performed by SANE are vital in collecting evidence of an assault, in helping survivors access necessary medical care, and in connecting survivors with additional community resources and support. Forensic exams performed by SANE nurses were found to have more complete and accurate results and a positive impact on the survivor's emotional state.[1] In one study, 85% of survivors identified SANE nurses' listening as one of the most helpful services during their crisis period.[2] In one national study, 8% of teens reported experiencing sexual assault before the age of 18, with 86% of the cases going unreported[3], and another study revealed that of reported cases, an arrest followed only 13% of adolescent sexual assaults.[4] This suggests that while these exams are available at hospitals and clinics, they are not utilized by many young sexual assault survivors. More needs to be done to overcome these many barriers.

Barriers

Lack of Clarity

Misinformation may cause distress and delayed medical treatment if an adolescent presents at an ER and is informed they are not able to access services without parent or guardian accompaniment and consent. Additionally, youth may perceive that sexual assault requires law enforcement involvement, which in turn will notify their parents, and consequently deter them from seeking an exam and medical care.

Lack of Information

Dating abuse frequently includes instances of sexual assault. Among the general population, survivors of intimate partner sexual assault are less likely to access forensic exams. Minors who experience sexual assault within a relationship are even less likely to report, for many intersecting reasons. Societal stigma around sex often encourages young people to hide relationships or sexual activity from parents, guardians, or medical providers; the dual stigma of sexual assault and intimate partner violence may further influence a minor's decision to not report.

Unclear Process for Accessing Exams

Complex service structures in hospitals and healthcare settings make it challenging for hospital staff to know where to send youth for exams that are specific to them. Additionally, minor survivors have limited access to information about survivor services and may not know where to go to access an exam. Empowering services should be transparent and have information easily availability through materials, social media, or the internet. This is particularly valuable for minors who may be concerned that a disclosure, even to inquire about accessing services, could put into motion a report or police investigation against their will.

Confusion About Laws and Policies

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A more ubiquitous barrier is the lack of clarity and understanding of the laws that are relevant to a minor survivor's disclosure. Intersections of mandatory reporting requirements, parental notification and/or consent, and age of consent laws all create barriers to adolescents accessing forensic exams while maintaining confidentiality and control over their case. These policies often work to adolescents' disadvantage because of fear of law enforcement, parents, or being denied services. While the laws are in place to protect minors, they often have the effect of taking away a survivor's agency and restricting access to forensic exams. Additionally, service providers' cloudy or inaccurate understanding of these rights can further limit a survivor's access to information and smooth handling of a case with utmost confidentiality.

All healthcare providers are mandatory reporters of child abuse, inclusive of statutory rape. If the assault falls under the state's definition of child abuse then a report must be made, law enforcement must be involved, and the minor's parents will be notified. While all child abuse must be reported, state definitions of child abuse affect which cases prompt mandatory reporting. For example, Maryland requires only child abuse cases where the perpetrator is a parent, guardian, or care-taker be reported to law enforcement.[5] On the other hand, in Washington, D.C. any cases where sexual assault or abuse of a child is suspected must be reported.[6] Furthermore, some states will require mandatory reporting of nonconsensual sex with a minor, regardless of the definition of child abuse.

Systems Challenges

The infrastructure in place to provide forensic exams to minors is reflective both of federal and state policies that govern these services as well as funding, structure, and access to resources. Hospital policies and procedures around the training of sexual assault and IPV nurse examiners may shape the accessibility of services for minors. Decisions made by hospital administrators and funders often define access to SAFE exams for minors based on convenience or availability of trained staff. For example, it may be known that a local hospital provides SAFE exams, and the advertisement in materials or online (or materials provided to referral sources) does not specify availability for minors. However, once a minor patient presents at the hospital, they may be told that child abuse practitioners, often at an entirely different location or hospital, must do the exam. Transportation to this second location may pose a challenge, and the requirement on the minor survivor to disclose twice can be a barrier and retraumatizing. In this example, the clarity of policies is the significant barrier, followed by the challenge of including adolescent survivors of sexual assault in programs built for addressing child abuse in younger children.

Parental Involvement

Involving non-abusing parents and caregivers in the exam process may be supportive and encouraging to young survivors. Parental support and conversations with their children about trauma and sexual health can often lead to better health outcomes. However, research also indicates that youth are less likely to access reproductive health services if they know parental consent or notification is required[7]. In cases of sexual assault, a minor survivor may be fearful of a parent being angry at them for "having sex", or that parent may victim blame. The parent or caregiver may also be abusive, or the survivor may distrust disclosing a relationship to them because of sexual orientation or cultural norms around sex. Though parental notification laws are meant to protect minors and promote informed consent, in cases of sexual assault that bring up highly stigmatized issues of sex and sexual violence, parental notification may not always be the safest, most trauma-informed, or most empowering response to the assault of a minor.

Age of Consent

The age at which adolescents can independently consent to healthcare services varies state to state and by the type of healthcare sought by the minor. In some states this age is left up to the physician providing services, who will evaluate the minor patient's maturity and ability to provide informed consent. Different services, especially ones concerning sexual health, may have different regulations about age of consent and parental notification and/or consent. For example, minors are able to access all Title X funded reproductive healthcare services without parental consent or notification. It is likely adolescents are aware they can consent to reproductive services independently, and may perceive the exam to fall into that category. When considering sexual assault forensic exams, however, the laws become more confusing.

Forensic exams are both criminal justice procedures and reproductive healthcare and emergency services. The dimensions of reproductive healthcare addressed in the exam – pregnancy test, baseline testing for STI's and HIV, and/or emergency contraception – are not protected if laws deem a minor unable to consent to an exam. On the other hand, emergency room services typically operate under flexible laws that are more likely to allow minor patients to consent to services, depending on the context of the emergency. For a minor wishing to know prior to disclosing abuse in a relationship whether they will be empowered to consent to a forensic exam, however, this process is unclear. It is challenging for a young person to discover on their own whether these intersecting policies grant them consent.

Towards a Solution

Laws about parental notification, age of consent, and mandatory reporting of child abuse may discourage minor survivors from accessing forensic exams. These laws vary widely based on jurisdiction, and correct information on their applicability is not always easy, clear, or consistent. When combined with youth perceptions of mandatory reporting requirements and distrust of law enforcement, current policies may prevent minors from seeking an exam and services.

1 Campbell, R. (2004, November). *The Effectiveness of Sexual Assault Nurse Examiner Programs*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved 08/19/2014, from: http://www.vawnet.org

2 Malloy, M. "Relationship of nurse identified therapeutic techniques to client satisfaction reports in a crisis program." *Unpublished master's thesis, University of Minnesota, Minneapolis* (1991).

3 Kilpatrick, D.G., Saunders, B.E., & Smith, D.W. (2003). Youth victimization: Prevalence and implications.
(Findings From the National Survey of Adolescents). Washington, DC: National Institute of Justice, U.S. Department of Justice.

4 Stein, R. E. & Nofziger, S. D. (2008). Adolescent sexual victimization: Choice of confidant and the failure of authorities. Youth Violence and Juvenile Justice, 6, 158-177.

5 Maryland Coalition Against Sexual Assault. (2005) *Overview of Maryland Law Regarding Mandatory Reporting of Sexual Assault/Abuse: A Guide for Medical Professional*, from Maryland VAWA Forensic Compliance Guidelines.

6 Rape, Abuse, & Incest National Network. (June 2013). *The Laws in Your State: D.C.* https://www.rainn.org/public-policy/laws-in-your-state

7 Perspectives on Sexual and Reproductive Health, 2004, 36(5):182-191