

United States Senate

WASHINGTON, DC 20510-4704

April 14, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Secretary Burwell and Attorney General Lynch:

According to the Centers for Disease Control and Prevention (CDC), nearly 1 in 5 women and 1 in 59 men have been raped in their lifetime.¹ Sexual violence is a growing problem and we applaud the Obama Administration's efforts to prevent and combat it, with efforts to make our schools safer and help bring justice to survivors by eliminating the nationwide rape kit backlog. As this work continues, it is crucial that when survivors seek medical care they are offered the best information, services, and support available. Unfortunately, we write with deep concern that many hospitals and states are failing to provide survivors with supports and services that are critical to their recovery and to holding perpetrators accountable.

Recently, the Government Accountability Office (GAO) issued a report examining access to sexual assault examinations and state laws addressing this issue. Among other concerns, the report found a disturbing lack, and in some cases a complete absence, of information and data on the number of sexual assault examiners in most states.² Sexual Assault Examiners are an integral part of the community response to support survivors of sexual assault by ensuring these individuals receive necessary care and supports, while also helping them to promote justice by providing critical evidence during one of the most traumatic times in their lifetime. The report further found that the Department of Health and Human Services (HHS) has not issued any guidance or requirements concerning the training of medical professionals on conducting exams or the availability of examiners, and that "Department of Justice and HHS had not collaborated on any activities concerning the training of medical providers conducting sexual assault forensic exams or the availability of trained examiners."³

¹ <http://www.cdc.gov/violenceprevention/pdf/nisvs-fact-sheet-2014.pdf>

² Government Accountability Office (GAO), Sexual Assault, Information on Training, Funding, and the Availability of Forensic Examiners, March 2016, *available at*: <http://www.gao.gov/products/GAO-16-334>

³ *Id.* at 13.

GAO's findings highlight a lack of federal standards regarding access to and qualifications of trained examiners. Outside of military, correctional, and Indian Health Services facilities, there are no federal requirements concerning the training or availability of trained examiners in health care facilities.⁴ The Department of Defense specifies roles, responsibilities, and required trainings for providers and staff in facilities. Coupled with the fact that most states do not have guidelines establishing the minimum level of training examiners should receive in order to properly collect and preserve evidence, identify victims' needs, and provide counseling and referrals for victims, investigatory standards are being assessed at the individual hospital level only. This is troubling because, according to the Department of Justice Bureau of Justice Studies, from 2005-2010, eighty percent of female rape or sexual assault survivors received care in a hospital, doctor's office, or emergency room.⁵

The report finds that there are multiple challenges to maintaining a sufficient examiner workforce, which make it difficult to start, sustain and grow examiner services for victims. Challenges include limited availability of training, weak stakeholder support for examiners and training programs, hospital reluctance to cover training costs or pay for on-call examiners. Further, training costs for nurses can be high and are often not covered by employers, forcing trainees to cover costs out of pocket.

These challenges are compounded by an additional barrier to the trained examiner pool: low retention rates. As the GAO report explained, "One state estimated that while the state trained 540 examiners over a two-year period, only 42 of those examiners were still practicing in the state of the end of those two years."⁶ The physically and emotionally demanding nature of examiner work is a major contributor to this low retention rate, along with dissatisfaction with compensation, long work hours, and poor structural support. There are few supportive resources for training programs and examiners, and a lack of technical assistance restricts efforts to maintain the trained examiner workforce. Mentorship opportunities within the examiner community are limited at best, while many programs lack the internal capacity necessary for long-term sustainability.⁷ Examiner support is needed across the board, from technical guidance on in-court testimony, to professional development, to working with unique victim populations.⁸

Studies have shown that when exams are performed by medical providers trained to collect and preserve evidence, victims have better physical and mental health outcomes, higher quality evidence is collected, and prosecution rates are higher.⁹

It is critical to survivors' recovery and their efforts to seek justice that the Department of Justice (DOJ) to work closely in coordination with the Department of Health and Human Services (HHS) to better meet survivors' needs. Further, as the lead agency overseeing all hospitals in the United States, we call on HHS to take a more active leadership role in working with hospitals nationwide to ensure that survivors are treated with dignity and respect no matter where they seek care. Specifically, we urge you to continue the Administration's efforts to prioritize survivor-centered access to health care by:

- Establishing a national task force in partnership with the Centers for Medicare and Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), the Health Resources and Services Administration (HRSA), the Indian Health Services (IHS), the Office for Victims of Crime (OVC), the Office on Women's Health, and the Department of Justice Office on

⁴ *Id.* at 8. (In contrast, "[t]he Department of Defense has issued guidance for implementing its comprehensive policy for preventing and responding to sexual assault. The guidance specified roles, responsibilities, and training for personnel, such as health care providers, who may be involved in responding to victims of sexual assault. For example, DOD's instruction identifies various types of health care providers who, depending on their training, may be eligible to conduct sexual assault forensic examinations. It also identified required categories of training for program personnel on topics that include the sexual assault examination process.") *Id.*

⁵ <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>

⁶ Government Accountability Office (GAO), Sexual Assault, Information on Training, Funding, and the Availability of Forensic Examiners, March 2016, at 31, available at: <http://www.gao.gov/products/GAO-16-334>.

⁷ *Id.* at 28

⁸ *Id.*

⁹ *Id.* at GAO Highlights.

Violence Against Women in order to articulate minimum standards of care for forensic medical examiners, and develop policy and administrative solutions to supporting and bolstering examiner training and retention in our nation's hospitals and increase access to care for survivors;

- Developing national best practices recommendations and issuing guidance for providers and hospitals who perform medical forensic examinations for victims of sexual violence;
- Coordinating with the Department of Justice to ensure evidence is collected, preserved, and protected in a manner that better supports the legal system and minimizes ambiguity around the examiners' role; and
- Partnering with the American Hospital Association to survey states and hospitals that receive federal funds in order to identify and address barriers to care by better understanding places for improvements in our nation's hospitals, including examiner training, availability of services, compensation, and retention;
- Supporting state efforts to implement mentorship programs and formal leadership opportunities for the medical examiner community.

Both HHS and DOJ have a duty to ensure that victims of sexual violence receive the competent, informed, and supportive care they seek. By acting now, we can improve a survivors' experiences during a period of enormous trauma and hardship, while providing higher quality medical care and valuable support to our criminal justice system.

Thank you in advance for your consideration of this request.

Sincerely,



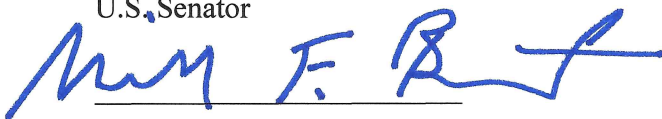
Patty Murray

U.S. Senator



Al Franken

U.S. Senator



Michael Bennet

U.S. Senator