



IMPACT OF SB1191 ON ACCESSIBILITY OF SEXUAL ASSAULT FORENSIC EXAMS IN TEXAS



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Executive Summary

The purpose of the evaluation is to understand the effect that SB1191 had on hospitals and emergency room nurses and to understand if the law had its intended effect of increasing access to medical forensic exams. SB 1191 became law on September 1, 2013 and required Texas hospitals to be equipped to conduct medical forensic exams for sexual assault patients. SB 1191 also required basic training regarding the exams for all nurses who work in an emergency room.

Representatives from 18 facilities (5 with SANE programs and 13 without SANE programs) in Dallas, Lubbock and Austin were interviewed to determine their awareness and compliance with SB1191, to glean information regarding any challenges faced by emergency room personnel, and innovations that have arisen in the wake of SB1191.

Findings:

- Among the 13 hospitals without a SANE program, 9 offer medical forensic exams, 3 do not offer medical forensic exams and 1 was preparing to offer medical forensic exams.
- In our sample of hospitals, there was little change in the number of exams conducted by the facilities following SB1191; however, one of the facilities with a SANE program and two without a SANE program were performing more medical forensic exams since SB1191 passed.
- There is reluctance by nurses, hospital administrators and criminal justice officials to having non-SANEs conduct medical forensic exams. Eleven of the facilities actively encourage the victim to transfer to a facility with a SANE.
- Transfers take a variety of forms including transportation provided by the victim (self-transport), the victim with a police escort, EMS, police or advocate.
- The current 'basic' training requirements of SB1191 are insufficient to prepare a nurse to confidently conduct a medical forensic exam and to defend their collection of evidence if challenged in court.
- Low sexual assault caseloads make it impractical for many facilities to have a SANE program or to maintain the skills of trained emergency room nurses. Eight of thirteen facilities saw fewer than six cases per year.

Conclusion and Recommendations:

The 'simple' goal to increase access to medical forensic exams by making them available at any hospital emergency room proved not to be simple to achieve in practice. SB 1191, while an important state level action to try to make forensic exams more readily available, did not fully account for the very real challenges faced by smaller hospitals that do not see enough sexual assault victims to justify training staff to SANE standards or to keep their certification if trained. We recommend convening one or more working groups of interested Directors of Nursing, Chief Nursing Officers and SANEs to identify a range of solutions that could be applied to build on SB1191 and provide better access to competent forensic exams for sexual assault victims in various settings. These solutions might include:

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- Require hospitals to create protocols for transferring victims who are sent to other facilities for a forensic exam
 - Increase training options for forensic exams so that there are additional levels of training between the 80 hours of SANE training and the two hours required by the Board of Nursing
 - In areas where justified, create a network of mobile SANEs who are on-call and can perform exams at a number of hospitals
 - Create opportunities for rural SANEs to regularly serve in hospitals with a higher volume of cases in order to maintain their skills
 - Explore telemedicine options whereby a nurse performing an exam at a remote hospital could be supervised in real time by an experienced nurse stationed elsewhere

I. Introduction

In 2013, Texas passed Senate Bill 1191, which was intended to expand the options for sexual assault victims/survivors to receive a forensic exam. Texas had already created a system of regional responses to sexual assault. Under that system, each region was to develop a community-wide plan, under which at least one health care facility would be designated as the primary health care facility to respond to sexual assault survivors. SB 1191 was designed to address the problem of sexual assault victims being required to travel long distances—especially in rural areas—to obtain a forensic exam.¹

When SB 1191 was adopted, it imposed new requirements for each health care facility with an emergency department that was not a “designated” facility. Specifically, the new law required each facility to inform sexual assault survivors:

(1) that the facility is not the designated facility, and provide the name and location of the designated facility to the survivor; and

(2) that the survivor is entitled, at his or her option:

(A) to have the facility collect forensic medical evidence in accordance with a kit and protocol developed by the Attorney General’s Office; or

(B) to be stabilized and to be transferred to and receive the exam and evidence collection at a health care facility designated as the primary health care facility in the community for treating sexual assault survivors.

If the sexual assault survivor chooses to be transferred, the facility is to obtain the survivor’s written, signed consent to the transfer.

¹ Jordan Smith, “Bill of the Week: Surviving Sexual Assault: Bill would ease ability of victims to get medical care,” *Austin Chronicle*, May 11, 2013, available online at <http://www.austinchronicle.com/daily/news/2013-05-11/bill-of-the-week-surviving-sexual-assault/> [last accessed August 23, 2016].

The new law also provided that no person may perform a sexual assault forensic exam unless that person has “at least basic forensic evidence collection training or the equivalent education.” Health and Safety Code § 323.004(b-1) and § 323.0045 (a). Every facility with an emergency department that is not a designated facility was required to develop “a plan to train personnel on sexual assault forensic evidence collection.” §323.0045(c).

In this paper, we lay out the essential elements of SB 1191. This is followed by the findings from a series of interviews of hospital emergency room administrators designed to find out their understanding of the law’s requirements and how it has affected their forensic exam process. The final section presents our conclusions about the effects of the statute and recommendations for change.

II. SB 1191 Implementation Basics

Which organization(s) developed forensic certification requirements dictated by Senate Bill 1191?

Following passage of SB 1191, two state entities developed rules related to SB 1191: the Texas Department of State Health Services and the Texas Board of Nursing.

1) Texas Department of State Health Services, Hospital Licensing Division

In implementing SB 1191, hospital licensing rules were amended relating to the care of sexual assault survivors in an emergency room, specifically regarding forensic evidence collection, stabilization, transfers, and mandatory staff training. These amendments were adopted by rule in the Texas Register on September 5, 2014.

The rules echo—almost verbatim—the statutory language of SB 1191.

2) Texas Board of Nursing

In order to implement SB 1191, the Texas Board of Nursing (BON) amended existing rules around continuing education on forensic evidence collection (see Appendix A for BON rules pre and post SB 1191).

Current rules require nurses employed in an emergency room to complete a minimum of two hours of continuing education relating to forensic evidence collection within two years of their employment in an ER. In addition, nurses are required to complete this basic forensic evidence collection training prior to performing a medical forensic exam, which may occur before two years, thus advancing the deadline for obtaining the training. Nurses are able to satisfy both of these requirements with one 2-hour training course. While not naming SB 1191 specifically, the Texas Board of Nursing published the following summary of the changes instituted by SB 1191.

Updated Forensic Evidence Collection Requirement - all nurses who perform a forensic examination on a sexual assault survivor in any practice setting must have basic evidence collection training or the equivalent education before performing the examination. The requirement for nurses who work in an emergency department to complete at least two contact

hours related to forensic evidence collection within two years of the initial date of employment in an emergency department remains in Board Rule. The updated rule requires completion of forensic education prior to performing a forensic examination.

- Texas Board of Nursing Bulletin, April 2014.

Who can provide the training?

To count towards a licensure requirement, a training program must have been approved by a credentialing agency recognized by the Board of Nursing.

The following credentialing agencies have met nationally-predetermined criteria to approve programs and providers of CNE and are recognized by the BON:

- American Association of Nurse Practitioners (AANP);
- American Association of Critical-Care Nurses (AACN);
- American Association of Nurse Anesthetists (AANA);
- American College of Nurse Midwives (ACNM);
- American Nurses Credentialing Center (ANCC);
- Category I Continuing Medical Education (for APRNs only);
- Colleges and Universities in the United States of America;
- Emergency Nurses Association (ENA);
- National Association for Practical Nurse Education and Service (NAPNES);
- National Association of Pediatric Nurse Practitioners (NAPNAP);
- National Federation of Licensed Practical Nurses (NFLPN); and
- Other State Boards of Nursing.

Some of these organizations approve other CNE providers. For example, the Texas Nurses Association (TNA) is accredited through the ANCC to approve both individual CNE programs and also approve providers of CNE programs. Thus, training programs provided by TNA or by TNA approved providers would be accepted. In addition, the BON also recognizes the Licensed Vocational Nurses Association of Texas (LVNAT) and the Texas League of Vocational Nurses (TLVN) as providers of CNE. Self-paced and online trainings are acceptable as long as they have been approved by one of the credentialing agencies to ensure quality education. In addition, the BON itself offers some continuing education programs.

What topics must be covered in the training?

The BON states in rules that the basic forensic examination training “shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and

protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kits, survivor symptoms, and emotional and psychological support interventions for victims.”

Who monitors compliance with the law?

The BON conducts random audits to determine compliance with all continuing education requirements. The notice is sent 90 days prior to the renewal dates for nurses who are chosen randomly by computer. A nurse being audited will not be able to renew his/her license until adequate proof of continuing education has been submitted and approved. It is expected that nurses will maintain course completion certificates to document completion of continuing education requirements, including the requirement to obtain training on forensic evidence collection.

The BON maintains no aggregate data regarding the number of nurses who, when audited, were out of compliance with the requirement to obtain training on forensic evidence collection.

Commentary

The impact of SB 1191 on nurse training seems to be minimal (see Appendix A for a point-by-point comparison of new versus old BON rules). New BON rules in response to SB 1191 expanded previously existing BON rules in two areas, but only slightly:

1. Nurses outside the ER might have to receive forensic evidence collection training. SB 1191 requires all persons, not just ER nurses, to receive basic training on forensic evidence collection prior to performing a forensic examination on a sexual assault survivor. Therefore, if a nurse worked outside of the ER, but performed forensic examinations on sexual assault survivors, the training would be required.

However, because most forensic examinations occur within the ER setting, unless they are at a specialized clinic which by its very nature will have specially trained clinicians, this change will effect very few nurses. It is unlikely that a nurse would conduct a forensic examination outside an ER or specialized clinic without training. Based on anecdotes, evidence collection by untrained persons outside an ER does not seem to be an issue in Texas.

2. Nurses may need to obtain training earlier. Previous to SB 1191, two hours of forensic evidence training had to be obtained ‘within two years of the initial date of the nurse’s employment in an ER setting.’ Since an ER nurse may be called upon to perform a forensic examination on a sexual assault survivor before two years of employment and SB 1191 requires training before conducting an exam, ER nurses may have to receive the forensic examination training sooner.

BON rules are clear that the previously required two hours of Continuing Nursing Education (CNE) can satisfy both the long standing requirement for forensic evidence collection as well as SB 1191.

The intent of SB 1191, based on conversations with the author, former Sen. Wendy Davis, and a staff member was to ensure that sexual assault survivors could obtain a forensic evidence collection exam at any ER in the state from a trained medical professional. When Sen. Davis conceived of SB 1191, part of the identified problem was that medical professionals in Texas ERs were not being trained to collect forensic evidence from a sexual assault survivor, thus requiring survivors to transfer to other hospitals for evidence collection. To that end, SB 1191 included language requiring all Texas ERs to offer forensic evidence collection exams as well as language regarding training of persons who would collect forensic

evidence. The author left the decision of what the specific education components should look like to the medical professionals themselves by allowing the “appropriate licensing board” to “approve or recognize” what education in forensic evidence collection would meet the requirements of the new law. Yet the BON interpreted SB 1191 in a manner which created no increase in the number or frequency of training hours required. Instead, the BON rules expanded minimally the type of nurses who must receive basic forensic evidence collection training and how soon nurses must receive the training.

III. Interviews with Hospital Emergency Room Administrators

To determine how hospitals were interpreting SB 1191, we interviewed representatives of emergency medical facilities in order to accomplish two objectives:

1. To determine awareness of and compliance with SB 1191, and
2. To determine whether implementation of SB 1191 has resulted in an increased number of victims receiving a sexual assault medical forensic examination.

Project staff interviewed representatives of 18 facilities—17 hospitals and one free-standing nonprofit, to explore these objectives and to glean information regarding any challenges faced by emergency room personnel and innovations that have arisen in the wake of SB 1191.

Methodology

Our original plan was to assess the impact of the law in the 14 Dallas-Fort Worth-Arlington Metropolitan Statistical Area counties: Collin, Dallas, Delta, Denton, Ellis, Hood, Hunt, Johnson, Kauffman, Parker, Rockwall, Somervell, Tarrant, and Wise. However, due in part to the large number of hospitals that would potentially be contacted in that sample, as well as the need to examine practice in a more rural location, this objective was adjusted. Project staff focused attention on selected hospitals in and around three counties, two of which coincide with the focus of our research efforts relating to evaluation of SB1636 (Tarrant and Travis Counties), and one of which is in a more rural area (Lubbock County).

In identifying hospitals to include in the sample, staff worked to include a range of facilities. The initial target list included the following, to the extent they existed in each region:

- A facility that is the designated hospital for sexual assault victims under the community-wide plan for responding to sexual assault.
- Two nondesignated hospitals within the county
- Two nondesignated hospitals in contiguous urban counties
- Two nondesignated hospitals in contiguous rural counties
- Two nondesignated hospitals in rural counties located further from the county of focus

Because the obligations of children’s hospitals largely did not change with SB 1191, children’s hospitals were not included in this project.

For each of the hospitals or other facilities targeted, staff identified key emergency room personnel, which included such positions as directors of nursing, SANE coordinators, emergency room directors, or similar professionals, and attempted to contact and interview one individual for each facility.

A semi-structured interview instrument, which included a statement to obtain informed consent and explain confidentiality, was developed and used to guide discussions. That instrument was designed to elicit whether the interviewee was aware of SB 1191 and whether the facility had taken steps to comply with that new law, the process they used to train staff in the collection of forensic evidence (especially whether nurses are SANE-trained), and the number and availability of specially-trained nurse examiners. (A copy of this instrument is attached as Appendix B.) Those interviews took an average of 30 minutes.

Project staff had considerable difficulty in securing the participation of key emergency room personnel. The Table 1 illustrates the numbers of facilities contacted, the number of interviews conducted with representatives of those facilities, and the number of contact attempts at the remaining facilities.

Table 1: Health Facility Sample Recruitment

Area	Facilities Contacted	Facilities with staff interviewed	Average number of attempts to contact remaining facilities
Lubbock	11	7	9.5
Tarrant	13	5	7.5
Travis	8	6	7.5

The sample of facilities with a staff member who was interviewed included 5 designated facilities (4 hospitals, one nonprofit agency operating a non-hospital designated program). Of those designated facilities, 4 were in the three-county area and one was in a rural area outside of Lubbock.

We also spoke with key staff at 13 non-designated hospitals in the 3 regions. In our outreach to these facilities, we worked to identify the individuals who were familiar with the facility’s response to sexual assault victims. Six of the respondents were ER directors, four were directors, and one was an on-call SANE who worked with an on-call nonprofit service in three facilities.

Findings

Awareness of and compliance with SB 1191 at non-Designated Hospitals

SB 1191 was intended to make forensic exams available to sexual assault victims at non-designated hospitals. So we wanted to know whether administrators in non-designated hospital emergency rooms knew what SB 1191 required of them (see Table 2). While nearly all of the interviewees at non-designated hospitals had a basic understanding of the law, there was an interesting difference in emphasis. Eight spoke of the hospital’s affirmative requirement to have trained staff available or that victims were entitled to have the forensic evidence exam conducted at the presenting hospital, while four others used more

negative terminology, stating that a victim “can refuse” to transfer, that the hospital was required to perform the exam “if the victim insists,” or that they were required to perform the exam “if the patient invokes SB 1191.” (One additional respondent, a Chief Nursing Officer, was unfamiliar with SB 1191.)

Table 2: Understanding of SB 1191 among Respondents at non-Designated Hospitals

Hospital must be prepared	Victim entitled to receive exam	Victim may refuse/insist/ invoke SB 1191	Not familiar with SB1191
6	2	4	1

Table 3 shows that 9 of the 13 non-designated hospitals offered forensic exams. Individuals from three facilities stated that they do not offer forensic medical exams. A fourth said their facility was currently preparing to offer them.

Table 3 also shows that individuals at 10 of the 13 non-designated facilities reported that their ER nurses had received the basic training, described generally as a 2-hour online course in taking evidence samples. Two other facilities had not provided staff training because they worked with an on-call or other contract SANEs; one indicated no staff had been trained because the local organization did not have the staff to provide training, and the hospital did not have funding to obtain training.

Table 3: Non-designated hospital compliance with SB 1191

Requirement	Yes	No	Other
Hospital offers forensic exam	9	3	1 (preparing to offer)
ER staff has received training	10	1	2 (contract with outside SANEs)

Has SB 1191 Encouraged non-Designated Hospitals to Conduct Forensic Exams?

For the most part, non-designated hospitals are seeing relatively few sexual assault victims at their facilities. One facility reported seeing 73 sexual assault victims in the preceding year, and two reported 15-20 cases annually. However, respondents at 8 of the non-designated facilities said they see 6 or fewer cases of adult sexual assault per year. (Two respondents could not provide a number.) In stark contrast, the two designated facilities that were able to provide an estimate both saw between 50 and 60 sexual assault victims *per month*.

Table 4 indicates that personnel at 7 of the 9 non-designated facilities that provide forensic exams indicated the number of exams they perform has not changed since passage of SB 1191 (this includes the 4 facilities that do not provide forensic exams). Two indicated a slight increase; one was from a non-designated hospital that now contracts with a SANE staffing service, the other was with a large urban hospital that reported seeing a far higher number of victims than the other non-designated hospitals.

Table 4 also shows that respondents at 4 of the 5 designated facilities reported no change in the number of forensic exams conducted since SB 1191 was implemented. The 5th had only opened after SB 1191 was enacted, but did note that they were seeing approximately 40% more victims than they expected.

Table 4: Change in Number of Exams Performed Since Passage of SB 1191

Type of facility	Increase in exams	Decrease in exams	No change in exams	Do not offer exams
Designated	1 (more than anticipated)	0	4	0
Non-designated	2	0	7	4

It was clear that, SB1191 notwithstanding, most of the non-designated hospitals do not want staff with minimal training to perform the exams. Eleven actively encourage the victim to transfer to a designated facility, with one stating that “our goal is to get them to transfer.”

This reluctance to have exams performed by non-SANEs extends to criminal justice officials. Six respondents (3 non-designated, 3 designated) mentioned that the local law enforcement or prosecutors still want victims transferred to a designated hospital or treated by a certified SANE. They want a professional who understands chain of custody issues and who will be prepared to testify in court.

Respondents offered some reasons why non-designated hospitals remained reluctant to perform forensic exams:

- *Training requirements developed in response to SB 1191 are very basic*

Respondents noted that the training provided for non-designated hospital staff was very basic and typically offered on-line, lasting one or two hours. It focused on the collection of samples. Respondents noted training did not include information about how to conduct a pelvic exam or information about testifying in court.

Two interviewees from designated hospitals in rural areas stated that when the law was first passed, many other hospitals reached out to them with questions and requested training, but they were unable to get clarification from anyone at the state level about what constituted “basic forensic training.” In addition, one of the interviewees was told by the employing hospital not to provide any training, because the hospital did not want that responsibility.

Four respondents (3 non-designated, 1 designated) observed that having a nurse who had only received the minimal training on sample collection perform a sexual assault exam was not providing the best level of care to victims. “It’s very stressful for staff, because of course we want to provide the best service; we want the nurse responding to have full SANE training.”

Three respondents (2 non-designated, 1 designated) indicated that nursing staff with only minimal training are very uncomfortable performing the exams because they did not want to be called to testify. “They would be turned into hamburger meat” in the courtroom.

- *Low sexual assault caseloads make it impractical for many non-designated hospitals to have a SANE program*

As noted above, many of the non-designated hospitals see a very low number of sexual assault cases each year: 8 of 13 saw fewer than six cases per year. Some of those hospitals are in very rural areas, one noted that they served an elderly population, another indicated their hospital specialized in cardiac and critical emergency care.

With such a low number of cases, a hospital would hesitate to have more than one trained SANE on staff. However, it is unworkable in the long term for a nurse to be available 24/7.

Moreover, with such a low volume of sexual assault cases, respondents indicated that a SANE would have difficulty maintaining proficiency and difficulty conducting enough exams to maintain SANE certification.

Hospitals with very small ER staffs also worried about staff being stretched too thin by conducting forensic exams for sexual assault victims. Three respondents talked about the length of time a forensic exam takes, during which time the nurse is not available for other patients. "You can't be rushed... knowing you have 3 other ER patients waiting."

An alternative to having full-time SANEs is to develop an on-call SANE program. However, seven respondents noted the difficulty in using on-call SANEs. This was especially true where the on-call shift was in addition to a regular fulltime schedule. Two reported difficulty recruiting nurses; one of those noted that, given that the on-call duties were in addition to a normal shift and that with travel one case can take up to 8 hours, "the amount of time exceeds whatever reward there is."

Furthermore, on-call positions may not work in every area in a way that eliminates wait time for the victim/patient. One non-designated facility reported that when they attempted to use an on-call SANE the victim wasn't really benefited because she/he would have to wait 2 -3 hours for the nurse to arrive.

How Victims Are Transferred

Since the point of SB 1191 was to make it possible for victims to get forensic exams at any Texas hospital, the law did not deal with the issue of transferring victims from non-designated to designated hospitals. Yet, as noted, most of the non-designated facilities were continuing to transfer nearly all sexual assault victims to designated facilities. Non-designated hospitals were asked how victims were transferred. Several gave more than one option (see Table 5). One non-designated hospital uses an on-call SANE, so does not transport. Many have the victim transport him or herself but not all have procedures to ensure the victim makes it to the designated hospital. One interviewee indicated they transfer using EMS, another using police, "to make sure they get there." Another non-designated hospital, which estimates that it performs more than 70 exams per year, will recommend transfer but does not push the patient to transfer. "We believe it is best for us to collect what we can instead of them running away."

Table 5: Forms of Transfer from non-Designated Facilities

Victim self- transports	Victim self- transports with police escort	EMS transports	EMS transport only if medically necessary	Police transport	Advocate transports	Unknown
5	1	2	2	4	1	1

The reliance on law enforcement to transfer could be problematic in those cases where the victim has not yet decided to report the offense. Two respondents (one from a designated, one a non-designated facility) noted that not all law enforcement officers understand that a victim is not required to report the offense in order to receive a forensic exam.

Overall Opinions of SB 1191

While interviewees were not expressly asked for their opinion about SB 1191, they often offered commentary in their answers to the questions on the interview guide. One respondent from a non-designated facility stated that the effect of SB 1191 has been positive. It “has allowed victims to come forward more and ensure resources are available for forensic exams. It has also brought more attention to sexual assault issues by the media.”

However, several other interviewees volunteered concerns about the law.

- “I do not like SB 1191. It creates a false perception that victims can get the same level of care at all hospitals, and we cannot provide quality care.” – Interviewee from non-designated facility
- “The idea was awesome. No one would be turned away, everyone gets service... [But for a small rural hospital] to keep one nurse trained and proficient is impossible.” - Interviewee from designated facility
- “The time commitment [taking an emergency room nurse away from general duties for several hours to perform a sexual assault exam] is part of the problem, but the biggest is lack of acceptable, court room level qualification to support that exam and then to testify. It is a disservice to the survivor and law enforcement trying to prosecute, and to the nurses to ask them to do that.” – Interviewee from non-designated facility
- “We want the nurse responding to have full SANE training, but because of our low numbers [of sexual assault patients] it’s very difficult to keep a SANE or system of SANEs.” – Interviewee from non-designated facility
- “I sympathize with not wanting to make victims travel, but there was not a lot of planning on how this law was supposed to work.” – Interviewee from designated facility

IV. Conclusion and Recommendations

It is clear that the “simple” goal of providing sexual assault victims the opportunity to receive a forensic medical exam from any hospital emergency room is not simple to achieve. SB 1191, while an important state level action to try to implement this goal, did not fully account for the very real challenges faced in a diverse state such as Texas. Inadequate basic training, very low case volume at many hospitals, lack of transportation options, and remote locations can all pose barriers even to professionals dedicated to ensuring a high quality victim response.

When SB 1191 was passed, the law failed to clearly state the requirements for “basic” training that would be required for emergency room staff. As determined by the Board of Nursing, the training requirements in SB 1191 involved minimal change from requirements in effect previously. The training now being accessed by most of the staff at hospitals we spoke with is brief, online, and focused on the collection and preservation of samples of evidence. The sentiment shared with us by interviewees is that this training is insufficient to prepare a nurse to meet the needs of a traumatized sexual assault victim, and insufficient to prepare a nurse to defend their collection of evidence if challenged in court.

What should seem like a benefit to establishing universal forensic exam availability—low numbers of cases in a hospital—is actually a challenge. With fewer than one or two victims per month, a SANE nurse would not typically see a sufficient number of cases to maintain her skill level and certification—even if that individual were available 24/7 for every local case, which itself is not workable over the long term. With reduced expertise, criminal justice officials have less confidence in the evidence collection and that nurse would face a more difficult cross-examination from defense counsel in court. The small or rural hospitals themselves are also challenged: the daily nursing coverage for their ER may be insufficient to be able to spare a skilled nurse for the several hours it takes to properly conduct a forensic exam.

Where a victim and hospital are located in a remote part of the state, it may take two hours or longer to travel to a designated facility. A victim may not have transportation or may not be in an emotional state to transport her or himself that distance, and—particularly if she or he has not decided whether to report the offense—may not be willing to be transported by law enforcement. By the same token, it can take even longer for an on-call SANE to be paged and to travel out to the remote hospital.

We summarize our key findings as follows:

- **Requirements of SB1191 notwithstanding, it still is not possible to get a sexual assault forensic exam at any hospital in Texas**

SB1191 included language requiring all ERs to provide forensic evidence collection exams as well as language regarding training of persons who would collect forensic evidence. However, among the 13 hospitals in our sample without a SANE program, 3 did not offer exams. Interviews revealed reluctance by nurses, hospital administrators and criminal justice officials to have non-SANEs conduct medical forensic exams.

- **SB1191 did not result in higher standards for competence of ER staff who perform medical forensic exams**

SB 1191 left the decision of what constituted “basic” training to perform medical forensic exams to the appropriate licensing body. Training requirements mandated by the Board of Nursing in response to SB 1191 involved minimal change from requirements in effect previously. Staff training at hospitals we spoke with was often brief and online. Interviewees acknowledged that this training is insufficient to prepare a nurse to meet the needs of a traumatized sexual assault victim or to defend her collection of evidence in a courtroom.

- **There is reluctance among medical and criminal justice professionals to have non-SANEs conduct medical forensic exams: Eleven of the facilities we spoke with encourage victims to transfer to a facility with a SANE.**

Hospitals with few sexual assault patients face significant challenges in conducting medical forensic exams. With fewer than one or two victims per month, a SANE nurse would not be able to maintain her skill level and certification. With reduced expertise, criminal justice officials have less confidence in evidence collected and that nurse would face a more difficult cross-examination from defense counsel in court. Small hospitals are also challenged by the fact that daily ER nursing coverage may be insufficient to spare a skilled nurse for the several hours it takes to properly conduct a forensic exam.

- **There are currently no standards for transferring sexual assault victims to facilities where they can receive a competent medical forensic exam**

SB 1191 did not include requirements for how sexual assault victims should be transferred from the hospital where they present to a hospital that can provide a competent exam. As a result, transfers take a variety of forms, but victims are often left to transport themselves while in a state of trauma to a facility that, in rural area, may be far away. According to hospital staff we spoke with, an unknown number never arrive at the transfer site and do not receive an exam.

Recommendations

The professionals we spoke to had very telling insights regarding the complicating factors that exist at their own hospitals. What's more, they clearly conveyed a strong concern for the best interests of sexual assault patients. The expertise of such frontline professionals should be tapped to create a path forward in improving the forensic medical response to sexual assault victims. We recommend convening one or more working groups of interested Directors of Nursing, Chief Nursing Officers, and SANEs to identify a range of solutions that could be applied to build on the start of SB 1191 and provide better access to competent forensic exams for sexual assault victims in various settings. These might include the following topics.

- **Increased training options**

Establishing criteria for additional levels of training—between “basic” and fully certified—and expanded training opportunities that include a clinical component and courtroom observation might help to expand opportunities for victims. Certainly, there should be an option between the two-hour requirement set by the Board of Nursing and the 80 hours required for SANE certification.

- **Mobile SANEs**

The state might also consider initiating a research and discussion process leading to legislation creating a network of on-call SANEs who could travel to many of the hospitals in Texas without SANE programs. Using the model currently being developed by Texas Health Resources, the on-call SANEs could work regular shifts at larger hospitals and be on call during some of their off hours to respond to needs at smaller area hospitals. This would, of course, require funding and agreements between hospitals, so it would be complicated and require time to gather information and input from key parties. It would be a solution to the current dilemma for small hospitals that their sexual assault caseload does not economically justify full-time SANE coverage, nor would SANEs based at smaller hospitals receive enough cases to maintain their skills and certification.

- **Rotational opportunities for SANEs**

A formal system to provide opportunities for interested rural SANEs to regularly serve in designated facilities would allow those nurses to experience a sufficient volume of cases to maintain their skills and certification.

- **Victim transportation**

The system many hospitals still rely on—where law enforcement transports the victim to a designated facility—is likely a holdover from earlier times, where law enforcement paid for forensic exams and where victims had to agree to report the assault to obtain an exam. Today, sexual assault victims are entitled to an exam regardless of whether they have made a decision to report. Moreover, too often, victims are sent off by themselves to drive to another facility with

better-trained staff. Legislation could be enacted to require hospitals without a SANE program to create, maintain and have on file with DSHS, transfer protocols to provide convenient transfer options for survivors to travel to the hospitals with SANE programs.

- **Telemedicine**

For very rural regions, the working group might explore options for telemedicine, which uses video conferencing, remote monitoring equipment, and electronic health records to link patients to specialized medical expertise. Telemedicine is being used increasingly, and at least one study suggest it can be effective for sexual assault exams as well.² The U.S. Department of Justice's Office for Victims of Crime previously funded a National Sexual Assault TeleNursing Center, located at Newton-Wellesley Hospital in Massachusetts, which initially served sexual assault victims at three sites, and which is now poised to expand. OVC will also be funding a series of demonstration projects to provide sexual assault forensic exams using telemedicine.

Following an identification of these or other solutions, that same group could convene to determine an implementation strategy, which may include legislation, regulation, funding, the development of new resources or protocols, trainings, or a combination of strategies.

SB 1191 should be seen as one important step in the development of a model response to sexual assault victims. Going forward, Texas should maintain its role as a leader in providing justice and access to competent medical care for victims of sexual assault.

2 Miyamoto, S., et al., "Impact of telemedicine on the quality of forensic sexual abuse examinations in rural communities," *Child Abuse & Neglect*, Vol. 38, Issue 9, September 2014, Pages 1533–1539.

APPENDIX A:

Side by Side Comparison of Pre- and Post- SB1191 Board of Nursing Requirements for Forensic Exams	
Board of Nursing Rules <i>previous</i> to SB 1191	Board of Nursing Rules <i>after</i> SB 1191
<p>(d) Forensic Evidence Collection.</p> <p>(1) Each nurse licensed in Texas and employed in an emergency room (ER) setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by the Occupations Code §301.306 and this subsection:</p> <p>(A) by September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006; or</p> <p>(B) within two years of the initial date of employment in an ER setting. This requirement may be met through completion of approved continuing education activities, as set forth in §216.4 of this chapter (relating to Criteria for Acceptable Continuing Education Activity).</p>	<p>(d) Forensic Evidence Collection.</p> <p>(1) Pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of this subsection. This is a one-time requirement. An APRN may use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.</p>
<p>(2) This requirement shall apply to nurses who work in an ER setting that is:</p> <p>(A) the nurse’s home unit;</p> <p>(B) an ER unit to which the nurse “floats” or schedules shifts; or</p> <p>(C) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.</p>	<p>(2) A nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two hours of CNE relating to forensic evidence collection that meets the requirements of this subsection within two years of the initial date of the nurse’s employment in an ER setting. This is a one-time requirement.</p> <p>(A) This requirement applies to nurses who work in an ER setting that is:</p> <p>(i) the nurse’s home unit;</p>

	<ul style="list-style-type: none"> (ii) an ER unit to which the nurse “floats” or schedules shifts; or (iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER. <p>(B) A nurse shall be considered to have met the requirements of paragraphs (1) and (2) of this subsection if the nurse:</p> <ul style="list-style-type: none"> (i) completed CNE during the time period of February 19, 2006, through September 1, 2013; and (ii) the CNE met the requirements of the Board’s rules related to forensic evidence collection that were in effect from February 19, 2006, through September 1, 2013. <p>(C) Completion of at least two hours of CNE that meets the requirements of this subsection may simultaneously satisfy the requirements of paragraphs (1) and (2) of this subsection.</p>
<p>(3) A licensed nurse in Texas who would otherwise be exempt from CE requirements during the nurse’s initial licensure or first renewal periods under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. This is a one-time requirement for each nurse employed in an ER setting. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CE attendance. Validation of course completion in Forensic Evidence Collection should be retained by the nurse indefinitely, even if a nurse changes employment.</p>	<p>(3) A nurse who would otherwise be exempt from CNE requirements during the nurse’s initial licensure or first renewal periods under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CNE attendance. Validation of course completion in forensic evidence collection should be retained by the nurse indefinitely, even if a nurse changes employment.</p>

<p>(4) The minimum 2 hours of continuing education requirement shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.</p>	<p>(4) Continuing education completed under this subsection shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.</p>
<p>(5) The required hours under this subsection are included in the continuing education requirements for nurses.</p>	<p>(5) The hours of continuing education completed under this subsection will count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification related to forensic evidence collection that is approved by the Board may be used to fulfill the requirements of this subsection.</p>

APPENDIX B: INTERVIEW GUIDE FOR USE WITH EMERGENCY ROOM ADMINISTRATORS

Informed Consent Form: Approach Script and Consent for Police, Prosecutors, Victim Advocates, and Emergency Room Administrators

The Police Foundation, an independent research organization, has been funded by the Communities Foundation of Texas to evaluate the effects of recent Texas laws requiring law enforcement agencies to test all sexual assault kits and requiring hospitals to have trained staff available to collect sexual assault forensic samples.

The Police Foundation will use the information you provide for research and statistical purposes only. We will not disclose information that would identify you to anyone in your office or anyone else outside of the project without your permission. Your information will be kept confidential in a secure manner and your identifying information will be destroyed at the conclusion of the study.

Taking part in this interview is voluntary. In addition, you may discontinue participation at any time or skip any questions that you prefer not to answer. The entire interview should take no more than 30 minutes.

Do you have any questions about your participation?

Name _____

Hospital _____

Date _____

Interviewer _____

INTRODUCTORY QUESTIONS

1. What is your position at the hospital?

How long have you been at this hospital?

How long have you been in your current position?

2. According to our records, _____ hospital is a (designated/nondesignated) hospital for the treatment of sexual assault survivors under the communitywide plan. Is that correct?

3. Have you heard about Senate Bill 1191, passed in 2013, which set new requirements for hospitals treating victims of sexual assault? Y/N

[If Yes] What is your understanding of the additional requirements for hospitals created by this new law?

What does it require of ERs that's different than before its passage?

Have you taken steps to comply? What?

FOR NONDESIGNATED HOSPITALS

1. Does _____ Hospital offer sexual assault forensic exams to any victim of sexual assault? Y/N?

[If Yes] Do you offer such exams 24/7?

[If No] Why is that? (cost? Availability of personnel? Demand? Other barriers?)

2. Do any staff receive training regarding the collection of sexual assault kits (SAKs)? Y/N

[If Yes] Which staff receive training? (Prompts: Those who request it? Staff in certain roles?)

What type of training do they receive? (prompts: length, scope, who provides)

What do you estimate this training costs per staff member?

When did you begin this special training?

Was there any relationship between the advent of this training and the passage of SB 1191?

Did you develop your own training, or does your staff take training offered elsewhere?

What is the estimated cost per person for this training? _____

[If not already addressed] How many SANE or SAFEs do you have on staff? _____

Any on call? _____

3. Does _____ hospital have a protocol or standard language to inform sexual assault victims that it is NOT a designated hospital for the treatment of sexual assault victims? Y/N

[If Yes] Under that protocol or procedure:

- Do you provide the name of the designated hospital? Y/N.

[If Yes] What is the designated hospital for your community?

Approximately what percentage of victims informed indicate they will seek services at the designated hospital?

- Do you permit the patient to choose to be transferred to the designated hospital?
- Do you make the transfer if the patient chooses? Y/N

[If Yes]: What does the transfer process entail?

4. Prior to the implementation of the new law [find out its popular name], did ___ hospital perform sexual assault forensic exams?

[If No] What would happen if a victim came to the emergency room following a sexual assault?

[Prompts: examined and treated but no evidence collected? Referred to another hospital? Transported to another hospital? Call in a SANE?]

Has the law affected the number of forensic exams performed at your facility versus victims referred elsewhere?

FOR DESIGNATED HOSPITALS

5. Do you offer sexual assault forensic exams 24/7? Y/N

[If No] Why is that? (cost? Availability of personnel? Demand? Other barriers?)

6. How many staff does _____ hospital have who are specially-trained in the provision of sexual assault forensic exams? _____

7. What training do those staff receive regarding sexual assault victims or SAKs? [prompts: basic, advanced, continuing, to be a registered SANE, etc.?]

8. In the time since SB 1191 was enacted, has _____ hospital increased the number of trained staff? Number of SANEs? Changed its training?

9. Are trained staff always available, or do you use on-call staff for forensic exams?

10. How many of the victims you serve are referred by other hospitals? _____ [estimate?]
(prompts: do the referrals come from a range of hospitals, or do you have a few primary referring hospitals? If it varies, do you have any sense why you get more referrals from some than others?)

11. In the time since the law was enacted, has the number of victims referred to you **INCREASED** or **DECREASED**?

[If they are able to answer the above] Do you keep accurate statistics regarding referrals?

[If yes] Is that information shared with any other organizations? Law enforcement?

FOR ALL HOSPITALS – DESIGNATED AND NONDESIGNATED

12. Once a SAK is collected, what is the process to transmit it to a law enforcement agency? Can you walk me through the process?

Possible prompts:

Does the victim have to first agree to report the crime?

13. Do you, or does the hospital, have a particular point of contact with the police agencies?

14. Do you meet with law enforcement regularly, as part of a sexual assault response team or something less formal?

15. Do you, or the hospital, have a point of contact with an area community sexual assault service provider?

We would like to understand more about the impact of this new law.

16. Does the hospital have data on the numbers of SAKs collected over the past several years? Y/N

[If Yes] We are interested in monthly or quarterly data, if available, from 2008 to present. Do you have that? Can we request copies?

THANK YOU for your time.



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