

SEXUAL ASSAULT EXAMINATION FREQUENTLY ASKED QUESTIONS

1. WHAT TREATMENT OPTIONS ARE AVAILABLE TO SEXUAL ASSAULT VICTIMS?

Victims who seek acute care following sexual violence have two options: (1) medical examination and treatment or (2) medical-forensic examination and treatment.

Note: Many victims seek examination and treatment only. The victim should be fully informed of all treatment options, including the advantages and disadvantages of each in order to make an informed decision. Emergency room personnel are required to perform sexual assault medical-forensic examinations on all victims who request such treatment.

2. WHAT IS A SEXUAL ASSAULT MEDICAL-FORENSIC EXAMINATION?

A medical-forensic examination should include:

- ◇ a medical assessment, stabilization and treatment of injuries;
- ◇ evidence collection;
- ◇ information, screening and prophylactic treatment for sexually transmitted infections (STIs), including HIV, pregnancy and other medical concerns; and
- ◇ referrals for counseling and follow up appointments.

In Kentucky, the Kentucky State Police Sexual Assault Evidence Collection Kit (KSP Kit), discussed below, is typically used to facilitate evidence collection. However, effective sexual assault exams involve much more than “filling up the box.”

3. WHAT IS A SANE IN KENTUCKY?

The Kentucky Board of Nursing offers Sexual Assault Nurse Examiner (SANE) credentials to registered nurses with a Kentucky license who complete a specialized training program that requires a total of 40 hours of didactic training and 60 hours of clinical training. The SANE credential grants a registered nurse the autonomy to perform sexual assault medical-forensic exams on patients 14 years of age and older. For information see KRS 314.011.

4. WHAT ARE THE PRIORITIES FOR CONDUCTING A MEDICAL-FORENSIC EXAMINATION?

Victims should initially be examined and treated for life-threatening injuries. A prompt examination minimizes the loss of evidence. Ideally, the physical examination and collection of specimens for medical treatment should be performed at the same time as the forensic examination and collection of forensic evidence. Documentation of the victim’s history and injuries, if any, is equally as important as collection of evidence.

5. WHAT IS THE TIME FRAME FOR EVIDENCE COLLECTION?

Typically, 96 hours. Pursuant to 502 KAR 12: 010 (3), “If the sexual assault occurred within ninety-six (96) hours prior to the forensic examination, a Kentucky State Police Evidence Collection Kit shall be used.”

Beyond the standard 96-hour window, it is possible in some cases to collect valid evidence. The decision whether to use an evidence collection kit, or parts thereof, after the 96 hours should be considered on a case-by-case basis.

Even if no evidence collection kit is used, examiners should take a careful history and document all injuries thoroughly.

6. WHAT LAW GOVERNS SEXUAL ASSAULT MEDICAL-FORENSIC EXAMINATIONS IN KENTUCKY?

Ky Administrative Regulation 502 KAR 12:0110 is the Statewide Medical-Forensic Examination Protocol for acute care of sexual assault victims, which describes how medical-forensic

examinations should be performed within 96 hours post-assault. This protocol is available at www.lrc.state.ky.us/kar/502/012/010.htm. Additional requirements are included in KRS 216B.400, available at <http://lrc.ky.gov>.

Critical components of this protocol include:

- ◇ Contacting an advocate from the regional rape crisis center prior to the examination;
- ◇ Informing the victim that s/he may refuse any part of the forensic evidence collection, and obtaining on-going consent for treatment throughout the exam;
- ◇ Careful collection and documentation of pertinent history, with focus on trauma and body-to-body contact;
- ◇ Physical examination and collection of evidence pertinent to history provided;
- ◇ Assessment and treatment of injuries, STIs and pregnancy; and
- ◇ Provision of information regarding follow-up procedures, referrals, and victim compensation.

Kentucky Revised Statute (KRS) govern performance of sexual assault medical forensic exams, providing additional information regarding who must perform exams, who can give consent, and who pays for examinations.

7. WHAT IS A SEXUAL ASSAULT EXAMINATION “KIT”?

Kentucky State Police Sexual Assault Evidence Collection Kits are used to facilitate evidence collection and provide examiners with:

- ◇ Materials needed to collect and preserve samples of evidence:
 - ◇ Forms to document detailed patient history and assessment;
 - ◇ Materials used as standards for comparison;
 - ◇ Samples used to prove that sexual assault occurred; and
 - ◇ Samples that may link perpetrator/s to the crime.

8. IS IT TRUE THAT AN EXAMINER JUST HAS TO “FOLLOW THE KIT DIRECTIONS”?

No. While the KSP kit provides directions for evidence collection, all medical-forensic examination should be “history driven,” rather than “kit driven.” In many cases, it is appropriate to go beyond the directions included in the kit and collect additional samples based on the history provided.

Based on the history and the patient’s wishes, the examiner may vary the nature of the specimens collected and the order in which they are collected. For example, if the assault involved only oral penetration, it is not necessary for the examiner to collect genital or anal swabs. If multiple penetrations were involved, the victim may wish to have oral swabs collected first so that s/he may rinse the mouth. The kit allows for such flexibility in specimen collection.

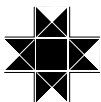
All procedures should be explained prior to beginning and immediately before each step. The victim should be given the opportunity to refuse any and all procedures with which s/he does not feel comfortable.

9. WHO PROVIDES SEXUAL ASSAULT EXAMINATION KITS?

Kentucky State Police provide the kits at no charge, generally through the local law enforcement agencies. However, facilities can and should obtain KSP Kits and training videos in advance, to ensure availability when needed. Contact the Kentucky State Police Central Crime Laboratory in Frankfort, at 502-564-5230.

10. WHAT IF THE CASE INVOLVES US MILITARY PERSONNEL?

The exam is largely the same. However, reporting procedures and evidence collection kits may be different. For information, visit the United States Department of Defense Sexual Assault Prevention and Response website at www.sapr.mil.



11. WHO CAN GIVE OR WITHHOLD CONSENT FOR A SEXUAL ASSAULT EXAMINATION?

With only one exception, any person can give consent for a sexual assault examination, even a minor. A parent may not prevent the performance of an examination on a minor. For information see KRS 216B.400 (g).

Only adults who have been determined by a court to be “legally disabled” AND for whom a “guardian” has been appointment to make medical decisions are legally incapable of giving consent for sexual assault exams. In such cases, the guardian must give consent. If health care providers believe that a guardian may not be acting in the patient’s best interest, health care providers should make a report to Adult Protective Services, so that additional protective action may be taken if necessary.

Sexual assault exams should only be conducted with the consent of the victim. For information see KRS 216B, 400(d). The victim must be informed that s/he may withdraw consent at any time. For information see 502 KAR 12:010 (2)(7). Laws dictating that the victim’s consent is required were established because these exams are very invasive and can result in further trauma to the victim, especially if the victim does not give consent. Even when another gives legal consent, as with a small child or incompetent adult, it is important for the victim to understand what is going to happen and give permission. In extreme cases where it is not possible for the victim to give permission, it may be appropriate to take steps to prevent further trauma, such as anesthesia or sedation. For information see 205 KAR 12:010 (3)(6).

12. DOES KENTUCKY LAW REQUIRE REPORTING ALL SEXUAL ASSAULTS TO LAW ENFORCEMENT?

No. Contrary to popular belief, there is no law that requires all sexual violence or all criminal acts.

Kentucky’s mandatory reporting laws only require reporting “abuse, neglect, or dependency” in three distinct situations: child abuse or neglect; spouse abuse; and abuse or neglect of an otherwise ‘vulnerable’ adult, i.e. any person who, “because of mental or physical disfunctioning, is unable to protect himself.” For information see KRS 620, 209, and 209A.

13. HOW CAN HEALTH CARE PROVIDERS COMPLY WITH BOTH HIPAA AND MANDATORY ABUSE REPORTING LAWS?

HIPAA permits disclosures required by law. Since health care providers are required by law to report abuse and neglect of these protected classes of persons, disclosure or information required for reporting in such cases is permitted by HIPAA.

In cases where mandatory reporting is not required, the patient must authorize the release of information prior to notification of law enforcement officials. Without such authorization, health care providers can be held liable for HIPAA violation.

Prior to the passage of HIPAA, most health care facilities routinely reported crimes to law enforcement officials without patient authorization. Facility policies should be updated as soon as possible.

14. DOES CONTACTING THE RAPE CRISIS CENTER ADVOCATE VIOLATE HIPAA?

No. Since health care providers are mandated by law to contact the Rape Crisis Center, they do not violate HIPAA by contacting rape crisis advocates as required by the regulation governing sexual assault medical-forensic examination (502 KAR 12:010). Also, HIPAA permits the use or disclosure of information for “treatment” purposes. For information see 45 CFR 164.502(a) (1). Since contacting the rape crisis center is required by the treatment protocol adopted by the state, contacting an advocate is clearly a ‘permitted disclosure.’

15. WHEN SHOULD THE FACILITY CONDUCTING THE EXAM CONTACT THE RAPE CRISIS ADVOCATE?

Providers should notify the rape crisis advocate as soon as the victim presents and requests treatment for a sexual assault. Advocates are prepared to respond whenever they are called, even in the middle of the night.

Contacting the victim advocate immediately helps ensure that advocacy services are provided in a timely manner and is the first step of the “Pre-Forensic Exam Procedure” incorporated into Kentucky law. For information see 502 KAR 12:010 (2)(1).

16. WHO PAYS FOR A SEXUAL ASSAULT MEDICAL-FORENSIC EXAMINATIONS?

If law enforcement is notified, these exams are paid by the Crime Victims Compensations Board (CVCB) using the Sexual Assault Victims Assistance Fund.

CVCB reimburses based on a designated rate for a physician, SANE, hospital or examination facility for performing the examination, a hospital or facility for use of a room, diagnostic laboratory testing and medications prescribed as a result of the examination and as part of basic treatment, including treatment for HIV prophylaxis. No charge shall be made to the victim for these examinations. For information see KRS 216.B 400(h).

Victims can sometimes be billed and held liable for additional medical services, such as x-rays or admissions. In some cases, expenses **may** be reimbursed by CVCB from the general Crime Victims Compensation Fund. It usually takes more than a year for claims to be processed and many are denied.

Health care providers are required to “advise the victim that the forensic examination shall be conducted free of charge, but costs related to medical treatment may be incurred” prior to conducting the exam. For information see 502 KAR 12:010 (2)(6). For payment rates see 107 KAR 2:010.

17. WHAT IF THE VICTIM DOES NOT WANT TO REPORT TO LAW ENFORCEMENT?

Except where mandatory abuse and neglect reporting laws apply, the victim/patient has the right to decide whether or not law enforcement is notified. Respecting the patient’s decision in such cases is necessary in order to ensure HIPAA compliance.

If the sexual assault is not reported to law enforcement, the exam will not be paid for by the state. Most facilities do not have mechanisms in place for securely storing kits not released to law enforcement officials, and, therefore, cannot maintain “chain of custody” as required for legal proceedings.

If the patient does not want to report to law enforcement officials, health care providers should review treatment options with the patient (see FAQ #1) and determine which option best meets the patient’s needs. Knowing that exams can be refused may meet some of the patient’s need to assume some control of the situation after the assault.

Note: Even if a “kit” is not used, the patient’s medical record may provide evidence of the assault through the accurate documentation of the patient’s history and assessment findings.

18. WHO DECIDES IF A SEXUAL ASSAULT EXAMINATION IS PERFORMED?

The victim or the victim’s guardian, if the victim is an adult who has been determined “legally disabled” and has had a guardian appointed to make medical decisions. For information see KRS 216B.400 (d). Law enforcement officials, prosecutors, nor any other officials are authorized to oppose the victim’s decision.

All hospitals that provide emergency services are required by law to perform these exams upon request. Refusal to perform exams can result in fines. For information see KRS 216B.400.

Note: No law prevents hospitals from referring non-emergent patients to specialized facilities, such as sexual assault examination centers or children’s advocacy centers. If the patient prefers to be treated on-sight, the hospital has a legal duty to provide the exam.

19. WHAT ARE CHILDREN’S ADVOCACY CENTERS?

Children’s Advocacy Centers (CACs) are child-friendly facilities that provide locations for child sexual abuse examinations and forensic interviews, along with other services. CACs generally provide exams in non-emergent cases, as most are not equipped to provide emergency medical services and are not open round the clock. In Kentucky, there is one CAC located in each area development district. For more information, contact your local CAC or the Division of Child Abuse and Domestic Violence Services at 502-564-9433.

